AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF TÜRKIYE AND THE GOVERNMENT OF THE REPUBLIC OF SERBIA CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Tilrkiye and the Government of the Republic of Serbia hereinafter referred to as "the Contracting Parties";

Desiring to promote greater economic cooperation between them, particularly with respect to investment by investors of the State of one Contracting Party in the territory of the State of the other Contracting Patty;

Recognizing that agreement upon the treatment to be accorded such investment will stimulatethe flow of capital and technology, and the economic development of the States of theContracting Parties;

Agreeing that fair and equitable treatment of investments is desirable in order to maintain a stable framework for investments and will contribute to maximizing effective utilization of economic resources and improve living standards; and

Convinced that these objectives can be achieved without relaxing health, safety andenvironmental measures of general application as well as internationally recognized labor rights;

Having resolved to conclude an agreement concerning the reciprocal promotion and protection of investments;

Have agreed as fo llows:

Article 1. Definitions

For the purposes of this Agreement;

1. The term "investment" means every kind of asset, connected with business activities, acquired for the purpose of establishing lasting economic relations in the territory of the State of a Contracting Party in conformity with its laws and regulations, and that has the characteristics of an investment (1), including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, the assumption of risk, contribution to economic development, and to the flow of capital and technology between the Contracting Parties, or a certain duration.

(1) Where an asset lacks the characteristics ofan investment, that asset is not an investment regardless of the form it may take.

Forms that an investment may take include:

(a) movable and immovable property, as well as any other rights in rem such as mortgages, liens, pledges, and any other similar rights as defined in conformity with the laws and regulations of the State of the Contracting Party in whose territory the property is situated;

(b) reinvested returns, claims to money or any other rights having financial value related to an investment;

(c) shares, stocks, or any other form of participation in companies;

(d) intellectual prope1ty rights, in particular patents, industrial designs, technical processes, as well as trademarks, goodwill, and know-how;

(e) an interest arising from the conm1itment of capital or other resources in the territory of a State of the Contracting Party to economic activity in that territory, such as under:

(i) a contract involving the presence of an investor's property in the territory of the State of the Contracting Party, including a turnkey or construction contract, or a concession including those to search for, cultivate, extract or exploit natural resources, or

(ii) a contract where remuneration depends substantially on the production, revenues or profits of a company.

2. The term "investment" does not mean claims to money that arise solely from:

(a) commercial contracts for sale of goods or services by investors in the territory of the State of one Contracting Party to nationals or companies in the territory of the State of the otherContracting Party, or

(b) the extension of credit in connection with a commercial transaction, referred to in subparagraph 2(a) of this Article.

3. The term "investor" means:

(a) natural persons having the nationality of the State of a Contracting Party according to its laws;

(b) legal persons incorporated or constituted under the law in force of the State of a Contracting Party and having their registered offices together with substantial business activities in the territory of the State of that Contracting Party;

who have made an investment in the territory of the State of the other Contracting Party.

4. The term "returns" means the amounts yielded by an investment and includes in particular, though not exclusively, profit, interest, capital gains, royalties, fees and dividends.

5. The "territory" means;

(a) in respect of the Republic of Ttirkiye; the land territory, internal waters, the territorial sea and the airspace above them, as well as the maritime areas over which Ttirkiye has sovereign rights or jurisdiction for the purpose of exploration, exploitation and preservation of natural resources whether living or non-living, pursuant to international law.

(b) in respect of the Republic of Serbia; the area over which the Republic of Serbia exercises sovereign rights and jurisdiction, in accordance with its national laws and regulations and international law.

Article 2. Scope of Application

This Agreement shall be applicable from the date of its entry into force to investments in the territory of the State of one Contracting Party, made in accordance with its national laws and regulations, by investors of the State of the other Contracting Party, whether prior to, or after the entry into force of the present Agreement. However, this Agreement shall not apply to any disputes that have arisen, or any claim which was settled before its entry into force.

Article 3. Promotion and Protection of Investments

1. Subject to its laws and regulations, each Contracting Party shall in the territory of its State promote as far as possible investments by investors of the State of the other Contracting Party.

2. Investments of investors of the State of each Contracting Party shall at all times be accorded fair and equitable treatment in accordance with the principles of international law and full protection and security in the territory of the State of the other Contracting Party. Neither Contracting Party shall in any way impair the management, maintenance, use, operation, enjoyment, extension, sale, liquidation or disposal of such investments by umeasonable or discriminatory measures.

3. For the purpose of this Agreement, violation of the fair and equitable treatment means:

(a) denial of justice in criminal, civil or administrative proceedings; or

(b) fundamental breach of due process in judicial and administrative proceedings; or

(c) manifest arbitrariness; or

(d) targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief; or

(e) abusive treatment of investors, such as coercion, duress and harassment.

4. For greater certainty, "full protection and security" refers to the Contracting Parties obligations relating to physical

security of investors and investment.

Article 4. Treatment of Investments

1. Each Contracting Party shall promote and admit investments into the territory of its State in accordance with its national laws and regulations, and this Agreement.

2. Each Contracting Party shall accord to these investments, once established, treatment no less favourable than that accorded in like circumstances to investments of investors of its own State or to investments of investors of any third State, whichever is the most favourable, as regards the management, maintenance, use, operation, enjoyment, extension, sale, liquidation or disposal of the investment.

3. Each Contracting Party shall within the framework of its national legislation give favourable consideration to applications for the entry and sojourn of nationals of the State of the other Contracting Party who wish to enter the territory of its State in connection with making and carrying through of an investment.

4. The provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the State of the other Contracting Party the benefit of any treatment, preference or privilege which the former Contracting Party may grant to any third State pursuant to:

(a) any agreement on membership in economic union, customs union, free trade zone, monetary union or similar international agreement establishing such unions or other forms of regional cooperation, or

(b) any international agreement or arrangement relating wholly or mainly to taxation.

5. Paragraph 2 of this Article shall not apply in respect of dispute settlement provisions between an investor and the hosting Contracting Party laid down simultaneously by this Agreement and by another similar international agreement to which one of the Contracting Parties is signatory.

6. The provisions of Articles 3 and 4 of this Agreement shall not oblige the Contracting Party to accord investments ofinvestors of the State of the other Contracting Party the same treatment that it accords to investments ofits own investors with regard to acquisition ofland, real estates, and real rights thereof.

Article 5. General Exceptions

1. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining, or enforcing any non-discriminatory legal measures:

(a) designed and applied for the protection of human, animal or plant life or health, or the environment;

(b) related to the conservation of living or non-living exhaustible natural resources;

(c) for maintaining the safety, solvency, integrity or financial responsibility of financial institutions and ensuring the integrity and stability of a Conh·acting Party's financial system.

2. Nothing in this Agreement shall be construed:

(a) to require any Contracting Party to furnish or allow access to any information if its disclosure determines to be contrary to its essential security interests;

(b) to prevent any Contracting Party from taking any actions that it considers necessary for the protection of its essential security interests;

(i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,

(ii) taken in time of war or other emergency in international relations, or

(iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) to prevent any Contracting Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 6. Expropriation and Compensation

1. Investments shall not be expropriated, nationalized or subject, directly or indirectly, to any other measure having similar effect (hereinafter referred as expropriation) except for a public purpose in accordance with the law of the Contracting Party, in a nondiscriminatory manner, upon payment of prompt, adequate and effective compensation, and in accordance with due process of law and the general principles of treatment provided for in Article 3 of this Agreement.

2. Non-discriminatory legal measures designed and applied to protect legitimate public welfare objectives, such as health, safety and environment, do not constitute indirect expropriation.

3. Compensation shall be equivalent to the market value of the expropriated investment before the expropriation was taken or became public knowledge, whichever is earlier, and shall include interest on an appropriate commercial rate until the date of payment. Compensation shall be paid in a freely convertible currency without delay and be freely transferable as described in Article 8.

4. The investor affected shall have a right, under the laws and regulations of the State of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of the State of that Contracting Party, of his or her case and to the valuation of his or her investment in accordance with the principles set out in this Agreement.

5. For greater certainty, examples of an indirect measure having an effect equivalent to expropriation, include inter alia, a measure or series of measures by a Contracting Party that substantially deprives the investor of the fundamental attributes of property in its investment, including the right to use, enjoy and dispose of its investment without formal transfer of title or seizure.

6. Expropriation arising from a measure or a series of measures of a Contracting Party without formal transfer of title or outright seizure (hereinafter referred to as "indirect expropriation") has an effect equivalent to direct expropriation. The determination of whether a measure or a series of measures of a Contracting Party constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

(a) the economic impact of those measures, although the sole fact that a measure or a series of measures of a Contracting Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred;

(b) the extent to which the measures interfere with distinct, reasonable investment-backed expectations, and

(c) the character of these measures.

Article 7. Compensation for Losses

1. Investors of the State of either Contracting Party whose investments suffer losses in the territory of the State of the other Contracting Party owing to war, insurrection, civil disturbance or other similar events shall be accorded by such other Contracting Party treatment no less favourable than that accorded to investors of its own State or to investors of any third State, whichever is the most favourable treatment, as regards restitution, indemnification, compensation or other settlement.

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

(a) requisitioning of their property by its forces or authorities; or

(b) destruction of their property by its forces or authorities, which was not caused in combat action or was not required by the necessity of the situation;

shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective. The amount of such compensation shall be determined in accordance with the provisions of paragraph 3 of Aiticle 6 of this Agreement, from the date of requisitioning or destruction until the date of actual payment. Resulting payments shall be freely convertible.

Article 8. Repatriation and Transfer

1. Each Contracting Party shall, upon payment of all fiscal obligations by the investors of the State of the other Contracting

Party, guarantee in good faith all transfers related to an investment made in accordance with this Agreement to be made freely and without delay into and out of its territory. Such transfers include:

(a) the initial capital and additional amounts to maintain or increase an investment;

(b) profit, dividends, interests, capital gains, royalties and other amounts arising from that investment;

(c) returns;

(d) proceeds from the sale or liquidation of all or any part of an investment;

(e) compensation pursuant to Aiticle 6 and 7;

(f) reimbursements and interest payments deriving from loans in connection with investments;

(g) salaries, wages and other remunerations received by the nationals of the State of one Contracting Party who have obtained in the territory of the State of the other Contracting Party the corresponding work permits related to an investment;

(h) payments arising from an investment dispute.

2. Transfers shall be made in the convertible currency in which the investment has been made or in any other conve1tible currency at the rate of exchange in force at the date of transfer, unless otherwise agreed by the investor and the hosting Contracting Party.

3. Notwithstanding paragraphs 1 and 2, nothing in this Article shall be construed to prevent a Contracting Paity from applying in an equitable, non-discriminatory and good faith manner of its laws relating to:

(a) bankruptcy, liquidation or the protection of the rights of a creditor;

(b) issuing, trading or dealing in securities;

(c) criminal or penal offences;

(d) financial reporting or record keeping of transfers when necessai·y to assist law enforcement or financial regulatory authorities; or

(e) ensuring compliance with an order or judgment in judicial or administrative proceedings.

4. Where, in exceptional circumstances, payments and capital movements cause or threaten to cause serious balance of payments difficulties, each Contracting Party may temporarily restrict transfers, provided that such restrictions are imposed on a non-discriminatory and in good faith basis.

Article 9. Subrogation

1. If one of the Contracting Parties has a public insurance or guarantee scheme to protect investments of its own investors against non-commercial risks, and if an investor of this Contracting Party has subscribed to it, any subrogation of the insurer w1der the insurance contract between this investor and the insurer, shall be recognized by the other Contracting Party.

2. The insurer is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

3. Disputes between a Contracting Party and an insurer shall be settled in accordance with the provisions of Article 12 of this Agreement.

Article 10. Health, Safety and Environmental Measures

The Contracting Parties recognize that it is inappropriate to encourage investments by relaxing domestic health, safety or environmental measures. Accordingly, a Contracting Party should not waive or otherwise derogate from or offer to waive or otherwise derogate from those measures to encourage the establishment, acquisition, expansion or retention of an investment of an investor in its territory.

Article 11. Corporate Social Responsibility

Each Contracting Party should encourage legal persons operating within the territory of its State or subject to its jurisdiction to voluntarily incorporate internationally recognized standards of corporate social responsibility in their practices and internal policies, such as statements of principle that have been endorsed or are supported by the Contracting Parties. These principles address issues such as labor, environment, human rights, community relations, and anti-corruption.

Article 12. Settlement of Disputes between One Contracting Party and Investors of the State of the other Contracting Party

1. This Article shall apply to disputes between one Contracting Party and an investor of the other Contracting Party concerning an alleged breach of an obligation of the former under this Agreement, which causes loss or damage to the investor or its investments.

2. Disputes between one of the Contracting Parties and an investor of the other Contracting Party, in connection with its investment, shall be notified in writing, including detailed information, by the investor to the recipient Contracting Party of the investment. As far as possible, the investor and the concerned Contracting Party shall endeavor to settle these disputes by consultations and negotiations in good faith.

3. If these disputes, cannot be settled in this way within six (6) months following the date of the written notification mentioned in paragraph 2, the disputes can be submitted, by the choice of investor, to:

(a) the competent court of the State of the Contracting Party in whose territory the investment has been made, or

(b) except as provided under paragraph 5 (a) and (b) of this Atticle, to:

(i) the International Center for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes Between States and Nationals of other States", or

(ii) an ad hoc arbitral tribunal established under the At·bitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL).

4. Once the investor has submitted the dispute to one or the other of the dispute settlement forums mentioned in paragraph 3 of this Article, the choice of one of these forums shall befinal.

5. Notwithstanding the provisions of paragraph 3 of this Article;

(a) only the disputes arising directly out of investment activities which have obtained necessary permission, if there is any permission required, in conformity with the relevant legislation of the State of the Contracting Party on foreign capital, and that effectively started shall be subject to the jurisdiction of the International Center for Settlement oflnvestment Disputes (ICSID) or any other international dispute settlement mechanism as agreed upon by the Contracting Parties;

(b) the disputes, related to the property and real rights upon the real estates within the territory of the States of the Contracting Parties are totally under the jurisdiction of the national courts and therefore shall not be submitted to jurisdiction of the International Center for Settlement of lnvestrnent Disputes (ICSID) or any other international dispute settlement mechanism.

6. The arbitral tribunal shall take its decisions in accordance with the provisions of this Agreement, the laws and regulations of the State of the Contracting Party involved in the dispute in which territory the investment is made (including its rules on the conflict of laws) and the relevant principles of international law as accepted by both Contracting Parties.

7. The arbitration awards shall be final and binding for all parties in dispute. Each Contracting Party shall execute the award according to its national law.

Article 13. Denial of Benefits

1. A Contracting Party may deny the benefits of this Agreement to an investor of the State of the other Conh·acting Party that is a company of such other Contracting Pruiy and to investments of such investor if:

(a) the investors of a State of a non-Contracting Patty or investors of the denying Contracting Party owns or controls the company, and

(b) the company has no substantial business activities in the territory of the State of the Contracting Party under whose law it is constituted or organized; or

(c) the denying Contracting Party adopts or maintains measures that prohibit transactions with that investor.

2. The denying Contracting Party shall, to the extent practicable, notify the other Contracting Party before denying the benefits.

Article 14. Settlement of Disputes between the Contracting Parties

1. The Contracting Parties shall seek in good faith and a spirit of cooperation a rapid and equitable solution to any dispute between them concerning the interpretation or application of this Agreement. In this regard, the Contracting Parties agree to engage in direct and meaningful negotiations to arrive at such solutions.

2. If the Contracting Parties cannot reach an agreement within six (6) months after the beginning of a dispute between themselves through the foregoing procedure, the dispute may be submitted, upon the request of either Contracting Party, to an arbitral tribunal of three members for a binding decision in accordance with the applicable rules of international law accepted by each Contracting Party.

3. Unless these rules are modified by the Contracting Parties, the UNCITRAL Arbitral Rules or any other applicable arbitration rules agreed upon the Contracting Parties shall govern the appointment of the members of the Arbitral Tribunal.

4. The Arbitral Tribunal shall determine its own rules of procedure. It shall reach its decisions by majority of votes. Such decision shall be final and binding for both Contracting Parties.

5. A dispute shall not be submitted to an international arbitral tribunal under the provisions of this Article, if a dispute on the same matter has been brought before another international arbitral tribunal under the provisions of Article 12 and is still before the tribunal. This will not impair the engagement in direct and meaningful negotiations between both Contracting Parties.

Article 15. Service of Documents

Notices and other documents in disputes under Article 12 and 14 shall be served on the Republic of Türkiye by delivery to:

Cumhurbaşkanlığı Hukuk ve Mevzuat Genel Müdürü

Cumhurbaşkanlığı Külliyesi

06560 Beştepe-Ankara

Türkiye

(General Directorate of Law and Legislation of Presidency

Presidential Complex

06560 Beştepe - Ankara

Türkiye)

Notices and other documents in disputes under Article 12 and 14 shall be served on the Republic of Serbia by delivery to:

Prime Minister

The Government of the Republic of Serbia

Nemanjina 11

11000 Belgrade

Republic of Serbia

The State Attorney's Office

Kosovska 31

11 000 Belgrade

Republic of Serbia

Article 16. Entry Into Force

1. This Agreement shall enter into force on the date of the receipt of the last notification by the Contracting Parties, in writing and through diplomatic channels, of the completion of the respective internal legal procedures necessary to that effect.

2. Upon the entry into force of this Agreement, the Agreement between the Government of the Republic of Turkey and the Federal Government of the Federal Republic of Yugoslavia concerning the Reciprocal Promotion and Protection oflnvestments, signed on 2nd March 2001 is terminated and substit11ted by this Agreement.

3. This Agreement shall remain in force for a period of ten (10) years and shall continue to be in force unless terminated in accordance with paragraph 5 of this Article.

4. This Agreement may be amended by mutual written consent of the Contracting Parties at any time. The amendments shall enter into force in accordance with the same legal procedure prescribed under the paragraph 1 of the present Article.

5. Either Contracting Party may, by giving one year's prior written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten-year period or at any time thereafter.

6. With respect to investments made or acquired prior to the date of termination of this Agreement and to which this Agreement otherwise applies, the provisions of all of the other Articles of this Agreement shall thereafter continue to be effective for a further period of five (5) years from the date of termination.

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

DONE in duplicate at Belgrade on September 7, 2022 in the Turkish, Serbian and English languages, all texts being equally authentic.

In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF TÜRKIYE

Mustafa VARANK

Minister of Industry and Technology

FOR THE GOVERNMENT OF THE REPUBLIC OF SERBIA

ANĐELKA ATANASKOVIĆ

Minister of Economy