

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE ITALIAN REPUBLIC AND THE GOVERNMENT OF \_\_\_\_\_ FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Italian Republic and the Government of \_\_\_\_\_, hereinafter referred to as "Parties",

DESIRING to establish favourable conditions to enhance economic co-operation between the two Countries, especially in relation to direct investments by investors of one Party in the territory of the other Party;

RECOGNISING the importance of strengthening their investment relations, in accordance with the objective of sustainable development in the economic, social and environmental dimensions, and of promoting investment between them, mindful of the needs of the business communities of each Party, in particular small and medium-sized enterprises, and of high levels of environmental and labour protection through relevant internationally recognised standards and international agreements, to which both Parties are party;

REAFFIRMING their commitment to the principles of sustainable development and transparency;

SEEKING to establish an investment framework based on mutually advantageous rules to govern investment between the Parties that would enhance the competitiveness of their economies, make their markets more efficient and vibrant, and ensure a predictable legal environment for further expansion of investment between them;

REAFFIRMING their commitment to the Charter of the United Nations and having regard to the principles articulated in the Universal Declaration of Human Rights;

ACKNOWLEDGING that the mutual encouragement and protection of investments based on international agreements will contribute to stimulate economic relations that will foster the prosperity of both Parties;

ENCOURAGING enterprises operating within their territories or subject to their jurisdiction to respect internationally recognised guidelines and principles of corporate social responsibility, including the OECD Guidelines for Multinational Enterprises, and to pursue best practices of responsible business conduct;

RECOGNIZING the importance to promote equal opportunities and participation for women and men in the economy;

WILLING to duly protect the intellectual property rights of their investors and

RECOGNISING that the provisions of this Agreement preserve the right of the Parties to regulate within their territories in order to achieve legitimate public policy objectives, such as public health, safety, environment, public morals, financial stability, social or consumer protection, and the promotion and protection of cultural diversity;

[For agreements with third countries that have a status of "EU (potential) candidate country":

BEARING IN MIND that, in light of the judgment of the Court of Justice of the European Union in Achmea (C-284/16), this Agreement should be terminated in the event of the [XX country] accession to the European Union];

HAVE AGREED AS FOLLOWS:

## **Section 1. OBJECTIVES, DEFINITIONS AND SCOPE**

### **Article 1. OBJECTIVES**

1. The objective of this Agreement is to enhance the investment climate between the Parties, in accordance with the following provisions.

### **Article 2. DEFINITIONS**

1. For the purposes of this Agreement:

1.1 "covered investment" means an investment in the territory of a Party, owned or controlled, directly or indirectly, by an investor of the other Party, made in accordance with the domestic legislation of the Party in whose territory the investment is made before or after the date of entry into force of this Agreement;

1.2 "domestic legislation" means laws, regulations, rules, decrees with legally binding characteristic in the territory of a Party;

1.3 "territory" means the part of a land area, internal and territorial waters, air space above them, the sea area outside the territorial waters, including the seabed and subsoil on which the Party exercises sovereign rights, and subject to its jurisdiction, according to international law;

1.4 "freely convertible currency" means a currency that can be freely exchanged against currencies that are widely traded in international foreign exchange markets and widely used in international transactions;

1.5 "investment" means every kind of asset that has the characteristics of an investment, including such characteristics as a certain duration, the commitment of capital or other resources, the assumption of risk, or the expectation of gain or profit.

1.5.1 Forms that an investment may take include:

(a) an enterprise;

(b) shares, stocks and other forms of equity participation in an enterprise;

(c) bonds, debentures, loans and other financial instruments of an enterprise;

(d) interests arising from:

i) concessions conferred pursuant to domestic law or under a contract, including to search for, cultivate, extract or exploit natural resources;

ii) turnkey, construction, production, or revenue-sharing contracts, or other similar contracts;

(e) intellectual property rights;

(f) claims to money or claims to performance under a contract;

(g) any other moveable or immovable, tangible or intangible property, and related rights.

1.5.2 For greater certainty:

(a) returns that are invested shall be treated as investment;

(b) any alteration of the form in which assets are invested or reinvested shall not affect their qualification as investments, provided that the form taken by the investment or reinvestment maintains its compliance with the definition of investment;

(c) "claims to money" does not include claims to money that arise solely from commercial transactions for the sale of goods or services by a natural person or an enterprise in the territory of a Party to a natural person or an enterprise in the territory of the other Party, or the extension of credit in relation to such transactions; and

(d) an order or judgment entered in a judicial or administrative action or an arbitral award shall not in itself constitute an investment.

1.6 "investor of a Party" means:

(i) a natural person of a Party; or

(ii) a juridical person duly constituted or otherwise organized under the domestic legislation of a Party, whether privately or governmentally owned or controlled, and engaged in substantive business operations in the territory of a Party, that has made a covered investment in the territory of the other Party. It includes a corporation, trust, partnership, sole proprietorship, joint venture, association, or other organization;

1.7. "measure of a Party" means any measure, whether in form of a law, regulation, rule, procedure, decision, practice, administrative action, or any other form (1), which is adopted or maintained by (2):

(i) central, regional or local governments or authorities; and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.

1.7.1 For greater certainty, "measures of a Party" covers measures by entities listed under sub-paragraphs (i) and (ii), which are adopted or maintained by instructing, directing or controlling, either directly or indirectly, the conduct of other entities with regard to those measures;

1.8 "operation" means conduct, management, maintenance, use, enjoyment and sale or other form of disposal of an investment;

1.9 "returns" means any amounts yielded by or derived from an investment or reinvestment, including profits, dividends, capital gains, royalties, interest, revenues from intellectual property rights, returns in kind and other lawful income.

(1) For greater certainty, "measure" includes failure to act.

(2) For greater certainty, "measures of a Party" covers measures by entities listed under sub-paragraphs (o) (i) and (o) (ii), which are adopted or maintained by instructing, directing or controlling, either directly or indirectly, the conduct of other entities with regard to those measures.

## **Article 3. SCOPE**

1. This Agreement shall apply to measures adopted or maintained by a Party affecting:

(a) covered investments; and

(b) investors of a Party in respect of a covered investment.

2. For greater certainty, this Agreement provides only post-establishment protection and does not cover the pre-establishment phase or matters of market access.

## **Section 2. PROTECTION AND TREATMENT OF THE INVESTMENTS**

### **Article 4. TREATMENT OF INVESTORS AND COVERED INVESTMENTS**

1. Each Party shall accord in its territory to covered investments and to investors of the other Party with respect to their covered investments fair and equitable treatment and full protection and security in accordance with paragraphs 2 to 5.

2. A Party breaches the obligation of fair and equitable treatment referenced in paragraph 1 through measures or series of measures that constitute:

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

(b) fundamental breach of due process, including a fundamental breach of transparency 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 such as harassment, duress or coercion.

3. When determining a breach of paragraph 2, a tribunal may take into account whether a Party made a specific representation to an investor to induce a covered investment that created a legitimate expectation, upon which the investor relied in deciding to make or maintain the covered investment, but that the Party subsequently frustrated.

4. For greater certainty, "full protection and security" refers to the Party's obligations to ensure the physical security of investors and covered investments.

5. For greater certainty, a breach of another provision of this Agreement, or of any other international agreement, does not constitute a breach of this Article.

### **Article 5. NON-DISCRIMINATORY TREATMENT**

1. Each Party shall accord to investors of the other Party and to covered investments treatment no less favourable than that it accords, in like situations, to its own investors and to their investments, with respect to operation in its territory.
2. Each Party shall accord to investors of the other Party and to covered investments treatment no less favourable than that it accords, in like situations, to investors of a third country and to their investments, with respect to operation in its territory.
3. Paragraph 2 shall not be construed as obliging a Party to extend to investors of the other Party or to covered investments the benefit of any treatment resulting from measures providing for recognition, including of the standards, or criteria for the authorization, licensing, or certification of a natural person or enterprise to carry out an economic activity, or of prudential measures.
4. For greater certainty, the "treatment" referred to in paragraph 2 does not include dispute settlement procedures provided for in other international agreements.
5. Paragraphs 1 and 2 shall not apply to subsidies or grants provided by the Parties, including government-supported loans, guarantees and insurance.
6. For greater certainty, substantive provisions in other international agreements concluded by a Party with a third country do not in themselves constitute the "treatment" referred to in paragraph 2. Measures of a Party pursuant to those provisions may constitute such treatment and thus give rise to a breach of this Article.
7. For greater certainty, the mere transposition of those provisions into domestic law, to the extent that it is necessary in order to incorporate them into the domestic legal order, does not in itself qualify as a measure.

## **Article 6. INVESTMENT AND REGULATORY MEASURES**

1. The Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, public education, safety, the environment including climate change, public morals, social or consumer protection, privacy and data protection, or the promotion and protection of cultural diversity.
2. For greater certainty, the provisions of this Agreement shall not be interpreted as a commitment from a Party that it will not change the legal and regulatory framework, including in a manner that may negatively affect the operation of covered investments or the investor's expectations of profits.
3. For greater certainty and subject to paragraph 4, a Party's decision not to issue, renew or maintain a subsidy:
  - (a) in the absence of any specific commitment under law or contract to issue, renew, or maintain that subsidy; or
  - (b) in accordance with any terms or conditions attached to the issuance, renewal or maintenance of the subsidy, shall not constitute a breach of the provisions of this Agreement.
4. For greater certainty, nothing in this Agreement shall be construed as preventing a Party from discontinuing the granting of a subsidy or requesting its reimbursement, where such action has been ordered by the competent authorities, or as requiring that Party to compensate the investor therefor.

## **Article 7. COMPENSATION FOR LOSSES**

1. Investors of a Party whose covered investments suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the other Party shall be accorded by that Party, with respect to restitution, indemnification, compensation or other form of settlement, treatment no less favourable than that accorded by that Party to its own investors or to the investors of any non-Party, whichever is more favourable to the investor.
2. Without prejudice to paragraph 1 of this Article, investors of a Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Party shall be accorded prompt, adequate and effective restitution or compensation by the other Party, if these losses result from:
  - (a) requisitioning of their covered investment or a part thereof by the latter's armed forces or authorities; or
  - (b) destruction of their covered investment or a part thereof by the latter's armed forces or authorities, which was not required by the necessity of the situation.
3. The amount of such compensation shall be determined in accordance with the provisions of paragraph 2 of Article 8 (Expropriation), from the date of requisitioning or destruction until the date of actual payment.

## **Article 8. EXPROPRIATION**

1. Neither Party shall nationalize or expropriate a covered investment either directly or indirectly through measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") except:

- (a) for a public purpose;
- (b) under due process of law;
- (c) in a non-discriminatory manner; and
- (d) against payment of prompt, adequate and effective compensation.

For greater certainty, this paragraph shall be interpreted in accordance with Annex I (Expropriation).

2. The compensation referred to in paragraph 1 shall amount to the fair market value of the investment at the time immediately before the expropriation or the impending expropriation became publicly known or when the expropriation took place, whichever is earlier. Valuation criteria shall include going concern value, asset value including the declared tax value of tangible property, and other criteria, as appropriate.

3. The compensation shall include interest at a normal commercial rate from the date of expropriation until the date of payment. It shall be freely transferable in accordance with Article 9 paragraph 1 (f) (Transfers).

4. The investor affected shall have a right, under the law of the expropriating Party, to prompt review of its claim and of the valuation of its investment, by a judicial or other independent authority of that Party, in accordance with the principles set out in this Article.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, to the extent that such issuance is consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreements ("TRIPS Agreement").

## **Article 9. TRANSFERS**

1. Each Party shall permit all transfers relating to a covered investment to be made in a freely convertible currency, without restriction or delay and at the market rate of exchange prevailing on the date of transfer with regard to the currency to be transferred. Such transfers include:

- (a) contributions to capital to maintain, develop or increase the investment;
- (b) profits, dividends, capital gains, interest, royalty payments, management fees, technical assistance and other fees or returns derived from the covered investment;
- (c) proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;
- (d) payments made under a contract entered into by the investor, or its covered investment, including payments made pursuant to a loan agreement;
- (e) earnings and other remuneration of personnel engaged from abroad and working in connection with an investment;
- (f) payments made pursuant to Articles 7 (Compensation for Losses) and 8 (Expropriation);
- (g) payments of damages pursuant to an award issued by an Arbitral Tribunal under Article

2. Neither Party may require its investors to transfer, or penalize its investors for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, their covered investments in the territory of the other Party.

3. Notwithstanding paragraphs 1 and 2, this Article shall not be construed as preventing a Party from applying in an equitable and non-discriminatory manner, and not in a way that would constitute a disguised restriction on trade and investment, its domestic legislation relating to:

- (a) bankruptcy, insolvency, bank recovery and resolution, or the protection of the rights of creditors;
- (b) issuing, trading, or dealing in financial instruments;
- (c) financial reporting or record keeping of transfers where necessary to assist law enforcement or financial regulatory

authorities;

(d) criminal or penal offenses, deceptive or fraudulent practices;

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings;

(f) social security, public retirement or compulsory savings schemes.

## **Article 10. TAXATION**

1. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such tax convention, the tax convention shall prevail to the extent of the inconsistency.

2. Article 5 (Non-Discriminatory Treatment) and Article 9 (Transfers) shall not apply to an advantage accorded by a Party pursuant to a tax convention.

3. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade and investment, nothing in this Agreement shall be construed to prevent the adoption, maintenance or enforcement by a Party of any measure aimed at ensuring the equitable or effective imposition or collection of direct taxes that:

(a) distinguishes between taxpayers, who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested; or

(b) aims at preventing the avoidance or evasion of taxes pursuant to the provisions of any tax convention or domestic fiscal legislation.

4. For the purpose of this Article:

(a) "residence" means residence for tax purposes;

(b) "tax convention" means a convention for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation that either Party to this Agreement is party to.

## **Article 11. SUBROGATION**

1. If a Party, or its designated agency, makes a payment under an indemnity, guarantee or contract of insurance it has entered into in respect of a covered investment made by one of its investors in the territory of the other Party:

(i) The other Party shall recognize that the Party or its agency shall be entitled in all circumstances to the same rights under this Agreement as those of the investor in respect of the covered investment, but for the subrogation. Such rights may be exercised by the Party or an agency thereof, or by the investor if the Party or an agency thereof so authorizes.

(ii) The investor shall not pursue these rights to the extent of the subrogation.

## **Article 12. TRANSPARENCY**

1. Each Party shall publish, or otherwise make publicly available, its laws and regulations of general application, as well as international agreements which may affect investors of the other Party and their covered investments in its territory, including any measures aimed at protecting the environment and labour conditions or that may be affecting the protection of the environment or labour conditions, thereby ensuring awareness and providing reasonable opportunities for interested persons and stakeholders to submit views.

2. Nothing in this Article shall require the Party to furnish or allow access to any confidential or proprietary information, including information concerning particular investors or their covered investments, the disclosure of which would impede law enforcement or be contrary to domestic laws protecting confidentiality, or would prejudice legitimate commercial interests of investors and their covered investments.

## **Article 13. OBSERVANCE OF WRITTEN COMMITMENTS**

1. Where a Party has entered into any written commitment with investors of the other Party or with their covered investments, that Party shall not breach the said commitment through the exercise of governmental authority.

## **Article 14. PRUDENTIAL CARVE-OUT**

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons, such as:
  - (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;
  - (b) ensuring the integrity and stability of a Party's financial system.
2. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's obligations under the Agreement.
3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

## **Article 15. GENERAL EXCEPTIONS**

1. Subject to the requirement that such measures are not applied in a manner that would constitute arbitrary or unjustifiable discrimination between investments or between investors, Article 5 (Non-Discriminatory Treatment) and Article 9 (Transfers) shall not be construed to prevent a Party from adopting or enforcing measures necessary:
  - (a) to protect public security or public morals or to maintain public order (3);  
  
(3) The public security and public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.
  - (b) to protect human, animal or plant life or health (4);  
  
(4) The Parties understand that the measures referred to in subparagraph (b) include environmental measures necessary to protect human, animal or plant life or health.
  - (c) to ensure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
    - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
    - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
    - (iii) safety.

## **Article 16. SECURITY EXCEPTION**

1. Nothing in this Agreement shall be construed:
  - (a) to require a Party to furnish or allow access to any information the disclosure of which it considers contrary to its essential security interests; or
  - (b) to prevent a Party from taking an action which it considers necessary for the protection of its essential security interests:
    - (i) connected to the production of or traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods and materials, services and technology, and to economic activities, carried out directly or indirectly for the purpose of supplying a military establishment;
    - (ii) relating to fissionable and fusionable materials or the materials from which they are derived; or
    - (iii) taken in time of war or other emergency in international relations; or
  - (c) to prevent a Party from taking any action in pursuance of its obligations under the Charter of the United Nations for the purpose of maintaining international peace and security.

## **Article 17. TEMPORARY SAFEGUARD MEASURES**

1. Where a Party experiences serious balance of payments or external financial difficulties, or threat thereof, it may adopt or maintain restrictive measures with regard to transfers. Such measures shall:

(a) be consistent with other international obligations of the Party, and with the Articles of the Agreement of the International Monetary Fund;

(b) not exceed those necessary to deal with the difficulties addressed under this paragraph;

(c) be temporary and phased out progressively;

(d) avoid unnecessary damage to the commercial, economic and financial interests of the other Party; and

(e) be non-discriminatory compared to third countries in like situations.

2. A Party maintaining or having adopted measures referred to in this paragraph shall promptly notify them to the other Party.

## **Article 18. REGIONAL ECONOMIC INTEGRATION ORGANISATION CLAUSE**

1. Nothing in this Agreement shall prevent a Party from exercising its rights and fulfilling its obligations deriving from its membership in any existing or future economic integration agreement, such as free trade area, customs union, common market, economic and monetary union, or as to oblige a Party to extend to the investors of the other Party and to their covered investments, the benefits of any treatment, preference or privilege by virtue of its membership or participation in such economic integration agreement.

## **Section 3. SUSTAINABLE DEVELOPMENT**

### **Article 19. CORPORATE SOCIAL RESPONSIBILITY, RESPONSIBLE BUSINESS CONDUCT AND MEASURES AGAINST CORRUPTION**

1. The Parties recognise the importance of investors implementing due diligence in order to identify and address adverse impacts, such as on the environment and labour conditions, in their operations, their supply chains and other business relationships. The Parties shall promote the uptake by enterprises and investors of corporate social responsibility or responsible business practices with a view to contributing to sustainable development and responsible investment.

2. The Parties shall support the dissemination and use of relevant internationally agreed instruments that have been endorsed or are supported by the Parties, such as the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The Parties shall support the dissemination and use of relevant internationally agreed instruments that have been endorsed or are supported by the Parties, such as the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the OECD Guidelines for Multinational Enterprises and related due diligence guidance.

3. The Parties agree to exchange information as well as best practices on issues covered by this article, including on possible ways to facilitate the uptake by enterprises and investors of corporate social responsibility and responsible practices.

4. Each Party shall ensure that measures and efforts are undertaken to prevent and combat corruption regarding matters covered by this Agreement in accordance with its laws and regulations.

### **Article 20. INVESTMENT AND ENVIRONMENT**

1. The Parties recognise the right of each Party to determine its sustainable development policies and priorities, to establish the levels of domestic environmental protection it deems appropriate, and to adopt or modify its environmental laws and policies. Such levels, laws and policies shall be consistent with each Party's commitments to internationally recognised standards and agreements on environmental protection.

2. A Party shall not weaken or reduce the levels of protection afforded in its environmental laws in order to encourage investment.

3. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from such legislation as an



encouragement for an investment in its territory.

3. Each Party shall effectively implement the multilateral environmental agreements, protocols and amendments that it has ratified.

## **Article 21. INVESTMENT AND CLIMATE CHANGE**

1. The Parties recognise the importance of taking urgent action to combat climate change and its impacts, and the role of investment in pursuing this objective, consistent with the United Nations Framework Convention on Climate Change (UNFCCC), the purpose and goals of the Paris Agreement adopted by the Conference of the Parties to the UNFCCC at its 21st session (the Paris Agreement?), and with other Multilateral Environmental Agreements and multilateral instruments in the area of climate change.

2. Each Party shall:

(a) effectively implement the UNFCCC and the Paris Agreement adopted thereunder, including its commitments with regard to its Nationally Determined Contributions;

(b) promote investment of relevance for climate change mitigation and adaptation; including investment concerning climate friendly goods and services, such as renewable energy, low-carbon technologies and energy efficient products and services, and by adopting policy frameworks conducive to deployment of climate-friendly technologies;

3. The Parties shall work together to strengthen their cooperation on investment-related aspects of climate change policies and measures bilaterally, regionally, and in international fora, as appropriate.

## **Article 22. INVESTMENT AND LABOUR**

1. The Parties recognize the right of each Party to determine its sustainable development policies and priorities, to establish the levels of domestic labour protection it deems appropriate, and to adopt or modify its labour laws and policies. Such levels, laws and policies shall be consistent with each Party's commitments to internationally recognized labour standards and agreements.

2. A Party shall not weaken or reduce the levels of protection afforded in its labour legislation in order to encourage investment.

3. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from such legislation in order to encourage investment in its territory.

4. In accordance with the ILO Constitution and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, as amended in 2022, each Party shall respect, promote and effectively implement throughout its territory the internationally recognised core labour standards as defined in the fundamental ILO Conventions.

5. Each Party shall effectively implement the ILO Conventions it has ratified and make sustained efforts towards ratifying, to the extent that it has not yet done so, the fundamental ILO Conventions.

6. Each Party is committed to promote investment policies which further the objectives of the Decent Work Agenda, in accordance with the 2008 ILO Declaration on Social Justice for a Fair Globalization and the 2019 ILO Centenary Declaration for the Future of Work, including a human-centred approach to the future of work, adequate minimum wages, social protection and safety and health at work.

## **Article 23. DIALOGUE AND COOPERATION ON INVESTMENT-RELATED SUSTAINABLE DEVELOPMENT ISSUES**

1. The Parties agree to engage in dialogue and cooperate as appropriate on investment-related labour, environmental and climate change issues of mutual interest arising under this Section in a manner complementary to the efforts under existing bilateral and multilateral mechanisms.

## **Section 4. SETTLEMENT OF DISPUTES BETWEEN AN INVESTOR OF A PARTY AND THE OTHER PARTY**

### **Article 24. SETTLEMENT OF DISPUTES BETWEEN AN INVESTOR OF A PARTY AND THE**

## OTHER PARTY

1. This Section applies to a dispute between, on the one hand, an investor of a Party and, on the other hand, the other Party arising from an alleged breach of investment protection standards provided in Section 2 of this Agreement, which allegedly caused loss or damage to the investor.

2. Any such dispute shall as far as possible be settled amicably through direct consultation, negotiation and mediation.

3. A written request for negotiations referred to in paragraph 2 of this Article shall include:

(a) the full name and address of the investor who is a party to the dispute and, if available, the contacts of the investor's representatives;

(b) the legal and factual basis for the request, including any disputed measures;

(c) the provisions of the Agreement, which, in the opinion of the investor, do not comply with the contested measures of the Party;

(d) the investor's proposals for a possible settlement of the dispute.

4. In the event that a dispute cannot be settled as provided for in paragraph 1 of this Article within six (6) months from the date of a written application for settlement, the investor may submit at its choice the dispute for settlement to one of the following fora (hereinafter collectively referred as "The Arbitration Tribunal"):

(a) an ad hoc Arbitration Tribunal, in compliance with the Arbitration Rules of the UN Commission on International Trade Law (UNCITRAL) as in force at that time, unless another set of rules is agreed by the Parties to the dispute;

(b) an arbitral tribunal which is established pursuant to the Dispute Resolution Rules of the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA) or the Arbitration Institute of the Stockholm Chamber of Commerce (SCC);

(c) the International Centre for Settlement of Investment Disputes (ICSID), for the implementation of an arbitration procedure, under the Washington Convention of 18 March, 1965, on the Settlement of Investment Disputes between State and National of other State, if this had entered into force for both of the Parties to the dispute, or, alternatively, in accordance with the ICSID Additional Facility Rules, if the Washington Convention has entered into force only for one of the Parties.

5. For greater certainty, the investor may submit a claim to arbitration pursuant to this Agreement, provided that no more than three (3) years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the breach alleged in the Notice of Arbitration and knowledge that the investor has incurred loss or damage.

6. In the event that the investor, the investment or a Party have already been satisfied under domestic law on a claim substantially reproducing that to be addressed under this article, the disputing party is forbidden from proposing an arbitration.

7. Both Parties shall refrain from negotiating through diplomatic channels on any matters relating to an arbitration procedure or judicial procedure at the stage of the arbitration proceedings until these procedures have been concluded. The Arbitration Tribunal's decision shall be final and binding upon disputants.

8. The Parties will engage with each other and with other interested trading partners in the negotiations to establish a permanent multilateral investment court which may include an appellate mechanism. Following the entry into force between the Parties of an international agreement providing for a permanent multilateral investment court and/or a multilateral appellate mechanism applicable to disputes under this Agreement, the relevant parts of this Agreement shall cease to apply.

9. The disputing parties shall share the costs of the arbitration, including arbitrator fees, expenses, allowances and other administrative costs. Each disputing party shall also bear the cost of its own representation in the arbitral proceedings. The Arbitration Tribunal may, however, in its discretion, direct that the entire costs or a higher proportion of costs shall be borne by one of the two disputing parties, taking into consideration factors such as, inter alia:

(a) the relative success on all the issues presented by the parties;

(b) reasonableness of the parties' positions;

(c) the complexity and novelty of the issues;

(d) the party's conduct;

(e) whether the proceedings were conducted in an efficient and cost-effective manner;

(f) the nature of the costs;

(g) the reasonableness of the costs claimed by the successful party and this determination shall be final and binding on both disputing parties.

10. The Arbitration Tribunal shall decline jurisdiction if the investment has been made through fraudulent misrepresentation, concealment, corruption or similar bad faith conduct amounting to an abuse of process.

## **Article 25. TRANSPARENCY OF PROCEEDINGS**

1. The UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, as adopted by the United Nations Commission on International Trade Law on 11 July 2013 shall apply to international arbitration proceedings initiated pursuant to Article 24.

2. Nothing in this Agreement or the applicable arbitration rules shall prevent the exchange of information between the European Union and the Italian Republic or vice versa, which relates to international arbitration proceedings initiated pursuant to Article 24.

## **Article 26. APPLICABLE LAW AND RULES OF INTERPRETATION**

1. The Arbitration Tribunal shall apply this Agreement as interpreted in accordance with the Vienna Convention on the Law of Treaties, and other rules and principles of international law applicable between the Parties. For greater certainty, the domestic law of the Parties shall not constitute part of the applicable law. In case of the Italian Republic "domestic law" includes the law of the European Union.

2. The Arbitration Tribunal shall not have jurisdiction to determine the legality of a measure under the domestic law of a Party. For greater certainty, in determining the consistency of a measure with this Agreement, the Arbitration Tribunal may consider, as appropriate, the domestic law of a Party as a matter of fact. In doing so, the Arbitration Tribunal shall follow the prevailing interpretation given to the domestic law by the courts or authorities of that Party.

## **Article 27. ETHICS**

1. Arbitrators shall be independent of, and not be affiliated with or take instructions from, a disputing party or the government of a Party with regard to trade and investment matters. Arbitrators shall not take instructions from any organization, government or disputing party with regard to matters related to the dispute. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest. They shall comply with the UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution, as adopted by the United Nations Commission on International Trade Law on 7 July 2023, and recommended for use by the United Nations General Assembly in its resolution 78/105 of 7 December 2023. In addition, upon appointment, they shall refrain from acting as counsel in any pending or new investment protection dispute under this or any other agreement or domestic law.

2. If a disputing party considers that an arbitrator does not meet the requirements set out in paragraph 1 or in the UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution, as adopted by the United Nations Commission on International Trade Law on 7 July 2023, it shall send a notice of challenge to the President of the International Court of Justice or the Appointing Authority who shall transmit it to the arbitrator concerned. The notice of challenge shall be sent within fifteen (15) days after the constitution of the tribunal was communicated to the disputing party, or within fifteen (15) days after the date on which the relevant facts came to its knowledge, if they could not have reasonably been known at the time of constitution of the tribunal. The notice of challenge shall state the grounds for the challenge.

3. If, within fifteen (15) days after the date of the notice of challenge, the challenged arbitrator has elected not to resign from the Arbitration Tribunal, the President of the International Court of Justice or the Appointing Authority, after hearing the disputing parties and after providing the arbitrator an opportunity to submit any observations, issue a decision within forty-five (45) days after receipt of the notice of challenge and forthwith notify the disputing parties and other arbitrators of the Arbitration Tribunal.

## **Article 28. MULTIPLE PROCEEDINGS**

1. The Arbitration Tribunal shall dismiss a claim by a claimant who has submitted a claim to any domestic or international court or tribunal concerning the same treatment as that alleged to breach the provisions of this Agreement, unless the claimant withdraws such pending claim.

2. Together with the submission of a claim the claimant shall provide:

(a) evidence that it has withdrawn any pending proceedings before any domestic or international court or tribunal under domestic or international law concerning the same treatment as that alleged to breach the provisions of Section 2 of this Agreement; and

(b) a declaration that it will not initiate any proceeding before any domestic or international court or tribunal under domestic or international law concerning the same treatment as that alleged to breach the provisions of Section 2 of this Agreement.

3. For the purposes of paragraphs 1 and 2 above, the term "claimant" includes the investor and, if applicable, its locally established enterprise. In addition, for the purposes of paragraphs 1 and 2(a), the term "claimant" also includes all persons who, directly or indirectly, have an ownership interest in or are controlled by the investor or its locally established enterprise, as applicable, and claim to have suffered the same loss or damage as the investor or the locally established enterprise, as applicable.

## **Article 29. CLAIMS MANIFESTLY WITHOUT LEGAL MERITS**

1. The respondent may, no later than thirty (30) days after the establishment of the Arbitration Tribunal under Article 24, or thirty (30) days after it became aware of the facts on which the objection is based, file an objection that a claim is manifestly without legal merit. The respondent shall specify as precisely as possible the basis for the objection.

2. The Arbitration Tribunal, after giving the parties to the dispute an opportunity to present their observations on the objection, shall, at its first session or promptly thereafter, issue a decision or award on the objection, stating the grounds therefor.

3. In the event that the objection is received after the first session of the Arbitration Tribunal, the Arbitration Tribunal shall issue such decision as soon as possible, and no later than one hundred and twenty (120) days after the objection was filed. In doing so, the Arbitration Tribunal shall assume the alleged facts to be true, and may also consider any relevant facts not in dispute.

4. The decision shall be without prejudice to the right of a party to object, pursuant to Article 30 or in the course of the proceeding, to the legal merits of a claim and without prejudice to the Arbitration Tribunal's authority to address other objections as a preliminary question.

## **Article 30. CLAIMS UNFOUNDED AS A MATTER OF LAW**

1. Without prejudice to the Arbitration Tribunal's authority to address other objections as a preliminary question or to the right of a respondent to raise any such objections at any appropriate time, the Arbitration Tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim, or any part thereof, is not a claim for which an award in favour of the investor may be made, even if the facts alleged were assumed to be true. The Arbitration Tribunal may also consider any relevant facts not in dispute.

2. Such an objection shall be submitted to Arbitration Tribunal as early as possible, and in any event not later than the expiration of the time limit fixed for the filing of the counter-memorial or statement of defence, unless the facts on which the objection is based are unknown to the party at that time.

3. On receipt of an objection under this paragraph, and unless it considers the objection manifestly unfounded, the Arbitration Tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision on the objection, stating the grounds therefor.

## **Article 31. THIRD PARTY FUNDING**

1. Third party funding is any funding provided by a natural or legal person who is not a disputing party but who enters into

an agreement with a disputing party in order to finance part or all of the cost of the proceedings in return for a remuneration dependent on the outcome of the dispute or in the form of a donation or grant.

2. A disputing party benefiting from third party funding shall notify to the other disputing party and to the Arbitration Tribunal hearing the claim, the name and address of the third party funder and of its beneficial owner.

3. Such notification shall be made at the time of submission of a claim, or, if the funding agreement is concluded or the donation or grant is made after the submission of a claim, without delay as soon as the funding agreement is concluded or the donation or grant is made.

## **Article 32. SECURITY FOR COSTS**

1. For greater certainty, on request, and after hearing the disputing parties, the Arbitration Tribunal may order the claimant to post security for all or a part of the costs if there are reasonable grounds to believe that the claimant risks not being able or willing to honour a possible decision or award on costs issued against it. In determining whether Tribunal may order the claimant to post security for all or a part of the costs if there are reasonable grounds to believe that the claimant risks not being able or willing to honour a possible decision or award on costs issued against it. In determining whether to order the provision of security for costs the Arbitration Tribunal shall consider all relevant circumstances and evidence, including the existence of third-party funding.

2. If the security for costs is not posted in full within thirty (30) days after the issuance of an order pursuant to paragraph 1 or within any other time period set by the Arbitration Tribunal, the Arbitration Tribunal shall so inform the disputing parties. The Arbitration Tribunal may order the suspension or termination of the proceedings.

## **Section 5. CONSULTATION AND DISPUTE SETTLEMENT BETWEEN THE PARTIES**

### **Article 33. SETTLEMENT OF DISPUTES BETWEEN THE PARTIES**

1. Any dispute arising between the Parties on the interpretation and/or application of the provisions of this Agreement, shall, as far as possible, be settled amicably through direct consultation, negotiation and mediation between the Parties.

2. In the event that the dispute cannot be settled within six (6) months from the date on which one of the Party notifies the other Party in writing, the dispute shall at the request of one of the Parties, be laid before an ad hoc Arbitration Tribunal as provided for in this Article.

3. The Arbitration Tribunal shall be constituted in the following manner: within two (2) months from the moment on which the request for arbitration is received, each of the two Parties shall appoint a member of the Arbitration Tribunal. The President shall be appointed within three (3) months from the date on which the other two members are appointed, by agreement of the Parties.

4. If, within the period specified in paragraph 3 of this Article, the appointment has not been made, each of the two Parties may invite, in default of other arrangements, the President of the International Court of Justice to make an appointment. In the event that the President of the Court is a national of one of the Parties or if, for any reason, it is impossible for him/her to make the appointment, the application shall be made to the Vice President of the Court. If the Vice President of the Court is a national of one of the Parties or, for any reason, is unable to make the appointment, the most senior member of the International Court of Justice, who is not a national of one of the Parties, shall be invited to make the appointment.

5. The Arbitration Tribunal shall rule with a majority vote, and its decision shall be binding. Each Parties shall pay the cost of its own arbitrator and of its representative at the hearings. The President's cost and any other cost shall be divided equally between the Parties. The Arbitration Tribunal shall lay down its own procedure.

## **Section 6. FINAL DISPOSITIONS**

### **Article 34. RELATIONS BETWEEN GOVERNMENTS**

1. The provisions of this Agreement shall be applied irrespective of whether or not the Parties have diplomatic or consular relations.

### **Article 35. MANAGEMENT OF THE AGREEMENT**

1. The Parties shall cooperate on issues covered by this Agreement.
2. To this end, the Parties shall establish a Committee, which shall meet once a year or at the request of a Party. Meetings may also be held by any technological means available to the Parties.
3. The Committee shall:
  - (a) supervise and facilitate the implementation and application of this Agreement and further its general aims;
  - (b) consider any matter of interest relating to an area covered by this Agreement;
  - (c) establish its own procedures.

## **Article 36. AMENDMENTS TO THE AGREEMENT**

1. By mutual consent and at any time, the Parties may amend this Agreement, or may jointly issue an interpretative note of any provision thereof.
2. Any such amendments and additions shall form an integral part of this Agreement and will enter into force as provided by Article 38 of this Agreement.

## **Article 37. DENIAL OF BENEFITS**

1. A Party may deny the benefits of this Agreement to an investor of the other Party or to a covered investment if the denying Party adopts, implements, maintains or enforces measures related to the maintenance of international peace and security, including the protection of human rights, which:
  - (a) prohibits transactions with investors of the other Party or their covered investments, or
  - (b) would be violated or circumvented if the benefits of this Agreement were accorded to investors of the other Party or their covered investments, including where the measures prohibit transactions with a natural or juridical person who owns or controls either of them.
2. For greater certainty, a Party may deny such benefits pursuant to this Article without any prior publicity or other additional formality related to its intention to exercise the right conferred by this Article.

## **Article 38. ENTRY INTO FORCE, DURATION AND TERMINATION**

1. Annexes I and II constitute an integral part of this Agreement.
2. The Parties shall notify each other in writing of the completion of their internal legal procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force thirty (30) days after the date of receipt of the later notification.
3. This Agreement shall remain in force for ten (10) years. Thereafter, it will be automatically extended for further periods of five (5) years, unless one of the Parties notifies in writing the other of its intention to terminate it within a minimum of six (6) months prior to the date of expiration. The termination shall take effect two (2) months after the date of receipt by the other Party of the notification.
4. In the event that the present Agreement is terminated pursuant to paragraph 3 of this Article, its provisions shall continue to be effective for a further period of five (5) years from the date of termination, with respect to covered investments made before the date of termination.

[For agreements with third countries that have a status of "EU (potential) candidate country":

5. This Agreement shall, in any event, be automatically terminated as a whole and cease its effects if and on the date [third country] becomes a Member State of the European Union.]

In witness thereof, the undersigned Representatives, duly authorized by their respective Governments, have signed the present Agreement.

DONE at \_\_\_\_\_ on \_\_\_\_\_ in two originals, each in the Italian, \_\_\_\_\_ and English language, all texts being equally authentic.

In case of any divergence in interpretation of the provisions of this Agreement, the text in English shall prevail.

For the Government of the Italian Republic

For the Government of \_\_\_\_\_

## **ANNEX I. EXPROPRIATION**

The Parties confirm their shared understanding that:

1. Expropriation may be either direct or indirect:

(a) direct expropriation occurs when an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

(b) indirect expropriation occurs where a measure or series of measures by a Party has an effect equivalent to direct expropriation, in that it 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 outright seizure.

2. The determination of whether a measure or series of measures by a Party, in a specific situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

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

(b) the duration of the measure or series of measures by a Party;

(c) the character of the measure or series of measures, notably their object and context.

3. For greater certainty, except in the rare circumstance when the impact of a measure or series of measures is so severe in light of its purpose that it appears manifestly excessive, non-discriminatory measures by a Party that are designed and applied to protect legitimate policy objectives, such as the protection of public health, social services, public education, safety, environment including climate change, public morals, social or consumer protection, privacy and data protection, or the promotion and protection of cultural diversity do not constitute indirect expropriations.

## **ANNEX II. PUBLIC DEBT**

1. No claim that a restructuring of debt of a Party breaches an obligation under this Agreement may be submitted to, or if already submitted, be pursued under Article 23 if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after such submission.

2. Notwithstanding Article 23 and subject to paragraph 1 of this Annex, an investor shall not submit a claim that a restructuring of debt of a Party breaches an obligation under this Agreement (5), unless two hundred seventy (270) days have elapsed from the date of submission by the claimant of the written request for consultations pursuant to Article 23.

3. For the purposes of this Annex:

(a) "negotiated restructuring" means the restructuring or rescheduling of debt of a Party that has been effected through

(i) a modification or amendment of debt instruments, as provided for under their terms, including their governing law, or

(ii) a debt exchange or other similar process in which the holders of no less than 75% of the aggregate principal amount of the outstanding debt subject to restructuring, have consented to such debt exchange or other process.

(b) "governing law" of a debt instrument means a jurisdiction's legal and regulatory framework applicable to that debt instrument.

(5) For greater certainty, a breach of Article 4 (Treatment of Investors and Covered Investments) does not occur merely by virtue of a different treatment provided by a Party to certain categories of investors or investments on grounds of a different macroeconomic impact, for instance

to avoid systemic risks or spillover effects, or on grounds of eligibility for debt restructuring.