

# **AGREEMENT BETWEEN THE BELGO-LUXEMBURG ECONOMIC UNION, on the one hand, AND THE SERBIA AND MONTENEGRO, on the other hand, ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

THE KINGDOM OF BELGIUM,

Acting both in its own name and in the name of the Grand-Duchy of Luxemburg, by virtue of existing agreements,

The Walloon Government,

The Flemish Government,

And the Government of the Region of Brussels-Capital,

On the one hand,

And

THE SERBIA AND MONTENEGRO, 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**

1. The term "investor" shall mean:

- a) The "national", i.e. any natural person having the nationality of one Contracting Party in accordance with its laws and regulations and making investments in the territory of the other Contracting Party;
- b) The "company", i.e. a legal entity incorporated, constituted or otherwise duly organized in accordance with the laws and regulations of one Contracting Party, having its registered office in the territory of that Contracting Party and making investments in the territory of the other Contracting Party;
- c) The "legal person" not constituted for the purpose of this Agreement, under the law of that Contracting Party, but controlled, directly or indirectly, by natural person as defined in a) or by legal person as defined in b).

2. The term "investment" shall mean any kind of assets invested in any sector of economic activity, in accordance with the laws and regulations of each of the Contracting Parties, and shall, though not exclusively, include:

- a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges, usufruct and similar rights;
- b) Rights derived from shares, stocks, bonds and other kinds of interest in a company;
- c) Claims to money and to any performance under contract having an economic value;
- d) Copyrights, industrial property rights, technical processes, trade names and goodwill;
- e) Concessions granted under public law or under contract in accordance with the law, 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 affect their designation as "investment" for the purpose of this Agreement.

3. The term "returns" shall mean the proceeds of an investment and shall include in particular, though not exclusively, profits, interest, capital gains, dividends, royalties and fees.

4. The term "territory" shall mean:

- with respect to the Kingdom of Belgium and to the Grand-Duchy of Luxemburg, the territory of the Kingdom of Belgium and to the territory of the Grand-Duchy of Luxemburg, as well as the maritime areas, i.e. the marine and underwater areas which extend beyond the territorial waters of the Kingdom of Belgium concerned and upon which the Kingdom of Belgium exercises, in accordance with international law, its sovereign, rights and its jurisdiction for the purpose of exploring, exploiting and preserving natural resources;

- with respect to the Serbia and Montenegro, the area encompassed by land boundaries as well as the sea, seabed and its subsoil beyond the territorial sea over which the Serbia and Montenegro exercises, in accordance with its national laws and regulations and international law, sovereign rights or jurisdiction.

## **Article 2. Promotion of Investments**

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

## **Article 3. Protection 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 legal 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.

## **Article 4. National Treatment and Most Favoured Nation**

1. 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 Contracting Party.

2. With respect to the operation, management, maintenance, use, enjoyment and sale or other disposal of investments, each Contracting Party shall accord, on its territory, to investors of the other Contracting Party, treatment no less favourable than that granted to its own investors or to investors of any other State if the latter is more favourable.

3. This treatment shall not include the privileges granted by one Contracting Party to investors of a third State by virtue of its participation or association in a free trade zone, customs union, common market or any other form of regional economic organization.

4. The provisions of this Article do not apply to tax matters.

## **Article 5. Environment**

1. Recognizing the right of each Contracting Party to establish its own levels of national environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental legislation, each Contracting Party shall strive to ensure that its legislation provide for high levels of environmental protection and shall strive to continue to improve this legislation.

2. The Contracting Parties recognize that it is inappropriate to encourage investment by relaxing national environmental legislation. Accordingly, each Contracting Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such legislation as an encouragement for the establishment, maintenance or expansion in its territory of an investment.

3. The Contracting Parties reaffirm their commitments under the international environmental agreements, which they have

accepted. They shall strive to ensure that such commitments are fully recognized and implemented by their national legislation.

4. The Contracting Parties recognize that co-operation between them provides enhanced opportunities to improve environmental protection standards. Upon request by either Contracting Party, the other Contracting Party shall accept to hold expert consultations on any matter falling under the purpose of this Article.

## **Article 6. Labour**

1. Recognizing the right of each Contracting Party to establish its own national labour standards, and to adopt or modify accordingly its labour legislation, each Contracting Party shall strive to ensure that its national legislation provide for labour standards consistent with the internationally recognized labour rights and shall strive to improve those standards in that light.

2. The Contracting Parties recognize that it is inappropriate to encourage investment by relaxing national labour legislation. Accordingly, each Contracting Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such legislation as an encouragement for the establishment, maintenance or expansion in its territory of an investment.

3. The Contracting Parties reaffirm their obligations as members of the International Labour Organization and their commitments under the International Labour Organization Declaration on Fundamental Principles and Rights at Work and its Follow-up. The Contracting Parties shall strive to ensure that such labour principles and the internationally recognized labour rights are recognized and protected by national legislation.

4. The Contracting Parties recognize that co-operation between them provides enhanced opportunities to improve labour standards. Upon request by either Contracting Party, the other Contracting Party shall accept to hold expert consultations on any matter falling under the purpose of this Article.

## **Article 7. Deprivation and Limitation of Ownership**

1. Each Contracting Party undertakes not to adopt any measure of expropriation or nationalization or any other measure having the effect of directly or indirectly dispossessing the investors of the other Contracting Party of their investments in its territory.

2. For the reason of public purpose, security or national interest require a derogation from the provisions of paragraph 1, the following conditions shall be complied with: paragraph 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 an adequate and effective compensation.

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

Such compensation shall be paid in convertible currency, without delay, and shall be freely transferable. It shall bear interest at the normal commercial rate from the date of the determination of its amount until the date of its payment.

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

5. 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 granted by the latter Contracting Party a treatment, as regards restitution, indemnification, compensation or other settlement, at least equal to that which the latter Contracting Party grants to its own investors or to the investors of the most favoured nation.

## **Article 8. Transfers**

1. Each Contracting Party shall grant to investors of the other Contracting Party the free transfer of all payments, relating to investment, after payment of all fiscal and other obligation, including in particular, though not exclusively:

- a) Amounts necessary for establishing, maintaining or expanding the investment;
  - b) Amounts necessary for payments under contract connected with the investment;
  - c) Repayment of loans;
  - d) Returns;
  - e) Proceeds from the total or partial sale or liquidation of investments;
  - f) Compensation paid pursuant to Article 7;
  - g) Unspent earnings of employees working in connection with the investment in the territory of the Contracting Party;
  - h) Payments arising out of a settlement of a dispute, according to Article 11 and 12.
2. Transfers shall be made in freely convertible currency at the exchange rate applicable on the day transfers are made to spot transactions in the currency used.
3. 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 banking costs.
4. The guarantees referred to in this Article shall at least be equal to those granted to its own investors or to the investors of the most favoured nation.

## **Article 9. Subrogation**

1. If one Contracting Party or any public institution of this Contracting Party pays compensation to its own investors pursuant to a guarantee providing coverage for an investment, the other Contracting Party shall recognize that the former Contracting Party or the public institution concerned is subrogated into the rights and claims of the investors.
2. The rights or claims so subrogated shall not exceed the original rights or claims of the investor.
3. As far as the subrogated 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 10. Applicable Regulations**

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

## **Article 11. 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 in order to take action. The notification shall be accompanied by a sufficiently detailed memorandum.

As far as possible, the Parties shall endeavour to settle the dispute through negotiations, if necessary by seeking expert advice, or 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 notification, the dispute shall be submitted, at the option of the investor, either to the competent jurisdiction of the Contracting Party where the investment was made, or to international arbitration.

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:

- an ad hoc arbitral tribunal set up according to the arbitration rules laid down by the United Nations Commission on International Trade Law (U.N.C.I.T.R.A.L.); or

- The International Center for the Settlement of Investment Disputes (I.C.S.I.D.), set up by the Convention on the Settlement of Investment Disputes between the States and Nationals of other States, opened for signature at Washington on March 18, 1965, when each Contracting Party to this Agreement has become a party to the said Convention; or

- the Arbitral Court of the International Chamber of Commerce.

If the arbitration procedure has been introduced upon the initiative of a Contracting Party, this Party shall 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, none of the Contracting Parties involved in a dispute shall be entitled to raise as an objection the fact that the investor who is the opposing party in the dispute has received compensation totally or partly covering his losses pursuant to an insurance policy or to the guarantee provided for in Article 9 of this Agreement. Article 9 of this Agreement.

5. 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 12. 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 submitted to a joint commission consisting of representatives of the two Parties; this commission shall convene without undue delay at the request of the first Contracting Party to take action.

3. If the joint commission cannot settle the dispute, the latter shall be submitted, at the request of either Contracting Party, to an arbitration court set up as follows on an ad hoc basis, for each individual case.

Each Contracting Party shall appoint one arbitrator within a period of two months from the date which either Contracting Party has 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 time 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 this 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 the votes, and 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 13. 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, and shall be applicable from the date of its entry into force.

## **Article 14. 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 ten 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 each time for a further period of ten years, it being understood that each

Contracting Party reserves the right to terminate the Agreement by notifications 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 ten years from the date of its termination.

In witness whereof, the undersigned representatives duly authorized thereto by their respective Governments, have signed the present Agreement.

DONE at , on the day of March 2004, in two originals copies, each in the French, Dutch, Serbian and English language, all texts being equally authentic. The text in the English language shall prevail in case of difference of interpretation.

FOR THE BELGO-LUXEMBURG ECONOMIC UNION: For the Kingdom of Belgium, acting both on its own name and in the name of the Grand-Duchy of Luxemburg: For the Walloon Government: For the Flemish Government: For the Government of the Region of Brussels-Capital:

FOR THE SERBIA AND MONTENEGRO: