

Agreement between the Government of the Kingdom of the Netherlands and the Government of the Socialist Republic of Romania on the reciprocal encouragement and protection of investments

The Government of the Kingdom of the Netherlands and the Government of the Socialist Republic of Romania, hereinafter referred to as "the Contracting Parties",

Considering the Agreement on long-term economic, industrial and technical co-operation between the Government of the Kingdom of the Netherlands and the Government of the Socialist Republic of Romania, concluded on 14 May 1975 in Bucharest

Desiring to develop further the co-operative relations between the two States in the spirit of the said Agreement

Concerned to create favourable conditions for investments by investors from one country in the other

Recognising that the reciprocal protection of investments in accordance with this Agreement is likely to stimulate initiative in this field,

Have agreed as follows:

Article 1.

For the purposes of this Agreement

(1) The term "investment" means the contribution of any kind to an enterprise or economic activity, and more particularly, but not exclusively

(a) shares, stocks or other forms of participation in companies;

(b) reinvested earnings, debt-claims or other rights to financially valuable assets such as goodwill and business assets

(c) movable and immovable property, as well as all other rights in rem such as mortgages, liens, guarantees and any other similar rights, as defined in accordance with the law of the Contracting Party in whose territory the said property is situated

(d) industrial property rights, technical processes, know-how and copyright;

(e) concessions granted by law or by virtue of a contract, in particular concessions relating to the exploration, extraction and exploitation of natural resources, including in maritime areas under the jurisdiction of one of the Contracting Parties.

(2) The term "investors" means:

(a) for the Socialist Republic of Romania, Romanian economic units having legal personality and which, in accordance with the law, have foreign trade and economic cooperation responsibilities abroad;

(b) for the Kingdom of the Netherlands

(i) natural persons with Dutch citizenship;

(ii) legal persons constituted in accordance with the law in the Kingdom and having their registered office there;

(3) The term "profits" means amounts realised from an investment as profits, dividends and other income.

Article 2.

The Contracting Parties shall promote, within the framework of their respective legislation, economic cooperation between their countries by protecting investments made by investors of one Contracting Party in the territory of the other Contracting Party and in the maritime areas under the jurisdiction of the latter.

Article 3.

(1) Each Contracting Party shall grant, in its territory and in the maritime areas under its jurisdiction, to investments and investors of the other Contracting Party, in respect of investments made by them, treatment no less favourable than that accorded to investments and investors of any third State.

Within this framework, each Contracting Party shall ensure fair and equitable treatment of the said investments and shall not hinder, by unjustified restrictive measures, their operation and use or their liquidation.

(2) Each Contracting Party shall accord to such investments the same protection as it accords to those of investors from third States.

(3) If the legislation of one of the Contracting Parties or the international obligations existing or to be assumed in the future by the Contracting Parties in addition to this Agreement result in regulations granting investments and investors of the other Contracting Party more favourable treatment than that provided for in this Agreement, such regulations shall apply.

(4) The provisions of this Agreement concerning most-favoured-nation treatment shall not be applied in respect of advantages which each Contracting Party grants to investors of any third State on the basis of its participation in an economic and customs union, a free-trade area, a regional economic organisation, or under an international agreement for the avoidance of double taxation or on the basis of reciprocity

Article 4.

Investments made by investors of a Contracting Party in the territory or maritime areas under the jurisdiction of the other Contracting Party may not be expropriated or subjected to other measures having a similar effect, unless the following conditions are fulfilled

(a) the measures are not discriminatory or contrary to the commitments assumed by that other Contracting Party;

(b) the measures are adopted in the public interest and through a legal procedure

(c) there is an adequate procedure for determining the amount and payment of fair compensation.

Such compensation shall correspond to the real value of the investment at the date of expropriation and shall be effectively realizable, made freely transferable and paid in full without delay and in a currency convertible into the country of which the entitled persons are nationals.

At the request of the interested party, the amount of the compensation may be re-evaluated by the judge or court or any other competent body of the country where the investment was made.

Article 5.

(1) If a dispute between an investor and the Contracting Party in whose territory the investment has been made, concerning the amount of compensation, continues to exist after the final decision of the judge or tribunal or other competent national body, according to Article 4, either of them shall have the right to submit the dispute within two months of the exhaustion of domestic legal remedies, to the Centre established under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, for conciliation or arbitration, in accordance with the procedure provided for in the said Convention. To this end, each Contracting Party hereby gives its consent.

(2) However, the condition of exhausting domestic remedies under the legislation of the Contracting Party in whose territory the investment was made may no longer be invoked by that Contracting Party after the expiry of a period of two years from the date of the first act of litigation instituted for the purpose of settlement of the respective dispute by the courts.

Article 6.

(1) Respecting the principle of freedom of transfer, each Contracting Party shall authorise, in accordance with its most favourable rules on the subject, the transfer without restriction or undue delay, to the country indicated by the investors of the other Contracting Party and in a convertible currency, of payments resulting from investment activities and in particular

(a) net profits, dividends and other current income;

(b) amounts required:

(i) for the acquisition of raw or auxiliary materials and semi-finished or finished goods

(ii) to replace capital goods in order to ensure the continuity of an investment;

(c) income from the professional activities of citizens authorised to work in connection with an investment, as well as management fees;

(d) the capital invested or the proceeds from the liquidation or disposal of the investment or part thereof

(e) funds for the repayment of loans for investments and interest thereon

(f) royalties and copyright.

(2) Each Contracting Party shall, after the fulfilment of the legal obligations incumbent on investors, grant the necessary authorisations to ensure without delay the execution of the transfers referred to in paragraph 1 of this Article.

Article 7.

(1) Transfers of currency in accordance with Articles 4 and 6 shall be effected without delay in the convertible currency in which the investment was made or in any other freely convertible currency, if so agreed.

(2) The exchange of currency shall be made in accordance with the regulations of the International Monetary Fund at the rate of exchange prevailing on the date of payment. If no such rate of exchange exists, the rate shall be established on the basis of the rates of exchange which would be applied by the International Monetary Fund for the exchange of the respective currencies into Special Drawing Rights.

Article 8.

Investments which investors of one of the Contracting Parties have made in the territory of the other Contracting Party before the entry into force of this Agreement shall also be subject to the provisions of this Agreement.

Article 9.

The Contracting Parties may hold consultations on matters concerning the application of this Agreement and on matters relating to investments made under this Agreement. Such consultations may also be held within the framework of the Joint Governmental Commission set up in accordance with the Agreement on Long-Term Economic, Industrial and Technical Cooperation concluded in Bucharest on 14 May 1975 between the two countries.

Article 10.

(1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall be settled, as far as possible, by negotiations between the two Parties. If such a dispute cannot be settled within six months of the commencement of negotiations, then, at the request of one of the Contracting Parties, it shall be submitted to an arbitral tribunal.

(2) The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint an arbitrator; the two arbitrators shall propose to the Contracting Parties, by mutual agreement, a chairman who must be a citizen of a third State, appointed by the Contracting Parties. The arbitrators shall be appointed within three months and the chairman within five months, after one of the Contracting Parties has notified the other that it wishes to submit the dispute to an arbitral tribunal. If the arbitrators are not appointed within the agreed period, the Contracting Party which has not appointed its arbitrator shall agree that the arbitrator shall be appointed by the President of the International Court of Justice. If the Contracting Parties cannot agree on the appointment of the chairman, they also agree that the chairman shall be appointed by the President of the International Court of Justice.

(3) The arbitral tribunal shall adopt its decisions on the basis of the provisions of this Agreement and other similar agreements concluded by the Contracting Parties, as well as in accordance with the principles and general rules of international law. The arbitral tribunal shall take its decisions by majority vote and its decision shall be final and binding. Only the Contracting Parties may submit claims to the arbitral tribunal and participate in the proceedings.

(4) Each Contracting Party shall bear the costs of the arbitrator appointed by it and those of its representatives in the proceedings of the tribunal. The costs of the chairman and the other costs shall be borne equally by the Contracting Parties.

(5) The arbitral tribunal shall determine its own procedure.

Article 11.

(1) As regards the Kingdom of the Netherlands, this Agreement shall apply to the Kingdom in Europe and the Netherlands Antilles.

(2) Taking into account the period of denunciation mentioned in paragraph (1) of Article 12, the Government of the Kingdom of the Netherlands shall have the right to denounce this Agreement separately for the Netherlands Antilles.

Article 12.

(1) This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have notified each other in writing that the formalities required by the Constitution in their respective countries have been completed.

The Agreement shall remain in force for a period of ten years. Unless one of the Contracting Parties denounces the Agreement at least six months before its expiry, it shall be tacitly extended for a further period of ten years, the Contracting Parties reserving the right to denounce the Agreement by notification at least six months before the expiry of the current period of validity.

(2) With respect to investments made before the date of expiry of this Agreement, the preceding Articles shall remain in force for a period of 15 years from the date of expiry.

IN WITNESS WHEREOF the undersigned representatives, being duly authorised thereto, have signed this Agreement.

DONE at The Hague on 27-10-1983 in two originals, in the Dutch, Romanian and French languages, all texts being equally authentic. In the event of a difference of interpretation between the Dutch and Romanian texts, the French text shall be considered as the reference text.

For the Government of the Kingdom of the Netherlands,

(s.) H. VAN DEN BROEK

For the Government of the Socialist Republic of Romania,

(s.) CONSTANTIN OANCEA

Exchange of Letters

Nr. I

DVE/VV-279919 The Hague, 27 October 1983

Dear Deputy Minister

On the occasion of the signing today of the Agreement between the Government of the Kingdom of the Netherlands and the Government of the Socialist Republic of Romania on the reciprocal encouragement and protection of investments, I have the honour to bring to your attention the following

1. In the event of investment disputes other than those provided for in Article 5 paragraph (1) of the Agreement, the Government of the Kingdom of the Netherlands proposes that the Contracting Parties consider sympathetically the requests of investors to submit such disputes for conciliation or arbitration to the International Centre for Settlement of Investment Disputes, in accordance with the procedure provided for in the Washington Convention of 18 March 1965, provided that domestic legal remedies have been exhausted. The provision of Article 5 paragraph (2) of the Agreement shall also apply *mutatis mutandis*.

The disputes referred to under point 1 may refer to the question whether the provisions of the act of expropriation have been correctly applied, the legality of the act of expropriation remaining undisputed.

2. In connection with the provisions of Article 5, paragraph (2) of the Agreement, it is the intention of both Governments that the first act of litigation shall be the act by which the investor initiates adversarial proceedings on the amount of compensation in the event of expropriation before any competent body, whether a judge, a court or any other competent national body.

I should be grateful if you would confirm that your Government agrees with the above.

Accept, Sir, the assurances of my highest consideration.

(s.) H. VANDENBROEK

(H. van den Broek)

Minister for Foreign Affairs of the Kingdom of the Netherlands

His Excellency

C. Oancea

Deputy Minister of Foreign Affairs of the Socialist Republic of Romania

Nr. II

The Hague, 27 October 1983

Dear Minister

I have the honour to acknowledge receipt of your letter, no. DVE/VV- 279919, dated today and worded as follows

(See Nr. I)

I have the honour to confirm that my Government is in agreement with the contents of your letter.

Please accept, Mr. Minister, the assurances of my highest consideration.

(s.) CONSTANTIN ÔANCEA

(C. Oancea)

Deputy Minister of Foreign Affairs of the Socialist Republic of Romania

His Excellency

H. van den Broek

Minister of Foreign Affairs of the Kingdom of the Netherlands