

Agreement for the reciprocal promotion and protection of investments between Spain and Ukraine

Agreement on the reciprocal promotion and protection of investments between Spain and Ukraine

Spain and Ukraine, hereinafter referred to as the Contracting Parties,

Desiring to intensify economic cooperation in the mutual benefit of both countries;

Proponiéndose create and maintain favourable conditions for investments by investors of either Contracting Party in the territory of the other contracting party, and

Recognizing that the promotion and protection of investments under this agreement will stimulate initiatives in this field,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. "investment" means every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter, including in particular, though not exclusively:

- a) Movable and immovable property as well as other rights in rem, such as mortgages, liens, pledges and similar rights usufructs,;
- b) Stocks, shares and debentures of a company and any other form of participation in companies;
- c) The right to money or to any other submission pursuant to a contract having an economic value, including any loan granted with the aim of creating an economic value;
- d) Intellectual Property Rights, including copyrights, patents, industrial designs, trademarks and trade rules, as well as know-how, technical know-how, processes and goodwill;
- e) Rights to undertake economic and commercial activities conferred by law or under contract, including concessions to prospecting, cultivate, extract or exploit natural resources.

Any change in the form in which assets are invested or reinvested shall not affect their character as investments provided that such change is made in accordance with the laws and regulations of the host contracting party of the investment.

2. "investor" refers with regard to either Contracting Party:

- a) Natural persons who, according to the legislation of a Contracting Party, are considered to be its nationals;
- b) Legal entities, including collective anonymous companies, corporations or associations and other organizations, which are duly constituted or otherwise organized in accordance with the laws of that Contracting Party;
- c) Any legal person duly constituted or organized under the laws of the other contracting party but controlled directly or indirectly by a natural person as defined in subparagraph (a) or any legal person as defined in subparagraph (a) or (b). Ietra by any legal person as defined in subparagraph (b).

3. "Income" means income deriving from an investment and shall include in particular, though not exclusively, profits, dividends, interests, capital gains, royalties and fees.

4. "territory" means the territory and territorial waters of each of the Contracting Parties, as well as the exclusive economic zone and the continental shelf extends beyond the limits of the territorial waters of each of the Contracting Parties, and on

which they are or may have jurisdiction and sovereign rights under international law for the purpose of exploration and exploitation and preservation of natural resources.

Article 2. Promotion and Admission

1. Each Contracting Party shall promote and create favourable conditions for investors of the other contracting party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.
2. In order to encourage mutual investment flows, each Contracting Party shall inform the other Contracting Party, at the request of the latter, investment opportunities in its territory.
3. If a Contracting Party has admitted an investment in its territory it shall in accordance with its laws and regulations the necessary permits in connection with such an investment. each Contracting Party shall endeavour to issue necessary whenever required authorisations in connection with the activities of consultants and other qualified persons, irrespective of their nationality.

Article 3. Protection

1. Shall at all times be accorded fair and equitable treatment and full protection and security to investments made by investors of one Contracting Party in the territory of the other contracting party.
2. Neither Contracting Party shall in any way by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, sale or, where appropriate, the liquidation of such investments. each Contracting Party shall comply with any obligation it has assumed with regard to investments of investors of the other contracting party.

Article 4. National and Most-favoured-nation Treatment

1. Each Contracting Party shall accord in its territory to returns of investments or investors of the other Contracting Party A treatment no less favourable than that accorded to investments or investors of returns of any third State, which is more favourable to the investor concerned.
2. Notwithstanding paragraph 1 of this article shall not be construed so as to oblige one contracting party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be granted by the first contracting party by virtue of: (1) of this article shall not be construed so as to oblige one contracting party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be granted by the first contracting party by virtue of:
 - a) Any customs union, free trade area, monetary union or any similar international agreement or other forms of regional economic cooperation, existing or future, to which either of the contracting parties is or becomes a party, or
 - b) Any international agreement relating wholly or partially to taxation or any domestic legislation relating wholly or partially to taxation.

Article 5. Expropriation

1. Returns of investments or investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalised, expropriated or subjected to any other measure having effect equivalent to nationalization or expropriation (hereinafter referred to as expropriation) except for reasons of public interest, in accordance with the law, on a non-discriminatory basis and accompanied by payment of prompt, effective and adequate compensation.
2. Such compensation shall correspond to the fair market value of the expropriated investment immediately before the impending expropriation or to the same became public knowledge, whichever is the first of these dates (hereinafter referred to as "Valuation date). the compensation shall be paid without delay, be effectively realizable and freely transferable.
3. The fair market value shall be calculated in a freely convertible currency at the prevailing market rate of exchange for that currency on the valuation date. the compensation shall include interest at a normal commercial rate on the market criteria established for the valuation currency from the date of expropriation until the date of payment.
4. According to the legislation of the contracting party making the expropriation, the investor affected shall have a right to a judicial authority or another competent and independent authority of that Contracting Party to prompt review of its case to

determine whether such expropriation and the valuation of its investment in accordance with the principles set out in this article.

5. When a Contracting Party shall expropriate assets of an enterprise constituted under the law in force in any part of its own territory in which an investor of the other Contracting Party, it shall ensure that the provisions of this article to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

Article 6. Compensation for Losses

1. Investors of one Contracting Party whose investments or annuities in the territory of the other contracting party suffer losses owing to war or other armed conflict, revolution, state of national emergency, revolt, civil disturbance or other similar circumstances, the other Contracting Party shall be accorded to restitution, indemnification, compensation or other settlement, a treatment no less favourable than that which that Contracting Party accords to its own investors to investors or of any third State, apply the treatment that is more favourable to the investor concerned. the resulting payments shall be freely transferable.

2. Notwithstanding paragraph 1 of this article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from: (1) of this article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

- a) The requisitioning of its investment or part thereof by the forces or authorities of that Contracting Party; or
- b) The destruction of its investment or part thereof by the forces or authorities of that Contracting Party, without requiring the necessity of the situation that Contracting Party, be accorded restitution or compensation which in either case shall be prompt, adequate and effective.

3. Payments arising from the provisions of paragraphs 1 and 2 of this article shall be made without delay in a freely convertible currency and be freely transferable.

Article 7. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of all payments relating to their investments. such transfers shall include in particular, though not exclusively:

- a) The initial capital and additional amounts to maintain or increase an investment;
- b) The investment income, as defined in article 1; article 1;
- c) The funds in repayment of loans related to an investment;
- d) The compensation under articles 5 and 6; articles 5 and 6;
- e) The proceeds from the sale or the total or partial liquidation of an investment;
- f) Wages and remuneration of other personnel engaged from abroad in connection with an investment;
- g) Payments arising out of the settlement of a dispute.

2. The transfers referred to in the present Agreement shall be made without delay in a freely convertible currency at the market exchange rate prevailing on the date of transfer.

Article 8. More Favourable Terms

1. If the legislation of either Contracting Party or obligations under international law faculty existing or emerging between the Contracting Parties in addition to this Agreement, is of a general or special rules under which shall be granted to investments made by investors of the other contracting party to a more favourable treatment than that provided for by the present Agreement, such rules shall prevail over this agreement to the extent that it is more favourable.

2. More favourable terms than those of this Agreement which have been agreed between a Contracting Party and investors of the other Contracting Party shall not be affected by this Agreement.

Article 9. Subrogation

If a Contracting Party or its designated agency made a payment under an indemnity, guarantee or contract of insurance against non-commercial risks with regard to an investment made by any of its investors in the territory of the other contracting party, the latter shall recognise the assignment of any such right or claim of the investor to former Contracting Party or to its designated agency as well as the law of that Contracting Party or its designated agency by subrogation to exercise such right or claim to the same extent as its predecessor in title. the subrogation will ensure that the first Contracting Party or its designated agency is direct beneficiary of any payment of compensation or other redress that could be entitled to the investor.

Article 10. Settlement of Disputes between the Contracting Parties

1. Any dispute between the contracting parties concerning the interpretation or application of this Agreement shall be settled as far as possible through diplomatic channels.
2. If the dispute cannot be settled in this way within six months, it shall be submitted upon written request of either of the two contracting parties to an arbitral tribunal in accordance with this article.
3. The arbitral tribunal shall be constituted for each individual case in the following way: within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. these two members shall select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal (hereinafter referred to as "President"). the Chairman shall be appointed within three months from the date of appointment of the other two members.
4. If the necessary appointments have been made within the periods specified in paragraph 3 of this article, a Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. if the President is a national of either Contracting Party or unable to perform this function for other purposes, it shall ask the Vice-President to make the necessary appointments. if the Vice-President is a national of one of the contracting parties or nor to perform this function would be encouraged to make the necessary appointments to the member of the International Court of Justice to continue in seniority who is not a national of any of the Parties contratantes. apartado 3 of this article, a Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. if the President is a national of either Contracting Party or unable to perform this function for other purposes, it shall ask the Vice-President to make the necessary appointments. if the Vice-President is a national of one of the contracting parties or nor to perform this function would be encouraged to make the necessary appointments to the member of the International Court of Justice to continue in seniority who is not a national of either of the Contracting Parties.
5. The arbitral tribunal shall render its decision on the basis of respect for the law and the rules contained in this Agreement or in other agreements in force between the contracting parties, as well as of the generally accepted principles of international law.
6. Unless the Contracting Parties decide otherwise, the arbitral tribunal shall determine its own procedure.
7. The arbitral tribunal shall reach its decision by a majority of votes and that decision shall be final and binding on both contracting parties.
8. Each Contracting Party shall bear the costs of the arbitrator appointed by it and its representation in the arbitral proceedings. The other expenses, including the President, shall be borne in equal parts by the two contracting parties.

Article 11. Disputes between Investors and a Contracting Party of the other Contracting Party

1. Disputes between a Contracting Party and an investor of the other Contracting Party with regard to an investment in the sense of the present Agreement shall be notified in writing, including detailed information by the investor Contracting Party to the recipient of the investment. to the extent possible, the parties to the dispute shall endeavor to settle these differences amicably.
2. If such disputes cannot be settled amicably within six months from the date of the written notification mentioned in paragraph 1, the dispute shall be submitted, at the choice of the investor,: (1), the dispute shall be submitted, at the choice of the investor, to:

The competent court of the Contracting Party in whose territory the investment has been made;

The ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law;

The International Centre for International Settlement Centre for Settlement of Investment Disputes) established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965, in case both contracting parties become members of this Convention. when a Contracting Party which is a party to the dispute is not a Contracting State to the said Convention, the dispute shall be settled under the additional facility for the administration of proceedings by the secretariat of the Centre.

3. The arbitration shall be based on:

The provisions contained in this Agreement or any other agreements in force between the contracting parties;

The rules and the universally accepted principles of international law;

The national law of the Contracting Party in whose territory the investment was made, including the rules relating to conflicts of law.

4. A Contracting Party shall not assert as a defence that the investor has received or will receive a guarantee or under a contract of insurance, indemnification or other compensation for all or part of the damage in question.

5. The arbitral decisions shall be final and binding on the parties to the dispute. each Contracting Party undertakes to execute the decisions in accordance with its national legislation.

Article 12. Applicability of the Agreement

This Agreement shall apply to all investments made before or after its Entry into Force by investors of one Contracting Party in the territory of the other contracting party.

Article 13. Entry Into Force , Duration and Termination

1. Each Contracting Party shall notify the other of the completion of the procedures required by its Law for the Entry into Force of this Agreement. it shall enter into force on the date of the second notification.

2. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter, unless one year before the expiration of the initial or any subsequent period, either Contracting Party notifies in writing the other party of its intention to denounce the agreement.

3. With respect to investments made prior to the date of termination of this Agreement, the provisions of all of the other articles of this Agreement shall remain in force for a further period of ten years from such date of termination.

Done in duplicate at Kyiv on 26 February 1998, in English, Ukrainian and English languages, all texts being equally authentic.

Spain

Ramón and Miguel Egea,

Secretary of State for Foreign Policy and to the European Union

In Ukraine,

I. Andriy goncharuk,

First Deputy foreign economic and trade