

AGREEMENT BETWEEN THE PEOPLE'S REPUBLIC OF BULGARIA AND THE BELGO-LUXEMBOURG ECONOMIC UNION ON RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

THE REPUBLIC OF BULGARIA

and

THE BELGO-LUXEMBOURG ECONOMIC UNION

hereinafter referred to as the Contracting Parties,

DESIRING

To strengthen economic cooperation through the creation of favourable conditions for investment by investors of one Contracting Party in the territory of the other contracting party,

CONSIDERING

The positive impact that may exercise such an agreement with a view to improving the business contracts and to enhance confidence in the field of investment,

BEING INSPIRED BY

The principles of the Final Act of the Conference on Security and Cooperation in Europe, signed at Helsinki on 1 August 1975,

HAVE AGREED AS FOLLOWS

Article 1.

1. The term "investment" means assets of every kind and any direct or indirect in all companies or firms in any sector of the economy, and in particular:

- a) The property and any other property rights;
- b) The shares and other forms of participation in companies;
- c) Claims and rights to any performance having an economic value;
- d) Copyrights, trademarks, patents, technical processes, trade names, know-how and any other rights of industrial property, as well as the right to customers;
- e) The assets and property relating to economic activities allowed by law.

Any modification of the legal form of investment or reinvestment shall not affect their character as "investment" within the meaning of this Agreement.

2. The term "returns" shall mean amounts received or to receive and resulting from investments made in accordance with paragraph 1, and in particular the profits, dividends and interest.

3. The term "investor" means:

A. In respect of the People's Republic of Bulgaria's people:

- a) Any legal person constituted under the laws of the Republic of Bulgaria and having its registered office in the territory of the Republic of Bulgaria's people;

b) Any natural person who, under the laws of the Republic of Bulgaria, is considered as a citizen of the Republic of Bulgaria; and provided that it is authorized to act as an investor in accordance with the law of the Republic of Bulgaria;

B. As regards the Belgo-Luxembourg Economic Union:

a) Any legal person constituted under the laws of Belgium or Luxembourg and having its registered office in the territory of the Kingdom of Belgium or the Grand Duchy of Luxembourg;

b) Any natural person who, according to the laws of Belgium or Luxembourg is considered as a citizen of the Kingdom of Belgium or the Grand Duchy of Luxembourg.

Article 2.

1. Each Contracting Party shall encourage investments of investors of the other Contracting Party in its territory and admit such investments in accordance with its legislation.

2. Each Contracting Party shall ensure to investments in its territory by investors of the other contracting party fair and equitable treatment, excluding any unlawful or discriminatory measure which could adversely affect their management, maintenance, use, enjoyment or disposal.

3. Subject to the measures necessary for the maintenance of public order, such investments and returns stemming therefrom enjoy a constant protection and security, which are equivalent to those enjoyed by investments belonging to investors of the most favoured nation.

4. Notwithstanding the provisions of paragraphs 2 and 3 shall not extend to the privileges which either Contracting Party shall accord to investors of a third State by virtue of:

- its participation in an economic union, a customs union, a common market or a free trade area;
- a convention for the avoidance of double taxation or any other arrangement relating to taxation.

Article 3.

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be nationalized or expropriated unless the following conditions are met:

- a) The measures are taken in the public interest and under due process;
- b) They are neither discriminatory nor contrary to a specific engagement as referred to in article 6 (2);
- c) They are accompanied by provisions for the payment of compensation in the amount shall correspond to the real value of the affected investments immediately before the date on which the measures taken or are publicly available. As soon as it is required, the compensation shall be paid to investors in convertible currency and paid without delay and freely transferable.

2. Investors of either Contracting Party whose investments suffer losses in the course of a war, armed conflict, a national state of emergency, disturbance or other similar events occurring in the territory of the other Contracting Party, shall be accorded by the latter in a non-discriminatory manner and not less than that accorded to the investors of the most favoured nation treatment, as regards compensation, restitution, compensation or other remedies.

3. This treatment shall apply to investors of either Contracting Party, holders of all kinds of participation in a company, in whatever form, established in the territory of the other Contracting Party.

4. In any case, each Contracting Party shall accord to investors in its territory of the other Contracting Party treatment not less than that accorded to the investors of the most favoured nation.

Article 4.

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of their liquid assets relating to an investment and in particular:

- a) Capital and additional amounts to maintain or increase the investment;
- b) Investment income;

c) The amounts required for payment of expenses which arise from the operation of the investment, such as:

- the repayment of loans;
- The payment of royalties,
- The payment of expenses;

d) The proceeds from a total or partial liquidation of the investment;

e) The compensation pursuant to article 3.

2. The transfers referred to in paragraph 1, shall be made at the rate of exchange applicable on the date of the latter and in accordance with the foreign exchange regulations in force in the State in whose territory the investment has been made.

3. Each Contracting Party shall take the necessary steps to ensure that the transfer can be effected without undue delay and without any fees or other charges that the usual costs.

In any event, the deadline for completion of the transfer may not exceed one month from the date of the request.

4. The guarantees provided for in paragraphs 1, 2 and 3 shall be at least equal to those accorded to investors of the most favoured nation in similar situations.

Article 5.

1. If under a legal or contractual guarantee covering non commercial risks related to an investment, either Contracting Party or an agency thereof pays compensation to its own investors, the other contracting party acknowledges that the rights of the indemnified investors have been transferred to the contracting party or to the public body, as the insurer.

2. In the same way as investors, and within the limits of the rights so transferred, the insurer may, by virtue of subrogation to exercise the rights and assert the claims of investors and those relating thereto.

3. As far as the transferred rights, the other contracting party may claim against the insurer subrogated into the rights of the investors indemnified the obligations under a legal or contractual relationship with them.

Article 6.

1. Where a matter relating to investment is governed by this Agreement and simultaneously by the national legislation of either Contracting Party or, under existing international conventions or undertaken by the parties in the future, investors of the other contracting party may avail itself of the provisions that are most favourable.

2. Investors of one Contracting Party may conclude with the other contracting party of the specific commitments which cannot be contrary to this Agreement. investments made under such specific commitments are, moreover, governed by this Agreement.

Article 7.

1. Disputes concerning the interpretation or application of this Agreement shall be settled as far as possible between the Parties through diplomatic channels.

2. If the dispute is submitted to a joint commission composed of representatives of the contracting parties; it shall meet without delay and at the request of one of the Contracting Parties.

3. If the Joint Commission cannot settle the dispute within six months after the beginning of negotiations, the dispute shall be submitted to an "ad hoc" arbitral tribunal, at the request of one of the Contracting Parties.

4. The tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and the two arbitrators shall appoint a third arbitrator who is a national of a third State, who shall be Chairman of the tribunal. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which either Contracting Party has informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

5. If the time limits specified in paragraph 4 have not been observed, the Secretary-General of the United Nations shall be invited to make the necessary appointments.

In the event that the latter is a national of one of the States Parties to this Agreement, the appointments shall be made by the most senior Deputy Secretary-General and who is not a national of one of the States concerned.

6. The President and the arbitrators the arbitral tribunal shall be nationals of States with which both parties to the dispute have diplomatic relations.

7. The Court of Arbitration Rules on the basis of the provisions of this Agreement and the rules and recognized principles of International Law.

8. The arbitration tribunal shall establish its own rules of procedure.

9. The arbitration tribunal shall take its decisions by a majority of votes. The decisions shall be final and binding on the parties.

10. Each Party to the dispute shall bear the costs of its own arbitrator and its representation in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the parties.

Article 8.

1. Any dispute between one Contracting Party and an investor of the other Contracting Party on the amount of compensation owed under Article 3 paragraph 1, shall be the subject of a written notification, including a detailed memorandum addressed by the investor and the Contracting Party concerned. To the extent possible, the dispute shall be settled amicably between the parties.

2. If the dispute cannot be settled within six months from the date of the written notification mentioned in paragraph 1, and in the absence of any other form of regulation agreed between the parties to the dispute, the dispute shall be submitted, at the initiative and at the choice of the investor:

a) The competent national court or

b) To international arbitration before an ad hoc arbitral tribunal.

3. The ad hoc arbitral tribunal shall be constituted for each individual case in the following way: each party to the dispute shall appoint one arbitrator and the two arbitrators shall appoint a third arbitrator who is a national of a third State, who shall be Chairman of the Tribunal. The arbitrators shall be appointed within two months and the Chairman within three months from the date on which the investor Party to the dispute has been notified to the Contracting Party concerned its intention to resort to international arbitration.

If the time limits referred to above have not been complied with, either party to the dispute may request the President of the International Court of Arbitration of the Stockholm Chamber of Commerce to make the necessary appointments.

The members of the "ad hoc" tribunal must be nationals of States with which both Contracting Parties maintain diplomatic relations.

4. The ad hoc arbitral tribunal shall establish its own rules of procedure in accordance with the provisions of the United Nations Commission on International Trade Law (UNCITRAL) adopted at the Conference on 15 December 1976.

5. The Tribunal shall decide on an ad hoc basis:

- The national law of the Contracting Party involved in the dispute in whose territory the investment is located, including its rules on the Conflict of Laws;

- The provisions of this Agreement;

- Terms of specific commitments in respect of the investment;

- The rules and recognized principles of International Law .

6. The arbitration awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the decisions in accordance with its national law.

Article 9.

Each Contracting Party shall settle, in accordance with its laws and regulations and as favourably as possible, problems

relating to the entry, residence, work and movement in its territory of nationals of the other Contracting Party and of members of their households engaged in investment-related activities within the meaning of this Agreement.

Article 10.

Each Contracting Party may propose to the other Contracting Party consult each other on all matters related to the implementation or interpretation of this Agreement. Each Contracting Party shall take the necessary steps to make this possible consultation.

Article 11.

This Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with its law, from 1 January 1960.

Article 12.

The modalities of application of certain provisions of this Agreement shall be the subject of a protocol which shall form an integral part thereof.

Article 13.

1. This Agreement shall enter into force one month after the date on which the Contracting Parties have exchanged their instruments of ratification.

It shall remain in force for a period of ten years.

Unless one of the Contracting Parties denounces it at least six months before the expiration of the period of validity, whenever it shall be automatically renewed for a further period of ten years, each Contracting Party reserving the right to terminate the agreement by a notification made at least twelve months before the date of expiry of the current period of validity.

2. Investments made prior to the termination of this Agreement shall continue to apply for a period of fifteen years from the date of its termination.

Done at Sofia, on 25 October 1988.

Each in two originals in the Bulgarian and French languages, both texts being equally authentic.

FOR THE PEOPLE'S REPUBLIC OF BULGARIA

Andreï LOUKANOV

FOR THE BELGO-LUXEMBOURG ECONOMIC UNION

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