Agreement on mutual promotion and protection of investments between the Government of Romania and the Government of the Republic of Moldova

The Government of Romania and the Government of the Republic of Moldova, hereinafter referred to as the Contracting Parties,

Desiring to intensify economic cooperation for the mutual benefit of both countries,

in order to create favorable conditions for the investments of investors of one Contracting Party in the territory of the other Contracting Party, and

Recognizing that the mutual promotion and protection of investments, on the basis of this Agreement, stimulates initiative in this field,

agreed as follows:

Article I. Definitions

For the purposes of this Agreement:

1. The term investment means any asset held by an investor of one of the Contracting Parties, invested in the territory of the other Contracting Party, in accordance with its laws and regulations. The term includes, but is not limited to:

a) ownership of movable and immovable property, as well as any other real rights;

b) rights derived from shares, bonds and other types of participation in commercial companies;

c) receivables or other rights related to benefits having an economic or financial value;

d) intellectual property rights, such as copyrights, trademarks and trade names, patents, technical procedures, know-how, goodwill, as well as other similar rights;

e) concessions granted by law or on the basis of a contract, including concessions related to prospecting, exploration, extraction and exploitation.

Any change in the form in which the assets are invested will not affect their investment character.

2. The term investor shall mean any natural or legal person of a Contracting Party who has made, makes or undertakes to make investments in the territory of the other Contracting Party in accordance with the law of the latter.

3. The terms natural person and legal person means any natural person who is a citizen of the Republic of Moldova or Romania in accordance with the legislation in force, and, respectively, any legal person established under the law of each of the contracting parties and whose headquarters are in the Republic Moldova and Romania, respectively.

4. The term income refers to the amounts produced by an investment and includes, but is not limited to, benefits, dividends, interest, capital gains, royalties and other similar remuneration.

5. The term territory shall mean, in addition to areas within the borders of the land, marine and submarine areas over which one of the Contracting Parties is sovereign or exercises sovereign or jurisdictional rights under international law.

Article II. Investment Promotion and Protection

1. Each Contracting Party shall encourage and create favorable conditions for investments made in its territory by investors

of the other Contracting Party.

2. Investments shall be admitted in accordance with the legal provisions of the two Contracting Parties and shall enjoy the protection and guarantees provided for in this Agreement and in the specific laws of each of them.

3. Each Contracting Party shall provide in its territory a fair and equitable treatment for the investments of the investors of the other Contracting Party, shall not obstruct in any way - through arbitrary or discriminatory measures - the management, use, use or repatriation of capital, alienation and the right to provision on investments, as well as on local companies, associations or companies in which these investments were made.

Article III. Investment Treatment and Most-favored-nation Clause

1. Each Contracting Party shall accord to investments made in its territory, its related activities and income accruing by the investors of the other Contracting Party treatment no less favorable than that accorded in similar situations to its own investors or to the investors of any third State.

2. Each Contracting Party shall accord to investors to the other Contracting Party, in respect of the management, maintenance, capitalization, authorized transformation, repatriation of capital, alienation, use or disposition of their investment, treatment no less favorable than that accorded to its own investors or investors of any third country.

3. The provisions of this Agreement relating to the granting of national or most-favored-nation treatment shall not be construed to oblige a Contracting Party to extend to the investors of the other Contracting Party the advantages or privileges granted by virtue of participation as a member in:

a) any economic or customs union, free trade area or regional or subregional economic organization, associations of the Common Market to which either Contracting Party is or may become a party;

b) any international, multilateral or regional economic agreement or other commitment relating, in whole or in part, to the avoidance of double taxation or the facilitation of frontier trade.

Article IV. Nationalization or Expropriation

1. Investments made by investors of one of the Contracting Parties in the territory of the other Contracting Party may not be nationalized, expropriated or subject to measures having a similar effect (hereinafter referred to as expropriation), unless the following conditions are met:

a) the measures were taken for reasons of necessity or public utility, according to an appropriate legal procedure;

b) the measures are not discriminatory or contrary to the measures, taken against national investments or domestic investors or against investments and investors of a third country;

c) an appropriate procedure is established to determine the amount and method of payment of compensation.

2. The compensation shall correspond to the value of the investment which was the subject of one of the measures referred to in paragraph 1 of this Article. The amount of compensation will be determined in accordance with recognized valuation principles, such as the fair market value of the investment on the date immediately preceding the date on which the expropriation or nationalization becomes effective or public. This compensation will be paid and will be transferable without undue delay.

3. The amount of compensation shall be determined in accordance with recognized international valuation principles, such as the effective and fair market value of the investment shortly before the time of the announcement of the expropriation decision or when it is made public. If the fair market value cannot be easily established, the amount of compensation will be decided on fair, objective principles, taking into account, inter alia, invested capital, current income, replacement value and any other relevant factors.

4. If no agreement can be reached between an investor and a contracting party, the amount shall be calculated following the procedure for settling disputes pursuant to art. X of this agreement.

5. The amount of compensation shall be paid immediately to the investor, who has the right to transfer this amount without undue delay, in the currency in which the investment was made. Once the amount of compensation has been established, the authorization for its repatriation will be promptly submitted according to the legislation of each country.

Article V. Compensation for Damage and Loss

Investors of one of the Contracting Parties whose investments have suffered losses in the territory of the other Contracting Party as a result of a war or other armed conflict, state of emergency, revolution or revolt shall be accorded treatment by the latter Contracting Party. no less favorable than that granted to investors of any third country in respect of refunds, compensations, compensations or other payments.

These payments will be freely transferable.

Article VI. Repatriation of Capital, Profits and Income

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, in respect of their investments, the carrying out, in accordance with its laws and regulations, of the free transfer of:

a) the capital and additional amounts used to maintain and increase investments;

b) current income from investments, such as: net income, dividends, payments for technical assistance and services, interest and any other fees;

c) amounts arising from the sale, in whole or in part, of the alienation or liquidation of an investment;

d) payments made for the repayment of investment loans and interest due, as well as funds for the repayment of investment-related loans and interest due;

e) an adequate share of the earnings of the nationals of the other Contracting Party arising out of the work and services rendered by them in connection with an investment in its territory.

2. Each Contracting Party shall issue, after the fulfillment of the tax obligations incumbent on the investment, the necessary authorizations - if required - to ensure the prompt execution of such transfers.

3. The above transfers shall be made in the currency in which the investment was made or in any other currency, if so agreed, at the official exchange rate in force on the date of the transfer, in accordance with the regulations in force in the host country.

4. Transfers within the normal time limit required for the completion of transfer formalities shall be deemed to be without delay for the purposes of this Article. The time limit shall run from the day on which the transfer application is duly submitted to the competent authorities together with the necessary documents and shall in no case exceed the time limits laid down in the national laws of the Contracting Parties. The same provisions are to be applied to the transfers referred to in art. IV, V and VII of this agreement.

Article VII. Subrogation

If one of the Contracting Parties or an agency designated by it makes a payment to one of its investors, under a financial guarantee against non-commercial risks, which it has granted in connection with an investment in the territory of the other Contracting Party, the latter shall recognizes, by virtue of the principle of subrogation, the transfer of any right or title of that investor to the first contracting party or to the agency designated by it. The other Contracting Party shall be entitled to deduct the fees and other public expenses due and payable by the investor.

Article VIII. Other Obligations

If the legal or future obligations of any of the Contracting Parties or the obligations assumed under international law result in a general or special regulation enabling the investments of investors of the other Contracting Party to be treated more favorably than that provided for in this Agreement, that regulation shall prevail, in so far as it is more favorable, over this agreement.

Article IX. Consultation

Either Contracting Party may propose to the other Contracting Party consultations on any matter relating to the application of this Agreement. The other Contracting Party shall pay particular attention to the proposal, creating appropriate conditions for such consultation to take place as soon as possible.

Article X. Settlement of Investment Disputes between Investors and the Contracting Parties

1. Any dispute between a Contracting Party and an investor of the other Contracting Party concerning an investment by that Contractor in the territory of the first Contracting Party shall, as far as possible, be settled amicably through consultations and negotiations between the Parties.

2. If such a dispute cannot be settled amicably within 6 months of the date of the written request for settlement, the investor may, at his choice, submit the dispute, at his choice, to:

a) the competent court of the Contracting Party in whose territory the investment was made;

b) The International Center for the Settlement of Investment Disputes (ICSID), provided for in the Convention between States and Persons of Other States, opened for signature in Washington on March 18, 1965; or

c) an ad hoc arbitral tribunal, unless otherwise agreed between the parties to the dispute, which shall be constituted in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

Article XI. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled amicably by negotiation between the two Contracting Parties.

2. If the dispute cannot be settled within six months of the date of commencement of the negotiations, it shall be submitted, at the request of either Contracting Party, to an arbitral tribunal.

3. The arbitral tribunal shall be appointed as follows: each Contracting Party shall appoint one arbitrator, and these two arbitrators shall appoint, by common accord, a chairman who shall be a national of a third State. The two arbitrators must be appointed within 3 months and the chairman within 5 months from the date on which either Contracting Party has notified the other Contracting Party that it wishes to submit the dispute to an arbitral tribunal.

4. If, during any of the periods referred to in the preceding paragraph, the appointments provided for have not been made, each Contracting Party shall have the right to request the President of the International Court of Justice to make such appointments.

If the President is a national of one of the Contracting Parties or is prevented from exercising that function, the Vice-President of the International Court of Justice shall be invited. If the Vice-President is a national of one of the Contracting Parties or is prevented for any other reason from exercising that function, appointments shall be made by the longest-serving member of the International Court of Justice who is not a national of either Contracting Party.

5. Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

6. The General Court shall act by a majority of votes. This decision will be final and binding on the parties.

7. Each Contracting Party shall bear the expenses of the arbitrator it has appointed, and the expenses of the President, as well as the other expenses incurred, shall be borne in equal parts by the Contracting Parties.

Article XII. Application of the Agreement and Application of other Provisions

1. This Agreement shall also apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party before the entry into force of this Agreement and accepted in accordance with the legal provisions in force of each Contracting Party. However, the Agreement shall not apply to disputes arising prior to the entry into force of this Agreement.

2. Whenever a case is governed by this Agreement and by another international agreement to which both Contracting Parties are parties, or if it is governed by general international law, the most favorable provisions, on a case-by-case basis, shall be applied to the Contracting Parties and their investors.

3. Whenever, as a result of laws and other general legal provisions, one of the Contracting Parties has provided more favorable treatment to investors of the other Contracting Party than that provided for in this Agreement, they shall be accorded such more favorable treatment.

In the case of special contracts between an investor and the other Contracting Party, the provisions of such contracts, without prejudice to the provisions of this Agreement, shall be in favor of the investor concerned.

Article XIII. Entry Into Force, Validity and Expiry

1. This Agreement shall enter into force 30 days after the date of exchange of the instruments of ratification and shall remain in force for 10 years.

2. If neither Contracting Party denounces it at least 6 months before the date of its expiry, this Agreement shall be tacitly extended for further periods of 10 years, each Contracting Party reserving the right to terminate this Agreement by giving notice. at least 6 months before the expiry date of that period.

3. In respect of investments made before the date of expiry of this Agreement, its provisions shall continue to apply for a period of 10 years from the date of its expiry.

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

Done at Bucharest on 14 August 1992, in two originals, in the Romanian language, both texts being equally authentic.

For the Government of Romania,

Florian Bercea,

For the Government of the Republic of Moldova,

Minister of Budget, State Revenue and Financial Control

Nicolae Andronati,

First Deputy Prime Minister

Protocol between the Government of Romania and the Government of the Republic of Moldova to the Agreement on the mutual promotion and protection of investments between the Government of Romania and the Government of the Republic of Moldova, signed in Bucharest on August 14, 1992, of 13.11.2009

Representatives of the Government of Romania and the Government of the Republic of Moldova,

discussing Romania's intentions to amend the Agreement between the Government of Romania and the Government of the Republic of Moldova on the mutual promotion and protection of investments, signed in Bucharest on August 14, 1992 (hereinafter referred to as the Agreement), in order to comply with its obligations as a Member State of the European Union,

recognizing that Romania, according to art. 307 of the Treaty establishing the European Community and art. 6.10 of the Act concerning the conditions of accession of Romania and Bulgaria to the European Union, must take all necessary steps to eliminate incompatibilities between Community law and all concluded international agreements, including the Agreement,

have agreed to conclude the following Protocol to the Agreement:

I.

Article 2, paragraph 3 will be amended by adding a new wording so that it reads as follows:

"3. Without prejudice to the measures adopted by the European Union, each Contracting Party shall provide in its territory a fair and equitable treatment for the investments of investors of the other Contracting Party, shall not in any way obstruct - through arbitrary or discriminatory measures - the management, use, the use or repatriation of capital, the alienation and the right of disposal over the investments, as well as over the local companies, associations or companies in which these investments were made. "

II.

Article 3 (3) (a) shall be amended by replacing in its entirety the wording previously in the Agreement with the following wording:

"3. The provisions of this Agreement, relating to national treatment and most-favored-nation treatment, shall not apply to present or future advantages granted by any Contracting Party by virtue of belonging to:

(a) or association with, a customs, economic or monetary union, a common market or a free trade area to its own investors, the Member States of such a union, common markets or free trade areas or any third country; ".

III.

Article 6, paragraph 1 shall be amended by adding a new wording so that it reads as follows:

"1. Without prejudice to the measures adopted by the European Union, each Contracting Party shall guarantee to investors of the other Contracting Party, in respect of their investments, the free transfer of: in accordance with its laws and regulations.

a) the capital and additional amounts used to maintain and increase investments;

b) current income from investments, such as: net income, dividends, payments for technical assistance and services, interest and any other fees;

c) amounts arising from the sale, in whole or in part, of the alienation or liquidation of an investment;

d) payments made for the repayment of investment loans and interest due, as well as funds for the repayment of investment-related loans and interest due;

e) an adequate share of the earnings of the nationals of the other Contracting Party arising out of the work and services rendered by them in connection with an investment in its territory. "

IV.

Article 13 shall be amended by adding a new paragraph 4, with the following wording:

"4. By way of derogation from Article 13.2, in the event of developments in the acquis communautaire on foreign investment, this Agreement shall be amended, if necessary, by agreement of the Parties, in order to ensure compliance of its provisions with Romania's obligations. resulting from the status of a member state of the European Union. If such an agreement cannot be obtained, Romania shall have the right to unilaterally terminate this Agreement. It shall cease to apply on the expiry of 3 months after receipt of the notice of denunciation. "

V.

This Protocol shall form an integral part of the Agreement and shall be subject to the constitutional procedures required by the national laws of the Contracting Parties.

VI.

This Protocol shall enter into force on the date of receipt of the last notification, through diplomatic channels, by which the Contracting Parties shall be informed of the completion of the internal legal procedures necessary for its entry into force.

This Protocol shall enter into force for the duration of the Agreement.

Signed in Bucharest on November 13, 2009, in two originals.

For the Government of Romania,

Cătălin Marian Predoiu,

Acting Minister of Foreign Affairs

For the Government of the Republic of Moldova,

Iurie Leanca,

Deputy Prime Minister,

Minister for Foreign Affairs and European Integration