Agreement between the Belgian-Luxembourg Economic Union and the Government of the Republic of Albania on the reciprocal encouragement and protection of investments

THE GOVERNMENT OF THE KINGDOM OF BELGIUM,

Acting both in its own name and in the name of the Government 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 Government of the Republic of Albania,

On the other hand,

(hereinafter referred to as "the Contracting Parties"),

DESIRING to intensify their economic cooperation to their mutual benefit on a long term basis,

HAVING as their objective to create favourable conditions for investments by nationals of one Contracting Party in the territory of the other Contracting Party,

RECOGNISING that the promotion and protection of investments on the basis of the present Agreement will stimulate the initiative in this field,

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investment" means any kind of assets and any direct or indirect contribution in cash, in kind or in services, invested or reinvested in any sector of economic activity, and more particularly, though not exclusively, includes:

a) Movable and immovable property as well as any other kind in rem, such as mortgages, liens, pledges, usufruct and similar rights;

b) Shares, corporate rights and any other kind of shareholding, including minority or indirect ones, in companies constituted in the territory of one Contracting Party;

c) Loans, bonds, claims to money and to any performance under contract having an economic value;

d) Intellectual and industrial property rights, including rights with respect to copyrights, trademarks, tradenames, patents, technological processes, know-how and goodwill;

e) Rights conferred under law or under contract with a Contracting Party, including the right to research for, to explore, develop, cultivate, extract or exploit natural resources

Provided that such assets when invested:

(i) In the Republic of Albania are invested in accordance with its laws, regulations and any written permits that may be required;

(ii) In the Kingdom of Belgium and in the Grand-Duchy of Luxemburg are invested in accordance with their respective laws and regulations.

2. Changes in the legal form in which assets and capital have been invested or reinvested shall not affect their designation as "investments" for the purposes of this Agreement.

3. The term "investors" means:

With respect to the Republic of Albania,

a) Natural persons having the nationality of Albania in accordance with its laws;

b) Legal persons constituted in accordance with the law of the Republic of Albania and having their seat within its territory,

With respect to the Belgo-Luxemburg Economic Union,

a) Any natural person who is considered as a citizen of Belgium or Luxemburg in accordance with the Belgian or Luxemburg legislation;

b) Any legal person constituted in accordance with the Belgian or Luxemburg legislation and having its registered office in the territory of Belgium or Luxemburg.

4. The term "returns" means the amount yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties and payments.

5. The term "territory" means in respect of each Contracting state, the territory under its sovereignty as well as the territorial sea, the continental shelf and the submarine areas over which that Contracting State exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2. Promotion of Investments

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

2. In particular, each Contracting Party shall authorize the conclusion and the fulfilment of licence contracts and commercial, administrative or technical assistance agreements, as far as these activities are in connection with such investments.

Article 3. Protection of Investments

1. All investments, whether direct or indirect, made by investors of either Contracting Party shall enjoy a fair and equitable treatment in the territory of the other Contracting Party.

2. Neither Contracting Party shall subject investments by investors of the other Contracting Party to treatment less favourable than that which it accords to investments of its own investors or to investments of investors of any third State.

3. Neither Contracting Party shall subject investors of the other Contracting Party, as regards their activities in connection with their investment in its territory, to treatment less favourable than that which it accords to its own investors or to investors of any third State.

4. Except for measures required to maintain public order, investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party, i.e. excluding any unjustified or discriminatory measure which could hinder, either in law or in practice, management, maintenance, use, possession or liquidation thereof.

5. The treatment and protection referred to in paragraphs 1 to 4 of this Article shall not cover the privileges granted by one Contracting Party to the investors of a third State pursuant to its participation in or association with a free trade zone, a customs union, a common market or any other form of regional economic organization.paragraphs 1 to 4 of this Article shall not cover the privileges granted by one Contracting Party to the investors of a third State pursuant to its participation in or association with a free trade zone, a customs union, a common market or any other form of regional economic organization.

6. This Agreement shall not be extended to the privileges granted by one Contracting Party to any third State pursuant to an agreement avoiding double taxation or pursuant to any other agreement in field of taxation.

Article 4. Expropriation

1. Investments by investors of either Contracting Party shall not be expropriated, nationalized or subject to any other measure the effect of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party.

2. If reasons of public purpose, security or national interest require a derogation from the provisions of paragraph 1 of this Article, the following conditions shall be complied with:paragraph 1 of this Article, 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 commitment;

c) The measures shall be accompanied by provisions for promt payment of a fair and effective compensation.

3. Such compensation shall be equivalent to the market value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has been taken or has become publicly known, whichever is earlier.

Such compensation shall be paid in the currency of the State of which the investor is a national or in any convertible currency. It shall be paid without undue delay and shall be effectively realizable and freely transferable. In the event of delay beyond one month from the date of the determination of its amount, it shall carry the current bank interest until the time of payment.

4. Investors of either Contracting Party shall enjoy the most favoured nation treatment in the territory of the other Contracting Party in respect of matters provided for in this Article. This treatment shall in no case be less favourable than that recognized under international law.

Article 5. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or any other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

Article 6. Repatriation of Investments and Returns

1. Each Contracting Party guarantees, in respect of investments of investors of the other Contracting Party, the free and prompt transfer of the investments and of their returns.

The transfers shall be effected without delay, in the freely convertible currency in which the investment was made, or in another freely convertible currency to be agreed upon between the investor and the Contracting Party concerned.

2. Such transfers include in particular, though not exclusively:

a) Capital and additionnal amounts to maintain or increase the investment;

b) Profits, interests, dividends and other current income from investments;

c) Funds in repayment of loans;

d) Royalties and fees;

e) Proceeds of sale or liquidation of the whole or of any part of the investment.

3. The nationals of each Contracting Party who have been autorized to work in the territory of the other Contracting Party in connection with an investment covered by this Agreement shall be permitted to transfer an appropriate portion of their earnings to their country of origin.

4. Each Contracing Party shall issue the autorizations required to ensure that the transfers referred to under this Article can be made without undue delay, and with no other expenses than the usual taxes and costs.

The guarantees referred to in this Article shall at least be equal to those granted in similar cases to the investors of the most favoured nation.

Article 7. Exchange Rates

1. All transfers of money referred to in this Agreement shall be made:

a) At the exchange rates prevailing on the date of transfer,

b) In accordance with the exchange regulations in force in the State in whose territory the investment was made.

2. These rates shall in no way be less favourable than those granted to the investors of the most favoured nation, especially by virtue of specific commitments provided for in any agreement or arrangement dealing with the protection of investments.

3. The applied rates shall be in any case fair and equitable.

Article 8. Subrogation

1. If one Contracting Party or any public institution of this 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 as insurer into the rights of the indemnified investors.

The insurer shall be entitled by virtue of subrogation to exercise the rights of the investors and to invoke the related claims with the same authority as the said investors and within the limits of the rights transferred in this way.

The subrogation of rights shall also apply to the rights of transfer or arbitration referred to in Articles 6 and 11.

Such rights shall be exercised by the insurer to the extent of the proportion of the risk covered by the contract of guarantee and by the investor entitled to benefit from the guarantee to the extent of the proportion of the risk not cover by the contract.

2. As far as the transferred 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 9. Specific Agreements

1. Investments made pursuant to a specific agreement concluded between one Contracting Party and investors of the other Contracting Party shall be covered by the provisions of this Agreement and by those of the specific agreement.

2. Each Contracting Party undertakes to ensure at all times that the commitments it has entered into vis-a-vis investors of the other Contracting Party shall be observed.

Article 10. 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. 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 most diligent Party.

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

Each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as Chairman. The arbitrators shall be appointed within three months, the Chairman within five months, from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an 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 prevented from exercising the said function, or is a national of either Contracting State, the Vice-President shall be invited to make the necessary appointment(s). If the Vice-President is prevented from exercising the said function, or is a national of either Contracting State, the most senior member of the Court available who is not a national of either Contracting State shall be invited to make the necessary 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; they 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 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 by the first party to take action. The notification shall be accompanied by a sufficiently detailed memorandum.

As far as possible, such dispute shall be settled amicably between the parties to the dispute or otherwise 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 receipt of the notification, the dispute shall, at the choice of the investor concerned, be submitted to either the competent court of the Contracting Party who is party to the dispute or to international arbitration.

3. In case of international arbitration, the dispute shall be submitted for settlement by arbitration to the International Centre for the Settlement of Investment Disputes set up by the Convention on the settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on March 18, 1965.Convention on the settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on March 18, 1965.

To this end, each Contracting Party agrees in advance and irrevocably to the submission of any investment dispute to this Centre for settlement by arbitration. Such consent implies that both Parties waive the right to demand that all domestic administrative or judiciary remedies be exhausted.

4. During arbitration or the enforcement of an award, the Contracting Party who is involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage.

5. The I.C.S.I.D. shall decide on the basis of:

- the national law, including the rules relating to conflicts of law, of the Contracting Party involved in the dispute in whose territory the investment has been made;

- the provisions of this Agreement;

- the terms of the specific agreement which may have been concluded regarding the investment concerned;

- the principles of international law.

6. The awards of the I.C.S.I.D. 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. Application of other Rules

If the regulations of law of one Contracting Party or obligations under international law existing or to be subscribed to by the Contracting Parties in the future contain provisions, whether general or specific entitling investments by investors of the other Contracting Party to a treatment more favourable than that provided for by the present Agreement, the investors of the other Contracting Party shall be entitled to avail themselves of the provisions that are the most favourable to them.

Article 13. Previous Investments

This Agreement shall also apply to investments made prior to its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's legislation.

Article 14. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force thirty days after the date of exchange of the instruments of ratification by the Contracting Parties. It shall remain in force for a period of ten years.

2. Unless notice has been given by either Contracting Party at least six months before the expiry of its period of validity, this Agreement shall be tacitly extended for a further period of ten years, it being understood that each Contracting Party reserves the right to terminate the Agreement by notification given at least six months before the date of expiry of the current period of validity.

DONE in Tiraur, on 1st February 1999, in two original copies, each in the English, French, Dutch and Albanese languages, 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 Government of the Kingdom of Belgium acting both in its own name and in the name of the Government of the Grand-Duchy of Luxemburg,

For the Walloon Government,

For the Flemish Government,

For the Government of the Region of Brussels-Capital,