

AGREEMENT BETWEEN THE REPUBLIC OF SLOVENIA AND BELGO-LUXEMBOURG ECONOMIC UNION CONCERNING 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 Luxembourg, 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 Slovenia, on the other hand, (hereinafter referred to as the "Contracting Parties");
Desiring to create favourable conditions for greater economic cooperation between their countries and in particular, with respect to investments by investors of one Contracting Party in the territory of the other Contracting Party; and

Recognising that the reciprocal promotion and protection of such investments under this Agreement will be conducive to the stimulation of business initiative and will increase prosperity in both Parties;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall mean every kind of asset invested in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made and in particular, though not exclusively:

- a) Movable and immovable property, as well as any other rights in rem such as mortgages, liens, pledges, usufruct and similar rights;
- b) Shares, stocks, bonds and any other form of participation in a company;
- c) Claim to money or a claim to performance having an economic value, and associated with an investment;
- d) Intellectual property rights, including rights with respect to copyright, patents, trade marks, trade names, industrial designs and rights in technical processes, goodwill and know-how;
- e) Concessions, conferred by law or under contract, to undertake any economic and commercial activity, including concessions to search for, cultivate, extract or exploit natural resources.

The term "investment" shall also apply to any indirect contribution in cash, in kind or in services, invested or reinvested in any sector of economic activity in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investments provided that such alteration is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

2. The term "investor" shall mean:

With respect to the Belgo-Luxembourg Economic Union

- a) Any natural person who, according to the legislation of the Kingdom of Belgium or of the Grand-Duchy of Luxembourg is considered as a citizen of the Kingdom of Belgium or of the Grand-Duchy of Luxembourg;
- b) Any legal person constituted in accordance with the legislation of the Kingdom of Belgium or of the Grand-Duchy of Luxembourg and having its registered office in the territory of the Kingdom of Belgium or of the Grand-Duchy of

Luxembourg;

With respect to the Republic of Slovenia:

- a) Natural persons having the nationality of the Republic of Slovenia in accordance with its laws;
- b) Legal persons, including corporations, commercial companies or other companies or associations, which have their seat in the territory of the Republic of Slovenia and are incorporated or constituted in accordance with the law of the Republic of Slovenia.

3. The term "return" shall mean any amount yielded by an investment and in particular though not exclusively include profit, interest, dividends, capital gains, royalties, proceeds from the sale or liquidation of all or any part of the investment and all other lawful income related to the investments.

4. The term "territory" shall mean:

- a) With respect to the Belgo-Luxembourg Economic Union the territory of the Kingdom of Belgium and the territory of the Grand-Duchy of Luxembourg as well as the maritime areas, i.e. the marine and underwater areas which extend beyond the territorial waters, of the States concerned and upon which the latter exercise, in accordance with international law, their sovereign rights and their jurisdiction for the purpose of exploring, exploiting and preserving natural resources;
- b) With respect to the Republic of Slovenia the territory of the Republic of Slovenia where the Republic of Slovenia exercises sovereignty, sovereign rights or jurisdiction in accordance with international law;

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and promote investments in its territory by investors of the other Contracting Party and shall, in accordance with its law, admit such investments.
2. Each Contracting Party shall in accordance with its laws and regulations 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.
3. 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 pursuant to this Agreement.
4. Each Contracting Party shall ensure continuous protection and security of investments made by investors of the other Contracting Party in accordance with its laws. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

The same treatment is applied to reinvestment of returns and additional assets for expansion and maintenance of investments.

Article 3. National Treatment and Most Favoured Nation Treatment

1. Each Contracting Party shall ensure fair and equitable treatment within its territory to investments and returns of investors of the other Contracting Party. This treatment shall be in no case less favourable than that which, in like circumstances, it accords to its own investors or investors of any third State, whichever is more favourable.
2. Neither Contracting Party shall subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of 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.
3. The provision of this Article relative to the grant of treatment no less favourable than that accorded to the investors of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to investors of the other the benefit of any treatment, preference or privilege resulting from:
 - a) Any existing or future customs or economic union, free trade area or agreement, or similar international agreement to which either Contracting Party is or becomes a party;
 - b) Agreements relating wholly or mainly to taxation.

Article 4. Compensation for Losses

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

Article 5. Expropriation and Compensation

1. Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having an effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the other Contracting Party, except for a public purpose, on a non-discriminatory basis, under due process of law and against prompt, effective and adequate compensation.

2. The compensation referred to in paragraph 1 of this Article shall be computed on the basis of the market value of the investment when the expropriation was decided or became public knowledge, whichever is earlier, shall be payable from the date of expropriation in convertible currency or in the currency in which the investment was made, with interest at the normal commercial rate provided by law, regulations or otherwise by the Contracting Party until the date of payment, shall be paid without delay and shall be effectively realisable and freely transferable.

3. The investor whose investments are expropriated, shall have the right under the law of the expropriating Contracting Party to prompt review by a judicial or other competent authority of that Contracting Party of its case and of the valuation of its investments in accordance with the principles set out in this Article.

Article 6. Transfers

1. Each Contracting Party shall pursuant to its laws grant investors of the other Contracting Party free transfer of funds related to their investments, including in particular though not exclusively:

- a) Initial capital and additional contributions for the maintenance or development of the investments;
- b) Returns defined in Paragraph 3 Article 1 of this Agreement;
- c) Funds in repayment of loans related to an investment;
- d) Proceeds from the sale or liquidation of all or part of an investment;
- e) Any compensation or other payment referred to in Articles 4 and 5 of this Agreement;
- f) Earnings and remuneration of nationals engaged from abroad in connection with the investment.

2. Transfers shall be effected without delay in a freely convertible currency. Unless otherwise agreed by the investor, transfers shall be made at the market rate of exchange applicable on the date of transfer.

Article 7. Subrogation

1. If one Contracting Party or its designated agency (hereinafter referred to as the "First Contracting Party") makes a payment to an investor of that Contracting Party under a guarantee or a contract of insurance it has granted in respect of an investment, the other Contracting Party shall recognise the transfer of rights of any right or title in respect of such investment. The First Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

2. Where a First Contracting Party has made a payment to its investors and has taken over the rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the First Contracting Party making the payment, pursue those rights and claims against the other Contracting Party.

Article 8. Settlement of Disputes between Investors and Parties Hereof

1. Any dispute which may arise between one Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in the territory of the former Contracting Party shall be settled amicably through negotiations.

2. If such a dispute cannot be settled within a period of six (6) months from the date of request for settlement, the dispute

shall be submitted, at the option of the investor, to either:

- a) The competent judicial authorities of the Contracting Party; or
 - b) An ad-hoc tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or
 - c) The International Centre for the Settlement of Investment Disputes (ICSID) through conciliation or arbitration, established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington D.C., on March 18, 1965. Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington D.C., on March 18, 1965.
3. Each Contracting Party hereby consents to the submission of an investment dispute to international conciliation or arbitration.
 4. At any stage of the arbitration proceedings or of the execution of an arbitral award, none of the Contracting Parties involved in a dispute shall be entitled to raise as an objection the fact that the investor who is the opposing party in the dispute has received compensation totally or partly covering his losses pursuant to an insurance policy or to the guarantee provided for in Article 7 of this Agreement.
 5. Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Contracting Party has failed to abide by or to comply with the award.
 6. The award shall be final and binding on both parties to the dispute. Each Contracting Party undertakes to execute the awards in accordance with its national legislation.

Article 9. Settlement of Disputes between the Contracting Parties

1. All disputes which may arise between the Contracting Parties concerning the interpretation and application of this Agreement shall, as far as possible, be settled amicably.
2. If the Contracting Parties cannot reach an agreement within six months from the date of request for settlement, the dispute shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members.
3. Such an 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. Those two members shall then select a national of a third country who on approval by the Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.
4. If the necessary appointments have not been made within the periods specified in paragraph (3) of this Article, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice in the Hague to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or is prevented from discharging the said function, a member of the Court who is not a national of either Contracting Party shall be invited to make the necessary appointments.
5. The arbitral tribunal shall reach its decision by a majority of votes. The decisions of the tribunal are final and binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and remaining costs shall be borne in equal parts by the Contracting Parties.
6. Subject to the provisions of this Article, the tribunal shall determine its own procedure.

Article 10. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provisions shall, to the extent that they are more favourable, prevail over this Agreement,

Article 11. Application of the Agreement

1. This Agreement shall apply to all existing and future investments made by investors from one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations.

2. In the case of indirect investments referred to in the second subparagraph of paragraph 1 of the Article 1, the investors must not raise a claim based on this Agreement if in respect of the same matter the provisions of another investment protection agreement have been invoked. second subparagraph of paragraph 1 of the Article 1, the investors must not raise a claim based on this Agreement if in respect of the same matter the provisions of another investment protection agreement have been invoked.

Article 12. Entry Into Force, Duration and Termination

1. Each Contracting Party shall notify the other Contracting Party in writing through the diplomatic channel of the completion of its legal requirements for the entry into force of this Agreement. This Agreement shall enter into force on the date of the later notification. This Agreement shall remain in force for a period of ten years.

2. Unless notice of termination is given by either Contracting Party at least six months before the expiry of its period of validity, this Agreement shall be tacitly extended each time 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.

3. In respect of investments made while this Agreement is in force, the provisions of Article 1 through 11 shall remain in force for a further period of ten years after the date of termination and without prejudice to the application thereafter of the general rules of international law.

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

Done at Ljubljana, on 1 February 1999 in two original copies, each in the Dutch, French, Slovene and English languages, all texts being equally authentic. In the case of divergence of interpretation, the English text shall prevail.

For the Belgo-Luxembourg 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 Luxembourg:

For the Walloon Government:

For the Flemish Government:

For the Government of the Region of Brussels-Capital: E. Derycke

For the Government of the Republic of Slovenia: B. Frlec