Agreement between the Swiss Confederation and the Republic of Bulgaria concerning the promotion and reciprocal protection of investments

The Swiss Confederation and the Republic of Bulgaria,

Hereinafter referred to as Contracting Parties,

Desirous of reinforcing economic cooperation between the two States for mutual benefit,

In the endeavor to create and maintain favorable conditions for investment by investors of one Contracting Party in the field of the other Contracting Parties,

Recognizing that the promotion and protection of investment contribute to an increase in economic prosperity in both countries,

Considering the final acts of the Conference on Security and Cooperation in Europe,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" covers all types of assets and assets, in particular

(a) Ownership of property as well as other rights in rem such as easements, liens and usufructuaries;

(b) Shares, stocks and other forms of participation of companies;

(c) Claims on money or on any service having an economic value;

(d) Copyrights, industrial property rights (such as patents, industrial designs, factory, trade and service marks, trade names, designations of origin), know-how and goodwill;

(e) The rights conferred by a law, contract or decision of an authority for the exercise of an economic activity, such as, in particular, the exploration, production and exploitation of natural resources.

(2) The term "income" means the amounts resulting from an investment for a period of time, such as profit, dividends or interest.

(3) The term "investor" refers to both contracting parties

(a) Natural persons who are considered as nationals under the legislation of the Contracting Party concerned;

(b) Legal entities, including companies, corporations, associations and other organizations constituted under the law of the Contracting Party concerned, or otherwise legally organized, and having their head office in the territory of the same Contracting Party, and having a genuine economic activity there;

(c) Legal entities constituted under the law of a third country or the law of the other Contracting Party concerned and controlled directly or indirectly by nationals of the Contracting Party concerned or by legal entities established in the territory of the Contracting Parties concerned and having a genuine economic activity there ,

Article 2. Scope of Application

This Agreement shall apply to investments in the territory of a Contracting Party effected after 31 December 1959 by investors of the other Contracting Parties in accordance with its laws and regulations.

Article 3. Promotion

Each Contracting Party shall, as far as possible, promote investments from investors of the other Contracting Parties and shall allow such investments in accordance with its laws and regulations.

Article 4. Protection, Authorizations

(1) Each Contracting Party shall, in its territory, protect investments made in accordance with its legislation by investors of the other Contracting Parties. The income from such investments and, in the case of reinvestments, the income from reinvestments enjoy the same protection as the investments themselves.

(2) Each Contracting Party shall, within the framework of its legislation, carefully examine requests for authorizations which are necessary for any activities relating to management, implementation and expansion, and in connection with the staffing requirements of such investments.

Article 5. Treatment

(1) Each Contracting Party ensures on its territory a fair and fair treatment of the investments of investors of the other Contracting Parties.

(2) Each Contracting Party shall, in particular, refrain from taking any discriminatory or otherwise unjustified measures with regard to investments by investors of the other Contracting Parties which are likely to hinder economic activity in connection with the realization, operation or use of such investments. The treatment of these investments must in no case be less favorable than the treatment accorded by the Contracting Party on its territory to the investments of investors of the most favored nation.

(3) The most-favored-nation treatment referred to in paragraph (2) of this Article does not relate to benefits conferred by a Contracting Party on investments by investors of a third country on the basis of its membership or association with a free-trade zone, customs union or economic community Not to advantages conferred by a Contracting Party on investments by investors of a third country on the basis of its membership or association with a free trade area, an customs union or an economic community.

Article 6. Free Transfer

(1) Each Contracting Party in whose territory investors have made investments in the other Contracting Party shall grant these investors the free transfer of payments relating to such investments, in particular for:

(a) Income as referred to in Article 1 (2);

(b) Reimbursement of loans;

(c) License and other fees;

(d) Investment management costs;

(e) Proceeds from the partial or complete liquidation of an investment.

(2) The transfers referred to in paragraph 1 shall take place at the exchange rate applicable on the day of the transfer in accordance with the foreign exchange regulations of the Contracting Party in whose territory the investment was made. The first paragraph shall be at the exchange rate applicable on the day of transfer pursuant to the exchange regulations of the Contracting Parties was made.

Article 7. Expropriation, Compensation

(1) No Contracting Party may take expropriation or nationalization measures against investments which belong to investors of the other Contracting Parties, unless such measures were carried out in the public interest, are not discriminatory, comply with legal requirements and provide for compensation. Compensation shall be equal to the value of the expropriated investment immediately before the expropriation or imminent expropriation is publicly known. The

compensation must be paid immediately after expropriation; It must in fact be usable and freely transferable.

(2) Investors of a Party whose investments have been damaged as a result of war or other armed conflict, insurrection, state of emergency or other comparable event in the territory of the other Party shall be entitled to non-discriminatory treatment as regards restitution, compensation, indemnity or other consideration. Treatment must be at least equal to that accorded to investors in the most favoured nation.

Article 8. More Favorable Conditions

If, under the legislation of a Contracting Party, or under international law obligations existing or arising in the future between the Contracting Parties, a system whereby the investment of the investors of the other Contracting Parties is to be accorded more favorable treatment than under this Agreement, That provision shall apply to this Agreement in so far as it is more favorable.

Article 9. Compliance with Obligations

Each Contracting Party shall at all times comply with the obligations it has assumed in respect of the investments of the investors of the other Contracting Parties.

Article 10. Principle of Subrogation

Where a Contracting Party has granted a financial guarantee against non-commercial risks for an investment of one of its investors in the territory of the other Contracting Party and has subsequently made a payment under that guarantee, the other Contracting Party shall recognise the assignment of all the rights of the investor to the first Contracting Party. The first Contracting Party may exercise the assigned rights to the same extent as their original holder (investor), taking into account counterclaims arising by law or contract.

Article 11. Disputes between a Contracting Party and an Investor of the other Contracting Parties

(1) To settle disputes over investment between a Contracting Party and an investor of the other Contracting Parties, discussions between the parties concerned shall take place, without prejudice to Article 12 of this Agreement (Disputes between Contracting Parties).

(2) If these consultations do not result in an amicable agreement within six months, the parties may proceed as follows:

(a) Disputes regarding obligations arising from Article 7 (1) of this Agreement may be submitted by the investor to an international arbitration court. The first paragraph of this Agreement may be submitted by the investor to an international arbitral tribunal.

(b) Disputes on other issues of interpretation or application of this Agreement may be submitted to an international arbitration tribunal if both parties agree.

(3) The international arbitral tribunal shall be formed on a case-by-case basis, subject to a different understanding between the parties concerned, as follows: Each dispute shall appoint an arbitrator and the two arbitrators shall elect a third-country national as chairman. The arbitrators shall be appointed within two months, the chairman shall be appointed within three months from the date on which the investor has notified the respective contracting party of his intention to submit the dispute to the international arbitral tribunal. If the above-mentioned deadlines are not met, each Party may invite the Secretary-General of the Permanent Court of Arbitration at The Hague to make the necessary appointments. The members of the arbitral tribunal shall be nationals of States with which both Contracting Parties maintain diplomatic relations.

(4) Subject to a different agreement between the parties, the arbitral tribunal shall settle its proceedings in accordance with the rules of the United Nations Commission on International Trade Law as adopted by the General Assembly of the United Nations by resolution 31/98 of 15 December 1976.

(5) The decisions of the arbitral tribunal shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to comply with the decisions.

(6) The Contracting Party involved in the dispute shall not claim as an objection during an arbitration or the enforcement of an arbitration award that the investor has received compensation for part or all of the damage resulting from a guarantee pursuant to Article 10 of this contract (subrogation principle) on the basis of an insurance contract . Article 10 of the Treaty

(subrogation principle).

Article 12. Disputes between Contracting Parties

(1) Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled by diplomatic means.

(2) If the two Contracting Parties fail to reach a settlement within twelve months of the dispute arising, the dispute shall, at the request of either Contracting Party, be submitted to an arbitral tribunal composed of three members. Each Contracting Party shall appoint one arbitrator. The two arbitrators so appointed shall appoint a chairman who shall be a national of a third State with which both Contracting Parties maintain diplomatic relations.

(3) If a Contracting Party fails to designate its arbitrator and does not comply with the request of the other Contracting Party to do so within two months, the arbitrator shall be appointed by the President of the International Court of Justice at the request of the latter Contracting Party.

(4) If the two arbitrators can not agree on the election of the chairman within two months of their designation, the latter shall be appointed by the President of the International Court of Justice at the request of one of the two Contracting Parties.

(5) If the President of the International Court of Justice is prevented from exercising his mandate in the cases referred to in paragraph (3) and paragraph (4), or if he is a national of either Contracting Party, the appointments shall be made by the Vice-President. If the latter is also prevented from becoming a national of either Contracting Party, the appointments shall be made by the most senior member of the Court of Justice who is not a national of a Contracting Party. The chairman and the members of the arbitrator thus appointed shall be nationals of such a State with which both Contracting Parties maintain diplomatic relations.

(6) Unless the Contracting Parties determine otherwise, the arbitral tribunal shall regulate its own procedures.

(7) The arbitral tribunal shall make its decisions by a majority of votes. Its decisions are final and binding for the contractual parties.

(8) Each Contracting Party shall bear the costs of the arbitrator designated by it and the costs of its representation in the proceedings. The costs for the chairman as well as the other costs are borne equally by both contracting parties. The arbitration court may also determine a different cost rule.

Article 13. Entry Into Force, Renewal, Termination

(1) This Agreement shall enter into force on the date on which the two Governments notify that the constitutional requirements for the conclusion and entry into force of international agreements are fulfilled and shall be valid for a period of ten years. If it is not terminated by written notification six months before the expiration of this period, its maturity extends by a further five years.

(2) In the case of termination of this Agreement, the provisions set out in Articles 1 to 12 shall continue to apply to investments made prior to its termination for a period of ten years.

Article 14. Protocol

The Protocol, which is annexed to this Agreement, forms an integral part thereof.

For the Swiss Confederation:

Jean-Pascal Delamuraz

For the Republic of Bulgaria:

Ivan Kostov

Protocol

By signing the Agreement between the Swiss Confederation and the Republic of Bulgaria concerning the reciprocal promotion and protection of investments, the undersigned plenipotentiaries have further agreed on the following provisions:

Ad. Art. 4.

The examination of requests concerning the personnel requirements of investments shall extend in particular to questions of entry, residence, work and movement of natural persons of the other Contracting Party and their families.

Ad. Art. 5.

The treatment which a Contracting Party grants to the investments of investors of the other Contracting Party shall not be less favourable than that which it guarantees to the investments of its own investors. Exceptions to this principle shall be permissible only if they are based on a formal law.

Ad. Art. 6.

The free transfer of Swiss investments on the territory of the Republic of Bulgaria has been agreed upon the following points:

(a) Foreign currency acquired by the investor through his business activity or on the foreign exchange market in exchange for Bulgarian currency remains at his disposal in any case.

(b) With regard to the transfer of the liquidation proceeds pursuant to Art. 6 (1) (e), the Bulgarian National Bank shall, within 30 days from receipt of the investor's application, make available to the investor the necessary foreign currency up to the amount of the registered or declared foreign currency contribution.

Ad. Art. 7.

The provisions of Art. 7 also apply to the transfer of the ownership of an investment to a public authority, its submission to the supervision of a public authority as well as to any other deprivation or restriction of property rights resulting from measures taken by the public authority, the effects of which are equivalent to expropriation.

Ad. Art. 11.

As soon as both Contracting Parties are parties to the Washington Convention of 18 March 19651 for the Settlement of Investment Disputes between States and Nationals of other States, investment disputes between an investor of a Contracting Party and the Contracting Party in whose territory the investment was made shall, at the request of the investor, be submitted to arbitration by the International Centre for Settlement of Investment Disputes in accordance with the aforementioned Convention.

Done at Berne on 28 October 1991, in four originals, two in German and two in Bulgarian, each text being equally authentic.

For the Swiss Confederation:

Jean-Pascal Delamuraz

For the Republic of Bulgaria:

Ivan Kostov