

# Agreement between the Republic of Austria and the Republic of Moldova on investment promotion and protection

THE REPUBLIC OF AUSTRIA AND THE REPUBLIC OF MOLDOVA, hereinafter referred to as the "Contracting Parties"

DESIRING to create favorable conditions for greater economic cooperation between the Contracting Parties,

RECOGNIZING that the promotion and protection of investments can strengthen the willingness to undertake such investments and thereby make an important contribution to the development of economic relations,

HAVE AGREED AS FOLLOWS:

## Article 1. Definitions

For the purposes of this Agreement

(1) The term "investment" includes all assets, and in particular but not exclusively:

- a) Ownership of movable and immovable property and other rights in rem, such as mortgages, rights of liens, liens, rights of use and similar rights;
- b) Shareholdings and other types of participations in companies;
- c) Claims for money that has been surrendered to create an economic value or claims for a service having an economic value;
- d) Intellectual and industrial property rights as defined in the multilateral agreements concluded within the World Intellectual Property Organization, including, but not limited to, copyrights, trademarks, inventor's patents, industrial models, technical procedures, know-how, trade secrets, trade names and goodwill;
- e) Public concessions for the exploration, extraction or extraction of natural resources.

(2) The term "investor"

With regard to the Republic of Austria

- a) Any natural person who is a national of the Republic of Austria in accordance with its laws and who makes an investment in the territory of the other Contracting Party;
- b) Any legal person or partnership established in accordance with the legislation of the Republic of Austria is established in its territory and makes an investment in the territory of the other Contracting Party;
- c) Any legal person or partnership created in accordance with the legislation of any Contracting Party or a third State in which an investor referred to in (a) or (b) has a significant influence;

As regards the Republic of Moldova

- a) Any natural person who is a national of the Republic of Moldova in accordance with the laws of the Republic of Moldova and who makes an investment in the territory of the other Contracting Party.
- b) Any legal person established in accordance with the laws of the Republic of Moldova is established in its territory and makes an investment in the territory of the other Contracting Party.

(3) The term "income" means the amounts that an investment provides and, in particular, but not exclusively, gains, interest, capital gains, dividends, royalties, royalties and other charges.

(4) The term 'expropriation' also includes nationalization or any other measure having equivalent effect.

(5) "Without undue delay" means the period of time normally required to meet the necessary formalities for transfer payments. This period begins on the day on which the application for transfer payment is submitted and may not exceed one month in any case.

(6) "Territory" means the territory of a Contracting Party, including the territorial sea and any marine territory outside the territorial sea of that Contracting Party, in which the Contracting Party exercises sovereign rights and jurisdiction in accordance with international law.

## **Article 2. Promotion and Protection of Investment**

(1) Each Contracting Party shall, as far as possible, promote the investments of the investors of the other Contracting Parties in its territory, permit such investments in accordance with its legislation and shall treat them in a fair and fair manner.

(2) Investments referred to in Article 1 (1) and their income shall enjoy the full protection of this Agreement. The same shall apply, irrespective of the provisions of paragraph 1, in the case of a re-assessment of such income also for its income. The legal extension, modification or conversion of an investment is considered to be a new investment. The first paragraph and its income enjoy the full protection of this agreement. The same shall apply, irrespective of the provisions of paragraph 1, in the case of a re-assessment of such income also for its income. The legal expansion, modification or conversion of an investment is considered as new investment.

## **Article 3. Treatment of Investment**

(1) Each Contracting Party treats investors of the other Contracting Parties and their investments as well as their own investors and their investments or investors of third States and their investments.

(2) The provisions of paragraph 1 can not be interpreted as imposing a contracting party to grant to the investors of the other Contracting Parties and their investments the present or future advantage of a treatment, preference or privilege which may be interpreted in accordance with paragraph 1 That they oblige a Contracting Party to grant to the investors of the other Contracting Parties and their investments the present or future advantage of any treatment, preference or privilege which arises

a) A customs union, a common market, a free trade area or membership of an economic community;

b) An international agreement, an intergovernmental agreement or domestic legislation on tax issues;

c) Border traffic.

## **Article 4. Compensation**

(1) Investments by investors of a Contracting Party may be expropriated in the territory of the other Contracting Parties only in the public interest, on the basis of a legal procedure and against compensation.

(2) The compensation shall be equal to the fair market value of the investment as determined by recognized valuation principles, such as: capital invested, replacement value, appreciation, current income, goodwill and other material factors, immediately before or at the time the decision Declared to be expropriated, or the imminent expropriation was publicly known, whichever is earlier. If the payment of the compensation is delayed, compensation shall be made at a level which does not place the investor in a less favorable situation than that in which he would have been, the compensation would have been paid directly at the time of expropriation. In order to achieve this objective, the compensation also includes interest from the date of expropriation to the date of payment at the normal commercial rate, which, however, must under no circumstances be lower than the valid LIBOR rate or the equivalent thereof. The final compensation will be paid to the investor immediately in freely convertible currency and will be freely transferable without delay. At the latest at the time of expropriation, appropriate provisions must be made for the setting and performance of the compensation.

(3) If a Contracting Party acquires the assets of a company which is to be regarded as a company of that Contracting Party pursuant to Article 1 (2) of this Agreement and in which an investor of the other Contracting Party has share rights it shall apply the provisions of paragraph 1 in such a way that the (2) of this Agreement is to be regarded as a company of that Contracting Party and in which an investor of the other Contracting Party has share rights, it shall apply the provisions of paragraph 1 in such a way as to ensure the appropriate compensation of that investor.

(4) The investor has the right to have the legality of the expropriation reviewed by the competent organs of the contracting

party which caused the expropriation.

(5) The investor has the right to have the amount of the compensation and the payment modalities reviewed by either the competent organs of the Contracting Party which caused the expropriation or by an international arbitral tribunal pursuant to Article 9 of this Agreement. Article 9 of this Agreement.

## **Article 5. Compensation for Damage or Loss**

(1) If investments by investors in either Contracting Party suffer damage or loss resulting from war or other armed conflicts, national emergency, revolt, unrest, insurrection, turmoil or other similar occurrences in the territory of the other Contracting Parties, Reimbursement, indemnity, indemnity or other provision on the part of the latter Contracting Party shall be accorded no less favorable treatment than the latter Contracting Party grants to its own investors or investors of a third State, whichever is the most favorable.

(2) Notwithstanding the provisions of paragraph 1, investors in a Contracting Party which, in the event of any event referred to in the said paragraph, shall be liable to a loss or loss in the territory of the other Contracting Party by virtue of the provisions of paragraph 1, investors of a Contracting Party which, on any territory referred to in the said paragraph, A loss or loss

- a) Confiscation of their property or part thereof by the armed forces or organs of the latter Contracting Party,
- b) Blocking of essential feeds by the latter Contracting Party; or
- c) Destruction of their property or any part thereof by the armed forces or organs of the latter Contracting Party

Which is not caused by any action or action taken under the circumstances, immediate repayment or prompt and reasonable compensation where reimbursement for the loss or loss suffered is not possible. Payments shall be made in a freely convertible currency and are freely transferable without undue delay.

## **Article 6. Transfer**

(1) Each Contracting Party guarantees the investors of the other Contracting Parties without undue delay the free transfer in freely convertible currency of the payments connected with an investment, in particular but not exclusively,

- a) Of the capital and additional amounts for maintaining or extending the investment;
- b) Of amounts intended to cover expenditure related to the management of the investment;
- c) Of income;
- d) Repayment of loans;
- e) Of the proceeds in case of complete or partial liquidation or disposal of the investment;
- f) Compensation referred to in Article 4 (1) of this Agreement, paragraph 1 of this Agreement;
- g) Payments due to dispute resolution.

(2) Payments pursuant to this Article shall be made at the exchange rates applicable on the day of the transfer payment in the territory of the Contracting Party from which the transfer is made.

(3) The exchange rates shall be determined in accordance with the quotations on the stock exchanges located in the territory of each Contracting Party or, in a subsidiary manner, by the respective banking system in the territory of each of the Contracting Parties. The bank fees will be fair and reasonable.

## **Article 7. Subrogation**

If a Contracting Party or an institution empowered by it provides payments to its investor on the basis of a guarantee for an investment in the territory of the other Contracting Party, that other Contracting Party shall recognize the rights of the investor of the first Contracting Party referred to in Article 9 of this Agreement and the rights of the former Contracting Party pursuant to Article 10 of this Agreement, the transfer of all rights or claims of this investor by law or by virtue of a legal transaction to the former Contracting Parties. The other Contracting Party also recognizes the entry of the former Contracting Party into all such rights or claims as may be exercised by the former Contracting Party to the same extent as its legal predecessor. Article 4, 5 and 6 of this Agreement shall apply mutatis mutandis to the transfer of payments to the

Contracting Party in question on the basis of the rights transferred.

## **Article 8. Other Obligations**

(1) Where, under the law of a Contracting Party or international obligations which exist between the Contracting Parties or which are established in the future, a general or specific rule whereby the investments made by the investors of the other Contracting Parties shall be accorded more favorable treatment than under this Agreement The provisions of this Agreement shall apply to the present Agreement in so far as it is more favorable.

(2) Each Contracting Party shall comply with any contractual obligation which it has assumed in respect of investments made in its territory by an investor of the other Contracting Party.

## **Article 9. Settlement of Investment Disputes**

(1) If disputes arise from an investment between a contracting party and an investor of the other Contracting Parties, the latter shall be consigned as much as possible between the parties.

(2) If a disagreement as referred to in paragraph 1 can not be settled within six months from the receipt of a written communication of sufficiently specific claims, the dissension shall be subject to the following procedure at the request of the Contracting Party or the investor of the other Contracting Party: Paragraph 1 not within six months from Receipt of a written communication of sufficiently specific claims, the dissension shall be subject to the following procedure at the request of the Contracting Party or the investor of the other Contracting Party:

a) A conciliation or arbitration procedure before the International Center for the Settlement of Investment Disputes, established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States \*, opened for signature in Washington on 18 March 1965. In the case of an arbitration procedure, each Contracting Party irrevocably agrees in advance to submit such differences of opinion to the said Center, even without an individual agreement between the Contracting Party and the investor. Such consent shall include waiving the requirement that national administrative or judicial procedures have been exhausted; Or \*), opened for signature in Washington on March 18, 1965. In the case of an arbitration procedure, each Contracting Party irrevocably agrees in advance to submit such differences of opinion to the said Center, even without an individual agreement between the Contracting Party and the investor. Such consent shall include waiving the requirement that national administrative or judicial procedures have been exhausted; or

b) An arbitration procedure by three arbitrators in accordance with the UNCITRAL rules, in the version applicable at the time of the request after the initiation of the arbitration procedure after the last amendment adopted by both contracting parties. In the case of an arbitration procedure, each Contracting Party irrevocably agrees in advance, even without an individual agreement between the Contracting Party and the investor, to submit such disputes to the said arbitral tribunal.

(3) The arbitration award shall be final and binding; It shall be enforced under national law, and each Contracting Party shall ensure the recognition and enforcement of the arbitration in accordance with its relevant legislation.

(4) A Contracting Party which is a party to the dispute shall not, at any stage of the settlement or arbitration proceedings or the enforcement of an arbitration award, make any objection to the fact that the investor forming the other Contracting Party has received compensation for all or part of its losses on the basis of a guarantee.

## **Article 10. Settlement of Disputes between the Contracting Parties**

(1) Differences of opinion between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by friendly negotiations.

(2) If a dispute can not be settled within six months in accordance with paragraph 1, it shall be submitted to an arbitration tribunal at the request of one of the contracting parties. If paragraph 1 is not submitted within six months, it shall be submitted to an arbitration court at the request of one of the contracting parties.

(3) The arbitral tribunal shall be formed from case to case as follows: each Contracting Party shall appoint one member and both members shall agree on a third country national as chairman. The members shall be appointed by the chairman within a further two months within two months after the one party to the agreement has notified the other that it wishes to submit the dispute to an arbitration tribunal.

(4) If the deadlines set out in paragraph 3 have not been complied with, any Contracting Party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointments. If the

President of the International Court of Justice has the nationality of either Contracting Party, or if he is prevented from exercising this function for any other reason, the Vice-President, or in the event of his / her failure, may be called upon to appoint the most active member of the International Court of Justice. In the absence of any other agreement, each Contracting Party may request the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice has the nationality of either Contracting Party, or if he is prevented from exercising this function for any other reason, the Vice-President, or in the event of his / her failure, may be called upon to appoint the most active member of the International Court of Justice.

(5) The arbitral tribunal shall decide its own rules of procedure.

(6) The arbitral tribunal shall decide on the basis of this Agreement as well as on the basis of generally accepted rules of international law. It decides with multiple votes; The arbitration award shall be final and binding.

(7) Each Contracting Party shall bear the costs of its member and its legal representation in the arbitration proceedings. The costs of the chairman and the other costs are borne equally by the two contracting parties. The court may, however, in its arbitral award, adopt a different cost regime.

## **Article 11. Application of this Agreement**

(1) This Agreement shall apply to investments made or to be carried out by investors of one Contracting Party in accordance with the laws of the other Contracting Parties in their territory, both before and after the entry into force of this Agreement.

(2) The Contracting Parties are not bound by this Agreement insofar as this is not compatible with the applicable legal framework of the European Union (EU).

(3) In the event of uncertainties regarding the effects of paragraph 2, the Contracting Parties shall enter into a dialogue in this respect. The Contracting Parties shall enter into a dialogue in this regard.

## **Article 12. Entry Into Force and Duration**

(1) This Agreement shall be ratified and shall enter into force on the first day of the third month following the date on which the exchange of the instruments of ratification has taken place.

(2) The agreement will remain in force for ten years. After the expiration of this period, it will be extended indefinitely and may be terminated in writing by either party upon 12 months' written notice by diplomatic means.

(3) For investments made up to the date of the expiry of this Agreement, Articles 1 to 11 of this Agreement shall continue to apply for a further twenty years from the date of expiry of the Agreement. Articles 1 to 11 of this Agreement for a further twenty years from the date of the expiry of this Agreement.

DONE at Chisinau, on 5 June 2001, in two originals, each in the German and Moldovan languages, each text being equally authentic.

For the Republic of Austria:

Vetter von der Lilie

For the Republic of Moldova:

Andrei Cucu