

Agreement on encouragement and reciprocal protection of investments between the Government of the Kingdom of the Netherlands and the Government of Romania

The Government of the Kingdom of the Netherlands

And

The Government of Romania,

(hereinafter referred to as "the Contracting Parties")

Desiring to strengthen the traditional ties of friendship between their countries, to extend and intensify the economic relations between them particularly with respect to investments by the investors of one Contracting Party in the territory of the other Contracting Party,

Recognising that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the Contracting Parties and that fair and equitable treatment of investment is desirable, Have agreed as follows:

Article 1.

For the purposes of this Agreement:

(a) The term 'investments' means every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party, in conformity with the laws and regulations of the latter, and more particularly, though not exclusively:

- i. Movable and immovable property as well as any other rights in rem in respect of every kind of asset;
- ii. Rights derived from shares, bonds and other kinds of interests in companies and joint ventures;
- iii. Title to money, to other assets or to any performance having an economic value;
- iv. Rights in the field of intellectual property, technical processes, goodwill and know-how;
- v. Rights granted under public law or contract, including rights to prospect, explore, extract and win natural resources.

(b) The term 'investors' shall comprise with regard to either Contracting Party:

- i. Natural persons having the citizenship or the nationality of that Contracting Party in accordance with its laws;
- ii. Legal persons constituted under the law of that Contracting Party;
- iii. Legal persons owned or controlled, directly or indirectly, by natural persons as defined in i. or by legal persons as defined in ii. above.

(c) The term 'territory' includes the maritime areas adjacent to the coast of the State concerned, to the extent to which that State exercises sovereign rights or jurisdiction in those areas according to international law.

Article 2.

Either Contracting Party shall, within the framework of its laws and regulations, promote economic cooperation through the protection in its territory of investments of investors of the other Contracting Party. Subject to its right to exercise powers conferred by its laws or regulations, each Contracting Party shall admit such investments.

Article 3.

- 1) Each Contracting Party shall ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors. Each Contracting Party shall accord to such investments full physical security and protection.
- 2) More particularly, each Contracting Party shall accord to such investments treatment, including with respect to fiscal matters, which in any case shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investor concerned. Fiscal matters refer to taxes, fees, charges and to fiscal deductions and exemptions, other than those covered by paragraph 3.
- 3) If a Contracting Party has accorded special advantages to investors of any third State by virtue of agreements establishing customs unions, economic unions, monetary unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to investors of the other Contracting Party. Nor shall such treatment relate to any advantage, which either Contracting Party accords to investors of a third state by virtue of an agreement for the avoidance of double taxation or other agreement on a reciprocal basis regarding fiscal matters.
- 4) Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.
- 5) If the provisions of law of either Contracting Party or obligations under international agreements existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall to the extent that it is more favourable prevail over the present Agreement.

Article 4.

The Contracting Parties shall guarantee that payments relating to an investment may be transferred. The transfers shall be made in a freely convertible currency, without restriction or delay. Such transfers include in particular though not exclusively:

- (a) Profits, interest, dividends and other current income;
- (b) Funds necessary:
 - i. For the acquisition of raw or auxiliary materials, semi-fabricated or finished products, or
 - ii. To replace capital assets in order to maintain the continuity of an investment;
- (c) Additional funds necessary for the development of an investment;
- (d) Funds in repayment of loans;
- (e) Royalties or fees;
- (f) Earnings to which persons are entitled;
- (g) The proceeds of sale or liquidation of the investment;
- (h) Payments arising under Article 6.

Article 5.

Neither Contracting Party shall take any measures, such as nationalization, expropriation, requisition or other measures of similar effect, depriving investors of the other Contracting Party of their investments, unless the following conditions are complied with:

- (a) The measures are taken in the public interest and under due process of law;
- (b) The measures are not discriminatory or contrary to any undertaking which the Contracting Party which takes such

measures may have given;

(c) The measures are taken against just compensation. Such compensation shall represent the fair market value of the investments affected, immediately before the measures were taken or became known, shall include interest at a normal commercial rate until the date of payment and shall, in order to be effective for the claimants, be paid and made transferable, without delay, to the country designated by the claimants concerned and in the currency of the country of which the claimants are investors or in any freely convertible currency accepted by the claimants.

Article 6.

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

Article 7.

If the investments of an investor of the one Contracting Party are insured against noncommercial risks under a system established by law or regulation, any subrogation of the insurer or re-insurer to the rights of the said investor pursuant to the terms of such insurance shall be recognized by the other Contracting Party.

Article 8.

1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party, consultations will take place between the parties concerned.

2) If these consultations do not result in a solution within three months, the investor may submit the dispute, at his choice, for settlement to:

(a) The competent court of the Contracting Party in the territory of which the investment has been made; or

(b) The International Centre for Settlement of Investment Disputes (ICSID) provided for by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, of 18 March 1965; or

(c) An ad hoc arbitral 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).

3) In case the dispute is not resolved pursuant to paragraph 2 a within a period of 10 months the investor may, subject to withdrawing his claim from the courts of the Contracting Party concerned, submit the dispute to arbitration under paragraph 2 b or c.

4) Each Contracting Party hereby consents to the submission of an investment dispute to international conciliation or arbitration.

5) The Contracting Party which is a party to the dispute shall at no time whatsoever during the procedures involving investment disputes, assert as a defence its immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the incurred damage or loss.

6) A legal person which is an investor of one Contracting Party and which before such a dispute arises is controlled by investors of the other Contracting Party shall in accordance with Article 25, paragraph 2 b of the Convention for the purpose of the Convention be treated as an investor of the other Contracting Party.

Article 9.

The provisions of this Agreement shall, from the date of entry into force thereof, also apply to investments, which have been made before that date. However, disputes that have arisen before its entry into force are to be settled in accordance with the Agreement on Reciprocal Encouragement and Protection of Investments concluded between the Contracting Parties on October 27, 1983.

Article 10.

Either Contracting Party may propose the other Party that consultations be held on any matter concerning the interpretation or application of the Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

Article 11.

1) Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement, which cannot be settled within a reasonable lapse of time by means of diplomatic negotiations, shall, unless the Parties have otherwise agreed, be submitted, at the request of either Party, to an arbitral tribunal, composed of three members. Each Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a national of either Party.

2) If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such appointment, the latter Party may invite the President of the International Court of Justice to make the necessary appointment.

3) If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice, to make the necessary appointment.

4) If, in the cases provided for in the paragraphs 2 and 3 of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Party the most senior member of the Court available who is not a national of either Party shall be invited to make the necessary appointments.

5) The tribunal shall decide on the basis of respect for the law, including the provisions of this Agreement and other relevant agreements between the Contracting Parties, the general principles of international law and relevant domestic legislation. Before the tribunal decides, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably. The foregoing provisions shall not prejudice the power of the tribunal to decide the dispute *ex aequo et bono* if the Parties so agree.

6) Unless the Parties decide otherwise, the tribunal shall determine its own procedure.

7) The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties.

8) Each Contracting Party shall bear the cost of the arbitrator it has appointed and of its representation in the arbitral proceedings. The cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

Article 12.

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe, the Netherlands Antilles and to Aruba, unless the notification provided for in Article 13, paragraph 1 provides otherwise.

Article 13.

1) The present Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have notified each other in writing that the procedures constitutionally required therefor in their respective countries have been complied with, and shall remain in force for a period of fifteen years.

2) Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for periods of ten years, whereby each Contracting Party reserves the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.

3) In respect of investments made before the date of the termination of the present Agreement the foregoing Articles shall continue to be effective for a further period of fifteen years from that date.

4) Subject to the period mentioned in paragraph 2 of this Article, the Government of the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of any of the parts of the Kingdom.

5) Upon entry into force of this Agreement, the Agreement on Reciprocal Encouragement and Protection of Investments

between the Kingdom of the Netherlands and the Socialist Republic of Romania, signed on 27 October 1983, shall be replaced by this Agreement except in case of disputes as referred to in Article 9. this Agreement shall replace the Agreement of 1983 only in relations between Romania and those parts of the Kingdom of the Netherlands to which the present Agreement applies in conformity with Article 12 of this Agreement.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto, have signed the present Agreement.

DONE in duplicate at [place] on [date], in the Netherlands, the Romanian and English languages, the three texts being equally authentic. In case of difference of interpretation the English text will prevail.

For the Government of the Kingdom of the Netherlands

For the Government of Romania

On the signing between the Government of the Kingdom of the Netherlands and the Government of Romania of the Agreement on Encouragement and Reciprocal Protection of Investments, the undersigned representatives have agreed on the following provision which constitutes an integral part of the Agreement:

Ad Article 4

Without prejudice to the requirements of Article 4, the Government of Romania shall take appropriate steps to improve the efficiency of the procedures for the transfer of payments related to investments. In any case investors of the Netherlands shall be treated no less favourably than investors of any third State.

For the Government of the Kingdom of the Netherlands

For the Government of Romania