

# Treaty between the Federal Republic of Germany and the Republic of Croatia on the Promotion and Reciprocal Protection of Capital Investments

The Federal Republic of Germany and the Republic of Croatia, hereinafter referred to as the Contracting Parties,

In the desire to deepen mutual economic cooperation,

In the endeavor to create favorable conditions for the investments of nationals or companies of one Contracting Party in the territory of the other Contracting Party,

Recognizing the fact that the promotion and the contractual protection of these investments are capable of stimulating private economic initiatives and increasing the prosperity of the two peoples,

Have agreed as follows:

## Article 1.

For the purposes of this Treaty

1. the term "investments" means assets of any kind, in particular

- a) Ownership of movable and immovable property as well as other rights in rem such as mortgages and liens;
- b) Share rights in companies and other types of participations in companies;
- c) Claims on money used to create an economic value or claims on an economic value;
- d) Intellectual property rights, in particular copyrights, patents, utility models, industrial designs, trade names, business and business secrets, technical procedures, know-how and goodwill;
- e) Rights to the exercise of economic activity transferred by public authorities, in particular public-law concessions, including concessions for concessions and concessions;

A change in the form in which assets are invested does not affect their property as an investment;

2. The term "income" means the amounts accruing to an investment for a certain period, such as profit shares, dividends, interest, royalties or other charges;

3. The term "nationals"

a) With regard to the Federal Republic of Germany:

Germans within the meaning of the Basic Law for the Federal Republic of Germany,

b) As regards the Republic of Croatia:

Nationals of the Republic of Croatia;

4. The term "companies"

With regard to both Contracting Parties:

Any legal person or any commercial or other company or association, with or without legal personality, having its registered office in the territory of the Contracting Party concerned, whether or not its activity is directed to profit;

## 5. The term "territory"

a) With regard to the Federal Republic of Germany:

Its territory and the territories of the exclusive economic zone and the mainland base, in so far as international law permits the exercise of sovereign rights or sovereign powers in these territories,

b) As regards the Republic of Croatia:

Their territory and the marine zones adjacent to the outer borders of the territorial waters, including the seabed and subsoil, in which the Republic of Croatia exercises sovereign rights and sovereign powers under international law.

## Article 2.

(1) Each Contracting Party shall, as far as possible, promote investments of nationals or companies of the other Contracting Parties in its territory and allow such investments in accordance with its laws. In any case, it will treat capital investments fairly and cheaply.

(2) Investments made in their territory by nationals or companies of the other Contracting Parties in accordance with the laws of a Contracting Party shall enjoy the full protection and full security of the contract.

(3) A Contracting Party shall in no way affect the management, use, use or use of the investments of nationals or companies of the other Contracting Parties in its territory by means of arbitrary or discriminatory measures.

## Article 3.

(1) Each Contracting Party shall treat investments in its territory owned or under the influence of nationals or companies of the other Contracting Parties no less favorable than the investments of its own nationals and companies or investments of nationals and companies of third States.

(2) Each Contracting Party shall not treat nationals or companies of the other Contracting Parties any less favorable than their own nationals and companies or nationals and companies of third States with regard to their activities in connection with investments in their territory.

(3) This treatment does not relate to privileges granted by a Contracting Party to third-country nationals or companies because of their membership in a customs or economic union, a common market or a free-trade area or because of their association with it.

(4) The treatment provided for in this Article does not relate to benefits granted by a Contracting Party to third-country nationals or companies under a double-taxation agreement or other arrangements for taxation.

## Article 4.

(1) Investments of nationals or companies of a Contracting Party shall enjoy full protection and full security in the territory of the other Contracting Parties.

(2) Investments of nationals or companies of a Contracting Party may be expropriated in the territory of the other Contracting Parties only for the general good and for compensation, be subject to nationalization or be subject to other measures equivalent to expropriation or nationalization. The compensation must correspond to the value of the expropriated investment immediately before the date on which the actual or imminent expropriation, nationalization or comparable measure became publicly known. The compensation must be paid without delay and is payable at the usual bank rate until the time of payment; it must in fact be usable and freely transferable. At the latest at the time of expropriation, nationalization or comparable measure, it must be appropriate for the fixing and performance of the compensation provision. The legality of the expropriation, nationalization or comparable measure and the amount of the compensation must be able to be verified by ordinary proceedings.

(3) Nationals or companies of a Contracting Party who suffer losses in investments by war or other armed conflicts, revolution, national or truce in the territory of the other Contracting Party shall be treated no less favorably by the Contracting Party in respect of repayments, settlements, compensation or other consideration than their own Nationals or companies. Such payments must be freely transferable.

(4) The nationals or companies of a Contracting Party in the territory of the other Contracting Party shall enjoy most-favored-nation treatment with regard to the matters governed by this Article.

## **Article 5.**

Each Contracting Party shall guarantee to the nationals or companies of the other Contracting Parties the free transfer of payments in connection with an investment, in particular

- a) Of the capital and additional amounts for the maintenance or expansion of the investment;
- b) Of the income referred to in Article 1 (2);
- c) To repay loans;
- d) Of the proceeds in the event of complete or partial liquidation or disposal of the investment;
- e) The compensation provided for in Article 4;
- f) Income from an authorized activity in connection with an investment.

## **Article 6.**

Where a Contracting Party or a third party commissioned by a Contracting Party makes payments to its nationals or companies on the basis of a guarantee for investment in the territory of the other Contracting Party, this other Contracting Party shall recognize the transfer of all rights, claims and obligations without prejudice to the rights of the former Contracting Party Of such nationals or companies by virtue of law or by virtue of legal transaction to the former Contracting Party or the third parties commissioned by it. In addition, the other Contracting Party shall recognize the entry of the former Contracting Party or the third party appointed by it into all such rights or claims (transferred claims) and obligations which the former Contracting Parties or the third parties commissioned by them may be entitled to exercise to the same extent as their predecessor. Article 4 (2) and (3) and Article 5 shall apply mutatis mutandis to the transfer of payments under the transferred claims.

## **Article 7.**

- (1) Transfers pursuant to Article 4 (2) or (3), Article 5 or 6 shall be effected without delay at the applicable rate.
- (2) This rate must correspond to the cross-rate, which is derived from the exchange rates which the International Monetary Fund would use as the basis for the conversion of the currencies into special drawing rights.

## **Article 8.**

- (1) If the legislation of a Contracting Party or obligations under international law which exist between the contracting parties or which are established in the future are governed by a general or special regulation which gives the investments of the nationals or companies of the other Contracting Parties more favorable treatment than under this Treaty Is to be granted, this provision shall be governed by this Treaty in so far as it is more favorable.
- (2) Each Contracting Party shall comply with any other obligation which it has assumed in respect of investments in its territory by nationals or companies of the other Contracting Parties.

## **Article 9.**

This Agreement shall also apply to investments made by nationals or companies of one Contracting Party in accordance with the legislation of the other Contracting Party in its territory before the entry into force of this Treaty. This does not apply to differences of opinion that arose before the entry into force of this contract.

## **Article 10.**

- (1) Disputes between the Contracting Parties concerning the interpretation or application of this Treaty shall, as far as possible, be settled by the Governments of the two Contracting Parties.
- (2) If a disagreement can not be settled in this way, it shall be submitted to an arbitration court at the request of one of the two contracting parties.
- (3) The arbitral tribunal shall be constituted on a case-by-case basis by appointing a member to each of the Contracting

Parties, and the two members as chairman of a third State with which the two Contracting Parties maintain diplomatic relations, to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months to appoint the chairman within three 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 are not met, in the absence of any other agreement, each Contracting Party may ask the President of the International Court of Justice to make the necessary appointments. If the President has the nationality of either Contracting Party or if he is prevented from doing so for another reason, the Vice-President shall make the appointments. If the vice-president also has the nationality of one of the two contracting parties or if he is also prevented from doing so, the next member of the Court who is not a national of one of the two contracting parties shall make the appointments.

(5) The arbitral tribunal shall decide by a majority of votes. Its decisions are binding. Each Contracting Party shall bear the costs of its member and its representation in the proceedings before the arbitral tribunal; The costs of the chairman and the other costs are borne equally by the two contracting parties. The arbitral tribunal may adopt a different cost regime. Moreover, the arbitral tribunal shall regulate its own procedures.

(6) If both Contracting Parties are Contracting States to the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States, the arbitration rules set out above may not be invoked with regard to the provisions of Article 27 (1) of the Convention Or the company of a Contracting Party and the other Contracting Party, an agreement has been concluded in accordance with Article 25 of the Convention. The possibility of calling the arbitral tribunal provided for in the event of failure to comply with a decision of the arbitration tribunal of the said Convention (Article 27) or in the case of a transfer by force of law or legal transaction pursuant to Article 6 of this Treaty shall remain unaffected.

## **Article 11.**

(1) Disputes concerning investment between one of the Contracting Parties and a national or a company of the other Contracting Parties shall, as far as possible, be settled amicably between the Contracting Parties.

(2) If the disagreement can not be settled within a period of six months from the date of its assertion by one of the two parties, it shall be subject to arbitration at the request of the national or the company of the other Contracting Party. Unless the parties to the dispute reach a dissenting agreement, the dispute shall be subject to arbitration under the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States.

(3) The arbitration award shall be binding and shall not be subject to any means of redress or other remedies other than those provided for in the said Convention. It is enforced under national law.

(4) The Contracting Party involved in the dispute shall not claim as an objection during an arbitration proceedings or the enforcement of an arbitration award that the national or the company of the other Contracting Party has received compensation for part or all of the damage resulting from insurance.

## **Article 12.**

This Agreement shall apply irrespective of whether diplomatic or consular relations exist between the two Contracting Parties.

## **Article 13.**

(1) This Treaty shall be subject to ratification; The instruments of ratification shall be exchanged as soon as possible.

(2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It remains in force for ten years; After the expiry of which period, the term of validity shall be extended indefinitely unless one of the two Contracting Parties terminates the contract in writing with a notice period of twelve months before the expiry of the contract. After ten years, the contract may be terminated at any time by a period of twelve months.

(3) For investments made up to the date of the expiry of this Treaty, Articles 1 to 12 shall continue to apply for a further twenty years from the date of expiry of the Treaty.

Done at Bonn, March 21, 1997, in two originals, each in the German and Croatian languages, both texts being equally

authentic.

For the Federal Republic of Germany

Kinkel

For the Republic of Croatia

Granić

## **Protocol**

At the signing of the Treaty between the Federal Republic of Germany and the Republic of Croatia on the Promotion and Reciprocal Protection of Capital Investments, the undersigned Plenipotentiaries also agreed on the following provisions, which shall be deemed to be integral parts of the Treaty:

### **1. Ad Article 1**

(a) Income from the capital investment and, in case of its reinvestment, also its proceeds, shall enjoy the same protection as the capital investment.

(b) Without prejudice to other procedures for the determination of nationality

in particular, any person holding a national passport issued by the competent authorities of the Contracting Party concerned shall be deemed to be a national of that Party.

### **2. Ad Article 3**

(a) For the purposes of paragraph 2 of Article 3, "activity" shall mean in particular, but not exclusively, the management, use, enjoyment and enjoyment of a capital investment. A "less favorable" treatment within the meaning of Article 3 shall be deemed to include, in particular, differential treatment in the case of the purchase of raw materials and supplies, energy and fuels, and means of production and inputs of all kinds, differential treatment in the case of hindrances to the sale of products at home and abroad, and other measures having a similar effect. Measures to be taken for reasons of public safety and order, public health or morality shall not be considered as "less favorable" treatment within the meaning of Article 3.

(b) The provisions of Article 3 shall not oblige a Party to extend to individuals and companies resident in the territory of the other Party tax advantages, exemptions and facilities which, under its tax laws, are available only to individuals and companies resident in that territory.

(c) The Contracting Parties shall, within the framework of their national legislation, give favorable consideration to applications for entry and residence of persons of one Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment of capital; the same shall apply to employees of one Contracting Party who wish to enter and reside in the territory of the other Contracting Party in connection with an investment of capital in order to carry on an activity as an employee. Applications for work permits shall also be favorably considered.

### **3. Ad Article 4**

A claim for compensation shall also exist if the enterprise which is the subject of the capital investment is interfered with by government measures and its economic substance is substantially affected thereby.

### **4. Ad Article 7**

For the purposes of Article 7(1), a transfer shall be deemed to have been effected "without undue delay" if it is effected within a period of time normally necessary for compliance with the transfer requirements. The period shall commence with the submission of an appropriate application and shall in no circumstances exceed two months.

### **5.**

In the case of transportation of goods and persons in connection with a capital investment, a Party shall neither eliminate

nor impede the transportation companies of the other Party and shall, to the extent necessary, grant authorizations for the transportation to be carried out. This includes shipments of

a) goods directly intended for capital investment within the meaning of the Treaty or acquired in the territory of a Contracting Party or of a third State by or on behalf of an enterprise in which assets within the meaning of the Treaty are invested;

b) persons traveling in connection with an investment.

Done at Bonn, March 21, 1997, in two originals, each in the German and Croatian languages, both texts being equally authentic.

The Chargé d'Affaires a.i. Zagreb, 27 June 1997

of the Federal Republic of Germany

Mr. Minister

With reference to the Treaty of 21 March 1997 between the Federal Republic of Germany and the Republic of Croatia on the Promotion and Reciprocal Protection of Capital Investments, I have the honor to propose to you the conclusion of an agreement between the Federal Republic of Germany and the Republic of Croatia on the editorial amendment of the German text of the Treaty, which shall have the following wording:

(1) As a result of an editorial error, the German and Croatian texts of Article 13(1) of the above-mentioned Treaty differ. Therefore, in order to establish congruent textual versions, it is proposed to correct the German wording of Article 13(1) as follows:

"Article 13

(1) This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged as soon as possible."

(2) It is agreed between the Contracting Parties that the correction of the German texts of the treaty in question, reproduced in paragraph 1 above, shall be deemed to have been made with retroactive legal effect from the date of signature.

(3) This Agreement shall be concluded in the German and Croatian languages, each text being equally authentic.

If the Republic of Croatia agrees with the proposals made in paragraphs 1 to 3 above, this Note and Your Excellency's Note in reply expressing the agreement of the Republic of Croatia shall constitute an agreement between our two States which shall enter into force together with the Treaty of 21 March 1997 between the Federal Republic of Germany and the Republic of Croatia on the Promotion and Reciprocal Protection of Capital Investments.

Please accept, Sir, the assurance of my highest consideration.

highest consideration.

Hans - Dieter Steinbach, f.r.

His Excellency

the Deputy Prime Minister and Minister of Foreign Affairs

of the Republic of Croatia

Dr. Mate Grani

Zagreb

Republic of Croatia Zagreb, 29 September 1997.

Ministry of Foreign Affairs

The Minister

Dear Chargé d'Affaires

I have the honor to acknowledge receipt of your letter of June 27, 1997, which reads as follows:

(The text of the introductory note follows.)

I have the honor to inform you that the Croatian side agrees with the proposals of the German side contained in the quoted letter under numbers 1 to 3 concerning the Treaty of March 21, 1997 on the Promotion and Mutual Protection of Capital Investments between the Republic of Croatia and the Federal Republic of Germany.

Thus, I have the honor to state that the quoted letter from Mr. Hans-Dieter Steinbach, Chargé d'Affaires of the Embassy of the Federal Republic of Germany in Zagreb, and this letter in reply form an integral part of the Treaty between the Republic of Croatia and the Federal Republic of Germany on the Promotion and Reciprocal Protection of Capital Investments.

With the expression of my highest consideration

Dr. Mate Grani

To the

Chargé d'Affaires a.i.

of the Federal Republic of Germany