Treaty between the Federal Republic of Germany and Romania on the Promotion and Mutual Protection of Capital Investments

The Federal Republic of Germany and Romania, hereinafter referred to as "Contracting Parties"

In the desire to deepen economic cooperation between the two countries,

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

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, in particular but not exclusively, assets of any kind invested by nationals or companies of one Contracting Party in the territory of the other Contracting Party in accordance with its legislation

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, such as, in particular, copyright, patents, utility models, industrial designs, trade names, business and business secrets, technical procedures, know-how and goodwill;

e) Public-law concessions, including concessions and concessions, as well as other legal or contractual rights;

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) With regard to Romania:

Natural persons who are nationals under Romanian legislation;

4. The term "companies"

a) With regard to the Federal Republic of Germany:

Any legal person as well as any commercial or other company or association with or without legal personality having its head office in the territory of the Federal Republic of Germany, whether or not its activity is directed at profit,

b) With regard to Romania:

Any legal person established in accordance with Romanian law and established in Romania;

5. The term "territory" shall mean the territory of each Contracting Party, including its territorial waters, in which it exercises sovereignty, as well as the exclusive economic zone and the base of the jurisdiction over which the respective Contracting Party exercises sovereign rights or sovereign powers in accordance with international law.

Article 2.

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

(2) A Contracting Party shall in no way interfere with the administration, entertainment, 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 nationals or companies of third States because of their membership in a customs or economic union, a common market, a free trade area or a comparable regional economic organization 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 by nationals or companies of a Contracting Party may be expropriated, nationalized or subject to other measures which are equivalent to expropriation or nationalization in the territory of the other Contracting Parties only for the general good and against prompt, adequate and effective compensation. 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, which has been fixed and freely transferable in freely convertible currency, must be paid forthwith and is payable at the usual bank rate until the time of payment. 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. Upon request, the legality of the expropriation, nationalization or comparable measure and the amount of the compensation shall 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 income;

c) To repay loans;

d) Of the proceeds in the event of complete or partial liquidation or disposal of the investment;

e) Of the compensation provided for in Article 4.

Article 6.

Where a Contracting Party makes payments to its nationals or companies on the basis of a guarantee for an investment in the territory of the other Contracting Party, that other Contracting Party shall recognize the transfer of all rights or claims of such nationals or companies by law or by reason of the rights of the former Contracting Party To the former Contracting Party. Furthermore, the other Contracting Party shall recognize the entry of the former Contracting Party into all such transferred rights or claims as may be exercised by the former Contracting Party to the same extent as its predecessor. Article 4 (2) and (3) and Article 5 shall apply mutatis mutandis to the transfer of payments under the transferred rights or rights.

Article 7.

(1) Transfers pursuant to Article 4 (2) and (3), Articles 5 and 6 shall be effected without delay at the market rate applicable to current transactions in the currency to be transferred at the date of the transfer.

(2) If there is no foreign exchange market, the latest exchange rate for foreign direct investment or the latest exchange rate of the International Monetary Fund for the conversion of foreign exchange into special drawing rights will apply, depending on what is more favorable for the investor.

Article 8.

(1) If the legislation of a Contracting Party or obligations under international law existing between the Contracting Parties or constituting a future agreement between them exist a general or special rule 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.

(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. However, the contract does not apply to differences of opinion which arose before its entry into force. These are annexed in accordance with the provisions of the Treaty of Bucharest between the Federal Republic of Germany and the Socialist Republic of Romania on the Promotion and Mutual Protection of Investments of 12 October 1979.

Article 10.

(1) Disputes between the Contracting Parties concerning the interpretation and application of this Treaty shall, as far as possible, be mediated by the Governments of the two Contracting Parties by diplomatic means.

(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 both members as members of a third State as chairman 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 of the International Court of Justice has the nationality of either Contracting Party or if he is prevented from exercising his office

for any other reason, the Vice-President shall make the necessary appointments. If the Vice-President also has the nationality of one of the Contracting Parties or if he is also prevented from doing so, the next member of the International Court of Justice, who is not a national of either Contracting Party, 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.

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, within six months from the date of their assertion by one of the two parties, the dissension of opinion can not be settled within the meaning of paragraph 1, it shall be subject to arbitration at the request of the national or the company of the other Contracting Party. Unless the parties agree on a different procedure, 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 be executed in accordance with the national law of the Contracting Party on whose territory the investment was made.

(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.

(4) Upon the entry into force of this Treaty, the Treaty of 12 October 1979 between the Federal Republic of Germany and the Socialist Republic of Romania on the promotion and mutual protection of investments between the Federal Republic of Germany and Romania ceases to exist, subject to the provisions of Article 9 of this Treaty ,

(5) The provisions of this Article shall also apply to the applicable Protocol which forms an integral part of this Agreement.

Done at Bonn, June 25, 1996, in two originals, each in the Romanian and German languages, both texts being equally authentic.

For the Federal Republic of Germany

Kinkel

For Romania

Melescanu

Protocol to the Treaty between the Federal Republic of Germany and Rumania on the Promotion and Mutual Protection of Capital Investments

At the time of signing the Treaty between the Federal Republic of Germany and Romania on the Promotion and Reciprocal Protection of Investments, the undersigned Plenipotentiaries also agreed on the following provisions, which shall be considered as integral parts of the Treaty:

1. Ad Article 1

(a) The income from investments and, in the event of their reinvestment, the income therefrom, shall enjoy the same protection as the investments.

(b) In particular, without prejudice to other procedures for determining nationality, any person holding a national passport issued by the competent authorities of a Contracting Party shall be considered a national of that Party.

2. Ad Article 2

Investments made in accordance with the laws of a Contracting Party in its territory by nationals or companies of the other Party shall enjoy the full protection of the Treaty.

3. Ad Article 3

(a) For the purposes of Article 3, paragraph 2, "activity" shall mean in particular, but not exclusively, the management, maintenance, use and enjoyment of an investment. Less favorable" treatment within the meaning of Article 3 shall be deemed to include, in particular, different treatment in the case of restrictions on the purchase of raw materials and supplies, energy and fuels, and means of production and inputs of all kinds, different treatment in the case of obstacles to the marketing 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 Contracting Parties shall, within the framework of their national legislation, give favorable consideration to applications for the 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 workers 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 engage in activities as workers. Applications for work permits shall also be favorably considered.

4. Ad Article 4

An entitlement to compensation shall also exist if the enterprise which is the subject of the investment is interfered with by State measures within the meaning of Article 4, paragraph 2, and its economic substance is substantially affected thereby.

5. 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 which is normally necessary for the observance of the formalities for the transfer. The period shall commence with the submission of a complete application in accordance with the procedural requirements of the Contracting Party concerned and shall not, under any circumstances, exceed two months.

6. Ad Article 11

In the case of Romania, a dispute may be submitted to international arbitration in accordance with Article 11 only to the extent that a decision of a national court on the same subject matter of the dispute has not yet been rendered on the merits.

7.

In the case of the carriage of goods and persons in connection with an investment, a Party shall neither eliminate nor obstruct the carriers of the other Party and shall, where necessary, grant authorizations for the carriage of such goods and

persons. This shall include transports of

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

b) persons acting in connection with a capital investment.

Done at Bonn, June 25, 1996, in two originals, each in the German and Romanian languages, each text being equally authentic.

For the Federal Republic of Germany

Kinkel

For Romania

Melescanu