AGREEMENT BETWEEN SPAIN AND ROMANIA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENT

Agreement between Spain and Romania for the Promotion and Reciprocal Protection of Investments

Romania and Spain referred to hereinafter as the contracting parties, "

Desiring to intensify economic cooperation between the two States and create favourable conditions for investments by investors of one State in the territory of another,

Aware of the need to create and maintain a stable framework to stimulate investment and an optimal and efficient use of economic resources of each country;

Recognizing that the reciprocal promotion and protection of investments under this agreement will stimulate initiatives in this field and improve the prosperity of both countries;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. "investment" shall mean assets of every kind, such as property and rights of any kind, acquired or invested in accordance with the laws and regulations of the host country, and in particular, though not exclusively:

a) Movable and immovable property as well as any rights in rem connected therewith;

b) Stocks, shares, debentures and any other forms of participation in companies;

c) Reinvestment of profits;

d) Rights of credit or other rights derived from any performance having financial and economic value:

e) Intelecual and industrial property rights, such as copyrights, trademarks, trade names, patents, licences, manufacture of technical processes, know-how and good-will "", as well as other similar rights;

f) Concessions conferred by law or under contract including activities related to prospecting, exploration, extraction and exploitation of the natural resources including the maritime areas covered under the jurisdiction of one of the Contracting Parties.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investments.

2. The term investor "means:

a) In respect of Spain: any natural person who is resident in Spain under Spanish law and any legal person constituted under Spanish legislation having its head office in Spain.

b) In respect of Romania: any natural person who in accordance with the laws in force, have Romanian citizenship and any legal person constituted under the Romanian laws, having its head office in Romania.

3. The concept of investment income "" means income deriving from an investment and includes in particular, though not exclusively, dividends, interest and dividends.

4. The term "territory" means the land territory and territorial waters of each of the Contracting Parties, as well as the exclusive economic zone and the continental shelf extends beyond the limits of the territorial waters of each of the Contracting Parties on which they are or may be in accordance with international law, sovereign rights and jurisdiction for

the purpose of exploration and exploitation and preservation of natural resources.

Article 2. Promotion and Protection

1. Each Contracting Party shall promote and create favourable conditions for investments made in its territory by investors of the other contracting party.

2. Investments shall be conducted in accordance with the laws of the Contracting Party in whose territory they are undertaken, shall enjoy the protection and guarantees provided for in this Agreement.

3. Each Contracting Party undertakes to ensure in its territory a fair and equitable treatment to investments of investors of the other contracting party.

Neither Contracting Party shall by Arbitrary Measures or unjustified or discriminatory Arbitrary Measures The management, maintenance or use of investments, as well as the right to the sale and liquidation.

4. Investors of one Contracting Party shall be permitted to engage managerial and technical personnel of their choice regardless of nationality, insofar as permitted by the laws of the country enfitrión. in accordance with the laws relating to the Entry of Aliens, investors and Sojourn of either Contracting Party shall be permitted to Entry and Sojourn the territory of the other contracting party in order to implement and administer its investment.

5. Each Contracting Party shall publish all laws and regulations affecting investments of investors in its territory of the other party contratente.

Article 3. Treatment

1. Contratente Each Party shall accord to investments made in its territory by investors of the other Contracting Party A treatment no less favourable than that accorded to investments made in its territory by investors of any third country that enjoyment of most-favoured-nation treatment.

2. Each Contracting Party shall accord to investors of the other contracting party, as regards the management, maintenance, use or disposal of their investments, treatment no less favourable than that accorded to investors of any third country.

3. This treatment shall not apply, however, to privileges which either Contracting Party accords to investors of a third State by virtue of its participation in or aduenera an economic union, a free trade area or regional economic organization which is or may become a member of either the contracting parties.

4. The treatment granted under the present article shall not extend to deductions and tax exemptions or other similar privileges granted by either contracting party to investors of third States by virtue of an agreement for the avoidance of double taxation or any other arrangement relating to taxation.

5. Each Contracting Party shall observe any obligations of investors to the other contracting party in connection with their investments.

6. In addition to the provisions of paragraphs 1 and 2 of this article, each Contracting Party shall, subject to its domestic law, to investments of investors of the other Contracting Party A treatment no less favourable than that accorded to its own inversores.párrafos 1 and 2 of this article, each Contracting Party shall, subject to its domestic law, to investments of investors of the other Contracting Party A treatment no less favourable than that accorded to its own investors.

Article 4. Expropriation and Nationalization

The expropriation or nationalization otre characteristics or any measure having similar effects that may be taken by the authorities of one Contracting Party against investments of investors of the other contracting party in its territory, it shall be applied only for reasons of public interest, in accordance with the laws and in no case shall be discriminatory. the contracting party to take such measures shall be paid to the investor or its patient, without undue delay, adequate compensation in convertible currency.

Article 5. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other contracting party suffer losses owing to war or other armed conflict, revolution, state of national emergency, revolt, or other similar events, including losses resulting from requisitioning, shall be accorded, with respect to measures taken to compensate for losses, a treatment no

less favourable than that which the latter Contracting party accorded to investors of any third State or to its own investors. any payments made under this article shall be made promptly adecuade, effective and freely transferable.

Article 6. Transfers

Each Contracting Party shall guarantee to investors of the other contracting party, in respect of their investments in its territory, in accordance with the laws and regulations of the host contracting party of the Investment, the free transfer of their investments and in particular, though not exclusively, the following:

The investment income as defined in article 1;

The compensation provided for in article 4;

The compensation provided for in article 5.

The proceeds from the sale or the total or partial liquidation of an investment;

Salaries, wages and other remunerations received by the nationals of one Contracting Party who have obtained in the other Contracting Party the corresponding work permits in connection with an investment.

The Contracting Party accepting the investment shall facilitate the investor of the other contracting party or to society at the official exchange market access on a non-discriminatory basis, in order to acquire the necessary currency for realizer transfers under this article.

Transfers shall be made in freely convertible currency.

Transfers shall be made once the investor has complied with tax obligations laid down by the legislation in force in the host contracting party of the investment.

The Contracting Parties undertake to facilitate the procedures for making such transfers without undue delay or restrictions. in particular, they shall not exceed three months from the date on which the investor has duly submitted applications necessary for the transfer until the date on which the transfer is made.

The Contracting Parties agree to accord to the transfers referred to in this article a treatment no less favourable than that accorded to transfers originating from investments made by investors of any third State.

Article 7. Principle of Subrogation

In the event that a Contracting Party has provided any financial guarantee on non-commercial risks in connection with an investment made by an investor of this contracting party in the territory of the other contracting party, the latter shall accept an application of the principle of subrogation to the first contracting party into the rights of the investor, with regard to compensation for payments due, from the time at which it has made a payment under the guarantee granted.

In no case may occur subrogation in property rights, use, enjoyment or any other right derived from the ownership of their investment without prior to obtain relevant authorisations, according to the Law on Foreign Investment in force in the Contracting Party where the investment was made.

Article 8. Disputes between Investors and a Contracting Party of the other Contracting Party

1. Disputes between a Contracting Party and an investor of the other Contracting Party shall be notified in writing, including detailed information by the investor Contracting Party to the recipient of the investment. to the extent possible, the Contracting Parties shall endeavour to settle these disputes by mutual agreement.

2. If these disputes cannot be settled in this way within six months from the date of the written notification mentioned in paragraph 1, the dispute shall be submitted at the choice of the investor: paragraph 1, the dispute shall be submitted at the choice of the investor:

The ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law; or

The Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965, when each

State Party to this Agreement has acceded to it.

This article shall not preclude a national or company of a Contracting Party subjecting a dispute concerning an investment to national courts of the other contracting party, when it has the right to do so in accordance with the national legislation of the other contracting party.

3. The arbitration shall be based on:

The provisions of this Agreement;

The rules and the universally accepted principles of International Law;

The national law of the Contracting Party in whose territory the investment was made, including the rules relating to conflicts of law;

The special agreements concluded with regard to investment.

4. The arbitration awards shall be final and binding on the contracting parties. each Contracting Party undertakes to execute the decisions in accordance with its national legislation.

5. Each Contracting Party undertakes to provide effective means to admit claims and implement laws under the agreements and investment and authorizations shall not prevent investors of the other Contracting Party the right of access to justice of its courts and tribunals and administrative agencies and any other body which has jurisdiction.

Article 9. Disputes between the Contracting Parties

1. Any dispute between the contracting parties concerning the interpretation or application of this Agreement shall as far as possible, be settled through negotiations between the two contracting parties. if the dispute cannot be settled in this way within six months from the beginning of negotiations, shall be submitted, at the request of either contracting party to an arbitral tribunal, in accordance with the terms of this article.

2. The arbitration tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and the two arbitrators appointed shall select a national of a third State as Chairman of the Tribunal.

The arbitrators shall be appointed within three months and the Chairman within five months from the date on which either Contracting Party has informed the other contracting party of its intention to submit the dispute and the arbitration tribunal.

3. If a Party has not appointed contratentes its arbitrator within the deadline, the other Contracting Party may request the President of the International Court of Justice to make the appointment.

Where two arbitrators fail to agree on the appointment of the third arbitrator within the prescribed period, either Contracting Party may have recourse to the President of the International Court of Justice to make the appointment. if the President is a national of either Contracting Party or is otherwise prevented Helle, the Vice-President shall make the appointment. if the Vice-President also outside nacionel of one of the contracting parties or if he is also prevented, the member of the Court next in seniority and is not a national of one of the Contracting Parties to make the appointments.

4. The arbitration tribunal shall deliver its opinion on the basis of the rules contained in this Agreement, in other agreements in force between the contracting parties and to the general principles and rules of International Law.

The decision shall be taken by a majority of votes. this decision shall be final and binding on both contracting parties.

5. Each Contracting Party shall bear the costs of the arbitrator appointed by it and the related to its representation in the arbitral proceedings. the other expenses, including the President, shall be borne equally by the contracting parties.

6. The arbitral tribunal shall determine its own procedure.

Article 10. Implementation

This Agreement shall apply to investments made after its Entry into Force by investors of one Contracting Party in the territory of the other.

This Agreement shall also apply to investments made before its entry into force by investors of one Contracting Party, in accordance with the laws of the other Contracting Party in the territory of the latter. however, it shall not apply to claims or

disputes arising prior to its Entry into Force.

Article 11. More Favourable Terms

More favourable conditions to those of this Agreement which have been agreed to by one of the Contracting Parties with investors of the other Contracting Party shall not be affected by this Agreement.

If the provisions of law of either Contracting Party or obligations under international law, in addition to the present Treaty, current or future between the contracting parties result in a general or special rules under which must be accorded to investments of investors of the other contracting party to a more favourable treatment than that provided for by the present Agreement, such rules shall prevail over as the present Treaty is more favourable.

Article 12. Entry Into Force , Extension and Termination

1. This Agreement shall enter into force one month after the date on which the contracting parties have notified each other that their respective internal constitutional formalities concerning agreements.

2. This Agreement shall remain in force for a period of ten years and, by tacit renewal, for consecutive periods of ten years unless it is denounced. during the initial perñodo validity of this Agreement may be denounced by notifica- prior written compiled by one of the two Contracting Parties, one year before its expiration. after the expiry of the initial period of validity, this Agreement may be denounced at any time'notice 12 months.

3. In the event of expiry, the provisions of this Agreement shall continue to apply for a period of ten years from the date of its termination, to the investments made within the period of validity.

Done in two original copies in the Spanish and Romanian languages, both equally authentic, at Bucharest on 25 January 1995.

For Spain.

Mr. Javier Solana

Minister of Foreign Affairs

For Romania,

Florin Georgescu,

Minister of State and Minister of Finance