

Treaty between the Federal Republic of Germany and the Kingdom of Greece on the Promotion and Reciprocal Protection of Capital Investments

THE FEDERAL REPUBLIC OF GERMANY AND THE KINGDOM OF GREECE

DESIRING to deepen economic cooperation between the two Contracting States, seeking to create favorable conditions for the investment of nationals and companies of one Contracting State in the territory of the other Contracting State;

RECOGNIZING that contractual protection of these investments is likely to stimulate private economic activity and increase the prosperity of both peoples,

HAVE AGREED AS FOLLOWS:

Article 1.

(1) Each Contracting State shall, in accordance with its laws and regulations, permit and, if possible, encourage in its territory the investment of capital by nationals and companies of the other Contracting State and give sympathetic consideration to the granting of any necessary authorizations.

(2) No Contracting State shall treat investments in its territory which are owned or controlled by nationals or companies of the other Contracting State less favorably than similar investments made by its own nationals and companies or similar investments made by nationals and companies of third States.

Article 2.

No Contracting State shall subject the nationals and companies of the other Contracting State to less favorable conditions in respect of their professional and economic activities, in so far as they are carried on in connection with investments in its territory, and in respect of the management, use, and enjoyment of their investments in its territory, than its own nationals and companies or nationals and companies of third States in respect of like professional and economic activities.

Article 3.

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

(2) Investments of nationals and companies of a Contracting State may be expropriated in the territory of the other Contracting State only for the general good and against compensation. The compensation shall correspond to the value of the expropriated capital assets, shall be actually realizable and freely transferable, and shall be paid in accordance with the laws of each Contracting State either in advance or at least without delay. At the latest at the time of expropriation, appropriate provision must be made for the determination and payment of compensation. The legality of the expropriation and the amount of compensation shall be subject to due process of law.

(3) Nationals and companies of a Contracting State who suffer losses in respect of investments situated in the territory of the other Contracting State as a result of war or another armed conflict, revolution or civil commotion shall not be treated more favorably by that Contracting State than its own nationals and companies as regards restitution, compensation, indemnity or other compensation. With respect to the transfer of such benefits, the Contracting States undertake not to treat the claims of nationals and companies of the other Contracting State less favorably than corresponding claims of nationals and companies of a third State.

(4) The provisions of paragraphs (1), (2), and (3) of this Article shall also apply to income from investments.

(5) With respect to matters governed by this Article, nationals and companies of a Contracting State shall enjoy a most-favored-nation treatment in the territory of the other Contracting State.

Article 4.

Each State Party shall ensure the transfer of capital and income to the nationals and companies of the other Contracting State, and, in the case of liquidation, the transfer of the proceeds.

Article 5.

If a Contracting State is called upon to pay under a guarantee in respect of an investment, it shall be entitled, without prejudice to its rights under Article 11, to exercise the rights which have passed to it by operation of law or which have been transferred to it by the predecessor in title (subrogated rights) on the terms and conditions of its predecessor in title. Article 3, paragraphs (2), (4) and (5) and Article 4 shall apply mutatis mutandis to the transfer of payments to be made to the Contracting State on the basis of the subrogated rights.

Article 6.

(1) Unless the parties concerned have made arrangements to the contrary permitted by the competent authorities of the Contracting State in whose territory the capital investment is situated, transfers shall be made without delay in accordance with Article 3, paragraphs (2), (3) or (4), Article 4 or Article 5, and at the rate applicable to current transactions on the date of the transfer.

(2) The rate applicable to current transactions shall be based on the par value agreed with the International Monetary Fund and shall be within the range of fluctuation permitted on either side of parity under Article IV, Section 3, of the Agreement on the International Monetary Fund.

(3) If, at the time of transfer, there is no conversion rate in a Contracting State within the meaning of paragraph (2), the official rate fixed by that Contracting State for its currency in relation to the United States dollar or other freely convertible currency or to gold shall be applied. If no such rate has been fixed either, the competent authorities of the Contracting State in whose territory the capital is invested shall allow a rate of conversion which is just and equitable.

Article 7.

If any provision of the laws of a Contracting State or of any obligation under international law which exists or may be established between the Contracting States in addition to this Treaty requires that the investments of nationals and companies of the other Contracting State be accorded treatment more favorable than that accorded by this Treaty, such provision shall not be affected by this Treaty. Each Contracting State shall comply with any other obligation it may have assumed in respect of investments made in its territory by nationals or companies of the other State.

Article 8.

(1) The term "investments" shall include all assets, including but not limited to:

- (a) ownership of movable and immovable property and other rights in rem such as mortgages, liens, usufruct or the like;
- (b) shares in companies and other types of participation;
- (c) claims to money or services that have an economic value;
- (d) copyrights, industrial property rights, technical processes, trade names and good will;
- (e) Concessions.

A change in the form in which assets are invested shall not affect their status as capital assets under an issued license.

(2) The term "income" means those amounts attributable to an investment for a specified period of time as profit shares or interest.

(3) The term "nationals" means.

- a) with respect to the Federal Republic of Germany:

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

(b) in relation to the Kingdom of Greece:

Greeks within the meaning of the Constitution and laws of Greece.

(4) The term "companies" means any legal person, as well as any commercial company or other partnership or association, with or without legal personality, which has its registered office in the territory of one of the Contracting States and is legally constituted under the laws of that State, whether the liability of its members, partners or associates is limited or unlimited, and whether its activities are profit-making or not.

Article 9.

This Treaty shall also apply to capital investments made by nationals and companies of one of the Contracting States in accordance with the laws of the other Contracting State in its territory before the entry into force of this Treaty.

Article 10.

Each Contracting State shall accord national treatment under this Treaty on the basis that national treatment in the same matters is also accorded by the other Contracting State.

Article 11.

(1) In the event of disagreement as to the interpretation or application of this Treaty, the Contracting States undertake to enter into consultations in an amicable spirit with a view to reaching a solution.

(2) To the extent that a difference of opinion cannot be settled in this manner, it shall, at the request of any Contracting State, be submitted to arbitration.

(3) (a) The arbitral tribunal shall be constituted on a case-by-case basis and shall consist of three arbitrators. Each Contracting State shall appoint one arbitrator; the two arbitrators so appointed shall agree on a chairman who shall be a national of a third State and who shall be appointed by the governments of the two Contracting States.

(b) Each Contracting State shall appoint its arbitrator within two months of a request to that effect by the other Contracting State; if it fails to do so, the arbitrator shall be appointed by the President of the International Court of Justice at the request of the other Contracting State.

c) If the arbitrators are unable to agree on the chairman of the arbitral tribunal within one month of their appointment, he shall be appointed by the President of the International Court of Justice at the request of one of the two Contracting States. If any arbitrator or the umpire is so prevented from acting that a decision of the Court cannot be expected within a reasonable time, a new arbitrator or umpire shall be appointed in his place in accordance with the foregoing procedure.

(d) If the President of the International Court of Justice is unable to comply with the request referred to in subparagraphs (b) and (c) of this paragraph, or if he is a national of one of the two Contracting States, the appointment shall be made by the Vice-President. If the Vice-President is also unable to act, or if he is a national of one of the two Contracting States, the appointment shall be made by the most senior member of the Tribunal who is not a national of one of the two Contracting States.

(4) The arbitral tribunal shall render its decisions on the basis of the provisions of this Treaty and of the general rules of international law.

(5) The arbitral tribunal shall decide by majority vote. Its decisions shall be signed by the chairman and at least one member. They shall be binding on both Contracting States.

(6) Each Contracting State shall bear the costs of its arbitrator and of its representation in the proceedings before the arbitral tribunal. The other costs shall be borne equally by both parties.

(7) The arbitral tribunal shall regulate its own procedure.

Article 12.

This Treaty shall also apply to the Land of Berlin unless the Government of the Federal Republic of Germany makes a

declaration to the contrary to the Government of the Kingdom of Greece within three months of the entry into force of this Treaty.

Article 13.

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

(2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall be renewed for an indefinite period unless terminated in writing by either of the Contracting States one year before its expiration. After the expiration of ten years, the contract may be terminated at any time, but shall remain in force for one year after termination.

(3) In respect of investments made up to the date of expiration of the Treaty, the provisions of Articles 1 to 12 shall continue to apply for a further period of twenty years from the date of termination of this Treaty.

DONE at Athens, this 27th day of March, 1961, in two originals, each in the German and Greek languages, each text being equally authentic.

FOR THE FEDERAL REPUBLIC OF GERMANY:

Dr. Hermann Reinhardt

FOR THE KINGDOM OF GREECE:

Athanassios Triantaphyllis

Protocol

At the signing of the Treaty on the Promotion and Reciprocal Protection of Capital Investments between the Federal Republic of Germany and the Kingdom of Greece, the undersigned Plenipotentiaries have also made the following arrangements, which shall be considered as integral parts of the Treaty:

(1) In particular, the following shall be considered as conditions within the meaning of Article 2: The restriction of the purchase of raw and auxiliary materials, energy and fuels, and means of production and operation of all kinds, the obstruction of the sale of products at home and abroad, and other measures having a similar effect. Measures under Articles 1 and 2 of the Settlement and Navigation Treaty between the Bund~srepublik Deutschland and the Kingdom of Greece of March 18, 1960, as well as measures to be taken for reasons of public safety and order, public health or morality, shall not be deemed to be conditions within the meaning of Article 2.

2. a) The provisions of Article 3, paragraph 2, shall also apply to the transfer of a capital investment to public ownership, its placement under public supervision or similar interventions by the public authorities.

b) Measures taken by the State at the request of the creditors of an enterprise in the event of bankruptcy or for the purpose of avoiding bankruptcy, or at the request of the investor, shall not be deemed to be interventions within the meaning of Article 3, para. 2.

c) Expropriation shall be understood as the deprivation or restriction of any property right which, alone or together with other rights, constitutes a capital investment.

3. a) With respect to Article 4, it is understood that the remittance of capital invested or to be invested by German nationals or companies in Greece under the provisions of this Treaty and the remittance of liquidation proceeds from such capital shall not be made before the expiration of one year from the date of investment or liquidation and shall not be made in higher installments than ten per cent annually of the capital introduced. Profits may be remitted at the rate of up to twelve percent, and interest at the rate of up to ten percent annually. They shall be calculated in each case from the capital that has not been re-executed. In the event that the aforementioned amounts for profits and interest are not transferred or not transferred in full within one year, the differences may be transferred in subsequent years.

b) Restrictions of the foregoing kind, even to the extent that they are provided for in authorization acts for capital

investments of German citizens or companies in Greece, shall automatically cease to have effect as soon as and to the extent that the Greek foreign exchange regulations on which the restrictions are based are repealed.

c) More favorable regulations concerning the transfer of capital, profits or interest within the framework of the OEEC or of treaties to which both Contracting States are parties shall prevail over the above provisions.

(4) For the purposes of Article 6, paragraph 1, a transfer shall be deemed to have been effected "without delay" if it is effected within a period of time normally necessary for the observance of the formalities of the transfer. The period shall begin with the submission of a request to that effect and shall under no circumstances exceed two months.

5. with regard to Article 7, it is understood that, with respect to investments made by nationals or companies of the Federal Republic of Germany for which the application of the provisions of Greek Legislative Decree No. 2687/53 has been requested and approved, the provisions of this Law and the special provisions of the Approval Decree shall prevail over the provisions of this Treaty.

(6) Special benefits granted under Legislative Decree No. 2687/53 shall not be automatically extended to investments covered by this Treaty.

(7) With respect to Article 9, it is understood that its provisions shall apply to the investments of nationals and companies of the Federal Republic of Germany existing in Greece on the date of the entry into force of this Treaty, which have come into existence as from January 1, 1954, provided that the aforesaid nationals and companies submit a request to this effect and that the Greek Government gives its consent in accordance with the procedure provided for in this Treaty for the new investments.

(8) In particular, without prejudice to other procedures for determining nationality, a national of a Contracting State shall be deemed to be any person holding a national passport issued by the competent authorities of the Contracting State concerned.

DONE at Athens, this 27th day of March 1961, in two originals, each in the German and Greek languages, each text being equally authentic.

FOR THE FEDERAL REPUBLIC OF GERMANY:

Dr. Hermann Reinhardt

FOR THE KINGDOM OF GREECE:

Athanassios Triantaphyllis

Exchange of Letters

Exchange of letters 1

Annex 1 to the minutes of March 27, 1961

The Chairman of the Greek Delegation

Mr. Chairman,

I have the honor to inform you of the following:

The Greek Government will, in especially justified cases, give favorable consideration to requests from German investors liquidating their capital investments in Greece for transfers of the liquidation proceeds in excess of those provided for in paragraph (3) (a) of the Protocol or in acts of approval of the Greek Government in connection with the investment of the capital, provided that the foreign exchange situation of Greece so permits and that it cannot be assumed that the request is intended to circumvent Greek foreign exchange regulations in an improper manner.

Please accept, Mr. Chairman, the assurance of my highest consideration.

Athanassios Triantaphyllis

To the Chairman of the German Delegation

Mr. Ministerial Director

Dr. Hermann Reinhardt

Athens

Annex 2 to the Minutes of March 27, 1961

The Chairman of the German Delegation

Mr. Chairman,

I have the honor to acknowledge receipt of your letter of today's date, which reads as follows:

"The Greek Government will consider favorably, in specially justified cases, requests from German investors liquidating their capital investments in Greece for transfers of the liquidation proceeds in excess of those provided for in paragraph (3) (a) of the Protocol or in acts of approval of the Greek Government in connection with the investment of the capital, provided that the foreign exchange situation of Greece permits this and it cannot be assumed that the request is intended to circumvent Greek foreign exchange regulations in an improper manner."

I concur with the contents of the foregoing letter.

Please accept, Mr. Chairman, the assurance of my highest consideration.

Dr. Hermann Reinhardt

To the Chairman of the Greek Delegation

Mr. Director General

Athanassios Triantaphyllis

Athens

Exchange of letters 2

Annex 3 to the minutes of March 27, 1961

The Chairman of the Greek Delegation

Mr. Chairman,

I have the honor to inform you of the following:

In Greece, capital investments under the treaty signed today will require approval.

The authorization will be granted if the Greek Government, in a procedure to be regulated by it, determines that the capital investment, on the terms proposed by the investor, has as its object the promotion of production or otherwise contributes to the economic progress of the country.

In regulating the procedure, the Hellenic Government shall establish a special committee for the appraisal of capital investments.

The capital investor shall be given the opportunity to present his request for the granting of the permit before the special committee.

Approve, Mr. Chairman, the expression of my excellent consideration.

Athanassios Triantaphyllis

To the Chairman of the German Delegation

Mr. Ministerial Director

Dr. Hermann Reinhardt

Athens

Annex 4 to the Minutes of March 27, 1961

The Chairman of the German Delegation

Mr. Chairman,

I have the honor to acknowledge your letter of today's date with the following wording:

"In Greece, capital investments will require approval on the basis of the treaty signed today. The authorization will be granted if the Greek Government, in a procedure to be regulated by it, determines that the capital investment, on the terms proposed by the investor, has as its object the promotion of production or otherwise contributes to the economic progress of the country.

In regulating the procedure, the Hellenic Government shall establish a special committee for the appraisal of capital investments.

The capital investor shall be given the opportunity to present his request for the granting of the permit before the special committee.

Please accept, Mr. Chairman, the expression of my highest consideration.

Dr. Hermann Reinhardt

To the Chairman of the Greek Delegation

Mr. Director General

Athanassios Triantaphyllis

Athens

Exchange of letters 3

Annex 5 to the minutes of March 27, 1961

The Chairman of the Greek Delegation

Mr. Chairman,

I have the honor to inform you of the following:

In the course of the negotiations for the conclusion of the treaty signed today, you had requested the inclusion of a clause to ensure that the principles of free competition would also be applied to the participation of maritime shipping in the carriage of capital goods in relation to our countries. However, I do not see the need for this, since the aforementioned capital investment goods are to be considered goods within the meaning of Article 15 of the Settlement and Navigation Treaty of March 18, 1960, and Article 15 already provides for freedom of choice of flag.

Please accept, Mr. Chairman, the expression of my highest consideration.

Athanassios Triantaphyllis

To the Chairman of the German Delegation

Mr. Ministerial Director

Dr. Hermann Reinhardt

Athens

Annex 6 to the Minutes of March 27, 1961

The Chairman of the German Delegation

Mr. Chairman,

I have the honor to acknowledge your letter of today .with the following wording:

"In the course of the negotiations for the conclusion of the treaty signed today, you had requested the inclusion of a clause to ensure that the principles of free competition would also be applied to the participation of maritime shipping in the carriage of capital goods in relation to our countries. However, I do not see the need for this, since the aforementioned capital investment goods are to be considered goods within the meaning of Article 15 of the Settlement and Navigation Treaty of March 18, 1960, and Article 15 already provides for freedom of choice of flag."

Approve, Mr. Chairman, the expression of my excellent consideration.

Dr. Hermann Reinhardt

To the Chairman of the Greek Delegation

Mr. Director General

Athanassios Triantaphyllis

Athens