

TREATY BETWEEN THE REPUBLIC OF AUSTRIA AND THE SOCIALIST REPUBLIC OF ROMANIA CONCERNING THE RECIPROCAL PROMOTION, GUARANTEE AND PROTECTION OF INVESTMENTS

The Republic of Austria and

The Socialist Republic of Romania,

Purposing to intensify economic co-operation between the two States,

Desiring to create favourable conditions for investments effected by Romanian juridical persons in Austria and by Austrian nationals and companies in Romania,

Recognizing that the reciprocal promotion and protection of investments in accordance with this Treaty will help to stimulate business initiatives,

Desiring to improve further the conditions for the execution of economic and industrial co-operation projects as regards protection of the interests of the partners in such projects, including legal protection for assets of every kind,

Conscious of the importance of the contribution which improved business contacts and the resulting increased trust in business relations could make to the development of commercial and economic relations, as provided for in the Final Act of the Helsinki Conference on security and co-operation in Europe,

Have agreed as follows:

Article 1. DEFINITIONS

For the purposes of this Treaty:

(1) "Investment" means possession of the following rights by an Austrian national or company in Romania or by a Romanian juridical person in Austria in accordance with the legislation of the two countries applicable to investments:

(a) Ownership of, and other rights in rem relating to, movable property

(b) Interests in limited-liability and joint-stock companies;

(c) Copyrights, patents, trade marks, designs, know-how and goodwill;

(d) Contractual claims to money or to performances having a monetary value, including tenant rights, with an effective period of validity of more than six months;

(2) "Returns" means net amounts derived from an investment in the form of dividends, profits and other income.

Undistributed returns shall be treated as an increase in assets and shall accordingly enjoy, as part of the investment, the same protection as the latter;

(3) "Juridical person" means, in relation to the Socialist Republic of Romania, a Romanian enterprise constituted under Romanian law and having its seat in Romania;

(4) "Companies" means, in relation to Austria, juridical persons and commercial partnerships constituted under Austrian law and having their seat in Austria, whether the liability of their partners or members is limited or unlimited and whether or not their activities are directed at profit. The term shall also include the State in respect of nonautonomous business enterprises carried on by the State.

Article 2. PROMOTION AND GUARANTEES

(1) Each Contracting Party shall admit in its territory, in accordance with its legislation, investments as provided for in this

Treaty by Austrian nationals and companies in Romania or by Romanian juridical persons in Austria, shall promote such investments as far as possible and shall grant the necessary permits.

(2) Investments effected in accordance with paragraph 1 shall enjoy in the territory of the other Contracting Party protection and guarantees as provided for in this Treaty.

Article 3. MOST-FAVOURED-NATION TREATMENT

(1) In accordance with article 1, paragraph 1, each Contracting Party shall ensure in its territory that investments of Austrian nationals and companies in Romania or of Romanian juridical persons in Austria receive just and equitable treatment, which shall be at least equivalent to the treatment accorded by each Contracting Party to investments of third countries with which similar treaties are in force.

(2) If the legislation of a Contracting Party, or international obligations existing at present or established hereafter between the Contracting Parties in addition to this Treaty, result in a more favourable régime for investments as provided for in this Treaty, such régime shall not be affected by the present Treaty.

(3) Each Contracting Party shall observe any other obligation which it may have assumed with regard to investments by Austrian nationals and companies in Romania or by Romanian juridical persons in Austria.

(4) Obligations of the Contracting Parties as referred to in paragraph 3 shall include only obligations assumed by the competent agencies of the Contracting Parties in the exercise of public authority.

Article 4. EXPROPRIATION AND COMPENSATION

(1) A Contracting Party shall expropriate investments effected in accordance with this Treaty only on the basis of its legislation and only in the public interest, against full compensation. Such compensation shall be made without delay and shall be actually realizable and freely transferable. Provision shall be made at the time of expropriation, for the determination and giving of the entire compensation.

(2) For the purposes of paragraph 1, the term "expropriation" means the taking of an investment by an act of sovereign power-including nationalization-or any other act of sovereign power having the same or similar effects.

(3) Austrian nationals and companies in Romania or Romanian juridical persons in Austria who, owing to war, armed conflict or acts which endanger public order, suffer the loss of investments situated in the territory of the other Contracting Party shall receive from that Contracting Party appropriate compensation, which shall cover the loss suffered.

(4) In respect of all matters provided for in this article, the Contracting Parties shall accord to claims by Austrian nationals and companies in Romania or by Romanian juridical persons in Austria treatment no less favourable than is accorded to comparable claims by nationals, juridical persons and companies of third States.

Article 5. DISPUTES CONCERNING INVESTMENTS

In the event of any dispute concerning compensation in accordance with article 4 between an Austrian national or company in Romania or a Romanian juridical person in Austria and the Contracting Party in whose territory the investment was effected, either Party shall be entitled, once the final decision of the competent national authority has become effective, to submit the dispute for conciliation or arbitration to the International Centre for Settlement of International Disputes in accordance with the Convention on the settlement of investment disputes between States and nationals of other States of 18 March 1965.

Article 6. TRANSFER

Each Contracting Party shall, in accordance with its legislation in force, permit the transfer without delay, in the currency in which the investment was effected or in any other agreed convertible currency, of the following sums:

(a) Returns from the investment and other income derived therefrom;

(b) Proceeds from the liquidation of investments, and compensation in accordance with article 4;

(c) Emoluments of persons who are in possession of a work permit in connection with an investment effected in the territory of the other Contracting Party.

Article 7. CURRENCY

(1) Unless those concerned in an investment have made some other arrangement approved by the competent agencies of the Contracting Party in whose territory the investment is situated, transfers under articles 4, 5 and 6 shall be made without delay in the freely convertible currency in which the investment was effected or in any other agreed freely convertible currency, at the rate of exchange in effect on the date of the transfer.

(2) Transfers shall be deemed to have been made "without delay" within the meaning of paragraph 1 when made within such period as is normally required for the completion of transfer formalities. The said period shall commence on the date on which the application, together with the necessary documents, has been duly submitted to the competent agency and shall under no circumstances exceed two months.

Article 8. RECOGNITION OF THE ASSUMPTION OF RIGHTS AND OBLIGATIONS

If a Contracting Party, in accordance with its legal order, assumes on the basis of a guarantee the rights and obligations arising from an investment, including those relating to duties and taxes, the other Contracting Party shall recognize such assumption of rights and obligations.

Article 9. TAXES

With the exception of articles 4 and 5, the provisions of this Treaty shall not apply in connection with the levying of taxes.

Article 10. AGREEMENTS CONCERNING COMPETENCE

For the purpose of the assertion of claims arising from investments or the returns therefrom or of other claims having a direct legal connection with investments, the Contracting Parties shall recognize:

1. Agreements in writing whereby the partners in an investment have subjected themselves, in respect of any civil or commercial case, to the competence of the courts of a Contracting Party;
2. Agreements in writing whereby the partners have undertaken to submit all or some disputes that have arisen or may in future arise between them from a specific legal relationship, whether contractual or non-contractual, to an arbitral proceeding in the territory of a Contracting State.

Article 11. ENFORCEABILITY OF DECISIONS

(1) Decisions in a civil or commercial case rendered in the territory of a Contracting Party by a court which was competent pursuant to an agreement under article 10, paragraph 1, shall be recognized and enforced in the territory of the other Contracting Party, provided that they fulfil the following conditions:

1. Recognition or enforcement of the decision is not contrary to the public policy of the Contracting Party in whose territory it is to be recognized or enforced;
2. The finality of the decision does not preclude its recognition or enforcement;
3. The case in question was not within the exclusive competence of a court of the Contracting Party in whose territory the decision is to be recognized or enforced or of a court of a third State;
4. In the case of a decision by default, the summons or writ instituting the proceedings was served in due time either on the party in default, against whom the decision is to be enforced, or on his representative; if service had to be effected in the territory of the Contracting Party in which the decision is to be enforced, this shall have been done in accordance with the procedures for judicial assistance;
5. The decision has become final under the law of the Contracting Party in whose territory it was rendered; if enforcement is sought, the decision shall also be enforceable under the law.

(2) Paragraph 1, subparagraphs 1, 2, 3 and 5, shall also apply to compositions with creditors made in the territory of the Contracting Party before a court which was competent pursuant to an agreement under article 10, paragraph 1.

(3) Paragraph 1 shall also apply to arbitral awards made in the territory of a Contracting Party on the basis of an arbitration agreement under article 10, paragraph 2; paragraph 1, subparagraphs 1, 2, 3 and 5, shall also apply to a composition with

creditors made in an arbitral proceeding, if such proceeding is based on an arbitration agreement under article 10, paragraph 2.

Article 12. PROCEDURAL PROVISIONS

(1) The party requesting recognition or enforcement of a judicial decision shall produce:

1. An officially signed and sealed copy of the decision showing beyond a doubt that the decision relates to a claim within the meaning of article 10;
2. In the case of a decision by default, judicial certification of the manner and date of service of the summons or writ instituting the proceedings on the party in default;
3. Judicial certification that the decision has become final and, where appropriate, is enforceable;
4. The original or a certified copy of the agreement under article 10, paragraph 1. (2) If enforcement of a composition with creditors made before a court is requested, a copy of the composition, judicial certification that it is enforceable and the original or a certified copy of the composition under article 10, paragraph 1, shall be produced.

(3) If recognition or enforcement of an arbitral award or enforcement of a composition with creditors made in an arbitral proceeding is requested, the Party shall produce the following documents:

1. A copy of the arbitral award or of the composition;
2. Certification that the arbitral award has become final and, where appropriate, is enforceable or that the composition is enforceable;
3. In the case of a decision by default, certification of the manner and date of service of the summons or writ instituting the arbitral proceeding on the party in default;
4. The original or a certified copy of the composition under article 10, paragraph 2.

(4) Consideration of the request for recognition or enforcement shall be limited to the conditions specified in article 11 of this Treaty and the documents to be produced under this article. There shall be no review in excess of the foregoing.

Article 13.

Obligations of the two Contracting Parties under multilateral agreements to which they are parties shall not be affected by articles 10 to 12.

Article 14. EXISTING INVESTMENTS

This Treaty shall also cover investments which were effected by Austrian nationals and companies in Romania or by Romanian juridical persons in Austria, in accordance with the legislation of the other Contracting Party, in the territory of that Party prior to the entry into force of this Treaty.

Article 15. DISPUTES BETWEEN THE CONTRACTING PARTIES

(1) In case of disputes concerning the interpretation or application of this Treaty, the Contracting Parties shall initiate consultations through the diplomatic channel with a view to achieving an amicable settlement.

(2) If a dispute cannot be settled in this manner within one year from the date on which a Contracting Party has proposed to the other Contracting Party the initiation of the consultations referred to in paragraph 1, the dispute may, at the request of either Contracting Party, be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be constituted for each individual case as follows: each Contracting Party shall appoint one member and the two members shall agree on a chairman, who shall be a national of a third State and shall be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months, and the chairman within five months, from the date on which a Contracting Party has informed the other Contracting Party that it wishes to submit the dispute to an arbitral tribunal.

(4) If the time-limits specified in paragraph 3 are not met, either Contracting Party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointments. If the President

is a national of either Contracting Party or if he is unable to act for any other reason, the Vice-President shall make the appointments. If the Vice-President is also a national of either Contracting Party or is also unable to act, the next most senior 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 disputes submitted to it in accordance with international law. The arbitral tribunal shall take its decisions by majority vote. Its decisions shall be binding.

Each Contracting Party shall bear the expenses of its own member and the costs of its representation in the proceedings before the arbitral tribunal; the expenses of the chairman and the remaining costs shall be borne in equal parts by the two Contracting Parties.

(6) The arbitral tribunal shall determine its own procedure.

Article 16. FINAL PROVISIONS

(1) This Treaty shall be ratified, and the instruments of ratification shall be exchanged at Bucharest.

(2) This Treaty shall enter into force 60 days after the date of exchange of the instruments of ratification. It shall remain in force for a period of 10 years and shall thereafter be extended indefinitely, unless denounced in writing through the diplomatic channel by either Contracting Party one year before its expiry. After the expiry of the period of 10 years, the Treaty may be denounced at any time on one year's notice.

(3) In respect of investments effected prior to the expiry of this Treaty and returns therefrom pertaining to the period of validity of this Treaty, the provisions of the Treaty shall continue to apply for a further period of 10 years from the date of expiry.

DONE at Vienna, on 30 September 1976, in two original copies in the German and Romanian languages, both texts being equally authentic.

For the Republic of Austria:

E. BIELKA

For the Socialist Republic of Romania:

I. AVRAM