# Agreement between the Belgo-Luxembourg Economic Union and the Eastern Republic of Uruguay on the reciprocal encouragement and protection of investments.

The Government of the Kingdom of Belgium, acting in the name and on behalf of the Government of the Grand Duchy of Luxembourg, under existing agreements, and the Government of the Eastern Republic of Uruguay,

Desiring to intensify economic cooperation through the creation of favourable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing the positive impact that may exercise such an agreement with a view to improving the business contacts and to enhance confidence in the field of investment;

Have agreed as follows:

## Article 1.

1. The term "investor" means:

a) Any natural person who, according to the laws of Belgium, Luxembourg, or Uruguay is considered as a citizen of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Oriental Republic of Uruguay respectively;

b) Any legal person constituted under the laws of Belgium, Luxemburg, or Uruguay and having its registered office in the territory of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Oriental Republic of Uruguay respectively.

2. The term "investments" means every kind of assets and any provision in cash or in kind or in services or reinvested invested, directly or indirectly in any sector of the economy.

The following shall be considered in particular, though not exclusively, as investments within the meaning of this Agreement:

a) Ownership of movable and immovable property as well as any other rights in rem such as mortgages, liens, pledges, usufruct and similar rights;

b) Stocks, shares and any other forms of participation, even indirect minority, or to companies established in the territory of one of the contracting parties;

c) The obligations, credits and rights to any benefit that has economic value;

d) Copyrights, industrial property rights, such as patents, licences, trademarks, industrial designs or models, technical processes, trade names, know-how and goodwill;

e) The concessions under public law or under contract, including those relating to prospecting, culture, extract or exploit natural resources.

Any alteration of the form in which assets and capital invested or reinvested shall not affect their classification as investment within the meaning of this Agreement.

3. The term "returns" means the amounts yielded by an investment and in particular, though not exclusively, interests, profits, capital increases, dividends, royalties or fees.

## Article 2.

1. Each Contracting Party shall encourage investments of investors of the other Contracting Party in its territory and admit

such investments in accordance with its legislation.

2. In particular, each Contracting Party shall permit the conclusion and the carrying out of licensing agreements and contracts for commercial, administrative or technical assistance, in so far as these activities were related to investments.

3. This Agreement shall apply to investments made before its entry into force in the territory of each of the Contracting Parties with investors of the other contracting party. It shall not apply to disputes arising before its entry into force.

## Article 3.

1. All existing and future investments made by investors of one of the Contracting Parties shall enjoy, in the territory of the other Contracting Party, fair and equitable treatment.

2. Subject to the measures necessary for the maintenance of law and order, such investments shall enjoy constant security and protection, excluding any unjustified or discriminatory measures which might in any way interfere with their management, maintenance, use, enjoyment or disposal.

3. The treatment and protection referred to in paragraphs 1 and 2 shall be at least equal to those enjoyed by investors of a third country and shall in no case be less favourable than those accorded by international law.

4. However, this treatment and such protection shall not extend to the privileges which either Contracting Party accords to investors of a third State by virtue of:

a) Its participation in or association of a free trade area, customs union, common market or any other form of international economic organizations;

b) An agreement for the avoidance of double taxation or any other arrangement relating to taxation.

## Article 4.

1. Each Contracting Party undertakes not to take, directly or indirectly, any measure of expropriation or nationalisation or any other measure having a similar effect in respect of investments belonging in its territory to investors of the other Contracting Party.

2. If requirements of public utility or national interest justify a derogation from paragraph 1, the following conditions must be met :

a) The measures shall be taken under due process;

b) The measures are not discriminatory;

c) They are accompanied by provisions for the payment of adequate and effective compensation.

3. The amount of compensation will correspond to the real value of the investments concerned on the day before the measures were taken or made public.

Compensation shall be paid in the currency of the State to which the investor belongs or in any other freely convertible currency. They shall bear interest at the market rate of the currency used from the date of their fixing until the date of their payment; they shall be paid without delay and shall be freely transferable, irrespective of the place of residence or of the seat of the beneficiary.

4. Investors of one of the Contracting Parties whose investments have suffered damage as a result of war or any other armed conflict, revolution, state of national emergency or revolt occurring in the territory of the other Contracting Party, shall enjoy, on the part of the latter, treatment at least equal to that accorded to investors of the most-favoured-nation in respect of restitution, indemnification, compensation or other relief.

5. In matters covered by this Article, each Contracting Party shall accord to investors of the other Party treatment at least equal to that which it accords in its territory to investors of the most favoured nation. Such treatment shall in no case be less favourable than that recognised by international law.

## Article 5.

Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer of their liquid assets and in particular:

a) Investment income, including interests profits, dividends, royalties, capital;

b) The amounts required for the repayment of loans contracted regularly;

c) Claims of the recovery of the proceeds of the total or partial liquidation of investments, including capital gains or increases in the capital invested;

d) Compensation paid pursuant to article 4;

e) Royalties and other payments deriving from the licence fees and commercial or administrative assistance.

2. The nationals of either Contracting Party who are authorised to work in connection with an investment approved in the territory of the other Contracting Party shall also be authorised to transfer their country of origin in a proportion appropriate remuneration.

3. Each Contracting Party shall issue the required authorisations to ensure the execution of transfers without undue delay and without any fees or other charges that the usual costs. the guarantees provided for by this article shall be at least equal to those accorded to investors in like circumstances of the most favoured nation.

## Article 6.

1. The transfers referred to in articles 4 and 5 of this Agreement shall be made at the rate of exchange applicable on the date of the latter and in accordance with the foreign exchange regulations in force in the State in whose territory the investment has been made.

2. These rates shall in no case be less favourable than those accorded to investors of the most favoured nation, including by virtue of specific commitments, provided for in any of the concluded agreements or arrangements with regard to the protection of investments.

3. In all cases, the rates applied will be fair and equitable.

## Article 7.

1. If one of the Contracting Parties or a public body thereof pays compensation to its own investors under a guarantee given for an investment, the other Contracting Party shall recognise that the rights of the compensated investors have been transferred to the Contracting Party or public body concerned, in its capacity as insurer.

2. In the same way as the investors, and within the limits of the rights thus transferred, the insurer may, by subrogation, exercise the rights of the said investors and assert claims relating thereto.

The rights of subrogation shall also apply to the transfer of rights and to arbitration referred to in articles 5 and 11.

These rights may be exercised by the insurer within the limits of the proportion of the risk covered. by the collateral agreement, and by the investor benefiting from the guarantee, within the limits of the portion of the risk not covered by the contract.

3. With regard to the rights transferred, the other Contracting Party may claim in respect of of the insurer, subrogated in the rights of the indemnified investors, the obligations which are legally or contractually incumbent upon them.

## Article 8.

Where a matter relating to investment is governed by this Agreement and simultaneously by the national legislation of either Contracting Party or international conventions in force at the date of this Agreement and subsequently by the contracting parties, investors of the other contracting party may avail itself of the provisions that are most favourable.

## Article 9.

1. Investments covered by a special agreement between investors of one Contracting Party and the other party shall be governed by the provisions of this Agreement and in accordance with the provisions of this Agreement.

2. Each Contracting Party shall at all times compliance with the commitments it has made to investors of the other contracting party.

## Article 10.

1. Any dispute which arise between the contracting parties concerning the interpretation or application of this agreement should, if possible, be settled through diplomatic channels.

2. In the absence of rules through diplomatic channels, the dispute is submitted to a joint commission composed of representatives of both sides, which shall meet at the request of either party diligent and without undue delay.

3. If the Joint Commission cannot settle the dispute shall be submitted, at the request of either of the contracting parties to an arbitral tribunal constituted for each individual case in the following way.

Each Contracting Party shall appoint an arbitrator within a period of three months from the date on which either Contracting Party has informed the other of its intention to submit the dispute to arbitration. within two months after their appointment, the two arbitrators shall appoint by mutual agreement a national of a third State who shall be the Chair of the arbitral tribunal.

If the time limits have not been made, either Contracting Party may invite the President of the International Court of Justice to make the appointment of the arbitrator or arbitrators not appointed.

If the President of the International Court of Justice is a national of either Contracting Party or of a State with which either contracting party does not maintain diplomatic relations or if he is otherwise prevented from exercising this function, the Vice-President of the International Court of Justice shall be invited to make the appointment.

4. The Arbitral Tribunal thus constituted shall determine its own rules of procedure. its decisions shall be taken by a majority of the votes; they shall be final and binding on the contracting parties.

5. Each Contracting Party shall bear the costs of its appointed arbitrator. the costs resulting from the appointment of the third arbitrator and costs of the arbitral tribunal shall be borne in equal parts by the contracting parties.

## Article 11.

1. Any investment dispute between an investor of one Contracting Party and the other Contracting Party, shall be the subject of a written notification, accompanied by an aide-memoire sufficiently detailed, by the most expeditious party.

To the extent possible, the dispute shall be settled by amicable consultations between the parties to the dispute.

2. In the absence of amicable settlement by direct arrangement between the parties to the dispute within six months of its notification, the dispute may be submitted at the request of one of the Parties, to the competent court or administrative tribunal of the Contracting Party in whose territory the investment is situated.

3. If on the expiry of a period of 18 months from the notification of the document instituting the proceedings before the Court, it did not take a final decision on the dispute, or if the award rendered in such dispute does not comply with the provisions of this Agreement and the generally accepted rules of international law, the dispute may be submitted to international arbitration.

To this end, each Contracting Party gives under this article, and advance its irrevocable consent to the submission of a dispute to arbitration.

4. Since the introduction of one of the arbitration procedures, each Party to the dispute shall take all necessary measures with a view to its removal of any judicial proceedings.

5. In the event of recourse to international arbitration, the dispute may be submitted to one of the arbitral tribunals referred to below, at the choice of the investor:

- to an ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on United Nations Commission on International Trade Law (UNCITRAL);

- The International Centre for the 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. as long as this requirement is not fulfilled, each Contracting Party consents that the dispute be submitted to arbitration under the ICSID Additional Facility Rules.

6. Neither of the Contracting Party, Party to the dispute shall not raise any objection, at the stage of proceedings or enforcement of an arbitration award, on account of the fact that the investor, opposing party to the dispute, be collected

compensation covering the whole or part of its losses by virtue of an insurance policy or to the guarantee provided for in article 7 of this Agreement.

7. The arbitration panel shall decide on the basis of the Law of the Contracting Party Party to the dispute, including the rules relating to conflicts of law, the provisions of this Agreement, the terms of the specific agreement which may have been entered into regarding the investment as well as the Principles of International Law.

8. The arbitral awards shall be final and binding on the parties to the dispute. each Contracting Party undertakes to execute the decisions in accordance with its legislation.

9. Neither Contracting Party shall not bring a claim regarding a dispute to one of its investors except if at the end of the arbitration procedure provided for in this article, the other contracting party fails or does not comply with the award rendered in such dispute.

## Article 12.

In all matters relating to the treatment of investments, investors of each Contracting Party shall enjoy most-favoured-nation treatment in the territory of the other Party.

## Article 13.

1. This Agreement shall enter into force one month after the date on which the Contracting Parties have exchanged their instruments of ratification.

It shall remain in force for a period of ten years.

It will then be renewed tacitly renewed for further periods of ten years. Each Contracting Party shall at all times have the right to terminate the agreement in writing with six months notice before the expiry of the current period of validity.

2. Investments made prior to the date of expiry of this Agreement shall remain subject to it for a period of ten years from that date.

Done at Brussels on 4 November 1991 in two originals, each in Dutch, French and Spanish languages, all texts being equally authentic.

For the Belgo-Luxembourg Economic Union :

Mark EYSKENS,

Minister for Foreign Affairs

For the Government of the Eastern Republic of Uruguay :

Héctor GROS ESPIELL,

Minister for Foreign Affairs

**Protocol to the Agreement between the Belgo-Luxembourg Economic Union and the Eastern Republic of Uruguay on the reciprocal encouragement and protection of investments.**

On the occasion of the signature of the Agreement between the Eastern Republic of Uruguay and the Belgian-Luxembourg Economic Union on the reciprocal promotion and protection of investments, the Plenipotentiaries, duly authorised by the Contracting Parties, agree to the following provisions which form part of the Agreement:

## Ad. Article 1 - Paragraph 1 (a)

The Agreement does not apply to investments made by natural persons who are nationals of the Eastern Republic of Uruguay or of Belgium and the Grand Duchy of Luxembourg, unless at the date of the investment these persons are domiciled outside the territory of the Contracting Party where the investment has been made.

## Ad Article 1 - Paragraph 2

Indirect investments shall be understood mainly as investments made by investors in one of the Contracting Parties in the territory of another Contracting Party through a company from a third state.

In order to benefit from the provisions of this Agreement such investors may be called upon to establish the proof of your investments.