AGREEMENT BETWEEN THE REPUBLIC OF AUSTRIA AND THE REPUBLIC OF CROATIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

THE REPUBLIC OF AUSTRIA and THE REPUBLIC OF CROATIA hereinafter referred to as "Contracting Parties",

DESIRING to create favourable conditions for greater economic co-operation between the Contracting Parties;

RECOGNIZING that the promotion and protection of investments may strengthen the readiness for such investments and hereby make an important contribution to the development of economic relations;

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purpose of this Agreement

(1) The term "investment" comprises all assets linked to business activities and in particular, though not exclusively:

(a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, pledges, usufructs and similar rights;

(b) Shares and other types of participations in legal entities;

(c) Claims to money that has been given in order to create an economic value or claims to any performance having an economic value;

(d) Intellectual and industrial property rights, as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organization, inasfar as both Contracting Parties are parties to them, including, but not limited to, copyrights, trademarks, patents, industrial designs and technical processes, rights in plants varieties, know-how, trade secrets, trade names and goodwill;

(e) Business concessions under public law to search for or exploit natural resources.

(2) The term "investor" means in respect of either Contracting Party:

(a) Nationals of a Contracting Party who make an investment in the other Contracting Party's territory;

(b) Legal entities including a company, corporation, business association, partnership and organization which are constituted in accordance with one Contracting Party's legislation, having their seat and performing real business activities on the territory of the same Contracting Party and making an investment in the other Contracting Party's territory;

(c) Any legal entity, or partnership, constituted in accordance with the legislation of a Contracting Party or of a third Party in which the investor referred to in a or b exercises a dominant influence.

(3) The term "returns" means the amounts yielded by an investment, and in particular, though not exclusively, profits, interests, capital gains, dividends, royalties, licence and other fees.

(4) The term "expropriation" also comprises a nationalization or any other measure having equivalent effect.

(5) The term "territory" means the territory of the Contracting Parties respectively as well as those maritime areas adjacent to the outer limit of the territorial sea including the seabed and subsoil of either of the Contracting Parties over which the Contracting Party concerned exercises, in accordance with international law, its sovereign rights and jurisdiction.

(6) The term "without undue delay" shall mean such period as is normally required for the completion of necessary

formalities for the transfer of payments. The said period shall commence on the day on which the request for transfer has been submitted and may on no account exceed one month.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall in its territory promote, as far as possible, investments of investors of the other Contracting Party, admit such investments in accordance with its legislation and in any case accord such investments fair and equitable treatment.

(2) Investments admitted according to Article 1 paragraph 1 and their returns shall enjoy the full protection of the present Agreement. The same applies without prejudice to the regulations of paragraph 1 also for their returns in case of reinvestment of such returns. The legal extension, alteration or transformation of an investment is considered to be a new investment.paragraph 1 and their returns shall enjoy the full protection of the present Agreement. The same applies without prejudice to the regulations of paragraph 1 also for their returns in case of reinvestment of such returns. The legal extension, alteration or transformation of an investment is considered to be a new investment.

Article 3. Treatment of Investments

(1) Each Contracting Party shall accord to investors of the other Contracting Party and their investments treatment no less favourable than that accorded to its own investors and their investments or to investors of any third State and their investments.

(2) The provisions of paragraph 1 of this Article shall not be construed as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the present or future benefit of any treatment, preference or privilege resulting fromparagraph 1 of this Article shall not be construed as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the present or future benefit of any treatment, preference or privilege resulting from

(a) Any customs union, common market, free trade area or membership in an economic community;

(b) Any international agreement, international arrangement or domestic legislation regarding taxation;

(c) Any regulation to facilitate the frontier traffic.

Article 4. Compensation

(1) Investments of investors of either Contracting Party shall not be expropriated in the territory of the other Contracting Party except for a public purpose by due process of law and against compensation.

(2) Such compensation shall be equivalent to the fair market-value of the investment, as determined in accordance with recognized principles of valuation taking into account such as, inter alia the capital invested, replacement value, appreciation, current returns, goodwill and other relevant factors, immediately prior to or at the time when the decision for expropriation was announced or became publicly known, whichever is the earlier. In the event that the payment of compensation is delayed, such compensation shall be paid in an amount which would put the investor in a position not less favourable than the position in which he would have been had the compensation been paid immediately on the date of expropriation. To achieve this goal the compensation shall include interest at the prevailing commercial rate, however, in no event less than the current LIBOR-rate or equivalent from the date of expropriation until the date of payment. The amount of compensation finally determined shall be promptly paid to the investor in freely convertible currencies and allowed to be freely transferred without delay. Provisions for the determination and payment of such compensation shall be made in an appropriate manner not later than at the moment of the expropriation.

(3) Where a Contracting Party expropriates the assets of a company which is considered as a company of this Contracting Party pursuant to paragraph 2 of Article 1 of the present Agreement and in which an investor of the other Contracting Party owns shares, it shall apply the provisions of paragraph 1 of this Article so as to ensure due compensation to this investor.paragraph 2 of Article 1 of the present Agreement and in which an investor of the other Contracting Party owns shares, it shall apply the provisions of paragraph 1 of this Article so as to ensure due compensation to this investor.

(4) The investor shall be entitled to have the legality of the expropriation reviewed by the competent authorities of the Contracting Party having induced the expropriation.

(5) The investor shall be entitled to have the amount and the provisions for the payment of the compensation reviewed either by the competent authorities of the Contracting Party having induced the expropriation or by an international arbitral

tribunal according to Article 9 of the present Agreement.Article 9 of the present Agreement.

Article 5. Compensation for Damage or Loss

(1) When investments made by investors of either Contracting Party suffer damage or loss owing to war or other armed conflict, a state of national emergency, revolt, civil disturbances, insurrection, riot or other similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that the latter Contracting Party accords to its own investors or investors of any third state, whichever is the most favourable.

(2) Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting Party resulting from:paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting Party resulting from:

(a) Requisitioning of their property or part thereof by its forces or authorities;

(b) Blocking of vital supplies of the latter Contracting Party; or

(c) Destruction of their property or part thereof by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded prompt restitution and, where applicable, prompt, adequate and effective compensation for the damage or loss sustained during the period of requisitioning or blocking or as a result of the destruction of their property. Resulting payments shall be made in a freely convertible currency and be freely transferable without undue delay.

Article 6. Transfers

(1) Each Contracting Party shall guarantee without undue delay to investors of the other Contracting Party free transfer in freely convertible currency of payments in connection with an investment, in particular but not exclusively, of

(a) The capital and additional amounts for the maintenance or extension of the investment;

(b) Amounts assigned to cover expenses relating to the management of the investment;

(c) The returns;

(d) The repayment of loans;

(e) The proceeds from total or partial liquidation or sale of the investment;

(f) A compensation according to Article 4 paragraph 1 or Article 5 of the present Agreement;paragraph 1 or Article 5 of the present Agreement;

(g) Payments arising out of a settlement of a dispute.

(2) The payments referred to in this Article shall be effected at the exchange rates prevailing on the day of the transfer of payments in the territory of the Contracting Party from which the transfer is made.

(3) Transfers shall be made at the market rate of exchange existing on the date of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used will be the most recent rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is more favourable to the investor.

Article 7. Subrogation

Where one Contracting Party or an institution authorized by it, makes payments to its investor by virtue of a guarantee for an investment in the territory of the other Contracting Party, the other Contracting Party shall, without prejudice to the rights of the investor of the first Contracting Party under Article 9 of the present Agreement and to the rights of the first Contracting Party under Article 10 of the present Agreement, recognize the assignment to the first Contracting Party of all rights and claims of this investor under a law or pursuant to a legal transaction. The latter Contracting Party shall also recognize the subrogation of the former Contracting Party to any such rights or claims which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments to the Contracting Party

concerned by virtue of such assignment, Article 4, Article 5 and Article 6 of the present Agreement shall apply mutatis mutandis.

Article 8. Other Obligations

(1) If the provisions of law of either Contracting Party or international obligations existing at present or established thereafter between the Contracting Parties in addition to the present Agreement, contain a rule, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rule shall to the extent that it is more favourable prevail over the present Agreement.

(2) Each Contracting Party shall observe any contractual obligation it may have entered into towards an investor of the other Contracting Party with regard to investments approved by it in its territory.

Article 9. Settlement of Investment Disputes

(1) Any dispute arising out of an investment, between a Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled amicably between the parties to the dispute.

(2) If a dispute according to paragraph 1 of this Article cannot be settled within three months of a written notification of sufficiently detailed claims, the dispute shall upon the request of the Contracting Party or of the investor of the other Contracting Party be subject to the following procedures:paragraph 1 of this Article cannot be settled within three months of a written notification of sufficiently detailed claims, the dispute shall upon the request of the Contracting Party or of the investor of the other Contracting Party be subject to the following procedures:

(a) To conciliation or arbitration by the International Centre for Settlement of Investment Disputes, established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on 18 March 1965. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such dispute to this Centre. This consent implies the renunciation of the requirement that the internal administrative or juridical remedies should be exhausted; orConvention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on 18 March 1965. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such dispute to this Centre. This consent implies the renunciation of the requirement that the internal administrative or juridical remedies should be exhausted; or

(b) To arbitration by three arbitrators in accordance with the UNCITRAL arbitration rules, as amended by the last amendment accepted by both Contracting Parties at the time of the request for initiation of the arbitration procedure. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such dispute to the tribunal mentioned.UNCITRAL arbitration rules, as amended by the last amendment accepted by both Contracting Parties at the time of the request for initiation of the arbitration procedure. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such dispute to the tribunal mentioned.

(3) The award shall be final and binding; it shall be executed according to national law; each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its relevant laws and regulations.

(4) A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise the objection that the investor who is the other party to the dispute has received in virtue of a guarantee indemnity in respect of all or some of its losses.

Article 10. Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through amicable negotiations.

(2) If a dispute according to paragraph 1 of this Article cannot be settled within six months it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.paragraph 1 of this Article cannot be settled within six months it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member and these

two members shall agree upon a national of a third State as their chairman. Such members shall be appointed within two months from the date one Contracting Party has informed the other Contracting Party, that it intends to submit the dispute to an arbitral tribunal, the chairman of which shall be appointed within two further months.

(4) If the periods specified in paragraph 3 of this Article are not observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President or in case of his inability the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.paragraph 3 of this Article are not observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President or in case of his inability the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.

(5) The tribunal shall establish its own rules of procedure.

(6) The arbitral tribunal shall reach its decision in virtue of the present Agreement and pursuant to the generally recognized rules of international law. It shall reach its decision by a majority of votes; the decision shall be final and binding.

(7) Each Contracting Party shall bear the costs of its own member and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal may, however, in its award determine another distribution of costs.

Article 11. Application of the Agreement

(1) The present Agreement shall apply to investments, made in the territory of one of the Contracting Parties in accordance with its legislation, by investors of the other Contracting Party prior to as well as after the entry into force of the present Agreement, but shall not apply to the investments which are subject of a dispute settlement procedure under the Agreement between the Republic of Austria and the Socialist Federal Republic of Yugoslavia on Mutual Promotion and Protection of Investments of 25 October 1989 which shall continue to apply to them until a settlement of the dispute is reached.Agreement between the Republic of Austria and the Socialist Federal Republic of Yugoslavia on Mutual Promotion and Protection of Investments of 25 October 1989 which shall continue to apply to them until a settlement of the dispute is reached.

(2) The Contracting Parties are not bound by the present Agreement insofar as it is incompatible with the legal acquis of the European Union (EU) in force at any given time.

(3) In case of uncertainties concerning the effects of paragraph 2 of this Article the Contracting Parties will enter a dialogue.paragraph 2 of this Article the Contracting Parties will enter a dialogue.

Article 12. Entry Into Force and Duration

(1) The present Agreement shall enter into force on the first day of the third month after the day of the receipt of the last diplomatic note confirming that the Contracting Parties have complied with the conditions provided for by national legislation for the entry into force of the present Agreement.

(2) The present Agreement shall remain in force for a period of 10 years; it shall tacitely be extended thereafter for an indefinite period and may be denounced in writing through diplomatic channels by either Contracting Party giving twelve months' notice.

(3) In respect of investments made prior to the date of termination of the present Agreement the provisions of Article 1 to 11 of the present Agreement shall continue to be effective for a further period of 10 years from the date of termination of the present Agreement.Article 1 to 11 of the present Agreement shall continue to be effective for a further period of 10 years from the date of termination of the present Agreement.

(4) On the date of entry into force of the present Agreement, the Agreement between the Republic of Austria and the Socialist Federal Republic of Yugoslavia on Mutual Promotion and Protection of Investments of 25 October 1989 shall be terminated, except for investments which are subject of a dispute settlement procedure as stipulated in Article 11, paragraph 1 of the present Agreement.Agreement between the Republic of Austria and the Socialist Federal Republic of Yugoslavia on Mutual Promotion and Protection of Investments of 25 October 1989 shall be terminated, except for investments which are subject of a dispute settlement procedure as stipulated in Article 11, paragraph 1 of the present

Agreement.

For the Republic of Austria:

Dr. Johann Farnleitner m. p.

For the Republic of Croatia:

D. Stern m. p.