AGREEMENT BETWEEN BOSNIA AND HERZEGOVINA AND THE GOVERNMENT OF THE ITALIAN REPUBLIC ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Italian Republic and Bosnia and Herzegovina (hereafter referred to as the Contracting Parties),

Desiring to establish favourable conditions for improved economic cooperation between the two Countries, and especially in relation to capital Investment by investors of one Contracting Party in the territory of the other Contracting Party;

And

Acknowledging that offering encouragement and mutual protection to such investment, based on international Agreements, will contribute to stimulate business ventures, which foster the prosperity of both Contracting Parties,

Hereby agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall include any kind of property invested before or after the entry into force of this Agreement, by a natural or legal person of a Contracting Party, in conformity with the laws and regulations of that Party, Irrespective of the legal form chosen, as well as of the legal framework.

Investments made before the entry into force of this Agreement shall be protected in the status in which they are at the date of its entry into force.

This Agreement shall not apply to any dispute or any claim concerning an investment made before the date of entry into force of this Agreement. Without limiting the generality of the foregoing, the term "investment" comprises in particular, but not exclusively:

a) Movable and Immovable property and any ownership right In rem, including real guarantee rights on property of a Third Party, to the extent that it can be invested;

b) Shares, debentures, equity holdings or any other Instruments of credit, and public securities in general;

c) Credits for sums of money or any service right having an economic value connected with an Investment, as well as reinvested Incomes and capital gains;

d) Copyright, commercial trade marks, patents, Industrial designs and other Intellectual and industrial property rights, know-how, trade secrets, trade names and goodwill;

e) Any property rights accruing by law or by contract and any licence and franchise granted in accordance with the domestic legislation of Contracting Parties, including the right to prospect for, extract and exploit natural resources.

f) Any increases in value of the original investment.

Any modification in the form of the Investment does not imply a change in the nature thereof.

2. The term "Investor" shall be construed to mean any natural or legal person established and operating under Contracting Party regulations, investing in the territory of the other Contracting Party as well as legal persons not constituted under the laws of the one of Contracting Parties but controlled, directly or indirectly, by its nationals.

Indirect control of an Investment means control in fact, determined after an examination of the actual circumstances in each situation. In any such examination, all relevant factors should be considered, including the investor's

a) Financial interest, including equity interest, in the investment;

b) Ability to exercise substantial influence over the management operation of the investment; and

c) Ability to exercise substantial influence over the selection of members of the board of directors or any other managing body.

Where there is doubt as to whether an investor controls, directly or indirectly, an Investment, an investor claiming such control has the burder of proof that such control exists.

3. The term "natural person" shall be construed to mean any natural person holding the nationality of the Contracting Party in accordance with its laws.

4. The term "legal person" shall be construed to mean any entity having its head office in the territory of one of the Contracting Parties established and recognised by it and operating in accordance with its regulations, such as public institutions, corporations, partnerships, foundations and associations, regardless of whether their liability is limited or otherwise.

5. The term "income" shall be construed to mean the money accruing to an Investment, including in particular profits or Interests, interest incomes, capital gains, dividends, royalties or payments for assistance, technical services and others as well as any considerations in kind such as, but not exclusively, row materials, produces or products, livestock.

6. The term "territory" with respect to the Italian Republic means, in addition to the zones contained within the land boundaries, "maritime zones". The latter also comprises marine and submarine zones over which the Italian Republic exercises sovereignty and sovereign or jurisdictional rights, under International law. The term "territory" with respect to Bosnia and Herzegovina means all land territory of Bosnia and Herzegovina, its territorial sea, its bed and subsoil and air space above.a) The term "territory" with respect to the Italian Republic means, in addition to the zones contained within the land boundaries, "maritime zones". The latter also comprises marine and submarine zones over which the Italian Republic exercises sovereignty and sovereign or jurisdictional rights, under International law.

b) The term "territory" with respect to Bosnia and Herzegovina means all land territory of Bosnia and Herzegovina, its territorial sea, its bed and subsoil and air space above.

7. "Investment agreement" means an agreement between a Contracting Party and an Investor of the other Contracting Party concerning an Investment.

8. "Nondiscriminatory treatment" means treatment that is equal to the national treatment or most-favoured-nation treatment.

9. "Right of access" means the right to be admitted to carry out investments in the territory of the other Contracting Party in conformity with its legislation.

Article 2. Promotion and Protection of Investments

1. Both Contracting Parties shall encourage investors of the other Contracting Party to invest in their territory.

2. Investors of one of the Contracting Parties shall have the right of access to the investment activities, in the territory of the other Contracting Party, not less favourable than the one granted as Article 3.1.

3. Both Contracting Parties shall at all times ensure just and fair treatment of the investments of Investors of the other Contracting Party. Both Contracting Parties shall ensure that the management, maintenance, use, transformation, enjoyment or assignment of the investments effected in their territory by the investors of the other Contracting Party, as well as companies and enterprises in which these investments have been effected, shall in no way be subject to unjustified or discriminatory measures.

4. Each Contracting Party shall create and maintain, in its territory a legal framework apt to guarantee to investors the continuity of legal treatment, including the compliance, in good faith, of all undertakings assumed with regard to each specific investor.

5. The Contracting Parties will stipulate with investors of the other Contracting Party, who carry out investment of national interest in their territory, an investment agreement, which will govern the specific legal relationships related to said Investment.

6. Neither of the Contracting Parties will set any conditions for the creation, the expansion or the continuation of

investments, which may imply the taking over or the Imposing of any obligations to export production, and which specifies that goods must be procured locally, or similar conditions.

7. Each Contracting Party will provide effective means of asserting claims and enforcing rights with respect to investments and authorisations relating thereto and investment agreements.

8. The citizens of either Contracting Parties authorised to work in the territory of the other Contracting Party in connection with an investment as per this Agreement, shall have the right to adequate legal working conditions for the carrying out of their professional activities.

9. Nationals of either Contracting Parties shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, administering, or advising on the operation of an investment to which they, or a company of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other reasons.

10. Companies which are legally constituted under the applicable laws or regulations of one Party and which are owned or controlled by the other Party shall be permitted to engage top managerial personnel of their choice, regardless of nationality.

Article 3. National Treatment and the Most Favoured Nation Clause

1. Both Contracting Parties, within the bounds of their own territory, shall offer Investments effected by, and the income accruing to, investors of the other Contracting Party no less favourable treatment than that accorded to investments effected by, and income accruing to, its own nationals or investors of Third States.

2. The provisions of the first paragraph of this Article shall also apply to all activities connected with an investment.

3. In case, from the legislation of one of the Contracting Parties, or from the international obligations in force or that may come into force for the future for one of the Contracting Parties, should come out a legal framework according to which the Investors of the other Contracting Party would be granted a more favourable treatment than the one foreseen in this Agreement, the treatment granted to the investors of such other parties will apply to investors of the relevant Contracting Party also for the outstanding relationships.

4. The provisions under point 1 and 2 of this Article do not refer to the advantages and privileges which one Contracting Party may grant to Investors of Third States by virtue of their membership of a Customs or Economic Union, of a free Trade Area, of a regional or subregional Agreement, of an International multilateral economic Agreement or under Agreements signed in order to prevent double taxation or to facilitate cross border trade.

Article 4. Compensation for Damages or Losses

Should investors of one of the Contracting Parties incur losses or damages on their investments in the territory of the other Contracting Party due to war, other forms of armed conflict, a state of emergency, civil strife or other similar events, the Contracting Party in which the Investment has been effected shall offer adequate compensation in respect of such losses or damages. Irrespective whether such losses or damages have been caused by governmental forces or other subjects. Compensation payments shall be freely transferable without undue delay.

The investors concerned shall receive the same treatment as the nationals of the other Contracting Party and, at ail events, no less favourable then Investors of Third States.

Article 5. Nationalization or Expropriation

1. The Investments to which this Agreement relates shall not be subject to any discriminatory measure which might limit the right of ownership, possession, control or enjoyment of the Investments, permanently or temporarily, unless where specifically provided by current, national or local, legislation and/or regulations and orders handed down by Courts or Tribunals having jurisdiction.

2. It will be considered as nationalisation or expropriation of an investor of one of the Contracting Parties, a measure or nationalisation or expropriation of goods or rights belonging to a company controlled by the investor, as well as substracting from the company financial resources or other assets, creating obstacles to the activities or otherwise substantially prejudice the value of the same.

3. Neither Contracting Party shall take any measures depriving directly or indirectly nationals of the other Contracting Party

of their investments or any measures having effect equivalent to nationalisation or expropriation except for public purposes or national interest and in exchange for timely, full and effective compensation in reasonable terms in accordance –with paragraph 6 of this Article, and on condition that these measures are taken on a non-discriminatory basis and in conformity with all legal provisions and procedures.

4. The just compensation shall be established on the basis of real international market values immediately prior to the moment in which the decision to nationalise or expropriate became of public knowledge.

Whenever that value cannot be readily ascertained, the compensation shall be determined in accordance with general internationally recognized criteria of evaluation, such as capital invested, depreciation, capital already repatriated, replacement value, and other relevant factors. The exchange rate applicable to any such compensation shall be that prevailing on the date immediately prior to the moment in which the nationalization or expropriation became of public knowledge. 5. Without restricting the scope of the above paragraph, in case that the object of nationalisation, expropriation, or similar, is a company with foreign capital, the evaluation of the share of the investor will be, in the currency of the investment not lower than the starting value, increased by capital increases and revaluation of capital, Indistributed profits and reserve funds, and diminished by the value of capital reductions and losses.

6. Compensation will be considered as actual if it will have been paid in the same currency in which the investment has been made by the foreign investor, in as much as such currency is - or remains - convertible, or, otherwise, in any other currency accepted by the investor.

7. Compensation will be considered as timely if it takes place without undue delay and, in any case, within three months.

8. Compensation shall include interests calculated on a six months average LIBOR basis from the date of nationalisation or expropriation to the date of payment.

9. A national or company of either Party that asserts that all or part of its investment has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of the other Party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and any compensation thereof, conforms to the principles of international law, and to decide all other matters relating thereto.

10. In the absence of an agreement between the Investor and the responsible authority, the amount of compensation will be established according to the procedures for disputes resolution as per Article 9 of this Agreement. Compensation will be freely transferable.

11. The provisions of paragraph 2. of this Article shall also apply to profits accruing to an investment and, in the event of winding-up of legal person, the proceeds of liquidation.

12. If, after the expropriation, the investment has not been wholly or partially utilised for the purpose of expropriation, the former owner or his assignees shall be entitled to repurchase the investment in conformity with the legislation in force of the respective Party at market price.

Article 6. Repatriation of Capital, Profits and Income

1. Each of the Contracting Parties shall guarantee that the investors of the other may transfer the following abroad, without undue delay, in any convertible currency:

a) Capital and additional capital, including reinvested income, used to maintain and increase investment;

b) The net income, dividends, royalties, payments for assistance and technical services, interests and other profits;

c) Income deriving from the total or partial sale or the total or partial liquidation of an investment;

d) Funds to repay loans connected to an investment and the payment of the related interests;

e) Remuneration and allowances paid to nationals of the other Contracting Party for work and services performed in relation to an investment effected in the territory of the other Contracting Party, in the amount and manner prescribed by the national legislation and regulations in force.

Transfers shall be done in accordance with legislation pertaining thereto. Such legislation shall not, regarding either the requirements or the application thereof, impair or derogate from the free, unrestricted and undelayed transfer guaranteed in this Agreement.

2. Without restricting the scope of Article 3 of this Agreement, the Contracting Parties undertake to apply to the transfers

mentioned in paragraph 1 of this Article the same favourable treatment that is accorded to investments effected by investors of Third States, in case it is more favourable.

Article 7. Subrogation

In the event that one Contracting Party or an Institution thereof has provided a guarantee in respect of non-commercial risks for the investment effected by one of its investors in the territory of the other Contracting Party, and has effected payment to said investor on the basis of that guarantee, the other Contracting Party shall recognise the assignment of the rights of the investor to the first-named Contracting Party. In relation to the transfer of payments to the Contracting Party or its Institution by virtue of this assignment, the provisions of Article 4, 5 and 6 of this Agreement shall apply.

Article 8. Transfer Procedures

1. The transfers referred to in Article 4, 5, 6 and 7 shall be effected without undue delay and, at all events, within six months after all fiscal obligations have been met, and shall be made in a convertible currency. All the transfers shall be made at the prevailing exchange rate applicable on the date on which the investor applies for the related transfer, with the exception of the provisions under point 3 of Article 5 concerning the exchange rate applicable in case of nationalization or expropriation.

2. The fiscal obligations under the previous paragraph are deemed to be complied with when the investor has fulfilled the proceedings provided for by the law of the Contracting Party on the territory of which the investment has been carried out.

Article 9. Settlement of Disputes between Investors and Contracting Parties

1. Any dispute which may arise between one of the Contracting Parties and the investors of the other Contracting Party on investments, including disputes relating to the amount of compensation, shall be settled in negotiations, as far as possible.

2. In case the investor and one entity of one of the Parties have stipulated an investment agreement, the procedure foreseen in such investment agreement shall apply.

3. In the event that such dispute cannot be settled with negotiations within six months from the reception of the written application for settlement, the investor in question may submit at his choice the dispute for settlement to:

a) The Contracting Party's Court having territorial jurisdiction;

b) An Arbitration Tribunal, in compliance with the arbitration standards of the United Nations Commission on the International Trade Law (UNCITRAL), as laid down in the UN General Assembly Resolution 31/98 of December 15, 1976 as well as pursuant to the following provisions: The Arbitration Tribunal shall be composed of three arbitrators; if they are not nationals of either Contracting Party, they shall be nationals of States having diplomatic relations with both Contracting Parties. The appointment of arbitrators, when necessary pursuant to the UNCTTRAL Rules, will be made by the president of the Arbitration Institute of the Stockholm Chamber, in his capacity as Appoint Authority. The arbitration will take place in Stockholm, unless the two Parties in the arbitration have agreed otherwise.1) The Arbitration Tribunal shall be composed of three arbitrators; if they are not nationals of either Contracting Party, they shall be nationals of States having diplomatic relations with both Contracting Parties.

The appointment of arbitrators, when necessary pursuant to the UNCTTRAL Rules, will be made by the president of the Arbitration Institute of the Stockholm Chamber, in his capacity as Appoint Authority. The arbitration will take place in Stockholm, unless the two Parties in the arbitration have agreed otherwise.

2) When delivering its decision, the Arbitration Tribunal shall In any case apply also the provisions contained in this Agreement, as well as the principles of international law recognized by the two Contracting Parties.

The recognition and implementation of the arbitration decision in the territory of the Contracting Parties shall be governed by their respective national legislations, in compliance with the relevant international Conventions they are parties to.

c) The International Centre for Settlement of Investment Disputes, for the implementation of the arbitration procedures under the Washington Convention of 18 March, 1965, on the settlement of investment disputes between States and nationals of other States, If or as soon as both the Contracting Parties have acceded to it.

4. Both Contracting Parties shall refrain for negotiating through diplomatic channels any matter relating to an arbitration procedure or judicial procedures underway until these procedures have been concluded, and one of the Contracting Parties has failed to comply with the ruling of the Arbitration Tribunal or the Court of law within the period envisaged by the ruling, or else within the period which can be determined on the basis of the International or domestic law provisions which can be

applied to the case.

Article 10. Settlement of Disputes between the Contracting Parties

1. Any dispute which may arise between the Contracting Parties relating to the interpretation and application of this Agreement shall, as far as possible, be settled amicably through diplomatic channels.

2. In the event that the dispute cannot be settled within six months from the date on which one of the Contracting Parties notifies, in writing, the other Contracting Party, the dispute shall, at the request of one of the Contracting Parties, be laid before an ad hoc Arbitration Tribunal as provided in this Article.

3. The Arbitration Tribunal shall be constituted in the following manner: within two months from the moment on which the request for arbitration is received, each of the two Contracting Parties shall appoint a member of the Tribunal. These two members will choose a national from any third, country who will be at the consent of both Contracting Parties appointed a President of the Tribunal. The President shall be appointed within three months from the date on which the other two members are appointed.

4. If, within the period specified in paragraph 3, of this Article, the appointments have not been made, each of the two Contracting Parties can. In default of other arrangements, ask the President of the International Court of Justice to make the appointment. In the event that the President of the Court is a national of one of the Contracting Parties or it is, for any reason, impossible for him to make the appointment, the application shall be made to the Vice President of the Court. If the Vice-President of the Court is a national of one of the Contracting Parties, or is unable to make the appointment for any reason, the most senior member of the International Court of Justice, who is not a national of one of the Contracting Parties, shall be invited to make an appointment.

5. The Arbitration Tribunal shall rule with a majority vote, and its decisions shall be binding. Both Contracting Parties shall pay the costs of their own arbitration and of their representative at the hearings. The President's costs and any other cost shall be divided equally between the Contracting Parties.

The Arbitration Tribunal shall lay down its own procedures.

Article 11. Relations between Governments

The provisions of this Agreement shall be applied irrespective of whether or not the Contracting Parties have diplomatic or consular relations.

Article 12. Application of other Provisions

1. If an investment is governed both by this Agreement and by another International Agreement to which both Contracting Parties are signatories, or by general international law provisions, the most favourable provisions shall be applied to the Contracting Parties and to their investors.

2. Whenever the treatment accorded by one Contracting Party to the Investors of the other Contracting Party, according to its laws and regulations or other provisions or specific contracts or investment authorisations or agreements, is more favourable than that provided under this Agreement, the most favourable treatment shall apply.

3. Whenever, after the date when the investment has been made, a modification should take place in laws, regulations, acts or measures of economic policies governing directly or indirectly the investment, the same treatment will apply upon request of the investor that was applicable to it at the moment when the investment had been started.

Article 13. Entry Into Force

This Agreement shall come into force as from the date of reception of the last of the two notifications by which the two Contracting Parties notify each other that their respective ratification procedures have been completed.

Article 14. Duration and Expiry

1. This Agreement shall remain effective for a period of 10 years from the date of the notification under Article 13 and shall remain in force for a further period of 5 years thereafter, unless one of the two Contracting Parties withdraws in writing by not later than one year before its expiry date.

2. With respect to investments made or acquired prior to the date of termination of the agreement as provided under paragraph I of this Article, the provisions of the Articles 1 to 12 shall remain effective for a further period of five years after the aforementioned date.

In WITNESS THEREOF, the undersigned Representatives had signed the present Agreement.

Done in ancona on 19th May 2000 in two originals, each in Italian, in Bosnian/Croatian/Serbian and in English languages, all texts being equally authentic. In case of any divergence on interpretation the English text shall prevail.

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

FOR BOSNIA AND HERZEGOVINA