Agreement between the Kingdom of Spain and the Republic of Estonia for the Promotion and Reciprocal Protection of Investments

The Kingdom of Spain and the Republic of Estonia, hereinafter referred to as the "Contracting Parties",

Desiring to intensify economic cooperation in the mutual benefit of both countries;

Aiming to create favourable conditions for investments by investors of either Contracting Party in the territory of the other party; and

Recognizing that the promotion and protection of investments under this agreement will stimulate initiatives in this field,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. "Investor" shall mean:

(a) any natural person who is a national of a Contracting Party under the law of that Contracting Party and makes investments in the territory of the other Contracting Party;

(b) any juridical person, including companies, partnerships, joint ventures, corporations and other organizations, which is incorporated or, in any case, duly organized under the laws of that Contracting Party and which is effectively conducted from the territory of that Contracting Party.

2. Investment" shall mean all types of assets, such as property and rights of any kind, acquired under the laws of the host country of the investment, including in particular, but not limited to, the following:

Shares and other forms of participation in companies; Rights derived from all types of contributions made for the purpose of creating economic value, including any loans granted for this purpose, whether capitalized or not; Movable and immovable property, as well as other rights in rem, such as mortgages, liens or pledges; Any rights in the field of intellectual property, including patents and trademarks, as well as manufacturing licenses, know-how and goodwill; Rights to carry out economic and commercial activities granted by law or by virtue of a contract, and in particular the right to prospect, cultivate, extract or exploit natural resources.

No change in the manner in which the assets are invested or reinvested shall affect their investment character.

3. "Income" shall mean income derived from an investment and includes in particular, but not exclusively, profits, interest, capital gains, dividends, royalties and fees.

4. Territory" means the territory and territorial waters of each Contracting Party, as well as the exclusive economic zone and the continental shelf which extends beyond the limits of the territorial waters of each Contracting Party and over which each Contracting Party has or may have jurisdiction and sovereign rights under international law for the purpose of exploitation, exploration and conservation of natural resources.

Article 2. Promotion and Implementation

1. Each Contracting Party shall promote and create favorable conditions for investors of the other Contracting Party to make investments in its territory and shall accept such investments in accordance with its legislation.

2. This Agreement shall apply to investments made in the territory of a Contracting Party by investors of either Contracting Party before or after its entry into force.

Article 3. Protection

1. Each Contracting Party shall accord protection in its territory to investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not hinder, by unjustified or discriminatory measures, the management, development, maintenance, use, enjoyment, expansion, sale or, as the case may be, the liquidation of such investments. Each Contracting Party shall comply with any other obligations it has undertaken in relation to investments of investors of the other Contracting Party.

2. Each Contracting Party shall endeavor to grant the necessary authorizations in connection with such investments and shall permit, within the framework of its legislation, the granting of work permits and contracts relating to manufacturing licenses and technical, commercial, financial and administrative assistance.

3. Each Contracting Party shall also grant, whenever necessary, the required authorizations in connection with the activities of consultants or experts engaged by investors of the other Contracting Party.

Article 4. Treatment

1. Each Contracting Party shall ensure in its territory fair and equitable treatment of investments made by investors of the other Contracting Party.

2. Such treatment shall not be less favorable than that accorded by each Contracting Party to investments made in its territory by investors of any third State.

3. Such treatment shall not, however, extend to privileges granted by a Contracting Party to investors of a third country by virtue of its membership or association in a future or existing free trade area, customs union, common market or similar international agreement to which either Contracting Party is or becomes a Party.

4. The treatment accorded under this Article shall not include tax deductions and exemptions or other similar privileges granted by either Contracting Party to investors of third countries under an agreement for the avoidance of double taxation or any other agreement relating to taxation.

5. In addition to the provisions of paragraph 2 of this Article, each Contracting Party shall, in accordance with its own legislation, apply to investments of investors of the other Contracting Party treatment no less favorable than that accorded to its own investors.

Article 5. Nationalization and Expropriation

1. Nationalization, expropriation or any other measure with similar characteristics or effects (hereinafter referred to as "expropriation") taken by the authorities of a Contracting Party against investments made in its territory by investors of the other Contracting Party may be applied only in the public interest, in accordance with the law, in a non-discriminatory manner and accompanied by the payment of prompt, adequate and effective compensation to the investor or the investor's successor in title.

2. Such compensation shall correspond to the fair market value of the expropriated investment immediately prior to the date on which the expropriation or the imminence thereof became public knowledge, whichever occurs first (hereinafter referred to as the "valuation date"). The compensation shall be paid without delay, shall be effectively realizable and freely transferable.

3. Such market value shall be calculated in a freely convertible currency at the market rate of exchange prevailing for that currency on the valuation date.

The compensation shall include interest at a commercial rate fixed on a market basis for the currency of valuation from the date of expropriation until the date of payment.

4. Under the law of the Contracting Party carrying out the expropriation, the investor affected shall have the right to have his case promptly reviewed by the judicial or other competent authority of that Contracting Party to determine whether the expropriation and any compensation therefor are in accordance with the principles set forth in this Article.

5. Where a Contracting Party expropriates assets of an enterprise incorporated under the laws in force in any part of its own territory in which investors of the other Contracting Party have an interest, it shall ensure that the provisions of this Article are applied to secure the payment of prompt, adequate and effective compensation in respect of their investments to investors of the other Contracting Party who hold such interests.

Article 6. Compensation for Losses

Investors of a Contracting Party whose investments or income in the territory of the other Contracting Party suffer losses due to war, other armed conflict, state of national emergency, insurrection, riot or other similar circumstances, including losses resulting from requisition measures, shall be accorded, by way of restitution, indemnity, compensation or other arrangement, treatment no less favorable than that accorded by such Contracting Party to its own investors or to investors of any third State.

Any payment made pursuant to this Article shall be prompt, adequate, effective and freely transferable.

Article 7. Transfers

1. In respect of investments made in its territory, each Contracting Party shall grant to investors of the other Contracting Party the free transfer of payments related to their investments and income, including in particular, but not limited to, the following:

Investment income as defined in Article 1; Compensation as provided for in Articles 5 and 6; Proceeds from the sale or liquidation, in whole or in part, of an investment; Funds in repayment of loans related to an investment; Payments for the maintenance or development of the investment, such as funds for the purchase of raw or auxiliary materials, semi-finished or finished products, as well as for the replacement of equipment; Wages, salaries and other remuneration received by nationals of a Contracting Party for work or services performed in the territory of the other Contracting Party in connection with an investment.

2. The Contracting Party receiving the investment shall allow the investor of the other Contracting Party or the company in which he has invested, on a non-discriminatory basis, access to the foreign exchange market, so as to enable him to acquire the foreign exchange necessary to make the transfers provided for in this Article.

3. The transfers referred to in this Agreement shall be made in freely convertible currencies and in accordance with the tax regulations of the Contracting Party receiving the investment.

4. The Contracting Parties undertake to facilitate the procedures necessary to effect such transfers without undue delay, in accordance with the practices of international financial centers.

In particular, no more than three months should elapse from the date on which the investor has duly submitted the necessary requests for the transfer to the time when the transfer actually takes place. Accordingly, both Contracting Parties undertake to complete within the said period the necessary formalities for the acquisition of foreign exchange and for its actual transfer abroad.

5. The Contracting Parties agree to accord to the transfers referred to in this Article treatment no less favorable than that accorded to transfers arising from investments made by investors of any third State.

Article 8. More Favourable Conditions

1. If the legislation of either Contracting Party, or obligations arising under international law, whether now existing or hereafter arising between the Contracting Parties in addition to this Agreement, provides for general or special regulations under which investments made by investors of the other Contracting Party are to be accorded treatment more favorable than that provided for in this Agreement, such regulations shall prevail over this Agreement to the extent that they are more favorable.

2. Conditions more favorable than those provided for in this Agreement which have been agreed between a Contracting Party and investors of the other Contracting Party shall not be affected by this Agreement.

Article 9. Subrogation

In the event that a Contracting Party or its designated agency has granted a financial guarantee relating to non-commercial risks in respect of an investment made by its investors in the territory of the other Contracting Party, the latter shall accept the subrogation of the first Contracting Party or its designated agency in respect of the economic rights of the investor from the time the first Contracting Party or its designated agency made the first payment under the guarantee granted. This subrogation shall make it possible for the first Contracting Party or its designated agency to be the direct beneficiary of all compensation payments to which the initial investor may be entitled.

With respect to the rights of ownership, use, enjoyment or any other right in rem, subrogation shall only take place once the applicable legal requirements of the receiving Contracting Party have been complied with.

Article 10. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, to the extent possible, be settled through diplomatic channels.

2. If the dispute cannot be settled in this way within six months of the commencement of negotiations, it shall, at the request of either Contracting Party, be submitted to an arbitral tribunal.

3. The arbitral tribunal shall be constituted, on a case-by-case basis, as follows: Within two months of receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. These two members shall choose a national of a third State who, by mutual agreement between the two Contracting Parties, shall be appointed President of the Tribunal. The President shall be appointed within two months of the date of appointment of the other two members.

4. If the necessary appointments have not been made within the time limits fixed in paragraph 3 of this Article, 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 any of the Contracting Parties or is otherwise unable to perform such function, the Vice-President shall be requested to make the necessary appointments. If the Vice-President is a national of one of the Contracting Parties or is also unable to perform this function, the member of the International Court of Justice next in seniority who is not a national of any of the Contracting Parties shall be called upon to make the necessary appointments.

5. The arbitral tribunal shall render its decision on the basis of respect for the laws and rules contained in this Agreement or in other agreements in force between the Contracting Parties, as well as in accordance with the universally recognized principles of international law.

6. Unless otherwise decided by the Contracting Parties, the tribunal shall establish its own procedure.

7. The tribunal shall reach its decision by majority vote and such decision shall be final and binding on both Contracting Parties.

8. Each Contracting Party shall bear the expenses of the arbitrator appointed by it and those related to his representation in the arbitral proceedings. All other expenses, including those of the Chairman, shall be borne equally by the two Contracting Parties.

Article 11. Disputes between a Contracting Party and Investors of the other Contracting Party

1. Disputes arising between a Contracting Party and an investor of the other Contracting Party with respect to an investment within the meaning of this Agreement shall be notified in writing, including detailed information, by the investor to the Contracting Party receiving the investment. To the extent possible, the parties to the dispute shall attempt to settle such disputes by amicable agreement.

2. If such disputes cannot be settled in this way within six months from the date of the written notification referred to in paragraph 1, the dispute shall be submitted, at the option of the investor, to:

The competent tribunal of the Contracting Party in whose territory the investment was made.

The "ad hoc" arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law.

The International Centre for 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 in Washington on March 18, 1965, in the event that both Parties become signatories to that Convention.

The Arbitration Tribunal of the International Chamber of Commerce of Paris.

3. The arbitration shall be based on:

The provisions contained in this Agreement or in any other agreements in force between the Contracting Parties.

The universally recognized rules and principles of international law.

The national law of the Contracting Party in whose territory the investment has been made, including the rules relating to conflicts of laws.

4. Arbitral decisions shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to enforce the decisions in accordance with its national law.

Article 12. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the date on which the Contracting Parties have notified each other in writing of the completion of the respective constitutional formalities required for the entry into force of international agreements.

It shall remain in force for a period of ten years. Thereafter, it shall remain in force until the expiration of a period of six months from the date on which either Contracting Party has notified the other Party in writing of its denunciation.

2. With respect to investments made or acquired prior to the date of expiration of this Agreement and to which this Agreement otherwise applies, the provisions of all other Articles of this Agreement shall remain in force for a further period of ten years from such date of expiration.

Done in duplicate at Tallinn on 11 November 1997, in the English, Estonian and English languages, all texts being equally authentic.

For the Kingdom of Spain,

Ramón de Miguel,

Secretary of State for Foreign Policy and for the European Union

For the Republic of Estonia,

Toomas Hendrik Ilves,

Minister of Foreign Affairs