

[TRANSLATION – TRADUCTION]

TREATY BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE
REPUBLIC OF MOLDOVA CONCERNING THE ENCOURAGEMENT
AND RECIPROCAL PROTECTION OF INVESTMENTS

The Federal Republic of Germany and the Republic of Moldova,

Desiring to intensify economic cooperation between both States,

Striving to create favourable conditions for investments by nationals or companies of one State in the territory of the other State,

Recognizing that the encouragement of such investments and their protection on the basis of a treaty are likely to stimulate private economic initiative and increase the prosperity of both peoples,

Have agreed as follows:

Article 1

For the purposes of this Treaty:

1. The term “investments” shall comprise all types of assets, in particular:

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

(b) Shares in companies and other forms of participation in companies;

(c) Claims to money used to create an article of economic value, or claims to services which have an economic value;

(d) Intellectual property rights, such as copyright, patents, utility models, industrial patterns and models, trademarks, trade names, business and trade secrets, technical processes, know-how and goodwill;

(e) Business concessions under public law, including prospecting and mining concessions.

Any alteration of the form in which assets are invested shall not affect their classification as an investment;

2. The term "returns" shall mean those amounts yielded by an investment over a certain period, such as percentages of profits, dividends, interest and licences or other fees;

3. The term "nationals" shall mean:

(a) In respect of the Federal Republic of Germany:

Germans within the meaning of the Basic Law of the Federal Republic of Germany;

(b) In respect of the Republic of Moldova:

Natural persons who possess Moldovan nationality;

4. The term "companies" shall mean:

(a) In respect of the Federal Republic of Germany:

Any juridical person, commercial or other company or association, with or without legal personality, having its seat in German territory, irrespective of whether or not its activities are profit-oriented;

(b) In respect of the Republic of Moldova:

Any juridical person that has been established according to the laws of the Republic of Moldova and that has its permanent seat in the Republic of Moldova, irrespective of whether or not its activities are profit-oriented and irrespective of whether or not it is privately or nationally owned.

Article 2

(1) Each Contracting Party shall in its territory as far as possible promote investments made by nationals or companies of the other Contracting Party and shall permit these investments in accordance with its legislation. In every case it shall afford investments fair and equitable treatment.

(2) Neither Contracting Party shall prejudice in any way by means of arbitrary or discriminatory measures the management, employment, use or enjoyment of investments by nationals or companies of the other Contracting Party in its territory.

Article 3

(1) Each Contracting Party shall accord to investments in its territory that are full property or under the influence of nationals or companies of the other Contracting Party treatment that is no less favourable than that which it accords to investments of its own nationals and companies or investments of nationals or companies of third States.

(2) Each Contracting Party shall accord to nationals or companies of the other Contracting Party, in respect of their activities in connection with investments in its territory, treatment that is no less favourable than that which it accords to its own nationals and companies or nationals and companies of third States.

(3) This treatment shall not apply to prerogatives which a Contracting Party grants to the nationals or companies of third States by virtue of their membership of or association with a customs or economic union, common market or free-trade area.

(4) The treatment accorded in pursuance of this article shall not apply to privileges which a Contracting Party grants to the nationals or companies of third States under a double taxation agreement or other agreements regarding matters of taxation.

Article 4

(1) Investments by nationals or companies of a Contracting Party shall enjoy full protection and full security in the territory of the other Contracting Party.

(2) Investments by nationals or companies of a Contracting Party may not be expropriated, nationalized or subjected to other measures the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party, save in full public interest and against compensation. Compensation must be equivalent to the value of the expropriated investment immediately preceding the date on which full

actual or imminent expropriation, nationalization or comparable measure became publicly known. Compensation must be paid promptly and shall bear interest at the usual bank rate until the day on which it is paid. It must be effectively realizable and freely transferable. Appropriate provision shall be made for the assessment and payment of compensation, no later than on the day on which the expropriation, nationalization or comparable measure occurs. The lawfulness of the expropriation, nationalization or comparable measure and the amount of compensation must be susceptible of review in proceedings by due process of law.

(3) Nationals or companies of a Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflicts, revolution, a state of national emergency or revolt, shall be accorded no less favourable treatment by the latter Contracting Party than that Party accords to its own nationals or companies with regard to restitution, settlements, compensation or other valuable consideration. Such payments shall be freely transferable.

(4) Nationals or companies of a Contracting Party shall receive most-favoured-nation treatment in the territory of the other Contracting Party in respect of the matters provided for in this article.

Article 5

Each Contracting Party shall guarantee to nationals or companies of the other Contracting Party the free transfer of payments in connection with an investment, in particular:

- (a) Of the capital and additional amounts for maintaining or increasing the investment;
- (b) Of returns;
- (c) In repayment of loans;
- (d) Of the proceeds from the complete or partial liquidation or sale of the investment;
- (e) Of the compensation provided for in article 4.

Article 6

If a Contracting Party makes a payment to its nationals or companies under a guarantee it has assumed in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party, without prejudice to the rights of the first Contracting Party under article 10, shall recognize the assignment of all rights and claims of these nationals or companies to the first Contracting Party by virtue of law or a contract. The other Contracting Party shall further recognize the subrogation of the first Contracting Party to all the rights and claims (assigned claims) which the first Contracting Party is entitled to exercise to the same extent as its predecessor in title. Article 4, paragraphs 2 and 3, and article 5 shall apply *mutatis mutandis* to the transfer of payments by virtue of the assigned claims.

Article 7

(1) Transfers under article 4, paragraphs 2 or 3, or articles 5 or 6 shall take place promptly at the exchange rate in force at the time for the Contracting Party in whose territory the investment has been made.

(2) This rate must be equivalent to the cross rate resulting from the rates of exchange which the International Monetary Fund would take as a basis for converting the currencies in question into special drawing rights on the date of the transfer.

Article 8

(1) If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Treaty result in general or specific roles entitling investments by nationals or companies of the other Contracting Party to treatment more favourable than is provided for by this Treaty, these roles, to the extent that they are more favourable, shall prevail over this Treaty.

(2) Each Contracting Party shall honour any other obligation it has accepted with regard to investments in its territory by nationals or companies of the other Contracting Party.

Article 9

This Treaty shall also apply to investments already made by nationals or companies of either Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter before the entry into force of this Treaty.

Article 10

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Treaty shall be settled, if possible, by the Governments of the two Contracting Parties.

(2) If a dispute cannot thus be settled, it shall be submitted to an arbitral tribunal, upon the request of either Contracting Party.

(3) The arbitral tribunal shall be constituted for each individual case 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 to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months and the chairman within three months from the date on which either Contracting Party informs the other that it wishes to submit the dispute to an arbitral tribunal.

(4) If the periods specified in paragraph 3 have not been observed, in the absence of any other agreement, either Contracting Party may invite 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 otherwise prevented from making the appointments, the Vice-President shall make them. If the Vice-President is a national of either

Contracting Party or if he, too, is prevented from making the appointments, the member of the Court next in seniority who is not a national of either Contracting Party shall make them.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Its decisions shall be binding. Each Contracting Party shall bear the costs of its own member and of its counsel in the arbitral proceedings; the costs of the chairman and other costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal may make different arrangements concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

(6) If both Contracting Parties are parties to the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, in consideration of the provisions of article 27, paragraph 1 of the Convention, a dispute may not be brought before the arbitral tribunal provided for above if an agreement has been reached between the nationals or companies of one Contracting Party and the Other Contracting Party under article 25 of the Convention. This shall not affect the possibility of referring the matter to the arbitral tribunal in the event that a decision of the arbitral tribunal established under the said Convention (article 27) is not complied with or in the event of an assignment of rights by virtue of law or a contract under article 6 of this Treaty.

Article 11

(1) Disputes regarding investments between one of the Contracting Parties and a national or company of the Other Contracting Party shall, as far as possible, be settled amicably between the parties to the dispute.

(2) If the dispute cannot be settled within six months from the time of its being raised by one of the parties to it, it shall be submitted to arbitral proceedings if the national or company of the Other Contracting Party so requests. Unless the parties to the dispute decide otherwise, the dispute shall be submitted to arbitral proceedings under the terms of the Convention of 18 March 1965 on the Settlement of Investment Disputes between States or Nationals of other States.

(3) The arbitral award shall be binding and shall not be subject to any legal appeal or legal recourse other than that provided for in the aforementioned Convention. The award shall be enforced in accordance with national legislation.

(4) Neither Contracting Party that is a party to the dispute shall raise the objection during arbitral proceedings or during the enforcement of an arbitral award that the national or the company of the other Contracting Party has received compensation under an insurance policy for part or all of the damage.

Article 12

This Treaty shall apply irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

Article 13

(1) This Treaty requires ratification. The instruments of ratification shall be exchanged as soon as possible in Bonn.

(2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It shall remain in force for ten years; thereafter its validity shall be extended for an unlimited period unless denounced in writing by either of the Contracting Parties twelve months before its expiration. After the expiry of the ten-year period the Treaty may be denounced at any time with twelve months' notice.

(3) In respect of investments made prior to the date of termination of this Treaty, articles 1 to 12 shall continue to apply for a further period of twenty years as from the date of termination of this Treaty.

DONE at Chisinau on 28 February 1994 in duplicate, in the German and Romanian languages, both texts being equally authentic.

For the Federal Republic of Germany:

For the Republic of Moldova:

PROTOCOL

On signing the Treaty concerning the Encouragement and Reciprocal Protection of Investments, concluded between the Federal Republic of Germany and the Republic of Moldova, the undersigned plenipotentiaries have further agreed on the following provisions which shall be regarded as an integral part of the Treaty:

(1) Ad Article 1

(a) Returns from the investment and, in the event of their reinvestment, the returns therefrom also, shall enjoy the same protection as the investment.

(b) Without prejudice to any other procedure to determine nationality, every person who possesses a national passport issued by the relevant authorities of the Contracting Party in question shall be deemed a national of that Contracting Party.

(2) Ad Article 2

(a) Investments made by nationals or companies of a Contracting Party in accordance with the legislation of the other Contracting Party and within its territory shall enjoy the full protection of the Treaty.

(b) The Treaty shall also apply in the territories of the exclusive economic zone and the continental shelf, insofar as international law permits the Contracting Party concerned to exercise sovereign rights or powers in those territories.

(3) Ad Article 3

(a) The following in particular, but not exclusively, shall be deemed "activities" within the meaning of article 3, paragraph 2: the management, employment, use and enjoyment of an investment. The following in particular shall be deemed "less favourable" treatment within the meaning of article 3: restricting the purchase of raw or auxiliary materials, energy, fuels or productive or operational equipment of all kinds, or impeding the sale of products on the domestic or foreign market and other measures having similar effects. Measures which must be taken on grounds of public security and order, public health or morals shall not be deemed "less favourable" treatment within the meaning of article 3.

(b) The provisions of article 3 shall not oblige a Contracting Party to extend to natural persons or companies domiciled in the territory of the other Contracting Party tax privileges, exemptions or reductions which, according to its tax laws, are granted solely to natural persons and companies domiciled in its territory.

(c) The Contracting Parties shall, within the framework of their national legislation, give sympathetic consideration to applications for the entry and sojourn of persons of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment; the same shall apply to employed persons of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment and to remain there in order to take up employment. Applications for work permits shall likewise be given sympathetic consideration.

(4) Ad Article 4

Entitlement to compensation shall also exist if, because of governmental measures within the meaning of article 4, paragraph 2, the enterprise in which the investment has been made is encroached upon and considerable economic harm results.

(5) Ad Article 7

A transfer shall be deemed to have been “promptly” carried out within the meaning of article 7, paragraph 1, if effected within the period of time normally required for compliance with transfer formalities. The period shall commence with the submission of an appropriate application and may under no circumstances exceed two months.

(6) Whenever goods and persons are to be transported in connection with an investment, a Contracting Party shall neither exclude nor hinder the transport enterprises of the other Contracting Party and shall, if necessary, issue permits as required to carry out the transport.

(7) With the entry into force of this Treaty, the Treaty of 13 June 1989 between the Federal Republic of Germany and the Union of Soviet Socialist Republics concerning the promotion and reciprocal protection of investments shall cease to be effective with respect to relations between the Federal Republic of Germany and the Republic of Moldova.

DONE at Chisinau on 28 February 1994 in duplicate, in the German and Romanian languages, both texts being equally authentic.

For the Federal Republic of Germany:

For the Republic of Moldova:

PROTOCOL OF AMENDMENT TO THE TREATY BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF MOLDOVA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS SIGNED AT CHISINAU ON 28 FEBRUARY 1994

The Federal Republic of Germany and the Republic of Moldova,

Conscious that the Treaty Between the Federal Republic of Germany and the Republic of Moldova Concerning the Encouragement and Reciprocal Protection of Investments, signed at Chisinau on 28 February 1994, requires amendment,

Have agreed as follows:

Article 1

Article 11, paragraph 2 of the aforementioned Treaty shall be replaced as follows:

“(2) If the dispute cannot be settled within six months from the time of its being raised by one of the parties to it, it shall be submitted to arbitral proceedings if the national or company of the other Contracting Party so requests. Unless the parties to the dispute decide otherwise, the provisions of article 10, paragraphs 3 to 5 shall be applied mutatis mutandis, on condition that the members of the arbitral tribunal are appointed by the parties to the dispute in pursuance of article 10, paragraph 3, and that if the periods specified in article 10, paragraph 3 are not observed, in the absence of any other agreements, either party to the dispute may invite the Chairman of the Court of Arbitration of the International Chamber of Commerce in Paris to make the necessary appointments. The arbitration award shall be enforced in accordance with national law.”

Article 2

Article 11, paragraph 3 of the aforementioned Treaty shall be replaced as follows:

“(3) In the event that both Contracting Parties have also become signatories of the Convention of 18 March 1965 on the Settlement of Investment Disputes between States or Nationals of other States, disputes between the parties to the dispute shall be submitted to arbitral proceedings under the terms of the aforementioned Convention unless the parties to the dispute decide otherwise; each Contracting Party hereby expresses its agreement with such a procedure. The arbitral award shall be binding and shall not be subject to any legal appeal or legal recourse other than that provided for in the aforementioned Convention. The award shall be enforced in accordance with national legislation.”

Article 3

This Protocol of Amendment is an integral component of the Treaty Between the Federal Republic of Germany and the Republic of Moldova Concerning the Encouragement and Reciprocal Protection of Investments and its Protocol, signed at Chisinau on 28 February 1994, and they shall be interpreted and applied as a single Treaty.

Article 4

(1) This Protocol of Amendment requires ratification. The instruments of ratification shall be exchanged as soon as possible.

(2) This Protocol of Amendment shall enter into force together with the Treaty Between the Federal Republic of Germany and the Republic of Moldova Concerning the Encouragement and Reciprocal Protection of Investments, signed at Chisinau on 28 February 1994.

DONE at Berlin on 26 August 2003 in duplicate, in the German and Romanian languages, both texts being equally authentic.

For the Federal Republic of Germany:

For the Republic of Moldova:

[TRANSLATION – TRADUCTION]

PROTOCOL OF AMENDMENT TO THE TREATY BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF MOLDOVA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS SIGNED AT CHISINAU ON 28 FEBRUARY 1994

The Federal Republic of Germany

and

The Republic of Moldova,

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DONE at Berlin on 26 August 2003 in duplicate, in the German and Romanian languages, both texts being equally authentic.

For the Federal Republic of Germany:

For the Republic of Moldova: