

No. 23304

**NETHERLANDS
and
ROMANIA**

**Agreement on the reciprocal encouragement and protection
of investments (with exchange of letters). Signed at The
Hague on 27 October 1983**

Authentic texts: Dutch, Romanian and French.

Authentic text of the exchange of letters: French.

Registered by the Netherlands 21 March 1985.

**PAYS-BAS
et
ROUMANIE**

**Accord sur l'encouragement et la protection réciproques des
investissements (avec échange de lettres). Signé à La
Haye le 27 octobre 1983**

Textes authentiques : néerlandais, roumain et français.

Texte authentique de l'échange de lettres : français.

Enregistré par les Pays-Bas le 21 mars 1985.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA ON THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of the Netherlands and the Government of the Socialist Republic of Romania, hereinafter referred to as “the Contracting Parties”,

Having regard to the Long-term Agreement on economic, industrial and technical co-operation between the Government of the Kingdom of the Netherlands and the Government of the Socialist Republic of Romania, concluded on 14 May 1975 at Bucharest,²

Desiring further to develop relations of co-operation between the two States in the spirit of the aforesaid Agreement,

Being anxious to create favourable conditions for investments by investors of one country in the other country,

Recognizing that the reciprocal protection of investments, in accordance with this Agreement, will be conducive to the stimulation of initiative in this field,

Have agreed as follows:

Article 1. For the purposes of applying this Agreement:

(1) The term “investment” means a contribution of any kind to an enterprise or economic activity, and in particular, but not exclusively:

- (a) Shares, stock or other forms of participation in companies;
- (b) Profits reinvested, claims or other rights relating to services having a financial value, such as a business or goodwill;
- (c) Movable and immovable property and any other real rights such as mortgages, privileges, guarantees and any other similar rights as defined in accordance with the laws of the Contracting Party in whose territory the property is situated;
- (d) Industrial property rights, technological processes, know-how and copyrights;
- (e) Concessions conferred by law or under contract, especially any concessions relating to the search for, or extraction and exploitation of natural resources, including resources in the maritime areas within the jurisdiction of one of the Contracting Parties.

(2) The term “investors” means:

- (a) In the case of the Socialist Republic of Romania, Romanian economic units with legal personality which, under the law, have competence in matters relating to foreign trade and economic co-operation with other countries;

¹ Came into force on 1 October 1984, i.e., the first day of the second month following the date on which the Contracting Parties had notified each other (on 3 July and 7 August 1984) of the completion of the required constitutional formalities, in accordance with article 12 (1).

² United Nations, *Treaty Series*, vol. 1107, p. 103.

- (b) In the case of the Kingdom of the Netherlands:
- (i) Natural persons having Netherlands nationality;
 - (ii) Legal persons constituted in accordance with the law of the Kingdom and having their statutory seat in the Kingdom.
- (3) The term “returns” means the amounts produced by an investment in terms of profits, dividends and other income.

Article 2. The Contracting Parties shall, in accordance with their respective national laws, promote economic co-operation between their countries through the protection of investments made by investors of one Contracting Party in the territory of the other Contracting Party and in the maritime areas within the jurisdiction of that Party.

Article 3. (1) Each Contracting Party shall, in its territory and in the maritime areas within its jurisdiction, accord to investments and to investors of the other Contracting Party, in respect of investments made by them, treatment which is no less favourable than that accorded to investments and investors of any third State. In that connection, each Contracting Party shall ensure that the aforesaid investments receive just and equitable treatment and shall not, by means of any unwarranted restrictive measures, impede the operation, use or liquidation of the investments.

(2) Each Contracting Party shall accord to such investments the same degree of protection as it accords to investments by investors of third States.

(3) If the legislation of one Contracting Party or international obligations existing or assumed in future by the Contracting Parties in addition to this Agreement should result in rules whereby investments and investors of the other Contracting Party are accorded more favourable treatment with respect to investments made by them than that provided for in this Agreement, those rules shall be applied.

(4) The provisions of this Agreement concerning most-favoured-nation treatment shall not be applied in respect of the advantages accorded by each Contracting Party to investors of any third State on the basis of its participation in an economic and customs union, free-trade area or regional economic organization, or by virtue of an international agreement for the avoidance of double taxation or on the basis of reciprocity.

Article 4. Investments made by investors of one Contracting Party in the territory or in the maritime areas within the jurisdiction of the other Contracting Party may not be expropriated or subjected to other measures having a similar effect unless the following conditions are fulfilled:

- (a) The measures are not discriminatory or contrary to commitments assumed by that other Contracting Party;
- (b) The measures are taken in the public interest and through a legal procedure;
- (c) Provision is made for an adequate procedure for determination of the amount of just compensation and the payment thereof.

Such compensation must correspond to the real value of the investment at the date of expropriation and must be effectively available, made freely transferable and paid in full and without delay in a convertible currency to the country of which the beneficiaries are nationals.

At the request of the party concerned, the amount of compensation may be reassessed by the judge, court or any other competent body of the country in which the investment was made.

Article 5. (1) If a dispute between an investor and the Contracting Party in whose territory the investment was made, concerning the amount of compensation, continues to exist after the final decision of the judge, court or other competent national body referred to in article 4, each party shall have the right to refer the dispute, within a period of two months after the domestic legal remedies have been exhausted, to the Centre established by the Washington Convention of 18 March 1965 for the settlement of investment disputes between States and nationals of other States¹ for conciliation or arbitration in accordance with the procedure provided for in the aforesaid Convention.

To that end, each Contracting Party gives its consent thereto by means of this Agreement.

(2) However, the condition concerning the exhaustion of domestic remedies laid down in the legislation of the Contracting Party in whose territory the investment was made may no longer be invoked by that Contracting Party after a period of two years has elapsed from the date on which adversary proceedings were first instituted with a view to the settlement of the dispute through the courts.

Article 6. (1) In respect for the principle of freedom of transfer, each Contracting Party shall authorize, in accordance with its most favourable regulations in effect on the subject, the transfer, without restrictions or undue delays, to the country specified by the investors of the other Contracting Party and in convertible currency, of the payments resulting from investment activities and, in particular:

- (a) Net profits, dividends and other current income;
- (b) The necessary sums:
 - (i) For the acquisition of raw materials or auxiliary materials and semi-finished or finished products;
 - (ii) To replace capital equipment in order to guarantee the continuity of an investment;
- (c) Income from professional activities by nationals authorized to work in connection with an investment, and also management costs;
- (d) Capital invested or the proceeds from the liquidation or total or partial disposal of the investment;
- (e) Funds for the repayment of loans intended for investments and interest pertaining thereto;
- (f) Royalties and copyrights.

(2) Each Contracting Party shall, after fulfilment of the legal obligations incumbent upon investors, grant the necessary licences for the execution, without delay, of the transfers referred to in paragraph 1 of this article.

Article 7. (1) Transfers of currency in accordance with articles 4 and 6 shall be effected without delay in the convertible currency in which the investment was made or in any other freely convertible currency, if so agreed.

¹ United Nations, *Treaty Series*, vol. 757, p. 159.

(2) The exchange of currencies shall be effected in accordance with the regulations of the International Monetary Fund at the rate in effect on the date of payment. If no such exchange rate exists, the rate shall be established on the basis of the exchange rates which would be applied by the International Monetary Fund for the conversion of the respective currencies into Special Drawing Rights.

Article 8. Investments made by investors of one Contracting Party in the territory of the other Contracting Party before the entry into force of this Agreement shall also be subject to the provisions of this Agreement.

Article 9. The Contracting Parties may hold consultations on matters concerning the application of this Agreement and on matters connected with investments made under the Agreement. Such consultations may also be held within the framework of the Governmental Mixed Commission established under the Long-term Agreement on economic, industrial and technical co-operation concluded between the two Parties at Bucharest on 14 May 1975.

Article 10. (1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall be settled, as far as possible, by negotiations between the two Parties. If such a dispute cannot be settled within six months from the date of commencement of the negotiations, it shall be submitted to an arbitral tribunal at the request of one of the Contracting Parties.

(2) The arbitral tribunal shall be established as follows: each Contracting Party shall appoint one arbitrator; the two arbitrators shall propose to the Contracting Parties, by mutual agreement, a chairman who shall be a national of a third State, designated by the Contracting Parties. The arbitrators shall be appointed within a period of three months and the chairman within a period of five months after one Contracting Party has notified the other that it wishes to submit the dispute to an arbitral tribunal. If the arbitrators are not appointed within the agreed time-limit the Contracting Party which has not appointed its arbitrator agrees that the arbitrator shall be appointed by the President of the International Court of Justice. If the Contracting Parties cannot reach agreement on the appointment of the chairman, they also agree to his being appointed by the President of the International Court of Justice.

(3) The arbitral tribunal shall take its decisions on the basis of the provisions of this Agreement and of other similar agreements concluded by the Contracting Parties, and in accordance with the principles and general rules of international law. The arbitral tribunal shall take its decisions by a majority of votes and its decision shall be final and binding. Only the Contracting Parties may institute proceedings before the arbitral tribunal and participate in its deliberations.

(4) Each Contracting Party shall defray the costs of the arbitrator it has appointed and the costs incurred by its representatives during the deliberations of the tribunal. The costs of the chairman and other costs shall be borne equally by the Contracting Parties.

(5) The arbitral tribunal shall determine its own procedure.

Article 11. (1) In the case of the Kingdom of the Netherlands, this Agreement shall apply to the Kingdom in Europe and in the Netherlands Antilles.

(2) In view of the time-limit for denunciation referred to in article 12, paragraph 1, the Government of the Kingdom of the Netherlands shall have the right to terminate this Agreement separately in respect of the Netherlands Antilles.

Article 12. (1) This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties give each other written notice that the formalities required under the constitution of their respective countries have been completed. The Agreement shall remain in force for a period of ten years. Unless it is denounced by one of the Contracting Parties at least six months before it is due to expire, the Agreement shall be tacitly renewed for further ten-year periods, the Contracting Parties in each case reserving the right to denounce the Agreement by giving notice to that effect at least six months before expiry of the current term.

(2) In respect of investments made before the date of termination of this Agreement, the foregoing articles shall remain in force for a period of fifteen years from the date of termination.

IN WITNESS WHEREOF, the undersigned representatives being duly authorized thereto, have signed this Agreement.

DONE at The Hague on 27 October 1983, in two original copies, in the Dutch, Romanian and French languages, all the texts being equally authentic. In case of any difference of interpretation between the Dutch and Romanian texts, reference shall be made to the French text.

For the Government
of the Kingdom of the Netherlands:

[Signed]

H. VAN DEN BROEK

For the Government
of the Socialist Republic of Romania:

[Signed]

CONSTANTIN OANCEA

EXCHANGE OF LETTERS

I

The Hague, 27 October 1983

DVE/VV-279919

Sir,

On the occasion of the signing today of the Agreement between the Government of the Kingdom of the Netherlands and the Government of the Socialist Republic of Romania on the reciprocal encouragement and protection of investments, I have the honour to bring the following matter to your attention:

1. In the event of disputes concerning investments other than those referred to in article 5, paragraph (1), of the Agreement, the Government of the Kingdom of the Netherlands proposes that the Contracting Parties give favourable consideration to requests by investors to submit those disputes, for conciliation or arbitration, to the International Centre for Settlement of Investment Disputes, in accordance with the procedure laid down in the Washington Convention of 18 March 1965, provided that the domestic legal remedies have been exhausted. The provision of article 5, paragraph (2), of the Agreement shall also apply *mutatis mutandis*.

The disputes referred to in paragraph (1) may relate to the question whether the provisions of the instrument of expropriation have been correctly applied, the legality of the instrument of expropriation remaining indisputable.

2. With regard to the provisions of article 5, paragraph (2), of the Agreement, the two Governments agree that the action of the investor in instituting adversary proceedings concerning the amount of compensation in the event of expropriation before any competent authority, whether it be a judge, a tribunal or any other competent national body, shall be regarded as the first stage of the judicial proceedings.

I should be grateful if you would kindly confirm that your Government is in agreement with the above.

Accept, Sir, etc.

[Signed]

H. VAN DEN BROEK
Minister for Foreign Affairs
of the Kingdom of the Netherlands

His Excellency C. Oancea
Deputy Minister for Foreign Affairs
of the Socialist Republic of Romania

II

The Hague, 27 October 1983

Sir,

I have the honour to acknowledge receipt of your letter, No. DVE/VV-279919, of today's date, reading as follows:

[See letter I]

I have the honour to confirm that my Government is in agreement with the contents of your letter.

Accept, Sir, etc.

[Signed]

C. OANCEA
Deputy Minister for Foreign Affairs
of the Socialist Republic of Romania

His Excellency H. Van Den Broek
Minister for Foreign Affairs
of the Kingdom of the Netherlands
