

No. 27615

**FRANCE
and
POLAND**

**Agreement concerning the mutual promotion and protection
of investments (with exchange of letters). Signed at Paris
on 14 February 1989**

Authentic texts: French and Polish.

Registered by France on 30 October 1990.

**FRANCE
et
POLOGNE**

**Accord sur l'encouragement et la protection réciproques des
investissements (avec échange de lettres). Signé à Paris le
14 février 1989**

Textes authentiques : français et polonais.

Enregistré par la France le 30 octobre 1990.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC CONCERNING THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the French Republic and the Government of the Polish People's Republic, hereinafter referred to as "the Contracting Parties",

Desiring to strengthen economic cooperation between the two States and to create favourable conditions for French investments in Poland and Polish investments in France,

Convinced that the promotion and protection of such investments are likely to stimulate transfers of capital and technology between the two countries in the interest of their economic development,

Have agreed on the following provisions:

Article 1

For the purposes of this Agreement:

1. The term "investment" shall mean assets such as property, rights and interests of any kind related to an economic activity in any sector, in accordance with the legislation of the Contracting Party in whose territory or maritime areas the investment has been made, and more particularly, but not exclusively to:

(a) Movable and immovable property and all other real rights such as mortgages, preferences, usufructs, sureties and similar rights;

(b) Shares, issue premiums and other forms of participation, even minority or indirect, in companies constituted in the territory of either Party;

(c) Bonds, claims and rights to any benefit having an economic value;

(d) Copyrights, industrial property rights (such as patents for inventions, licences, registered trademarks, industrial models and designs), technical processes, registered trade names and goodwill,

it being understood that the said assets related to an economic activity must be or must have been invested in accordance with the legislation of the Contracting Party in whose territory or maritime areas the investment is made, before or after the entry into force of this Agreement.

Any change in the form in which assets are invested shall not affect their status as an investment, provided that the change is not contrary to the legislation of the State in whose territory or maritime areas the investment is made.

2. The term "investor" shall mean:

(a) Any individual having the nationality of either Contracting Party;

¹ Came into force on 10 February 1990, i.e., one month after the date of receipt of the last of the notifications (of 9 January 1990) by which the Parties had informed each other of the completion of their respective internal procedures, in accordance with article 12.

(b) Any corporate body constituted in the territory of either Contracting Party in accordance with the legislation of that Party and having its registered office there.

3. The term “income” shall mean all the amounts yielded by an investment, such as profits, royalties or interest, during a given period.

Income from an investment and, in the event of reinvestment, income from its reinvestment shall enjoy the same protection as the investment itself.

4. The term “maritime areas” shall mean those marine and submarine areas over which the Contracting Parties exercise sovereignty, sovereign rights or jurisdiction in accordance with international law.

Article 2

Each Contracting Party shall permit and promote, in accordance with its legislation and with the provisions of this Agreement, investments made in its territory and maritime areas by investors of the other Party.

Article 3

Each Contracting Party undertakes to accord, in its territory and maritime areas, fair and equitable treatment to the investments of investors of the other Party, any unjustified or discriminatory measure which might hamper their management, maintenance, use, enjoyment or liquidation being prohibited.

Article 4

1. Each Contracting Party shall accord in its territory and maritime areas to investors of the other Party, in respect of their investments and activities connected with such investments, the same treatment as is accorded to its own investors or the treatment accorded to investors of the most favoured nation if the latter is more advantageous.

2. Such treatment shall not, however, include privileges which a Contracting Party extends to the investors of a third State by virtue of its participation in or association with a free trade area, customs union, common market or any other form of regional organization or organization for mutual economic assistance.

3. This Agreement shall not include privileges extended by a Contracting Party to any third State by virtue of an agreement for the avoidance of double taxation or any other agreement with respect to taxes.

Article 5

1. Investments made by investors of one Contracting Party shall be fully and completely protected and safeguarded in the territory and maritime areas of the other Contracting Party.

2. The Contracting Parties shall not take any expropriation or nationalization measures or any other measures which would have the effect of divesting investors of the other Party, either directly or indirectly, of investments belonging to them in its territory or maritime areas, except for reasons of public necessity and on condition that these measures are not discriminatory or contrary to a specific undertaking.

Any divestment measures that may be taken shall give rise to the payment of prompt and adequate compensation, the amount of which shall correspond to the

real value of the investments in question on the day before the measures are taken or made known to the public.

Such compensation, its amount and its method of payment shall be determined no later than the date of divestment. The compensation shall be effectively realizable, paid without delay and freely transferable. It shall yield, up to the date of payment, interest calculated on the basis of the appropriate rate of interest in force at the time of divestment.

3. Investors of either Contracting Party whose investments have suffered losses as a result of war or any other armed conflict, revolution, state of national emergency or uprising in the territory or maritime areas of the other Contracting Party shall be accorded by the latter Party treatment no less favourable than that accorded to its own investors or to investors of the most favoured nation. They shall in any event receive adequate compensation.

Article 6

1. A Contracting Party in whose territory or maritime areas investments have been made by investors of the other Contracting Party shall allow those investors to transfer freely:

- (a) Interest, dividends, profits and other current income;
- (b) Royalties deriving from intangible property, in particular that listed in article 1, subparagraph 1 (d);
- (c) Payments made towards the repayment of duly contracted loans;
- (d) Proceeds of the transfer or complete or partial liquidation of the investment, including appreciation of the invested capital;
- (e) The compensation for divestment or loss provided for in article 5, paragraphs 2 and 3, above.

2. Nationals of each Contracting Party who have been authorized to work in the territory or maritime areas of the other Contracting Party in connection with an approved investment shall also be authorized to transfer to their country of origin an appropriate proportion of their remuneration determined in accordance with the legislation of the latter Party.

3. The transfers referred to in the preceding paragraphs shall be made without delay at the normal exchange rate officially applicable on the date of transfer.

Article 7

1. If the regulations of one Contracting Party provide for a guarantee for investments made outside the country, such guarantee may be granted, on the basis of a case-by-case review, for investments made by investors of that Party in the territory or maritime areas of the other Party.

2. The guarantee referred to in the preceding paragraph shall not be available for investments by investors of one Contracting Party in the territory or maritime areas of the other Party unless the investments have been granted prior approval by the latter Party.

Article 8

1. Any dispute relating to investments between one Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled amicably between the two parties concerned or, failing that, through internal means of recourse.

2. However, disputes relating to the divestment measures referred to in article 5, paragraph 2, particularly those relating to possible compensation, its amount and terms of payment and the interest payable in the event of a delay in payment, shall be settled according to the following conditions:

If any such dispute has not been settled amicably within six months from the time when the matter was raised by one of the parties to the dispute, it shall, at the request of either party, be submitted to arbitration. It shall be settled definitively in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, as adopted by the General Assembly of the United Nations in resolution 31/98 of 15 December 1976.¹

When both Contracting Parties have become parties to the Convention on the settlement of investment disputes between States and nationals of other States, signed at Washington on 18 March 1965,² any such dispute which has not been settled amicably within six months from the time when the matter was raised by one of the parties to the dispute shall be submitted for arbitration to the International Centre for Settlement of Investment Disputes.

3. The arbitral tribunal shall rule in accordance with the provisions of this Agreement and the rules and principles of international law.

Article 9

If one Contracting Party, by virtue of a guarantee issued in respect of an investment made in the territory or maritime areas of the other Party, makes payments to one of its own investors, it shall thereby enter into the rights and actions of that investor.

Such payments shall be without prejudice to the rights of the beneficiary of the guarantee to have recourse to the competent arbitral body or to pursue actions brought before that body until the procedure has been completed.

Article 10

Investments which have been the subject of a specific undertaking by one Contracting Party *vis-à-vis* investors of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, by the terms of that undertaking, in so far as its provisions are more favourable than those laid down by this Agreement.

Article 11

1. Disputes concerning the interpretation or application of this Agreement shall, as far as possible, be settled through the diplomatic channel.

¹United Nations, *Official Records of the General Assembly, Thirty-first Session, Supplement No. 39 (A/31/39)*, p. 182.

²United Nations, *Treaty Series*, vol. 575, p. 159.

2. If a dispute has not been settled within six months from the time when the matter was raised by one of the Contracting Parties, it shall be submitted, at the request of either Contracting Party, to an *ad hoc* arbitral tribunal.

3. That tribunal shall be constituted, for each separate case, as follows:

Each Contracting Party shall designate one member and the two members shall designate, by mutual agreement, a national of a third State who shall be appointed Chairman by the two Contracting Parties. The members of the tribunal shall be appointed within two months and the Chairman within four months, of the date on which one Contracting Party notifies the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the deadlines established in paragraph 3 above have not been observed, either of the Contracting Parties shall, in the absence of any applicable agreement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if, for any other reason, he is prevented from exercising that function, the Under-Secretary-General next in seniority shall make the necessary appointments, provided that he is not a national of either Contracting Party.

5. The arbitral tribunal shall rule in accordance with the provisions of this Agreement and the rules and principles of international law.

6. The arbitral tribunal shall take its decisions by majority vote. Such decisions shall be final and binding on the Contracting Parties.

The tribunal shall adopt its own rules of procedure. It shall interpret its ruling at the request of either Contracting Party. Unless the tribunal decides otherwise, taking particular circumstances into consideration, legal costs, including the arbitrators' fees, shall be shared equally between the two Governments.

Article 12

Each Party shall notify the other of the completion of its respective internal procedures for the entry into force of this Agreement, which shall take effect one month after the date of receipt of the second notification.

This Agreement is concluded for an initial period of 10 years. It shall remain in force thereafter unless one of the Parties denounces it through the diplomatic channel giving one year's advance notice.

Upon expiry of the period of validity of this Agreement, investments made while it was in force shall continue to be protected by its provisions for an additional period of 15 years.

DONE at Paris on 14 February 1989, in two originals in the French and Polish languages, both texts being equally authentic.

For the Government
of the French Republic:
[PIERRE BÉRÉGOVOY]

For the Government
of the Polish People's Republic:
[ANDRZEJ WRÓBLEWSKI]

EXCHANGE OF LETTERS

I

Paris, 14 February 1989

Sir,

I have the honour to refer to the Agreement signed today between the Government of the French Republic and the Government of the Polish People's Republic concerning the mutual promotion and protection of investments and to confirm the following interpretation of the Agreement:

In respect of article 6, subparagraphs 1 (a) to 1 (c) concerning the free transfer of assets related to an investment:

For the Government of the People's Republic of Poland, the said provisions shall apply provided that the convertible currency derives from the investment, or from convertible currency earnings deriving from the investment, unless it has been agreed otherwise in the framework of a special undertaking concluded between the investor concerned and the competent authorities.

I should be grateful if you would inform me of your Government's confirmation of this understanding, which shall henceforth form an integral part of the aforesaid Agreement.

Accept, Sir, etc.

For the Government
of the Polish People's Republic:

[Signed]

ANDRZEJ WRÓBLEWSKI
Minister of Finance

II

Paris, 14 February 1989

Sir,

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows:

[See letter I]

I have the honour to inform you of my Government's confirmation of the above understanding.

Accept, Sir, etc.

For the Government
of the French Republic:

[Signed]

PIERRE BÉRÉGOVOY
Minister of State
Minister of Economic Affairs,
Finance and Budget
