No. 27617

FRANCE
and
BULGARIA

Agreement concerning the reciprocal promotion and protection of investments (with protocol and exchange of letters). Signed at Sofia on 5 April 1989

Authentic texts: French and Bulgarian.

Registered by France on 30 October 1990.

FRANCE
et
BULGARIE

Accord sur l'encouragement et la protection réciproques des investissements (avec protocole et échange de lettres). Signé à Sofia le 5 avril 1989

Textes authentiques : français et bulgare.

Enregistré par la France le 30 octobre 1990.

[TRANSLATION — TRADUCTION]

AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BULGARIA CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the French Republic and the Government of the People's Republic of Bulgaria,

Desiring to develop relations and economic cooperation between the two countries and to ensure favourable conditions for French investments in Bulgaria and for Bulgarian investments in France,

Considering that the promotion and protection of investments contribute to the development of initiatives in this field and taking into account the Final Act of the Conference on Security and Cooperation in Europe,[2] have agreed as follows:

Article 1

For the purposes of the application of this Agreement:

1. The term "investments" means financial assets, rights and property of any kind connected with participation in enterprises, companies or any other form of participation, and particularly:

(*a*) Property rights and other rights *in rem*;

(*b*) All claims and all rights to benefits having an economic value;

(*c*) Copyrights, industrial property rights, such as patents to inventions, licences, registered trade marks, industrial models and designs, technical processes, registered trade names, know-how and goodwill;

(*d*) Activities carried out under the law or by virtue of a contract concluded with a competent body for prospecting, cultivating, mining or developing natural resources.

The financial assets, rights and property must be invested in accordance with the legislation of the Contracting Party in whose territory the investment is made.

Any change in the form of the investments referred to above shall not affect their status as investments provided that such changes are not contrary to the legislation of the State in whose territory the investment is made or to the approval accorded for the investment.

2. The term "income" means the amounts yielded by an investment, such as net profit or interest, during a given period.

3. The term "investor" means:

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[1] Came into force on 1 May 1990, i.e., the first day of the third month following the date of the exchange of the instruments of ratification or approval (of 20 December 1989 and 16 February 1995), in accordance with article 13 (1).

[2] *International Legal Materials*, vol. 14 (1975), p. 1292 (American Society of International Law).

(*a*) Any individual having the nationality of one Contracting Party who may, in accordance with the legislation of that Contracting Party, make investments in the territory or maritime zones of the other Contracting Party;

(*b*) Any body corporate constituted in the territory of one Contracting Party in accordance with its legislation and having its registered office there;

(*c*) Any body corporate controlled directly or indirectly by one or more individuals having the nationality of one Contracting Party or by one or more bodies corporate having a registered office in the territory of one Contracting Party and constituted in accordance with the legislation of that Contracting Party.

4. This Agreement shall apply to the territory of each Contracting Party and to the maritime zones of each Contracting Party, hereinafter defined as the maritime or submaritime zones over which each Contracting Party exercises sovereign rights or jurisdiction, in accordance with international law.

Article 2

1. Each Contracting Party shall promote, in its territory and maritime zones, investments made by investors of the other Contracting Party.

2. The investments approved under the legal provisions of the Contracting Party in whose territory and maritime zones they are made shall enjoy the protection of this Agreement.

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

Article 3

Each Contracting Party undertakes to accord, in its territory and maritime zones, just and equitable treatment, in accordance with the principles of international law, to investments made by investors of the other Party and to ensure that the exercise of the right so accorded is not impeded either *de jure* or *de facto*.

Article 4

1. Each Contracting Party undertakes to accord in its territory and maritime zones, to investors of the other Party, in respect of their investments and activities connected with those investments, treatment that is no less favourable than that accorded to investors of the most favoured nation.

2. If more favourable treatment is accorded to investments made by investors of a third country on the basis of the legal provisions of one Contracting Party or of international conventions, such treatment shall also be applicable to the investments covered by this Agreement.

3. Such treatment shall not, however, extend to privileges which may be accorded by a Contracting Party to investors of a third State by virtue of its participation in or association with an economic union or community, a customs union, a free trade area or any other form of regional economic organization.

Article 5

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

2. Neither Contracting Party shall take any expropriation or nationalization measures against investments made by investors of the other Contracting Party, except for reasons of public necessity and on condition that such measures are not discriminatory or contrary to a specific undertaking by the Contracting Party concerned and that they give rise to the payment of adequate compensation.

The amount of compensation must correspond to the real value of the investments in question, assessed on the basis of a normal economic situation immediately prior to the date on which the measure is made public.

Such compensation, the amount thereof and the methods of payment shall be determined no later than the date on which the measure is taken. The compensation shall be effectively realizable, paid without delay and freely transferable. It shall yield, up to the date of payment, interest calculated at the LIBOR rate (London Interbank Offered Rate) in the currency used for the payment of compensation.

3. Investors of either Contracting Party whose investments have suffered losses in connection with a war, an armed conflict, a state of national emergency, disturbances or other similar events in the territory or maritime zones of the other Contracting Party shall be accorded by the latter Party treatment that is not discriminatory and is at least as favourable as that accorded to investors of the most favoured nation in respect of restitution, damages, indemnification and other types of compensation.

Article 6

1. Each Contracting Party shall allow investors of the other Contracting Party, after the fulfilment of all fiscal obligations, freely to transfer:

(*a*) Capital or additional amounts intended to maintain or increase investments;

(*b*) Income from investments;

(*c*) The proceeds from the total or partial liquidation of an investment;

(*d*) Amounts necessary for the payment of expenses deriving from the operation of the investment such as:

Repayment of loans;

Payment of royalties;

Payment of other costs;

(*e*) Compensation due under article 5;

(*f*) An appropriate portion of the remuneration received by nationals of the other Contracting Party for work performed or services provided in connection with investments made in its territory and maritime zones, under the conditions set forth in its laws and regulations.

2. The transfers referred to in the foregoing paragraph shall be effected without delay at the exchange rate in force on the date of transfer, in the State in which the investment was made, after the fulfilment of fiscal obligations.

Article 7

1. When the legislation of one Contracting Party provides for guaranteeing external investments, a 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 zones of the other Party.

The guarantee referred to in the foregoing paragraph shall not be available for such investments unless they have first been approved by the Contracting Party in whose territory or maritime zones the investments were made.

2. Where one Contracting Party, by virtue of a guarantee given for an investment made in the territory or maritime zones of the other Party, makes payments to one of its investors, it shall thereby enter into the rights and shares available to the latter, while taking into account the obligations corresponding to those rights.

Such payments shall not affect the rights of the recipient of the guarantee to have recourse to the procedure for the settlement of disputes provided for in article 8 and to pursue actions brought before the competent arbitral body until the completion of that procedure.

Article 8

1. Any dispute between one Contracting Party and an investor of the other Contracting Party relating to investments shall, as far as possible, be settled amicably between the two parties to the dispute.

2. If any such dispute cannot be settled within six months from the time when the question was raised by one of the parties to the dispute, it may be submitted to the competent courts of the Contracting Party which is party to the dispute and in whose territory or maritime zones the investment was made.

3. The investor concerned may choose to submit in writing for *ad hoc* arbitration a dispute relating to the measures mentioned in article 5, paragraph 2, and in particular to the existence of compensation, the amount thereof, the conditions of payment and interest to be paid in the case of delayed payment, provided that such investor has not submitted the dispute to the competent courts of the Contracting Party which is a party to the dispute.

A final settlement shall then be reached on the dispute in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as adopted by the United Nations General Assembly in its resolution 31/98 of 15 December 1976.[1]

Article 9

Investments which are the subject of a specific undertaking, under an agreement, 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 for the investor than those laid down by this Agreement.

Article 10

1. Disputes concerning the application or interpretation of this Agreement shall be settled by negotiations between the Contracting Parties.

2. If a dispute cannot be settled in this way within six months from the time when the question was raised by one Contracting Party, and unless otherwise agreed

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

between them concerning the establishment of a further time-limit, it shall be submitted, at the request of either Contracting Party, to a court of arbitration.

3. The court of arbitration shall, in each separate case, be constituted as follows:

Each Contracting Party shall designate one arbitrator. The Party intending to bring a dispute before a court of arbitration shall indicate the name of the arbitrator it has chosen in the notice of arbitration sent to the other Party. The latter, within two months from the date of receipt of the notification, must communicate to the arbitrator already designated the name of the arbitrator it is designating.

The chairman of the court of arbitration shall be designated by the arbitrators chosen in accordance with the provisions of the foregoing paragraph, within one month from the designation of the second arbitrator.

4. If the time-limits established in paragraph 3 are not observed and in the absence of any other applicable agreement, either Contracting Party may invite the Secretary-General of the United Nations to make the necessary designations. 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, provided that he is not a national of either Contracting Party, make the necessary designations.

5. The court of arbitration shall determine its own procedure. It shall take its decisions by a majority vote in accordance with the provisions of this Agreement. The decision of the court of arbitration shall be final and binding on the Parties.

6. The remuneration of the arbitrators and of the chairman of the court of arbitration shall be established by the court of arbitration and must be approved by the Parties. The costs of arbitral proceedings shall be borne in equal parts by the Parties.

Article 11

Each Contracting Party shall resolve in accordance with its domestic legislation and resolve in the most favourable manner possible, any questions relating to the entry, residence, work and travel in its territory of nationals of the other Contracting Party who carry out an activity connected with investments within the meaning of this Agreement, and their families.

Article 12

This Agreement shall apply to all investments made after 1 January 1960.

Article 13

1. This Agreement shall be subject to ratification or approval by the competent bodies of the Contracting Parties in accordance with their domestic legislation. It shall enter into force on the first day of the third month from the date of the exchange of the instruments of ratification or approval.

2. This Agreement is concluded for a period of 10 years. It shall remain in force thereafter for an indefinite period unless one Contracting Party denounces it in writing at least six months before the expiry of this period. If the Agreement remains in force after the initial period of validity, each Contracting Party may denounce it through the diplomatic channel upon one year's notice in writing.

3. Investments made up to the expiration date of this Agreement shall continue to enjoy the protection of its provisions for an additional period of 20 years.

Article 14

Either Contracting Party may propose consultations to the other Contracting Party on any matter relating to the implementation or interpretation of this Agreement. The other Contracting Party shall take the necessary steps to make such consultations possible.

Article 15

The modalities of application of certain articles of this Agreement are the subject of two annexes forming an integral part of this Agreement.

DONE at Sofia on 5 April 1989 in two original copies in the French and Bulgarian languages, both texts being equally authentic.

For the Government
of the French Republic:

[*Signed*]

JEAN-MARIE RAUSCH
Minister of Foreign Trade

For the Government
of the People's Republic of Bulgaria:

[*Signed*]

ANDREJ LOUKANOV
Minister of Foreign
Economic Relations

PROTOCOL

On signing the Agreement between the Government of the French Republic and the Government of the People's Republic of Bulgaria concerning the reciprocal promotion and protection of investments, it was agreed between the two Parties that the following provisions shall form an integral part of the Agreement.

1) *Ad* article 4:

All activities connected with investments and relating to the purchase and transportation of raw and auxiliary materials, energy and fuel and also means of production or exploitation of any kind, and to the sale and transportation of products within the country and abroad, must receive treatment that is no less favourable than that accorded to similar activities carried out by other investors.

2) *Ad* article 5:

The provisions of article 5, paragraph 2, shall apply to expropriation or nationalization measures and to all measures to rescind or restrict rights *in rem*, the effects of which are similar to expropriation.

3) *Ad* article 6:

In the case of the People's Republic of Bulgaria, the transfers referred to in article 6, paragraph 1, subparagraphs (*a*) to (*d*) shall be made from the convertible currency account of the joint venture or investor concerned.

If a joint venture, with the authorization of the Bulgarian authorities, carries out an economic activity which produces income wholly or partly in local currency, and therefore does not have sufficient convertible currency assets, the National Bank of Bulgaria shall make available to it the necessary convertible currency for the transfer of the income from the investment and from its complete or partial liquidation — article 6, paragraph 1, subparagraphs (*b*) and (*c*) — in exchange for local currency.

4) *Ad* article 8:

(*a*) The provisions of article 8, paragraph 3, shall apply only with respect to the expropriation or nationalization measures referred to in article 5, paragraph 2, to the exclusion of any other measure with effects similar to expropriation, mentioned in paragraph 2 of this Protocol.

(*b*) The *ad hoc* tribunal envisaged in article 8, paragraph 3, shall be constituted in each case in the following manner: each party to the dispute shall designate one arbitrator, and the two arbitrators shall designate a chairman who must be a national of a third State. The two arbitrators must be designated within a period of two months, and the chairman within a period of three months, from the date on which the investor that is party to the dispute has notified the other party to the dispute of its intention to submit the dispute for *ad hoc* arbitration.

If the time-limits specified above are not observed, either party to the dispute may request the Chairman of the Arbitral Tribunal in the Stockholm Chamber of Commerce to make the necessary designations within a period of two months.

The *ad hoc* arbitral tribunal shall establish its rules of procedure in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), adopted by the General Assembly in its resolution 31/98 of 15 December 1976.

(*c*) The arbitral tribunal shall take its decisions by a majority vote. Its decisions shall be final and binding for the two parties to the dispute and shall be carried out by those parties in accordance with their national legislation.

(*d*) The arbitral tribunal shall render its decisions on the basis of the provisions of this Agreement, of the appropriate domestic legislation and of the universally recognized principles of international law.

(*e*) Each party to the dispute shall bear the costs of its arbitrator and of its representation in the arbitral proceedings. The cost of the chairman and the remaining costs shall be borne in equal parts by the parties.

DONE at Sofia on 5 April 1989, two original copies in the French and Bulgarian languages, both texts being equally authentic.

For the Government
of the French Republic:

[*Signed*]

JEAN-MARIE RAUSCH
Minister of Foreign Trade

For the Government
of the People's Republic of Bulgaria:

[*Signed*]

ANDREJ LOUKANOV
Minister of Foreign
Economic Relations

EXCHANGE OF LETTERS

I

FRENCH REPUBLIC
MINISTER OF FOREIGN TRADE

5 April 1989

Sir,

On the occasion of the signing of the Agreement between the Government of the French Republic and the Government of the People's Republic of Bulgaria concerning the reciprocal promotion and protection of investments, I have the honour to inform you that the two Contracting Parties have agreed as follows:

Each Contracting Party guarantees to the other Contracting Party that joint ventures in which investors of that Contracting Party participate will be accorded treatment no less favourable than that enjoyed by companies without foreign participation.

Accept, Sir, etc.

[*Signed*]
JEAN-MARIE RAUSCH

Mr. Andrej Loukanov
Minister of Foreign Economic Relations

II

MINISTER OF FOREIGN ECONOMIC RELATIONS

Sofia, 5 April 1989

Sir,

I have the honour to acknowledge receipt of your letter of 5 April 1989, reading as follows:

[*See letter I*]

I have the honour to confirm that the Government of the People's Republic of Bulgaria agrees to the above.

Accept, Sir, etc.

[*Signed*]

ANDREJ LOUKANOV

Mr. Jean-Marie Rausch
Minister of Foreign Trade of the French Republic