No. 32703

FRANCE
and
ESTONIA

Agreement concerning the reciprocal promotion and protection of investments (with exchange of letters). Signed at Tallinn on 14 May 1992

Authentic texts: French and Estonian.

Registered by France on 11 March 1996.

FRANCE
et
ESTONIE

Accord sur l'encouragement et la protection réciproques des investissements (avec échange de lettres). Signé à Tallinn le 14 mai 1992

Textes authentiques : français et estonien.

Enregistré par la France le 11 mars 1996.

[TRANSLATION — TRADUCTION]

AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF ESTONIA CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the French Republic and the Government of the Republic of Estonia, 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 Estonia and for Estonian 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 as follows:

Article 1

For the purposes of this Agreement:

1. The term "investment" shall apply to assets such as property, rights and interests of any category and 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, albeit minority or indirect, in companies constituted in the territory of either Contracting 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 trade marks, industrial models and designs), technical processes, registered trade names and goodwill;

(*e*) Concessions accorded by law or by virtue of a contract, including concessions to prospect for, cultivate, mine or develop natural resources, including those situated in the maritime zones of the Contracting Parties,

It being understood that the said assets shall be or shall have been invested, in conformity with the legislation of the Contracting Party in whose territory or maritime zone 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 Contracting Party in whose territory or maritime zone the investment is made.

2. The term "national" shall mean individuals bearing the nationality of either Contracting Party in accordance with that Party's legislation.

[1] Came into force on 25 September 1995, i.e., one month after the date of receipt of the last of the notifications (19 January 1994 and 25 August 1995) by which the Parties had informed each other of the completion of the required internal procedures, in accordance with article 12.

3. The term "company" shall mean any body corporate constituted in the territory of one Contracting Party in accordance with that Party's legislation and having its registered office there, or controlled, directly or indirectly, by nationals of one Contracting Party or by bodies corporate having their registered office in the territory of one Contracting Party and constituted in accordance with that Party's legislation.

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

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

5. This Agreement shall apply to the territory of each of the Contracting Parties and to the maritime zone of each of the Contracting Parties, hereinafter referred to as the economic zone and the continental shelf extending beyond the limit of the territorial waters of each of the Contracting Parties and over which they have, in accordance with international law, sovereign rights and jurisdiction for the purpose of prospecting for, exploiting and conserving natural resources.

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 zone by nationals or companies of the other Party.

Article 3

Each Contracting Party shall undertake to accord in its territory and maritime zone just and equitable treatment, in accordance with the principles of international law, to the investments of nationals or companies of the other Party and to ensure that the exercise of the right so granted is not impeded either *de jure* or *de facto*.

Article 4

Each Contracting Party shall accord in its territory and maritime zone to nationals or companies of the other Party, in respect of their investments and activities in connection with such investments, treatment that is no less favourable than that accorded to its own nationals or companies or the treatment accorded to nationals or companies of the most-favoured nation, if the latter is more advantageous. For this purpose, nationals who are authorized to work in the territory and maritime zone of one of the Contracting Parties shall be entitled to enjoy the appropriate facilities for the exercise of their professional activities.

Such treatment shall not, however, include privileges which may be extended by a Contracting Party to nationals or companies 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 economic organization.

The provisions of this article shall not apply in respect of taxation.

Article 5

1. Investments made by nationals or companies of one Contracting Party shall be fully and completely protected and safeguarded in the territory and maritime zone of the other Contracting Party.

2. Neither Contracting Party shall take any expropriation or nationalization measures or any other measures which could cause the nationals or companies of the other Party to be dispossessed, directly or indirectly, of their investments in its territory or maritime zone, except for reasons of public necessity and on condition that those measures are not discriminatory or contrary to a specific undertaking.

Any such dispossession measures taken shall give rise to the payment of prompt and adequate compensation, the amount of which, calculated on the basis of the real value of the investments concerned, shall be assessed on the basis of a normal economic situation prior to any threat of dispossession.

The amount and methods of payment of such compensation shall be determined not later than the date of dispossession. The compensation shall be readily convertible, paid without delay and freely transferable. It shall yield, up to the date of payment, interest calculated at the applicable market rate.

3. Nationals or companies of one 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 zone of the other Contracting Party shall be accorded by the latter Party treatment which is no less favourable than that accorded to its own nationals or companies or to those of the most-favoured nation.

Article 6

A Contracting Party in whose territory or maritime zone investments have been made by nationals or companies of the other Contracting Party shall accord to said nationals or companies freedom of transfer of:

(*a*) Profits, dividends and other current income;

(*b*) Royalties deriving from the intangible property listed in article 1, paragraph 1, subparagraphs (*d*) and (*e*);

(*c*) Payments made in reimbursement of duly contracted loans;

(*d*) Proceeds of the transfer or complete or partial liquidation of the investment, including appreciation of the invested capital;

(*e*) Compensation for dispossession or loss provided for under article 5, paragraphs 2 and 3 above.

Nationals of either Contracting Party who have been authorized to work in the territory or maritime zone of the other Contracting Party in connection with an approved investment shall also be authorized to transfer to their country of origin an appropriate portion of their remuneration.

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

Article 7

Insofar as the regulations of one Contracting Party provide for guaranteeing external investments, a guarantee may be granted, on the basis of a case-by-case review, for investments made by nationals or companies of that Party in the territory or maritime zone of the other Party.

Investments made by nationals or companies of one Contracting Party in the territory or maritime zone of the other Contracting Party may be granted the guar-

antee provided for in the preceding paragraph only with the prior consent of the latter Contracting Party.

Article 8

1. Any dispute relating to investments made between one Contracting Party and a national or company of the other Contracting Party shall, as far as possible, be settled amicably between the two parties concerned.

2. Any dispute which cannot be settled amicably within six months from the time when a claim is made in writing shall, at the request of either party, be submitted to arbitration with a view to a binding decision. The applicable procedures for arbitration shall be the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as adopted by the General Assembly on 15 December 1976.[1]

3. 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] such disputes shall, at the request of either Party, be submitted for arbitration to the International Centre for Settlement of Investment Disputes (ICSID), established by that Convention.

Article 9

If one Contracting Party, by virtue of a guarantee issued in respect of investments made in the territory or maritime zone of the other Party, makes payments to one of its own nationals or companies, it shall thereby assume the rights and claims of said national or company.

Such payments shall be without prejudice to the rights of the beneficiary of the guarantee to have recourse to ICSID 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 nationals or companies of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, by the terms of that undertaking, insofar 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.

2. If a dispute cannot be settled within six months of the time when a claim is made by one of the Contracting Parties, it shall be submitted, at the request of either Contracting Party, to an arbitral tribunal.

3. Said tribunal shall, in each separate case, be constituted as follows:

Each Contracting Party shall designate one member, and the two said members shall, by agreement, designate a national of a third State, who shall be appointed

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

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

chairman by the two Contracting Parties. All the members shall be appointed within two 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 time limits established in paragraph 3 above are not observed, one Contracting Party shall, in the absence of any other arrangement, 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 performing that function, the most senior Under-Secretary-General shall, provided that he is not a national of either Contracting Party, make the necessary appointments.

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

The tribunal shall adopt its own rules of procedure. It shall interpret the award at the request of either Contracting Party. Unless the tribunal decides otherwise, taking particular circumstances into consideration, the cost of the arbitral proceedings, including the arbitrators' fees, shall be divided equally between the Parties.

Article 12

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

This Agreement is concluded for an initial period of 20 years. It shall remain in force thereafter unless either Party denounces it through the diplomatic channel, giving one year's notice.

Upon the expiry of the validity of this Agreement, investments made while it was in force shall continue to be protected by its provisions for an additional period of 20 years.

DONE at Tallinn on 14 May 1992, in duplicate in the French and Estonian languages, both texts being equally authentic.

For the Government
of the French Republic:

DOMINIQUE STRAUSS-KAHN

For the Government
of the Republic of Estonia:

REIN MILLER

EXCHANGE OF LETTERS

I

Sir,

I have the honour to refer to the Agreement signed today between the Government of the French Republic and the Government of the Republic of Estonia on the reciprocal promotion and protection of investments and to inform you that the interpretation of article 3 of this Agreement is as follows:

(*a*) Any discriminatory legislation which restricts the purchase and transport of raw materials, secondary materials, energy and fuel and of means of production and operation of any type, any interference with the sale and transport of products within the country and abroad and any other measure having similar effect shall be considered *de facto* or *de jure* impediments to just and equitable treatment;

(*b*) The Contracting Parties shall, within the framework of their domestic legislation, give favourable consideration to requests for entry and permission to reside, work and travel submitted by nationals of a Contracting Party, in connection with an investment in the territory of the other Contracting Party.

I should be grateful if you would inform me of your Government's agreement with the contents of this letter.

Accept, Sir, etc.

DOMINIQUE STRAUSS-KAHN

II

Madam,

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

[*See letter I*]

I have the honour to confirm my Government's agreement with the preceding statements.

Accept, Madam, etc.

R. MILLER