

No. 33361

**BELGIUM, LUXEMBOURG
and
UNION OF SOVIET SOCIALIST REPUBLICS**

Agreement concerning the reciprocal promotion and protection of investments (with protocol). Signed at Moscow on 9 February 1989

Authentic texts: French and Russian.

Registered by Belgium on 13 November 1996.

**BELGIQUE, LUXEMBOURG
et
UNION DES RÉPUBLIQUES
SOCIALISTES SOVIÉTIQUES**

Accord concernant l'encouragement et la protection réciproques des investissements (avec protocole). Signé à Moscou le 9 février 1989

Textes authentiques : français et russe.

Enregistré par la Belgique le 13 novembre 1996.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE GOVERNMENTS OF THE KINGDOM OF BELGIUM AND THE GRAND DUCHY OF LUXEMBOURG AND THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of Belgium and the Government of the Grand Duchy of Luxembourg, on the one hand, and

The Government of the Union of Soviet Socialist Republics, on the other hand,

Desiring to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Considering the beneficial effect that this Agreement may have in improving business contacts and enhancing confidence in the area of investments,

Have agreed as follows:

Article 1

1. In this Agreement:

1.1. The term “investor” shall mean:

1.1.1. Any individual who under Belgian, Luxembourg or Soviet law is considered to be a citizen of the Kingdom of Belgium, the Grand Duchy of Luxembourg or the Union of Soviet Socialist Republics respectively and who is entitled, in accordance with the legislation of his country, to make investments in the territory of the other Contracting Party.

1.1.2. Any corporation constituted in accordance with Belgian, Luxembourg or Soviet law having its head office in the territory of the Kingdom of Belgium, the Grand Duchy of Luxembourg or the Union of Soviet Socialist Republics respectively and being entitled, in accordance with the legislation of its country, to make investments in the territory of the other Contracting Party.

1.2. The term “investments” shall mean every kind of assets that the investors of one Contracting Party invest in the territory of the other Contracting Party, in accordance with the legislation of the latter, including:

1.2.1. Property (buildings, installations, equipment and other tangible assets);

1.2.2. Financial assets, shares and any other kinds of interest and claims relating thereto;

1.2.3. Rights relating to any performance having economic value;

1.2.4. Intellectual property rights, including patents, trade marks, appellations of origin, trade names, industrial designs and models, copyrights and technology and know-how.

¹ Came into force on 13 October 1991 by notification, in accordance with article 13.

The term “investments” shall also mean indirect investments made by investors of one Contracting Party in the territory of the other Contracting Party through an investor of a third State.

No change in the legal form of investments or reinvestments shall affect their status as “investments” for the purposes of this Agreement.

1.3. The term “income” shall mean amounts received or to be received deriving from investments, including profits, dividends, interest, copyright royalties, licensing fees, commissions or remuneration for technical assistance or services.

2. This Agreement shall apply to the territory of each Contracting Party and to the economic zone and continental shelf extending beyond the territorial waters of each of the Contracting Parties concerned and over which, in accordance with international law, they have sovereign rights and jurisdiction for the purposes of prospecting for, mining and conservation of natural resources.

Article 2

Each Contracting Party shall guarantee that the most-favoured-nation clause will be applied to investors of the other Contracting Party in all matters covered by this Agreement, particularly articles 4, 5 and 6, excluding the privileges that one Contracting Party accords to investors of a third State on the basis of:

- Its participation in a customs union or in various international economic organizations;
- A double taxation agreement or any other agreement concerning taxation.

Article 3

Each Contracting Party shall encourage investments by investors of the other Contracting Party and shall admit such investments into its territory in accordance with its legislation.

Article 4

1. Each Contracting Party shall undertake to accord to investments made in its territory by investors of the other Contracting Party fair and equitable treatment which shall not be subject to any unreasonable or discriminatory measure that might impede their management, maintenance, enjoyment or liquidation.

2. Subject to measures necessary for the maintenance of law and order, such investments shall be safeguarded and protected at all times.

Article 5

Investments made by investors of one Contracting Party in the territory of the other Contracting Party may not be expropriated, nationalized or subjected to any other measures having similar effects, unless such measures are taken in the public interest in accordance with a legal procedure and are not discriminatory.

Furthermore, such measures must be accompanied by provisions for the payment of compensation, the amount of which shall correspond to the real value of the investments concerned on the day before the measures were adopted or became public knowledge.

Such compensation shall be paid to investors, without delay, in convertible currency and shall be freely transferable.

Article 6

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer in convertible currency of their financial assets relating to investments, namely:

1.1. The initial capital and additional amounts for the maintenance or extension of the investment;

1.2. Income from the investment;

1.3. Amounts intended for the repayment of loans in connection with the investment;

1.4. Amounts due to the investor in connection with the sale or total or partial liquidation of the investment;

1.5. Compensation due in accordance with article 5.

2. The transfers referred to in paragraph 1 shall be made at the exchange rate effective on the date of transfer and in accordance with the exchange regulations in force in the State in whose territory the investment was made.

3. Each Contracting Party shall take the necessary measures to ensure that, after completion of the formalities required under its legislation, transfers are effected without delay and with no charge other than the usual taxes and related costs.

Article 7

1. If, by virtue of a legal or contractual guarantee covering the non-commercial risks of investments, compensation is paid to an investor of one Contracting Party, the other Contracting Party shall recognize the subrogation of the insurer in respect of the rights of the compensated investor to an extent not exceeding the portion of the risk effectively covered by the guarantee and paid to the investor.

2. In accordance with the guarantee concerning the investment in question, the insurer shall be acknowledged to have all the rights that the investor would have been able to exercise if the insurer had not subrogated him; in this case, the rights of the insurer shall not exceed those of the investor.

Article 8

1. This Agreement shall not prevent investors from invoking more favourable provisions in the legislation applicable to them in the territory of the Contracting Party where the investments are made or in the international agreements to which the Contracting Parties are or will be party.

2. Investors of one Contracting Party may conclude specific agreements with investors of the other Contracting Party, but the provisions of such agreements may not be contrary to this Agreement or to the legislation of the Contracting Party in whose territory the investment is made.

Article 9

1. Any dispute arising between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through the diplomatic channel.

2. If the dispute cannot be settled in the manner provided for in paragraph 1, it shall be submitted to a joint commission consisting of representatives of the Contracting Parties. This commission shall meet as soon as possible at the request of either Contracting Party.

3. If the dispute cannot be resolved by the joint commission within six months from the start of negotiations, it shall be submitted to an arbitral tribunal at the request of either Contracting Party.

4. For each specific case the arbitral tribunal shall be constituted in the following manner. Each Contracting Party shall appoint an arbitrator and the two arbitrators shall together appoint as chairman of the tribunal a third arbitrator, who shall be a national of a third State. The arbitrators shall be appointed within three months and the chairman within four months of the date on which one Contracting Party notified the other Contracting Party of its intention to submit the dispute to arbitration.

5. If the time-frame provided for in paragraph 4 is not observed, either Contracting Party may invite the Secretary-General of the United Nations to make the necessary appointments.

6. The arbitral tribunal shall reach its decision on the basis of the provisions of this Agreement and the universally recognized rules and principles of international law.

7. The arbitral tribunal shall establish its own rules of procedure.

8. The arbitral tribunal shall take its decisions by a majority vote; such decisions shall be final and binding on the Contracting Parties.

9. Each Contracting Party shall bear the costs of its arbitrator and of its representation in the arbitration proceedings. The costs of the chairman of the arbitral tribunal and the remaining costs shall be borne equally by the Contracting Parties.

Article 10

1. Any dispute between one Contracting Party and an investor of the other Contracting Party relating to the amount or method of payment of the compensation due under article 5 shall be communicated in writing, together with a detailed report addressed by the investor to the Contracting Party involved in the dispute. The two shall, as far as possible, endeavour to settle it to their mutual satisfaction.

2. If the dispute cannot be settled thus within six months of the date of the written notification referred to in paragraph 1, it shall be referred to either of the following, the choice being left to the investor:

2.1. The Institute of Arbitration of the Chamber of Commerce in Stockholm;

2.2. The *ad hoc* arbitral tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. The decisions of the arbitral tribunal shall be based on:

3.1. The provisions of this Agreement;

3.2. The national legislation of the Contracting Party in whose territory the investment was made, including the rules of conflict of laws;

3.3. The universally recognized rules and principles of international law.

4. The decisions of the arbitral tribunal shall be final and binding on the parties to the dispute. Both Contracting Parties shall undertake to enforce such decisions in accordance with their national legislation.

Article 11

Either Contracting Party may invite the other Contracting Party to enter into consultations concerning any issue relating to the implementation or interpretation of this Agreement. The other Contracting Party shall make the necessary arrangements to facilitate such consultations.

Article 12

This Agreement shall apply to investments made in the territory of one Contracting Party by investors of the other Contracting Party as from 1 January 1964.

Article 13

1. This Agreement shall enter into force 30 days following the date on which the Contracting Parties have notified each other of the completion of the requisite procedures in their respective countries. This Agreement shall remain in force for a period of 15 years. Unless one Contracting Party gives written notice of termination at least 12 months prior to the expiry of the period of validity, it shall be tacitly renewed until one Contracting Party notifies the other Contracting Party in writing of its wish to terminate this Agreement. This notification shall take effect 12 months following the date of its receipt by the other Contracting Party.

2. In respect of investments made before the expiry of this Agreement, its provisions shall remain in force for a period of 15 years following the expiry.

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

DONE in Moscow on 9 February 1989, in three original copies, each in the French and Russian languages, both texts being equally authentic.

For the Government
of the Kingdom of Belgium:

WILLY CLAES

ROBERT URBAIN

For the Government
of the Grand Duchy of Luxembourg:

HUBERT WURTH

For the Government
of the Union of Soviet Socialist Republics:

BORIS TOLSTYKH

VLADIMIR PANSKOV

PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENTS OF
THE KINGDOM OF BELGIUM AND THE GRAND DUCHY OF LUXEM-
BOURG AND THE GOVERNMENT OF THE UNION OF SOVIET SO-
CIALIST REPUBLICS CONCERNING THE RECIPROCAL PROMOTION
AND PROTECTION OF INVESTMENTS

At the time of signature of the Agreement between the Governments of the Kingdom of Belgium and the Grand Duchy of Luxembourg and the Government of the Union of Soviet Socialist Republics concerning the reciprocal promotion and protection of investments, the undersigned representatives have additionally agreed to give the following interpretation to article 2 of the Agreement:

“In the territory of the Union of Soviet Socialist Republics, investors of the Kingdom of Belgium and the Grand Duchy of Luxembourg shall be accorded treatment at least equal to that accorded to investors of countries which are members of the Organisation for Economic Cooperation and Development on the date of this Protocol.”

This Protocol shall form an integral part of the above-mentioned Agreement.

DONE in Moscow on 9 February 1989, in three original copies, each in the French and Russian languages, both texts being equally authentic.

For the Government
of the Kingdom of Belgium:

WILLY CLAES

ROBERT URBAIN

For the Government
of the Grand Duchy of Luxembourg:

HUBERT WURTH

For the Government
of the Union of Soviet Socialist Republics:

BORIS TOLSTYKH

VLADIMIR PANSKOV
