No. 33360

BELGO-LUXEMBOURG ECONOMIC UNION
and
BULGARIA

Agreement concerning the reciprocal promotion and protection of investments (with protocol). Signed at Sofia on 25 October 1988

Authentic texts: French and Bulgarian.

Registered by the Belgo-Luxembourg Economic Union on 13 November 1996.

UNION ÉCONOMIQUE BELGO-LUXEMBOURGEOISE
et
BULGARIE

Accord concernant l'encouragement et la protection réciproques des investissements (avec protocole). Signé à Sofia le 25 octobre 1988

Textes authentiques : français et bulgare.

Enregistré par l'Union économique belgo-luxembourgeoise le 13 novembre 1996.

[TRANSLATION — TRADUCTION]

AGREEMENT[1] BETWEEN THE BELGO-LUXEMBOURG ECONOMIC UNION AND THE PEOPLE'S REPUBLIC OF BULGARIA CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Belgo-Luxembourg Economic Union and

The People's Republic of Bulgaria,

Hereinafter referred to as "the Contracting Parties",

Wishing to strengthen their economic cooperation by creating favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Considering that such an agreement could be conducive to improving business relations and confidence in the area of investments,

Guided by the principles of the Final Act of the Helsinki Conference on Security and Cooperation in Europe, signed in Helsinki on 1 August 1975,[2]

Have agreed as follows:

Article 1

1. The term "investments" shall mean any kind of assets and any direct or indirect input into any companies or enterprises in any sector of economic activity, in particular:

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

(*b*) Shares and other kinds of interest in companies;

(*c*) Title to money and to any performance having economic value;

(*d*) Copyrights, trade marks, patents, technical processes, know-how, trade names and any other industrial property right, as well as goodwill;

(*e*) Assets and property relating to economic activities authorized by law.

No change in the legal form of investments or reinvestments shall affect their status as "investments" for the purpose of this Agreement.

2. The term "income" shall mean the amounts received or to be received from investments made pursuant to paragraph 1, including profits, dividends and interest.

3. The term "investors" shall mean:

A. In respect of the People's Republic of Bulgaria:

(*a*) Any corporation constituted in accordance with Bulgarian law and having its head office in the territory of the People's Republic of Bulgaria;

[1] Came into force on 29 May 1991 by the exchange of the instruments of ratification, which took place at Brussels, in accordance with article 13.

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

(*b*) Any individual who, under Bulgarian law, is considered to be a national of the People's Republic of Bulgaria, provided that he is authorized to act as an investor under Bulgarian law.

B. In respect of the Belgo-Luxembourg Economic Union:

(*a*) Any corporation constituted in accordance with Belgian or Luxembourg law and having its head office in the territory of the Kingdom of Belgium or the Grand Duchy of Luxembourg;

(*b*) Any individual who, under Belgian or Luxembourg law, is considered to be a national of the Kingdom of Belgium or of the Grand Duchy of Luxembourg.

Article 2

1. 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 law.

2. Each Contracting Party shall accord to investments made in its territory by investors of the other Contracting Party fair and equitable treatment, precluding any illicit or discriminatory measure which might impede their management, maintenance, use, enjoyment or liquidation.

3. With the exception of measures necessary to maintain law and order, such investments and the income derived therefrom shall at all times be afforded protection and security equal to those accorded to investments belonging to investors of the most favoured nation.

4. However, the provisions of paragraphs 2 and 3 shall not extend to privileges which may be accorded by either Contracting Party to investors of a third State by virtue of:

— Its participation in an economic union, customs union, common market or free trade zone;

— An agreement on the elimination of double taxation or any other agreement concerning taxation.

Article 3

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall not be expropriated or nationalized unless the following conditions are fulfilled:

(*a*) The measures are taken in the public interest and in accordance with legal procedure;

(*b*) They are neither discriminatory nor contrary to a specific commitment, such as those envisaged in article 6, paragraph 2;

(*c*) They contain provisions for the payment of compensation in an amount corresponding to the market value of the investments concerned on the day before the measures were adopted or became public knowledge. Immediately it is due, such compensation shall be paid to investors in convertible currency without delay and shall be freely transferable.

2. Investors of either Contracting Party whose investments have suffered losses as a result of war, armed conflict, a state of national emergency, unrest or other similar events occurring in the territory of the other Contracting Party shall

not be discriminated against by that Contracting Party, and shall be accorded treatment at least equal to that accorded to investors of the most favoured nation as regards restitution, indemnification or other forms of compensation.

3. Such treatment shall apply to investors of either Contracting Party possessing any form of interest in any type of company established in the territory of the other Contracting Party.

4. In all cases, each Contracting Party shall in its territory accord to investors of the other Contracting Party treatment at least equal to that accorded to investors of the most favoured nation.

Article 4

1. Each Contracting Party shall guarantee to investors of the other Contracting Party free transfer of their liquid assets relating to an investment, in particular of:

(*a*) The capital or an additional amount for the maintenance or extension of the investment;

(*b*) Income from the investment;

(*c*) Amounts needed to settle expenses arising from the upkeep of the investment, such as:

— Repayment of loans,

— Payment of royalties,

— Payment of other costs;

(*d*) The proceeds from the complete or partial liquidation of the investment;

(*e*) The compensation referred to in article 3.

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

3. Each Contracting Party shall make the necessary arrangements to ensure that transfers are effected without delay and without any charges other than the usual taxes and costs.

In any case, the transfer shall not be effected later than one month after the date on which it was requested.

4. The guarantees envisaged in paragraphs 1, 2 and 3 shall be at least equal to those accorded to investors of the most favoured nation who are in a similar situation.

Article 5

1. If, under a legal or contractual guarantee against non-commercial risks of an investment, either Contracting Party or a public body of that Party pays compensation to its own investors, the other Contracting Party shall recognize that the rights of the compensated investors have been transferred to the Contracting Party or public body concerned, in its capacity as insurer.

2. In the same manner as the investors, and within the limits of the rights transferred, the insurer may, through subrogation, exercise and claim the rights of the said investors and claims relating thereto.

3. In respect of the transferred rights, the other Contracting Party may, in respect of the insurer subrogated with regard to the rights of the compensated investors, invoke the obligations incumbent on such investors by law or by contract.

Article 6

1. When a question relating to investments is governed both by this Agreement and by the national legislation of either Contracting Party, or by international agreements to which they are parties or may be parties in future, the investors of the other Contracting Party may invoke the provisions which are most favourable to them.

2. The investors of either Contracting Party may conclude specific commitments with the other Contracting Party but the provisions of such commitments may not be contrary to this Agreement. Investments made under such specific commitments shall, moreover, be governed by this Agreement.

Article 7

1. Disputes concerning the interpretation or application of this Agreement shall be settled, to the extent possible, between the Contracting Parties through the diplomatic channel.

2. In the absence of a settlement, the dispute shall be submitted to a joint commission composed of representatives of the Contracting Parties; the commission shall meet without delay 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 *ad hoc* arbitral tribunal at the request of either Contracting Party.

4. The said tribunal shall be constituted in the following way. 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 five months of the date on which either Contracting Party notifies the other Contracting Party of its intention to submit the dispute to arbitration.

5. If the time limits established in paragraph 4 are not observed, the Secretary-General of the United Nations shall be invited to make the necessary appointments. If the Secretary-General is a national of one of the Contracting Parties, the appointments shall be made by the Under-Secretary-General with most seniority who is not a national of one of the States concerned.

6. The chairman and the arbitrators of the arbitral tribunal shall be nationals of States with which the two parties to the dispute have diplomatic relations.

7. The arbitral tribunal shall base its decisions on the provisions of this Agreement and on the universally recognized rules and principles of international law.

8. The arbitral tribunal shall adopt its own rules of procedure.

9. The arbitral tribunal shall reach its decisions by a majority vote. Such decisions shall be final and binding on the parties.

10. Each party to the dispute shall bear the costs of its own arbitrator and of its representation in the arbitral proceedings. The costs of the chairman and other costs shall be borne equally by the parties.

Article 8

1. Any dispute arising between either of the Contracting Parties and an investor of the other Contracting Party concerning the amount of compensation due under article 3, paragraph 1, shall be the subject of a written notification accompanied by a detailed report addressed by that investor to the Contracting Party concerned. As far as possible, the dispute shall be settled amicably between the parties.

2. If the dispute cannot be settled within six months from the date of the written notification referred to in paragraph 1, and in the absence of any other form of settlement agreed between the parties involved, the dispute shall be referred to either of the following, the choice being left to the investor:

(*a*) The domestic court competent in the matter

or

(*b*) International arbitration before an *ad hoc* tribunal.

3. The *ad hoc* tribunal shall for each case be constituted in the following manner. Each party to the dispute 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 two months and the chairman within three months of the date on which the investor who is a party to the dispute notifies the Contracting Party concerned of his intention to submit the dispute to international arbitration.

If the time limits established above are not observed, either party to the dispute may invite the President of the Institute of Arbitration of the Chamber of Commerce in Stockholm to make the necessary appointments.

The members of the *ad hoc* tribunal shall be nationals of States with which the Contracting Parties have diplomatic relations.

4. The *ad hoc* tribunal shall establish its own rules of procedure in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) adopted at the Conference on 15 December 1976.

5. The *ad hoc* tribunal shall base its decisions on:

— The national legislation of the Contracting Party which is a party to the dispute in whose territory the investment was made, including the rules of conflict of laws;

— The provisions of this Agreement;

— The terms of any specific commitment made in respect of the investment;

— The universally recognized rules and principles of international law.

6. The arbitral decisions shall be final and binding on the parties to the dispute. Each Contracting Party shall undertake to enforce such decisions in accordance with its national legislation.

Article 9

Each Contracting Party shall settle, in accordance with its laws and regulations and as favourably as possible, questions relating to the entry, stay, work and movement in its territory of nationals of the other Contracting Party and members of their household engaged in activities relating to investments for the purposes of this Agreement.

Article 10

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 11

This Agreement shall apply to investments made by investors of either Contracting Party in the territory of the other Contracting Party and in accordance with that Contracting Party's law as from 1 January 1960.

Article 12

The modalities for implementing certain provisions of this Agreement shall be the subject of a protocol which shall be an integral part of this Agreement.

Article 13

1. This Agreement shall enter into force one month following the date on which the Contracting Parties exchange their instruments of ratification.

It shall remain in force for a period of ten years.

Unless one Contracting Party gives notice of termination at least six months prior to the expiry of the period of validity, the Agreement shall be tacitly renewed for successive ten-year periods, each Contracting Party reserving the right to terminate the Agreement by giving notice at least twelve months prior to the date of expiry of the current period.

2. In respect of investments made prior to the date of expiry of this Agreement, it shall remain in force for a period of fifteen years from that date.

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

DONE in Sofia on 25 October 1988, in two original copies, each in the French and Bulgarian languages, both texts being equally authentic.

For the Belgo-Luxembourg Economic Union:

ROBERT URBAIN

For the People's Republic of Bulgaria:

ANDREÏ LUKANOV

PROTOCOL

At the time of signature of the Agreement on the reciprocal promotion and protection of investments between the Belgo-Luxembourg Economic Union and the People's Republic of Bulgaria, the undersigned representatives have additionally agreed to the following provisions, which form an integral part of the Agreement:

Article 3, paragraph 1

These provisions shall also apply to the transfer of an investment to public ownership and its placement under public scrutiny, as well as to any other forfeiture or limitation of rights *in rem* through sovereign measures involving consequences similar to expropriation.

Article 4, paragraph 1

1. In respect of the People's Republic of Bulgaria, the provisions of article 4, paragraph 1 (*a*) to (*d*), shall apply in such a way as to ensure that the free transfer is effected by debiting the convertible currency account of the joint company or of the investor concerned.

2. If a joint company, with the authorization of the Bulgarian authorities, engages in an economic activity producing income wholly or partially in local currency and if consequently it does not possess sufficient holdings of convertible currency, the National Bank of Bulgaria shall make available to it the necessary convertible currency for the transfer of the income from the investment and its complete or partial liquidation (article 4, paragraph 1 (*b*) and (*d*)) in exchange for local currency.

DONE in Sofia on 25 October 1988, in two original copies, each in the French and Bulgarian languages, both texts being equally authentic.

For the Belgo-Luxembourg Economic Union:

ROBERT URBAIN

For the People's Republic of Bulgaria:

ANDREÏ LUKANOV