

PROCES-VERBAL OF EXCHANGE OF INSTRUMENTS OF RATIFICATION

The undersigned have met today for the purpose of exchanging the instruments of ratification of the Agreement between the Republic of Malta and the Belgo-Luxembourg Economic Union concerning the reciprocal encouragement and protection of investments.

The instruments having been examined and found to be in due form, the exchange took place.

In conformity with its article 11 this Agreement shall enter into force on 15 June 1993.

In witness whereof, the undersigned have signed the present Proces-verbal.

Done at Brussels this 15 day of June 1993, in duplicate.

C. INGUANEZ, First Secretary Embassy of the State of Malta.

G. DE PROOST, Head Treaties Division Ministry of Foreign Affairs of Belgium

AGREEMENT BETWEEN THE REPUBLIC OF MALTA AND BELGO-LUXEMBOURG ECONOMIC UNION CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Government of the Republic of Malta, and the Government of the Kingdom of Belgium, acting in its own name and on behalf of the GrandDuchy of Luxembourg, under the Convention establishing the Belgo-Luxembourg Economic Union,

DESIRING to strengthen economic cooperation between the Contracting Parties,

INTENDING to create favourable conditions for investments by nationals and companies of either Contracting Party in the territory of the other Contracting Party, and

RECOGNISING that encouragement and contractual protection of such investments are apt to stimulate the transfer of capital and technology between the Contracting Parties in the interest of their economic development,

HAVE AGREED AS FOLLOWS:-

ARTICLE 1

For the purposes of this Agreement:-

1. The term "investments" means every direct or indirect contribution in cash, in kind or in services, invested or reinvested:

- either in a company which delivers to the investor, as a counterpart of this contribution, bonds, shares or any other certificate of participation;

- or in any establishment without juridical personality, having an economic activity.

This contribution may be realised in any sector of economic activity and especially in enterprises in the field of industry, trade, agriculture, mining, forestry, tourism, communications and services.

The following shall more particularly, though not exclusively, be considered as investments within the meaning of the present Agreement:

(a) Movable and immovable property as well as any other right "in rem" such as mortgages, pledges, usufructs and similar rights;

(b) Shares and other types of holding;

(c) Titles to money or to any performance having an economic value;

(d) Copyrights, marks, patents, technical processes, trade names, trademarks and goodwill;

(e) Concessions under public law, including concessions to search for, extract or exploit natural resources.

Any alteration of the form in which assets have been invested shall not affect qualifying of "investments" within the meaning of the present Agreement.

2. The term "nationals" means physical persons who, according to the law of each contracting state, are considered as citizens of that country.

3. The term "companies" means any juridical person set up in the territory of either Contracting Party in accordance with the law of such contracting state and having its seat within its territory.

4. The term "incomes" means the amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties or fees.

ARTICLE 2

Each Contracting Party shall, within the framework of its legislation, admit and encourage on its territory investments made by nationals and companies of the other Contracting Party.

In particular, each Contracting party shall authorize the conclusion and execution of licencing contracts and of contracts relating to commercial administrative or technical assistance, in so far those activities are connected with investments.

ARTICLE 3

1. Either Contracting Party binds itself to ensure on its territory a fair and equitable treatment to the investments belonging directly or indirectly to nationals or companies of the other Contracting Party.

2. Such investments shall also enjoy continuous protection and security, excluding all unjustified or discriminatory measures which would "de jure" or "de facto" hinder their management, maintenance, utilization, enjoyment or liquidation.

3. The treatment and protection guaranteed by paragraphs 1. and 2. of this article shall at least be equal to those enjoyed by the nationals or legal persons of any third State, and may, in no case, be less favourable than those recognized by international law.

ARTICLE 4

The investments made by nationals or companies of either Contracting Party in the territory of the other Contracting Party shall not be subjected to any expropriation or nationalization measures or any other measures of dispossession, direct or indirect, unless the following conditions are complied with:

(a) the measures are taken in the public interest and under due process of law;

(b) they are neither discriminatory nor contrary to a specific engagement;

(c) they are accompanied by provisions for the payment of adequate and effective compensation.

2. The amount of such compensation shall represent the real value of the affected investments on the date on which the measure was taken or, should the case arise, on

the day before the date on which the impending measure became public knowledge; it shall be paid to the persons entitled thereto and shall be freely transferred without delay.

3. To nationals or companies of either Contracting Party, shall be accorded, in every case, in the territory of the other Contracting Party, a treatment no less favourable than that enjoyed by the nationals or companies of any third State and in no case less favourable than that recognized by international law.

4. Where a Contracting Party expropriates the assets of a company established in its territory, company of which physical or legal persons of the other Contracting Party own shares, the former Contracting Party shall apply the provisions of paragraphs 1, 2 and 3 of this article, to the physical or legal persons of the other Contracting Party, owners of these shares.

5. If physical or legal persons of one of the Contracting Parties are owners of shares of a foreign company which is not Belgian, Luxembourg or Maltese, company which should be owner of shares of a company of the other Contracting Party, this latter Party shall apply the paragraphs 1, 2 and 3 of this article to the aforementioned physical or legal persons, shareholders of the foreign company concerned.

This provision shall only be applicable if the aforementioned company or the State of this company are not entitled to assert a right to indemnification or if this company or this State should renounce to claim the provided indemnification.

ARTICLE 5

1. Each Contracting Party shall, in respect of investments made in its territory by nationals or companies of the other Contracting Party, allow the free transfer of capital, returns derived therefrom and, in the case of liquidation, the proceeds of such liquidation.

2. The nationals of either Contracting Party who have been authorised to work in the territory of the other Contracting Party as a result of an approved investment shall also be authorised to transfer their earnings to their country of origin.

3. The transfers referred to in the preceding paragraphs shall be effected at the official rates of exchange, applicable on the date of transfer, pursuant to the exchange regulations in force for the various classes of transactions.

4. Each Contracting Party shall issue the authorizations required to ensure that the transfer can be effected without undue delay and any fees or charges other than the usual bank charges.

ARTICLE 6

1. If either Contracting Party, or any public institution of this Party makes payment to its nationals or companies under an indemnity it has given in respect of an investment or any part thereof in the territory of the other Contracting Party, this latter Party shall recognise:-

(a) the assignment, whether under law or pursuant to a legal transaction, of any right or claim from the party indemnified to the former Contracting Party (or its designated Agency); and

(b) that the former Contracting Party (or its designated Agency) is entitled by virtue of subrogation to exercise the rights and enforce the claims of such a party.

2. The subrogation of rights shall also apply to the rights of transfer referred to in article 5 of this Agreement.

ARTICLE 7

1. Any controversy between the Contracting Parties concerning the interpretation or execution of this Agreement shall be settled through the normal diplomatic channels.

2. In case of failure to reach an understanding the controversy in question shall be submitted to a mixed commission consisting of representatives of both Contracting Parties.

3. The commission shall be convened upon the request of the most diligent Contracting Party and shall meet without undue delay.

ARTICLE 8

1. Where a dispute arises between an investor of one of the Contracting Parties and the other Contracting Party affecting an investment of the former and relating to a matter with respect to which the latter has undertaken an obligation in favour of the other Contracting Party under this Agreement, such a dispute shall in the first instance be dealt with the pursuit of local remedies, unless some other method, including arbitration, has been agreed between the investor and the Contracting Party.

2. (a) If no settlement is reached within a period of eighteen months from a written notification of a claim, any such dispute shall be submitted to international arbitration upon the request of either of the parties to the dispute.

(b) For this purpose, each Contracting Party gives its advanced and irrevocable consent to submit any such dispute to international arbitration provided the local remedies have been pursued in accordance with the foregoing provisions of this article.

3. Where the dispute is submitted to international arbitration, it may, upon the request of the most diligent party to the dispute, be referred to:

(a) the International Centre for Settlement of Investment Dispute

(b) the Court of Arbitration of the International Chamber of Commerce

(c) an ad hoc international arbitrator appointed by a special agreement or arbitration tribunal established under the arbitration rules of the United Nations Commission on International Trade Law.

ARTICLE 9

The provisions in this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other Contracting party the benefit of any treatment, preference or privilege resulting from:-

(a) any existing or future customs union, free trade area or special trade, customs or tariff arrangements or similar international agreement to which either of the Contracting Parties is or may become a party; or

(b) any international agreement or arrangement relating wholly or mainly to taxation or monetary matters or any domestic legislation relating wholly or mainly to taxation.

ARTICLE 10

In the event of any matter being provided as well in this Agreement as in an international Agreement or in the national regulations of one of the Contracting Parties, no provision of this Agreement shall prevent a national or legal person of one of the Contracting Parties who possesses investments in the territory of the other Contracting Party, from availing itself of the most favourable provisions.

ARTICLE 11

1. This Agreement shall be ratified by the Contracting Parties in accordance with their respective constitutional procedures and shall come into force on the date of exchange of such instruments of ratification.

2. It shall remain in force for a period of ten years, and unless written notice of termination is given six months before the termination of the above period of ten years this Agreement shall automatically be renewed for a further period of five years and so forth.

3. On expiry of termination of this Agreement, investments made while the Agreement was in force shall continue to enjoy protection of this Agreement for a further period of ten years.

In witness whereof, the undersigned representatives duly authorized thereto by their respective Governments, have signed the present Agreement.

Done in Brussels in duplicate, in the English, French and Dutch languages, all texts being equally authentic, on the fifth day of March 1987.

FOR THE GOVERNMENT OF THE REPUBLIC OF MALTA Dr. Alex SCEBERRAS
TRIGONA Minister of Foreign Affairs

FOR THE BELGO-LUXEMBOURG ECONOMIC UNION Leo TINDEMANS
Minister of External Relations