AGREEMENT

BETWEEN

BOSNIA AND HERZEGOVINA

AND

THE GOVERNMENT OF THE REPUBLIC OF FRANCE

ON

RECIPROCICAL PROMOTION AND PROTECTION

OF

INVESTMENTS

Bosnia and Herzegovina and the Government of the Republic of France, hereinafter referred to as Contracting Parties,

In order to strengthen economic cooperation between the two Contracting Parties and create favourable conditions for Bosnia and Herzegovina's investments in France and French investments in Bosnia and Herzegovina,

Convinced that promotion and reciprocal protection of such investments will contribute to stimulating the transferring of capital and technology between the two Contracting Parties, and in the interest of their economic development,

Have agreed as follows:

Article 1
Definitions

For the purpose of this Agreement:

1. The term "investment" means any kind of assets, such as goods, rights and interests of any kind, and in particular, though not exclusively:

   a) movable and immovable property and any other real rights such as mortgages, liens, usufruct, sureties and similar rights;

   b) shares, premium on shares, stocks and other forms of participation, including minority and indirect forms, in companies established in the territory of one Contracting Party;

   c) monetary claims, bonds and real ownership of any legal enforcement that has an economic value;

   d) intellectual, commercial and industrial property rights such as copyrights, patents, licenses, trademarks, industrial patterns and models, technical processes, know-how and trade names;

   e) business concessions conferred by law or under contract, including concessions for research, cultivation, extraction or exploitation of natural resources, including those which are located in the maritime area of the Contracting Parties.

   This Agreement shall apply to investments made before or after its entry into force by investors of either Contracting Party in the territory of another Contracting Party. However, this Agreement shall not apply to events or disputes that have arisen before its entry into force.

   Any change in the form in which assets are invested or reinvested shall not affect their qualification as investments provided that such change is not inconsistent with the legislation of the Contracting Party in whose territory or maritime area the investments has been made.

2. The term "investors" means:

a) In relation to the French Republic:

(i) natural persons who have the nationality of the French Republic;

(ii) legal entities established in the territory of the French Republic in accordance with its legislation and having their head offices in the territory of the French Republic, or are controlled directly or indirectly by nationals of the French Republic, or by legal persons having their head offices in the territory of the French Republic and established in accordance with the legislation of the French Republic.

b) In relation to Bosnia and Herzegovina:

(i) natural persons enjoying their status as citizens of Bosnia and Herzegovina under the laws in force in Bosnia and Herzegovina if they have permanent residence status or the principal place of business in Bosnia and Herzegovina;

(ii) legal entities established in accordance with the laws of Bosnia and Herzegovina, whose registered head offices, central administrations or principal places of business are located in the territory of Bosnia and Herzegovina.

3. The term "returns" means all amounts obtained from an investment, within a certain period, such as profits, royalties and interest, dividends, capital gains, licence fees and other fees.

Returns from investments, and in the case of reinvestment, returns from reinvestments enjoy the same protection and the same treatment as an investment.

4. The term "territory" means:

a) In relation to the French Republic: the territory of the French Republic, as well as its maritime territory, hereinafter defined as the economic zone and continental area, which are continuing in the territorial waters of the French Republic over which the French Republic, in accordance with international law, has sovereign rights and jurisdiction for the purpose of search, exploitation and conservation of natural resources.

b) In relation to Bosnia and Herzegovina: all land territory of Bosnia and Herzegovina, its territorial sea, the whole bed and subsoil and air space above, including any maritime area situated beyond the territorial sea of Bosnia and Herzegovina, which is under the law of Bosnia and Herzegovina, in accordance with international law, designated as an area within which Bosnia and Herzegovina may exercise rights with respect to the seabed and subsoil and natural resources.

Article 2
Scope of the Agreement

1. This Agreement shall apply in the territory of each Contracting Party as defined in Article 1, paragraph 4.

2. Nothing in this Agreement shall be construed in a way to prevent any Contracting Party to take any measure to regulate investment of foreign companies and the conditions of activities of these companies as part of measures which are designed to maintain and promote cultural and linguistic diversity.

3. For the purpose of this Agreement, it is understood that the Contracting Parties are responsible for activities or omissions of their public institutions, including but not limited to their Entities, regions and local governments, over which the Contracting Party exercises control, represents itself through, or is responsible for its international operations, or its sovereignty in accordance with its internal legislation.

Article 3
Promotion and Admission of Investments

Each Contracting Party shall promote and admit in its territory and maritime area, in accordance with its legislation and the provisions of this Agreement, investments made by investors of the other Contracting Party.

Article 4
Investment Protection

1. Each Contracting Party shall ensure fair and equitable treatment, in accordance with the principles of international law, to investments made by investors of the other Contracting Party, in its territory or maritime area, and shall guarantee that the exercise of such recognized rights is not prevented by law or in practice. In particular, but not exclusively, it shall be considered as *de jure* or *de facto* obstacles to fair and equitable treatment, any restriction to purchase or transport of raw materials and auxiliary materials, energy and fuel, as well as the means of production and utilization of all types, any obstacle to the sale and transport of products in and outside the country, as well as any other measure that have a similar effect.

2. In the framework of their internal legislation, the Contracting Parties shall give sympathetic consideration to requests for entry and permission to stay, work and travel made by nationals of one Contracting Party in connection with the investment made in the territory or maritime territory of another Contracting Party.

3. None Contracting Party shall in any way by discriminatory measures in its territory hamper the expansion, management, maintenance, use, enjoyment or alienation of investments by investors of the other Contracting Party.

Article 5
National Treatment and Most Favoured Nation Treatment

Each Contracting Party shall in its territory and maritime area accord to investors of another Contracting Party, in respect of their investments and activities related to investments, a treatment no less favourable than that which is accorded to its own investors, or the treatment accorded to investors of the Most Favoured Nation, if the second one is more favourable. In

this regard, the citizens who have permission to work in the territory or maritime area of one Contracting Party shall enjoy the material facilities relating to the performance of their professional activities.

However, this treatment shall not include privileges or advantages granted by one Contracting Party to the investors of a third party state on the basis of its membership or accession to any existing or future free trade area, customs union, common market or any other form of regional economic organization or similar international agreement to which the Contracting party is or may become a party.

The provisions of this Article shall not apply to matters of taxation.

Article 6

Expropriation and Compensation

1. Investments made by investors of one Contracting Party shall enjoy full and complete protection and security in the territory and maritime area of another Contracting Party.

2. Neither Contracting Party shall take any measures of expropriation or nationalization, requisition or any other measure that have the effect of expropriation (hereinafter referred to as "expropriation") of investments of investors of another Contracting Party, in its territory and maritime area, except in the public interest related to the internal needs and under due process of law and provided that such measures are not discriminatory or contrary to particular obligations.

   Any measures of "expropriation" that could be taken shall cause rapid and adequate and effective compensation, the amount of which will be equal to the fair value of the investment immediately before the "expropriation" or before the upcoming "expropriation" became publicly known in a manner that affects the value of the investment. The compensation shall be calculated in accordance with the normal economic situation that existed prior to any threat of "expropriation".

   The said compensation, its amount and terms of payment, shall be determined at the latest by the date of "expropriation". The compensation shall be effectively realizable, paid without delay and freely transferable. Until the date of payment, the compensation shall include interest calculated at the normal commercial exchange rate for current transactions from the date of "expropriation" until the date of payment.

3. Investors of one Contracting Party, whose investments suffered losses, including damage due to war or other armed conflict, revolution, state of national emergency or revolt occurred in the territory or maritime area of another Contracting Party, shall enjoy the treatment by the other Contracting Party which is no less favourable than that accorded to its own investors or those of the Most Favoured Nation.

4. The affected investors of either Contracting Party shall have the right, under the law of the Contracting Party making the "expropriation", to a prompt review by a judicial or other independent authorities of that Party concerning the validity of the "expropriation" of its process and the evaluation of the investment, in accordance with the principles set out in paragraph 2 of this Article, not excluding the possibility of launching any dispute under the

provisions of Article 8 of this Agreement.

Article 7
Transfers

Each Contracting Party shall, in the territory or in the maritime area, in which the investments are made by investors of another Contracting Party, guarantee those investors the free transfer of:

a) Initial capital and additional amounts needed for the maintenance and development of investment;

b) Interest, dividends, profits and other current income;

c) Charges resulting from intangible rights as defined in Article 1, paragraph 1, under d) and e);

d) Funds for repayment of loans which are duly contracted;

e) Value of partial or total liquidation or sale of investment, including the excess value on the basis of invested capital;

f) Compensation for the "expropriation" or loss described in Article 6, paragraphs 2 and 3 of this Agreement;

g) Payments arising from resolved disputes.

Citizens of any of the Contracting Parties, who are allowed to work in the territory or maritime area of another Contracting Party, as a result approved investments, shall also be allowed to transfer a certain portion of their earnings to their country of origin.

Transfers mentioned in the previous paragraphs shall be carried out without delay at the official rate of exchange applicable on the date of transfer.

The Contracting Parties shall undertake to accord to such transfers a treatment no less favourable than the treatment accorded to transfers originating from investments made by investors of any third state.

If, in exceptional circumstances, movements of capital to or from third countries cause or threaten to cause a serious imbalance of its balance of payments, each Contracting Party may temporarily apply safeguard measures for transfers, provided that these measures are strictly necessary, that they are introduced in good faith, on a fair and non-discriminatory basis, and that they in any case do not exceed a period of six months.

Article 8
Settlement of Disputes between the Investor and the Contracting Party

1. Any dispute which may arise between one Contracting Party and investor of another

Contracting Party in connection with the investment shall be settled amicably between the two respective Parties.

2. If any such dispute is not settled within six months from the date it was presented by the one or the other Party to the dispute, the dispute shall be submitted to:

   a) at the request of the investor:

      (i) the competent court or administrative tribunal of the Contracting Party in whose territory the investment was made; or

      (ii) for arbitration of the International Centre for Settlement of Investment Disputes (ICSID), established according to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on 18 March 1965;

   b) at the request of any Party: for arbitration of the International Centre for Settlement of Investment Disputes (ICSID), established according to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on 18 March 1965.

3. In case of arbitration according to ICSID when a dispute may involve responsibility for the actions or omissions of the public authorities of a Contracting Party, as defined in Article 2 of this Agreement, the above mentioned public institution must give their unconditional agreement to use arbitration of the International Centre for Settlement of Investment Disputes (ICSID), as defined in Article 25 of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on March 18, 1965.

Article 9
Guarantee and Subrogation

1. If one Contracting Party or an Agency tasked by it to legally pay any of its investors, under a guarantee or contract of insurance against non-commercial risks given in respect to an investment, the other Contracting Party shall, in spite of its rights under Article 11 of this Agreement, in favour of the former Contracting Party or its Agency, recognize the validity of the subrogation against any right or claim held by the investor.

2. Investments made by investors of one Contracting Party in the territory or maritime area of another Contracting Party may obtain the guarantee referred to in the preceding paragraph, only if they are pre-approved by the other Party.

3. If a Contracting Party, as a result of guarantee given for an investment made in the territory or maritime area of another Contracting Party, makes payment to its own investors, the first-mentioned Party has in this case all rights of subrogation relating to the rights and activities of the said investors.

4. The said payments shall not affect the rights of the guarantee beneficiaries to complain to the ICSID or to continue an already submitted procedure before the ICSID until the end of

the proceedings.

Article 10
Specific Obligations

The investments, which are subject to specific obligations of one Contracting Party, in relation to the investors of another Contracting Party, not excluding the provisions of this Agreement, shall be regulated by the provisions of separate obligations if they include provisions more favourable than those under this Agreement. The provisions of Article 8 of this Agreement shall also apply in cases where a special obligation has the effect of a waiver of international arbitration or determination of an arbitration body different than that stated in Article 8 of this Agreement.

Article 11
Settlement of Disputes between the Contracting Parties

1. Disputes regarding the interpretation or application of this Agreement shall, if possible, be settled through diplomatic channels.

2. If the dispute can not be settled within six months from the date on which either Contracting Party raised the issue, the dispute shall at the request of either Contracting Party be submitted to an arbitral tribunal.

3. The mentioned arbitral tribunal shall be constituted for each individual case as follows: each Contracting Party shall appoint one arbitrator and the two arbitrators so appointed shall by common consent designate a third country national, who will be the appointed Chairman of the tribunal by both Contracting Parties. All the arbitrators must be appointed within two months from the date of notification of a Contracting Party to the other Contracting Party of its intention to submit the disagreement to arbitration.

4. If the periods specified in Paragraph 3 of this Article are not complied with, either Contracting Party, in the absence of any other agreement, may invite the Secretary General of the United Nations to make the necessary appointments. If the Secretary General is a citizen of either Contracting Party or is otherwise prevented from discharging the said function, the necessary appointments shall be done by the Undersecretary – the next in line after the Secretary-General according to his or her function, who is not a national of either Contracting Party.

5. The Tribunal shall issue its decisions by plurality vote. Such decisions shall be final and legally binding on both Contracting Parties.

6. The Tribunal shall determine its own Rules of Procedure. The Tribunal shall interpret the judgment at the request of either Contracting Party. If the Tribunal does not decide otherwise, in accordance with special circumstances, court costs, including the fees of the arbitrator will be divided equally between the two Contracting Parties.

Article 12

Consultations and Exchange of Information

At the request of either Contracting Party, the other Contracting Party shall, without delay, enter into consultations concerning the interpretation and application of this Agreement.

Article 13

Entry into force, Duration and Termination

Each Contracting Party shall notify the other of the execution of the legal procedures required for the entry into force of this Agreement, which shall enter into force one month after the date of receipt of the last notification.

This Agreement was concluded for an initial period of ten years. It shall continue to be valid after that period if one of the Contracting Parties does not submit a notification of termination, one year in advance through diplomatic channels.

After the expiry of the term of this Agreement, the investments made during its period of validity shall continue to enjoy protection by its provisions for an additional period of twenty years.

Done at Paris on 11 December 2004 in two originals in Bosnian/Croatian/Serbian and French languages, all originals are equally authentic.

For Bosnia and Herzegovina	For the Government of the French Republic
_____	_____
Dr. **Mladen Ivanić** Minister of Foreign Affairs of Bosnia and Herzegovina	**Francis Mer** Minister of Economy, Finance and Industry