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Eesti Vabariigi ja Hispaania Kuningriigi vaheline investeeringute vastastikuse soodustamise ja kaitse leping

Vastu võetud 11.11.1997

Lepingu ratifitseerimise seadus
Välisministeeriumi teadaanne välislepingu jõustumise kohta
Euroopa Liidu liikmesriikide vaheliste kahepoolsete investeerimislepingute lõpetamise lepingu ratifitseerimise seadus
Välisministeeriumi teadaanne Euroopa Liidu liikmesriikide vaheliste kahepoolsete investeerimislepingute lõpetamise lepingu jõustumise kohta
Välisministeeriumi teadaanne välislepingu lõppemise kohta

Agreement Between the Republic of Estonia and the Kingdom of Spain on the Reciprocal Promotion and Protection of Investment

The Republic of Estonia and the Kingdom of Spain, hereinafter referred to as the "Contracting Parties",

desiring to intensify their economic cooperation for the mutual benefit of both countries,

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

and

recognizing that the promotion and protection of investments under this Agreement will stimulate initiatives in this field,

have agreed as follows:

Article 1. Definitions

For the purposes of the present Agreement,

1. The term "investor" means:

a) any natural person who is a national of a Contracting Party according to its law and makes investments in the territory of the other Contracting Party.

b) any legal entity, including companies, associations of companies, trading corporate entities and other organization which is incorporated or, in any event, is properly organized under the law of that Contracting Party and is actually managed from the territory of that Contracting Party.

2. The term "investment" means any kind of assets, such as goods and rights of all sorts, acquired under the law of the host country of the investment and in particular, although not exclusively, the following:

- shares and other forms of participation in companies;

- rights arising from all types of contributions made for the purpose of creating economic value, including every loan granted for this purpose, whether capitalized or not;

- movable and immovable property and any other property rights such as mortgages, liens or pledges;

- any rights in the field of intellectual property, including patents and trademarks, as well as manufacturing licences, know-how and goodwill;

- rights to engage in economic and commercial activities authorized by law or by virtue of a contract, particularly those rights to search for, cultivate, extract or exploit natural resources.

Any change of the form in which assets are invested or reinvested shall not affect their character as an investment.

3. The term "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties and fees.

4. The term "territory" designates the land territory and territorial waters of each of the Contracting Parties, as well as the exclusive economic zone and the continental shelf that extends outside the limits of the territorial waters of each of the Contracting Parties, over which they have or may have jurisdiction and sovereign rights for the purposes of exploitation, exploration and conservation of natural resources, pursuant to international law.

Article 2. Promotion and application

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments pursuant to its law.

2. This Agreement shall apply to investments made by investors of either Contracting Party in the territory of the other Contracting Party before or after its entry into force.

Article 3. Protection

1. Each Contracting Party shall protect in its territory the investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not hamper, by means of unjustified or discriminatory measures, the management, development, maintenance, use, enjoyment, expansion, sale and if it is the case, the liquidation of such investments. Either Contracting Party shall observe any other obligation it may have entered into with regard to investments of investors of the other Contracting Party.

2. Each Contracting Party shall endeavour to grant the necessary permits relating to these investments and shall allow, within the framework of its law, the execution of work permits and contracts related to manufacturing licences and technical, commercial, financial and administrative assistance.

3. Each Contracting Party shall also grant, whenever necessary, the permits required in connection with the activities of consultants or experts engaged by investors of the other Contracting Party.

Article 4. Treatment

1. Each Contracting Party shall guarantee in its territory fair and equitable treatment for the investments made by investors of the other Contracting Party.

2. This treatment shall not be less favourable than that which is extended by each Contracting Party to the investments made in its territory by investors of any third State.

3. However, this treatment shall not extend to the privileges that one Contracting Party may grant to investors of a third country by virtue of its membership or association with any existing or future free-trade area, customs union, common market or similar international agreement to which any of the Contracting Parties is or may become a Party.

4. The treatment given pursuant to this article shall not extend to tax deductions and exemptions or other similar privileges granted by either of the Contracting Parties to investors of third countries by virtue of a double-taxation avoidance agreement or any other taxation agreement.

5. In addition to the provisions of paragraph 2 of this article, each Contracting Party shall apply, under its own law, no less favourable treatment to the investments of investors of the other Contracting Party than that granted to its own investors.

Article 5. Nationalization and expropriation

1. The nationalization, expropriation or any other measure of similar characteristics or effects (hereinafter referred to as "expropriation") that may be adopted by the authorities of one Contracting Party against the investments made in its own territory by investors of the other Contracting Party must be applied exclusively for reasons of public interest, pursuant to the law, in a non discriminatory manner and provided that it is accompanied by the payment to the investor or his legal beneficiary of prompt, adequate and effective compensation.

2. Such compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or impending expropriation became known, whichever is the earlier (hereinafter referred to as the "valuation date"). It shall be paid without delay, be effectively realizable and freely transferable.

3. Such market value shall be calculated in a freely convertible currency at the market rate of exchange prevailing for that currency on the valuation date. Compensation shall include interest at a commercial rate established on a market basis for the currency of valuation from the date of expropriation until the date of payment.

4. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review by a judicial or other competent authority of that Contracting Party, of his or its case to determine whether such expropriation and any compensation therefore conforms to the principles set out in this Article.

5. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of this Article are applied so as to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

Article 6. Compensation for losses

Investors of one Contracting Party whose investments or returns in the territory of the other Contracting Party suffer losses owing to war, other armed conflicts, a state of national emergency, rebellions, riots or other similar circumstances, including losses arising out of requisitioning measures, shall be accorded, as regards restitution, indemnification, compensation or other settlement, treatment no less favourable than that which the latter Contracting Party grants to its own investors or to investors of any third State. Any payment made under this Article shall be prompt, adequate, effective and freely transferable.

Article 7. Transfer

1. With regard to the investments made in its territory, each Contracting Party shall grant to investors of the other Contracting Party the free transfer of payments related to their investments and returns, including particularly but not exclusively, the following:

- investment returns, as defined in Article 1;

- the indemnities provided for under Articles 5 and 6;

- the proceeds of the sale or liquidation, in full or partial, of an investment;

- funds in repayment of loans related to an investment;

- payments for maintaining or developing the investment, such as funds for acquiring raw or auxiliary materials, semi-finished or finished products as well as for replacing capital assets;

- the salaries, wages and other compensation received by the nationals of a Contracting Party for work or services done in the territory of the other Contracting Party in relation to an investment.

2. The host Contracting Party of the investment shall allow the investor of the other Contracting Party, or the company in which he has invested, to have access to the foreign exchange market in a non-discriminatory manner so that the investor may purchase the necessary foreign currency to make the transfers pursuant to this Article.

3. The transfer under the present Agreement shall be made in freely convertible currencies and in accordance with tax regulations in the host Contracting Party of the investment.

4. The Contracting Parties undertake to facilitate the procedures needed to make these transfers without excessive delays, according to the practices in international financial centres. In particular, no more than three months must elapse from the date on which the investor properly submits the necessary applications in order to make the transfer until the date the transfer actually takes place. Therefore, both Contracting Parties undertake to carry out the required formalities, both for the acquisition of foreign currency and for its effective transfer abroad, within that period of time.

5. The Contracting Parties agree to accord to transfers referred to in the present Article a treatment no less favourable than that accorded to transfers originated from investments made by investors of any third State.

Article 8. More favourable terms

1. If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such regulation shall to extent that it is more favourable prevail over this Agreement.

2. More favourable terms than those of this Agreement which have been agreed to by one of the Contracting Parties with investors of the other Contracting Party shall not be affected by this Agreement.

Article 9. Subrogation

In case one Contracting Party or its designated Agency, has granted a financial guarantee relative to non-commercial risks in respect of an investment made by its investors in the territory of the other Contracting Party, the latter shall accept the subrogation of the former Contracting Party or its designated Agency in respect of the economic rights of the investor from the time when the former Contracting Party or its designated Agency made a first payment charged to the guarantee issued. This subrogation will make it possible for the former Contracting Party or its designated Agency to be the direct beneficiary of all the payments for compensation of which the initial investor could be a creditor.

In respect of property rights, use, enjoyment or any other property right, subrogation will only take place after having met the relevant legal requirements of the host Contracting Party.

Article 10. Settlement of disputes between the Contracting Parties

1. Any dispute between the Contracting Parties relative to the interpretation or application of this Agreement shall as far as possible be settled through diplomatic channels.

2. If it was not possible to settle the dispute in this way within six months from the start of the negotiations, it shall be submitted, at the request of either Contracting Party, to an arbitral tribunal.

3. The Arbitral Tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by

the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make necessary appointments.

5. The arbitral tribunal shall issue its decision on the basis of respect for the law, of the rules contained in this Agreement or in other agreements in force between the Contracting Parties, and as well as of the universally recognized principles of international law.

6. Unless the Contracting Parties decide otherwise, the tribunal shall lay down its own procedure.

7. The tribunal shall take its decision by a majority of votes and that decision shall be final and binding on both Contracting Parties.

8. Each Contracting Party shall bear the expenses of the arbitrator appointed by it and those connected with representing it in the arbitration proceedings. The other expenses, including those of the President, shall be borne in equal parts by the two Contracting Parties.

Article 11. Disputes between one Party and investors of the other Contracting Party

1. Disputes that may arise between one of the Contracting Parties and an investor of the other Contracting Party with regard to an investment in the sense of the present Agreement, shall be notified in writing, including a detailed information, by the investor to the host Contracting Party of the investment. As far as possible, the parties concerned shall endeavour to settle these differences by means of a friendly agreement.

2. If these disputes cannot be settled in this way within six months from the date of the written notification mentioned in paragraph 1, the dispute shall be submitted, at the choice of the investor, to:

- the competent court of the Contracting Party in whose territory the investment was made;

- the ad hoc court of arbitration established under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law;

- the International Centre for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes between States and Nationals of other States", opened for signature at Washington on 18 March 1965, in case both Contracting Parties become signatories to this Convention;

- the Court of Arbitration of the Paris International Chamber of Commerce.

3. The arbitration shall be based on:

- the provisions of this Agreement and of the other agreements in force between the Contracting Parties;

- the rules and the universally accepted principles of international law;

- the national law of the Contracting Party in whose territory the investment was made, including the rules relative to conflicts of law.

4. The arbitration decisions shall be final and binding on the parties in the dispute. Each Contracting Party undertakes to execute the decisions in accordance with its national law.

Article 12. Entry into force, extension and termination

1. This Agreement shall enter into force on the

date on which the Contracting Parties shall have notified each other in writing that the respective constitutional formalities required for the entry into force of international agreements have been completed. This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of six months from the date on which either Contracting Party shall have given written notice of termination to the other.

2. With respect to investments made or acquired prior to the date of termination of this Agreement and to which this Agreement otherwise applies, the provisions of all of the other Articles of this Agreement shall thereafter continue to be effective for a further period of ten years from such date of termination.

In witness whereof, the respective plenipotentiaries have signed this Agreement.

Done in duplicate at Tallinn, this 11 day of November 1997, in the Estonian, Spanish and English languages, all texts being equally authentic.

For the Republic of Estonia
Toomas Hendrik ILVES

For the Kingdom of Spain
Ramon de MIGUEL