

30 Annex - External relations

244. DECREE PROMULGATING THE LAW ON RATIFICATION OF THE AGREEMENT BETWEEN THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY IN RELATION TO MUTUAL STIMULATION AND PROTECTION OF INVESTMENTS

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BETWEEN THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA
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STIMULATION AND PROTECTION OF INVESTMENTS

25.

Pursuant to Article 96. item 2 of the Constitution of the Federal Republic of Yugoslavia, I hereby issue the

DECREE

**PROMULGATING THE LAW ON RATIFICATION OF THE AGREEMENT BETWEEN THE
FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA AND THE
GOVERNMENT OF THE REPUBLIC OF TURKEY IN RELATION TO MUTUAL STIMULATION
AND PROTECTION OF INVESTMENTS**

I hereby promulgate the Law on ratification of the Agreement between the Federal Government of the Republic of Yugoslavia and the Government of the Republic of Turkey in relation to mutual stimulation and protection of investments, adopted by the Federal Assembly, in the session of the Council of Citizens of 22 June 2001, and in the session of the Council of Republics of 22 June 2001.

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No 63

President

22 June 2001

of the Federal Republic of Yugoslavia

Belgrade

Vojislav Kostunica, m. p.

LAW

ON RATIFICATION OF THE AGREEMENT BETWEEN THE FEDERAL GOVERNMENT OF YUGOSLAVIA AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY IN RELATION TO MUTUAL STIMULATION AND PROTECTION OF INVESTMENTS

Article 1.

I hereby ratify the Agreement between the Federal Government of the Federal Republic of Yugoslavia and the Government of the Republic of Turkey in relation to mutual stimulation and protection of investments, signed on 2 March 2001 in Belgrade, in the original in Serbian, Turkish and English.

Article 2.

The Agreement text in the original in Serbian reads as follows:

AGREEMENT

BETWEEN THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY IN RELATION TO MUTUAL STIMULATION AND PROTECTION OF INVESTMENTS

The Federal Government of the Federal Republic of Yugoslavia and the Government of the Republic of Turkey, here defined as Contracting Parties (hereinafter referred to as "Parties");

Anxious to stimulate larger international cooperation, especially with regard to investments of one Party's investors in the territory of the other Party,

Understanding that the Agreement on treatment given to such investments shall stimulate the flow of capital and technology and economic development of the Parties,

Agreed that equitable and fair treatment of investments is desirable in order to maintain stable framework for investments and to the utmost successful exploitation of economic resources, and

Having decided to conclude the agreement in relation to stimulation and mutual protection of investments,

Have agreed as follows:

Article I.

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AGREEMENT BETWEEN THE FEDERAL GOVERNMENT OF THE FEDERAL
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INVESTMENTS

For the purpose of this Agreement:

1. The expression "investor" shall stand for:
 - (a) natural person whose status of citizen of any Party results from its applicable law, and who invests in the territory of the other Party;
 - (b) corporations, companies and business associations registered or founded according to the applicable laws and regulations of one Party and which have a head office in the territory of that Party, and invest in the territory of the other Party.
2. The expression "investment", in conformity with laws and regulations of a host Party, shall comprise all kinds of funds and especially, although not exclusively:
 - (a) shares, stocks and any other form of sharing and interest in companies;
 - (b) re-invested returns, payment claims and any other claims under this agreement, which have economic value and refer to investment;
 - (c) movable and real estate property, as well as any other property rights such as mortgage, pledge or guarantee;
 - (d) intellectual property rights such as copyrights and similar rights, patents, industrial design and models as well as trademarks "good-will", technical processes and "know-how";
 - (e) business concessions approved by law or contract in conformity with national legislation which refer to natural resources.

The expression abovementioned shall refer to all direct investments made in conformity with laws and regulations in the territory of the Party where the investments have been executed.

Change of form in which the funds are invested shall not have an influence on their character of an investment.

3. The expression "returns" shall stand for the amounts brought by an investment and shall comprise especially but not exclusively, profit, interest, dividends, capital gains, author's royalties, licence compensations and other similar compensations.
4. (a) The expression "territory" shall mean, in relation to the Federal Republic of Yugoslavia, areas enclosed by terrestrial borders, as well as sea area, seabed and its underground out of the territorial sea to which the Party has sovereign rights or jurisdiction in conformity with its laws and regulations and international law.

(b) The expression "territory" shall mean, in relation to the Republic of Turkey, terrestrial territories of the Republic of Turkey, territorial sea, seabed and its underground out of territorial sea to which it has jurisdiction or sovereign rights, for the purpose of research, exploitation, preservation and management of national natural resources pursuant to the international legislation.

Article II.

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AGREEMENT BETWEEN THE FEDERAL GOVERNMENT OF THE FEDERAL
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INVESTMENTS

Stimulation and protection of investments

1. Each Party to the Agreement shall stimulate and create favourable conditions for the investors of the other Party to the Agreement to make investments in its territory and approve such investments in conformity with its laws and regulations.
2. Investments of the investors of any of the Parties to the Agreement shall make use, at any time, of an equitable and fair treatment, total protection and safety in the territory of the other Party to the Agreement.
3. Depending on laws and regulations of Parties referring to entry, brief stay and employment of parties:
 - (a) citizens of any of the Parties shall be allowed, in conformity with laws and regulations of a host country, to set foot on and stay in the territory of the other Party in order to establish development of management and counselling about the function of the investment to which they or an investor of the first Party who employs him, have engaged or are in progress of engaging considerable amount of capital or other resources;
 - (b) companies legally founded according to current laws and regulations of one Party and which represent investments of the investors of the other Party shall be allowed to engage managerial and technical staff by their own choice, regardless of nationality.

Article III.

National treatment and the most favorable nation treatment

1. Each Party shall approve, in its territory, investments and related activities, on the basis not a bit less favourable than the one it approves in similar situations to investments of any third country's investors, within its laws and regulations.
2. Each Party shall assign these investments, upon their establishment, a treatment which shall not be less favourable than the one it approves in similar situations to investments of its investors or investments of any third country's investors, whatever is more favourable.
3. Provisions of paragraphs 1. and 2. of this Article shall not be interpreted so to oblige one of the Parties to the Agreement to give the investors of the other Party to the Agreement any preference in treatment, preferentials or privileges which the first Party to the Agreement may assign to:
 1. customs union, free trade zone, monetary union or any similar international agreement founding such unions or other forms of regional cooperation, whose signatory any of the Parties to the Agreement is, or may become, or
 2. any international agreement or arrangement which entirely or partly refers to taxation.

Article IV.

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Expropriation and compensation

1. Investments shall not be expropriated, nationalized or, directly or indirectly, subjected to the measures with similar effects, except in public interest, in a non-discriminatory way, along with payment of an urgent, adequate and effective compensation, and in conformity with corresponding legal procedure and general principals of the treatment stipulated in Article 3. of this Agreement.
2. Compensation shall be equal to the real value of expropriated investment before the expropriation is undertaken or becomes a widely known fact. Compensation shall be paid with no delay, shall be freely transferable and shall include the interest, in conformity with national legislation, from the day of expropriation to the payment date.
3. Investors of any Party whose investments have suffered damage in the territory of the other Party, as a consequence of a war, armed conflict, rebellion, civil commotions or any other similar events in regard of returns, indemnification, compensation or other form of liability discharges, shall be assigned by the other Party a treatment no less favourable than the one assigned to its own investors or any third country's investors, whichever treatment is the most favourable in regard to any measures it adopts regarding such damages. Payments on the quoted grounds shall be made with no unnecessary delay and shall be freely transferable.

Article V.

Repatriation and transfer

1. Each Party shall guarantee the investor of the other Party freedom of payment transfer with reference to investments, including especially but not exclusively:
 - (a) returns;
 - (b) incomes from sale or liquidation of entire or any part of an investment;
 - (c) compensations pursuant to Article 4;
 - (d) refunds and interests arisen from loans in relation to investments;
 - (e) unexpended salaries, wages, and other financial rewards which are received by citizens of one Party who have obtained, in the territory of the other Party, relevant working permits referring to an investment;
 - (f) payments arisen from an investment dispute.
2. Transfers shall be executed in convertible currency in which the investment is made or in any other convertible currency according to the exchange rate applicable on the transfer day, unless otherwise agreed between investors and a host Party.

Article VI.

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Subrogation

1. If the investment of one Party's investors is insured against non-commercial risks in accordance with a system established by law, and if a Party or its appointed institution or legal entity acting under its supervision (hereinafter referred to as "insurant") makes the payment to any of investors in the territory of the other Party, in accordance with the contract of insurance, the host Party shall recognize that the insurant is empowered to receive such rights and claims and the transfer of any rights and claims of such an investor.
2. Subrogated rights and claims shall not exceed prime rights and claims of the investor.
3. Subrogation of rights and obligations of the insured investor refers also to the payment transfer which is executed in accordance with Article 6 of this Agreement.
4. Any disputes between one Party and an insurer shall be settled in conformity with provisions of Article 7 of this Agreement.

Article VII.

Settlement of disputes between one Party and the other Party's investor

1. The investor shall send a written notice to a beneficiary Party, with a detailed information, about disputes between one Party and the investor of the other Party, regarding its investment. The investor and the interested Party shall endeavor to the utmost to settle these disputes through consultations and negotiations in good faith.
2. If these disputes fail to be settled in this manner within six month from the date of the written notice delivery, mentioned in paragraph 1, the dispute may be handed over, by the investor's choice, to:
 - (a) International Center for settlement of investment disputes (ICSID) established on the basis of "Convention on settlement of investment disputes between countries and other countries' citizens", in case that both Parties are signatories of this Convention;
 - (b) an ad hoc court or arbitration formed according to Principles of arbitration procedure of UN Commission for the International Trade Law (UNCITRAL);
 - (c) Arbitration court of the International Chamber of Commerce in Paris, provided that, if an interested investor has handed over the dispute to the courts of the Party which is a party in dispute, the final judgment is not entered within a year.
3. Arbitration judgment shall be final and binding for all parties in dispute. Each Party is obliged to implement the judgment in conformity with its national legislation.

Article VIII.

Settlement of disputes between the Parties

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1. A Party shall seek, in good faith and spirit of partnership, prompt and equitable solution of any mutual dispute in connection with interpretation or application of this Agreement. In this respect, the Parties shall agree to perform direct and comprehensive talks in order to arrive at such solutions. If the Parties fail to arrive at an understanding within six months from the start of a dispute between them throughout the previous procedure, the dispute may be submitted, at any Party's request, to an arbitration court consisted of three members.
2. Within two months from the request reception, each Party shall appoint one arbiter. These two arbiters shall appoint the third arbiter for the president, who shall be a third country's citizen. In case that any of the Parties fails to appoint an arbiter within defined period of time, the other Party may demand from the president of the International Court of Justice to perform the appointment.
3. If two arbiters fail to agree about the choice of the president within two months from their appointments, the president shall, at the request of any Party, be appointed by the president of the International Court of Justice.
4. If, in the cases defined in paragraphs (2) and (3) of this Article, the president of the International Court of Justice is not able to perform the mentioned function, or if he is a citizen of any Party, the appointment shall be performed by the vice president, and if the vice president is not able to perform the mentioned function, or if he is a citizen of any Party, the appointment shall be performed by a subsequent member of the Court according to seniority who is not a citizen of any of the Parties.
5. The Court shall have three months from the president's appointment date to reach the agreement about procedure in conformity with other provisions of this Agreement. In case that such an agreement is not reached, the Court shall demand from the president of the International Court of Justice to define the procedure rules, taking into consideration widely recognized rules of international arbitration procedure.
6. Unless otherwise agreed, all requests shall be submitted and all hearings completed within eight months from the date of president's appointment, and the Court shall make a decision within two months from the last submitted request or from the hearing completion date, whatever is later. Arbitration Court shall make its decision, which shall be final and binding, by a majority of vote.
7. Costs made by the president, other arbiters and other costs of judicial proceedings, the Parties shall bear equally. The Court, however, may decide, within its discretionary power, that one Party bears major part of costs.
8. Dispute shall not be handed over to any international arbitration court according to provisions of this Article, if the same dispute has been handed over to some other international arbitration court according to provisions of Article 8, and still is conducted in this court. This shall not do any harm to the two Parties' participation in direct and comprehensive talks.

Article IX.

Application of other provisions

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If the laws of the Parties to the Agreement, and current and future international agreements between the Parties to the Agreement or other international agreements whose signatories are the Parties to the Agreement, consist of provisions by which investments of other Party's investors are given a treatment more favourable than the treatment provided by this agreement, such laws and agreements shall, to the extent they are more favourable in, prevail over this agreement.

Article X.

Consultations

Representatives of the Parties to the Agreement shall hold consultations, when necessary, in relation to the issues referring to application of this agreement. Consultation shall be held, at the suggestion of one Party to the Agreement, in place and at time agreed through diplomatic channels.

Article XI.

Entry into force

1. This Agreement is a subject of ratification and shall enter into force on the exchange day of the latter of two written notices by which the two Parties inform each other that their internal procedures are fulfilled. It will stay in force for the period of ten years and will continue to be in force unless it is cancelled in accordance with paragraph 2 of this Agreement. It shall apply to the investments which exist at the time of its entry into force as well as to the investments being developed and obtained after that, and shall apply from the day of entry into force of this Agreement.

2. Any of the Parties may, giving, a year in advance, a written notice to the other Party, cancel this Agreement after the expiration of the first ten year period or at any time after that.

3. This Agreement may be amended with the written consent of the Parties. Any amendment shall enter into force when each Party informs the other one that it has fulfilled all internal requirements for entry into force of such an agreement.

With regard to investments arisen or obtained prior to the cancellation date of this Agreement and to which this Agreement otherwise applies, provisions of all other Articles of this Agreement after that shall continue to be in force for the following ten year period from the cancellation date.

As ratification to the abovementioned, the respective plenipotentiaries signed this Agreement.

Done in Belgrade, on the day of 2 March 2001 in Serbian, Turkish and English, and all texts are equally authentic.

In case of any discrepancies with regard to interpretation, the English text shall prevail.

For the Federal Government of
The Federal Republic of Yugoslavia
Goran Svilanovic, m. p.

For the Government of
The Republic of Turkey
Ismail Dzem, m. p.

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Article 3

This law shall entry into force on the eighth day following that of its publication in the Official Gazette of the Federal Republic of Yugoslavia – International Agreements.