

30 Annex - External relations

**253. DECREE PROMULGATING THE LAW ON
RATIFICATION OF THE AGREEMENT BETWEEN THE
FEDERAL REPUBLIC OF YUGOSLAVIA AND THE KINGDOM
OF THE NETHERLANDS IN RELATION TO STIMULATION
AND MUTUAL PROTECTION OF INVESTMENTS**

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INVESTMENTS

59.

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

DECREE

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

I hereby promulgate the Law on ratification of the Agreement between the Federal Republic of Yugoslavia and the Kingdom of the Netherlands in relation to Stimulation and Mutual Protection of Investments, adopted by the Federal Assembly, in the session of the Council of Citizens of 16 December 2002 and in the session of the Council of Republics of 13 November 2002.

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KINGDOM OF THE NETHERLANDS IN RELATION TO STIMULATION AND
MUTUAL PROTECTION OF INVESTMENTS

No 245

16 December 2002

Belgrade

President

of the Federal Republic of Yugoslavia

Vojislav Kostunica, m. p.

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LAW

**ON RATIFICATION OF THE AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF
YUGOSLAVIA AND THE KINGDOM OF THE NETHERLANDS IN REALTION TO STIMULATION
AND MUTUAL PROTECTION OF INVESTMENTS**

Article 1

I hereby ratify the Agreement between the Federal Republic of Yugoslavia and the Kingdom of the Netherlands in relation to Stimulation and Mutual Protection of Investments, signed on 29 January 2002 in the Hague, in the original in Serbian, Dutch and English.

Article 2

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

AGREEMENT

**BETWEEN THE FEDERAL REPUBLIC OF YUGOSLAVIA AND THE KINGDOM OF THE
NETHERLANDS IN RELATION TO STIMULATION AND MUTUAL PROTECTION OF
INVESTMENTS**

The Federal Republic of Yugoslavia and the Kingdom of the Netherlands (hereinafter referred to as: Parties to the Agreement),

Anxious to strengthen their traditionally friendly relations and to expand and intensify their economic interrelation, especially with regard to the investments of the investors of one Party to the Agreement in the territory of the other Party to the Agreement,

Aware that the Agreement related to the treatment to be provided for such investments shall stimulate the flow of capital and technology and economic development of the Parties to the Agreement, and that an equitable and fair treatment of investments shall be desirable,

Have agreed as follows:

Article 1

For the purpose of this Agreement:

1. The expression „investments“ shall stand for each type of funds and especially, although not exclusively:
 - (a) movable and real estate property as well as all other in rem property rights, such as lease, mortgage, pledge and guarantee, with regard to all types of funds;
 - (b) rights resulting from shares, bonds and other sorts of interest in the companies and joint investments;
 - (c) financial claims, claims upon other funds or on the grounds of activities having economic value;
 - (d) intellectual property rights (such as copyrights and related rights, patents, industrial designs and models, trademarks), technical processes, good-will, and know-how;
 - (e) rights given on the grounds of laws and treaties, including rights to researches, inspection, extraction and exploitation of natural resources;

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2. The expression „investors“, with regard to any of the Parties to the Agreement, shall comprise:
 - (a) natural persons having citizenship of that Party to the Agreement;
 - (b) legal entities founded in conformity with the law of that Party to the Agreement;
 - (c) legal entities not founded in conformity with the law of that Party to the Agreement but being under control, directly or indirectly, of natural persons defined under (a) or legal entities defined under (b);
3. The expression „territory“ shall stand for the territory of respective Party to the Agreement and any other area in the vicinity of the territorial sea being an exclusive economic zone, according to the laws applicable in respective Party to the Agreement in conformity with the international law, or continental littoral of respective Party to the Agreement within which that Party to the Agreement performing its jurisdiction and realizing sovereign rights.

Article 2

Each Party to the Agreement, within its laws and regulations, shall stimulate economic cooperation through protection of investments of the investors of the other Party to the Agreement in its territory. Each Party to the Agreement shall accept such investments, depending on its right to conduct authorities established by laws and regulations.

Article 3

1. Each Party to the Agreement shall provide an equitable and fair treatment to the investments of the investors of the other Party to the Agreement and shall not cause damage, through unjustified or discriminatory measures, to such investments' work, management, maintenance, exploitation, enjoyment or disposal by those investors. Each Party to the Agreement shall give such investments the most reliable protection and security.
2. In more specific sense, each Party to the Agreement shall provide such investments a treatment in no case less favourable than the one provided to the investments of its own investors or the investments of the third countries' investors, depending on what is more favourable for the interested investor.
3. If the Party to the Agreement gave the investors of a third country special privileges on the basis of an agreement establishing customs unions, economic unions, monetary unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Party to the Agreement shall not be obliged to provide such privileges to the investors of the other Party to the Agreement.
4. Each Party to the Agreement shall respect each legal obligation perhaps taken over with regard to the investments of the investors of the other Party to the Agreement.
5. If provisions of the law of any of the Parties to the Agreement, or obligations from the international law presently existing or appearing to exist later between the Parties to the Agreement, contain a regulation, general or specific, giving the investments of the investors of the other Party to the Agreement the right to more favourable treatment than one stipulated with this Agreement, that regulation shall prevail, in the extent it is more favourable in, over this Agreement.

Article 4

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With regard to taxes, compensations, costs and fiscal deductions and exemptions, each Party to the Agreement shall provide the investors of the other Party to the Agreement, engaged in an economic activity in its territory, a treatment no less favourable than the one provided to its own investors or the investors of third countries being under the same circumstances, depending on which one is more favourable for the investors. For that purpose, however, any particular fiscal privileges given by that Party shall not be taken into consideration:

- (a) on the basis of an agreement on avoiding double taxation; or
- (b) on the basis of its participation in a customs union, economic union or any similar institution; or
- (c) on the basis of reciprocity with any third country.

Article 5

1. Each Party to the Agreement shall guarantee the investors of the other Party to the Agreement a free payment transfer referring to their investments. Transfers shall be made in freely convertible currency, with no restrictions or delays. Such transfers shall comprise especially but not exclusively:
 - (a) capital and additional amounts for maintenance or increase of investments;
 - (b) gain, interests, dividends or other current income;
 - (c) funds from discharge of loans;
 - (d) incomes from sale and liquidation of investments;
 - (e) author's royalties or compensations;
 - (f) unspent salaries of the staff working in relation to investments in the territory of the Party to the Agreement;
 - (g) payments arisen pursuant to Article 7.
2. A Party to the Agreement may request from the investor, prior to payment transfer referring to the investment, to fulfil tax obligations in relation to such an investment, provided that those obligations are non-discriminatory and that they are not used for annulment of meaning of paragraph 1 of this Article.
3. A Party to the Agreement may adopt or retain the measures not being in accordance with its obligations from paragraph 1 of this Article, in case of serious payment-balance or foreign-financial difficulties or risks of their occurrence.

Such measures:

- (a) shall be in accordance with Articles of the Statute of the International Monetary Fund;
- (b) shall not exceed those necessary for tackling the circumstances described in this paragraph; and
- (c) shall be temporary and shall be removed as soon as those circumstances allow it.

Article 6

1. Investments of the investors of any Party to the Agreement shall not be nationalized, expropriated, or subjected to measures according to the effect equal to nationalization or expropriation (hereinafter referred to as: expropriation) in the territory of the other Party to the Agreement, unless the expropriation is done:

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- (a) for the reason of public interest
- (b) if conducted in conformity with law;
- (c) if non-discriminatory and
- (d) with prompt, adequate and effective compensation, realized with no delay.

Such a compensation shall be equal to equitable market value of the expropriated investment as it was immediately prior to expropriation. Equitable market value shall not reflect any change of values arisen because the expropriation became a widely known fact before.

Compensation shall comprise interest according to normal commercial rate until the payment date and shall be freely transferable with no delay.

2. The investor suffering damage shall be entitled, in conformity with laws and regulations of the Party to the Agreement performing expropriation, to request from a judicial or any other competent and independent body of that Party to the Agreement, to make an urgent consideration of his/her case, evaluation of his/her investment and payment of compensation in accordance to principles defined in this Agreement.

Article 7

1. The investors of the Party to the Agreement whose investments, in the territory of the other Party to the Agreement, have suffered losses, due to war or any other armed conflict, revolution, state of emergency, rebellion, uprising or riots, shall be provided by the other Party to the Agreement, with regard to returns, reimbursement, compensation or any other manner of loss retrieval, a treatment no less favourable than the one the other Party to the Agreement provides to its own investors or the investors of any third country, depending on which one is more favourable for the interested investors.
2. With no damage for paragraph 1 of this Article, the investors of one Party to the Agreement suffering losses in the territory of the other Party to the Agreement, in any of the situations set forth in that paragraph, as a consequence of:
 - (a) confiscation of their property by the authorities of the other Party to the Agreement;
or
 - (b) destruction of their property by the authorities of the other Party to the Agreement,
not indispensable due to situation,

shall be provided by the other Party to the Agreement a return or compensation, in both cases prompt, adequate and effective, and with regard to compensation, in accordance with Article 6.

Article 8

If the investments of the investors of a Party to the Agreement are insured against non-commercial risks or if in any other way causes payment of reimbursement with regard to such investments, on the basis of system established by law, regulation or state contract, each subrogation of rights of the mentioned investor by an insurer, re-insurer or an Agency authorized by one Party to the Agreement, pursuant to terms of such insurance or according to any other given notice, shall be recognized by the other Party to the Agreement.

Article 9

1. Each dispute between an investor of one Party to the Agreement and the other Party to the Agreement in relation to investment in the territory of the other Party to the Agreement, shall be settled, if possible, in a friendly manner.

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2. If a dispute set forth in paragraph 1 of this Article fails to be settled within three months following the date of its written request for settlement of dispute in a friendly manner, the investor shall be entitled to submit a request for settlement of dispute, by its choice, to:
 - (a) International Centre for settlement of investment disputes, for settling through arbitration or reconciliation according to the Convention on settlement of investment disputes between countries and other countries' citizens, opened for signing in Washington, on 18 March 1965;
 - (b) International Centre for settlement of disputes according to rules for regulating additional privileges for managing reconciliation procedures, arbitration and investigation procedures (Rules of additional privileges), unless one of the Parties is a signatory state of the Convention, as mentioned in paragraph (a) of this Article;
 - (c) An arbiter or international ad hoc arbitration court, according to Arbitration rules of the UN Commission for the International Trade Law (UNCITRAL);
 - (d) Arbitration court of the International Chamber of Commerce (ICC).
3. Each Party to the Agreement this way shall give its unconditional consent to submission of dispute to international reconciliation or arbitration in accordance with provisions of this Article.
4. Consent given by the Parties to the Agreement in paragraph 3 of this Article, along with written request for settlement of dispute submitted by the investor, or the investor's consent for that submission given in advance, shall constitute a written agreement and written consent of a party in dispute for handing over the dispute for settlement, within the meaning of Chapter II of the Convention ICSID, Rules of additional privileges of ICSID, Article I of Arbitration rules UNCITRAL, Rules of arbitration of ICC, and Article II of UN Convention on ratification and implementation of foreign arbitration judgments (New York Convention).
5. Arbitration judgment shall be final and binding for both parties in dispute and shall be implemented in conformity with laws of the Party to the Agreement in whose territory the investment has been made.
6. Legal entity, being a citizen of one Party to the Agreement and, before the occurrence of such a dispute, controlled by citizens of the other Party to the Agreement, shall be treated, in accordance to Article 25 (2) (b) of the Convention, for the purpose of the Convention, as a citizen of the other Party to the Agreement.

Article 10

Provisions of this Agreement shall also apply, from the date of its entry into force, to the investments realized before that date.

Article 11

Any Party to the Agreement may suggest the other Party to the Agreement to hold consultations on any issue in relation to interpretation or application of this Agreement. The other Party to the Agreement shall kindly consider that suggestion and shall give an adequate opportunity for such consultations.

Article 12

1. Unless otherwise agreed by the Parties, any disputes between the Parties to the Agreement in relation to interpretation or application of this Agreement, which fail to be settled within reasonable period of time through diplomatic negotiations, shall be submitted,

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at the request of one of the Parties, for settlement to an arbitration court, consisted of three members. Each Party shall appoint one member of the court, and those two members shall appoint the third member of the court for their president, who is not a citizen of any Party to the Agreement.

2. If one of the Parties to the Agreement fails to appoint its member to the court within two months following the day of invitation of the other Party for realization of that appointment, the other Party to the Agreement may ask the president of the International Court of Justice to make the necessary appointment.
3. If the two members of the court fail to reach an agreement on the choice of the third member of the court, within two months following their appointment, any party to the Agreement may ask the president of the International Court of Justice to make the necessary appointment.
4. If the president of the International Court of Justice, in cases foreseen in paragraphs 2 and 3 of this Article, is unable to perform that function or is a citizen of any of the Parties to the Agreement, the vice president shall be asked to perform the necessary appointments. If the vice president is unable to perform that function or is a citizen of any of the Parties to the Agreement, the most senior member of the court, provided he is not a citizen of any of the Parties, shall be asked to perform the necessary appointments.
5. The Court shall make decisions in conformity with law. Before the court makes a decision, it may suggest the Parties to the Agreement, at any stage of procedure, to settle the dispute in a friendly manner. Previous provisions shall not do any harm to settlement of dispute *ex aequo et bono* if the Parties to the Agreement agree so.
6. Unless otherwise decided by the Parties to the Agreement, the Court shall define its own work procedure.
7. The Court shall make a decision by majority of vote. Such a decision shall be final and binding for the Parties to the Agreement.
8. Each Party to the Agreement shall bear costs of its member of the court and its participation in arbitration procedure. The Parties to the Agreement shall equally bear costs of the president and other costs. However, the court may decide that one of the two Parties to the Agreement bears major part of costs and that decision shall be binding for both Parties to the Agreement.

Article 13

As for the Kingdom of the Netherlands, this Agreement shall apply to the part of the Kingdom belonging to Europe, to Dutch Antilles and Aruba, unless otherwise foreseen under Article 14, paragraph 1.

Article 14

1. This Agreement shall enter into force on the first day of the second month following the day when the Parties to the Agreement inform in written each other that all procedures stipulated by their Constitutions are fulfilled and shall stay in force within the period of fifteen years.
2. Unless one of the Parties delivers a written notice on termination, at least six months prior to its expiration date, this Agreement shall be tacitly extended for the periods of ten years, where each Party to the Agreement reserve the right to terminate the Agreement upon delivery of a written notice at least six months prior to expiration date of the current validity period.

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3. With regard to investments made before the termination date of this Agreement, previous articles shall continue to apply through the following period of fifteen years following that date.
4. Depending on the period mentioned in paragraph 2 of this Article, the Kingdom of the Netherlands shall be entitled to terminate the application of this Agreement separately with regard to any part of the Kingdom.
5. By entry into force of this Agreement, the Agreement on protection of investments between the Socialist Federative Republic of Yugoslavia and the Kingdom of the Netherlands, signed on 16 February 1976, shall be terminated in the relation between the Federal Republic of Yugoslavia and the Kingdom of the Netherlands, and shall be replaced with this Agreement. This Agreement shall exclusively terminate the Agreement on protection of investments between the Socialist Federative Republic of Yugoslavia and the Kingdom of the Netherlands, signed on 16 February 1976, in relation to the Federal Republic of Yugoslavia and those parts of the Kingdom of the Netherlands to which this Agreement applies, according to a written notice mentioned in paragraph 1 of this Article. This Agreement, however, shall not be applicable to disputes in relation to investments being a subject of procedures for settlement of disputes, according to the agreement on protection of investments between the Socialist Federative Republic of Yugoslavia and the Kingdom of the Netherlands of 16 February 1976. In that case, the latter agreement shall continue to apply to those investments, to the extent it concerns the mentioned disputes, until the final solution for those disputes is reached.

As ratification of the abovementioned, the undersigned representatives, properly empowered for that, signed this Agreement.

Done in two originals, in the Hague, on the day of 29 January 2002, in Serbian, Dutch and English, where all three texts are authentic. In case of any discrepancy in interpretation, the text in English shall prevail.

For the Federal Republic of Yugoslavia

Goran Svilanovic, m. p.

For the Kingdom of the Netherlands

Jozijas Artsen, m. p.

Article 3

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