

30 Annex - External relations

256. DECREE PROMULGATING THE LAW ON RATIFICATION OF THE AGREEMENT BETWEEN THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA AND THE GOVERNMENT OF THE CZECH REPUBLIC 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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30.

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 GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA AND THE
GOVERNMENT OF THE CZECH REPUBLIC 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 Czech Republic, in relation to mutual stimulation and protection of investments, adopted by the Federal Assembly, in the session of the Council of Citizens of 29 December 1997, and in the session of the Council of Republics of 3 March 1998.

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No 87	President
3 March 1998	of the Federal Republic of Yugoslavia
Belgrade	Slobodan Milosevic , m. p.

LAW

ON RATIFICATION OF THE AGREEMENT BETWEEN THE FEDERAL GOVERNMENT OF YUGOSLAVIA AND THE GOVERNMENT OF THE CZECH REPUBLIC 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 Czech Republic in relation to mutual stimulation and protection of investments, signed on 13 October 1997 in Belgrade, in the original in Serbian, Czech 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 CZECH REPUBLIC IN RELATION TO MUTUAL STIMULATION AND PROTECTION OF INVESTMENTS

The Federal Government of the Federal Republic of Yugoslavia and the Government of the Czech Republic hereinafter referred to as "Parties to the Agreement";

Anxious to create favourable conditions for enlargement of economic cooperation between the Parties to the Agreement,

Anxious to create and maintain favourable conditions for reciprocal investments,

Convinced that stimulation and protection of investments shall contribute to strengthening entrepreneurial initiatives and so considerably contribute to development of economic relations between the Parties to the Agreement,

Have agreed as follows:

Article 1

Definitions

For the purpose of this Agreement:

1. The expression "investment" shall cover all kinds of resources which the one Party's investor invests in relation to economic activities in the territory of the other Party to the Agreement, in conformity with laws and regulations of the other one, and it shall comprise, especially but not exclusively:

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- (1) movable and real estate property, and all other property rights in rem such as mortgage, pledge and guarantee;
- (2) shares, stocks and bonds and other securities of the company and other forms of participation in the company;
- (3) payment claims or any other claims according to the Agreement, which have economic value;
- (4) intellectual property rights, including copyrights, trademarks, patents, industrial design, technical processes, know-how, business secrets, commercial names and good-will related to an investment;
- (5) economic and other rights resulting from concessions given in conformity with laws and regulations of the Party to the Agreement in whose territory the investment is made, including concessions for researches, working mines and exploitation of natural resources.

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

2. The expression "returns" stands for amounts which are brought by an investment and comprises especially but not exclusively, profit, capital gains, dividends, interests, author's royalties, patent and licence compensations and other similar compensations;
3. The expression "investor" stands for:
 - (1) a natural person having citizenship of one of the Party to the Agreement, and investing in the territory of the other Party to the Agreement;
 - (2) a legal entity established, founded or in any other way properly organized in conformity with laws and regulations of one Party to the Agreement, with a permanent head office in the territory of that Party to the Agreement, and investing in the territory of the other Party to the Agreement.
4. The expression "territory" stands for:
 - (1) with regard to the Federal Republic of Yugoslavia, the territory of the Federal Republic of Yugoslavia, including areas enclosed by terrestrial borders as well as the sea area, maritime region and maritime underground out of the territorial sea, in which the Federal Republic of Yugoslavia has sovereignty, sovereign rights and jurisdiction, in conformity with its national laws and regulations and the international law;
 - (2) with regard to the Czech Republic, the territory of the Czech Republic in which it has sovereignty, sovereign rights and jurisdiction in conformity with the international law.

Article 2

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.

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2. Investments of the investors of any of the Parties to the Agreement, at any time, shall have an equitable and fair treatment, and shall make use of full protection and safety in the territory of the other Party to the Agreement.

Article 3

National treatment and the most favourable nation treatment

1. Each Party to the Agreement, in its territory, shall provide investments and returns of investors of the other Party to the Agreement an equitable and fair treatment, not less favourable than one provided to investments and returns of any third country's investors, depending on which one is more favourable.
2. Each Party to the Agreement, in its territory, with regard to management, maintenance, exploitation, enjoyment or free use of their investments, shall provide the other Party's investors an equitable and fair treatment, not less favourable than the one provided to its own investors or any third country's investors, depending on which one 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 based on:
 - (1) customs union or free trade zone or monetary union or any similar international agreement leading to such unions or institutions or other forms of regional cooperation, whose member any Party to the Agreement is or can become;
 - (2) any international agreement or arrangement which in its entirety or partly refers to taxation.

Article 4

Retrieval of losses

1. The investors of the Party to the Agreement, whose investments have suffered losses, as a consequence of war or other armed conflict, state of emergency, rebellion, uprising or riots, in the territory of the other Party to the Agreement, shall be provided, with regard to return, indemnification, compensation or any other retrieval of losses, a treatment no less favourable than the one the other Party to the Agreement gives to its own investors or any third country's investors. Payments on those grounds shall be made with no unnecessary delay and shall be freely transferable in freely convertible currency.
2. Without prejudging provision of paragraph 1 of this Article the investors of a Party to the Agreement which, in any of the situations quoted in that paragraph, having suffered losses in the territory of the other Party to the Agreement as a consequence of:
 - (1) confiscation of their property by the authorities of the other Party to the Agreement, or
 - (2) a destruction of their property by the authorities of the other Party to the Agreement which did not arise in combative operations nor were indispensable due to situation, shall be approved a return of funds or an equitable and adequate compensation for the suffered losses during the confiscation period or as a consequence of property

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destruction. Payments on those grounds shall be made with no unnecessary delay and shall be freely transferable in freely convertible currency.

Article 5

Expropriation

1. Investments of the investors of any Party to the Agreement shall not be nationalized, expropriated, or subjected to measures equal by effect to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of other Party to the Agreement, except in public interest. Expropriation shall be executed by law enforcement, on non-discriminatory basis, and shall be followed by payment of a prompt, adequate and efficient compensation. Such a compensation shall comply with a real value of expropriated investment immediately prior to expropriation or before the forthcoming expropriation becomes widely known fact, depending on what happened first; it shall include interest, on commercial basis, from the expropriation date to the payment date; it shall be settled with no unnecessary delay and shall be freely transferable in freely convertible currency.
2. The investor suffering a loss shall be entitled, in conformity with laws and regulations of the Party to the Agreement which performed the expropriation, to request from a legal or any other independent body of that Party to the Agreement, to make with no delay, consideration of his/her case and evaluation of his/her investment in accordance with principles defined in this Article.

Article 6

Transfers

1. Each Party to the Agreement shall, upon settlement of all his respective fiscal liabilities, guarantee the investors of other Party to the Agreement free transfer of payments referring to their investments including especially, but not exclusively:
 - (1) capital and additional amounts for investment maintenance or enlargement;
 - (2) returns;
 - (3) funds from loan discharge;
 - (4) incomes from sale and liquidation of investments;
 - (5) compensation paid within the meaning of Articles 4 and 5 of this Agreement;
 - (6) earnings of natural persons, in conformity with laws and regulations of that Party to the Agreement where the investments are made.
2. Payment transfers from paragraph 1 of this Article shall be executed with no unnecessary delay and any restrictions, in free convertible currency, according to prevailing exchange rate applicable on the transfer day, in the territory of the Party to the Agreement where the investment is made.
3. It shall be deemed that transfer is performed "with no delay" if it is performed within the period not longer than three months.

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Subrogation

1. If the Party to the Agreement or its appointed institution makes the payment to its own investors according to the warranty it approved for investment in the territory of the other Party to the Agreement, the other Party to the Agreement shall recognize:
 - (1) assignment of, according to law or in accordance with legal transaction, any right or claim of the investor to the first Party to the Agreement or its appointed institution and
 - (2) that the former Party to the Agreement, according to subrogation, shall be empowered to realize such rights or realize such claims and shall take over obligations referring to investments.
2. Subrogated rights or claims shall not exceed prime rights or claims of the investors.
3. Subrogation of rights and obligations of the insured investor shall refer also to payment transfer performed in accordance to Article 6 of this Agreement.

Article 8

Settlement of disputes between the Parties to the Agreement

1. Disputes of the Parties to the Agreement in relation to interpretation or application of this Agreement shall be settled, to the utmost extent, through consultations and negotiations;
2. If a dispute between the Parties to the Agreement fails to be settled in that manner within six months from the beginning of negotiations, it shall be submitted to an arbitration court, at the request of one Party to the Agreement.
3. Arbitration court from paragraph 2 of this Article shall be constituted on ad hoc basis, for each individual case, as follows: within three months from reception of arbitration request each Party shall appoint one member of the court. These two members shall appoint the third member of the court – the third country's citizen, who, with consent of both Parties to the Agreement, shall be appointed the president of the court. The president shall be appointed within three months from the date of the other two members' appointment.
4. If within the terms stipulated in paragraph 3 of this Article the arbitration court is not constituted, both of the Parties to the Agreement, in absence of any agreement, may request from the president of the International Court of Justice to perform necessary appointments. If the president is a citizen of any of the Parties to the Agreement, or if he is in any other way unable to perform this function, the vice president shall be requested to perform necessary appointments. If the vice president is a citizen of any of the Parties to the Agreement, or if he is also unable to perform this function, a member of the International Court of Justice, subsequent by seniority, who is not a citizen of any of the Party to the Agreement shall be asked to perform necessary appointments.
5. Arbitration Court shall make decisions according to provisions of this Agreement, as well as widely accepted principles and rules of the international law. Arbitration Court shall make decisions by majority of vote. Its decisions shall be final and binding for both Parties to the Agreement. The Court shall define its own work procedure.
6. Each Party to the Agreement shall bear costs of its court member and his participation in arbitration procedure. The costs of president and other costs shall be equally at the expense of both Parties to the Agreement.

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Article 9

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

1. Disputes between investors of one Party to the Agreement and the other Party to the Agreement in relation to investments which the investor of one Party to the Agreement made in the territory of the other Party to the Agreement, shall be settled, to the utmost extent, through negotiations.
2. If the dispute quoted in paragraph 1 of this Article fails to be settled through negotiations, the investor shall be entitled to submit the dispute to a competent court of the Party to the Agreement, which is a party in dispute.
3. Instead of applying provisions of paragraph 2 of this Article, the investor may choose to hand over the dispute to an arbitration settlement to:
 - (1) an ad hoc arbitration court in accordance with Arbitration Principles of the UN Commission for International Trade Law (UNCITRAL),
 - (2) International Centre for settlement of investment disputes, in case both Parties to the Agreement are signatories of the Convention on settlement of investment disputes between states and citizens of other states, open to signing in Washington, on 18 March 1965 (Convention ICSID).
4. Judgment shall be final and binding for both Parties in the dispute and shall apply, in conformity with laws and regulations of the Party to the Agreement in whose territory the investment is realized.

Article 10

Application of other regulations

1. If the matter is regulated simultaneously with this Agreement and with any other international agreement, the signatories of which are both Parties to the Agreement, no segment of this Agreement shall prevent any of the Parties to the Agreement or any of their investors having investments in the territory of the other Party to the Agreement, to follow up the advantages of any regulation being more favourable in their case.
2. If the treatment provided by one Party to the Agreement to the investors of the other Party to the Agreement, in conformity with its laws and regulations, is more favourable than the one provided under this Agreement, the treatment more favourable shall be provided.

Article 11

Consultations

The representatives of the Parties to the Agreement shall, when required, make consultations in relation to issues referring to the application of this Agreement. These consultations shall be made at suggestion of one of the Parties to the Agreement, and the time and place shall be agreed through diplomatic channels.

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Article 12

Application of this Agreement

Provisions of this Agreement shall apply to future investments of the investors of one Party to the Agreement in the territory of the other Party to the Agreement, as well as to the existing investments in conformity with the laws of the Parties to the Agreement on the day of entry into force of this Agreement. However, provisions of this Agreement shall not apply to the claims arisen from the events that happened or to the claims settled prior to its entry into force.

Article 13

Entry into force, continuation and expiration of the Agreement

1. Each Party to the Agreement shall inform, in written form, the other Party to the Agreement on completion of the procedure for entry into force of this Agreement, as provided by its laws. This Agreement shall enter into force on the day of the second notice.
2. This Agreement shall stay in force within the period of ten years. Following that, it shall stay in force within the period of twelve months following the date when one Party informs in written the other one on its intention to cancel the Agreement.
3. With regard to the investments made prior to the expiration date of this Agreement, provisions of Articles 1 to 12 shall apply within the period of ten years following that date.

As ratification of the abovementioned, the undersigned persons properly empowered, signed this Agreement.

Done in Belgrade, on the day of 13 October 1997, in two originals, in Serbian, Czech and English, where each text shall be equally authentic. In case of any discrepancy in interpretation, the text in English shall prevail.

For

The Federal Republic of Yugoslavia

Milan Milutinovic, m. p.

For

The Czech Republic Government

Josef Zieleniec, m. p.

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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.