

[TRANSLATION — TRADUCTION]

TREATY¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY
AND THE REPUBLIC OF ALBANIA CONCERNING THE EN-
COURAGEMENT AND RECIPROCAL PROTECTION OF IN-
VESTMENTS

The Federal Republic of Germany and the Republic of Albania,

Desiring to intensify bilateral economic cooperation,

Intending to create favourable conditions for investments by nationals or companies of one State in the territory of the other,

Recognizing that the encouragement of such investments and their protection on the basis of this Treaty will foster the development of private economic initiatives and improve the prosperity of both peoples,

Have agreed as follows:

Article 1

For the purposes of this Treaty

1. The term “investments” shall comprise all kinds of assets that are invested pursuant to the national legislation of each respective Contracting Party, in particular:

(a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges;

(b) Shares of companies and other kinds of company interests;

(c) Claims to money which has been used to create an economic value or claims to any performance having an economic value;

(d) Intellectual property rights, in particular copyrights, patents, utility models, commercial designs and models, trade marks, trade names, trade and company secrets, technical processes and goodwill;

(e) Rights arising from public-law Treaties, including rights for the prospecting and exploiting of natural resources;

Any change made to the form in which assets are invested shall not affect their status as investments.

2. The term “returns” shall mean the amounts yielded from an investment for a definite period, such as profits, dividends, interest, and licence or other fees.

3. The term “national” shall mean

(a) In reference to the Federal Republic of Germany: German, as defined by the Basic Law of the Federal Republic of Germany.

¹ Came into force on 18 August 1995, i.e., one month after the exchange of the instruments of ratification, which took place at Tirana on 18 July 1995, in accordance with article 13 (2).

(b) In reference to the Republic of Albania: Albanian, as defined by Decree No. 1874 of 7 June 1954;

4. The term “companies” shall mean

(a) In reference to the Federal Republic of Germany: any juridical person and any trading or other company or association, with or without legal personality, which has its headquarters on German territory, regardless of whether or not its business is intended to make a profit,

(b) In reference to the Republic of Albania: any juridical person and any trading or other company or association, with or without legal personality, which has its headquarters on Albanian territory, regardless of whether or not its business is intended to make a profit.

Article 2

(1) Each Contracting Party shall in its territory promote as far as possible investments by nationals or companies of the other Contracting Party and admit such investments in accordance with its respective laws. It shall in any case accord investments fair and equitable treatment.

(2) No Contracting Party should in any way impede the management, maintenance, use or enjoyment of investments in its territory by nationals or companies of the other Contracting Party through arbitrary or discriminatory measures.

Article 3

(1) Neither Contracting Party shall treat investments owned by nationals or companies of the other Contracting Party or investments in which nationals or companies of the other Contracting Party have a holding less favourably in its territory than it treats investments of its own nationals or companies, or investments of nationals or companies of any third State.

(2) Neither Contracting Party shall treat nationals or companies of the other Contracting Party, as regards their activity in connection with investments in its territory, less favourably than it treats its own nationals or companies, or nationals or companies of any third State.

(3) Such treatment shall not extend to privileges which either Contracting Party accords to nationals or companies of third States on account of their membership of, or association with, a customs or economic union, a common market, the Council for Mutual Economic Assistance, or a free trade area.

(4) The treatment granted under this Article shall not refer to privileges granted by either Contracting Party to nationals or companies of third States by virtue of a double taxation agreement or other agreements regarding matters of taxation.

Article 4

(1) Investments by nationals or companies of either Contracting Party shall enjoy full protection as well as security in the territory of the other Contracting Party.

(2) Investments by nationals or companies of either Contracting Party shall not be expropriated, nationalized or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the

other Contracting Party except for the public benefit and against compensation. Such compensation shall be equivalent to the value of the expropriated investment immediately before the date the actual or impending expropriation, nationalization or comparable measure has become publicly known. The compensation shall be paid without delay and shall attract interest at the normal rate of bank interest; it shall be effectively realizable and freely transferable. Suitable arrangements for the determination and payment of the compensation shall be made, by the latest on the date of expropriation, nationalization or comparable measure. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review by due process of law.

(3) Nationals or companies of either Contracting Party who suffer losses on their investments owing to war or other armed conflict, revolution, a state of national emergency, or revolt in the territory of the other Contracting Party shall be accorded treatment no less favourable by such other Contracting Party than that Party accords to its own nationals or companies, in the event of restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

(4) In respect of the matters provided for in this Article, nationals or companies of either Contracting Party shall be treated no less favourably in the territory of the other Contracting Party than nationals or companies of any third State.

Article 5

Each Contracting Party shall guarantee the nationals or companies of the other Contracting Party the free transfer of payments in connection with an investment, in particular

- (a) Of the capital and additional amounts to maintain or increase the investment;
- (b) Of the returns;
- (c) In repayment of loans;
- (d) Of the proceeds from the liquidation or sale of the whole or any part of the investment;
- (e) Of the compensation provided for in Article 4.

Article 6

If either Contracting Party makes payments to any of its nationals or companies under a guarantee it has assumed in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 10, recognize the assignment, whether under a law or pursuant to a legal transaction, of all rights or claims from such national or company to the former Contracting Party. The latter Contracting Party shall further recognize the subrogation of the former Contracting Party to all such rights or claims (assigned claims), which the former Contracting Party shall be entitled to exercise to the same extent as its legal predecessor. As regards the transfer of payments by virtue of such assignment, paragraphs 2 and 3 of Article 4, as well as Article 5 shall apply *mutatis mutandis*.

Article 7

(1) A transfer under paragraphs 2 or 3 of Article 4, Article 5 or Article 6 shall be made without delay at the exchange rate in effect on the day of the transfer.

(2) Such exchange rate may not vary significantly from the cross rate determined on the basis of the conversion rates underlying the International Monetary Fund's special drawing rights conversions for the currencies concerned on the day the transfers take place.

Article 8

(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 Treaty contain a regulation, whether general or specific, entitling investments by nationals or companies of the other Contracting Party to a treatment more favourable than is provided for by this Treaty, such regulation shall, to the extent that it is more favourable, prevail over this Treaty.

(2) Each Contracting Party shall observe any other obligation it may have entered into with regard to investments in its territory by nationals or companies of the other Contracting Party.

Article 9

This Treaty shall also apply to investments made by nationals or companies of either Contracting Party in the territory of the other Contracting Party, in accordance with the legislation of the latter, before the entry into force of this Treaty.

Article 10

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Treaty should, if possible, be settled by the Governments of the two Contracting Parties.

(2) If a dispute cannot be thus settled, it shall upon request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be constituted for each individual case as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as their chairman to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within two months, and such chairman within three months, from the date on which either Contracting Party has informed the other that it wants to submit the dispute to an arbitral tribunal.

(4) If the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any other relevant agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or is excluded for some other reason, the Vice President shall make the appointments. If the Vice-President is also a national of either Contracting Party or is excluded for some other reason, the next highest ranking member of the International Court of Justice who is not a national of either Contracting Party shall make the appointments.

(5) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. Each Contracting Party shall bear the cost of its own

member and of its counsel in the arbitral proceedings; the cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitral tribunal may make a different regulation concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

(6) If both Contracting Parties are Contracting States to the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States, the arbitral tribunal provided for above may in consideration of the provisions of paragraph 1 of Article 27 of the said Convention not be appealed to in so far as agreement has been reached between the investor of one Contracting Party under Article 25 of the Convention. This shall not affect the possibility of appealing to such arbitral tribunal in the event that a decision of the Arbitral Tribunal established under the said Convention is not complied with (Article 27) or in the case of an assignment under a law or pursuant to a legal transaction as provided for in Article 6 of the present Treaty.

Article 11

(1) Disputes with regard to investments between either Contracting Party and a national or company of the other Contracting Party should, as far as possible, be settled amicably between the parties to the dispute.

(2) If a dispute cannot be settled within six months after it has been raised by one of the parties to the dispute, the dispute shall, at the request of a national or company of the other Contracting Party, be subjected to arbitral proceedings. If the parties to the dispute do not make another arrangement, the provisions of paragraphs 2 to 5 of Article 10 shall be applied *mutatis mutandis*, subject to the proviso that in accordance with paragraph 3 of Article 10 the members of the Arbitral Tribunal shall be appointed by the parties and that, should the periods mentioned in paragraph 3 of Article 10 not be observed, either Contracting Party may, in the absence of other agreements, invite the President of the Court of Arbitration of the International Chamber of Commerce in Paris to make the necessary appointments. The award shall be enforced in accordance with national legislation.

(3) Neither Contracting Party that is a party to the dispute shall raise the objection during arbitral proceedings or during the enforcement of an arbitral award that the national or company of the other Contracting Party has received compensation from an insurance institution for part or whole of the damage.

(4) In the event that both Contracting Parties shall become Contracting States to the Convention of 18 March 1965¹ on the Settlement of Investment Disputes between States and Nationals of other States, the disputes between the disputing parties as described in this Article shall be subjected to arbitral proceedings within the framework of the aforementioned agreement; unless the parties to the dispute reach another agreement; each Contracting Party hereby declares its approval of such proceedings.

Article 12

This Treaty shall apply irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

¹ Nations Unies, *Recueil des Traités*, vol. 575, p. 159.

Article 13

(1) This Treaty shall be ratified; the instruments of ratification shall be exchanged in Tirana as soon as possible.

(2) This Treaty shall enter into force one month from the date of the exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall be extended thereafter for an unlimited period except if denounced in writing by either Contracting Party twelve months before its expiration. After the expiry of the period of ten years, this Treaty may be denounced at any time giving twelve months' notice.

(3) In respect of investment made prior to the date of termination of this Treaty, Articles 1 to 12 shall continue to apply for a further period of twenty years from the date of termination of this Treaty.

DONE at Bonn on 31 October 1991, in duplicate, in the German and Albanian languages, both texts being equally authentic.

For the Federal Republic
of Germany:

HANS-DIETRICH GENSCHER

For the Republic
of Albania:

MUHAMET KAPLLANI

PROTOCOL

On signing the Treaty concerning the Encouragement and Reciprocal Protection of Investments concluded between the Federal Republic of Germany and the Republic of Albania, the undersigned Plenipotentiaries have reached agreement in addition on the following provisions, which shall be regarded as an integral part of the said Treaty.

(1) *Ad Article 1*

(a) Returns from the investment and, in the event of their reinvestment, the returns therefrom, shall enjoy the same protection as the investment.

(b) Irrespective of other procedures undertaken to establish nationality, a national of a Contracting Party shall be defined in particular by the possession of a passport issued by the competent authorities of such Contracting Party.

(2) *Ad Article 2*

(a) Investments of nationals or companies of one Contracting Party that have been admitted by the other Contracting Party in accordance with its respective laws and within the scope of its legal system shall enjoy the full protection of this Treaty.

(b) This Treaty shall also apply in the territories of the exclusive economic zone and the continental shelf of either Contracting Party in so far as international law permits either Contracting Party to exercise sovereign rights and powers in such territories.

(3) *Ad Article 3*

(a) The term “activity” within the meaning of paragraph 2 of Article 3 shall refer in particular, but not exclusively, to the management, maintenance, use and enjoyment of an investment. The following shall, in particular, be deemed “treatment less favourable” within the meaning of Article 3: discriminatory treatment with respect to the purchase of raw or auxiliary materials, of energy or fuel or of means of production or operation of any kind, discriminatory treatment with respect to the marketing of products in domestic or foreign markets, as well as any other measures having similar effects. Measures that have to be taken for reasons of public security and order, or for the protection of life and health or public morality, shall not be deemed “treatment less favourable” within the meaning of Article 3.

(b) The provisions of Article 3 do not oblige a Contracting Party to extend to natural persons or companies resident in the territory of the other Contracting Party tax privileges, tax exemptions and tax reductions which according to its tax laws are granted only to natural persons and companies resident in its territory.

(c) The Contracting Parties shall, within the framework of their national legislation, give sympathetic consideration to applications for the entry and sojourn of persons of either Contracting Party who wish to enter the territory of the other Contracting Party in direct connection with an investment; the same shall apply to employees of either Contracting Party who in direct connection with an investment wish to enter the territory of the other Contracting Party and remain there in order to work as employed persons. Applications for work permits shall also be given sympathetic consideration.

(4) *Ad Article 4*

A claim for compensation also arises in the event that the company that is the object of the investment is subject to State intervention and its economic survival is thereby significantly threatened.

(5) *Ad Article 7*

A transfer shall be deemed to have been made “without delay” within the meaning of paragraph 1 of Article 7 if effected within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant request has been submitted and may on no account exceed two months.

(6) Whenever goods or persons connected with the investment are to be transported, one Contracting Party shall neither exclude nor hinder transport enterprises of the other Contracting Party and shall issue permits as required to carry out such transport. In this context, the expression “goods or persons to be transported” shall refer to the following:

(a) Goods that are directly connected to the investment within the meaning of this Treaty or those which in the territory of a Contracting Party or of any third State are purchased or ordered by a company in which assets are invested within the meaning of this Treaty.

(b) Persons travelling in connection with an investment.

DONE at Bonn on 31 October 1991, in duplicate, in the German and Albanian languages, both texts being equally authentic.

For the Federal Republic
of Germany:

HANS-DIETRICH GENSCHER

For the Republic
of Albania:

MUHAMET KAPLLANI

EXCHANGE OF NOTES

I

THE MINISTRY OF FOREIGN AFFAIRS
OF THE REPUBLIC OF ALBANIA

Bonn, 31 October 1991

Sir,

I have the honour to inform you that, with the aim of encouraging investments by nationals or companies of the Federal Republic of Germany in the territory of the Republic of Albania, the Government of the Republic of Albania will provisionally apply the Treaty before its entry into force, as from the date of its signature.

The purpose of this declaration is to enable the Government of the Federal Republic of Germany to consider underwriting guarantees for investments in the Republic of Albania before the entry into force of the Treaty.

Accept, Sir, etc.

MUHAMET KAPLLANI

Hans-Dietrich Genscher
Minister for Foreign Affairs
of the Federal Republic of Germany
Bonn

II

THE FEDERAL MINISTER OF FOREIGN AFFAIRS

Bonn, 31 October 1991

Dear Minister,

I am delighted to confirm the receipt, on 31 October 1991, of the note from the Government of the Republic of Albania, which reads as follows:

[*See note I*]

Accept, Sir, etc.

GENSCHER

To the Minister of Foreign Affairs
of the Republic of Albania
Mr. Muhamet Kapllani
