

No. 29539

**FEDERAL REPUBLIC OF GERMANY
and
POLAND**

Treaty concerning the encouragement and reciprocal protection of investments (with protocol). Signed at Warsaw on 10 November 1989

Authentic texts: German and Polish.

Registered by Germany on 28 January 1993.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
POLOGNE**

Traité relatif à la promotion et à la protection réciproque des investissements (avec protocole). Signé à Varsovie le 10 novembre 1989

Textes authentiques : allemand et polonais.

Enregistré par l'Allemagne le 28 janvier 1993.

[TRANSLATION — TRADUCTION]

TREATY¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY
AND THE PEOPLE'S REPUBLIC OF POLAND CONCERNING
THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF
INVESTMENTS

The Contracting Parties,

Desiring to intensify bilateral economic cooperation,

Intending to create favourable conditions for reciprocal investments,

Recognizing that the encouragement of such investments and their protection on the basis of this Treaty will serve the further development of economic initiative in this area,

Have agreed as follows:

Article 1

(1) In this Treaty

(a) The term “investments” shall comprise all kinds of assets that an investor of one Contracting Party invests in the territory of the other Contracting Party pursuant to the latter’s legislation, in particular:

- Movable and immovable property as well as any other rights *in rem*, such as mortgages, liens and pledges;
- Shares of companies and other kinds of interest;
- Claims to money which has been used to create an economic value or claims to any performance having an economic value;
- Copyrights, industrial property rights, technical processes, trade marks, trade names, know-how, and goodwill;
- Rights to engage in an industrial activity having an economic value, including rights to prospecting for, developing, mining or working of natural resources which are based on a permit in accordance with the legislation of the Contracting Party in whose territory the investments are made, or based on a permit in accordance with a relevant agreement.

(b) The term “returns” shall mean the amounts yielded for a definite period as profit, dividends, interest, licence fees or other comparable earnings from an investment within the meaning of subparagraph (a) above.

(c) The term “investor” shall mean a natural person with permanent domicile or a juridical person with its seat in the respective area of application of this Treaty, entitled to engage in investments.

(2) This Treaty shall cover the exclusive economic zone and the continental shelf over which the respective Contracting Party can exercise sovereign rights and

¹ Came into force on 24 February 1991, i.e., one month from the date of the exchange of the instruments of ratification, which took place at Bonn on 24 January 1991, in accordance with article 14 (2).

powers for the prospecting, exploitation and conservation of natural resources in conformity with international law.

Article 2

(1) Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its respective laws. Investments that have been admitted in accordance with the respective law of one Contracting Party shall enjoy the protection of this Treaty. Each Contracting Party 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 investors of the other Contracting Party by means of unjustified or discriminatory measures.

Article 3

(1) Neither Contracting Party shall subject investments by investors of the other Contracting Party or investments in which investors from the other Contracting Party have a holding less favourably in its territory than investments by its own investors or investments by investors of any third State.

(2) Neither Contracting Party shall subject investors of the other Contracting Party, as regards their activity in connection with investments in its territory, to treatment less favourable than it accords to its own investors or investors from any third State.

(3) Such treatment shall not extend to privileges which either Contracting Party accords to investors 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 investors of third States by virtue of a double taxation agreement or other agreements regarding matters of taxation.

Article 4

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

(2) Investments by investors 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 investment expropriated immediately before the date the expropriation or nationalization has become publicly known. The compensation shall be paid without delay, but at the latest within two months and shall attract interest at the normal rate of bank interest from the third month up to the date of payment; 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) Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, or revolt, shall be accorded treatment no less favourable by such other Contracting Party than that Party accords to its own investors, in the event of restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

(4) Investors of either Contracting Party shall enjoy most-favoured-nation treatment in the territory of the other Contracting Party in respect of the matters provided for in this Article.

Article 5

Each Contracting Party shall guarantee investors 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 sale of the whole or any part of the investment or from its liquidation;

(e) Of the compensation provided for in Article 4.

Article 6

(1) If either Contracting Party makes compensation payments to any of its investors 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 any right or claim from such investor to the former Contracting Party. The latter Contracting Party shall also recognize the subrogation of the former Contracting Party, which made the payment, to any such assigned rights or claims. The Contracting Party making payment can assert the rights or claims to which the investor was entitled only to the extent that the investor could have asserted them; on the other hand, the other Contracting Party can also assert against the Contracting Party making payment counterclaims that exist against the investor.

(2) If the rights or claims of the investor have been assigned to the Contracting Party making payment, the investor cannot assert them against the other Contracting Party unless he is empowered to do so by the Contracting Party making payment.

(3) 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

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

Article 8

(1) If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting