

THE BACKGROUND

Ravka is a small underdeveloped country, where the economy majorly relies on the tourism that it generates from its scenic landscapes. The country is landlocked and lacks various essential resources, and hence it has to rely majorly on trade and interactions with other countries for sustenance. However, majority of the countries that Ravka shares its borders with are hostile war-trodden countries, and do not engage in any effective trade.

The only country that Ravka can engage in trade with is Silverstonia, which is four times the size of Ravka and is extremely prosperous, comparatively.

Silverstonia has a booming economy and its trade through sea routes is vast. It also has large reserves of oil & natural gas which it exports to countries around the world. However, the cost of transportation of the natural resources is extremely high as the reserves are located under a group of islands, collectively referred to as Monzane Islands, 250 km away from the mainland of Silverstonia. In addition to this, Silverstonia is a part of the Atlantis Union, which is a Regional Economic Integration Organisation (“**REIO**”).

Ravka, owing to its growing economy and population, has a high demand for natural gas, however, it lacks those resources and due to limited supply from neighbouring countries, price of natural gas in Ravka is high and availability is always low.

THE AGREEMENT

In April 2019, Ravka held its general elections which saw a new economically progressive and liberal party come to power. The new Government in its bid to keep their promise to increase supply of natural gas and bring down its price approached Silverstonia with trade propositions.

In June 2019, after extensive discussions, a Bilateral Investment Treaty was signed between the two countries which offered Fair and Equitable Treatment, Full Protection and Security, as well as protection from Expropriation to any investment made under the treaty. Subsequently, in August 2021, an investment was made by a company called **Asterix Inc.**, which is a fully owned entity of the State of Ravka, in the territory of Silverstonia for the extraction and transportation of natural gas. The aim was to procure natural gas from a single source so as to increase reliable supply and bring down prices.

As per the Investment Agreement, the extraction of natural gas was the responsibility of Silverstonia and its employees, while the transportation was to be fully facilitated by Asterix Inc. In furtherance of the same, Asterix Inc. bought a fleet of used Airtruck B319 aircrafts, which

were on an average 8 years old, and specifically modified them to safely transport the natural gas from Silverstonia to Ravka. These aircrafts were fitted with older generation jet engines that complied with Chapter 3 Noise Regulations of the International Civil Aviation Organisation (“**ICAO**”) Environmental Regulations. In addition to the above, Asterix Inc. also invested in training professionals to operate these aircrafts, loading and unloading equipment and other supplementary technical equipment. During a meeting, concerns were raised by the Silverstonia’s Civil Aviation Governance Authority (“**CAGA**”) over the age of the aircrafts, but were later looked over.

Ravka was assured by the Silverstonia’s Minister of Trade and Commerce of their full-cooperation and support not only during the foundation of the facilities but also after the launch of the operations. Through Asterix, Ravka had invested close 770 million USD into the project, making it the most ambitious and expensive investment project that Ravka had ever taken up.

THE DISPUTE

In April 2020, Asterix began the extraction and transportation in Silverstonia and the operations normally continued till January 2021. On 31st January 2021, the Atlantis Union issued Directive 51/2021 (“**Directive**”) to all its member countries, which increased the prevalent noise requirements for operating aircrafts in lieu of making aviation more eco-friendly. The Directive provided that aircrafts with Chapter 3 certifications will no longer be allowed to fly in and out of the Atlantis Union, after a period of five years.

This directive was binding in nature as it had been passed by a majority of Atlantis Union members. Silverstonia, however, had raised its concerns pertaining to the commercial setbacks of the Directive and had dissented during the vote in the Council Meeting.

This directive effectively rendered the specifically modified and commissioned cargo aircrafts non-operable, and Asterix Inc. was obligated to cease its operations. This would cause immense losses to Ravka as their investment will be crippled and their economy would suffer immensely as it had hedged all its bets on this investment. Silverstonia too would face losses, as they had demarcated and started working on large swathes of land for extraction, all of which will be rendered futile as the transport operations will have to be ceased in the near future.

In this scenario, both parties looking towards a reconstruction scheme, started negotiations, however the talks broke down when news leaked that Silverstonia had entered into a similar agreement for the export of natural gas with a third country, Hinterland, for the same resources which were allocated to Ravka. This news was not received well by Asterix Inc. and Ravka and

they accused Silverstonia of not treating them Fairly and Equitably and also for expropriating their investment as under the Treaty.

To mitigate the damage done by the Directive, Silverstonia offered priority access to natural gas along with various tax incentives to Ravka, but only on the condition that Ravka reconstructs their cargo aircraft fleet in the coming years, so as to comply with the Directive.

Ravka opposed the aforesaid condition while stating that the implementation of a unilateral measure restricting the operations of a particular class of aircraft goes against the Balanced Approach to Aircraft Noise Management, which states that aircrafts have to be phased-out only after adequate consultations with stakeholders and provides a reasonable and non-arbitrary phase-out period.

CURRENT STATUS OF THE DISPUTE

Ravka, through Asterix, threatened to initiate arbitral proceedings through the International Centre for Settlement of Investment Disputes (ICSID), but later agreed to sit down for negotiation with Silverstonia to resolve the dispute amicably.

ANNEXURE I

**TREATY CONCERNING THE ENCOURAGEMENT AND RECIPROCAL
PROTECTION OF INVESTMENTS IN SILVERSTONIA
("SILVERSTONIA INVESTMENT TREATY")**

OF 31st JANUARY 2021

PREAMBLE

Having regard to the importance of sustaining economic growth and development in the Atlantis Union Region through joint efforts in promoting intra-Atlantis investment flows;

Recognising the necessity for the most efficient investment, storage, transport, distribution and use of resources;

Recognising the need to encourage and create stable, equitable, favourable and transparent conditions for Investors of other Contracting Parties to make Investments in the REIO Region; and

Desiring to achieve these objectives in a manner consistent with the protection of health, safety, and the environment, and the promotion of internationally recognised human rights;

HAVE AGREED AS FOLLOWS:

[OMITTED]

ARTICLE II — TREATMENT OF INVESTMENTS

(1) Each Contracting Party shall accord at all times to Investments of Investors of other Contracting Parties fair and equitable treatment.

The Investments shall also enjoy the most constant protection and security and no Contracting Party shall in any way impair by unreasonable or discriminatory measures their management, maintenance, use, enjoyment or disposal. In no case shall such Investments be accorded treatment less favourable than that required by international law, including treaty obligations.

(2) Each Contracting Party shall endeavour to accord to Investors of other Contracting Parties, as regards the Making of Investments in its Area, the Treatment described in paragraph (3).

(3) For the purposes of this Article, “Treatment” means treatment accorded by a Contracting Party which is no less favourable than that which it accords to its own Investors or to Investors of any other Contracting Party or any third state, whichever is the most favourable.

ARTICLE III — EXPROPRIATION

(1) Investments of Investors of a Contracting Party shall not be nationalised, expropriated or subjected to a measure or measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as “Expropriation”) except where such Expropriation is:

- (a) For a purpose which is in the public interest;
- (b) Not discriminatory;
- (c) Carried out under due process of law; and
- (d) Accompanied by the payment of prompt, adequate and effective compensation.

Such compensation shall amount to the fair market value of the Investment expropriated at the time immediately before the Expropriation or impending Expropriation became known in such a way as to affect the value of the Investment (hereinafter referred to as the “*Valuation Date*”).

(2) The Investor affected shall have a right to prompt review, under the law of the Contracting Party making the Expropriation, by a judicial or other competent and independent authority of that Contracting Party, of its case, of the valuation of its Investment, and of the payment of compensation, in accordance with the principles set out in paragraph (1).

[OMITTED]

ARTICLE VII — ENVIRONMENTAL ASPECTS

(1) Recognizing the right of each Contracting Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt

or modify accordingly its environmental laws, each Contracting Party shall strive to continue to improve those laws.

(2) The Contracting Parties recognise that it is inappropriate to encourage investment by relaxing domestic environmental laws. Accordingly, each Contracting Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws as an encouragement for the establishment, maintenance or expansion in its territory of an investment.

(3) The Contracting Parties reaffirm their commitments under the international environmental agreements, which they have accepted. They shall strive to ensure that such commitments are fully recognised and implemented by their domestic laws.

(4) The Contracting Parties recognise that co-operation between them provides enhanced opportunities to improve environmental protection standards. Upon request by either Contracting Party, the other Contracting Party shall accept to hold expert consultations on any matter falling under the purpose of this Article.

ANNEXURE II

DIRECTIVE (AU) 51/2021 OF THE COUNCIL of 31st January 2021

THE COUNCIL OF THE ATLANTIS UNION

Having regard to the Founding Charter of the Atlantis Union (“AU” or “**Association**”) and in particular Article 75(2) thereof,

[OMITTED]

Whereas:

- (1) In accordance with the founding principles, Atlantis Union aims to reduce the nuisances of noise to citizens through general rules on environmental noise management, as well as by addressing specific sectors of activity, such as air transport.
- (2) The directive specifically targeted at noise reduction in air traffic is essentially based on the application of standards developed within the Regional Economic Integration Organisation (REIO) and on the setting of common AU measures to implement the internationally recognised 'balanced approach' principle.
- (3) It is thus appropriate to establish a binding 2026 Association target to reduce noise level near airports by 25% in order to achieve and even go beyond the goal set in the Nationally Determined Contribution.

HAVE, BY MAJORITY, ADOPTED THIS DIRECTIVE:

[OMITTED]

Article 2

Binding overall Association target for 2030

In order to achieve the Goal, AU Member States shall collectively ensure that the noise generated from aircraft operations in 2026 be reduced by at least 25%.

Article 3

Rationale behind the reduction in the noise levels

Noise pollution is a major problem in Atlantis. Noise can cause both short and long-term health problems, such as annoyance, sleep disturbances or hearing impairment. It may also lead to poorer physical and mental condition, reduced work and learning performance, or cardiovascular effects. It is estimated that, every year, all traffic noise-related effects lead to a loss of the equivalent of over one million 'healthy life years' for the western Atlantis population.

In order to reach or exceed the Association target set in Article 2, and each Member State's contribution to that target set at a national level for the deployment of measures to reduce noise pollution, 340 Member States may apply support schemes.

[OMITTED]

Article 7

Restriction of the noise produced by airplanes

1. In order to reach or exceed the Association target set in Article 2, each Member State shall reduce the percentage of its noise produced from airplanes by 25% by 31 January 2026.
2. The Member States, considering their specific circumstances, are encouraged to gradually reduce their noise produced from airplanes before 31 January 2026.
3. The Member States shall pay no compensation to owners and/or operators of airplanes subject to measures adopted by the Member States under Article 7(1).
4. Notwithstanding Article 7(3), Member States may apply support schemes to provide incentives.

[OMITTED]