



EBRD and Giurgiulești International Free Port

1. History

Moldova is a landlocked country in south-eastern Europe that is bordered by Romania and Ukraine. The river Danube touches Moldova's border at the country's southernmost tip, where it is joined by the river Prut. In 1995, Moldova decided to construct the Giurgiulești International Free Port (Giurgiulești Port) at the confluence of the two rivers. The port, located near the village of Giurgiulești, was to be accessible to seagoing vessels and to be equipped with a terminal for the storage and trans-shipment of refined oil products.

The European Bank for Reconstruction and Development (EBRD) provided a US\$ 27.5 million financial package consisting of debt and equity in support of the infrastructure development to Terminal S.A., a joint Greek-Moldovan entity, which entered into a concession agreement with the government of Moldova for the purpose of the construction and operation of Giurgiulești Port. The government provided a throughput guarantee to Terminal S.A. to secure a minimum throughput volume of oil products via the terminal to generate the necessary level of cash flow that would make the project viable.

The project suffered a number of delays right from the start. As a result, physical work on the development ceased at 60 per cent completion in 1999. The EBRD loan was classified as impaired and transferred to the Bank's department for the management of non-performing loans. After years of negotiations, a settlement was agreed at the end of 2004, with the support of all the parties involved, including the government of Moldova. The settlement resulted in a 100 per cent write-off of the equity investment and a substantial write-off of the outstanding debt. The initial investor, Terminal S.A., and a number of Greek banks that had supported the original investment under the EBRD umbrella withdrew from the project and the Azpetrol Group, owned by Azerbaijani citizen Rafiq Aliyev, stepped in to replace them. At that time, the First Vice President of the Azpetrol Group was Thomas Moser, a former EBRD employee.

A group of companies, then known as Azertrans SRL, Azpetrol Refinery SRL and Azpetrol SRL, signed a Host Investment Agreement with the government of Moldova in December 2004, committing themselves to, among other goals, (a) the obligatory construction of various terminals at the port, (b) the obligatory construction of an oil refinery at the port and (c) the voluntary development of a network of up to 50 petrol stations (points of sale).

Total investments by the three aforementioned companies were expected to reach US\$ 250 million during the 25-year term of the Host Investment Agreement. The government of Moldova also provided – among other forms of support and in exchange for the release of the sovereign

guarantee (the throughput-volume guarantee) – an estimated MDL 1 billion in subsidies to Bemol Retail SRL between 2008 and 2015 in order to facilitate the delivery of the investments agreed with the three companies.

In June 2006, Rafiq Aliyev's Azpetrol Group sold its Moldovan subsidiaries to Rafiq Aliyev's Easeur Holding BV (Easeur) and renamed Azertrans SRL as Danube Logistics SRL (Danube Logistics), Azpetrol Refinery SRL as Bemol Refinery SRL (Bemol Refinery) and Azpetrol SRL as Bemol Retail SRL (Bemol Retail).

In November 2009, Thomas Moser resigned from his position as one of Rafiq Aliyev's trustees and acquired Easeur, including its subsidiaries Danube Logistics, Bemol Retail SRL and Bemol Refinery SRL, from Rafiq Aliyev's New Ventures Capital NV. A specialised distressed fund of Credit Suisse had been approached by the EBRD in 2006 because no commercial financial institution had been prepared to finance the completion of the project. Credit Suisse had started to finance the project in early 2007. Between 2009 and 2011, Easeur failed to refinance a defaulted senior debt of US\$ 28.6 million outstanding to Credit Suisse that was used to finance the infrastructure development in the port and the development of a petrol station network. The loan carried a default interest of US\$ 3.7 million per year.

In order to avoid the liquidation of Easeur and its Moldovan subsidiaries, all parties reached an amicable settlement providing for Easeur and Bemol Retail SRL to settle their overdue obligation to pay US\$ 28.6 million to Credit Suisse in exchange for their interests in Danube Logistics, which were transferred to Danube Logistics Holding BV. These interests included Easeur's 80 per cent shareholding in Danube Logistics SRL that was acquired for US\$ 344.60, Easeur's loan receivables from Danube Logistics SRL that were acquired for US\$ 14.9 million and Bemol's loan receivables from Danube Logistics SRL that were acquired for MDL 163 million (then: US\$ 13.7 million equivalent). The transaction was based on an independent valuation that was finalised by a reputable Dutch firm – a specialist in the valuation of ports – in consultation with Rafiq Aliyev's trustees and their financial adviser. As the company's debts were substantially larger than the independently established value of the enterprise, Danube Logistics Holding BV acquired Easeur's 80 per cent shareholding for US\$ 344.60. This amount was equivalent to the total investment in the share capital related to this shareholding up to that point in time.

Credit Suisse became the primary economic beneficiary of Danube Logistics Holding BV and, in exchange for not accelerating its loan, agreed to receive proceeds of up to 65 per cent from future dividends as well as from any future sale of the assets of or shares in Danube Logistics. Thomas Moser was appointed general manager of the Giurgiulești Port and a reward scheme (a common financial tool used in restructuring to incentivise management to create future value) was put in place by Credit Suisse with the approval of all parties involved, including Aliyev's New Ventures Capital NV.

November 2011 saw the transaction completed after an amicable settlement was reached between all parties following the receipt of consent from Rafiq Aliyev's New Ventures Capital NV, represented by its trustees.

In February 2013, the EBRD refinanced Danube Logistics Holding BV's debt outstanding to Credit Suisse and replaced Credit Suisse as the primary economic beneficiary of Danube Logistics Holding BV's shareholding in Danube Logistics, being entitled to 65 per cent of any sale of shares and dividend proceeds on the basis of a participation agreement concluded under English law.

After Rafiq Aliyev reacquired the Easeur group in 2014, Easeur, Bemol Retail SRL and New Ventures Capital NV launched several attempts to annul the settlement to try and gain control over Giurgiulești Port, claiming that the transaction had undervalued Danube Logistics. The Amsterdam Appeals Court dismissed this claim in a final and irrevocable judgment in September 2018. In the same year, the High Court of England and Wales also dismissed a personal claim against Thomas Moser in connection with this transaction. Another two claims by Easeur and Bemol Retail SRL were dismissed by courts in Moldova in December 2018 and March 2019.

In addition to seeking the nullification of Danube Logistics Holding BV's 2011 acquisition of Danube Logistics, Rafiq Aliyev's company Bemol Retail SRL pursued Thomas Moser personally for compensation with regard to the alleged loss of profits that Bemol Retail SRL claimed it had suffered as a result of Moser's management of Bemol Retail SRL until August 2012. In October 2019, the Chișinău Court of Appeal issued a judgment against Moser in his personal capacity to pay damages of MDL 177.4 million to Bemol Retail. Moser's challenge to this judgment is pending before the European Court of Human Rights.

While Bemol Retail's claim is against Moser and is unrelated to Danube Logistics and Danube Logistics Holding BV, Moldovan bailiffs, acting on behalf of Bemol Retail, have nevertheless since 2019 imposed a sequester on Danube Logistics Holding BV's shareholding in Danube Logistics, ordered a sequester on payments from Danube Logistics to Danube Logistics Holding BV and ordered the forced administration of the shareholding in Danube Logistics.

The EBRD has submitted documentary evidence to the Moldovan courts confirming that it has been the primary economic beneficiary of Danube Logistics Holding BV's shareholding in Danube Logistics since 2013 and that the shares in Danube Logistics are pledged as security for the EBRD's outstanding loan to Danube Logistics. A court dispute regarding the legality of the bailiffs' actions is ongoing.

On 18 March 2021, the EBRD announced that it was taking action to enforce its legal rights to protect its investment in, and the continued operations and the going concern of, Giurgiulești Port.

On 7 May 2021, the EBRD acquired 100 per cent of the capital of the Danube Logistics group of companies and thereby became the sole ultimate owner of Danube Logistics, the operator of Giurgiulești Port.

The change in the ultimate beneficial ownership of Danube Logistics was registered by the State Registry of Legal Entities in Moldova on 18 May 2021.

2. Completion

The 2004 Host Investment Agreement defines the obligations of Danube Logistics SRL, Bemol Retail SRL and Bemol Refinery SRL with regard to the construction and operation of Giurgiulești Port and related activities and services:

a) Terminals

Danube Logistics completed the construction of the oil terminal for the envisaged oil refinery in 2007 and constructed a cargo terminal in 2011. In February 2008, the government of Moldova released Danube Logistics from the obligation to construct a passenger terminal after the government demanded the return of the relevant plot of land from Danube Logistics. The Moldovan government

subsequently constructed its own passenger terminal on this plot, which is operated by the state-owned company, the Port of Ungheni.

Danube Logistics also constructed a berth for a grain terminal, a mixed-gauge railway terminal, port infrastructure, a warehouse and open storage areas as well as office buildings. Furthermore, it facilitated investments by other residents in Giurgiulești Port such as investments in a vegetable oil terminal, a grain terminal expansion project, a multipurpose warehouse, a sunflower oil extraction plant and others.

b) Refinery

The Host Investment Agreement stipulates the construction and operation of a refinery with an annual throughput capacity of 1,000,000 to 2,000,000 million tonnes of oil by Bemol Refinery for an originally estimated US\$ 150 million. This work has not been done and due to the missing refinery only about 30 per cent of the oil terminal's capacity is used, causing substantial financial damages to Danube Logistics.

c) Petrol stations

The agreement does not impose an obligation on Bemol Retail to develop a petrol station network. Instead, it offers Bemol Retail the opportunity to register up to 50 points of sale for the collection of the subsidy. Of the 48 stations registered with the Ministry of Economy and Infrastructure, 19 were owned by Bemol Retail and the remainder were leased. An obligation to build new petrol stations is not stipulated in the agreement.

3. The EBRD's involvement

The EBRD first got involved in Giurgiulești Port in November 1995, when the Bank approved a financial package of US\$ 2.5 million in equity as a minority shareholder alongside Terminal S.A., a consortium of Greek-Moldovan investors, and US\$ 25 million of debt for the development of an oil and oil-products terminal in the port.

After the takeover of the project in 2004 by Azpetrol Group, Danube Logistics acquired the partially constructed oil terminal from the EBRD and the insolvent Terminal S.A. in January 2005. The agreement provided for a purchase price of US\$ 12.8 million.

In 2011, the EBRD consented to the settlement for the rescue of Easeur and Bemol, which provided for the sale of Danube Logistics SRL to Danube Logistics Holding BV.

In early 2013, the EBRD sold its minority shareholding in Danube Logistics back to the company after exercising its put option for US\$ 2 million. At the same time, the Bank arranged the refinancing of Danube Logistics Holding BV's and Danube Logistics' short-term debt which was then outstanding to Credit Suisse and to the EBRD.

The refinancing was realised by a US\$ 12 million loan provided by the EBRD and a US\$ 12 million parallel loan provided by Moldova Agroindbank. The EBRD replaced Credit Suisse as the party holding an economic interest of up to 65 per cent in the shares of Danube Logistics.

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4. FAQ

Is the EBRD the sole owner of Giurgiulești Port?

Yes. The EBRD became the sole ultimate legal owner of Danube Logistics, the operator of Giurgiulești Port, on 7 May 2021.

Why did you take this step?

Our goal is to safeguard the operations of Giurgiulești Port, a strategic asset for Moldova, and to protect the EBRD's financial interests in the project. The port owes a substantial amount of money to the EBRD following the financial restructuring that was necessary to overcome the difficulties the asset has encountered from the start.

Why did the EBRD buy the port knowing that its ownership is being disputed in court?

The ownership of the port is not being disputed in court. The dispute has already been settled irrevocably by Dutch and Moldovan courts. However, there is currently an effort under way to settle an alleged personal claim against Thomas Moser by using – incorrectly in the EBRD's view as the *de facto* primary economic beneficiary – the assets and shares of Danube Logistics that are owned by Danube Logistics Holding BV.

Did the EBRD privatise the port?

No. The land on which the port is situated belongs to the state of Moldova. Under a 99-year concession, Danube Logistics is building, operating and expanding Giurgiulești Port.

Is the port now being taken into foreign ownership with EBRD help?

From the very beginning in the 1990s, the leadership of Moldova has sought foreign investment for the design, development and operation of the Giurgiulești Port project. International investors have owned the project since its inception.

Did the EBRD get approval from the government to take over the port operator?

The Host Investment Agreement does not require such approval. Article 13.1 of the 2004 agreement requires government approval in case of assignment by any party of its rights and/or obligations but not in case of a change of control. Danube Logistics has not transferred any of its rights or liabilities. It remains a party under the agreement and therefore article 13.1 is not applicable.

Why did the transaction take place in Cyprus, where the EBRD's mandate has ended?

When making investments, the EBRD is guided by the impact it creates in the economies where the Bank operates. By acquiring the Cyprus-registered ultimate beneficiary of a Moldovan port operator, the EBRD is helping to develop key Moldovan infrastructure in accordance with its mandate.

Is it true that the EBRD paid only €1,000 for the port?

This is not true.

The document circulated in certain media shows the nominal value of shares of Thomo Invest Ltd, the former indirect owner of Danube Logistics, which the EBRD acquired on 7 May 2021. The value of the transaction is different and remains confidential.

The EBRD has been accused of submitting forged documents for the registration of the port's takeover.

We categorically deny such allegations. The EBRD, its staff and lawyers abide by the highest ethical standards, integrity and good governance in all business operations.

We have asked the Ministry of Justice to clarify the discrepancy between the pledge registration document that was issued to the EBRD and the one circulated in the media.

We reserve the right to take legal action, if and when necessary, against any defamatory, libellous or slanderous accusations.

Is it true that the Prosecutor General's Office has opened a criminal case investigating the use of a fraudulent document?

The EBRD has not been made aware by the Prosecutor General's Office of the opening of such a case.

EBRD employees have been personally accused of misconduct and the Bank has been accused of supporting Thomas Moser in the misappropriation of property. How do you comment?

We strongly and rigorously reject any such accusations. Our staff abide by the highest ethical standards, integrity and good governance in all business operations and have our full confidence.

We reserve the right to take legal action, if and when necessary, against any defamatory, libellous or slanderous accusations.

How does Moldova benefit from the EBRD now being the sole owner of the Giurgiulești Port operator?

By taking over Danube Logistics, the EBRD seeks to ensure the uninterrupted operations of one of Moldova's key strategic infrastructure assets. This should allow the port's operations to continue under its existing capital structure and investment needs, with the ultimate aim of helping to attract strong, reputable investors for its further development.