

Z A K O N
O POTVRĐIVANJU UGOVORA O GARANCIJI IZMEĐU
REPUBLIKE SRBIJE I EVROPSKE INVESTICIONE BANKE
(PROJEKAT OBNOVE ŽELEZNICA II)

Član 1.

Potvrđuje se Ugovor o garanciji između Republike Srbije i Evropske investicione banke (Projekat obnove železnica II), potpisan 8. decembra 2006. godine u Beogradu.

Član 2.

Tekst Ugovora o garanciji između Republike Srbije i Evropske investicione banke (Projekat obnove železnica II), u originalu na engleskom jeziku i prevodu na srpski jezik glasi:

Railways Rehabilitation II Project
Guarantee Agreement
between the
Republic of Serbia
and
European Investment Bank
Belgrade, 8 December 2006

THIS AGREEMENT IS MADE BETWEEN :

the Republic of Serbia, acting through its Minister of International Economic Relations, Dr Milan Parivodic, hereinafter also called: "the Guarantor",

of the first part,

and

the European Investment Bank, having its seat in Luxembourg, represented by Mr. Gerlando Genuardi, Vice-President, hereinafter called: "the Bank",

of the second part.

WHEREAS :

1. a Finance Contract entitled "Railways Rehabilitation II Project" between the European Investment Bank and the Public Enterprise "Serbian Railways" (hereinafter called "the Borrower") has been signed at the date hereof by which contract (hereinafter called the "Finance Contract") the Bank has established a credit of EUR 80,000,000 (eighty million euro) in favour of the Borrower to be used for a project consisting in track rehabilitation in priority railway lines along Corridor X and procurement of rolling stock and equipment in the Republic of Serbia (hereinafter called "the Project");

2. the obligations of the Bank under the Finance Contract are conditional upon the execution, delivery by the Guarantor and continuing operation of a guarantee of performance by the Borrower of its financial obligations under the Finance Contract (this guarantee hereinafter called the "Guarantee Agreement");

3. the former Federal Republic of Yugoslavia and the Bank concluded on 13 December 2001 a framework agreement governing the Bank's activities in the

territory of the Federal Republic of Yugoslavia (hereinafter called the "Framework Agreement");

4. following a referendum on independence in the Republic of Montenegro on 21 May 2006 and the adoption of the Declaration of Independence by the National Assembly of the Republic of Montenegro, the Parliament of the Republic of Serbia has adopted a decision on 5 June 2006 whereby the Republic of Serbia has declared to be the successor of the Federal Republic of Yugoslavia and to have fully inherited its international legal personality and international documents;

5. this declaration has been recognised by the international community, including other international financial institutions and the European Community, which, following the Presidency Conclusions of the Council of the European Union dated 15/16 June 2006, considered the Republic of Serbia as the successor state of the Federal Republic of Yugoslavia;

6. the Republic of Serbia has therefore assumed all the obligations arising from the Framework Agreement in relation to its own territory and acknowledged by latter of its Minister of International Economic Relations dated 17 November 2006 that the financing be provided by the Bank under the Finance Contract falls within the scope of the Framework Agreement;

7. the execution of this Guarantee Agreement has been authorised by a decision of the Government of the Republic of Serbia dated 23 November 2006;

NOW THEREFORE it is hereby agreed as follows:

ARTICLE 1

Finance Contract

1.01 The Guarantor declares that it is well acquainted with the terms, conditions and clauses of the Finance Contract, a true copy of which, as signed by the parties thereto, has been delivered to the Guarantor by the Bank.

Terms defined in the Finance Contract shall have the same meaning in this Guarantee Agreement.

ARTICLE 2

Guarantee

2.01 The Guarantor, as primary obligor and not merely as surety, guarantees entirely the full and punctual performance of all monetary obligations of the Borrower to the Bank under the Finance Contract in respect of principal monies, interest without any limitation, commissions and all other charges, expenses and sums which may from time to time become due under or pursuant to any provision of the Finance Contract (each amount so guaranteed hereinafter referred to as a "Guaranteed Sum").

ARTICLE 3

Enforcement of Guarantee

3.01 Demand may be made hereunder as soon as the Borrower has not performed, whether on a Payment Date, upon demand for early repayment or otherwise, all or part of the obligations guaranteed pursuant to article 2 of this Guarantee Agreement.

3.02 The Guarantor hereby waives irrevocably any objection or exception in law to the total or partial enforcement of this Guarantee Agreement. It undertakes to perform its obligations upon first written demand by the Bank whenever such demand is made and to pay the sums due without any limitation, retention or condition, without the Bank having to furnish any special evidence in support of its request other than the reason for the demand under this Guarantee Agreement. In particular, the Bank is not bound to prove that it has taken any action against the Borrower and it is not obliged, prior to the enforcement of this Guarantee Agreement, to realise securities or to enforce any other security that the Borrower or a third party may have constituted.

3.03 Any payment of a Guaranteed Sum by the Guarantor shall fall due three Luxembourg Business Days after the date of the relevant demand and shall be made in the currency of that Guaranteed Sum and to the account specified in the demand.

3.04 In the event of the Bank making any demand hereunder, the Guarantor shall have the right to pay immediately to the Bank, in full and final settlement of its obligations under this Guarantee Agreement, the balance of the Loan outstanding at the date of such payment, interest accrued thereon until that date and any other Guaranteed Sum then payable by the Borrower, together with any indemnity which would have been payable pursuant to Article 4.02B of the Finance Contract if the Borrower would have voluntarily prepaid the balance of the Loan on the date of the payment under this article 3.04.

3.05 The guarantee under this Guarantee Agreement shall remain in force until all Guaranteed Sums have been fully and unconditionally paid or discharged.

ARTICLE 4

Subrogation

4.01 When the Guarantor has made a payment to the Bank, it is subrogated, to the extent of such payment, to the rights and actions relating to the said payment that the Bank has against the Borrower; this right of subrogation shall not be invoked to the detriment of the Bank.

ARTICLE 5

Modification of the Finance Contract

5.01 The Bank may agree to any modification of the Finance Contract which does not increase the amounts payable by the Borrower thereunder. The Bank shall notify the Guarantor of each such modification.

5.02 The Bank may grant the Borrower, in respect of the due date of payment of any Guaranteed Sum, an extension of time of up to three months. Any such extension of time shall be notified to the Guarantor.

5.03 The Bank may not amend or vary the terms of the Finance Contract save as provided in articles 5.01 and 5.02 or save with the prior written consent of the Guarantor, which consent shall not be unreasonably withheld.

ARTICLE 6

Guarantee of the European Community

6.01 The guarantee hereby created is independent of any guarantees now or hereafter given to the Bank by the European Community ("EC"). The Guarantor hereby waives any right to contribution or indemnity from the EC.

6.02 If payment is made to the Bank by the EC on account of any Guaranteed Sum, the EC shall be subrogated to the rights of the Bank hereunder and the EC may recover from the Guarantor any amount outstanding under this Guarantee Agreement.

ARTICLE 7

Taxes, Charges and Expenses

7.01 Taxes or fiscal charges, legal costs and other expenses that may be incurred in the execution or implementation of this Guarantee Agreement shall be borne by the Guarantor. The Guarantor shall make payments hereunder without any possible withholding or deduction on account of tax or fiscal charges.

ARTICLE 8

Law, Jurisdiction and Language

8.01 This Guarantee Agreement shall be governed by the laws of the Grand Duchy of Luxembourg.

8.02 The place of performance of this Guarantee Agreement is the head office of the Bank.

8.03 Disputes arising out of this Guarantee Agreement shall be submitted to the to the Court of Justice of the European Communities.

The parties to this Guarantee Agreement hereby waive any immunity from, or right to object to, the jurisdiction of that Court. A decision of the Court given pursuant to this article 8.03 shall be conclusive and binding on the parties without restriction or reservation.

Any document and notice submitted to the Bank in accordance with the provisions of this Guarantee Agreement shall be made in the English language or shall be accompanied by a duly certified translation thereof in English.

ARTICLE 9

Final Provisions

9.01 Notices and other communications given hereunder shall be in writing and shall be sent to the relevant address set out below or to such other address as the addressee shall have previously notified in writing as its new address for such purpose:

- for the Guarantor:
Kneza Milosa 20
Belgrade 11000
Republic of Serbia

- for the Bank:
boulevard Konrad Adenauer 100
L-2950 Luxembourg.

9.02 The Recitals form part of this Guarantee Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Guarantee Agreement to be executed on their behalf in three originals in the English language. Each page hereof has been initialled for the Guarantor and for the Bank.

Belgrade, 8 December 2006

Signed for and on behalf of the
REPUBLIC OF SERBIA
The Minister of International
Economic Relations

Dr Milan Parivodic

Signed for and on behalf of the
EUROPEAN INVESTMENT BANK
The Vice-President

Gerlando Genuardi

Ugovor o garanciji

između

Republike Srbije

i

Evropske investicione banke
(Projekat obnove železnica II)

Beograd, 8. decembar 2006. godine

KOJI ZAKLJUČUJU:

Republika Srbija, koju zastupa dr Milan Parivodić, ministar za ekonomske odnose sa inostranstvom, u ime Vlade kao zastupnika Republike Srbije (u daljem tekstu: Garant),

sa jedne strane,

i

Evropska investiciona banka, sa sedištem u Luksemburgu, koju predstavlja Mr. Gerlando Genuardi, potpredsednik (u daljem tekstu: Banka),

sa druge strane.

POLAZEĆI OD ČINJENICE:

1. da je Ugovor o finansiranju pod nazivom "Projekat obnove železnica II" zaključen 8. decembra 2006. godine između Evropske investicione banke i Javnog preduzeća "Železnice Srbije" (u daljem tekstu: Zajmoprimac) i da je po osnovu tog ugovora (u daljem tekstu: Ugovor o finansiranju) Banka odobrila kredit od 80.000.000 EUR (osamdeset miliona EUR) u korist Zajmoprimca koji će se koristiti za projekat obnove koloseka na prioritetnim železničkim prugama duž Koridora X i nabavku vozničkih sredstava i opreme u Republici Srbiji (u daljem tekstu: Projekat);

2. da su obaveze Banke po osnovu Ugovora o finansiranju uslovljene sačinjavanjem, predajom od strane Garanta i valjanošću garancije za izvršenje finansijskih obaveza Zajmoprimca po osnovu Ugovora o finansiranju (ova garancija u daljem tekstu se naziva: Ugovor o garanciji);

3. da su nekadašnja Savezna Republika Jugoslavija i Banka 13. decembra 2001. godine zaključile Okvirni sporazum kojim se uređuju aktivnosti Banke na teritoriji Savezne Republike Jugoslavije (u daljem tekstu: Okvirni sporazum);

4. da je posle referendumu o nezavisnosti u Republici Crnoj Gori od 21. maja 2006. godine i usvajanju Deklaracije o nezavisnosti od strane Narodne Skupštine Republike Crne Gore, Narodna skupština Republike Srbije 5. juna 2006. godine donela odluku kojom se Republika Srbija proglašava pravnim sledbenikom Savezne Republike Jugoslavije i u celosti nasleđuje njen međunarodno-pravni subjektivitet i međunarodne dokumente;

5. da je ova Deklaracija priznata od strane međunarodne zajednice, uključujući i ostale finansijske institucije i Evropsku zajednicu koja, od usvajanja zaključaka predsedništva Saveta Evropske unije od 15/16. juna 2006. godine, smatra Republiku Srbiju državom sledbenikom Savezne Republike Jugoslavije;

6. da je Republika Srbija, stoga, preuzela sve obaveze koje proističu iz Okvirnog sporazuma u pogledu svoje teritorije i potvrdila u dopisu njenog ministra za ekonomske odnose sa inostranstvom od 17. novembra 2006. godine da finansiranje koje će Banka obezbediti po osnovu Ugovora o finansiranju potpada pod Okvirni sporazum;

7. da je izvršenje ovog ugovora o garanciji odobreno odlukom Vlade Republike Srbije od 23. novembra 2006. godine;

strane su, saglasne sa sledećim:

Član 1.

Ugovor o finansiranju

1.01 Garant izjavljuje da je dobro upoznat sa odredbama, uslovima i klauzulama Ugovora o finansiranju, čiju je istovetnu kopiju, potpisanu od strane ugovornih strana tog ugovora, Banka predala Garantu.

Termini definisani u Ugovoru o finansiranju imaju isto značenje i u ovom ugovoru o garanciji.

Član 2.

Garancija

2.01 Garant, kao prvenstveni nosilac obaveze, a ne samo kao jemac, u celosti garantuje potpuno i blagovremeno izvršenje svih novčanih obaveza Zajmoprimca prema Banci po osnovu Ugovora o finansiranju u pogledu iznosa glavnice, kamate, bez ikakvih ograničenja, provizija i svih ostalih naknada, troškova i iznosa koji bi povremeno mogli biti plativi po osnovu ili u skladu sa bilo kojom odredbom Ugovora o finansiranju (u daljem tekstu svi iznosi koji se garantuju na ovaj način nazivaju se: Garantovani iznos).

Član 3.

Sprovođenje garancije

3.01 U skladu sa ovom garancijom, a po osnovu zahteva za otplatu unapred ili na drugi način, čim Zajmoprimac ne izvrši svoje obaveze, na datum

plaćanja, može se tražiti izvršenje svih ili dela garantovanih obaveza u skladu sa članom 2. ovog ugovora o garanciji.

3.02 Garant se ovim neopozivo odriče svih primedaba ili zakonskih izuzeća u pogledu celokupne ili delimične primene ovog ugovora o garanciji. On preuzima obavezu da izvrši svoje obaveze na prvi pismeni zahtev Banke kada se takav zahtev podnese i da plati dospele iznose bez ikakvog ograničenja, zadržavanja ili uslovljavanja, a da Banka ne mora da dostavi posebne dokaze u prilog ovog zahteva već samo treba da navede razlog za podnošenje ovog zahteva u skladu sa Ugovorom o garanciji. Odnosno, Banka nije dužna da dokazuje da je preduzela ikakve mere protiv Zajmoprimca i nije u obavezi da, pre primene ovog ugovora o garanciji, realizuje jemstva ili bilo koje druge garancije koje su Zajmoprimac ili treća strana eventualno obezbedili.

3.03 Sva plaćanja garantovanog iznosa koja vrši Garant dospevaju u roku od tri luksemburška radna dana od dana odnosnog zahteva i vršiče se u valuti garantovanog iznosa na račun preciziran u zahtevu.

3.04 U slučaju da Banka podnese zahtev u skladu sa ovim ugovorom o garanciji, Garant ima pravo da odmah plati Banci celokupan i konačni iznos njegovih obaveza prema ovom ugovoru o garanciji, saldo preostalog iznosa zajma na dan ovog plaćanja, kamate zaračunate do tog dana i bilo koji drugi garantovani iznos koji tada Zajmoprimac treba da plati, zajedno sa svim eventualnim iznosima za naknadu štete koji su plativi prema članu 4.02B Ugovora o finansiranju ako bi Zajmoprimac dobrovoljno unapred otplaćivao saldo zajma na dan plaćanja prema ovom stavu.

3.05 Garancija po osnovu ovog ugovora o garanciji važiće sve dok se svi garantovani iznosi u potpunosti i bezuslovno ne otplate, odnosno ne izmire.

Član 4.

Subrogacija

4.01 Kada Garant izvrši plaćanje Banci, on preuzima na sebe, u iznosu tog plaćanja, prava i postupke u pogledu navedenog plaćanja koje Banka ima prema Zajmoprimcu; ovo pravo subrogacije neće se sprovoditi na štetu Banke.

Član 5.

Izmene Ugovora o finansiranju

5.01 Banka može biti saglasna sa svim izmenama Ugovora o finansiranju koje ne povećavaju iznose koje Zajmoprimac mora da plati u skladu sa Ugovorom o finansiranju. Banka će obavestiti Garanta o svim ovakvim izmenama.

5.02 Što se tiče dana plaćanja bilo kog garantovanog iznosa, Banka može odobriti Zajmoprimcu produžetak roka do tri meseca. Garant mora biti obavешten o svakom ovakvom produženju roka.

5.03 Banka može da ne izvrši izmene ili promene odredbi Ugovora o finansiranju osim u skladu sa odredbama st. 5.01 i 5.02 ovog člana ili osim u skladu sa prethodnom pismenom saglasnošću Garanta koja se ne može neopravdano uskratiti.

Član 6.

Garancija Evropske zajednice

6.01 Garancija koja se ovim uspostavlja je nezavisna od svih garancija koje su sada ili koje će Evropska zajednica (EC) dati Banci. Garant se ovim odriče svih prava na doprinose ili naknadu štete od strane EC.

6.02 Ako EC vrši plaćanje bilo kog garantovanog iznosa Banci, EC preuzima prava Banke u tom pogledu i EC može da naplati od Garanta sve preostale iznose iz ovog ugovora o garanciji.

Član 7.

Porezi, naknade i troškovi

7.01 Porezi, odnosno poreske dažbine, zakonski i ostali troškovi koji mogu nastati tokom izvršenja ili implementacije ovog ugovora o garanciji padaju na teret Garanta. Garant će vršiti plaćanja po osnovu ovog ugovora o garanciji bez ikakvog eventualnog zadržavanja ili odbitka u pogledu poreza, odnosno poreskih dažbina.

Član 8.

Zakon, sudska nadležnost i jezik

8.01 Ovaj ugovor o garanciji podleže zakonima Velikog Vojvodstva Luksemburga.

8.02 Mesto izvršenja ovog ugovora o garanciji je sedište Banke.

8.03 Sporovi koji proisteknu iz ovog ugovora o garanciji biće podneti Sudu pravde evropskih zajednica.

Ugovorne strane iz ovog ugovora o garanciji se ovim odriču bilo kakvog imuniteta od, ili prava na primedbu u pogledu nadležnosti ovog suda. Sudska odluka doneta u skladu sa ovim stavom biće konačna i obavezujuća za ugovorne strane bez ograničenja i rezervi.

Svi dokumenti i saopštenja koji se dostavljaju Banci u skladu sa odredbama ovog ugovora o garanciji moraju biti na engleskom jeziku ili će uz njih biti priložen overeni prevod na engleski jezik.

Član 9.

Završne odredbe

9.01 Obaveštenja i druga saopštenja koja se dostavljaju u skladu sa ovim ugovorom, treba da budu u pismenoj formi i šalju se na odgovarajuću adresu navedenu u daljem tekstu ili na onu drugu adresu koju je primalac u prethodnom pismenom obaveštenju naveo kao svoju novu adresu za ove svrhe:

- za Garanta:
Kneza Miloša 20
Beograd 11000
Republika Srbija

- za Banku:
boulevard Konrad Adenauer 100

L-2950 Luxembourg.

9.02 Preambule predstavljaju sastavni deo ovog ugovora o garanciji.

U POTVRDU NAPRED NAVEDENOG, ugovorne strane su naložile da se ovaj ugovor o garanciji potpiše u njihovo ime u tri originalna primerka na engleskom jeziku. Svaka strana ovog ugovora o garanciji je parafirana u ime Garanta i u ime Banke.

Beograd, 8. decembar 2006. godine

Potpisuje za i u ime
REPUBLIKE SRBIJE
Ministar za ekonomske odnose sa
inostranstvom

dr Milan Parivodić

Potpisuje za i u ime
EVROPSKE INVESTICIONE BANKE
Potpredsednik

Gerlando Genuardi

Član 3.

Ovaj zakon stupa na snagu osmog dana od dana objavljivanja u "Službenom glasniku Republike Srbije".