

FI no.
SERAPIS no.

24.134 (RS)
2006-0385

Belgrade By-Pass

Guarantee Agreement

between the

Republic of Serbia

and the

European Investment Bank

Belgrade, 19 October 2007





THIS AGREEMENT IS MADE BETWEEN :

the Republic of Serbia, represented by Mr Dragan Djilas, Minister without Portfolio in Charge of the National Investment Plan, on behalf of the Government as the representative of the Republic of Serbia,

hereinafter also called: "**the Guarantor**",

of the first part,

and

the European Investment Bank, having its seat in Luxembourg, represented by Mr Dario Scannapieco, Vice-President,

hereinafter called: "**the Bank**"

of the second part.

WHEREAS :

1. a finance contract entitled "Belgrade By-Pass" between the European Investment Bank and the Public Enterprise "Roads of Serbia" (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 60,000,000 (sixty million euros) in favour of the Borrower to be used for the construction of the 10 kilometres of a 2x2 lane motorway Section A (Batajnica to Dobanovci) of the Belgrade Bypass (this Section 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 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 legal successor of the State Union of Serbia and Montenegro and therefore 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 legal successor of the State Union of Serbia and Montenegro and therefore 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 Finance dated 10 October 2007 that the financing to 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 18 October 2007;
8. the Bank acknowledges that this Guarantee Agreement will undergo the ratification by law procedure in the Republic of Serbia and that it will become enforceable following ratification by the Parliament of the Republic of Serbia.

NOW THEREFORE it is hereby agreed as follows:

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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 it.

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 (3) 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.
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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 (3) 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 implementation of this Guarantee Agreement shall be borne by the Guarantor. The Guarantor shall make payments hereunder without any 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.

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8.04 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 (3) originals in the English language. Each page hereof has been initialled for the Guarantor and for the Bank.

Belgrade, 19 October 2007

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Signed for and on behalf of the
REPUBLIC OF SERBIA
The Minister without Portfolio in Charge of the
National Investment Plan

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


Dragan Djilas


Dario Scannapieco