

Z A K O N
O POTVRĐIVANJU UGOVORA O GARANCIJI FIAT KOMPAKT
AUTOMOBILI SRBIJA/C IZMEĐU REPUBLIKE SRBIJE I
EVROPSKE INVESTICIONE BANKE

Član 1.

Potvrđuje se Ugovor o garanciji Fiat kompakt automobili Srbija/C između Republike Srbije i Evropske investicione banke, zaključen 16. maja 2011. godine, u Luksemburgu.

Član 2.

Tekst Ugovora o garanciji Fiat kompakt automobili Srbija/C između Republike Srbije i Evropske investicione banke, u originalu na engleskom jeziku i u prevodu na srpski jezik glasi:

FI N° (RS)
Serapis N° 2009-0666

FIAT SMALL CARS SERBIA /C

GUARANTEE AGREEMENT

between the

REPUBLIC OF SERBIA

and the

EUROPEAN INVESTMENT BANK

Luxembourg, 16 May 2011

THIS DEED IS MADE BETWEEN:

the Republic of Serbia, represented by the Minister of Economy and Regional Development, Mr Nebojsa Ciric, 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 the Vice President, Mr Dario Scannapieco,

hereinafter called the "**Bank**"

of the second part.

WHEREAS :

1. a finance contract entitled Fiat Small Car Serbia / C between the European Investment Bank and Fiat Automobili Srbija Doo (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 150,000,000 (hundred and fifty million euros) in favour of the Borrower to be used to implement a project of investments over the 2010-2013 period for the refurbishment, expansion and innovation of the existing car plant in Kragujevac (Republic of Serbia) (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 first demand guarantee of performance by the Borrower of its financial obligations under the Finance Contract (this guarantee hereinafter called the "**Guarantee Agreement**");
3. the Republic of Serbia (legal successor of the State Union Serbia and Montenegro and legal successor of the Federal Republic of Yugoslavia) and the Bank concluded a Framework Agreement on 13 December 2001 (hereinafter called the "**Framework Agreement**"). The financing of the Project falls within the scope of the Framework Agreement;
4. the execution of this Guarantee Agreement has been authorised by an Act of the Government of the Republic of Serbia dated 12 May 2011.

NOW THEREFORE it is hereby agreed as follows:

ARTICLE 1
Finance Contract

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

The Guarantor, as primary obligor and not merely as surety, irrevocably and unconditionally guarantees on first demand 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) 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 4.03C 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**

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.

The Guarantor agrees that, so long as the Borrower is under any actual or contingent obligations under the Finance Contract, the Guarantor shall not exercise any rights which the Guarantor may at any time have by reason of performance by it of its obligations under this Guarantee Agreement:

- (i) to be indemnified by the Borrower or to receive any collateral from the Borrower; and/or
- (ii) to claim any contribution from any other guarantor of the Borrower's obligations under the Finance Contract: and /or
- (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Bank under the Finance Contract or of any other security taken pursuant to, or in connection with, the Finance Contract by the Bank; and/or
- (iv) to enforce any security taken by the Guarantor from the Borrower in relation to the Guarantor's subrogation rights to the Borrower under this Guarantee Agreement.

ARTICLE 5 **Modification of the Finance Contract**

- 5.01** The Bank may concur in any modification of the Finance Contract that has the effect of improving or strengthening the position of the Bank vis-à-vis the Borrower without increasing the obligations of the Guarantor; any such modification shall be advised to the Guarantor.
- 5.02** The Bank may grant the Borrower an extension not exceeding three calendar months in respect of the due date of payment of any principal monies, interest or any other monies payable under the Finance Contract; any such extension shall be advised to the Guarantor.
- 5.03** Any other modification of the Finance Contract shall be conditional upon the prior written consent of the Guarantor, which shall not be withheld unless the Guarantor reasonably considers that its obligations thereunder would be materially increased or extended thereby.

ARTICLE 6 **Taxes, Charges and Expenses**

- 6.01** 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 7

Granting of Security

Should the Guarantor grant to a third party any security for the performance of any Debt Instrument or any preference or priority in respect thereof, the Guarantor shall, if so required by the Bank, provide to the Bank equivalent security for the performance of its obligations under this Contract or grant to the Bank equivalent preference or priority.

For the purpose of this Article, Debt Instrument means an (i) an instrument, including any receipt or statement of account, evidencing or constituting an obligation to repay a loan, deposit, advance or similar extension of credit (including without limitation any extension of credit under a refinancing or rescheduling agreement), (ii) an obligation evidenced by a bond, debenture or similar written evidence of indebtedness and (iii) a guarantee of an obligation arising under a Debt Instrument of another; provided in each case that such obligation is governed by a system of law other than the law of the Borrower.

ARTICLE 8 **Information**

- A. So long as the Loan is outstanding, the Guarantor shall inform immediately the Bank with explicit reference to this Guarantee:
- (i) of any security, preference or priority of the type that would give the Bank the right to demand equivalent security, preference or priority under Article 7 of the Finance Contract has been created or is in existence; or
 - (ii) of any event mentioned in Article 4.03A(6) or 10.01A (I) of the Finance Contract.
- B. The Bank is not obliged to report to the Guarantor on the progress of the Project, on the financial position of the Borrower or on any security provided.

ARTICLE 9 **Law, Jurisdiction and Language**

- 9.01** This Guarantee Agreement shall be governed by the laws of England.
- 9.02** The place of performance of this Guarantee Agreement is the head office of the Bank.
- 9.03** Disputes arising out of this Guarantee Agreement shall be submitted to the to the of the English Courts.
- 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 9.03 shall be conclusive and binding on the parties without restriction or reservation.
- 9.04** 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 10 **Final Provisions**

10.01 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:

Ministry of Finance
Kneza Milosa 20
11000 Belgrade
Republic of Serbia

- for the Bank:

boulevard Konrad Adenauer 100
L-2950 Luxembourg.

10.02 The Recitals form part of this Guarantee Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Guarantee Agreement to be executed as delivered as a deed on their behalf in four (4) originals in the English language. Each page hereof has been initialled for the Guarantor and for the Bank.

Luxembourg, 16 May 2011

EXECUTED and DELIVERED as a DEED
by EUROPEAN INVESTMENT BANK
acting by

The Vice President

Dario SCANNAPIECO

EXECUTED and DELIVERED as a DEED
by the REPUBLIC of SERBIA
acting by

The Minister of Economy and Regional
Development

Nebojsa CIRIC

FI N° (RS)
Serapis N° 2009-0666

FIAT KOMPAKT AUTOMOBILI SRBIJA / C

Ugovor o garanciji

između

Republike Srbije

i

Evropske investicione banke

Luksemburg, 16. maj 2011. godine

OVAJ UGOVOR ZAKLJUČUJU:

Republika Srbija, koju zastupa Nebojša
Čirić, ministar ekonomije i regionalnog
razvoja, u ime Vlade, kao zastupnika
Republike Srbije,

u daljem tekstu: Garant,

kao prva ugovorna strana,

i

Evropska investiciona banka, sa
sedištem u Luksemburgu, koju
predstavlja Dario Scannapieco,
potpredsednik,

u daljem tekstu: Banka

kao druga ugovorna strana.

IMAJUĆI U VIDU :

1. da je Finansijski ugovor pod nazivom „Fiat kompakt automobili Srbija/C” između Evropske investicione banke i Fiat automobili Srbija d.o.o. (u daljem tekstu: Zajmoprimac) potpisan na dan koji je dalje naveden, i na osnovu ovog ugovora (u daljem tekstu: Finansijski ugovor) Banka Zajmoprimcu daje na raspolaganje kredit u iznosu od 150.000.000 evra (sto pedeset miliona evra) da ga koristi radi sprovođenja projektnih investicija, u periodu 2010-2013, u renoviranje, proširenje kapaciteta i uvođenje inovacija u postojeću fabriku automobila u Kragujevcu (Republika Srbija) (u daljem tekstu: Projekat);
2. da su obaveze Banke iz Finansijskog ugovora uslovljene izdavanjem i kontinuiranim važenjem garancije na prvi poziv koju daje Garant na ime finansijskih obaveza Zajmoprimca iz Finansijskog ugovora (ova garancija se u daljem tekstu naziva: Ugovor o garanciji);
4. da su Republika Srbija (pravni sledbenik državne zajednice Srbija i Crna Gora i pravni sledbenik Savezne Republike Jugoslavije) i Banka zaključile Okvirni sporazum 13. decembra 2001. godine (u daljem tekstu: Okvirni sporazum). Finansiranje Projekta spada u delokrug Okvirnog sporazuma;
5. da je zaključivanje ovog ugovora o garanciji odobreno od strane Vlade Republike Srbije Zaključkom od dana 12. maja 2011. godine.

SHODNO NAVEDENOM usaglašeno je sledeće:

Član 1. Finansijski ugovor

- 1.01** Garant izjavljuje da je dobro upoznat sa uslovima Finansijskog ugovora i da mu je dostavljena verna kopija potpisanog ugovora.

Pojmovi koji su definisani u Finansijskom ugovoru imaju isto značenje u ovom ugovoru.

Član 2. Garancija

- 2.01** Garant, u svojstvu primarnog dužnika, a ne samo u svojstvu jemca, bezuslovno, neopozivo i na prvi poziv u celosti garantuje potpuno i pravovremeno izvršenje svih novčanih obaveza Zajmoprimca prema Banci shodno Finansijskom ugovoru po osnovu glavnice, kamate bez bilo kakvog ograničenja, provizije i drugih troškova i iznosa koji mogu dospeti na plaćanje u skladu sa bilo kojom odredbom Finansijskog ugovora (svaki iznos koji se ovim putem garantuje u daljem tekstu naziva se: Garantovani iznos).

Član 3. Izvršenje garancije

- 3.01** U skladu sa ovim ugovorom, zahtev za aktiviranje garancije može se uputiti neposredno nakon što Zajmoprimac, bilo na dan plaćanja, bilo po zahtevu za pre vremenu otplatu ili na neki drugi datum, ne izvrši obaveze koje su garantovane članom 2. ovog ugovora, bilo u celosti ili delimično.
- 3.02** Garant se ovim putem neopozivo odriče prava na bilo kakav prigovor ili izuzeće u zakonu u vezi sa celokupnim ili delimičnim sprovođenjem Ugovora o garanciji. Garant se obavezuje da će izmiriti svoje obaveze odmah nakon dobijanja prvog pisanog zahteva Banke i da će platiti dospele iznose bez ikakvih ograničenja, zadržavanja ili uslovljavanja, i bez nametanja obaveze Banci da uz svoj pisani zahtev priloži neke posebne dokaze osim onog kojim se obrazlaže razlog za podnošenje zahteva u skladu sa ovim ugovorom. Pre svega, Banka nije dužna da podnese dokaze o tome da je preduzela bilo kakve mere protiv Zajmoprimca i nema obavezu da, pre stupanja na snagu ovog ugovora, aktivira bilo koji instrument obezbeđenja koji je ponudio Zajmoprimac ili neka treća strana.
- 3.03** Svaki Garantovani iznos dospeće na plaćanje Garantu tri (3) Radna dana nakon datuma relevantnog zahteva i plaćanje će se izvršiti u valuti Garantovanog iznosa i na račun naveden u zahtevu.
- 3.04** U slučaju da Banka podnese zahtev u skladu sa ovim ugovorom, Garant će imati pravo da neposredno nakon toga plati Banci, kao potpuno i konačno izmirenje svojih obaveza iz ovog ugovora, iznos Zajma koji je na dan pomenutog plaćanja ostao neotplaćen, zajedno sa kamatom koja je prirasla do tog dana i svakim drugim Garantovanim iznosom koji je Zajmoprimac dužan da plati na taj dan. Uz to, Garant je dužan da plati i bilo koje obeštećenje koje je plativo u skladu sa članom 4.03C Finansijskog ugovora u slučaju da Zajmoprimac svojevolejno pre vremenu otplati preostali iznos Zajma na dan plaćanja iz ovog člana 3.04.

- 3.05** Garancija iz ovog ugovora ostaće na snazi sve dok svi Garantovani iznosi ne budu u potpunosti i bezuslovno plaćeni ili izmireni.

Član 4. Subrogacija

- 4.01** Kada Garant izvrši plaćanje prema Banci on ima pravo na subrogaciju, do iznosa tog plaćanja, na prava i mere koje se odnose na pomenuto plaćanje, a koje Banka ima prema Zajmoprimcu. Ovo pravo na subrogaciju neće se ostvarivati na štetu Banke.

Garant je saglasan da, dokle god postoje obaveze Zajmoprimca, bilo stvarne ili uslovne a koje proizlaze iz Finansijskog ugovora, ne koristi prava koja je stekao, u bilo koje vreme, po osnovu izvršenja svojih obaveza po ovom ugovoru o garanciji, i to:

- (i) pravo da bude regresiran od Zajmoprimca, ili da dobije bilo koje sredstvo obezbeđenja od Zajmoprimca; i/ili
- (ii) da traži učešće u nadoknadi bilo kog drugog garanta za obaveze Zajmoprimca po Finansijskom ugovoru; i/ili
- (iii) da iskoristi bilo koje pravo Banke (u celosti ili delimično i to po osnovu subrogacije ili drugom osnovu) po Finansijskom ugovoru, ili sredstvo obezbeđenja Banke ustanovljeno u skladu ili u vezi sa Finansijskim ugovorom; i/ili
- (iv) da se namiri iz sredstava obezbeđenja koje je Garant dobio od Zajmoprimca, u vezi sa subrogacijom Garanta u prava prema Zajmoprimcu po ovom ugovoru o garanciji.

Član 5. Izmene Finansijskog ugovora

- 5.01** Banka može odobriti izmene Finansijskog ugovora koje utiču na poboljšanje ili jačanje pozicije Banke u odnosu na Zajmoprimca bez uvećavanja obaveza Garanta, koji će biti obavešten o svakoj takvoj izmeni.
- 5.02** Banka može odobriti Zajmoprimcu produženje roka datuma dospeća glavnice, kamate ili drugih dospelih obaveza za plaćanje iz Finansijskog ugovora najduže do tri kalendarska meseca. Garant će biti obavešten o svakom pomenutom produženju roka.
- 5.03** Svaka druga izmena Finansijskog ugovora zavisiće od prethodne pisane saglasnosti Garanta, koja će biti uskraćena samo u slučaju ako Garant bude opravdano smatrao da će njegove obaveze na taj način biti materijalno uvećane ili proširene.

Član 6. Porezi, naknade i troškovi

- 6.01** Poreze ili fiskalne naknade, zakonske troškove i druge izdatke koji mogu nastati u toku sprovođenja ovog ugovora snosiće Garant. Garant će izvršavati ovde predviđena plaćanja bez ikakvih umanjenja ili zadržavanja po osnovu poreza ili fiskalnih naknada.

Član 7. Obezbeđenje

Ukoliko Garant da trećoj strani bilo koji vid obezbeđenja za realizaciju bilo kog Instrumenta zaduženja, odnosno da prednost ili prioritet, Garant će, ukoliko to Banka zatraži, obezbediti Banci ekvivalentno obezbeđenje za ispunjenje svojih obaveza iz ovog ugovora ili joj dati ekvivalentnu prednost ili prioritet.

U smislu ovog člana, Instrument zaduženja znači (i) instrument, uključujući i svaku priznаницu ili izvod sa računa koji dokazuje ili predstavlja obavezu da se otplati zajam, depozit, avans ili sličan vid kredita (uključujući bez ograničenja i svako davanje kredita po osnovu sporazuma o refinansiranju ili reprogramu), (ii) obavezu na osnovu obveznice, dužničke hartije od vrednosti ili sličnog pisanog dokaza o zaduženju i (iii) garanciju obaveze koja proističe iz Instrumenta zaduženja, pod uslovom da je u svakom od slučajeva obaveza regulisana zakonskim sistemom koji nije zakon Zajmoprimca.

Član 8. Informacije

- A. Sve dok je Zajam neotplaćen, Garant će bez odlaganja obavestiti Banku uz eksplicitno upućivanje na ovu garanciju o:
- (i) bilo kom obezbeđenju, odnosno prednosti ili prioritetu, koji Banci obezbeđuje pravo da zahteva da se ekvivalentno obezbeđenje, prednost ili prioritet iz člana 7. Finansijskog ugovora obezbedi ili da već postoji;
 - (ii) bilo kom događaju koji je naveden u članu 4.03A(6) ili članu 10.01A (I) Finansijskog ugovora.
- B. Banka nije obavezna da podnosi izveštaje Garantu o napredovanju Projekta, finansijskoj poziciji Zajmoprimca ili bilo kom sredstvu obezbeđenja.

Član 9. Zakon, nadležnost i jezik

- 9.01** Ovaj ugovor spada u nadležnost zakona Engleske .
- 9.02** Mesto izvršenja ovog ugovora o garanciji biće sedište Banke.
- 9.03** Sporovi koji proisteknu iz ovog ugovora o garanciji biće prosleđeni Sudu pravde Evropske zajednice.
- Strane ovog ugovora o garanciji odriču se bilo kakvog imuniteta ili prava na prigovor prema nadležnosti pomenutog suda. Odluka Suda koja bude doneta u skladu sa članom 9.03 ovog ugovora biće konačna i obavezujuća za strane bez restrikcija ili ograničenja.
- 9.04** Sva dokumenta ili obaveštenja koja budu podneta Banci shodno odredbama ovog ugovora moraju biti sačinjena na engleskom jeziku ili uz njih mora biti priložen zvaničan i propisno overen prevod na engleski jezik.

