

# **ZADAR NEW PORT**

## Finance Contract

*between*

European Investment Bank

*and*

Lučka Uprava Zadar

Zadar, 7 September 2007

THIS CONTRACT IS MADE BETWEEN:

the European Investment Bank having its seat at  
100, boulevard Konrad Adenauer,  
L-2950 Luxembourg, represented by its Vice-  
President, Mr Matthias Kollatz-Ahnen,

hereinafter called : the "**Bank**"

of the first part, and

Lučka Uprava Zadar (Port of Zadar Authority),  
having its registered office in Croatia at Liburnska  
Obala 6/1, Zadar, represented by its General  
Manager, Mr Ivica Burić,

hereinafter called : the "**Borrower**"

of the second part.

## WHEREAS:

1. the Bank is authorised to grant loans from its own resources for investment projects in the Republic of Croatia according to the decisions of the Board of Governors of the Bank dated 6 February 2001 and 14 May 2004, as amended from time to time;
2. the Borrower and the Republic of Croatia have stated that they desire to undertake project (hereinafter referred to as the "**Project**") concerning the construction of the infrastructure of a new ferry port at Gazenica, 3.5 kilometers south of Zadar city centre, as more particularly described in the technical description (hereinafter the "**Technical Description**") set out in Schedule A hereto;
3. the Borrower is a public authority established by a decision of the Government of the Republic of Croatia;
4. in accordance with the relevant Croatian legislation the Republic of Croatia ensures that the financial resources of the Borrower are sufficient to adequately operate and maintain the Project infrastructures and buildings until the Project revenues become sufficient to cover operation and maintenance costs;
5. the Ministry of the Sea, Tourism, Transport and Development of the Republic of Croatia is responsible for the administrative supervision of the Borrower and closely monitors the implementation of the Project;
6. the total cost of the Project as estimated by the Bank is EUR 200,500,000 (two hundred million and five hundred thousand million euros), to be financed as follows:

• own funds of the Borrower and/or other sources of funding, including but not limited to Kreditanstalt für Wiederaufbau (" <b>KFW</b> ")	EUR	100,500,000
• loan requested from the Bank	EUR	100,000,000
Total	EUR	200,500,000;

7. the Government of the Republic of Croatia has acknowledged by letter dated 1 June 2007 that the loan financing to be provided hereunder falls within the scope of the framework agreement governing the Bank's activities in the Republic of Croatia (hereinafter the "**Framework Agreement**") as concluded on 13 December 2000 between the Republic of Croatia and the Bank and ratified by law published in the Croatian official gazette "Narodne novine – Medjunarodni ugovori" (Official Gazette - International agreements) No. 6/2001 dated 23 May 2001;
8. by Article 3 of the Framework Agreement, the Republic of Croatia agreed that interest and all other payments due to the Bank and arising out of activities envisaged by the Framework Agreement, as well as the assets and revenues of the Bank connected with such activities, shall be exempt from tax;
9. by Article 4 of the Framework Agreement, the Republic of Croatia agreed that throughout the life of any financial operation concluded pursuant to the Framework Agreement it shall:

- " (a) ensure (i) that Beneficiaries may convert into any fully convertible currency, at the prevailing market exchange rate on the due date, the amounts in the national currency of Croatia necessary for the timely payment of all sums due to the Bank in respect of loans and guarantees in connection with any Project; and (ii) that such amounts shall be freely, immediately and effectively transferable;
- (b) ensure (i) that the Bank may convert into any fully convertible currency, at the prevailing market exchange rate, the amounts in the national currency of Croatia received by the Bank by way of payments arising in respect of loans and guarantees or any other activity and that the Bank may freely, immediately and effectively transfer the amounts so converted; or, at the Bank's option, (ii) that it may freely dispose of such amounts within the territory of Croatia; and, (iii) that the Bank may convert into the national currency of Croatia, at the prevailing market exchange rate, any amounts in any fully convertible currency ";
10. the due performance of the financial obligations of the Borrower hereunder shall be unconditionally guaranteed by the Republic of Croatia (hereinafter also: the "**Guarantor**") pursuant to a guarantee agreement to be concluded on terms satisfactory to the Bank between the Republic of Croatia and the Bank (hereinafter: the "**Guarantee Agreement**");
11. the Statute of the Bank provides that the Bank shall ensure that its funds are used as rationally as possible in the interests of the European Community and, accordingly, the terms and conditions of the Bank's loan operations must be consistent with relevant European Community policies;
12. the Bank, in response to the request made by the Republic of Croatia in agreement with the Borrower, being satisfied that the financing of the Project comes within the scope of its functions, and relying, inter alia, on the statements and facts cited in these Recitals, is willing to make available to the Borrower a credit of EUR 100,000,000 (one hundred million euros) under this finance contract (hereafter called the "**Contract**");
13. execution of this Contract on behalf of the Borrower is duly authorised by a decision taken by its Management Board on 20 August 2007;
14. References herein to Articles, Recitals and Schedules are, save if explicitly stipulated otherwise, references respectively to articles of, recitals and schedules to this Contract:

NOW THEREFORE it is hereby agreed as follows :

**ARTICLE 1**  
**Credit and disbursement**

**1.01 Amount of Credit**

By this Contract the Bank establishes in favour of the Borrower, and the Borrower accepts, a credit (hereafter called the “**Credit**”) in an amount of EUR 100,000,000 (one hundred million euros) for the financing of the Project.

**1.02 Disbursement procedure**

**1.02A Tranches**

The Bank shall disburse the Credit in up to ten tranches. The amount of each tranche, if not being the undrawn balance of the Credit, shall be a minimum of EUR 5,000,000 (five million euros). A tranche requested by the Borrower in accordance with Article 1.02B is hereafter referred to as a “**Tranche**”.

**1.02B Disbursement Request**

From time to time up to 31 December 2012, the Borrower may present to the Bank, with a copy to the Guarantor, a written request (a “**Disbursement Request**”), substantially in the form set out in Schedule C. 1, for the disbursement of a Tranche. Save where the evidence has already been supplied, the Disbursement Request shall be accompanied by evidence of the authority of the signatory or signatories, together with their authenticated specimen signatures. The Disbursement Request shall specify:

- (i) the amount of disbursement of the Tranche;
- (ii) the preferred date for disbursement, which shall be a Relevant Business Day as defined in Article 5.01 falling not less than 15 (fifteen) calendar days following the date of the Disbursement Request, it being understood that the Bank may disburse the Tranche up to four (4) calendar months from the date of the Disbursement Request;
- (iii) whether the Tranche bears a fixed rate of interest (i.e. it is a “**Fixed-Rate Tranche**”) or a floating rate of interest at a fixed spread (i.e. a “**Fixed-Spread Floating-Rate Tranche**” or “**FSFR Tranche**”), both pursuant to the relevant provisions of Article 3.01;
- (iv) the preferred interest payment periodicity for the Tranche, chosen in accordance with Article 3.01;
- (v) the preferred terms for repayment of principal, chosen in accordance with Article 4.01;
- (vi) the preferred Payment Dates, chosen in accordance with Article 5.01; and
- (vii) in the case of an FSFR Tranche, the Borrower’s choice of Interest Conversion Date (as defined in Schedule E), if any.

The Borrower may also at its discretion specify in the Disbursement Request the following respective elements, if any, as indicated by the Bank without commitment to be applicable to the Tranche during its lifetime, that is to say:

- (viii) in the case of a Fixed-Rate Tranche, the interest rate; and
- (ix) in the case of an FSFR Tranche, the Spread (as defined in Article 3.01) that applies up to the Maturity Date (as defined in Article 4.01C) or the Interest Conversion Date, if any.

For the purposes of this Contract generally, “**Relevant Interbank Rate**” means EURIBOR (as defined in Schedule B).

Subject to the second paragraph of Article 1.02C, each Disbursement Request is irrevocable.

#### **1.02C Disbursement Notice**

Between 10 (ten) and 15 (fifteen) days before the date of disbursement of a Tranche the Bank shall, if the Disbursement Request conforms to Article 1.02B, deliver to the Borrower, with a copy to the Guarantor, a notice (hereafter a “**Disbursement Notice**”), which shall specify:

- (i) the amount of disbursement;
- (ii) the interest rate basis;
- (iii) the applicable Payment Dates;
- (iv) the terms for repayment of principal and the periodicity of the payment of interest;
- (v) the date on which the Tranche is scheduled to be disbursed (hereinafter referred to as the “**Scheduled Disbursement Date**”), disbursement being in any case subject to the conditions of Article 1.04;
- (vi) in the case of an FSFR Tranche, the Interest Conversion Date, if any; and
- (vii) for a Fixed-Rate Tranche, the fixed interest rate and for an FSFR Tranche, the Spread.

If one or more of the elements specified in the Disbursement Notice does not conform to the corresponding element, if any, in the Disbursement Request, the Borrower may within three (3) Luxembourg Business Days following receipt of the Disbursement Notice revoke the Disbursement Request by notice to the Bank and thereupon the Disbursement Request and the Disbursement Notice shall be of no effect.

For the purposes of this Contract generally “**Luxembourg Business Day**” means a day on which commercial banks are open for business in Luxembourg.

#### **1.02D Disbursement account**

Disbursement shall be made to such bank account in the name of the Borrower as it shall notify to the Bank in writing (specifying the account number and the account bank's Bank Identifier Code) not less than 15 (fifteen) days before the Scheduled Disbursement Date. Only one account may be so specified for each Tranche.

#### **1.03 Currency of disbursement**

The Bank shall disburse each Tranche in euros (EUR).

#### **1.04 Conditions of disbursement**

##### **1.04A First Tranche**

Without prejudice to Article 1.04B and Article 1.04C, the disbursement of the first Tranche under Article 1.02 is subject to the Bank having received from the Borrower, or, as the case may be, from the Guarantor, on or before the date falling seven (7) Luxembourg Business Days preceding the Scheduled Disbursement Date, the following documents or evidence in form and substance satisfactory to it:

- (i) the Guarantee Agreement duly executed;

- (ii) a legal opinion issued by or on behalf of the Minister of Justice of the Republic of Croatia, confirming that the provisions of the Guarantee Agreement are in full force and effect and that such agreement is valid, binding and enforceable in the Republic of Croatia in accordance with its terms and that the financing to be provided under this Contract falls within the scope of the Framework Agreement;
- (iii) a confirmation that no exchange control consents are currently required in order to permit the receipt of amounts disbursed hereunder on any account referred to in Article 1.02D and to permit the repayment of the Loan and the payment of interest and all other amounts due under this Contract;
- (iv) a copy of the resolution of the Borrower's Management Board authorising the Borrower to enter into this Contract and Mr Ivica Burić, General Manager, to sign it on behalf of the Borrower;
- (v) a legal opinion issued by an external legal advisor to the Borrower confirming that:
  - the resolution referred to in this Article 1.04A (iv) has been validly adopted by its Management Board;
  - this Contract has been duly executed by the Borrower, its provisions are in full force and effect and it is valid, binding and enforceable in the Republic of Croatia in accordance with its terms; and
  - no exchange control restrictions are in place or consents are required in order to permit the receipt of all amounts to be disbursed hereunder and to permit the repayment of the Loan and the payment of interest and all other amounts due under this Contract;
- (vi) evidence that the required funding to complete the financing plan set out in Recital (6) has been or will be made available to the Borrower in a timely manner to enable the undisturbed implementation of the Project;
- (vii) documentary evidence issued by the competent Nature Conservation Authority (the Nature Protection Directorate under the Ministry of Culture) that the requirements of the Habitat Directive have been fulfilled for the Project;
- (viii) written notice that the Borrower has established within its organisation a project implementation unit, suitably resourced and staffed to the satisfaction of the Bank, aimed at coordinating and managing the Project (this unit hereinafter called: the "**PIU**");
- (ix) recruitment by the Borrower of an internationally experienced consultant, with terms of reference satisfactory to the Bank, to review the design and the tender documents, which should be acceptable to the Bank. The consultant will also assist the PIU in tender evaluation, environmental and construction monitoring, and overall project management, as well as port operations management and business development until two years after Project completion.

#### **1.04B All Tranches**

The disbursement of each Tranche under Article 1.02(B), including, without prejudice to Article 1.04A and Article 1.04C, the first, shall be subject to the Bank having received from the Borrower, or, as the case may be, from the Guarantor, on or before the date falling seven (7) Luxembourg Business Days preceding the Scheduled Disbursement Date, the following documents or evidence in form and substance acceptable to it:

- (i) evidence of the authority of the person(s) authorised to sign the Disbursement Request on behalf of the Borrower and the relating authenticated specimen signature of such persons, save where such evidence has already been supplied;
- (ii) a confirmation in writing that sufficient funds continue to be available to ensure the timely completion and implementation of the Project;

- (iii) written notice that the Borrower maintains in operation within its organisation the already established PIU;
- (iv) a recent certificate from the Borrower in the form of Schedule D;
- (v) main elements (e.g. the bid submission letter, the notification of award, the signed contract agreement, the schedule showing the contract amount, the particular conditions of contract, the summary of the bill of quantities, the performance security and advance payment security) of a contract or contracts for a minimum aggregate value equivalent to the amount of the respective Tranche in respect of items specified in the Technical Description as eligible for financing under the Credit, which contract or contracts shall have been executed on terms satisfactory to the Bank having regard to the Bank's *Procurement Guide* applicable at the time of signature of this Contract (all expenditure on such items being herein referred to as "**Qualifying Expenditure**");
- (vi) evidence that the Borrower has incurred Qualifying Expenditure – or has contractually committed up to incur Qualifying Expenditure within hundred twenty (120) days following the relevant Scheduled Disbursement Date – in an amount equal to the aggregate of previous disbursements and the 80 % of the requested disbursement – save for the final disbursement where the amount shall be equal to the aggregate of previous disbursements and the requested disbursement – provided that, for the purpose of calculating the equivalent in euro of any sum spent in another currency, the Bank shall apply the reference exchange rate computed and published for that currency by the European Central Bank on such date falling within 15 (fifteen) days before the date of disbursement as the Bank shall decide (or, failing such a rate, the relevant exchange rate or rates then prevailing on any financial market reasonably chosen by the Bank).

#### **1.04C First disbursement regarding civil works contracts**

Without prejudice to Article 1.04A and Article 1.04B, the first disbursement relating to each of the civil works contracts is subject to the Bank having received from the Borrower on or before the date falling seven (7) Luxembourg Business Days preceding the Scheduled Disbursement Date, evidence, acceptable to the Bank, of the relevant construction permits.

#### **1.04D General provisions on the conditions of disbursement**

In case a Disbursement Request is made without the conditions set out in Article 1.04 having been fulfilled, such Disbursement Request shall be deemed to have been received by the Bank on the date on which the Bank is satisfied that such conditions have been fulfilled.

Notwithstanding the provision of the previous paragraph, if any part of the documents received pursuant to Article 1.04 is not satisfactory to the Bank, the Bank may disburse, without prejudice to the minimum amount set out in Article 1.02(A), an amount equal to the amount being the subject of the relevant Disbursement Request less the amount corresponding to the undocumented incurred and forecasted Qualifying Expenditures.

#### **1.05 Deferment of disbursement**

##### **1.05A Grounds for deferment**

The Bank shall, at the request of the Borrower, defer disbursement of any Tranche in whole or in part to a date specified by the Borrower being a date falling not more than six (6) months from its Scheduled Disbursement Date. In such a case, the Borrower shall pay deferment indemnity as determined pursuant to Article 1.05B below. Any request for deferment shall have effect in respect of a Tranche only if it is made at least seven (7) Luxembourg Business Days before its Scheduled Disbursement Date.



If any of the conditions referred to in Article 1.04 is not fulfilled as of the specified date, and at the Scheduled Disbursement Date, disbursement will be deferred to a date agreed between the Bank and the Borrower falling not less than seven (7) Luxembourg Business Days following the fulfilment of all conditions of disbursement.

#### **1.05B Deferment indemnity**

If the disbursement of any Notified Tranche (as defined below in this Article 1.05B) is deferred, whether on request of the Borrower or by reason of non-fulfilment of the conditions of disbursement, the Borrower shall, upon demand by the Bank, pay an indemnity on the amount of which disbursement is deferred. Such indemnity shall accrue from the Scheduled Disbursement Date to the actual disbursement date or, as the case may be, until the date of cancellation of the Tranche at a rate equal to R1 minus R2, where:

“R1” means the rate of interest that would have applied from time to time pursuant to Article 3.01 and the relevant Disbursement Notice, if the Tranche had been disbursed on the Scheduled Disbursement Date

and

“R2” means the Relevant Interbank Rate less 0.125% (12.5 basis points); provided that for the purpose of determining the Relevant Interbank Rate in relation to this Article 1.05, the relevant periods provided for in Schedule B shall be successive periods of one (1) month commencing on the Scheduled Disbursement Date.

Furthermore, the indemnity:

- (a) if the deferment exceeds one (1) month in duration, shall accrue at the end of every month;
- (b) shall be calculated using the day count convention applicable to R1;
- (c) where R2 exceeds R1, shall be set at zero; and
- (d) shall be payable in accordance with Article 1.07.

In this Contract a “**Notified Tranche**” means a Tranche in respect of which the Bank has issued a Disbursement Notice.

#### **1.05C Cancellation of disbursement deferred by six months**

The Bank may, by notice to the Borrower, with a copy to the Guarantor, cancel a disbursement which has been deferred under Article 1.05A by more than six (6) months in aggregate. The cancelled amount shall remain available for disbursement under Article 1.02.

#### **1.06 Cancellation and suspension**

##### **1.06A Borrower’s right to cancel**

The Borrower may at any time by notice given to the Bank, with a copy to the Guarantor, cancel, in whole or in part and with immediate effect, the undisbursed portion of the Credit. However, the notice shall have no effect on a Notified Tranche whose Scheduled Disbursement Date falls within seven (7) Luxembourg Business Days following the date of the notice.

**1.06B Bank's right to suspend and cancel**

The Bank may, by notice to the Borrower, with a copy to the Guarantor, in whole or in part suspend and/or cancel the undisbursed portion of the Credit at any time, and with immediate effect:

- (i) upon an event mentioned in Article 10.01;
- (ii) in exceptional circumstances adversely affecting the Bank's access to the capital market, save as regards a Notified Tranche; and
- (iii) if, acting reasonably, it is not satisfied that the warranties and undertakings given by the Borrower in Articles 6 and 8.03 have been complied with.

Furthermore, to the extent that the Bank may cancel the Credit under Article 4.03A, the Bank may also suspend it. Any suspension shall continue until the Bank ends the suspension or cancels the suspended amount.

**1.06C Indemnity for suspension and cancellation of a Tranche****1.06C(1) Suspension**

If the Bank suspends a Notified Tranche, whether upon an Indemnifiable Prepayment Event (as defined in Article 4.03C) or an event mentioned in Article 10.01 but not otherwise, the Borrower shall indemnify the Bank under Article 1.05B.

**1.06C(2) Cancellation**

If the Borrower cancels a Fixed Rate Notified Tranche, it shall indemnify the Bank under Article 4.02B. If the Borrower cancels any part of the Credit other than a Fixed Rate Notified Tranche, no indemnity or otherwise is payable.

If the Bank cancels a Fixed Rate Notified Tranche upon an Indemnifiable Prepayment Event or cancels a Fixed Rate Tranche disbursement pursuant to Article 1.05C, the Borrower shall indemnify the Bank under Article 4.02B.

If the Bank cancels a Notified Tranche upon an event mentioned in Article 10.01, the Borrower shall indemnify the Bank under Article 10.03A or 10.03B. Save in the cases set out in this Article 1.06C(2), no indemnity is payable upon cancellation by the Bank.

An indemnity shall be calculated on the basis that the cancelled amount is deemed to have been disbursed and repaid on the Scheduled Disbursement Date or, to the extent that the disbursement of the Tranche is currently deferred or suspended, on the date of the cancellation notice.

**1.06D Cancellation after expiry of Credit**

At any time after the deadline for the Borrower to submit a Disbursement Request under Article 1.02B, the Bank may by notice to the Borrower, and without liability arising on the part of either party, cancel any part of the Credit other than a Notified Tranche.

**1.07 Sums due under Article 1**

Sums due under Articles 1.05 and 1.06 shall be payable in EUR. They shall be payable within seven (7) days of the Borrower's receipt of the Bank's demand or within any longer period specified in the Bank's notice of demand.

**ARTICLE 2**  
**The Loan****2.01 Amount of Loan**

The loan made under the Credit (hereinafter the “**Loan**”) shall comprise the aggregate of the amounts disbursed by the Bank, as notified by the Bank upon the occasion of the disbursement of each Tranche.

**2.02 Currency of repayments**

Each repayment of a Tranche under Article 4 or, as the case may be, Article 10 shall be effected in EUR.

**2.03 Currency of interest and other charges**

Interest and other charges payable by the Borrower under Articles 3, 4 and, where applicable, Article 10 shall be calculated and be payable in EUR.

Any payment under Article 9.02 shall be made in the currency specified by the Bank having regard to the currency of the expenditure to be reimbursed by means of that payment.

**2.04 Confirmation by the Bank**

After each disbursement of a Tranche, the Bank shall deliver to the Borrower a summary statement showing the disbursement date, amount, repayment terms and the interest rate of and for that Tranche. Such confirmation shall include the relevant amortisation table.

**ARTICLE 3**  
**Interest****3.01A Fixed-Rate Tranches**

The Borrower shall pay interest on the outstanding balance of each Fixed-Rate Tranche semi-annually or annually in arrears on the relevant Payment Dates, as specified in the Disbursement Notice, commencing on the first such Payment Date following the date of disbursement of the Tranche.

Interest shall be calculated on the basis of Article 5.02 (i) at an annual rate that is the Fixed Rate.

In this Contract, “**Fixed Rate**” means an annual interest rate determined by the Bank in accordance with the applicable principles from time to time laid down by the governing bodies of the Bank for loans made at a fixed rate of interest, denominated in EUR and bearing equivalent terms for the repayment of capital and the payment of interest.

**3.01B FSFR Tranches**

The Borrower shall pay interest on the outstanding balance of each FSFR Tranche at FSFR (as defined below) semi-annually or annually in arrears on the relevant Payment Dates, as specified in the Disbursement Notice.

The Bank shall notify FSFR to the Borrower within 10 (ten) days following the commencement of each FSFR Reference Period.

Interest shall be calculated in respect of each FSFR Reference Period on the basis of Article 5.02 (iii).

In this Contract:

“**FSFR**” means a fixed-spread floating interest rate, that is to say an annual interest rate equal to the Relevant Interbank Rate plus or minus the Spread, determined by the Bank for each successive FSFR Reference Period;

“**FSFR Reference Period**” means each period of six (6) or 12 (twelve) months from one Payment Date to the next relevant Payment Date, provided that the first FSFR Reference Period shall commence on the date of disbursement of the Tranche; and

“**Spread**” means such fixed spread to the Relevant Interbank Rate (being either plus or minus) determined by the Bank and notified to the Borrower in the relevant Disbursement Notice.

### **3.01C Conversion of FSFR Tranches**

Where the Borrower exercises an option to convert the interest rate basis of a FSFR Tranche, it shall, from the effective date of the conversion, pay interest at a rate determined in accordance with the provisions of the relevant Schedule to this Contract.

### **3.02 Interest on overdue sums**

Without prejudice to Article 10 and by way of exception to Article 3.01, interest shall accrue on any overdue sum payable under the terms of this Contract from the due date to the date of payment at an annual rate equal to the Relevant Interbank Rate plus 2% (200 basis points) and shall be payable in accordance with the demand of the Bank. For the purpose of determining the Relevant Interbank Rate in relation to this Article 3.02, the relevant periods within the meaning of Schedule B shall be successive periods of one (1) month commencing on the due date.

However, interest on a Fixed-Rate Tranche shall be charged at the annual rate that is the sum of the rate defined in Article 3.01A or 3.01C plus 0.25% (25 basis points) if that annual rate exceeds, for any given relevant period, the rate specified in the preceding paragraph.

If the overdue sum is in a currency other than EUR, the following rate per annum shall apply, namely the relevant interbank rate that is generally retained by the Bank for transactions in that currency plus 2% (200 basis points), calculated in accordance with the market practice for such rate.

## **ARTICLE 4** **Repayment**

### **4.01 Normal repayment**

#### **4.01A By instalments**

The Borrower shall repay each Tranche by instalments on the Payment Dates specified in the relevant Disbursement Notice in accordance with the terms of the amortisation table delivered pursuant to Article 2.04.

Each amortisation table shall be drawn up on the basis that:

- (i) repayment of a Tranche shall be made:
  - (a) in the case of a Fixed-Rate Tranche, either (i) by equal annual or semi-annual instalments of principal or (ii) on a constant annuity basis, so that the aggregate of principal and interest payable in respect of the Tranche shall be nearly as possible the same on each repayment date; and
  - (b) in the case of an FSFR Tranche, by equal annual or semi-annual instalments of principal; and
- (ii) the first repayment date of each Tranche shall be a Payment Date falling not later than the first Payment Date immediately following the fifth anniversary of the Scheduled Disbursement Date of the Tranche and the last repayment date shall be a Payment Date falling not earlier than four (4) years and not later than 25 (twenty-five) years from the Scheduled Disbursement Date.

The last repayment date of a Tranche specified pursuant to this Article 4.01 is hereinafter referred to as the **"Maturity Date"**.

## **4.02 Voluntary prepayment**

### **4.02A Prepayment option**

Subject to Articles 4.02B and 4.03D, the Borrower may prepay all or part of any Tranche, together with accrued interest thereon, upon giving one (1) month's prior written notice (hereafter a **"Prepayment Notice"**) specifying the amount thereof to be prepaid (the **"Prepayment Amount"**) and the date on which the Borrower proposes to effect prepayment (the **"Prepayment Date"**), which date shall be a Payment Date for that Tranche. In case of a partial prepayment, the notice shall also specify the Borrower's preference under Article 4.03D.

### **4.02B Prepayment indemnity**

#### **4.02B(1) Fixed-Rate Tranche**

In respect of each Prepayment Amount of a Fixed-Rate Tranche, the Borrower shall pay to the Bank on the Prepayment Date an indemnity equal to the present value (as of the Prepayment Date) of the excess, if any, of:

- (i) the interest that would accrue thereafter on the Prepayment Amount over the period from the Prepayment Date to the Maturity Date, if it were not prepaid; over
- (ii) the interest that would so accrue over that period, if it were calculated at the EIB Redeployment Rate (as defined below), less 15 basis points.

The said present value shall be calculated at a discount rate equal to the EIB Redeployment Rate, applied as of each relevant Payment Date.

In this Contract, **"EIB Redeployment Rate"** means the Fixed Rate in effect one (1) month prior to the Prepayment Date and having the same terms for the payment of interest and the same repayment profile to Maturity Date as the Prepayment Amount.

#### **4.02B(2) FSFR Tranche**

The Borrower may prepay a FSFR Tranche without indemnity on any relevant Payment Date.

**4.02C Prepayment mechanics**

The Bank shall notify the Borrower, not later than 15 (fifteen) days prior to the Prepayment Date, of the Prepayment Amount, of the interest due thereon, and, in case of prepayment of a Fixed-Rate Tranche or FSFR Tranche, of the indemnity payable under Article 4.02B or, as the case may be, that no indemnity is due.

Not later than the Acceptance Deadline (as defined below), the Borrower shall notify the Bank either:

- (i) that it confirms the Prepayment Notice on the terms specified by the Bank; or
- (ii) that it withdraws the Prepayment Notice.

If the Borrower gives the confirmation under (i), it shall effect the prepayment. If the Borrower withdraws the Prepayment Notice or fails to confirm it in due time, it may not effect the prepayment. Save as aforesaid, the Prepayment Notice shall be binding and irrevocable.

The Borrower shall accompany the prepayment by the payment of accrued interest and indemnity, if any, due on the Prepayment Amount.

For the purpose of this Article 4.02C, the “**Acceptance Deadline**” for a notice is:

- (i) 16h00 Luxembourg time on the day of delivery, if the notice is delivered by 14h00 on a Luxembourg Business Day; or
- (ii) 11h00 on the next following day which is a Luxembourg Business Day, if the notice is delivered after 14h00 Luxembourg time on any such day or is delivered on a day which is not a Luxembourg Business Day.

**4.03 Compulsory prepayment****4.03A Grounds for prepayment**

## 4.03A(1) Project cost reduction

If the total cost of the Project should fall significantly short of the figure stated in the Recital (6), the Bank may in proportion to the reduction forthwith, by notice to the Borrower, cancel the Credit or demand prepayment of the Loan.

## 4.03A(2) Pari passu to another Term Loan

If the Borrower voluntarily prepays a part or the whole of any other loan, or any other financial indebtedness or credit, originally granted to it for a term of more than five (5) years (hereafter a “**Term Loan**”) otherwise than out of the proceeds of a new loan having a term at least equal to the unexpired term of the loan prepaid, the Bank may, by notice to the Borrower, cancel the Credit or demand prepayment of the Loan in such proportion as the repaid amount of the Term Loan bears to the aggregate outstanding amount of all Term Loans.

The Bank shall address its notice to the Borrower within 30 (thirty) days of receipt of notice under Article 8.02.

#### 4.03A(3) Change-of-control Event

If the Borrower is informed, or has reasonable grounds to believe, that (i) the Republic of Croatia loses the possibility to control the Borrower, either directly or indirectly, through the exercise of shareholder's voting rights or the power to appoint and/or remove a majority of the members of the Management Board or other governing body of the Borrower or (ii) a single natural or legal person or a group of such persons acting in concert acquire such number of outstanding voting shares of the Borrower and/or any other legal person, as is necessary to control the Borrower (such a loss of control or acquisition of shares being hereafter referred to as a "**Change-of-control Event**"), the Borrower shall promptly inform the Bank. Upon receipt of such information the Bank may demand that the Borrower consult with it. Such consultation shall take place within 30 (thirty) days from the date of the Bank's request. If, after the elapse of 30 (thirty) days from the date of such a request, the Bank is of the reasonable opinion that the Change-of-control Event is likely to affect the future servicing of the Loan or the financial stability of the Borrower, the Bank may by notice to the Borrower, forthwith cancel the Credit or demand prepayment of the Loan.

#### 4.03B Prepayment mechanics

Any sum demanded by the Bank pursuant to Article 4.03A, together with any interest accrued and any indemnity due under Article 4.03C, shall be paid on the date indicated by the Bank, which date shall fall not less than 30 (thirty) days from the date of the Bank's notice of demand.

#### 4.03C Prepayment indemnity

In the case of prepayment upon an event mentioned under Article 4.03A, other than paragraph 4.03A(1) and Article 4.03(2) (each such event herein referred to as an "**Indemnifiable Prepayment Event**"), the indemnity, if any, shall be determined in accordance with Article 4.02B.

If, moreover, pursuant to any provision of Article 4.03B the Borrower prepays a Tranche on a date other than a relevant Payment Date, the Borrower shall indemnify the Bank in such amount as the Bank shall certify is required to compensate it for receipt of funds otherwise than on a relevant Payment Date.

#### 4.03D Application of partial prepayments

If the Borrower partially prepays a Tranche, the Prepayment Amount shall be applied pro rata or, at its option, by inverse order of maturity to each outstanding instalment.

If the Bank demands a partial prepayment of the Loan, the Borrower, in complying with the demand, may, by notice to the Bank, delivered within seven (7) Luxembourg Business Days of its receipt of the Bank's demand, choose the Tranches to be prepaid and exercise its option for application of the prepaid sums.

**ARTICLE 5**  
**Payments**

**5.01 Payment Date definition**

In this Contract:

“**Payment Date**” means:

- (i) for a Fixed-Rate Tranche the semi-annual or annual dates specified in the Disbursement Notice; and
- (ii) for an FSFR Tranche, the dates falling at semi-annual or annual dates from the Scheduled Disbursement Date

until the Maturity Date, save that, in case any such date is not a Relevant Business Day, it means:

- (i) for a Fixed-Rate Tranche, the following Relevant Business Day, without adjustment to the interest due under Article 3.01; and
- (ii) for an FSFR Tranche, the next day, if any, of that calendar month that is a Relevant Business Day or, failing that, the nearest preceding day that is a Relevant Business Day, with corresponding adjustment to the interest due under Article 3.01; and

“**Relevant Business Day**” means:

- (i) for the EUR, a day on which the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET) payment system operates; and
- (ii) for any other currency, a day on which banks are open for normal business in the principal domestic financial centre of the currency concerned.

**5.02 Day count convention**

Any amount due by way of interest, indemnity or fee from the Borrower under this Contract, and calculated in respect of a fraction of a year, shall be determined on the following respective conventions:

- (i) for a Fixed-Rate Tranche, a year of 360 days and a month of 30 days; and
- (ii) for an FSFR Tranche, a year of 360 days and the number of days elapsed.

**5.03 Time and place of payment**

All sums other than of interest, indemnity and principal are payable within seven (7) days of the Borrower’s receipt of the Bank’s demand.

Each sum payable by the Borrower under this Contract shall be paid to the respective account notified by the Bank to the Borrower. The Bank shall indicate the account not less than 15 (fifteen) days before the due date for the first payment by the Borrower and shall notify any change of account not less than 15 (fifteen) days before the date of the first payment to which the change applies. This period of notice does not apply in the case of payment under Article 10.

A sum due from the Borrower shall be deemed paid when the Bank receives it.



**ARTICLE 6**  
**Borrower undertakings**

*A. Project undertakings*

**6.01 Use of Loan and availability of other funds**

The Borrower shall use the proceeds of the Loan exclusively for the execution of the Project.

The Borrower shall ensure that it has available to it the other funds listed in Recital (6) and that such funds are expended, to the extent required, on the financing of the Project.

**6.02 Completion of Project**

The Borrower shall carry out the Project in accordance with the Technical Description as may be modified from time to time with the approval of the Bank, and complete it by the final date specified therein.

**6.03 Increased cost of Project**

If the cost of the Project exceeds the estimated figure set out in Recital (6), the Borrower shall obtain the finance to fund the excess cost without recourse to the Bank, so as to enable the Project to be completed in accordance with the Technical Description. Any plan for funding the excess cost shall be submitted in a timely manner to the Bank's approval, which may not be withheld if such plan is reasonably likely to enable completion of the Project in accordance with Article 6.02.

**6.04 Tendering procedure**

The Borrower shall purchase goods, procure services, and order works for the Project in accordance with the current edition of the EIB Guide to Procurement, contracts above the thresholds of the EU procurement directives to be subject to open international tender with prior publication in the Official Journal of the European Communities.

The Borrower shall seek the Bank's non-objection written notice prior to the issue of any tender documents and any contract award concerning the Project components financed by the Bank.

The Borrower shall take all reasonable steps, acceptable to the Bank, to agree on less restrictive licensing requirements for professional engineers with the Croatian authorities and licensing bodies for consultancy and construction contracts under the Project. In particular, the Borrower should strive for the acceptance of appropriately qualified EU professionals on an equal footing with Croatian professionals.

**6.05 Continuing Project undertakings**

So long as the Loan is outstanding, the Borrower shall:

- (i) **Maintenance:** maintain, repair, overhaul and renew all property forming part of the Project as required to keep it in good working order;

- (ii) **Project assets:** unless the Bank shall have given its prior consent in writing, retain title to and possession of all or substantially all the assets comprising the Project or, as appropriate, replace and renew such assets and maintain the infrastructure forming part of the Project continuous open to traffic (save if not possible for maintenance or safety reasons) and in substantially continuous operation in accordance with its original purpose; provided that the Bank may withhold its consent only where the proposed action would prejudice the Bank's interests as lender to the Borrower or would render the Project ineligible for financing by the Bank under the Statute or under Article 267 of the Treaty of Rome;
- (iii) **Insurance:** insure all works and property forming part of the Project with first class insurance companies in accordance with the most comprehensive relevant industry practice;
- (iv) **Rights and Permits:** maintain in force all rights of way or use and all permits necessary for the execution and operation of the Project; and
- (v) Environment and EU law:
  - (a) **Environment:** implement and operate the Project in conformity with those laws of the European Union save for any derogation made by the Bank for the purpose of this Contract and the Republic of Croatia, as well as applicable international treaties, of which a principal objective is the preservation, protection or improvement of the Environment; for which purpose "**Environment**" means the following, in so far as they affect human well-being: (a) fauna and flora; (b) soil, water, air, climate and landscape; and (c) cultural heritage and the built environment; and
  - (b) undertake to ensure that:
    - (i) all approvals by, and authorisations from, the competent environmental authorities in the Republic of Croatia required for the purpose of Article 6.05 (v) (a) will be secured and maintained;
    - (ii) the Project will not have significant negative effects on any site of nature conservation importance and that no materials or substances which could have adverse effects on the environment will be used or disposed of in the construction and, so long as the Loan is outstanding, the operation and maintenance of the Project; and
    - (iii) so long as the Loan is outstanding, all maintenance and rehabilitation works which may be required by the competent environmental authorities will be carried out on the facilities of the Project.
  - (c) **EU law:** execute and operate the Project in accordance with the relevant standards of EU law, as well as the relevant laws of the Republic of Croatia, save for any derogation made by the Bank for the purpose of this Contract.

#### 6.06 PIU

The Borrower shall, to the Bank's satisfaction, strengthen and maintain the existing PIU within its organisation, adequately staffed with qualified and dedicated personnel. The PIU shall be entrusted, during the full implementation period of the Project, with the coordination of the Project.

*B. General undertakings***6.07 Disposal of assets**

The Borrower shall not, without the prior written consent of the Bank, either in a single transaction or in a series of transactions whether related or not and whether voluntarily or involuntarily, sell, transfer, lease or otherwise dispose of any material part of its assets. The Bank may only withhold its consent if such disposal of assets would, in the reasonable opinion of the Bank, have a material adverse effect on the ability of the Borrower to perform its obligations hereunder.

For the purpose of this Article 6.07 "any material part of its assets" means 10 % or more of fixed, financial, and/or other relevant assets as disclosed in the latest audited consolidated financial statements prior to the signature of this contract.

**6.08 Integrity Commitment**

The Borrower warrants and undertakes for the benefit of the Bank that it has not committed, and no person to its present knowledge has committed, any of the following acts and that it will not commit, and no person, with its consent or prior knowledge, will commit any such act, that is to say:

- (i) the offering, giving, receiving or soliciting of any improper advantage to influence the action of a person holding a public office or function or a director or employee of a public authority or public enterprise or a director or official of a public international organisation in connection with any procurement process or in the execution of any contract in connection with the Project; or
- (ii) any act which improperly influences or aims improperly to influence the procurement process or the implementation of the Project to the detriment of the Borrower, including collusion between tenderers.

For this purpose, the knowledge of the General Manager or the President or any Member of the Management Board of the Borrower, of the head of any of its departments or of the officer, of the Project manager or of any member of the PIU staff shall be deemed the knowledge of the Borrower. The Borrower undertakes to inform the Bank if it should become aware of any fact or information suggestive of the commission of any such act.

Unless the Borrower shall otherwise specify in writing to the Bank, the General Manager of the Borrower shall be responsible for contacts with the Bank for the purposes of this Article 6.08.

**6.09 Visits**

The Borrower shall, upon prior notification, permit persons designated by the Bank to visit the sites and works comprising the Project and to conduct such checks as they may wish. For this purpose the Borrower shall provide them, or ensure that they are provided, with all necessary assistance.

**6.10 Legitimacy of funds used for the Project**

The Borrower declares that, to the best of its knowledge and belief and to the extent it is applicable, no fund invested in the Borrower's share capital is of illicit origin and likewise declares that no fund specified in the Recitals is of illicit origin. It furthermore undertakes promptly to inform the Bank, if it should at any time be informed of an illicit origin of any such fund.

The Borrower notes the policy of the Bank to pass information on its clients' transactions to the competent authorities in circumstances where EU law would require regulated financial institutions to do so.

Unless the Borrower shall otherwise specify in writing to the Bank, the head of the Borrower's internal audit function shall be responsible for contacts with the Bank for the purposes of this Article 6.10.

**6.11 Accounts of the Borrower**

The Borrower undertakes starting from 2008 to:

- (a) maintain financial and accounting records and documents consistent with International Accounting Standards;
- (b) have its accounts and financial statements audited on an annual basis in accordance with International Accounting Standards; and
- (c) retain as its auditor a firm of international repute, which has proven capacity of auditing according to International Auditing Standards.

**ARTICLE 7**  
**Security****7.01 Guarantee**

Without prejudice to Article 1.04, the obligations of the Bank hereunder are conditional upon the prior execution and delivery to it of the Guarantee Agreement.

**7.02 Pari Passu Security**

If, after the date of this Contract, the Borrower should grant to any third party any additional security for the performance of any of its external debt obligations or any preference or priority in respect thereof, the Borrower shall so inform the Bank and shall, if so required by the Bank, provide to the Bank equivalent security for the performance of its obligations hereunder or grant to the Bank equivalent preference or priority. The Borrower represents that no such security, preference or priority presently exists.

Nothing in the above section shall apply: (i) to any vendor's lien where such encumbrance secures only its purchase price; (ii) to any pledge over stocks created to secure any short-term credit; or (iii) to any security arising by operation of law.

**ARTICLE 8**  
**Information and visits**

**8.01 Information concerning Project**

The Borrower shall:

- (i) deliver to the Bank (a) the information in content and in form, and at the times, specified in Schedule A.2 or otherwise as agreed from time to time by the parties to this Contract, and (b) any such information or further document concerning the financing, procurement, implementation, operation and environmental impact of or for the Project as the Bank may reasonably require, provided always that, if such information or document is not delivered to the Bank on time, and the Borrower does not rectify the omission within a reasonable time set by the Bank in writing, the Bank may remedy the deficiency, to the extent feasible, by employing its own staff or a consultant or any other third party, at the Borrower's expense, and the Borrower shall provide such persons with all assistance necessary for the purpose
- (ii) ensure that its records show all the operations relating to the financing and execution of the Project and maintain procedures to record the process of tender, award and execution of Supply Contracts (save for any Supply Contract for which the Bank shall have given a prior exemption from this obligation);

Provided that such procedures shall include the retention of all relevant original documents in a single file or folder for a period of six (6) years from the respective date of completion of the Supply Contract;

Provided further that, for the purposes of this Contract, "**Supply Contract**" shall mean a duly signed contract, of which the Bank has received a certified true copy, which satisfies the following conditions, namely that:

- (a) it is a contract for works, goods or services procured in respect of the Project executed on terms satisfactory to the Bank, having regard to the edition of its Procurement Guide as available to the public on its website at the time of its conclusion;
- (b) having regard to the applicable Bank's *Guide to Procurement*, the relevant tendering procedure satisfies Article 6.04 of this Contract;
- (c) in case of a contract for which section 3.5 of the Bank's Guide to Procurement so requires, such a contract:
  - contains a contractor's covenant of integrity substantially in the form set out in that Guide;
  - empowers the Borrower, the Bank and auditors appointed by either of them to inspect the contractual records of the contractor;
  - obliges the contractor to preserve these records for at least six (6) years from the date of substantial performance of the contract;
- (iii) on the request of the Bank make available to the Bank's representatives the records and documents referred to in Article 8.01 (i);
- (iv) deliver to the Bank the following documents:
  - (a) by 31 January 2008 and subsequently on a quarterly basis (unless otherwise agreed) until the Project is completed, a report on the implementation of the Project in accordance with Schedule A;

- (b) deliver to the Bank (i) the information in content and in form, and at the times, specified in the Schedule A or otherwise as agreed from time to time by the parties to this Contract, and (ii) any such information or further document concerning the financing, procurement, implementation, operation and environmental impact of or for the Project as the Bank may reasonably require;
- (v) submit for the approval of the Bank without delay any material change to the price, design, plans, timetable or expenditure programme for the Project, in relation to the disclosures made to the Bank prior to the signing of this Contract;
- (vi) inform the Bank in good time of any situation which requires the consent of the Bank under Paragraph 6.05(ii);
- (vii) promptly inform the Bank of (a) any material litigation that is commenced or threatened against it with regard to environmental or other matters affecting the Project; and (b) any fact or event known to the Borrower, which may substantially prejudice or affect the conditions of execution or operation of the Project.

## **8.02 Information concerning Borrower**

The Borrower shall:

- (i) deliver to the Bank (a) each year within one (1) month after their approval, its annual report, balance sheet and profit and loss account (both prepared in accordance with International Accounting Standards) and auditor's report; and (b) from time to time, such further information on its general financial situation as the Bank may reasonably require;
- (ii) ensure that its accounting records fully reflect the operations relating to the financing, execution and operation of the Project; and
- (iii) inform the Bank immediately of:
  - (a) any alteration of its statutes or of any material modification of any law, decree, regulation or legal requirement directly relating to its business activities in particular, as well as of each proposal or decision to any such effect of which it is aware; any transaction by which there occurs a change of ownership of 10% or more of the Borrower or which is likely to result in a change in control of the Borrower;
  - (b) its belief or, as the case may be, reasonable grounds for belief that a Change-of-Control Event as referred to in Article 4.03A(3) has occurred or is about to occur;
  - (c) any fact which obliges it to prepay any financial indebtedness;
  - (d) any decision made by it to make a prepayment of a Term Loan as referred to in Article 4.03A(2);
  - (e) any intention on its part to grant any security over any of its assets in favour of a third party;
  - (f) any intention on its part to relinquish ownership of any material component of the Project; and
  - (g) any fact or event that is reasonably likely to prevent the substantial fulfilment of any obligation of the Borrower under this Contract.

**8.03 Investigations and Information**

The Borrower undertakes:

- (i) to take such action as the Bank shall reasonably request to investigate and/or terminate any alleged or suspected act of the nature described in Article 6.08;
- (ii) to inform the Bank of the measures taken to seek damages from the persons responsible for any loss resulting from any such act; and
- (iii) to facilitate any investigation that the Bank may make concerning any such act.

**ARTICLE 9**  
**Charges and expenses**

**9.01 Taxes, duties and fees**

The Borrower shall pay all taxes, duties, fees and other impositions of whatsoever nature, including stamp duty and registration fees, if any, arising out of the execution or implementation of this Contract or any related document or the creation of any security for the Loan.

The Borrower shall pay all principal, interest, indemnity and other amounts due under this Contract gross without deduction of any national or local impositions whatsoever, provided that, if the Borrower is obliged to make any such deduction, it will gross up the payment to the Bank so that after deduction, the net amount received by the Bank is equivalent to the sum due.

**9.02 Other charges**

The Borrower shall bear all charges and expenses, including professional, banking or exchange charges incurred in connection with the preparation and implementation of this Contract or any related document, including any amendment thereto, and in the creation, management and realisation of any security for the Loan, if any as well as expenses of the Bank under Article 8.03.

**ARTICLE 10**  
**Prepayment upon an event of default**

**10.01 Right to demand repayment**

The Borrower shall repay the Loan or any part thereof forthwith, together with interest accrued thereon, upon written demand being made therefor by the Bank in accordance with the following provisions.

**10.01A Immediate demand**

The Bank may make such demand immediately:

- (i) if the Borrower fails on due date to repay any part of the Loan, to pay interest thereon or to make any other payment to the Bank as herein provided;

- (ii) if any information or document given to the Bank by or on behalf of the Borrower in connection with the negotiation of this Contract or during its lifetime proves to have been incorrect in any material particular;
- (iii) if the Borrower defaults in the performance of any financial obligation in respect of any loan (other than the Loan) made respectively to the Borrower by the Bank;
- (iv) if, following any default in relation thereto, the Borrower is required to prepay any other loan or to discharge ahead of maturity any indebtedness arising out of a financial transaction;
- (v) if, following a default of the Borrower in the performance of any obligation in respect to any grant extended respectively to the Borrower by the European Union, the right of the Borrower to drawdown the proceeds of that grant, in whole or in part, have been cancelled or terminated or if that grant shall have become repayable pursuant to its terms;
- (vi) if the Borrower ceases to manage the passenger port or the cargo port or the fishing port in the Zadar city harbour or fails to comply with the terms of the licence, approval or other relevant legislation under which it operates or if the terms and conditions of such licence, approval or other relevant legislation or any modification thereof in the sole determination of the Bank materially adversely affect the ability of the Borrower to comply with any of its payment obligations or adversely affect any other material obligation under this Contract;
- (vii) if the amendment of any act and/or regulation applicable to the Borrower in the sole determination of the Bank materially adversely affect the ability of the Borrower to comply with any of its payment obligations or adversely affect any other material obligation under this Contract;
- (viii) if an order is made or an effective resolution is passed for the winding up of the Borrower, or if the Borrower takes steps towards a substantial reduction in its capital, is declared insolvent or ceases or resolves to cease to carry on the whole or any substantial part of its business or activities, save in the course of a material reconstruction, amalgamation, reorganisation, merger or consolidation previously consented to by the Bank;
- (ix) if an encumbrancer takes possession of, or a receiver, liquidator, administrator, administrative receiver or similar officer is appointed, whether by a court of competent jurisdiction or by any competent administrative authority, of or over, any part of the business or assets of the Borrower or any property forming part of the Project;
- (x) if any distress, execution, sequestration or other process is levied or enforced upon the property of the Borrower or any property forming part of the Project and is not discharged or stayed within 14 (fourteen) days; or
- (xi) if a Material Adverse Change occurs in relation to the Borrower,  

**“Material Adverse Change”** means for the purposes of this Contract, in relation to the Borrower or, respectively, any event or change of condition, as compared with its condition at the date of this Contract, affecting the Borrower or any of their subsidiaries, which, in the reasonable opinion of the Bank, materially impairs the ability of the Borrower to perform its financial and other obligations under this Contract, or which materially affects any security provided.

#### **10.01B Demand after notice to remedy**

The Bank may also make such demand, upon the matter not being remedied within a reasonable period of time specified in a notice served by the Bank on the Borrower:

- (i) if the Borrower fails to comply with any material obligation under this Contract not being an obligation mentioned in Article 10.01(A) or if the Guarantor fails to comply with any material obligation under the Guarantee Agreement; or



- (ii) if any fact stated in the Recitals materially alters and is not materially restored and the alteration either prejudices the interests of the Bank as lender to the Borrower or adversely affects the implementation or operation of the Project.

#### **10.02 Other rights at law**

Article 10.01 shall not restrict any other right of the Bank at law to require prepayment of the Loan.

#### **10.03 Indemnity**

##### **10.03A Fixed-Rate Tranches**

In case of demand under Article 10.01 in respect of any Fixed-Rate Tranche, the Borrower shall pay to the Bank the sum demanded together with interest accrued thereon and with a sum calculated in accordance with Article 4.02B on any sum that has become due and payable. Such sum shall accrue from the due date for payment specified in the Bank's notice of demand and be calculated on the basis that prepayment is effected on the date so specified.

##### **10.03B FSFR Tranches**

In case of demand under Article 10.01 in respect of an FSFR Tranche, the Borrower shall pay to the Bank the sum demanded together with a sum equal to the present value of 0.15% (15 basis points) per annum calculated and accruing on the amount due to be prepaid in the same manner as interest would have been calculated and would have accrued, if that amount would have remained outstanding according to the original amortisation schedule of the Tranche, taking into account the Interest Conversion Date, if any.

Such present value shall be determined using a discount rate, applied as of each relevant Payment Date. The discount rate shall be the Fixed Rate applicable one (1) month prior to the date of prepayment and having the same terms for the payment of interest and the same term to Maturity Date or, in case of a FSFR Tranche, the Interest Conversion Date, if any, as the amount to be prepaid.

##### **10.03C General**

Amounts due by the Borrower pursuant to this Article 10.03 shall be payable on the date of prepayment specified in the Bank's demand.

#### **10.04 Non-Waiver**

No failure or delay by the Bank in exercising any of its rights under this Article 10 shall be construed as a waiver of such right.

#### **10.05 Application of sums received**

Sums received by the Bank following a demand under Article 10.01 shall be applied first in payment of expenses, interest and indemnities and secondly in reduction of the outstanding instalments in inverse order of maturity. The Bank may apply sums received between Tranches at its discretion.

**ARTICLE 11**  
**Law and jurisdiction**

**11.01 Governing Law**

This Contract shall be governed by the laws of the Republic of Austria.

**11.02 Jurisdiction**

The parties hereby submit to the jurisdiction of the courts of the Republic of Austria.

The parties to this Contract 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 11.02 shall be conclusive and binding on the parties without restriction or reservation.

**11.03 Evidence of sums due**

In any legal action arising out of this Contract the certificate of the Bank as to any amount due to the Bank under this Contract shall be in absence of any manifest error prima facie evidence of such amount.

**11.04 Language**

Every document, notice or communication made between the parties hereunder shall be made in the English language or shall be accompanied by a duly certified translation in English.

**ARTICLE 12**  
**Final clauses**

**12.01 Notices to either party**

Notices and other communications given hereunder addressed to either party to this Contract shall be in writing and shall be sent to its address set out below, or to such other address as it previously notifies to the other in writing:

For the Bank

Attention:  
100 boulevard Konrad Adenauer  
L-2950 Luxembourg

For the Borrower

(1) Lučka Uprava Zadar  
Liburnska Obala 6/1  
HR- Zadar

(2) the Mission of the Republic of Croatia  
to the European Communities  
Avenue des Arts 50  
B-1000 Brussels.

For legal proceedings:  
Lovells, Attorneys at Law  
Darmstaedter Landstrasse 126  
D-60598 Frankfurt/Main

For the Guarantor

Ministry of Finance of the  
Republic of Croatia  
Katančičeva 5  
HR-10000 Zagreb

## 12.02 Form of notice

Notices and other communications, for which fixed periods are laid down in this Contract or which themselves fix periods binding on the addressee, shall be served by hand delivery, registered letter, facsimile or other means of transmission which affords evidence of receipt by the addressee. The date of registration or, as the case may be, the stated date of receipt of transmission shall be conclusive for the determination of a period.

Notices issued by the Borrower pursuant to any provision of this Contract shall, where required by the Bank, be delivered to the Bank together with satisfactory evidence of the authority of the person or persons authorised to sign such notice on behalf of the Borrower and the authenticated specimen signature of such person or persons.

## 12.03 Recitals and Schedules

The Recitals and following Schedules form part of this Contract:

Schedule A	Technical Description and Information Duties
Schedule B	Definitions of EURIBOR
Schedule C	Form of Disbursement Request (Article 1.02B)
Schedule D	Form of Certificate from Borrower
Schedule E	Conversion of Tranche from FSFR to Fixed

IN WITNESS WHEREOF the parties hereto have caused this Contract to be executed in four (4) originals in the English language and have respectively caused Mr Matteo Rivellini, Legal Counsel, for the Bank and Mr Ivica Burić, General Manager, for the Borrower to initial each page of this Contract on their behalf.

This 7<sup>th</sup> day of September 2007, in Zadar.

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

Signed for and on behalf of  
LUČKA UPRAVA ZADAR  
The General Manager

Matthias Kollatz-Ahnen

Ivica Burić

## **A.1 Technical Description**

### **A.1.1 Purpose, Location**

The Project concerns the design, construction supervision and infrastructure works of a new ferry port and ancillary works, including the necessary environmental mitigation measures, at Gaženica, about 3.5 km south of the city centre of Zadar, Croatia, including Technical Assistance to the Project Implementation Unit.

### **A.1.2 Description**

The Project consists of the following components:

- Engineering design and construction supervision.
- Technical assistance to the Project Implementation Unit, including review of the design and of the tender documents, assistance in tender evaluation, environmental and construction monitoring, and overall project management, as well as port operations management and business development until two years after Project completion.
- Maritime works including:
  - Reclamation of about 23.7 ha of land;
  - Undersea rock excavation of about 125,000 m<sup>3</sup> for maritime access;
  - Construction of a secondary breakwater;
  - Construction of about 1,550 m of quays to create 12 berths for islands ferry vessels, international ferry vessels and cruise ships;
  - Construction of about 300 m of quay to create a new fishing port.
- Construction of about 1,450 m of access roads to the city road network.
- Provision of basic terminal areas infrastructure (approx. 12.6 ha of port area), including:
  - Surfacing of wharf and pier areas;
  - Construction of traffic processing areas (internal roads, waiting areas, loading and unloading lanes, pedestrian areas);
  - Water supply and sewage.

### **A.1.3 Calendar**

Project works are expected to start by the first quarter of 2008 and to be completed by the end of 2011.

**A.2 Information Duties under Article 8.01****PROJECT INFORMATION TO BE SENT TO THE BANK AND METHOD OF TRANSMISSION****1. Dispatch of information: designation of the person responsible**

The information below has to be sent to the Bank under the responsibility of:

Company	<i>Port of Zadar Authority</i>
Contact person	<i>Ivica Burić</i>
Title	<i>General Manager</i>
Address	<i>Liburnska Obala 6/1, 23000 Zadar, Croatia</i>
Phone	<i>0038523250520</i>
Fax	<i>0038523250666</i>
Email	<i>Lucka-uprava-zadar@zd.hinet.hr</i>

The above-mentioned contact person(s) is (are) the responsible contact(s) for the time being.

The Borrower shall inform the EIB immediately in case of any change.

**2. Information on specific subjects**

The Borrower shall deliver to the Bank the following information at the latest by the deadline indicated below.

<b>Document / information</b>	<b>Deadline</b>
Draft terms of reference for Technical Assistance (TA)	<i>30 September 2007</i>
Form A issued by Directorate for Nature Protection	<i>Prior to first disbursement</i>
Confirmation of PIU establishment	<i>Prior to first disbursement</i>
Award of TA consultant contract	<i>Prior to first disbursement</i>
Review of preliminary design by TA consultant	<i>Not later than 1 month after mobilization of TA consultant</i>
Tender documents	<i>Not later than 1 month prior to the launch of the respective tender procedure</i>
Approval for construction permits	<i>Not later than 1 month prior to the signing of the respective contracts</i>

3. Information on the project's implementation

The Borrower shall deliver to the Bank the following information on project progress during implementation at the latest by the deadline indicated below.

Document / information	Deadline	Frequency of reporting
Project Progress Report - A brief update on the technical description, explaining the reasons for significant changes vs. initial scope; - Update on the date of completion of each of the main project's components, explaining reasons for any possible delay; - Update on the cost of the project, explaining reasons for any possible cost increases vs. initial budgeted cost; - A description of any major issue with impact on the environment; - Update on procurement procedures; - Update on the project's demand or usage and comments; - Any significant issue that has occurred and any significant risk that may affect the project's operation; - Any ongoing legal action concerning the project.	<i>Not later than 30 days after the end of each reporting period, starting on 31/01/2008</i>	<i>Quarterly</i>

4. Information on the end of works and first year of operation

The Borrower shall deliver to the Bank the following information on project completion and initial operation at the latest by the deadline indicated below.

Document / information	Date of delivery to the Bank
Project Completion Report, including: - A brief description of the technical characteristics of the project as completed, explaining the reasons for any significant change; - The date of completion of each of the main project's components, explaining reasons for any possible delay; - The final cost of the project, explaining reasons for any possible cost increases vs. initial budgeted cost; - The number of new jobs created by the project: both jobs during implementation and permanent new jobs created; - A description of any major issue with impact on the environment and the results of environmental monitoring; - Update on procurement procedures; - Update on the project's demand or usage and comments; - Any significant issue that has occurred and any significant risk that may affect the project's operation; - Any legal action concerning the project that may be ongoing.	<i>Not later than 15 months after project completion, i.e. by 31/12/2012.</i>
<b>Language of reports</b>	<i>English</i>

**Definition of EURIBOR****A. EURIBOR**

"EURIBOR" means:

- (i) in respect of any relevant period, including a FSFR Reference Period or any other period of time of one (1) month or more, the rate of interest for deposits in EUR for a term being the number of whole months most closely corresponding to the duration of the period; and
- (ii) in respect of a relevant period of less than a month, the rate of interest for deposits in EUR for a term of one (1) month,

(the period for which the rate is taken being hereafter called the "**Representative Period**")

as published at 11.00 a.m. Brussels time or at a later time acceptable to the Bank on the day (the "**Reset Date**") which falls two (2) Relevant Business Days prior to the first day of the relevant period, on Reuters page EURIBOR 01 or its successor page or, failing which, by any other means of publication chosen for this purpose by the Bank.

If such rate is not so published, the Bank shall request the principal euro-zone offices of four major banks in the euro-zone, selected by the Bank, to quote the rate at which EUR deposits in a comparable amount are offered by each of them as at approximately 11:00 a.m., Brussels time, on the Reset Date to prime banks in the euro-zone interbank market for a period equal to the Representative Period. If at least two quotations are provided, the rate for that Reset Date will be the arithmetic mean of the quotations.

If fewer than two quotations are provided as requested, the rate for that Reset Date will be the arithmetic mean of the rates quoted by major banks in the euro-zone, selected by the Bank, at approximately 11:00 a. m. Brussels time on the day which falls two (2) Relevant Business Days after the Reset Date, for loans in EUR in a comparable amount to leading European Banks for a period equal to the Representative Period.

**B. General**

For the purposes of the foregoing definitions:

- (i) All percentages resulting from any calculations referred to in this Schedule will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point, with halves being rounded up.
- (ii) The Bank shall inform the Borrower without delay of the quotations received by the Bank.
- (iii) If any of the foregoing provisions becomes inconsistent with provisions adopted under the aegis of EURIBOR FBE and EURIBOR ACI in respect of EURIBOR, the Bank may by notice to the Borrower amend the provision to bring it into line with such other provisions.

**Schedule C****C. 1 Form of Disbursement Request (Article 1.02B)  
Country – PROJECT**Date: 

Please proceed with the following disbursement:

Loan Name (\*):

**Zadar New Port**

Signature Date (\*):

Contract FI number:

Currency & amount requested	
Currency	Amount

Proposed disbursement date: 

<b>INTEREST</b>	Int. rate basis (Art. 3.01)	<input type="text"/>
	Rate (% or Spread)	<input type="text"/>
	Frequency (Art. 3.01)	Annual <input type="checkbox"/> Semi-annual <input type="checkbox"/>
	Payment Dates (Art. 5)	<input type="text"/>
	Conversion date (if any)	<input type="text"/>

<b>CAPITAL</b>	Repayment frequency	Annual <input type="checkbox"/> Semi-annual <input type="checkbox"/>
	Repayment methodology (Art. 4.01)	Equal instalments <input type="checkbox"/> Constant annuities <input type="checkbox"/> Single instalment <input type="checkbox"/> Amortisation Schedule specified in Contract <input type="checkbox"/>
	First repayment date	<input type="text"/>
	Last repayment date:	<input type="text"/>

<b>Reserved for the EIB</b> (contract currency)	
Total Credit Amount:	100 mio.
Disbursed to date:	<input type="text"/>
Balance <u>for</u> disbursement:	<input type="text"/>
Current disbursement:	<input type="text"/>
Balance <u>after</u> disbursement:	<input type="text"/>
Disbursement deadline:	<input type="text"/>
Max. number of disbursements:	10
Minimum Tranche size:	5 mio.
Total allocations to date:	<input type="text"/>
Conditions precedent:	Yes / No

Borrower's account to be credited:

Acc. N°: .....

**(please, provide IBAN format in case of disbursements in EUR, or appropriate format for the relevant currency)**

Bank name and address: .....

Please transmit information relevant to request to:

Borrower's authorised name(s) and signature(s):



**Form of Certificate from Borrower**

To: European Investment Bank

From: Lučka Uprava Zadar

Date:

Dear Sirs,

Subject: Zadar New Port

Finance Contract between European Investment Bank and Lučka Uprava Zadar dated 7 September 2007 (hereafter referred to as the "Finance Contract")

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Terms defined in the Finance Contract have the same meaning when used in this letter.

For the purposes of Article 1.04 of the Finance Contract we hereby certify to you as follows:

- (i) such part of our funds and (subject to availability of the finance to be provided under the Finance Contract) the loans and grants referred to in the sixth Recital will be available to us as is necessary to enable the undisturbed progress of the execution of the Project in accordance with the Technical Description;
- (ii) no exchange control consents are currently required in order to permit the receipt of the amount of the Tranche to be disbursed hereunder on our account No. \_\_\_\_\_ with \_\_\_\_\_, repayment of the Loan and payment of all interest and other amounts due under the Finance Contract;
- (iii) no situation has occurred among those described in Article 4.03A of the Finance Contract;
- (iv) the provisions set out in Articles 6 and 8.03 of the Finance Contract are fully complied with;
- (v) after the date of the Finance Contract, no additional security, preference or priority envisaged by Article 7.02 has been granted without us having informed you in respect of it;
- (vi) there is no current litigation, arbitration, regulatory proceeding or investigation, for which process has been served on us or any of our subsidiaries, and which, if adversely determined, could materially affect our ability to perform our obligations under the Finance Contract; and
- (vii) since the execution of the Finance Contract, there has not occurred any event mentioned in its Article 10.01.

Yours faithfully,

for and on behalf of

Lučka Uprava Zadar

**Conversion of Tranche from FSFR to Fixed**

For any FSFR Tranche the following provisions shall apply:

**A. Definitions in this Schedule**

“**Conversion Proposal**” means a proposal made by the Bank under Paragraph B of this Schedule.

“**Interest Conversion**” means the conversion of the Tranche, or part thereof, from a variable to fixed interest rate for its remaining term.

“**Interest Conversion Date**” means the date specified by the Borrower under Article 1.02B (vii) on condition that at least € 10 million remains outstanding at that date, being a date falling not less than four (4) years before the last allowed Payment Date stated in Article 4.01A “**Interest Conversion Request**” or “**Request**” means a written notice from the Borrower, delivered at least 75 (seventy-five) days before the Interest Conversion Date, requesting the Bank to submit to it a Conversion Proposal for the Tranche. The Request shall also specify:

- (i) whether the conversion is into a Fixed-Rate Tranche;
- (ii) Payment Dates chosen in accordance with the respective provisions of Article 3.01; and
- (iii) the preferred repayment schedule chosen in accordance with Article 4.01A.

**B. Mechanics of Conversion**

Upon receiving an Interest Conversion Request, and, where appropriate, after prior consultation with the Borrower, and subject to availability, the Bank shall, on each Luxembourg Business Day in the interval falling between 60 (sixty) and 30 (thirty) days before the Interest Conversion Date, until the date the Borrower accepts, deliver to the Borrower a proposal (a “**Conversion Proposal**”) stating:

- (i) the interest rate that would apply to the Tranche, or the part thereof indicated in the Request, being a Fixed Rate pursuant to Article 3.01; and
- (ii) that the Fixed Rate shall apply as from the relevant Interest Conversion Date, interest being payable quarterly, semi-annually or annually in arrears on designated Payment Dates.

The Borrower may accept a Conversion Proposal by 17h00 Luxembourg time on the day of its delivery.

Any amendment to the Contract requested by the Bank in this connection shall be effected by an agreement to be concluded not later than 15 (fifteen) days prior to the relevant Interest Conversion Date.

**C. Effects of Conversion**

To the extent that the Borrower duly accepts a Conversion Proposal, the Borrower shall pay accrued interest on the Interest Conversion Date and thereafter on the designated Payment Dates.

Prior to the Interest Conversion Date, the provisions of the Contract relating to FSFR Tranches shall apply to the entire Tranche. From the Interest Conversion Date, the provisions relating to Fixed-Rate Tranches shall apply to the whole or, as the case may be, the converted part of the Tranche and, in particular, to any prepayment of the converted part that occurs after the Borrower has duly accepted a Conversion Proposal. The previously applicable provisions shall apply to the balance.

**D. Non-fulfilment of Interest Conversion**

If the Borrower accepts the Conversion Proposal for less than the whole Tranche or if the parties fail to effect an amendment requested by the Bank pursuant to Paragraph B, the Borrower shall repay the balance of the Tranche on the Interest Conversion Date.