

Statement by the Principal Deputy High Representative and Brcko Supervisor, Raffi Gregorian at the Press Conference following the meeting of the Peace Implementation Council

Thank you, High Representative. Good afternoon, everyone.

During the High Representative's visit to Brcko last week, I mentioned that I would be making some announcements today related to Supervision of Brcko District.

I regret that continued, serious non-compliance with the Final Award by the SNSD-led government of Republika Srpska has for – the third time in the past 9 months- again made closure of Supervision impossible.

The issue is the RS's continued *refusal* to allow Brcko District to be incorporated into BiH's legal and regulatory framework for electricity and to establish a legal obligation for Elektroprivreda of RS (EPRS), along with Elektroprivreda of Bosnia and Herzegovina (EPBiH), to *supply* electricity to Brcko in accordance with BiH law and EU directives.

BiH and the Entities reformed and then established a state-wide transmission system some six years ago in line with EU requirements and conditions. Unfortunately, Brcko was accidentally excluded from the legal and regulatory framework and remains so today. It has no license to operate or

distribute electricity, and, until the High Representative's decisions of 18 September 2009, no entity elektroprivreda had any legal obligation to supply Brcko electricity as a public service. It was all left to political whim and ad hoc arrangements unenforceable in a court of law.

The SNSD-led RS government is damaging Brcko by refusing either to publish (as required by RS law) the High Representative's 18 September 2009 amendments to the RS electricity law in the Official Gazette, or by adopting acceptable amendments in the RS National Assembly.

The reasons for this are clear from the SNSD's September 2009 plan to split up the state electricity transmission system along entity lines and to lay claim to Brcko's electricity distribution system.

During nearly six months of talks with senior RS officials I have made every possible effort to accommodate even the most inane and unjustified concerns about the legislation. Legislation which, by the way, Federation officials have had absolutely no problem understanding and observing as laid down in the text of the High Representative's decisions.

The talks got consistently held up by the insistence of the RS to include language that would create conditions to lay claim to Brcko District's distribution system, even though the RS acknowledged in a September 2001 signed agreement that the system in Brcko District belongs solely to Brcko.

It is crystal clear that giving the RS control of the Brcko electricity distribution network would be a clear violation of the 1999 Final Award, its Annex, and the 2007 Addendum.

It is also clear to me that deliberately preventing Brcko from being incorporated into the BiH framework constitutes an act of serious non-compliance with the Final Award.

Moreover, the RS's defiance of the High Representative's

authority on this and other matters represents an even deeper concern regarding the SNSD-led government's *a la carte* adherence to the Dayton Peace Accords as a whole, and its frequent mentions of secession and referenda over the past four years.

One of the consequences of the SNSD's serious non-compliance with the Final Award and the HR's decisions is that it has prevented Elektroprivreda Republika Srpska and Elektroprivreda of Bosnia and Herzegovina to agree on a supply arrangement different from the default arrangement in place for this year, an arrangement which could have been to the benefit of all.

In addition, one member of the State Electricity Regulatory Commission (SERC), Mr. Vladimir Dokic, although an official of a state-level institution, governed by state law, claims that he is bound by an RSNA decision to not implement the law which requires the SERC to issue a license to the Brcko District Public Utility Company (PUC) to operate and distribute electricity in Brcko and to set the tariff for the Brcko PUC's own distribution costs. Mr. Dokic is on record as proposing that the Entities, rather than the SERC, set and control the tariffs for Brcko District, which would be a violation of the Final Award and of the Constitution of Bosnia and Herzegovina.

If Mr. Dokic was not illegally blocking the SERC from fulfilling its legally mandated function, then tariffs in Brcko could have been set in a way that buffered price fluctuations throughout the entire year.

Instead, the price paid by the Brcko PUC for electricity will, as of tomorrow, be the same for the next six months as it is in the Federation. These regulated prices are higher than those that were being charged by the EPRS for the first six months of the year. However, unknown to most people, EPRS's prices for the first six months have actually been higher by more than 6% than they were last year. It is only because the Brcko PUC was in a position to absorb this price increase that

consumers haven't noticed.

Unfortunately, the PUC is not able to absorb all of the additional costs for the next six months. My concern is that a sudden rise in prices now could de-rail the District's recovery from the global economic downturn, a price rise brought on by Mr. Dokic's blockage of the SERC and the RS's refusal to make supply of electricity to Brcko District a public obligation required by law and in accordance with EU directives.

The SNSD will respond to all this by saying that the RS has always provided cheap electricity to Brcko, so why the big fuss?

Well, as I already indicated, it's about control of Brcko District, not about price. The previous supply arrangement has relied on political whim rather than on the law, and it has existed in the context of international supervision and OHR. What happens after Supervision and OHR are gone? Are we supposed to trust the SNSD to do what's right when in fact their goal includes taking control of Brcko's distribution network? In such a situation nothing will stop them from raising prices *any time they want to once Supervision ends*. In fact, they signed a contract with Brcko at the end of December, then announced that the prices would rise more than 6%!

This strikes me as the electricity equivalent of a drug-pusher who offers cheap drugs to users until they become addicted.

So, what to do?

First of all, I have signed a Supervisory Order directing the use of funds from Brcko's share of SFRY succession assets to help offset the rise in prices for the next six months. *These funds do not come from the District budget*. The PUC will absorb some of the additional costs, while customers will face an average price increase of only about 5.5%. In other words,

they will have to pay less of a price rise than what the rise in prices from the RS have been for the past six months. And they will pay less than what customers in the Federation pay.

Second, there is no reason why District residents should have to bear the costs for someone else's illegal activity. That is why I expect criminal charges to be brought against Mr. Dokic for blocking the SERC from setting distribution tariffs for Brcko and issuing a license.

Third, under the Final Award and the Annex to Final Award, the Supervisor has the authority to order the entities to make up any short-fall in District finances. As one of the entities bears a clear responsibility for this situation, I am prepared to use this authority once the accounting of the additional costs is finalized.

Lastly, something must be done about the SNSD-led RS government's continued and willful serious non-compliance with the Final Award and its attempts to assert control over Brcko's electricity distribution network.

Despite the frequent statements of SNSD leaders about how much they want the OHR and Supervision to end, they are uniquely responsible for keeping Brcko Supervision open. They prevented closure in November last year. They prevented closure in February of this year, and they prevented a chance to close Supervision today.

Despite their behavior, and although I had no legal or moral obligation to do so, I engaged in nearly six months of talks with the RS to assist them in finding a face-saving way out of the situation they created by their lack of compliance. Instead, they wasted my time.

Two weeks ago, in a "last-ditch" effort to help the RS create the conditions for ending Supervision, I even met with RS PM Dodik to explain what was needed and gave him a final proposal for acceptable amendments. He promised to get back to me the

next day, but he has not done so, even up to this moment. So it is clear the RS has no intention of meeting their remaining obligation under the Final Award any time soon, perhaps preferring to wait for a new Supervisor in order to do what they have been legally obliged to do for more than 10 years. So be it.

The HR has indicated in his reports to the UN Security Council that the RS is in violation of Annexes 2, 4, 9, and 10 of the Dayton Peace Agreement. If they want to act outside the law, then they will have to be treated as outlaws.

Under the Final Award, the Arbitral Tribunal retains jurisdiction over the Brcko dispute until such time as the Supervisor informs the Tribunal that the Final Award is complete. The Tribunal remains as a source for an alternative remedy for the Supervisor in the event of any serious non-compliance by one or the other of the entities. I am therefore announcing today my intention to file a complaint with the Arbitral Tribunal, a complaint which will, regrettably, probably have to fall to my successor to see it through to its successful conclusion.

I end my remarks here and open the floor for questions. Thank you.