

Decision Enacting the Law on Amendments to the Law on Payments into the Single Account and Distribution of Revenues

In the exercise of the powers vested in the High Representative by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter: GFAP), according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement; and considering in particular Article II.1. (d) of the last said Agreement, according to the terms of which the High Representative shall "Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation";

Recalling paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative's intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid "by making binding decisions, as he judges necessary" on certain issues including (under sub-paragraph (c) thereof) "measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities";

Conscious that the responsibility for indirect taxation was transferred to Bosnia and Herzegovina by an agreement signed by the Federation of Bosnia and Herzegovina and Republika Srpska on 5 December 2003, which regulates distribution of competences in that field;

Mindful that the Parliamentary Assembly of Bosnia and Herzegovina enacted the Law on Indirect Taxation System in Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina" 44/03 and 52/04) establishing the institutional and organizational basis for the single indirect taxation system of Bosnia and Herzegovina, including principles of allocating revenues from indirect taxation;

Bearing in mind that the Parliamentary Assembly of Bosnia and Herzegovina enacted the Law on Payments into the Single Account and Distribution of Revenues ("Official Gazette of Bosnia and Herzegovina" 55/04 hereinafter: "Law on Single Account"), which contains the methodology for the allocation and distribution of all indirect tax revenues to the State of Bosnia and Herzegovina, Federation of Bosnia and Herzegovina, Republika Srpska and the Brcko District of Bosnia and Herzegovina (hereinafter: the Brcko District);

Recalling that the Law on Indirect Taxation System provides that the shares of indirect taxation revenues of the Federation of Bosnia and Herzegovina, Republika Srpska and the Brcko District is determined by their share of final consumption as revealed by value added tax returns;

Recalling further that the Law on Single Account provides that these shares shall be based on allocation coefficients to be determined as a relation between final consumption sums indicated in value added tax returns on the territory of the revenue beneficiary in question and final consumption sums indicated in value added tax returns on the territory of Bosnia and Herzegovina, and that it obliges the Governing Board of the Indirect Taxation Authority to issue implementing acts on the calculation of the allocation coefficient;

Regretting, that negotiations and arguments over revenue allocation coefficients among the Institution of Bosnia and Herzegovina, the Entities and Brcko District have consumed an alarming amount of political time and energy, that agreement on allocation coefficients has yet to be reached, and that as a result, the Brcko District has lodged complaints related to the aforesaid dispute before the Arbitral Tribunal for the Dispute Over Inter-Entity Boundary in Brcko Area (hereinafter: the Arbitral Tribunal for Brcko);

Noting the communiqué of the Steering Board of the Peace Implementation Council, issued on 23 June 2006, which emphasized that the BiH authorities should resolve the dispute over revenue allocation as a matter of urgency;

Bearing in mind the communiqué of the Steering Board of the Peace Implementation Council, issued on 7 December 2006, in which the Steering Board expressed its concern that despite its previous urgings for a

satisfactory resolution of the issue of VAT revenue allocation, the Governing Board of the Indirect Taxation Authority has so far failed to identify a way to resolve the matter in a systematic manner;

Deploring that the aforementioned failure of the Governing Board of the Indirect Taxation Authority to reach decisions on the applicable revenue allocation coefficient has effectively blocked the allocation of indirect taxation revenues from the single account on several occasions, thereby jeopardizing fiscal stability of the Brcko District;

Noting that the Law on Indirect Taxation System provides that Brcko District participates in the Governing Board of the Indirect Taxation Authority as an observer without the right to vote;

Recalling that the Final Award of the Arbitral Tribunal for Dispute Over Inter – Entity Boundary in Brcko Area (hereinafter: Final Award), rendered in accordance with GFAP, Annex 2, establishes Brcko District as a financially self-sustainable part of Bosnia and Herzegovina with its own autonomous budget and which recognizes the need for coordination among the governments of BiH, the Entities and the Brcko District on a variety of issues, including questions of sharing expenses and revenues;

Taking into account that the Final Award obliges the Brcko District to incorporate within its budget an estimate of revenues that will be raised within the District and obliges the Federation of Bosnia and Herzegovina and Republika Srpska to respectively finance any short-fall in the Brcko District budget in the proportions of two-thirds and one-third;

Ever mindful that the Steering Board of the Peace Implementation Council, in its Communiqué issued on 27 February 2007, reiterated its urgings for a satisfactory resolution to the issue of VAT revenue allocation and expressed its hope that, through negotiations, and through the adoption of the draft Law on the District of Brcko, together with any related constitutional and legislative provisions, all complaints currently lodged before Arbitral Tribunal Brcko Area would be withdrawn;

Considering, the heightened urgency of resolving the revenue allocation dispute for Brcko District created by the continuing proceedings before Arbitral Tribunal for Brcko, which entered a new phase on 23 April 2007 when the period for written submissions by the parties elapsed;

Convinced, of the need to urgently enact appropriate legislation to resolve the revenue allocation dispute in advance of further proceedings before the Arbitral Tribunal for Brcko to ensure the financial self-sustainability of the Brcko District; and

Having taken into account and considered the totality of all matters aforesaid, the High Representative hereby issues the following:

DECISION

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(Official Gazette of Bosnia and Herzegovina 55/04)

which is hereby attached as an integral part of this Decision.

The said Law shall enter into force as a law of the Bosnia and Herzegovina, with effect from the date provided for in Article 5 thereof, on an interim basis, until such time as the Parliamentary Assembly of Bosnia and Herzegovina adopts this Law in due form, without amendment and with no conditions attached.

With respect to Article 25, paragraph 4 of the Law on Indirect Taxation System in Bosnia and Herzegovina, the required approval by the Board shall be deemed to have been granted.

This Decision shall come into force forthwith and shall be published without delay in the “Official Gazette of Bosnia and Herzegovina”.

Sarajevo, 4 May 2007

Dr. Christian Schwarz-Schilling
High Representative

**Law on Amendments to the Law on Payments
into the Single Account and Distribution of Revenues**

Article 1

In Article 9, paragraph 2, the words "the Entities" shall be deleted and after the words "hereinafter:" the word " the District's" shall be inserted and the said paragraph shall read as follows:

"Revenue available to the District means any available amount after deduction of the amount for financing the Institutions of Bosnia and Herzegovina (hereinafter: the District's Remaining Amount)."

Article 2

In Article 9, following paragraph 2, a new paragraph shall be inserted and read as follows:

"Revenue available to the Entities means any available amount following the deduction of the amount for financing the Institutions of Bosnia and Herzegovina and the amount for the District (hereinafter: the Entities' Remaining Amount)."

The current paragraphs 3, 4 and 5 shall become paragraphs 4, 5 and 6.

Article 3

In Article 11, paragraph 1, the words "Items i), ii) and iii)" shall be deleted and replaced by "Items i), ii) iii) and iv)".

In paragraph 2 of the same Article, the words "12 and 13" shall be deleted and replaced by "12, 13, 13a and 13b".

Article 4

Article 13 shall be deleted and the new articles 13, 13a and 13b, shall be inserted to read as follows:

"Article 13

(1) The District's share in the District's Remaining Amount shall be determined by applying the coefficient in the manner specified by paragraphs 2-7 of this Article (hereinafter: the District's Allocation Coefficient).

(2) The District's Allocation Coefficient for 2007 shall be 3.55%.

(3) For each year following 2007, the District's Allocation Coefficient shall be calculated, in accordance with paragraphs 3-7 of this Article, on the basis of the data on registered persons in the District and in BiH, as maintained by the BiH Ministry of Civil Affairs' Register of Personal Identification Numbers, (hereinafter: the CIPS Data), which the BiH Ministry of Civil Affairs shall provide to Macroeconomic Analysis Unit of the ITA Governing

Board (hereinafter: the MAU) by no later than the last working day in December for each year after 2007.

(4) The District's coefficient for each year following 2007 shall be determined on the basis of the District's share in CIPS data on persons registered in BiH after the aforesaid share is increased by 29.3%, (hereinafter: the District's Adjusted Share).

(5) The District's Adjusted Share shall be divided by the number of registered persons in BiH on the basis of CIPS data, (hereinafter: the District's Corrected Share).

(6) If the District's Corrected Share is lower than the allocation coefficient specified in paragraph 2 of this Article, then the District's Allocation Coefficient for the following year shall be 3.55%.

(7) If the District's Corrected Share is higher than the allocation coefficient specified in paragraph 2 of this Article, then the District's Corrected Share shall represent the District's Allocation Coefficient for the following year.

Article 13a

(1) Notwithstanding the provisions of Article 13 of this law, for the years 2007 through 2011, the total amount of distributed revenues for each year to the District shall not be less than 124 million KM.

(2) On the first working day following the 20th of December each year, the Authority shall deliver to the MAU all data on the amount of distributed revenues, which shall be current for the aforesaid date.

(3) If the amount of distributed revenue to the District for the current year, based on MAU estimates pursuant to paragraph 2 of this Article, is less than 124 million KM, the shortfall in the amount of distributed revenues to the District shall be compensated from the Entities' Remaining Amount by the Federation and Republika Srpska respectively in the proportion of two-thirds and one-third.

(4) No later than three working days following the 20th of December of each year, the Authority shall notify Entities of the shortfall in distributed revenues referred to in paragraph 3 of this Article, and the amounts which shall be deducted from the Entities Remaining Amount.

(5) On the last working day of each year, the Authority shall provide to the MAU all data on the total distributed revenues to the District for the current year. The Authority shall rectify any excess in the amount of distributed revenues to the District made pursuant to paragraph 3 of this Article.

Article 13b

(1) The Entities' shares in the Entities' Remaining Amount shall be calculated as the Remaining Amount multiplied by a certain coefficient (hereinafter: the Entities' Allocation Coefficient).

(2) The Entities' Allocation Coefficient shall be determined as a relation between final consumption sums indicated in value added tax returns for goods and services on the territory of the revenue beneficiary in question and final consumption sums indicated in value added tax returns on the territory of Bosnia and Herzegovina entered into Authority records for the same period. Information on final consumption shall be entered into the Authority records on the basis of tax returns for the tax for which the taxpayer is not eligible to reimbursement, separately for each value added tax rate.

(3) The final consumption as revealed from value added tax returns referred to in paragraph 2 of this Article shall be defined as the value added tax for which the taxpayer is not eligible for reimbursement.

(4) The Governing Board shall issue implementing acts on the calculation of Entities' Allocation Coefficient."

Article 5

This Law shall enter into force upon publication in the Official Gazette of Bosnia and Herzegovina or on June 1, 2007, whichever is later.