

Directive Reallocating Budgetary Itemisations Intended to Fund the SDS

n. 220/04

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, 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 the Peace Agreement throughout Bosnia and Herzegovina and its Entities which “may include actions against persons holding public office or officials...who are found by the High Representative to be in violation of legal commitments made under the Peace Agreement or the terms for its implementation”;

Mindful of the fact that the peace implementation process requires to be completed in order that a stable political and security environment in Bosnia and Herzegovina is established which is conducive, *inter alia*, to fundamental reform;

Conscious of the need to prevent the funding of activities which are or which threaten to be obstructive of the peace implementation process as pursued under the aegis of the General Framework Agreement for Peace in Bosnia and Herzegovina;

Noting that the Election Law of Bosnia and Herzegovina requires the presidents of political parties to state that the activities of the political party in question comply with the General Framework Agreement for Peace in Bosnia and Herzegovina;

Recalling that under Article II, Paragraph 8 of the Constitution of Bosnia and Herzegovina, all competent authorities in Bosnia and Herzegovina shall cooperate with and provide unrestricted access to the International Tribunal for the Former Yugoslavia (ICTY) and shall in particular comply with orders issued pursuant to Article 29 of the Statute of the Tribunal;

Recalling further all relevant resolutions of the Security Council of the United Nations and in particular Resolution 1503 of 28 August 2003 and Resolution 1534 of 26 March 2004 by which the Security Council called upon all States, especially Serbia and Montenegro, Croatia and Bosnia and Herzegovina, and on the Republika Srpska within Bosnia and Herzegovina, to intensify cooperation with and render all necessary assistance to the ICTY, particularly to bring Radovan Karadžić and Ratko Mladic, [...] and all other indictees to the ICTY;

Regretting that a number of persons indicted under Article 19 of the Statute of the International Criminal Tribunal for the Former Yugoslavia have been able, prior to the date hereof, to

elude just prosecution, and that such eluding of just prosecution cannot have occurred without the assistance of other individuals and entities, whereby the implementation of the General Framework Agreement for Peace in Bosnia and Herzegovina has been obstructed;

Noting that there is evidence, including a letter from Radovan Karadzic, a person indicted under Article 19 of the Statute of the International Criminal Tribunal for former Yugoslavia who has been able, prior to the date hereof, to elude just prosecution, that the said individual was in regular contact with and has received assistance from the SDS;

Bearing in mind the fact that several members of the SDS were removed by the High Representative for their involvement in activities inimical to the stability of Bosnia and Herzegovina and the rule of law, some of which, directly or indirectly, provided and provide material support and sustenance to an individual indicted under Article 19 of the aforesaid, namely Dr Radovan Karadžić;

Mindful that the said individual was the founder of the SDS and that the SDS has a special responsibility to break its links with the past, to cooperate fully with the ICTY, and to assist in the detention and transfer of that and other indictees to The Hague;

Recalling that the Directive Suspending All Disbursements of Budgetary Itemisations for Party Funding to the Srpska Demokratska Stranka (hereinafter the SDS) and Ordering the SDS to Submit a Financial Plan for the Period from 1 January 2003 until 31 March 2004 remains in force;

Noting that the sums frozen at municipal, city, entity and state level according to the aforesaid Directive remain the property of the taxpayers of Bosnia and Herzegovina and should be put to work for their benefit;

Mindful of the Financial Report of 19 April 2004 submitted by

the SDS pursuant to the said Directive of the High Representative and the report of the Special Auditor for Republika Srpska (hereinafter: the Special Auditor) on the said Financial Report released on 24 June 2004.

Distressed by the fact that the said Financial Report contains evidence of a disturbing pattern of serious violations of the Law on Party Financing of Bosnia and Herzegovina;

Recalling that the aforementioned Financial Report shows that no sufficient safeguards are in place against SDS funds being used to assist persons indicted under Article 19 of the Statute of the International Criminal Tribunal for former Yugoslavia, such as Radovan Karadzic, and their support structure;

Ever conscious of the need to balance in due proportion the public good with the rights of individuals;

Noting that Bosnia and Herzegovina's failure to meet its international obligations towards the International Criminal Tribunal for Former Yugoslavia increasingly constitutes an obstacle to Bosnia and Herzegovina's integration into Europe and that this failure is largely attributable to failures on the part of the Entity of Republika Srpska;

Further noting, by way of illustration, the Istanbul Summit Communiqué issued on 28 June 2004 by which the Heads of State and Government participating in the meeting of the North Atlantic Council expressed their concerns that Bosnia and Herzegovina, particularly obstructionist elements in the Republika Srpska entity, has failed to live up to its obligation to cooperate fully with ICTY, including the arrest and transfer to the jurisdiction of the Tribunal of war crimes indictees, a fundamental requirement for the country to join Partnership for Peace.

Recalling that the Steering Board of the Peace Implementation Council, at its meeting held in Sarajevo on 25 June 2004,

noted that Republika Srpska has failed to locate or apprehend even one war-crimes indictee in the nine years since the Dayton Accord and reminded that Republika Srpska an Entity of Bosnia and Herzegovina guaranteed under Dayton, is failing to carry out a key obligation under Dayton and international law, for which the relevant individuals and institutions must be held accountable.

Having considered, borne in mind and noted all the matters aforesaid, the High Representative hereby issues the following:

DIRECTIVE

Reallocating Budgetary Itemisations Intended to Fund the SDS

Article 1

All disbursements of budgetary itemisations intended for political party funding to the SDS during fiscal year 2004 in the Parliamentary Assembly of Bosnia and Herzegovina, the National Assembly of Republika Srpska, and the city and municipal assemblies in Republika Srpska suspended according to Decision 202/04 of 2 April 2004 shall be reallocated to the Budget of the Institutions of Bosnia and Herzegovina.

Article 2

The sums re-allocated pursuant to Article 1 of this Directive shall be transferred to the following budget beneficiaries:

1. One-third of the total disbursements re-allocated pursuant to Article 1 of this Directive shall be paid to State Information and Protection Agency (SIPA);
2. One-third of the total disbursements re-allocated pursuant to Article 1 of this Directive shall be paid to the War Crimes Chamber of the Court of Bosnia and Herzegovina.
3. One-third of the total disbursements re-allocated

pursuant to Article 1 of this Directive shall be paid to the BiH Election Commission.

Article 3

The sums referred to in Article 1 of this Directive shall be re-allocated to each of the aforementioned budget beneficiary on a monthly basis until Radovan Karadžić has been apprehended or has surrendered to the ICTY and the SDS has used its full influence to ensure that Republika Srpska is in full compliance with Bosnia and Herzegovina's international obligations to cooperate with the ICTY.

All budgetary itemisations due for payment to the SDS in the Parliamentary Assembly of Bosnia and Herzegovina, the National Assembly of Republika Srpska, and the city and municipal assemblies in Republika Srpska for the fiscal year 2005 and for the subsequent fiscal years shall be reallocated on the same basis until Radovan Karadžić has been apprehended or has surrendered to the ICTY and the SDS has used its full influence to ensure that Republika Srpska is in full compliance with Bosnia and Herzegovina's international obligations to cooperate with the ICTY or until the High Representative decides otherwise.

Article 4

The Minister of Finance and Treasury of Bosnia and Herzegovina or any other persons who may be acting on behalf of the aforesaid person are hereby directed to implement this Directive to the extent it applies to them and, in particular,

1. To determine the amounts of disbursement suspended by virtue of Decision 202/04 of 2 April 2004 and available for reallocation from the budget of the Parliamentary Assembly of BiH;
2. To secure and transmit according to Articles 1-3 of this Directive the funds referred to in the previous paragraph;

3. To furnish, no later than three (3) working days from the date of the signing of this Directive, evidence, in the form of a written undertaking to the Office of the High Representative, that Articles 1-3 of this Directive are being executed;
4. To ensure that the funds transferred to the Budget of the Institutions of Bosnia and Herzegovina are allocated to the budget beneficiaries provided for under Article 2 of this Directive.

The Minister of Finance and Treasury of Bosnia and Herzegovina shall be held accountable for the orderly execution of this Directive.

Article 5

At the level of Republika Srpska, the Minister of Finance or any other persons who may be acting on behalf of the aforesaid person are hereby directed to implement this Directive to the extent it applies to them and, in particular,

1. To determine the amounts of disbursement suspended by virtue of Decision 202/04 of 2 April 2004 and available for reallocation from the budgets of the RSNA and the municipalities and cities of Republika Srpska;
2. To secure and transmit according to Articles 1-3 the funds referred to in the previous paragraph.
3. To furnish, no later than five (5) working days from the date of the signing of this Directive, evidence, in the form of a written undertaking to the Office of the High Representative, that this Directive is being executed.

The Minister of Finance shall be held accountable for the orderly execution of this Directive, including the coordination of compliance by all cities and municipalities of Republika Srpska.

Article 6

This Directive does not require further procedural steps to be taken and shall supersede any regulation or law which may be in contradiction with it. This Directive in no way releases the SDS of its obligations under the Election Law of Bosnia and Herzegovina or the Law on Party Financing of Bosnia and Herzegovina.

Article 7

For the avoidance of doubt, it is hereby specifically declared and provided that the provisions of the Directive contained herein are, as to each and every one of them, laid down by the High Representative pursuant to his international mandate and are not, therefore, justiciable by the Courts of Bosnia and Herzegovina or its Entities or elsewhere, and no proceedings may be brought in respect of duties carried out as a consequence before any court whatsoever at any time hereafter.

Article 8

This Directive shall enter into force forthwith and shall be immediately published on the official website of the Office of the High Representative and shall be published without delay in the Official Gazettes of Bosnia and Herzegovina and Republika Srpska.

Sarajevo, 30 June 2004

Paddy Ashdown
High Representative