

Directive Superseding the High Representative's Directive Reallocating Budgetary Itemisations Intended to Fund the SDS, no. 220/04 of 30 June 2004

n. 383/05

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;

Noting that the Election Law of Bosnia and Herzegovina and the Law on Party Financing of Bosnia and Herzegovina introduced procedures to increase transparency in the funding of political parties with a view to arrest and reverse ingrained corruption in Bosnia and Herzegovina that undermines democratic governance, wastes public resources and hinders the development of a market economy;

Bearing in mind the fact that several members of the Srpska Demokratska Stranka (hereinafter: 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 provide material support and sustenance to an individual indicted under Article 19 of the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), namely Mr. Radovan Karadžić;

Recalling the High Representative’s Decision Suspending All Disbursements of Budgetary Itemisations for Party Funding to the SDS and Ordering the SDS to submit a Financial Plan for the period from 1 January 2003 until 31 March 2004, number 202/04 of 2 April 2004, which, *inter alia*, suspended all disbursements of budgetary itemisations for political party funding to the SDS in the Parliamentary Assembly of Bosnia and Herzegovina, the National Assembly of Republika Srpska, City

and Municipal Assemblies until such time as the High Representative provides otherwise;

Recalling further the High Representative's Directive Reallocating Budgetary Itemisations Intended to Fund the SDS, number 220/04 of 30 June 2004, which reallocates 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 2004, and for the subsequent fiscal years, to the institutions of Bosnia and Herzegovina for payment, in equal parts, to the State Information and Protection Agency (SIPA), the War Crimes Chamber of the Court of Bosnia and Herzegovina and the BiH Election Commission;

Noting that the aforementioned High Representative's Decision of 30 June 2004 prescribes that said directive shall remain in effect "... 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";

Recalling the High Representative's Decision number 376/05 of 22 September 2005, Extending the effects of the High Representative's Decision Blocking All Bank Accounts Held by and/or in the Name of SDS and Requiring the SDS to Establish One Bank Account, number 221/04 of 30 June 2004, whereby SDS and all subdivisions thereof were proscribed from holding, receiving or otherwise obtaining any funds covered by the Law on Party Financing, except by means of a financial transaction conducted through the single account established pursuant to the aforesaid Decision (hereinafter Single Account);

Acknowledging the ongoing efforts of the SDS to meet its special responsibility to break its links with indicted war criminals and other persons who directly or indirectly provide

material support and sustenance to Radovan Karadžić, including through the introduction into the SDS Statute of financial controls to safeguard against SDS funds being used to assist persons indicted under Article 19 of ICTY Statute and their support structure, and which, *inter alia*, increases financial transparency through monthly audits of the aforementioned Single Account;

Considering the findings of the Report of the Tax Administration of the Ministry of Finance of the Republika Srpska of 4 October 2005 (no. 01/0101/014-126/05), which indicate that the SDS offices in Pale and Sokolac are conducting their financial affairs in accordance with the law;

Conscious of the significant progress made by the SDS towards exercising its full influence to ensure that Republika Srpska is in full compliance with Bosnia and Herzegovina's international obligations to cooperate with the ICTY, which include, *inter alia*, the apprehension and transfer to the ICTY of twelve (12) further indictees since 30 June 2004;

Mindful that, despite the aforementioned progress Radovan Karadžić has neither been apprehended nor has surrendered himself to the ICTY and therefore requires of the SDS their continued commitment to ensure transparency in the conduct of its financial operations, and their continued cooperation with the ICTY, including on the apprehension and transfer of persons indicted under Article 19 of the ICTY Statute;

Ever Conscious of the continuing need for safeguards against the funding of activities that are or that 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;

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

DIRECTIVE

Superseding the High Representative's Directive Reallocating Budgetary Itemisations Intended to Fund the SDS, no. 220/04 of 30 June 2004

Article 1

The High Representative's *Decision Suspending All Disbursements of Budgetary Itemisations for Party Funding to the SDS and Ordering the SDS to Submit a Financial Plan for the Period from 1 January 2003 until 31 March 2004*, with an effective date of 1 October 2005, is herewith repealed.

Article 2

The High Representative's Decision number 376/05 of 22 September 2005, *Extending the effects of the High Representative's Decision Blocking All Bank Accounts Held by and/or in the Name of SDS and Requiring the SDS to Establish One Bank Account*, number 221/04 of 30 June 2004, effective 1 November 2005, is herewith repealed.

Article 5 of the High Representative's Decision number 221/04 of 30 June 2004 *Blocking All Bank Accounts Held by and/or in the Name of SDS and Requiring the SDS to Establish One Bank Account*, which requires all transactions in excess of 150 KM by or on behalf of the SDS to be conducted through the Single Account, is herewith deleted.

Notwithstanding the deletion of Article 5 pursuant to the previous paragraph of this Article, Decision 221/04 aforementioned remains in effect in all other respects.

Article 3

Effective 1 October 2005, the provisions of this Directive shall supersede the High Representative's *Directive Reallocating Budgetary Itemisations Intended to Fund the SDS*, number 220/04, (Official Gazette" of Bosnia and Herzegovina,

36/04, "Official Gazette" of the Republika Srpska 62/04).

Article 4

All disbursements of budgetary itemisations intended for political party funding to the SDS that have accrued between 1 January and 31 September during the 2005 fiscal year in the Parliamentary Assembly of Bosnia and Herzegovina, the National Assembly of Republika Srpska, and the city and municipal assemblies in Republika Srpska, which were suspended according to Decision 202/04 of 2 April 2004 but not yet disbursed in accordance with the Decision number 220/04, shall be maintained in a separate account until 31 December 2005 and shall be disbursed only in accordance with the provisions of this Directive.

Article 5

If Radovan Karadžić is apprehended or surrenders to the ICTY on or before 31 December 2005 and the SDS has exercised its full influence to ensure that Republika Srpska is in full compliance with Bosnia and Herzegovina's international obligations to cooperate with the ICTY, on 1 January 2006 the sums referred to in Article 3 of this Directive shall be disbursed to the SDS.

Article 6

If Radovan Karadžić is not apprehended or does not surrender to the ICTY on or before 31 December 2005, or if the SDS has not exercised its full influence to ensure that Republika Srpska is in full compliance with Bosnia and Herzegovina's international obligations to cooperate with the ICTY, on 1 January 2006 the sums referred to in Article 4 of this Directive shall be re-allocated to the Budget of the Institutions of Bosnia and Herzegovina and transferred to the budget beneficiaries in accordance with Article 7 of this Directive.

Article 7

The sums re-allocated pursuant to Article 6 of this Directive shall be transferred to the following budget beneficiaries:

1. One-third of the total disbursements re-allocated pursuant to Article 6 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 6 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 6 of this Directive shall be paid to the BiH Election Commission.

Article 8

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 disbursements suspended by virtue of Decision 220/04 of 30 June 2004 and available for disbursement in accordance with Article 4-7 of this Directive;
2. To secure and transmit all funds in accordance with Articles 4-7 of this Directive;
3. To furnish, no later than three (3) working days from the date of the signing of this Directive, a written accounting to the Office of the High Representative of all sums referred to in Article 3 of this Directive;
4. To furnish, no later than 31 January 2006, a written accounting of all disbursements made in accordance with this Directive; including such evidence of funds that are transferred to either the SDS or the budget beneficiaries within the Budget of the Institutions of

Bosnia and Herzegovina.

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

Article 9

The SDS is hereby ordered to file a Financial Report each month in accordance with Article 10 of this Directive until the expiration of the mandate of the High Representative or until such time as the High Representative decides otherwise.

Each report shall be filed with the Election Commission of Bosnia and Herzegovina, the Indirect Tax Administration of Bosnia and Herzegovina and the Tax Administration of the Ministry of Finance of the Republika Srpska and shall be copied to the Office of the High Representative, no later than the fifth day of each month for the previous month.

Article 10

The Financial Report shall comprise the following data:

1. General data on the SDS, including the title of the political party's organizational structure as registered with the competent court, registered abbreviation, seat, address, telephone, fax, e-mail address, identification number, name of the court where registered, total number of employees;
2. Name, surname and address of the person or persons authorized to legally represent SDS, including the position of the said person or persons in the SDS;
3. Name and surname of the person or persons, from SDS, authorized to sign transfers from the Single Account to vendor accounts, to receive and dispose of SDS funds from the SDS single account, and to conduct any other financial transaction;
4. All income of the SDS, including details of the specific

sources and amounts of said income, and including details of each contribution made by physical and legal persons;

5. All expenditures of the SDS including, including but not limited to, overhead and operating expenses, marketing expenses, and expenses for salaries of its employees.

All financial reports shall include evidence of each financial transaction relating to income and expenditures referred to in items 4 and 5 of Paragraph 1 of this Article.

Article 11

Recipients of the financial report referred to in Article 10 of this decision shall, within their individual competence, jointly conduct regular checks as to the completeness and accuracy of the aforesaid financial reports, which shall be submitted to the competent authority and copied to Office of the High Representative.

Article 12

The President of the SDS shall sign the Financial Report submitted in accordance with Article 9 of this Decision and shall be held accountable for the accuracy of data presented therein.

Article 13

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 14

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 15

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.

Sarajevo, 28 October 2005

Paddy Ashdown High Representative