Decision Enacting the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina

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 implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities";

Recalling furtherthatthe Declaration of the Peace Implementation Council Steering Board adopted at the level of

Political Directors in Sarajevo on 24 September 2004 called for a “lasting solution” to “the issue of State Property”;

Noting that pursuant to the aforesaid, a Commissionfor State Property, for the Identification and Distribution of State Property, the Specification of Rights and Obligations of Bosnia and Herzegovina, the Entities and the Brcko District of Bosnia-Herzegovina in the Management of State Property (hereinafter: Commission), comprised of expert representatives from both Entities of Bosnia and Herzegovina, the Brcko District of Bosnia and Herzegovina and institutions of Bosnia and Herzegovina, was formed in December 2004 by a Decision of the Council of Ministers of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina no. 10/05, hereinafter: “the Commission”);

Bearing in mind that pursuant to Article 1 of the aforesaid Decision the Commission is tasked to propose draft laws on ownership rights and management of State Property;

Considering that the Commission, according to Article 3 of the aforementioned Decision of the Council of Ministers of Bosnia and Herzegovina, was tasked, among other things, with preparing “criteria to be used in order to identify which property is owned by Bosnia and Herzegovina, the Entities and Brcko District” and “draft legislation to be adopted, which ensures implementation of identified criteria”;

Further notingthat, according to Article 10 of the Decision of the Council of Ministers, the Commission is obliged to, “by 30 May 2005, prepare a final report on the work performed for the Chairman of the Council of Ministers and/or offer the relevant draft legislation within the same timeframe”; and

Recognizing that effective measures to protect to the interests of Bosnia and Herzegovina, and its sub-divisions, from the potential prejudice posed by further disposal of State Property prior to the enactment of appropriate

legislation, based on the aforementioned Commission's recommendation, which, on the basis of Constitutional competences, will enable the authorities to dispose of or otherwise allocate State Property in a manner that is non-discriminatory and in the best interests of the citizens, do not now exist throughout Bosnia and Herzegovina;

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

DECISION

Enacting the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina

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

The said Law shall enter into force as a law of Bosnia and Herzegovina , with immediate effect, 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.

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

Sarajevo, 18 March 2005

Paddy Ashdown
High Representative

Law on the Temporary Prohibition of Disposal of State Property

of Bosnia and Herzegovina

Article 1

This Law prohibits the disposal of State Property.

For the purpose of this Law, State Property is considered to be:

1. Immovable property, which belongs to the state of Bosnia and Herzegovina (as an internationally recognized state) pursuant to the international Agreement on Succession Issues signed on 29 June 2001 by the states of Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Slovenia and the Federal Republic of Yugoslavia which, on the day of adoption of this Law, is considered to be owned or possessed by Bosnia and Herzegovina or other public organizations of Bosnia and Herzegovina; and
2. Immovable property for which the right of disposal and management belonged to the former Socialist Republic of Bosnia and Herzegovina before 31 December 1991, which on the day of adoption of this Law is considered to be owned or possessed by Bosnia and Herzegovina , or public organization or body of Bosnia and Herzegovina and any of its subdivisions.

For the purpose of this Law, disposal of the aforementioned property shall mean the direct or indirect transfer of ownership.

Article 2

Notwithstanding the provisions of any other law or regulation, State Property may be disposed of only in accordance with the provisions of this Law.

Any decision, act, contract, or other legal instrument, disposing of property referred to in Article 1 of this Law

concluded contrary to provisions of this Law, after its entry into force, shall be null and void.

Article 3

Assets and rights of enterprises, registered as such, which are subject to privatization pursuant to the Framework Law on Privatization of Enterprises and Banks in Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina no. 14/98 and 14/00), and applicable regulations thereunder, shall be exempt from the prohibition under this Law.

Additionally, the State Property Commission established by the Decision of the Council of Ministers of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina ", No. 10/05, hereinafter: "the Commission") may, upon the proposal of an interested party, decide to exempt certain State Property from the prohibition imposed by this Law.

Article 4

The temporary prohibition on the disposal of State Property in accordance with this Law shall be in force until entry into force of the law regulating implementation of criteria to be used for identification of property owned by Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska and Brcko District of Bosnia and Herzegovina, and specifying the rights of ownership and management of State Property, which shall be enacted upon the recommendations of the Commission but not later than one year from the day of the entry into force of this Law.

Article 5

This Law shall enter into force forthwith and shall be published without delay in the "Official Gazette of Bosnia and Herzegovina ".