

Decision on temporary suspension of right to challenge Banking Agency anti-terrorism orders before the courts

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";

Mindful of the fact that the peace implementation process, which continues to be pursued under the aegis of the General Framework Agreement for Peace in Bosnia and Herzegovina, is not yet complete;

Further 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 economic reform and to the return of refugees and displaced persons;

Considering that the business environment and the peace implementation process require a sound and reliable banking system where banks are subject to strict rules inter alia with respect not only to fighting against terrorism but also in respect of those individuals who, or legal persons or bodies which, obstruct or threaten to obstruct or pose a significant risk of actively obstructing the implementation of the peace process; or who or which materially assist in, sponsor, or provide financial or technological support for, or goods and services in support of, such obstructionism; or which are owned or controlled by, or act or purport to act directly or indirectly for or on behalf of, any of the foregoing.

Noting Articles 4 (h) and (i) of the *Law on the Banking Agency of Republika Srpska* and Articles 4(g) and (h) of the *Law on the Banking Agency of the Federation of Bosnia and Herzegovina*, which provide for the blocking by the Entity Banking Agencies of customer accounts and the transfer of the amount of funds contained therein to the Central Bank of Bosnia and Herzegovina in order to prevent the funding of activities which are, or which threaten to be obstructive of the peace implementation process;

Considering that the Central Bank of Bosnia and Herzegovina requires to be provided with clear authority to assist in actions designed to cut off sources of financial support for activity which is supportive of terrorism or obstructive of the peace implementation process;

Concluding that for a period of six months the fight against terrorism, which is in itself a fight which has to be engaged in order to enable the peace implementation process to be pursued, and the fight against acts obstructing the implementation of the General Framework Agreement for Peace in Bosnia and Herzegovina, require the taking of firm and resolute but fair measures proportionate to the threat of terrorism and of obstruction of the peace implementation process, whilst remaining fully respectful of the European Convention on Human Rights, and in particular Article 1 of Protocol 1 thereof.

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

DECISION

Declaring and ordering the temporary suspension for a period of six months of any right to challenge, before the

courts of Bosnia and Herzegovina (including the District of Brcko) and its Entities or otherwise, orders issued to Banks by the Banking Agencies of Republika Srpska and of the Federation of Bosnia and Herzegovina blocking and making further provision as to the accounts of account holders under the relevant provisions concerning the fight against terrorism and against obstruction of the peace implementation process of Article 4 of the Banking Agency Laws of each said Entity respectively, namely Article 4, items h through m of the *Law on the Banking Agency of Republika Srpska* and Article 4, items g through l of the *Law on the Banking Agency of the Federation of Bosnia and Herzegovina*. (Official Gazette of Republika Srpska No. 10/98; 16/00; 18/01; 71/02 and as further amended by the Decision taken on the date hereof; Official Gazette of the Federation of Bosnia and Herzegovina No. 9/96; 27/98; 20/00; 45/00; 58/02 and as further amended by the Decision taken on the date hereof).

The High Representative will review the necessity to continue or lift the said temporary suspension, which suspension will otherwise expire, if no further action is taken, on 7 September 2003.

For the avoidance of doubt this Decision does not apply to blocking orders issued by the High Representative himself pursuant to his powers under the said Annex 10, which are, by reason of that fact, not justiciable or reviewable by or before the courts of Bosnia and Herzegovina and its Entities or elsewhere.

This Decision shall come into effect forthwith and shall be published without delay in the Official Gazettes of Bosnia and Herzegovina.

Sarajevo, 7 March 2003

Paddy Ashdown
High Representative