Decision appointing a Provisional Administrator for the Hercegovacka Banka

In the exercise of the powers vested in me 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 Representativeąs 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";

Observing the importance which the international community has attributed to the proper running of the banking system of Bosnia and Herzegovina as part of the peace implementation process;

Noting by way of example of the said attribution, the welcome

given by the Peace Implementation Council at the Conference held at London on 4-5 December 1996 to the commitment of the authorities in Bosnia and Herzegovina to pass laws on fields including banking; further noting paragraph 44. a) of the Declaration of the Ministerial Meeting of the Steering Board of the said Council held at Luxembourg on 9 June 1998 in which the Board observed that new banking legislation should be adopted in both Entities; still further noting the call to the authorities in Bosnia and Herzegovina made by the said Council, at its meeting in Brussels on 23-24 May 2000, for the said authorities to harmonize country-wide their approach in a number of areas including banking;

Considering the repeated and deep concern expressed by the international community, inter alia through the Declaration of the said Council at its said meeting in Brussels on 23-24 May 2000, over ingrained corruption in Bosnia and Herzegovina which apart from hindering the development of the market economy undermines democratic governance and wastes public resources;

Recalling that the Peace Implementation Council, at its said meeting in Brussels on 23-24 May 2000, urged the High Representative to use his authority in accordance with his mandate to ensure full and accelerated implementation in all sectors of civilian implementation, including removing obstacles that stand in the way of economic reform.

Recalling the abhorrence which the international community has clearly expressed in the past for illegal parallel structures within the Federation of Bosnia and Herzegovina;

Observing by way of example of such abhorrence that the Peace Implementation Council at the said Conference held at London on 4-5 December 1996 reaffirmed that all administrative and other structures in the Federation had to be fully and irreversibly integrated; in addition the Communique of the Steering Board of the said Council meeting at Sintra on 30 May

1997 stated that “Unilateral actions, such as maintaining administrative or other bodies that are unconstitutional, will not be tolerated”; and that the said Council later stated at the said Conference held at Bonn on 9-10 December 1997 that remaining parallel and para-constitutional structures in the territory of the Federation were illegal and had to be dissolved and that “The authorities in the Federation should publicly announce that all these former institutions have stopped functioning. The bank accounts of such structures must be closed”; further observing that in its Declaration following the meeting of the said Council held at Madrid on 15-16 December 1998, it was stated that the entrenchment of the rule of law would be achieved inter alia by ending parallel institutions and that the Council supported work to end the continued existence of parallel budgets in some Cantonal police forces, and that the said Declaration reiterated that remaining parallel and para-constitutional structures in the territory of the Federation were illegal and had to be dismantled immediately; and observing finally that in the Presidential Statement on Bosnia and Herzegovina read out by the President of the United Nations Security Council during the Security Council meeting held at New York on 23 March 2001 it was stated that “The Security Council condemns recent unilateral moves by the so-called Croat National Congress to establish Croat self-rule in open contradiction of the provisions of the Peace Agreement”;

Deeply concerned at information that there are approximately fifty sub-accounts held by the HVO in the Hercegovacka Banka (whose principal registered office is situated at Mostar) into which, records show, that large deposits have been made, but do not reveal where the monies so deposited are now held, nor how they came to be withdrawn or otherwise disbursed from such sub-accounts;

Deeply concerned likewise at information that the said Hercegovacka Banka has a substantial investment in a firm

known as Croherc AG which in turn owns part of a firm known as Primus AD Mostar which in turn has an ownership interest in the said Hercegovacka Banka so that the question as to the actual ownership of the said Hercegovacka Banka is unclear, whereby concerns are raised as to lack of transparency in a field where transparency is vital in the general public interest;

Convinced that in the interests of public confidence in the credibility of the banking system of Bosnia and Herzegovina in general and of the Hercegovacka Banka in particular, of the need to ensure that bank accounts are not hidden from normal accounting processes, of the need to ensure that damage is not occasioned to the Federation budget, of the need to ensure that all monies which should be accounted for to the Federation authorities concerned are properly and fully accounted for, of the need to ensure that the interests of bona fide bank depositors are not endangered, of the need to ensure transparency in public and banking affairs, of the need to promote reliance upon and trust in the basic principles of democracy, of the need to resist the setting up and/or revival of illegal parallel structures and/or of the illegal financing of legal or physical persons or bodies within Bosnia and Herzegovina, it has become necessary for the affairs of the said Hercegovacka Banka to be subjected to the most thorough administration.

Having taken into account and considered the totality of the matters aforesaid I hereby make and require to have issued the following:

DECISION

To appoint a Provisional Administrator for the Hercegovacka Banka

1. As from 6 April 2001 Ms Toby Robinson is appointed Provisional Administrator of the said Hercegovacka Banka.

2. The said appointment is made under and by virtue of the powers vested in the High Representative pursuant to the General Framework Agreement for Peace in Bosnia and Herzegovina. For the avoidance of doubt it is hereby declared that the said appointment is made, any internal laws and regulations notwithstanding.

3. The Provisional Administrator shall be assisted by specialist teams authorized by the Provisional Administrator to work under her orders, and each member of such team shall be provided with a letter in proof of such authorization and of the identity of the bearer thereof.

4. The Provisional Administrator and all those authorized to work under her shall have unrestricted access to the premises of the said Hercegovacka Banka and each and every one of its offices and subsidiaries, and shall have control over all the financial assets, offices, books of account and other records and documents, electronic equipment, electronic and hardcopy files and all other assets of the bank, including its subsidiaries. Such control shall include control over the reserve held on behalf of the Hercegovacka Banka in the Central Bank of Bosnia and Herzegovina.

5. The Provisional Administrator, assisted by all those authorized to work under her, is hereby authorized, required and empowered to take all such measures as necessary and appropriate in order to secure the assets and records of the bank and its branches and subsidiaries as aforesaid so as to prevent their dissipation by theft or other improper action.

6. Should the Provisional Administrator and/or any of those appointed and authorized as above to assist her be physically obstructed in carrying out any of the measures required to implement this Decision, the Provisional Administrator is empowered, should she deem it necessary, to request the assistance of the Peace Stabilization Force in addition to government bodies and officials, including members of the

Financial Police and of the Civilian Police.

7. Staff of government bodies, officials, and Financial and other Police officers acting in the course of their duty in providing such assistance as aforesaid, shall be, and remain for all time, immune from proceedings in any court whatsoever.

8. The Provisional Administrator shall, during the period of such administration, be responsible for conserving the assets and for continuing the operation of the said Hercegovacka Banka.

9. During the tenure of office of the Provisional Administrator, the powers of the officers, directors, and shareholders of the said Hercegovacka Banka to take decisions or actions shall be suspended. The Provisional Administrator shall herself have all the powers of such directors, officers, and shareholders, in accordance with the High Representativeąs Decision as to her appointment.

10. The Provisional Administrator shall be empowered, as if appointed Provisional Administrator by the Banking Agency of the Federation of Bosnia and Herzegovina, inter alia to:

a) sell the assets and discharge any liabilities of the Hercegovacka Banka as may be necessary to conserve the value thereof;

b) repudiate or amend (subject to third part accrued rights) contracts concluded by the Hercegovacka Banka, or negotiate and enter into fresh contracts. In so far as an amendment or amendments were to be concerned, such amendment or amendments could include changes of rates, tariffs and duration of validity;

c) issue orders concerning the dismissal, demotion or temporary removal of a Hercegovacka Banka employee or employees from positions currently occupied by such employee or employees, or issue orders varying the field of

responsibility of individual Hercegovacka Banka employees;

d) suspend the acceptance of deposits by the Hercegovacka Banka;

e) sign any contracts and documents and accept liabilities in the name of the Hercegovacka Banka;

f) lodge and pursue claims before an appropriate court or courts in Bosnia and Herzegovina and abroad in the name of and on behalf of the Hercegovacka Banka, and represent the interests thereof in any court proceedings in which it may be and/or become involved;

g) suspend payment of any kind to officers, directors, and shareholders of the Hercegovacka Banka.

11. The Provisional Administrator shall be empowered at any time to declare all or part of the deposits and investments by the public in the Hercegovacka Banka to be totally or partially blocked for a maximum period of one year. Should a blocking order be declared as aforesaid the Provisional Administrator shall take all such measures as she may deem to be appropriate with the object of preserving in the interim the approximate value of such deposits and investments in the Hercegovacka Banka.

12. The Provisional Administrator shall report to the High Representative upon the said administration when required by the High Representative so to do and her powers and the said administration shall end as hereinafter determined by the High Representative.

13. Further and in addition to the immunity specifically provided for under numbered Article 7 hereof, the Provisional Administrator and all those persons who are authorized to work under her pursuant to the Decision of the High Representative herein, shall, notwithstanding the provisions of any local law or laws to the contrary, have full immunity for all time from

all proceedings brought before any court in respect of actions carried out by her or them under or by virtue of the mandate bestowed by the said Decision and in the course of duties carried out thereunder before any court whatsoever.

14. For the avoidance of any doubt or ambiguity it is hereby specifically declared and provided that the provisions of the Decision 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.

This decision, which has immediate effect, shall be published without delay in the Official Gazette of the Federation of Bosnia and Herzegovina.

Sarajevo, 5 April 2001

Wolfgang Petritsch

High Representative

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