

# **Amicus curiae submission in the matter of CH/99/2984, et al. v. BiH and FBiH**

HUMAN RIGHTS COMMISSION

CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA

In the Matter of

**CH/99/2984, et al.**

AMICUS CURIAE SUBMISSION – OHR

Bosnia and Herzegovina and the

Federation of Bosnia and Herzegovina

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## ***QUESTIONS OF THE COMMISSION IN BOLD***

**I. Are there competences and responsibilities of the State of Bosnia and Herzegovina, (hereinafter: BiH) and if so, what are its obligations in the proceedings related to the solution of this issue?**

With regard to this, it is necessary to answer whether the State is obliged to regulate this issue uniformly and in the territory of the whole country (i.e. by issuance of a framework Law), and whether the State is obliged to create institutional frameworks and secure procedural guarantees. What is the obligation of the State in this respect and with regard to [... it's obligation under the] BiH Constitution as the State, in accordance with Article II/1, to secure the highest level of human rights [protection].

1. Article III (1) d. of the BiH Constitution provides that

the institutions of Bosnia and Herzegovina shall be responsible for, *inter alia*, “monetary policy” and obliges the State of BiH, under Article II 1, to “...ensure the highest level of internationally recognized rights and fundamental freedoms”, including “the right to property” as specified by the Constitution of Bosnia and Herzegovina, Article II. In Poropat et al. BiH and the Federation of BiH, on the basis of special legislation adopted in 1995 and 1996 regulating monetary policy, which provided that claims for frozen foreign savings accounts would be resolved under forthcoming legislation to consolidate public debt, the Human Rights Chamber (hereinafter: Chamber) held that the State “implicitly recognized its responsibility ...[for] old foreign currency savings” (see Poropat, paragraphs 95, 97 and 166). The Chamber, and the Human Rights Commission (hereinafter: Commission) of the Constitutional Court of BiH as its legal successor, has consistently affirmed the reasoning in Poropat and to that the State remains under a positive obligation to act insofar as is necessary to secure the protected rights of the so-called “old foreign currency savers” (CH/98/377 *et al.*, Durkovic, et al. v. BiH, Republika Srpska and the Federation of BiH and CH/98/420 *et al.* Kugic v. BiH and Republika Srpska). The Office of the High Representative for Bosnia and Herzegovina (hereinafter: OHR) finds no basis upon which its opinion should deviate from such previously articulated findings of general responsibility on the part of BiH for old foreign currency savings.

2. As noted by the Chamber in the aforementioned decisions, the State delegated by legislation the resolution of old foreign currency savings to the Entities. The Framework Law on Privatization of Enterprises and Banks in Bosnia and Herzegovina (Official Gazette No. 14/98), provides, *inter alia*, that “claims against enterprises and banks to be privatized shall be deemed as a liability of the privatizing Entity”. Subsequently adopted legislation, namely the Law on Determination and Realization of Citizens’ Claims in the

Privatization Process (Official Gazette No. 27/97 and 8/99) in the Federation of Bosnia and Herzegovina (hereinafter: Federation) and the Law on Privatization of State Capital in Enterprises (Official Gazette of Republika Srpska No. 24/98, 62/02 and 38/03), each provided the basic legal framework under which savers could realize their right to reimbursement for old foreign currency accounts. As the resolution of these mass claims involve complex policy choices for which the State has no directly identifiable financial means, OHR is of the opinion, as previously recognized by the Chamber, that the resolution of these rights to compensation through Entity legislation, as opposed to State framework legislation, falls within the "wide margin of appreciation" of the State only insofar as the Entity legislation adequately secures the protected rights of savers under the European Convention on Human Rights and Fundamental Freedoms (hereinafter: Convention).

3. Moreover, while old foreign currency savers might have benefited from the introduction of framework legislation at State level that specifically provides a uniform mechanism for reimbursing savers, differences in the processes of privatization between Entities raises questions about the fairness and potential effectiveness of any such framework legislation were it to be introduced at this current stage. The exercise of rights protected under the Convention only requires that existing Entity and Brcko District legislation in force, and any forthcoming supplemental legislation, be fully harmonized with each other and with the general principles of the Convention and does not, at this stage, mandate the introduction of State level framework legislation regulating the matter.

## **II. Are there, and [to] what [extent] are the liabilities of the Entities and Brcko District?**

**These liabilities should be taken into consideration with the meaning of the current laws governing this matter (i.e., Law**

on Determination and Manner of Settlement of the Internal Debt of Republika Srpska (Official Gazette of Republika Srpska No. 63/04); Law on Determination and Manner of Settlement of the Internal Debt of the Federation of Bosnia and Herzegovina (Official Gazette of Federation No. 64/04); Law on Determination and Manner of Settlement of the Internal Debt of Bosnia and Herzegovina (Official Gazette of BiH No. 44/04); and the Law on Settlement of Old Liabilities Based on Old Foreign Savings (Official Gazette of Brcko District No. 27/04) (hereinafter collectively: Debt Settlement Laws).

4. The combined estimated debt of BiH, the Entities and Brcko District of BiH exceeds 9.2 billion KM, of which 4.8 billion KM represents domestic liabilities incurred before 31 December 2002. These liabilities broadly represent three categories and include 'general liabilities' (i.e., arrears, pension contributions, etc.), war damage claims and old foreign currency savings. In the Federation, these liabilities are respectively estimated at 958.9 million KM<sup>[1]</sup>, 900 million KM and 1,110 million KM for old foreign currency savings. The Republika Srpska estimates its 'general liabilities' at 386.8 million KM, 600 million KM for war damage claims and 774.9 million KM for old foreign currency savings. The public debt of Brcko District is solely comprised of liabilities for old foreign currency savings, which is estimated at 94 million KM.

5. However, the actual liability within each category may vary significantly. For example, in Republika Srpska where some 33,000 claims for war damages remain pending before courts, the government suggests that the total liability with accrued interest could exceed 6 billion KM.

6. In June 2003, several inter-governmental working groups were established upon the advice of the International Monetary Fund (hereinafter: IMF) to identify outstanding claims and to develop a restructuring plan. According to the IMF, countries whose public debt exceeds 50% of their gross domestic product (hereinafter: GDP) face a high risk of economic crisis. The

public debt of BiH and its subdivisions, internal and external, represents approximately 75% of GDP according to the IMF. By December 2003, BiH, Brcko District and the Entities each endorsed a 'Strategic Plan' for settling public debts (Official Gazette FBiH 63/03, Official Gazette of Republika Srpska 108/03) designed to restructure the combined liabilities at a net present value of 10% GDP for 2003. Although only the internal debt restructuring legislation of the Federation makes express reference to this goal, the provisions in the respective debt settlement laws in the both Entities and Brcko District, providing, *inter alia*, for cash payments, partial write-offs and bond issuances, were all developed on this basis.

**III. In [OHR's] opinion, does the current legal framework give adequate procedural guarantees with regard to citizens' old foreign currency savings within the meaning of Article 6 of the European Convention on Human Rights and Fundamental Freedoms, as well as the institutional guarantees within the meaning of Article 1, protocol 1 to the European Convention?**

**With regard to the aforementioned, it is necessary to state whether the competent bodies undertake appropriate steps to have their legal obligations implemented efficiently.**

7. The Law on Determination and Manner of Settlement of the Internal Debt of Republika Srpska (Official Gazette of Republika Srpska No. 63/04) provides, in pertinent part:

“...

### **Manner, Procedure and Deadlines of Verification**

#### **Article 12**

Government of Republika Srpska shall, within 90 days from the entry into force of this Law, issue regulation which will specify the precise manner, procedure and deadlines of individual verification of liabilities referred to in

Article 11 of this Law.

...

## **Writing Off**

### **Article 13**

The accrued, unpaid, or unused Interest for Frozen Foreign Currency Savings accounts starting with January 1, 1992 is hereby written off in full, and at most up to the amount of frozen foreign currency savings on the day of verification, and shall not represent a liability of Republika Srpska.

Frozen Foreign Currency Savings which are not verified in accordance with provisions of Article 12 of this Law are hereby written off and shall not represent a liability of Republika Srpska.

If the liabilities verified in the manner prescribed by Article 12 of this Law are larger then the amount referred to in Article 11 of this Law, the difference is written off by a proportional decrease of individual liabilities and no longer represent liability of the Republika Srpska.

## **Manner of Settlement**

### **Article 14**

The liabilities referred to in Article 11 of this Law shall be settled through cash payments and through the issuance of Bonds.

### **Article 15**

A portion of Frozen Foreign Currency Savings liabilities in an amount up to 16 Million KM shall be paid in cash to each owner of Frozen Foreign Currency Savings up to an

amount of 100 KM, during the verification process.

The payment of 100 KM referred in the previous paragraph shall include the verified claims on all savings accounts of the owner of frozen foreign savings.

Prior to the making the cash payments provided for by the previous paragraph of this article, the individual claim shall be verified in a manner consistent with Article 12 of this Law.

A portion of Frozen Foreign Currency Savings liabilities in an amount up to 39.1 Million KM shall be paid in cash to each owner of Frozen Foreign Currency Savings up to an amount of 1000 KM.

Liabilities from the paragraph 4 of this article shall be settled within a period of 4 years, starting in the fiscal year 2004.

The Republika Srpska Government shall issue a bylaw within 90 days of entry into force of this Law, regulating the dynamics and amounts of cash payments.

## **Article 16**

Each claim for Frozen Foreign Currency Savings that have not been settled in accordance with Article 15 of this Law shall be settled through the issuance of long-term bonds in an amount up to 719,8 million KM, under the following conditions:

1. shall have a maturity not to exceed 30 years;
2. shall be payable in ten equal annual payments commencing nine years prior to the final maturity;
3. shall bear no interest.

## **Article 17**

Bonds issued in settlement of the internal debt of

Republika Srpska can not be used in privatisation. Frozen Foreign Currency Savings can still be used in the privatisation process, till the day when those will be converted into bonds, and in accordance with the legal regulations regulating privatisation of state-owned capital.

...

### **Article 23**

With the coming into force of this Law, the Law on Temporary Postponement of Enforcement of Enforceable Court Decisions against the Republika Srpska Budget (Official Gazette of the Republika Srpska 110/03) shall no longer be valid.

8. The Law on Determination and Manner of Settlement of the Internal Debt of the Federation of Bosnia and Herzegovina (Official Gazette of Federation No. 64/04) provides, in pertinent part:

...

Article 3, paragraph 5

...

"The provisions of this Law shall also apply to the enforcement orders regulated by the Law on Temporary Suspension of the Execution of Claims based on Executive Decisions Against the Budget of the Federation of Bosnia and Herzegovina, (*Official Gazette of the Federation of BiH, 09/04*)."

...

### **"III. FROZEN FOREIGN CURRENCY SAVINGS**

#### **Article 9**



The Federation shall assume the liabilities for Frozen Foreign Currency Savings in the lowest-level business units of banks (branch offices and/or agencies) in the territory of the Federation. If the bank has no branch offices then, its seat is considered to be the lowest-level business unit.

The liabilities for Frozen Foreign Currency Savings as defined in paragraph 1 of this Article shall not include the liabilities for Frozen Foreign Currency Savings deposited in Ljubljanska Banka and Invest Banka, considering that these liabilities will be resolved in the succession process of former SFR of Yugoslavia.

The Federation shall settle liabilities for Frozen Foreign Currency Savings referred to in Article 3 of this Law through cash payments and through the issuance of Bonds.

Interest on Frozen Foreign Currency Saving liabilities as of 1 January 1992 shall be written off.

## **Article 10**

After completion of the verification of claims for frozen foreign currency savings in the manner as provided for in Article 12 of this Law, the Federation Government (hereinafter: the Government) shall, by a special regulation, stipulate the manner and the amount of cash payments for Frozen Foreign Currency Savings to every natural person, holder of frozen foreign currency savings up to the amount provided for in Article 2 of this Law.

## **Article 11**

Cash payments for Frozen Foreign Currency Savings referred to in Article 10 of this Law shall be effected from the Federation budget during a 4-year period starting from the fiscal year following the completion of

verification procedure of frozen foreign currency savings.

## **Article 12**

The verification of all claims for Frozen Foreign Currency Savings shall be conducted on the basis of the database established under the Law on Establishment and Realization of Citizens' Claims in the Process of Privatization (Official Gazette of the Federation BiH 27/97, 8/99, 45/00, 54/00, 32/01, 57/03, xx/04) and other regulations based in law databases in the possession of banks.

The verification process of all claims for Frozen Foreign Currency Savings shall be completed within nine months from entry into force of this Law.

## **Article 13**

Bonds up to the amount necessary to settle cumulative claims, and not to exceed the principal amount of 1,005 Million KM, shall be issued for liabilities for Frozen Foreign Currency Savings, which are not settled by cash payments in accordance with Articles 9 and 10 of this Law.

## **Article 14**

Upon verification of claims based on old foreign currency savings in the manner foreseen by Article 12 of this Law, the Government shall determine the model of bond issue in special regulations, stipulating the maturity date of the bonds, the interest rate on bonds and the length of the grace period, up to the amount determined as the principal amount in the process of verification of claims based on old foreign currency savings up to the amount referred to in Article 2 of this Law.

In order to ensure additional financial assets for the bondholders referred to in Article 13 of this Law, the Government, in its capacity as a shareholder, and in accordance with the applicable regulations, shall adopt a decision distributing up to 15% of the dividend from the companies with state capital, in order to *buy off* public bonds by means of offer, at market price, paying them out as foreseen in the annual budget, starting from the bonds with the lowest nominal value and progressively moving towards bonds with the higher nominal value.

#### **Article 14a**

The Government shall pay three percent of the amount obtained from the sale of the companies JP "BH Telecom", JP "Elektroprivreda BiH" d.d., JP "Elektroprivreda HZHB" d.d. and "Hrvatske telekomunikacije" d.o.o. Mostar to a special account.

The funds received on the special account referred to in paragraph 1 of this Article shall be used for the purpose of early purchase of bonds based on old foreign currency savings, at market price, including the priority in paying out/purchasing the bonds of old foreign currency savings holders, by offering to buy off bonds with the higher nominal value.

The Federation Minister of Finance shall adopt bylaws regulating the manner of disposal of funds deposited on the account referred to in the previous paragraph, and the modality of payment to bond owners, depending on the funds obtained as referred to in this Article."

9. The Law on Settlement of Old Liabilities Based on Old Foreign Savings (Official Gazette of Brcko District No. 27/04) provides, in pertinent part:

...

## **“Article 2**

### Settling of claims

Brcko District shall settle liabilities per old foreign currency savings in the following manner:

1. Cash payment in the amount of up to KM 9 million to all depositors in equal annual instalments during 2004, 2005 and 2006. The amount and the timeframe of cash payments shall be determined by the Mayor, at the proposal of the Director of the Revenue Agency of Brcko District of BiH, after the verification is done as prescribed by Article 3 of this Law.
2. Liabilities that will not be paid in cash as prescribed in the previous Item, shall be discharged through the issuance of bonds of the following characteristics:
  - a. up to 25 years maturity;
  - b. no interest on the amount of equity which does not exceed KM 85 million;
  - c. paid in ten equal annual instalments starting from the ninth year before the closing maturity deadline.

## **Article 3**

### Verification

Cash payments or payments of bonds shall not be done for any kind of old foreign currency savings liabilities before each claim is verified in an appropriate procedure.

Following the proposal of the Revenue Agency Director, the Mayor shall, within 90 days after this Law becomes effective, enact the regulation determining the procedure and the verification deadline, particularly the

following:

- a. which claims shall be accepted on the basis of old foreign currency savings;
- b. which old foreign currency savings claims shall be paid in cash, which shall be paid in bonds and with what maturity date;

Liabilities per old foreign currency savings shall be calculated in KM per medium official exchange rate at the Central Bank of Bosnia and Herzegovina valid on the day this Law becomes effective.

#### **Article 4**

##### Write-off

Calculated unpaid or unused interest on the old foreign currency savings as of January 1, 1992, shall be written off in its entirety, not exceeding the amount of foreign currency savings on the verification date, and it shall not represent Brcko District's liability.

#### **Article 5**

##### Securities

The Revenue Agency shall administer the bonds that are issued as securities of Brcko District in terms of the law regulating the internal debt of Brcko District."

10. In the case no. AP-288/03, L., et al. v. Republika Srpska, the Constitutional Court of BiH, in its finding that the legal framework for debt settlement violated the applicant's rights under Article 6 of the Convention with respect to the enforcement of a court judgment for non-pecuniary war damages, found, *inter alia*, that:

"...the cited Law which established the manner of settlement of the internal debt of the Republika Srpska,

one comes to the conclusion that such law, in addition to the fact that its adoption is questionable within the meaning of the principles under the European Convention, also violates the principle of proportionality with respect to the fundamental rights of individuals. Regardless of the evident public interest of the state to adopt this law, due to the enormous debt which was incurred as the result of the pecuniary and non-pecuniary damages caused by the war actions and which is contained in Article 18 of the Law in question, the Constitutional Court holds that by adoption of such law *“an excessive burden was placed on the individuals”* and therefore the requirement of proportionality between the public interest of the community and fundamental rights of individuals was not met. The Constitutional Court sees the excessive burden which is placed on the individuals in the fact that Article 21 paragraph 1 of this Law provides that the claims which were established in the legally binding court judgments shall be settled *“by issuing of bonds with the maturity date of up to 50 years”* which justifiably imposes the question whether any of the citizens who will possess such type of bonds will live to charge these bonds and thus realize their rights.” [See NL, paragraph 29]

11. It is well settled within the jurisprudence of the European Court of Human Rights (hereinafter: European Court) that Article 6 § 1 of the Convention embodies the ‘right to a court’, of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect. However, the case law of the European Court also provides that this right is not absolute and may be subject to limitations provided such limitations do not restrict or reduce the access left to the individual in such a way, or to such an extent, that the very essence of the right is impaired. The Court may deem such limitation compatible with aforementioned Article 6 if the restriction pursues a

legitimate aim and if the interference bears a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see National & Provincial Building Society, et al. the United Kingdom, No. 117/1996/736/933-935, paragraph 105).

12. Although the Constitutional Court of BiH, in L. v. RS, found that the suspension of an enforceable judgment and the settlement of the instant court award through long term zero coupon bonds violated the applicant's Convention protected rights under the Convention, OHR believes that a distinction between settlement terms for war damage claims and settlement terms for old foreign currency savings should be made.

13. The terms for resolving claims for old foreign savings represents affirmative measures by the authorities, in compliance with relevant decisions of the Chamber, to provide savers with a clear legal framework through which they will be reimbursed. While the relevant settlement terms in the Republika Srpska, Federation and Brcko District differ with respect to the level of specificity of bond maturities and interest to be paid, each law, however, provides for short-term cash payments for all verified claims within a period of time no greater than four years. According to available bank data, over 70% of claimed accounts are valued at or below 1,000 KM and the governments expect that the majority of these claims will be settled through short-term cash payments. Although many aspects of the settlement mechanism have yet to be defined through the legislatively authorized adoption of regulations by the Entity and Brcko District governments, OHR is of the opinion that any interference under the Debt Settlement Laws, including the mixture of short term payments and long term government bonds, with rights protected under Article 6 of the Convention bears a reasonable relationship to the recognized governmental interest in preserving macroeconomic stability.

14. Notwithstanding the above referenced position, it is

important to note that the adequacy of the legal framework cannot be fully assessed prior to the adoption of implementing regulation as authorized by the Debt Settlement Laws. The implementing regulations will cover various aspects relevant to such an assessment, including the manner in which claims will be verified, the mechanism by which savers who no longer possess their 'savings booklet' can substantiate their claim, as well as, specifically in the case of the claimants of the Federation only, the conditions and terms under which residual claims will be settled through government bonds. Although the deadline for adopting implementing regulations for old foreign currency savings expired in both Entities the delays have been largely associated with efforts by the governments to ensure harmonized procedures, which, *inter alia*, will ensure the equitable treatment of foreign currency savers regardless of which government--be it Federation, Republika Srpska or Brcko District--bears responsibility for the old foreign currency claim. At this stage, there is no evidence to suggest that that the delays are based on a policy by either government of willful disregard for its obligations as laid out by the Debt Settlement Laws or otherwise reflective of bad faith regarding the implementation of the debt settlement framework.

#### **IV. Does the current legal framework guarantee a reasonable relationship of proportion between the citizens' right to property and the interest of the State?**

15. The relevant decisions of the Chamber and Commission have recognized as legitimate the interest of the State in restructuring liabilities for old foreign currency savings and have, thus far, called upon the State to provide savers clear legislative guidance as to what percent of their savings they can expect to recoup in what specific timeframe (see Durkovic, paragraph 278). Until mid-2004, old foreign currency savers were only able to recoup their savings in the context of entity privatization programs. The Debt Settlement Laws introduced additional mechanisms through which such savers can



realize their claim, including mechanisms through which most savers, namely those with accounts valued less than 1,000 KM, are expected to recoup the full value of the principal claim within a specified period of not more than four years. However, as previously mentioned, many aspects of the settlement have yet to be fully defined by implementing regulations and therefore concerns related to the adherence to Article 1 of Protocol No. 1 of the Convention may persist. In this regard, OHR, through inter-government working groups, supports efforts of the governments of the Entities and Brcko District to have all regulations and supplemental laws envisioned by the Debt Settlement Laws in place at the earliest possible date.

16. In this context, particularly when viewed in the context of the overall public debt liability, OHR is of the opinion that the debt settlement framework for old foreign currency savings, as envisioned by the Debt Settlement Laws, does ensure a proportional relationship between the right of savers to be reimbursed and the interest of the State in preserving macroeconomic stability. This proportional relationship strikes a fair balance between the rights of the savers and the articulated right of the State in implementing social and economic policies. As the European Court has recently re-affirmed, the Convention's notion of "public interest" is necessarily extensive and hence the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one. Hence the European Court has noted that it will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (see Jahn v. Germany, 46720/99, 72203/01 and 72552/01, paragraph 80).

17. Nonetheless, OHR believes that the Constitutional adequacy of the balance struck between the rights of savers and the public interest turns on an adequate assessment of the potential impact of outstanding claims against the government

on macroeconomic stability, including those for old foreign currency accounts. As the governments developed many aspects of the Debt Settlement Strategy under the advice of, and in cooperation with, the IMF, we believe such an assessment of this issue by the Commission would benefit from IMF input. OHR, therefore, supports any initiative of the Commission to invite the IMF to participate in the proceedings as *amicus curiae*.

**V. What developments have been made since the issuance of the Chamber's decisions, i.e. the Commission's decisions in the cases nos. CH/98/377 *et al.*, Nenad Durkovic *et al.* BiH, and the Federation of BiH, delivered on 7 November 2004 and cases nos. CH/98/420 *et al.*, Azra Kugic *et al.* v. BiH and Republika Srpska, delivered on 10 October 2003.**

18. Following the enactment of the debt settlement law in the Federation in December 2004, the Federation, Republika Srpska and Brcko District have begun developing harmonized regulations for settling claims for old foreign currency savings as envisioned by the Debt Settlement Laws. While the respective governments have prepared draft regulations, several issues have caused delay, including the availability and consistency of banking data and the lack of agreement as to which Entity is responsible for claims in exactly which banks under the settlement legislation.

**VI. Is there justification for differential treatment of certain banks in BiH, such as Ljubljanska Bank and Invest Bank?**

19. The Framework Law on Privatization of Enterprises and Banks in Bosnia and Herzegovina (Official Gazette of BiH No. 14/98 and 12/99) provides, in pertinent part:

“

...

Article 2 paragraph 1:

“In accordance with the [General Framework Agreement], this Law expressly recognizes the right of the Entities to privatize non-privately owned enterprises and banks located on their territory...”

...

Article 4 paragraph 2:

“Claims against enterprises and banks to be privatised shall be deemed as a liability of the privatizing Entity...”

20. Annex G to the Agreement on Succession Issues between the Successor States of the Former Socialist Federal Republic of Yugoslavia, (hereinafter, Succession Agreement) provides, in pertinent part in Article 2:

## **“Article 2**

...

(2) All contracts concluded by citizens or other legal persons of the SFRY as of 31 December 1990, including those concluded by public enterprises, shall be respected on a non-discriminatory basis. The successor States shall provide for the carrying out of obligations under such contracts, where the performance of such contracts was prevented by the break-up of the SFRY.

## **Article 3**

The successor States shall respect and protect rights of all natural and juridical persons of the SFRY to intellectual property, including patents, trade marks, copyrights, and other allied rights (e.g., royalties) and shall comply with international conventions in that regard.

## **Article 4**

The successor States shall take such action as may be required by general principles of law and otherwise appropriate to ensure the effective application of the principles set out in this Annex, such as concluding bilateral agreements and notifying their courts and other competent authorities.

## **Article 5**

Nothing in the foregoing provisions of this Annex shall derogate from the provisions of bilateral agreements concluded on the same matter between successor States which, in particular areas, may be conclusive as between those States.”

21. Annex C to the Agreement on Succession Issues between the Successor States of the Former Socialist Federal Republic of Yugoslavia(hereinafter: Succession Agreement) further provides, in pertinent part:

### **“Annex C**

#### **Financial Assets and Liabilities**

...

## **Article 7**

Guarantees by the SFRY or its NBY of hard currency

Savings deposited in a commercial bank and any of its branches in any successor State before the date on which it proclaimed independence shall be negotiated without delay taking into account in particular the necessity of protecting the hard currency savings of individuals. This negotiation shall take place under the auspices of The Bank for International Settlements.”

22. According to government representatives, both Invest Bank and Ljubljanska Bank became foreign banks, and were thereby not subject to the Entity privatization laws. On that basis, government representative assert, previous attempts to resolve citizens' claims for old foreign currency savings never included such claims against these banks and have always been the subject of bilateral negotiations between BiH and the respective States party to the Succession Agreement.

23. When the Succession Agreement entered into force upon ratification by the last of each signatory States in June 2004, Slovenia assumed responsibility for the banks located on its territory in fulfilling the contractual obligations towards old foreign currency savers. While BiH and Slovenia have not reached any bilateral agreement, and a mechanism has yet to be identified to resolve claims against these banks under the Succession Agreement, these foreign currency claims were explicitly excluded from the Debt Settlement Legislation as liabilities of foreign entities.

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#### **Notes:**

[\[1\]](#) This estimate includes commercial bank loans which are identified as a separate category of liability within the debt settlement legislation in the Federation.