

Decision Blocking All Bank Accounts Held by and/or in the Name of the SDS and Requiring the SDS to Establish one Bank Account

n. 221/04

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;

Conscious of the need to prevent the funding of activities which are, or which 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;

Bearing in mind that at Madrid on 16 December 1998 the Peace Implementation Council set out its concerns as follows: “The Council expresses deep concern about continuing corruption and evasion of public funds. It welcomes the High Representative’s development of a comprehensive anti-corruption strategy... The High Representative will take the lead in co-ordinating International Community efforts aimed at eliminating opportunities for corruption, tax evasion and diversion of public revenue, ensuring transparency in all phases of governmental operation...”;

Noting that the Election Law of Bosnia and Herzegovina requires the Presidents of political parties to state that the activities of the political party comply with the General Framework Agreement for Peace in Bosnia and Herzegovina;

Cognizant that the Election Law of Bosnia and Herzegovina and the Law on Party Financing of Bosnia and Herzegovina introduced the concept of transparency of funding of political parties with a view to curb ingrained corruption in Bosnia and Herzegovina which undermines democratic governance, wastes public resources and hinders the development of market

economy;

Considering Recommendation 1516(2001) on the Financing of Political Parties adopted by the Standing Committee, acting on behalf of the Parliamentary Assembly of the Council of Europe, which provides that “in the case of a violation of the legislation, political parties should be subject to meaningful sanctions, [...] and that when individual responsibility is established, sanction should include the annulment of the elected mandate or a period of ineligibility”;

Recalling that the Directive Suspending All Disbursements of Budgetary Itemisations for Party Funding to the Srpska Demokratska Stranka (hereinafter: the SDS) and Ordering the SDS to Submit a Financial Plan for the Period from 1 January 2003 until 31 March 2004 remains in force;

Mindful of the Financial Report of 19 April 2004 submitted by the SDS pursuant to the said Directive of the High Representative and the report of the Special Auditor for Republika Srpska on the said Financial Report released on 24 June 2004;

Distressed by the fact that the SDS Financial Report contains evidence of a disturbing pattern of violations of the Law on Party Financing of Bosnia and Herzegovina;

Recalling that the aforementioned Financial Report shows that no sufficient safeguards are in place against SDS funds being used to assist persons indicted under Article 19 of the Statute of the International Criminal Tribunal for former Yugoslavia, such as Radovan Karadzic, and their support structure;

Noting that there is evidence, including a letter from Radovan Karadzic that the said individual was in regular contact with and has received assistance from the SDS;

Recognizing that no other evidence has been proffered to

exonerate the SDS in this connection;

Noting that Bosnia and Herzegovina's failure to meet its international obligations towards the International Criminal Tribunal for Former Yugoslavia (ICTY) increasingly constitutes an obstacle to Bosnia and Herzegovina's integration into Europe and that this failure is largely attributable to failures on the part of the Entity of Republika Srpska;

Further noting, by way of illustration, the Istanbul Summit Communiqué issued on 28 June 2004 by which the Heads of State and Government participating in the meeting of the North Atlantic Council expressed their concerns that Bosnia and Herzegovina, particularly obstructionist elements in the Republika Srpska entity, has failed to live up to its obligation to cooperate fully with ICTY, including the arrest and transfer to the jurisdiction of the Tribunal of war crimes indictees, a fundamental requirement for the country to join Partnership for Peace;

Recalling that the Steering Board of the Peace Implementation Council, at its meeting held in Sarajevo on 25 June 2004, noted that Republika Srpska has failed to locate or apprehend even one war-crimes indictee in the nine years since the Dayton Accord and reminded that Republika Srpska an Entity of Bosnia and Herzegovina guaranteed under Dayton, is failing to carry out a key obligation under Dayton and international law, for which the relevant individuals and institutions must be held accountable.

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

DECISION

Blocking All Bank Accounts Held by and/or in the Name of the SDS and Requiring the SDS to Establish one Bank Account

I. Blocking of Bank Accounts

Article 1

Each and every account held by and/or in the name of the SDS, including local and municipal SDS organizations, is and shall be blocked in each and every bank and its branches coming within the jurisdiction of the Banking Agency of Republika Srpska or the Banking Agency of the Federation of Bosnia and Herzegovina, with immediate effect and until further notice.

For the avoidance of doubt, money, valuables or other property held to the accounts of the SDS as aforesaid, shall be deemed to include such money, valuables or property held in bank vaults or otherwise in the safe keeping of the bank concerned.

Article 2

By close of business on 2 July 2004, each bank and its branches, with one or more accounts held by and/or in the name of the SDS, must report to the Office of the High Representative, to the Central Bank of Bosnia and Herzegovina and to the Banking Agency of Republika Srpska and the Banking Agency of the Federation of Bosnia and Herzegovina all blockings effected pursuant to this Decision. Such reports must include details as to all authorized signatories to accounts so blocked, account balances and account numbers.

Article 3

Failure to comply with this Decision by the director of a bank, by any individual on behalf of a bank or by any employee thereof may hereafter be treated as participation in a transaction contrary to the provisions of the Entity Laws on Banking Agencies and Entity Laws on Banks and may lead to penalties which can include, in the case of individuals, financial penalties and, in the case of a bank, the revocation of the licence of that Bank.

II. Establishment of one Bank Account

Article 4

Within 15 days after the Decision becomes effective, the SDS shall establish one bank account in a commercial bank duly licenced in Bosnia and Herzegovina.

Within 2 days of the establishment of one bank account, evidence of such establishment shall be forwarded to the Office of the High Representative, the Central Bank of Bosnia and Herzegovina and, as appropriate, the Banking Agency of Republika Srpska or the Banking Agency of the Federation of Bosnia and Herzegovina. The evidence shall include the name of the commercial bank, the account number and the authorized signatories on the said account.

Banks and their branches with blocked accounts are directed, upon notification by the relevant Banking Agency that the bank account provided in paragraph 1 of this Article has been established, to transfer the amount of funds contained in such blocked accounts to the said bank account and to close the blocked accounts after the transfer.

Article 5

Upon establishment of the bank account as provided for in Article 4 of this Decision any financial transaction in excess of 150 KM by or on behalf of the SDS shall be conducted through the said account.

Article 6

This Decision does not require further procedural steps to be taken and shall supersede any regulation or law which may be in contradiction with it.

This Decision 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 7

For the avoidance of doubt, it is hereby specifically declared and provided that the provisions of the Decision 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 thereunder before any court whatsoever at any time hereafter.

Article 8

This Decision shall enter into force forthwith and shall be published without delay in the Official Gazette of Bosnia and Herzegovina, the Official Gazette of the Federation of Bosnia and Herzegovina and the Official Gazette of Republika Srpska.

Sarajevo 30 June 2004

Paddy Ashdown

High Representative