Decision Enacting the Law On Amendments to the Law on the Indirect Taxation System in 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 (hereinafter: GFAP), 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";

Conscious thatthe responsibility for indirect taxation was transferred to Bosnia and Herzegovina by an agreement signed

by the Federation of Bosnia and Herzegovina and Republika Srpska on 5 December 2003, which regulates distribution of competences in that field;

Mindful that the Parliamentary Assembly of Bosnia and Herzegovina enacted the Law on Indirect Taxation System in Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina" 44/03 and 52/04) establishing the institutional and organizational basis for the single indirect taxation system of Bosnia and Herzegovina, including principles of allocating revenues from indirect taxation;

Bearing in mind that the Parliamentary Assembly of Bosnia and Herzegovina enacted the Law on Payments into the Single Account and Distribution of Revenues ("Official Gazette of Bosnia and Herzegovina" 55/04 hereinafter: "Law on Single Account"), which contains the methodology for the allocation and distribution of all indirect tax revenues to the State of Bosnia and Herzegovina, Federation of Bosnia and Herzegovina, Republika Srpska and the Brcko District of Bosnia and Herzegovina (hereinafter: the Brcko District);

Recalling that the Law on Indirect Taxation System provides that the shares of indirect taxation revenues of the Federation of Bosnia and Herzegovina, Republika Srpska and the Brcko District is determined by their share of final consumption as revealed by value added tax returns;

Recalling further that the Law on Single Account provides that these shares shall be based on allocation coefficients to be determined as a relation between final consumption sums indicated in value added tax returns on the territory of the revenue beneficiary in question and final consumption sums indicated in value added tax returns on the territory of Bosnia and Herzegovina, and that it obliges the Governing Board of the Indirect Taxation Authority to issue implementing acts on the calculation of the allocation coefficient;

Regretting that negotiations and disputes over revenue allocation coefficients among the Institution of Bosnia and Herzegovina, the Entities and Brcko District have consumed an alarming amount of political time and energy, that agreement on allocation coefficients has yet to be reached, and that as a result, the Brcko District has lodged complaints related to the aforesaid dispute before the Arbitral Tribunal for the Dispute Over Inter-Entity Boundary in Brcko Area (hereinafter: the Arbitral Tribunal for Brcko);

Noting the communiqué of the Steering Board of the Peace Implementation Council, issued on 23 June 2006, which emphasized that the BiH authorities should resolve the dispute over revenue allocation as a matter of urgency;

Bearing in mind the communiqué of the Steering Board of the Peace Implementation Council, issued on 7 December 2006, in which the Steering Board expressed its concern that despite its previous urgings for a satisfactory resolution of the issue of VAT revenue allocation, the Governing Board of the Indirect Taxation Authority has so far failed to identify a way to resolve the matter in a systematic manner;

Deploring that the aforementioned failure of the Governing Board of the Indirect Taxation Authority to reach decisions on the applicable revenue allocation coefficient has effectively blocked the allocation of indirect taxation revenues from the single account on several occasions, thereby jeopardizing fiscal stability of Brcko District;

Noting that the Law on Indirect Taxation System provides that the Brcko District participates in the Governing Board of the Indirect Taxation Authority as an observer without the right to vote;

Recalling that the Final Award of the Arbitral Tribunal for Dispute Over Inter – Entity Boundary in Brcko Area (hereinafter: Final Award), rendered in accordance with GFAP,

Annex 2, establishes Brcko District as a fiscally self-sustainable part of Bosnia and Herzegovina with its own autonomous budget, and which recognizes the need for coordination among the governments of BiH, the Entities and the Brcko District on a variety of issues, including questions of sharing expenses and revenues;

Taking into account that the Final Award obliges the Brcko District to incorporate within its budget an estimate of revenues that will be raised within the District and obliges the Federation of Bosnia and Herzegovina and Republika Srpska to respectively finance any short-fall in the Brcko District budget in the proportions of two-thirds and one-third;

Ever mindful that the Steering Board of the Peace Implementation Council, in its Communiqué issued on 27 February 2007, reiterated its urgings for a satisfactory resolution to the issue of VAT revenue allocation and expressed its hope that, through negotiations, and through the adoption of the draft Law on the District of Brcko, together with any related constitutional and legislative provisions, all complaints currently lodged before Arbitral Tribunal Brcko Area would be withdrawn;

Considering, the heightened urgency of resolving the revenue allocation dispute for Brcko District created by the continuing proceedings before Arbitral Tribunal for Brcko, which entered a new phase on 23 April 2007 when the period for written submissions by the parties elapsed;

Convinced, of the need to urgently enact appropriate legislation to resolve the revenue allocation dispute in advance of further proceedings before the Arbitral Tribunal for Brcko to ensure the financial self-sustainability of the Brcko District; and

Having taken into account and considered the totality of all matters aforesaid, the High Representative hereby issues the

following:

DECISION

Enacting the Law On Amendments to the Law on the Indirect Taxation System in Bosnia and Herzegovina

(Official Gazette of Bosnia and Herzegovina 44/03, 52/04)

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

The said Law shall enter into force as a law of the Bosnia and Herzegovina, with effect from the date provided for in Article 2 thereof, 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.

With respect to Article 25, paragraph 4 of the Law on Indirect Taxation System in Bosnia and Herzegovina, the required approval by the Board shall be deemed to have been granted.

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

Sarajevo, 4 May 2007

Dr. Christian Schwarz-Schilling
High Representative

THE LAW ON AMENDMENTS TO THE LAW ON THE INDIRECT TAXATION

SYSTEM IN BOSNIA AND HERZEGOVINA

Article 1

In Article 21, Paragraphs 3 and 4 of the Law on Indirect Taxation System will be amended to read as follows:

“The Authority ensures that the balance in the Single Account is the minimum necessary to allow it to clear all obligations related to the indirect taxes it collects, and that distributions to the State budget and the budgets of the Federation, Republika Srpska and the District are made on a regular basis in accordance with the following:

(i) the amount transferred to the State budget is based on the amount in the current year State budget;

(ii) from the amount remaining after the transfer to the State budget, transfers to District shall be on the basis of following:

a. In 2007 the District’s allocation coefficient will be 3.55%;

b. For any other year following 2007, the coefficient from item a) of this Article shall be verified on annual basis against the corrected CIPS data as prescribed by Articles 13 and 13a of the Law on Payments into the Single Account and Distribution of Revenues (“Official Gazette of Bosnia and Herzgovina” 55/04, hereinafter: the Single Account Law). The amount transferred shall not be less than the amount resulting from the application of the higher of two coefficients;

c. Nothwithstanding the previous provisions a) and b) of this item, for the years 2007 through 2011, the total of transffered amounts to the District shall not be less than 124

millon KM. If the amount received by District is lower than 124 million KM, the shortfall shall be compensated by the Federation and Republika Srpska respectively in the proportion of two-thirds and one-third, as provided in the Article 13a of the Single Account Law;

(iii) the share of the remaining amount transferred to the Federation and Republika Srpska is determined by their share in final consumption, as revealed by value added tax returns; and

(iv) the amount needed to finance international debt obligations is deducted from the shares of the Federation and Republika Srpska, and is paid directly to the State budget.

The distribution system and the method for calculating shares of collected revenue pursuant to this Article shall be specified in the Single Account Law.“

Article 2

This Law shall enter into force upon publication in the Official Gazette of Bosnia and Herzegovina or on June 1, 2007, whichever is later.