Decision Enacting the Law on the Distribution, Purpose and Use of Financial Assets Obtained Under Annex “C” to the Agreement on the Succession Issues

In the exercise of the powers vested in the High Representative by Article V of Annex 10 (Agreement on Civilian Implementation on the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter: General Agreement for Peace), 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 Article II.1 (d) of the last said Agreement, which requests from the High Representative to facilitate the resolution of any difficulties arising in connection with civilian implementation of the General Framework Agreement for Peace in Bosnia and Herzegovina;

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";

Noting that the competent authorities in Bosnia and Herzegovina have yet to establish a systemic legislative mechanism for apportioning financial assets belonging to Bosnia and Herzegovina pursuant to the Agreement on the Succession Issues of the Former Socialist Federal Republic of Yugoslavia, (hereinafter, Succession Agreement) ("Official Gazette of Bosnia and Herzegovina", No. 10/01), between the State and other levels of government, and for determining the appropriate use of these assets;

Recalling that the Parliamentary Assembly of Bosnia and Herzegovina has thus far enacted only partial solutions on the apportionment and use of the financial assets, including the enactment of the Law on Purpose and Utilization of a Portion of the Property that Bosnia and Herzegovina Obtained Under the Agreement on Succession Issues (Official Gazette of Bosnia and Herzegovina, no. 11/02), by which monetary proceeds in the amount of 156,011,373.15 KM were allocated to Bosnia and Herzegovina at the ratio of 13%, the Federation of Bosnia and Herzegovina at the ratio of 46%, and Republika Srpska at the ratio of 25%, whereas the remaining 16% was placed in capital reserves with the Central Bank of Bosnia and Herzegovina;

Recalling further that on 2 of March 2009, the Minister of Finance and Treasury of Bosnia and Herzegovina, Minister of Finance of the Federation of Bosnia and Herzegovina and the Minister of Finance of Republika Srpska signed a Protocol on the Temporary Distribution of Funds Received Under the Agreement on Succession Issues, (hereinafter, Protocol), by which they agreed to temporarily allocate 170,892,841.01 KM in pecuniary assets received under the Succession Agreement "in accordance with the principle applied by the *Law on Purpose and Utilization of a Portion of Property that was Obtained by Bosnia and Herzegovina Under the Succession Agreement;"*

Notwithstandingthe aforementioned Law on Purpose and

Utilization of a Portion of Property that was Obtained by Bosnia and Herzegovina Under the Succession Agreement, which assigned a portion of the Succession Agreement assets between Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and Republika Srpska respectively at the ratio of 13%, 46%, and 25%, the BiH Fiscal Council adopted a conclusion on 9 March 2009 purporting to support the Protocol between the State and Entity finance ministers but which prescribed that the portion of succession funds specified by the Protocol shall be distributed at the ratio of 65% for the Federation of Bosnia and Herzegovina and 35% for Republika Srpska;

Noting that pursuant to the aforementioned conclusion of the BiH Fiscal Council, on 2 April 2009 the Council of Ministers of Bosnia and Herzegovina adopted the Decision on the Temporary Allocation of a Portion of Property of Bosnia and Herzegovina Obtained Under the Agreement on Succession Issues, (Official Gazette of Bosnia and Herzegovina, no. 34/09), affirming the aforementioned Protocol and directing that 170,584,245,841.01 KM in succession assets be apportioned exclusively between the Federation of Bosnia and Herzegovina and Republika Srpska, respectively at the ratio of 65% and 35% until such time as a law may be enacted that fixes the final distribution ratios, and providing that the Single Account of the Indirect Taxation Authority be used to secure the return of any funds that may be necessary to implement the final apportionment specified by such law;

Recalling the letter of the High Representative of 20 April 2009 to the Chair of the Council of Ministers of Bosnia and Herzegovina by which he noted that the exclusion of the State from the apportionment of succession funds under the aforementioned conclusion of the BiH Fiscal Council and decision of the Council of Ministers contradicts the distribution ratios encompassed by the 2002 Law on Purpose and Utilization of a Portion of Property that was Obtained by Bosnia and Herzegovina Under the Succession Agreement, and by

which he noted that such exclusion "represents a worrisome precedent for future cases of apportionment of these funds" in light of the obligations of Bosnia and Herzegovina arising under Annex "C" of the Succession Agreement that could be covered from these funds, a part of which might become due this year;"

Recalling further the aforementioned letter of the High Representative of 20 April 2009 by which he also noted that the Brčko District of Bosnia and Herzegovina is also excluded from the temporary apportionment of succession funds endorsed by the Council of Ministers, and by which he reminded the Council of Ministers that "such systemic exclusion of Brčko District in this type of agreement led to the initiation, in 2005, of proceedings before the Arbitral Tribunal for the Dispute Over Inter-Entity Boundary in Brčko Area, and that the reopening of similar proceedings cannot be ruled out;"

Cognizant of the 14 May 2009 letter of the Supervisor of Brčko District of Bosnia and Herzegovina to the Chairman of the Council of Ministers of Bosnia and Herzegovina by which he emphasized that "Brčko District of Bosnia and Herzegovina is an integral part of the fiscal system of Bosnia and Herzegovina that contributes to the collection of indirect tax revenues, which has -and continues to meet- obligations arising from BiH's external and internal debts (…) therefore has a right to participate in the apportionment of succession funds in order to carry out its responsibilities in accordance with the awards of the Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brčko Area and the Constitution of Bosnia and Herzegovina;"

Considering the Communiqué of 30 June 2009, by which the Steering Board of the Peace Implementation Council noted that the Entities have not yet fulfilled their remaining obligations under the Awards of the Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brčko Area to resolve, *inter alia*, the issue of "the share of gold and other proceeds

from SFRY assets due to the Brčko District of Bosnia and Herzegovina, and called upon the Entities, and the State, where appropriate, to resolve these issues no later than 15 September 2009;"

Notwithstanding the Draft Law on the Distribution, Purpose and Use of Financial Assets Obtained under Annex "C" to the Agreement on the Succession Issues, adopted by the Council of Ministers Bosnia and Herzegovina on 14 September 2009, which foresees the apportionment, purpose and use of the financial assets received by Bosnia and Herzegovina under the Agreement, the authorities of Bosnia and Herzegovina have failed to fully regulate the share of gold and other proceeds from succession assets due to the Brčko District of Bosnia and Herzegovina within the 15 September 2009 deadline set by the Steering Board of the Peace Implementation Council;

Regretting that the failure to resolve outstanding issues identified by Steering Board of the Peace Implementation Council, including the share of gold and other proceeds from succession assets due to the Brčko District of Bosnia and Herzegovina represents a continuing detriment to Brčko District of Bosnia and Herzegovina institutions;

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

DECISION

Enacting the Law on the Distribution, Purpose and Use of Financial Assets Obtained Under Annex "C" to the Agreement on the Succession Issues

The Law which follows and which forms an integral part of this Decision shall enter into force as provided for in Article 11 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.

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

Sarajevo, 18 September 2009	Dr. Valentin Inzko
	High Representative

LAW

ON THE DISTRIBUTION, PURPOSE AND USE OF FINANCIAL ASSETS OBTAINED UNDER ANNEX “C” TO THE AGREEMENT ON THE SUCCESSION ISSUES

Article 1

(Scope of the Law)

This Law shall regulate the distribution, purpose and use of financial assets that Bosnia and Herzegovina obtained under Annex “C” to the Agreement on the Succession Issues as ratified by the Decision on Ratification of the Agreement on the Succession Issues (Official Gazette of BiH – the International Treaties, 10/01), (hereinafter referred to as: the Agreement).

Article 2

(Types of Financial Assets)

The financial assets obtained by Bosnia and Herzegovina under Annex “C” of the Agreement comprised of pecuniary assets, proceeds obtained through the sale of monetary gold, the value of shares, dividends and interests.

Article 3

(Pecuniary Assets)

Pecuniary assets shall constitute the funds that belong to Bosnia and Herzegovina pursuant Annex “C” of the Agreement, which are deposited on segregated escrow accounts held by the Central Bank of Bosnia and Herzegovina.

Article 4

(Proceeds Obtained Through the Sale of Gold)

Monetary gold shall be transferred to the Central Bank of Bosnia and Herzegovina and shall be converted into banknotes through sale at national and international markets on the basis of an assessment by the Central Bank of Bosnia and Herzegovina and the Ministry of Finance and Treasury of Bosnia and Herzegovina regarding the most favorable time and conditions for sale.

The Decision on the Assignment of the Property of Bosnia and Herzegovina Obtained Through the Agreement on Succession Issues and its conversion into banknotes that was enacted by the Council of Ministers of BiH on 12th January 2006 (Official Gazette of BiH, no. 14/06 and 21/06) is hereby repealed.

Article 5

(Shares and Dividends)

The value of shares and dividends obtained shall be determined in the manner and under the terms and conditions of regular stock market operations.

Article 6

(Interests)

The interests arising from the time-tied pecuniary deposits obtained under the Agreement in national and international banks shall constitute pecuniary assets that together with the principal amount make the integral part of the total stock of assets obtained on the basis of the succession agreement.

Article 7

(Time and conditions for Sale)

Upon the recommendation of the Ministry of Finance and Treasury of Bosnia and Herzegovina, the Council of Ministers shall decide, as necessary, on the most favorable time and conditions for sale.

Article 8

(Distribution of the Financial Assets)

All financial assets received by Bosnia and Herzegovina pursuant to Annex “C” of the Agreement shall be apportioned according to the following proportions:

a. Bosnia and Herzegovina – 10%;

b. The Federation of Bosnia and Herzegovina – 58%;

c. The Republika Srpska – 29%; and

d. Brčko District of Bosnia and Herzegovina – 3%.

Upon the instruction issued by the Ministry of Finance and Treasury of Bosnia and Herzegovina, the financial assets received according to the Agreement shall be apportioned in accordance with the proportions as specified in paragraph 1 of this Article.

Article 9

(Purpose of the Financial Assets)

The financial assets obtained under the Agreement, allocated for the needs of Institutions of Bosnia and Herzegovina shall be used, *inter alia*, for the settlement of the liabilities arising from Annex "C" to the Agreement, and for other purposes as may be decided by the Council of Ministers of Bosnia and Herzegovina.

The Entities and Brčko District of Bosnia and Herzegovina shall use the financial assets obtained in accordance with this law for the settlement of liabilities arising from Annex "C" to the Agreement, including for the settlement of liabilities for frozen foreign currency accounts in accordance with applicable law and for other purposes, as decided by the respective governments.

Article 10

(Distributed Assets)

The settlement and transfer of the funds previously distributed in accordance with the *Decision on the Temporary Distribution of One Part of Assets of Bosnia and Herzegovina Obtained under the Agreement on the Succession Issues* ("Official Gazette of Bosnia and Herzegovina," no. 34/09),

according to which the amount of KM 170,892,841.07 was allocated between the Federation of Bosnia and Herzegovina and Republika Srpska, shall be returned to the Institutions of Bosnia and Herzegovina and the Brčko District of Bosnia and Herzegovina in the corresponding ratios prescribed by Article 8 of this Law.

According to aforementioned Decision, 111,080,346.70 KM was made available to the Federation of Bosnia and Herzegovina and the amount of 59,812,494.37 KM was made available to Republika Srpska. In accordance with the final apportionment ratios prescribed by Article 8 of this Law, the Federation of Bosnia and Herzegovina received 11,962,498.88 KM in excess of its specified share and Republika Srpska received 10,253,570.46 KM in excess of its specified share.

The return of the excess funds received by the Federation of Bosnia and Herzegovina and Republika Srpska in accordance with this Article, and the settlement of the final apportionment of financial assets on behalf of the Institutions of Bosnia and Herzegovina and Brčko District of Bosnia and Herzegovina specified by Article 8 shall be implemented through the current revenues within the Single Account of the Indirect Taxation Authority in the following manner:

a. 17,089,284.11 KM shall be reallocated to the Institutions of Bosnia and Herzegovina;

b. 5,126,785.23 KM shall be reallocated to the Brčko District of Bosnia and Herzegovina.

The Central Bank of Bosnia and Herzegovina shall allocate and transfer any remaining financial assets specified by the *Decision on the Temporary Distribution of One Part of Assets of Bosnia and Herzegovina Obtained under the Agreement on the Succession* to the Institutions of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska and the Brčko District of Bosnia and Herzegovina, in the ratios

prescribed by Article 8 of this law.

Article 11

(Dynamics for Realization of Settlement)

The amounts due from the Federation of Bosnia and Herzegovina and Republika Srpska, as established in Article 10 of this law, shall be deducted from the Single Account of the Indirect Taxation Authority belonging to the Entities and allocated on a daily basis between 1 January 2010 and 31 March 2010 to the accounts of the Institutions of Bosnia and Herzegovina and the Brčko District of Bosnia and Herzegovina.

The Director of the Indirect Taxation Authority shall be responsible for the execution of the settlement as defined by the provisions of Articles 10 and 11.

Article 12

(Entry into force)

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