HR Christian Schmidt clarifies deliberate misconceptions presented by RS authorities

I have been following recent statements that purport to interpret the General Framework Agreement for Peace (GFAP) and some of its fundamental aspects. In this context, I must correct some willful misinformation that is being spread in pursuit of irresponsible personal goals. This is my role under Annex 10 to the GFAP and I would be neglecting my duties if I did not set the record straight. The GFAP remains the basis for a peaceful future for all citizens of BiH. Its implementation requires commitment rather than experiments.

In an attempt to lend the RS the image of a State, RS officials have long been challenging previous state-building reforms that have been central to the progress made since Dayton. This RS policy, combined with several years of provocative and divisive rhetoric challenging the sovereignty, territorial integrity, and constitutional order of the country, has impacted the political stability of the country. It is now time to put aside these backward-looking policies and to work for the future of the country as a whole. Recent moves of the European Union and the granting of the candidate status to BiH have produced a genuine opportunity. This opportunity needs a convincing commitment of all authorities in BiH. Let me be clear: as part of the structure set forth

under the GFAP, nobody should question the right of the RS to exist as an entity. But that right goes along with the duty of RS officials to contribute to the prosperity of the whole country rather than personal ones.

The RS officials have elaborated a theory about BiH being a union of entities that enjoy Statehood, about the Entities being the holders of sovereignty, or about the "original Dayton" and the responsibilities that were "stolen" by the State from the Entities. This theory, which has been expounded with remarkable consistency to undermine the institutions that have the power to interpret Dayton or the BiH Constitution, is erroneous and proceeds from a very partial and purposeful misreading of the GFAP, including the constitutional framework of BiH embedded in the agreement itself.

Like all constitutions, the BiH Constitution is a living document that has been used to develop the institutions and responsibilities BiH needs. This in no way threatens the RS and does not call its existence into question. Agreement on transfer of responsibilities were all signed by the RS authorities. Denial of that calls the good faith of the RS authorities into question. It is also false to say that BiH has all powers while the Entities have none. The Dayton Constitution gives extensive powers to the Entities while ensuring that these powers are exercised as part and in the interest of BiH, rather than against it. As such, it gives the opportunity to BiH and the Entities therein to turn to the future and build this future as part of Europe and in harmony with neighboring countries. There is no conflict between BiH and the Entities. The entities' existence is guaranteed by the Constitution, as is BiH's territorial integrity, political independence, and sovereignty. These concepts are placed in the very first provisions of the GFAP and underscore that the agreement does not recognize the possibility for the country to dissolve.

At the same time, the GFAP leaves no room for the misguided

concept of a union of States. We all remember BiH recent history. Dayton does not refer to the 9th of January but rather to the Republic of BiH continuing its existence under international law as a state. As such, the BiH Constitution clearly establishes that BiH's existence as a State continues and establishes two Entities as parts of Bosnia and Herzegovina. The GFAP did not create BiH; to the contrary it created the entities with the continuation of BiH. Entities are not founders of the State, as some would want to see them, but are consisting part of the State, which does not recognize them as "states". The extensive responsibilities that the Constitution gives to the Entities are by no means an expression of their statehood, but rather an expression of the need for the Entities and the State to work cooperatively to achieve their policy goals. It is also worth recalling that the GFAP was signed by the Republic of BiH, the Republic of Croatia and the Republic of Yugoslavia, and not the Entities.

The RS officials claim that Entities can simply withdraw from BiH legislation and introduce their own, along with parallel structures to implement it. This is wrong and goes against all legal principles included in the GFAP. Beside the fact that the RS has no existence other than the one recognized by the Dayton Constitution, the RS is also bound by all decisions adopted by the institutions of BiH. Of course, they can challenge those decisions in front of the BiH Constitutional Court but when they do, they are bound by the outcome. The RS officials have painted the BiH Constitutional Court as the enemy of the RS. As a result, they have chosen to leave the institution, thereby creating a situation where decisions are taken without them. By doing so, the RS perpetuates its practice of attacking the Court and putting political pressure on its judges. Appointing the RS members of the Court would not only enable the RS to be heard but would also unblock an institution that is crucial in any complex state.

This shows the true nature of the problem that all BiH

politicians must face. Constructive participation in the institutions is what is needed to move BiH further on the EU path. The RS and the FBiH both have a crucial role to play. I helped the Federation last year to overcome the crisis it was facing. The RS must adopt a constructive stance and refrain from blocking the institutions of BiH. The latest developments show that the path out of deadlock is through negotiation rather than threats and ultimatums. However important the issues such as the HJPC, the Law on Court or the Law on Conflict of Interest may be, their adoption shows that coordination and compromise is the only way for BiH to function and to be an instrument to the benefit of citizens in both Entities.

The RS officials also argue that BiH has no other responsibilities than the ones listed explicitly in the Constitution. This proceeds again from a very partial reading of the Constitution. The BiH Constitution also includes provisions entitled “additional responsibilities” that list a few conditions for BiH to take on responsibilities that are not expressly listed in the Constitution. These provisions have been used to establish institutions that have, since then, worked for the benefit of BiH but also of the RS and the FBiH. This is certainly the case for the Indirect Taxation Authority or the single defense establishment.

The RS officials then argue that only the signatories to the Annexes to the GFAP have the authority to interpret these Annexes, which they erroneously claim also refers to the BiH Constitution, and that, consequently, the RS has the authority to interpret those agreements unilaterally. There is no support in international law for this claim. Most of the Annexes have expressly ceded the power of interpretation to an independent authority: this can be a BiH institution such as the Constitutional Court for Annex 4, or an international official such as the High Representative for Annex 10 or the Commander of the International Peacekeeping Forces for Annex

1. This of course does not stand in the way of consensual amendments to the Constitution in accordance with the procedure spelled out therein.

These attacks on the foundations of Dayton are not motivated by high-minded principles, but rather the narrow interest of a few to avoid accountability, ensure the capture of institutions, and advance their corrupt enterprises. The structure of Dayton as a State consisting of two entities was also a way to protect Serbs and Serb interests, as well as those of other constituent peoples. The mutual safeguards in Dayton protect the interests of citizens and peoples. These willful misreadings of Dayton endanger those safeguards to the benefit of selfish interests.

These attacks are also a piece of a larger campaign of attacks on institutions that protect Dayton and the state, with the same goals of evading accountability. Attacks on the Constitutional Court in the context of misreading Dayton and pressuring its judges is also a front in the campaign. Vulgar and often embarrassing attacks on me and the legitimacy of my appointment is another.

In preparation for the integration of BiH to the European Union, it is essential to adhere to the rule of law, be it national or international, to preserve the perspective for the citizens of BiH to build a prosperous future in a country that offers its share of opportunities. This requires politicians who are dedicated to peace and prosperity rather than to their own interest. It is my mandate to keep BiH together and I take this task very seriously. Everybody should keep this in mind.