

Decision Establishing the Indirect Tax Policy Commission

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 implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities” and actions against persons holding public office or officials;

Noting Article III: 1 (c) of the Constitution of Bosnia and Herzegovina which includes: “Customs policy” among the responsibilities of the institutions of Bosnia and Herzegovina;

Taking into account the enactment and later amendment of the Law on Customs Policy of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, Numbers 21/98, 34/00 and 10/02);

Considering Article III: 1 (e) of the Constitution of Bosnia and Herzegovina, which includes: “Finances of the institutions and for the international obligations of Bosnia and Herzegovina” among the responsibilities of the institutions of Bosnia and Herzegovina;

Taking into account Article V: 4 (a) of the Constitution of Bosnia and Herzegovina which provides that: “Together the Chair and the Ministers shall constitute the Council of Ministers, with responsibility for carrying out the policies and decisions of Bosnia and Herzegovina in the fields referred to”, which fields include those set out in Article III: 1 (c) and (e) aforesaid;

Bearing in mind Article IV: 4 (b) of the Constitution of Bosnia and Herzegovina, which stipulates that the Parliamentary Assembly shall have responsibility for: “Deciding upon the sources and amounts of revenues for the operations of the institutions of Bosnia and Herzegovina and international obligations of Bosnia and Herzegovina”;

Recalling Article VIII: 3 of the Constitution of Bosnia and Herzegovina, which provides that: “The Federation shall provide two-thirds, and the Republika Srpska one-third, of the revenues required by the budget, except insofar as revenues are raised as specified by the Parliamentary Assembly”;

Bearing in Mind that the Peace Implementation Council in its Declaration at Madrid on 16 December 1998 (Paragraph 16 of Part IV of the Annex to the Peace Implementation Agenda) required the authorities of Bosnia and Herzegovina to strengthen the common institutions and make them more effective by, inter alia, ensuring proper implementation of Customs Laws, including the establishment of a mechanism to monitor implementation of the Law on Customs Policy of Bosnia and Herzegovina;

Noting that the Peace Implementation Council in its Declaration at Brussels on 24 May 2000, within the context of emphasising the critical economic reforms required to create a single economic space and enable private sector growth, inter alia called on the authorities of Bosnia and Herzegovina to identify and establish adequate domestic funding sources for the State budget, and further urged the authorities of Bosnia and Herzegovina to proceed with broad-based reform of the taxation and customs systems;

Considering the communique issued by the Steering Board Political Directors of the Peace Implementation Council on 21 November 2002, in which Bosnia and Herzegovina was called on urgently to adopt economic reforms including: “The unification of the customs system to end duplication and fraud”, and “The introduction of VAT at

the State level to simplify taxation, make it more efficient and help reduce the overall tax burden”;

Considering further the Declaration of the Steering Board of the Peace Implementation Council issued on 30 January 2003 which proclaimed, in relation to the economic reform process, that: “The introduction of a single customs administration and Bosnia and Herzegovina-wide VAT were an essential part of this reform process.”;

Mindful of the letters from European Union External Relations Commissioner Christopher Patten of 21 January 2003, which stipulate that the European Union will insist on the establishment of a single customs administration and the introduction of VAT at the State level if Bosnia and Herzegovina is to progress within the Stabilisation and Association process.;

Noting the joint statement by European Union Foreign Ministers, meeting in the European Union’s General Affairs and External Relations Council on 27 January 2003, which urged the Bosnia and Herzegovina authorities “...to proceed rapidly with the implementation of the reforms necessary for progress in the Stabilisation and Association process, including the establishment of a single state-level customs and VAT system.”;

Concluding that the aforesaid reforms necessary for the efficient implementation of the Peace Implementation Agreement require the development of legislation to ensure that the said reforms can be brought to fruition without hindrance throughout Bosnia and Herzegovina and its Entities;

Further concluding that the development of legislation as aforesaid, and the execution thereby of the mandate of the High Representative, would be facilitated by the establishment by the High Representative of a civilian commission as referred to in Article II: 8 of Annex 10 to the said General Framework Agreement for Peace in Bosnia and Herzegovina.

Having borne in mind the totality of the matters aforesaid the High Representative issues the following

DECISION

Establishing the Indirect Tax Policy Commission

Article 1

The Indirect Tax Policy Commission of Bosnia and Herzegovina (hereinafter “the Commission”), which is hereby established, shall be responsible, as directed by the Chairman of the said Commission, for drafting such legislation, including amending legislation, as may hereafter be required to be enacted by the Parliamentary Assembly of Bosnia and Herzegovina and by the legislatures of the Federation of Bosnia and Herzegovina, of the Republika Srpska and of the District of Brcko respectively, in the fields hereinafter identified.

Article 2

The Commission shall, in particular, draft legislation regarding:

- a) the merger of the separate customs administrations in Bosnia and Herzegovina into one single customs administration of Bosnia and Herzegovina;
- b) the establishment of a single State-wide value added tax;
- c) the establishment of an Indirect Taxation Administration (ITA). The said Administration shall operate at State level, include the single customs administration and be responsible for the collection and administration of indirect taxes, including customs duties and value added tax.

Legislation drafted by the Commission shall fully respect the Constitution of Bosnia and Herzegovina (Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina). Such legislation shall also ensure the economic viability of Bosnia and Herzegovina, including the two Entities and the District of Brcko.

Article 3

Legislation drafted by the Commission as aforesaid shall be in accordance with the “Principles for Reform of Customs and Introduction of Value Added Tax (VAT)” which is annexed to this Decision as Annex A. The said

Annex forms an integral part of this Decision.

Article 4

The Commission shall be composed of seven members. The Prime Ministers of each Entity and the Chairman of the Council of Ministers of Bosnia and Herzegovina shall each respectively appoint two representatives, one of whom should be the Minister responsible for matters of finance, the other of whom shall be an expert chosen on the basis of experience and professionalism in the field of economics, particularly in the area of indirect taxation. The seventh member shall be a Chairman appointed by the High Representative. The representatives of Bosnia and Herzegovina shall likewise be responsible for the District of Brcko. The Mayor of the District of Brcko may appoint an observer.

Article 5

Appointments to the Commission shall be confirmed by the High Representative.

Article 6

The Chairman shall be responsible for directing the work of the Commission, and s/he shall prepare a schedule of work and shall call meetings of the Commission which may be held as required at locations throughout Bosnia and Herzegovina. No specific quorum shall be required in order to hold a meeting of the Commission.

The schedule of work from the preceding paragraph shall include all elements deemed necessary by the Chairman, including:

- a) a formula for allocation of revenue to the Entities and the District of Brcko;
- b) a formula for determining the amount of revenue required to fund the institutions of Bosnia and Herzegovina;
- c) a mechanism to determine tax rates and structures;
- d) an economic/social assessment to inform decisions relating to tax rates and structures;
- e) a process for ensuring a smooth transition from existing tax and customs regimes, ensuring that revenue streams are not disrupted and that appropriate arrangements are made for the transfer of assets.

The schedule of work prepared by the Chairman shall be so prepared with a view to ensuring that the Indirect Taxation Administration referred to in Article 2(c) of this Decision is operational in the area of customs as of 1 July 2003.

Article 7

The Chairman may call for the formation of sub-working groups as s/he deems necessary for the fulfillment of the mandate of the Commission as provided for in this Decision.

Article 8

The Chairman may call for the participation of observers and/or international experts at meetings of the Commission, as s/he deems necessary for the fulfillment of the mandate of the Commission as provided for in this Decision.

The Commission shall have such support staff and technical assistance as may hereinafter be determined.

Article 9

The Commission shall begin work no later than 3 March 2003.

Article 10

The Commission shall complete its work by 31 July 2003, unless a specific request made to the High Representative by the Chairman for the extension of this deadline is granted.

Article 11

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

Sarajevo, 12 February 2003

*Paddy Ashdown
High Representative*

Annex A

Principles for Reform of Customs and Introduction of Value Added Tax (VAT)

Based on the common interest of Bosnia and Herzegovina (BiH), the Entities and the District of Brcko to:

- Remove any existing barriers to the economic development of BiH and encourage domestic and international investment
- Promote macro-economic stability
- Develop a more efficient and effective indirect revenue collection system
- Ensure consistent application of customs legislation throughout BiH
- Set BiH on the road to EU integration and WTO membership by adopting a single customs administration and State-wide VAT
- Ensure all customs and VAT revenues collected are provided to the appropriate level of government
- Effectively tackle fraud and corruption

The single State-wide VAT and single customs and VAT administration shall meet the following principles:

Efficiency and Professionalism

- A single State-level Administration to collect and distribute indirect revenue ("Administration")
- A Director-General of the Administration chosen on the basis of professional qualifications, responsible for policy implementation, operations and day to day fulfillment of executive duties
- A single career service, designed to ensure professionalism and efficiency and probity, reporting to and managed by the Director-General
- A governing board that sets the relevant tax policies to be implemented by the Administration
- Introduction of modern management and effective internal controls to ensure accountability

Macro-Economic Stability

- The revenue collected by the Administration shall be held in a single account
- Revenues collected by the Administration shall be apportioned to the State for the following purposes:
 - ∅ financing the operations of the institutions of Bosnia and Herzegovina
 - ∅ financing the international obligations of Bosnia and Herzegovina
 - ∅ financing the running costs of the Administration, in accordance with its approved budget

- Remaining revenues shall be allocated as required to the District of Brcko and shall be allocated to the Entities, as agreed upon by the Entities
- The Administration shall draw on the single account to clear all its obligations related to the indirect taxes it collects

Transparency and Confidence-Building Measures

- State and Entity Finance Ministers and, as appropriate, a representative of the District of Brcko, shall have access to full information regarding the collection and distribution of revenue
- State and Entity Finance Ministers shall participate in the governing board of the Administration. A representative of the District of Brcko may participate as an observer.
- An annual external audit shall be conducted with participation of the Entities and the State