

Decision Enacting the Law on Gifts of the Federation of 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, 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";

Recalling that the recent audit of one of the strategic public enterprises (operating in the utilities sector) in the Federation of Bosnia and Herzegovina, conducted pursuant to the HR Decision on the Special Auditor for the Cantons of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, 5/01)) revealed entrenched and organized corrupt practices relating to gifts and that these unlawful practices resulted in a significant amount of the public enterprise's funds being diverted and siphoned-off by persons within the enterprise acting in collusion with third parties under the guise of "gifts" to the public;

Recalling further that there is cogent evidence that malpractice and corruption surrounding gifts by public enterprises, are not restricted to the public enterprise for which the audit was conducted, but that there is a widespread problem, which is endemic in public enterprises in Bosnia and Herzegovina;

Noting that if this malpractice, which discloses organized and entrenched corruption, is not addressed within a proper, rational and transparent legal framework, much of the property of such public enterprises will be unlawfully and improperly siphoned off and will, consequently have a detrimental effect on the privatization process and on economic reforms in general;

Noting further that at Brussels on 23/24 May 2000 the Peace Implementation Council issued a Declaration in which it urged, "the High Representative to use his authority to ensure full and accelerated reform in all sectors of civilian implementation, including removing obstacles that stand in the way of economic reform";

Bearing in mind that at Madrid on 16 December 1998 the Peace Implementation Council set out its concerns as follows: "[t]he 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 operations.....";

Considering in addition that in the last said Declaration of 23/24 May 2000 the Peace Implementation Council stated that: "[t]he Council remains deeply concerned over ingrained corruption in BiH which undermines democratic governance, wastes public resources and hinders the development of the market economy.

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

DECISION

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The Law which follows, and which forms an integral part of this Decision, shall enter into force as provided for in Article 7 thereof but on an interim basis until such time as the Legislature of the Federation of Bosnia and Herzegovina adopts the same in due form, without amendment and with no conditions attached.

This Decision shall come into effect forthwith and shall be published without delay in the Official Gazette of Federation of Bosnia and Herzegovina.

Law on Gifts by Publicly Owned or Controlled Enterprises in the Federation of Bosnia and Herzegovina

Sarajevo, 6 March 2003

*Paddy Ashdown
High Representative*