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Resolving the Commodity Reserve Crisis in Bosnia and Herzegovina: An Inter-Entity Legal Operational Framework

Apstrakt: For over three years, public and academic discourse in Bosnia and Herzegovina (BiH) has highlighted the severe material vulnerabilities arising from the lack of functional strategic commodity reserves. This policy brief introduces a constitutional, legally sound, non-centralized mechanism to resolve this crisis: the Inter-Entity Legal Institute for Coordination and Joint Public Procurement (IELIC). Grounded strictly in Article III(5)(a) of the BiH Constitution, this framework circumvents the politically sensitive issue of the “transfer of competencies” by utilizing consensual horizontal agreements. Financial liquidity is secured by allocating 5% of the record-breaking indirect tax revenues from 2025 (12.17 billion BAM) and early 2026 surpluses. Furthermore, the brief outlines a comprehensive Public-Private Partnership (PPP) model to leverage private storage infrastructure, ensuring immediate food, medical, and energy security through an automated, needs-based distribution algorithm. By bypassing institutional deadlocks through contractual cooperation and public-private agility, this framework offers a replicable legal-governance model for supply chain resilience in highly decentralized or post-conflict states globally.

Ključne riječi: commodity reserves; fiscal policy; supply chain security; public-private law; constitutional law; Bosnia and Herzegovina.

1. INTRODUCTION AND CONSTITUTIONAL CONTEXT

The ongoing geopolitical reconfiguration of Europe necessitates proactive national legal frameworks capable of securing critical supply chains. Bosnia and Herzegovina (BiH), characterized by a highly decentralized constitutional structure established by Annex 4 (The Constitution) of the General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP), currently operates in a state of absolute material vulnerability regarding its emergency stockpiles.

The institutional and fiscal reality in 2026 exhibits a complete structural breakdown:

- **The Regulatory Vacuum:** Following the final bank-

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ruptcy and subsequent liquidation of the public enterprise *Robne rezerve* in Republika Srpska, no replacing entity-level institutional mechanism has been operationalized. Concurrently, the Federal Directorate for Commodity Reserves in the Federation of BiH (FBiH) possesses critically low inventories that fail to meet baseline emergency thresholds (District Commercial Court of Banja Luka, 2017; Federal Directorate for Commodity Reserves, 2025).

- **The Fiscal Disconnect:** According to official data from the Indirect Taxation Authority (ITA BiH), fiscal revenues reached an unprecedented **12.17 billion BAM in 2025** (a year-on-year increase of 633 million BAM), with a continuous surplus growth of **216 million BAM recorded in the first four months of 2026** (Indirect Taxation Authority of Bosnia and Herzegovina (ITA BiH), 2026). Consequently, BiH does not face a financial liquidity crisis, but rather a profound crisis of statutory resource allocation and strategic prioritization.
- **The Constitutional Deadlock:** For years, legislative attempts to reform strategic reserves have stalled due to asymmetric political interpretations. Centralization efforts at the state level are routinely vetoed by entity representatives who view them as unauthorized transfers of constitutional competencies. Conversely, the resulting total fragmentation prevents the country from achieving the financial benefits of bulk purchasing, leaving citizens across both entities equally vulnerable to global market shocks. This systemic vulnerability directly contradicts modern supply chain security standards (Christopher, 2016) while failing to meet international safety criteria regarding national emergency stockpiles (European Commission, 2023).

2. LEGAL ARCHITECTURE: AVOIDING THE “TRANSFER OF COMPETENCIES”

From an institutional and constitutional law perspective, any viable solution must preserve the existing constitutional division of powers. The proposed Inter-Entity Legal Institute for Coordination and Joint Public Procurement (IELIC) is engineered to fit strictly within the existing constitutional paradigm.

The Constitutional Foundation: Article III(5)(a)

The legal validity of this framework rests upon **Article III, Paragraph 5, Point (a) of the Constitution of Bosnia and Herzegovina**, which explicitly states that BiH shall assume competence for such other matters as are agreed by the entities.

Therefore, the IELIC is not established via a state-level law imposed from above. Instead, it is created via a consensual, horizontal Inter-Entity Agreement signed directly between the Government of the Federation of BiH and the Government of Republika Srpska, with the formal assent of their respective parliaments (Constitutional Court of Bosnia and Herzegovina, 1995).

International legal scholarship confirms that such horizontal, inter-administrative cooperative agreements are highly effective tools for managing national crises within complex, decentralized state architectures without triggering federal disputes (Stephan, 2019)

Integrating the Brčko district via the Accession Annex

To ensure comprehensive material security across the territory of Bosnia and Herzegovina, the framework addresses the unique constitutional position of the Brčko

District. Since the District operates as a condominium held jointly by both entities under the Final Award of the Arbitral Tribunal for Dispute Over the Inter-Entity Boundary Line at Brčko, it cannot be automatically bound by a bilateral inter-entity agreement. To resolve this, the legal architecture of the IELIC includes an explicit Accession Annex. Upon the signing of the primary horizontal agreement by the Federation of BiH and Republika Srpska, the Government of the Brčko District, with the formal assent of its District Assembly, can formally accede to the institute as a third, equal operational partner. This ensures that the District's citizens are fully integrated into the automated, needs-based distribution algorithm, and protected by the unified strategic emergency pool.

Legal Characteristics of the IELIC:

- **Strictly Technical Mandate:** The Institute possesses no sovereign regulatory or legislative power. It acts exclusively as a joint commercial agent and logistical coordinator for the signing parties.
- **Parity Representation:** The steering board of the Institute operates on a strict principle of parity and consensus, ensuring that neither entity can be outvoted or marginalized.
- **Preservation of Entity Ownership:** Title and legal ownership of the purchased commodities remain fully vested in the respective entities based on their financial contribution, while the procurement process itself is unified to maximize market power.

3. ECONOMIC OPTIMIZATION THROUGH JOINT PROCUREMENT

Partialized purchasing by individual entities or cantons forces public bodies to buy goods at near-retail prices, which represents an inefficient use of public revenues. By consolidating the purchasing power of both entities through a single legal vehicle, BiH activates the economic principle of economies of scale.

The Financial Allocation Mechanism

The IELIC would be funded by a synchronized statutory allocation. The entity parliaments would pass twin legislative acts directing **5% of their respective net allocations from the record-breaking 12.17 billion BAM ITA gross indirect tax revenues** directly into a dedicated escrow account managed by the IELIC. This generates an immediate, politically unencumbered fund of approximately **600 million BAM** earmarked exclusively for bulk emergency procurement.

The Procurement Scope

The joint procurement is legally restricted to three non-ideological, survival-essential sectors:

- **Strategic Agri-Food Stocks:** Wheat, corn, sunflower oil, sugar, and salt.
- **Essential Medical Reservoirs:** Life-saving pharmaceuticals (e.g., insulin, basic antibiotics, anesthetics, intravenous fluids) ensuring uninterrupted public hospital operations for a minimum of 180 days.
- **Energy Reserves:** Bulk procurement of Euro-diesel and heating oil to protect emergency services, security forces, and public transport from global price spikes.

4. THE PUBLIC-PRIVATE PARTNERSHIP (PPP) INFRASTRUCTURE MODEL

A primary obstacle to establishing reserves is the lack of state-owned storage infrastructure (silos, fuel tanks, and specialized warehouses). Building new state infrastructure would require years and hundreds of millions of BAM. The optimal legal and economic solution is the deployment of a Public-Private Partnership (PPP) Framework, operationalized through two distinct legal instruments:

- **Availability Contracts:** The IELIC enters into long-term PPP contracts with vetted, domestic private companies (milling complexes, pharmaceutical distributors, and oil terminals). The private partner legally guarantees that a specific percentage of their storage capacity is permanently reserved for the state-owned strategic reserves utilizing the existing statutory frameworks governing PPPs within the respective Entities. Global institutional performance reviews confirm that such public-private agility successfully bridges critical public infrastructure gaps during national emergencies (Hodge&Greve, 2007).
- **The Continuous Rotation Mechanism:** To prevent the degradation and expiration of products (especially food and medicines), the PPP contract obligates the private partner to continuously rotate the state reserves through their regular commercial supply chains. The private partner uses the older state-owned stock for daily market operations and simultaneously replaces it with fresh, newly imported or produced stock.
- **Legal and Financial Safeguards:** The state retains ownership of the specific quantity and quality of the goods at all times, backed by mandatory bank guarantees provided by the private partner. This model eliminates state maintenance costs, prevents corruption in state warehouses, and injects liquidity into the domestic private sector. This rigorous risk-mitigation structure aligns with verified European legal frameworks governing the permanent safety and quality of strategic state-owned resources (Watts, 2011).

5. THE AUTOMATED, NEEDS-BASED DISTRIBUTION ALGORITHM

A critical failure of past commodity reserve models in Bosnia and Herzegovina (BiH) was the politicization of crisis response. When a crisis occurs, the decision to deploy life-saving resources cannot be left to prolonged political negotiations, parliamentary debates, or entity-based voting blockades. Therefore, the Inter-Entity Legal Institute (IELIC) operates under a legally binding, automated distribution algorithm that prioritizes immediate human need and logistical efficiency over political quotas. Operationalizing such objective data frameworks is well-documented in humanitarian logistics, proving that automated algorithms remove bureaucratic friction and vastly accelerate regional delivery times during supply disruptions (Kessler&Alon,2022)

The Activation Protocol

The deployment of strategic reserves (food, medicine, or fuel) is triggered automatically when a region, canton, or municipality crosses a predefined Emergency Vulnerability Threshold. These thresholds are defined by objective, measurable indicators, including:

- **Natural Disasters:** Official declaration of a state of natural disaster (floods, earthquakes, droughts) affecting local infrastructure.

- **Market Disruption:** An abrupt, asymmetric price spike (>30% within a 14-day window) or a total cessation of imports for critical goods (e.g., medical insulin or Euro-diesel).
- **Critical Depletion:** A documented drop in public hospital supplies below a 7-day operational baseline.

Legal Unity vs. Physical Decentralization

To ensure maximum speed in crisis response, the distribution mechanism enforces two fundamental rules:

- **The Principle of Absolute Solidarity:** While the commodities are physically stored across decentralized private facilities in both entities (as established via the PPP framework), they legally belong to a unified emergency pool. If a severe supply shock hits the healthcare system in Banja Luka, the IELIC algorithm immediately authorizes the deployment of medical supplies from the nearest available partner warehouse, even if that warehouse is physically located in Tuzla or Mostar, Sarajevo, or the Brčko District, and vice versa.
- **Automatic Restitution:** The entity that draws resources from the joint pool during an isolated crisis is legally and financially obligated to replenish that stock within a specified timeframe (e.g., 90 to 120 days) using its share of the ITA tax revenues, ensuring the long-term sustainability of the fund.

6. DISCUSSION AND EXPECTED POLICY OUTCOMES

Implementing the IELIC framework using the recorded 12.17 billion BAM in fiscal revenues from 2025 and the ongoing 2026 surpluses yields significant socio-economic and legal benefits:

- **De-escalation of Competency Debates:** By utilizing horizontal inter-entity agreements (Article III(5)(a) of the Constitution), the framework respects the Dayton constitutional boundaries. It provides a practical solution to a national security threat without setting a precedent for forced centralization.
- **Fiscal Accountability:** Directing 5% of the indirect tax revenue (approx. 600 million BAM) into tangible, survival-essential assets prevents these public funds from being absorbed by inefficient bureaucratic spending and corruption. It directly returns the tax surplus to the citizens who generated it through inflated living costs.
- **Private Sector Stimulation:** The PPP model avoids the massive capital expenditure required to build new state silos. Instead, it injects steady state liquidity into domestic transport, milling, energy, and pharmaceutical companies through long-term availability contracts.

7. CONCLUSIONS

The geopolitical realities of 2026 leave no room for political delay or inaction. Bosnia and Herzegovina possesses the necessary financial liquidity to shield its population from imminent global supply chain failures; what it lacks is strategic institutional coordination.

The establishment of the Inter-Entity Legal Institute for Coordination and Joint Public Procurement offers a clear, legally sound, and economically optimized path forward. By combining the financial benefits of economies of scale with the infrastructural agility of public-private partnerships, BiH can finally transition from a state of total mate-

rial vulnerability to one of regional resilience. Ultimately, this institutional framework demonstrates that legal contractual cooperation can successfully safeguard vital supply chains without centralizing constitutional power, providing a valuable blueprint for other multi-tiered, highly decentralized jurisdictions facing systemic crisis management challenges worldwide. The responsibility now lies with all relevant stakeholders to transform historical tax revenues into a permanent shield for the citizens.

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