

Decision Enacting the Decision on Approving the Allocation of Funds for the Purpose of Covering Expenditures Related to the 2022 General Elections in Bosnia and Herzegovina

n. 02/22

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 further Paragraph 4 of Resolution 1174 (1998) of the United Nations Security Council of 15 June 1998, by which the Security Council, under Chapter VII of the United Nations Charter “... reaffirms that the High Representative is the final authority in theatre regarding the interpretation of Annex 10 on civilian implementation of the Peace Agreement and that in case of dispute he may give his interpretation and make recommendations, and make binding decisions as he judges necessary on issues as elaborated by the Peace Implementation Council in Bonn on 9 and 10 December 1997”;

Mindful that the Security Council of the United Nations has repeatedly affirmed, through its resolutions adopted pursuant to Chapter VII of the Charter of the United Nations, that the role of High Representative as final authority in theater regarding the implementation of Annex 10 to the GFAP includes the “authority to make binding decisions as he judges necessary on issues as elaborated by the Peace Implementation Council in Bonn on 9 and 10 December 1997”;

Noting that the Constitution of Bosnia and Herzegovina states that Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections and that the principle of periodicity of elections is strongly embedded in international law as both the International Covenant on Civil and Political Rights and the Additional Protocol to the European Convention on Human Rights give it a prominent position;

Emphasizing that the BiH Election Law, in Article 1.2a. paragraph 1 and 6 regulates that the Budget of the Institutions of BiH and International Obligations shall provide for the cost and expense for the conduct of elections by the Central Election Commission of BiH referred to in Article 2.9 and Article 2.19 paragraph 17 of this Law and that such funds must be provided by the relevant institutions within 15 days from the day the decision to announce the elections is issued by the Central Election Commission of BiH;

Recalling that the international community members in letters sent to the Minister of Finance and Treasury of Bosnia and Herzegovina in January and April 2022 urged him to secure funds for the conduct of 2022 General Elections stating that the absence of 2022 budget and temporary financing does not have to restrict the overall capacity and scope of activities that the Central Election Commission of Bosnia and Herzegovina must perform to implement preparatory actions including procurement necessary for the conduct of General Elections, as they are already envisaged in the temporary financing decision;

Noting that the proposed Decision on Approving the Allocation and Use of a Part of the Transferred Funds of Accumulated Surplus Revenue from Previous Years to Cover the Special Purpose Program Expenditures in 2022

submitted by the Central Election Commission of Bosnia and Herzegovina to the Council of Ministers of Bosnia and Herzegovina and the Ministry of Finance and Treasury on 9th April 2022, was not supported by the Ministry of Finance and Treasury of Bosnia and Herzegovina;

Considering that on 4th of May 2022 the Central Election Commission of Bosnia and Herzegovina adopted the Decision on Calling and Holding the General Elections in Bosnia and Herzegovina in 2022 pursuant to which the elections will be held on Sunday, October 2nd, 2022;

Considering further that, whereas the 15 days legal deadline for the relevant institutions to secure funding has long passed, the Council of Ministers of Bosnia and Herzegovina failed to enable the Central Election Commission of Bosnia and Herzegovina to proceed with the activities needed to hold elections in a timely manner;

Taking into consideration that the costs of some materials necessary for the elections from the moment of their planning to the moment of initiating procurement procedure have increased due to the inflation and other causes for the amount of BAM 800.000,00 as reported by the Central Election Commission of Bosnia and Herzegovina in their letter of 6th May 2022 addressed to both the Council of Ministers of Bosnia and Herzegovina and the Ministry of Finance and Treasury of Bosnia and Herzegovina ;

Mindful that this letter received by the Ministry of Treasury of BiH on 6th May 2022 provides a list of expected expenditures linked to the organization of elections revised in light of the increase of costs and fixes the global amount needed to BAM 12.528.000,00.

Considering that the BiH Election Law, in Article 1.2a. paragraph 1 and 6 regulates that the Budget of the Institutions of BiH and International Obligations shall provide for the cost and expense for the conduct of elections by the Central Election Commission of BiH referred to in Article 2.9 and Article 2.19 paragraph 17 of this Law and that such funds must be provided by the relevant institutions within 15 days from the day the decision to announce the elections is issued by the Central Election Commission of BiH as well as the fact that Bosnia and Herzegovina competent authorities have failed to ensure necessary funds in due time in clear violation of said obligations;

Taking into account that on 6 June 2022, the Council of Ministers of Bosnia and Herzegovina enacted a *Decision on Approving the Temporary Use of a Part of the Funds Charged for the Licenses Issued for the Use of a Radio Frequency Spectrum to Provide Services through the Mobile Access Systems* which entered into force on the day of its adoption;

Considering that in his letter of 6 June 2022, the President of the Central Election Commission of Bosnia and Herzegovina informed the High Representative that said Decision of the Council of Ministers of Bosnia and Herzegovina places the Central Election Commission of Bosnia and Herzegovina in a precarious situation regarding the payment of all overdue necessary expenses for the 2022 General Elections;

Reaffirming that the citizens of Bosnia and Herzegovina must be able to exercise their democratic rights in the free, fair and democratic elections and that the conditions for such elections exists in spite of the inability of their political leaders to reach a compromise on electoral reform;

Bearing in mind the prominent place that elections have under the General Framework Agreement for Peace and its Annexes and convinced of the need to facilitate the resolution of the above-mentioned difficulties in order to guarantee the holding of free, fair and democratic elections on October 2, 2022.

All the above considered, born in mind and noted, I hereby issue the following:

DECISION

Enacting the Decision on Approving the Allocation of Funds for the Purpose of Covering Expenditures Related to the 2022 General Elections in Bosnia and Herzegovina

The Decision on Approving the Allocation of Funds for the Purpose of Covering Expenditures Related to the 2022 General Elections in Bosnia and Herzegovina (hereinafter: the Decision) set out hereunder forms an integral part of this Decision.

The authorities in charge for proposing the Law on Budget of the Institutions of Bosnia and Herzegovina and the International Obligations of Bosnia and Herzegovina shall ensure that the amount specified hereinafter is reflected

in the proposed Law on Budget of the Institutions of Bosnia and Herzegovina and the International Obligations of Bosnia and Herzegovina.

The Decision Enacting the Decision on Approving the Allocation of Funds for the Purpose of Covering Expenditures Related to the 2022 General Elections in Bosnia and Herzegovina shall come into effect immediately and shall be published on the

official website of the Office of the High Representative and in the "Official Gazette of Bosnia and Herzegovina" without delay.

Sarajevo, 7 June 2022

Christian Schmidt

High Representative

DECISION

on Approving the Allocation of Funds for the Purpose of Covering Expenditures Related to the 2022 General Elections in Bosnia and Herzegovina

Article 1

The allocation and use of the amount of BAM 12.528.000,00 for the purpose of covering the expenditures of the Central Election Commission of Bosnia and Herzegovina for the holding the "2022 General Elections" in accordance with the expenditure structure specified in the Central Election Commission requests of 18 April 2022 no. 07-1-16-1-259-10/22, of 6 May 2022 no. 07-1-16-1-259-11/22 and of 25 May 2022, no. 07-1-16-1-259-12/22, is hereby approved.

Article 2

(1) The funds referred to in Article 1 of this Decision shall be provided regardless of the source of the income including but not limited to transferred surplus revenue exceeding expenditures from previous fiscal years or any other source.

(2) For the avoidance of doubt, the Ministry of Finance and Treasury of Bosnia and Herzegovina is hereby authorized to transfer funds charged as a fee for the licenses issued for the use of the radio frequency spectrum to provide services through the mobile access systems.

Article 3

The Central Election Commission of Bosnia and Herzegovina shall compile the reports on the funds spending, as part of its regular reporting and within the time limits prescribed in accordance with the provisions of Article 22 of the Law on Financing of the Institutions of Bosnia and Herzegovina ("Official Gazette of BiH", Nos. 61/04, 49/09, 42/12, 87/12 and 32/13).

Article 4

The funds approved under this Decision shall be included in the Law on Budget of the Institutions of Bosnia and Herzegovina and International Obligations of Bosnia and Herzegovina for 2022.

Article 5

(1) The Ministry of Finance and Treasury of Bosnia and Herzegovina shall be responsible for the immediate implementation of this Decision.

(2) In addition, each and every administrative step required to be made or taken under the applicable laws of Bosnia and Herzegovina in order to implement this decision, is hereby deemed to have been made and taken in proper and due form. The Central Election Commission of Bosnia and Herzegovina will start its activities to enable the timely holding of the 2022 General Elections forthwith.

Article 6

Decision on Approving the Temporary Use of a Part of the Funds Charged for the Licenses Issued for the Use of a Radio Frequency Spectrum to Provide Services through the Mobile Access Systems adopted by the Council of Ministers of Bosnia and Herzegovina on 6 June 2022 is repealed by virtue of this Decision.

Article 7

The Decision shall enter into force on the date of its publication on the website of the Office of the High Representative and shall be published in the "Official Gazette of Bosnia and Herzegovina" without delay.