

Op-ed by HR Valentin Inzko: Institutions Need Continuity and Timely Appointments

By Valentin Inzko

Legal procedures are in place at the state and entity level to ensure that executive and administrative positions are filled in a transparent and efficient way, but – from seats on the BiH Council of Ministers to seats on statutory boards – positions routinely remain unfilled until long after existing mandates should have come to an end.

The consequences of this can be disastrous and the example of the FBiH Securities Commission is a case in point.

First of all some background information. The FBiH Securities Commission is a specialized institution entrusted by law with broad regulatory powers aimed at supporting the establishment, development and smooth functioning of the capital market in the Federation.

The mandate of the five Federation Securities Commission members expired in May 2009 and since then the Federation Presidency and Parliament have been unable to agree on replacements, so the Commission has had to operate for more than four years on the basis of a technical mandate.

Parliament has rejected the candidates proposed by the Presidency, expressing reservation about the procedure followed to select candidates. So that you know, I share the view of the Parliament about the need for a transparent procedure.

In the meantime, the Federation Supreme Court has upheld a legal challenge to one of the numerous decisions the Commission has made since May 2009, on the grounds that this decision exceeded the Commission's technical mandate. This in turn has opened up the possibility of further challenges to Commission decisions.

The Commission is effectively paralysed. This, of course, is the opposite of what financial markets demand and it could not have happened at a worse time for an economy that is struggling to deal with a drastic fall in investment and a corresponding rise in unemployment. So what are the practical consequences?

Without the Securities Commission, no joint stock company in the Federation could, among others, increase or decrease its capital, change its status or form of organization, register changes in management structures, issue shares, etc. There could also be no effective oversight over operations of brokerage companies, fund management companies or the Stock Exchange nor could the issuance of cantonal and municipal bonds be realized. Those are only some of the responsibilities of the FBiH Securities Commission illustrating the type of problems and their far-reaching consequences.

And the problems are already evident on the ground: one prominent commercial bank in the Federation cannot complete the 30 million KM increase in its initial capital intended to double the volume of financing available to economy and citizens, while one municipality is at this very moment unable to proceed with a bond issue that would have raised one million KM for a development project. These are only two examples of the consequences of the recent suspension of the Commission's decision-making following the court rulings.

A sound solution needs to be put in place without any further delay, and so it was deeply regrettable that the authentic interpretation of the relevant legislation was not adopted last week. Without such a solution, further legal challenges are possible and we will not have a functioning body to take essential decisions in the future.

Legal certainty and institutional stability are the pillars of any legal system. They are also key to investment decisions that have the potential of generating much needed jobs in this country.

I believe these principles can be clarified in the existing legal framework in a manner that ensures institutions continue to function and to meet their responsibilities regardless of politics failing to agree on new appointments.

My Office is currently engaged in discussions with the Federation Presidency and representatives of the Federation Government and Federation Parliament with a view to resolving the situation at the Securities Commission and in a range of statutory bodies where appointments have been deadlocked.

I believe we can find a solution that is both pragmatic and principled, and which ensures that institutions function at all times.