

Decision removing Mr. Mijat Tuka from his position as a member of the House of Representatives 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 the Peace Agreement throughout Bosnia and Herzegovina

and its Entities which “may include actions against persons holding public office”;

Noting that in paragraph X. 4 of the Annex to the Declaration of the Peace Implementation Council issued at Madrid on 16 December 1998 it was stated that the Council acknowledged that those whom the High Representative barred from official office “may also be barred from running in elections and from any other elective or appointive public office and from office within political parties until further notice”;

Noting that the Peace Implementation Council at its meetings held in Bonn on 10 December 1997, in Madrid on 16 December 1998 and in Brussels on 23/24 May 2000, expressed its deep concerns regarding ingrained corruption in BiH which can lead to the undermining of democratic governance and the wasting of public resources and can hinder the development of the market economy;

Bearing in mind that at Madrid on 16 December 1998 the Peace Implementation Council set out its concerns as follows: “The 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....”;

Noting 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 in accordance with his mandate to ensure full and accelerated implementation in all sectors of civilian implementation, including removing obstacles that stand in the way of economic reform”;

Considering that, in the said Declaration of 23/24 May 2000,

the Peace Implementation Council stated that: "The Council remains deeply concerned over ingrained corruption in BiH which undermines democratic governance, wastes public resources and hinders the development of the market economy. The OHR comprehensive Anti-corruption Strategy is the solid basis for the fight against corruption. All public officials are expected to give their active and unreserved support to this Strategy and to the institutions which are implementing it.";

Further taking into account the Decision of the High Representative on the Special Auditor for the Federation of Bosnia and Herzegovina of 2 March 2001 (published in the Official Gazette of the FBH 9/01 on 23 March 2001) and of the further Decision of the High Representative on the Special Auditor for the Federation of Bosnia and Herzegovina of 1 August 2002 (published in the Official Gazette of the FBH 40/02 on 21 August 2002), and the report of the said Special Auditor on the Ministry of Social Affairs, Labor, Refugees and Displaced Persons of the Federation of Bosnia and Herzegovina released on March 20, 2003(hereinafter referred to as the "Report");

Considering that the High Representative by letter of 20 March 2003 requested the President of the New Croat Initiative being the political party to which Mr. Tuka belongs, to urge Mr. Tuka to resign voluntarily within seven days from his position as a member of the Federation House of Representatives and that Mr. Tuka indicated that he will not do so;

Bearing in mind the totality of the matters hereinbefore and hereinafter set out, the High Representative hereby issues the following:

DECISION

To remove Mr. Mijat Tuka from his position as a member of the House of Representatives of the Federation of Bosnia and

Herzegovina, and to bar him from holding any official, elective or appointed public office and from running in elections and from office within political parties unless or until such time as the High Representative may expressly authorise him so to do or to hold the same. Any entitlement to receive remuneration or any privileges or status arising out of his said position ceases forthwith.

This Decision has immediate effect and does not require any further procedural steps to be taken. Mr. Tuka must vacate his position immediately.

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

REASONS FOR REMOVAL

Mr. Mijat Tuka held the position of deputy Minister for the Ministry now designated as the Federation Ministry for Refugees and Displaced Persons (hereinafter: the Ministry), from 25 September 2001 until 21 February 2003. After Minister Sefer Halilovic left his position as Minister for Social Affairs, Labour, Refugees and Displaced Persons, Deputy Minister Mr. Tuka became the acting Minister. This office is one in which the holder is subject to the highest fiduciary duties in relation to the process of returning refugees and displaced persons in the Federation. As such, Mr. Tuka held the position as head of the Ministry, a position which has special duties and responsibilities in the context of implementation of Annex 7 of the Dayton Peace Accords. The holder of such an office must be active in exercising the highest probity in relation to his dealings with funds set aside for the return of refugees and displaced persons. The confidence of the citizens of the Federation and Bosnia and Herzegovina must always be maintained in order to ensure proper governance and transparency.

Mr. Tuka, as the holder of such high office, has failed in his duty to maintain the confidence of the public and in particular failed to manage the Ministry's budget in a transparent and accountable manner.

Over the course of events leading to the audit process, Mr. Tuka failed to take effective action to ensure the proper guardianship of public funds and failed thereby to protect the reputation of his office and the government. He has failed to demonstrate active and unreserved support for the strategy, set out by the Peace Implementation Council, to oppose ingrained corruption in Bosnia and Herzegovina.

The Ministry, with Mr. Tuka at its head, failed to exercise appropriate control of its major return-related operations. The Ministry exceeded its budget by more than 14 million KM in 2001. Despite the expenditure of this sum, projects were not completed in a timely manner. Upon completing her review, the Special Auditor concluded that the majority of projects were still incomplete 15 months after the contracts had been signed with beneficiaries.

In addition, the Special Auditor learned that the tendering process had been manipulated or simply ignored. The Special Auditor also noted that some vendors charged a price approximately 2000 % higher than the average per kilometre for transporting materials which were in any event locally available. Contract terms were not adhered to, works remained incomplete and the monitoring of project implementation was ineffective or non-existent. The process of selecting beneficiaries and regions for assistance was not transparent and the process for specifying and controlling material deliveries was weak. Project accounting, record keeping and reporting were unreliable, incomplete and inaccurate.

Funds collected at donor conferences, which are not under the Treasury system, were poorly controlled and commingled with funds from different sources. These funds were also accessed

outside of budgetary controls. In order to ensure that its funds were placed out of Governmental budgetary control, the Ministry contributed money to itself through donor conferences. Indeed, 99% of the funds collected at donor conferences came from the Ministry

Within the Ministry Mr. Tuka failed to supervise actively his staff and perform his functions as acting Minister in the expected manner.

Mr. Tuka, acting as aforesaid, did not demonstrate the required commitment to maintaining public trust and guardianship of the interests of the citizens served by the Ministry. The principles of proper governance and transparency were eroded by Mr. Tuka's conduct during his tenure and he is therefore no longer fit to hold any positions of public trust.

Bearing in mind the elected position that Mr. Tuka has held since his election to the Federation House of Representatives and further bearing in mind the status of the Federation Parliament, the High Representative on the basis of the aforementioned facts wrote a letter to the President of the New Croat Initiative political party to which Mr. Tuka belongs, with a copy to the Chair of the Federation House of Representatives. In this letter the High Representative requested the President of the said party to urge Mr. Tuka to resign voluntarily from his said position. Mr. Tuka has, despite the matters aforesaid, indicated that he will not resign voluntarily. There remains no other option than to remove Mr. Tuka from his current position.

Sarajevo, 28 March 2003

Paddy Ashdown
High Representative