

Decision Nullifying and Voiding the Decision of the Assembly of the Western-Herzegovina Canton on Approval of the Government of the Western-Herzegovina Canton adopted at its Session held on 27 August 2010

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 “[f]acilitate, 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”;

Noting Article V.3.8.(3) of the Constitution of the Federation of Bosnia and Herzegovina which provides, *inter alia*, that “[m]inisters, together with the Prime Minister, constitute the Cantonal Government” and that “[a]pproval of the Cantonal Government by the Cantonal Legislature shall be by majority vote”;

Considering that by his letter of 28 November 2002, the High Representative decided that the evolving nature of the peace process was requiring the extension of the “vetting process” and hence required the authorities of Bosnia and Herzegovina to communicate to the Office of the High Representative the names of suitable nominees for certain ministerial positions at State, Entity and cantonal level prior to their appointment and/or confirmation;

Mindful of the fact that the candidate for the position of Prime Minister of the Government of the Western-Herzegovina Canton sent a letter to the High Representative on 26 August 2010 asking him to initiate “vetting process” for nominees for three ministerial positions in the Government subject to vetting;

Noting that, on 26 August 2010, the High Representative sent a letter to the candidate for the position of Prime Minister of the Government of the Western-Herzegovina Canton in which he made clear that the vetting procedure for the requested positions shall be initiated in accordance with regular practice and requested the authorities of the Western-Herzegovina Canton not to take any step towards appointing a new government pending an answer to his request for vetting the three candidates;

Noting further, that the deadline of ten working days in which the High Representative endeavors to complete the vetting process under his Decision of 28 November 2002 is due to lapse on 9 September 2010;

Deploing therefore, that the Assembly of the Western-Herzegovina Canton, at its Session held on 27 August 2010, adopted the *Decision on Approval of the Government of the Western-Herzegovina Canton* prior to the completion of the vetting process;

In full awareness that the institution of vetting is necessary in order to strengthen the system of scrutiny of nominees for ministerial positions and to prevent abuse of powers by public officials and that said institution therefore remains essential to the peace implementation process;

Emphasizing that the present Decision does not in any manner affect the vote of non-confidence taken by the Assembly of the Western-Herzegovina Canton and does not otherwise have any bearing on the case pending with the Constitutional Court of the Federation of Bosnia and Herzegovina in that respect.

Conscious that the institution of vetting needs to be transferred to domestic institutions and **regretting** that no legislation has been put in place in this respect by the authorities in the Federation of Bosnia and Herzegovina;

Having taken into account and considered the totality of all matters aforesaid the High Representative hereby issues the following:

DECISION

Nullifying and Voiding the Decision of the Assembly of the Western-Herzegovina Canton on Approval of the Government of the Western-Herzegovina Canton adopted at its Session held on 27 August 2010

Article 1

The Decision of the Assembly of the Western-Herzegovina Canton on Approval of the Government of the Western-Herzegovina Canton adopted at its Session held on 27 August 2010 (hereinafter: the Decision on Approval) is hereby declared null and void *ab initio*, and is without any legal effect whatsoever.

Article 2

For the avoidance of doubt, it is hereby specifically declared that the outgoing Government of the Western-Herzegovina Canton and its members will continue to act in a caretaker capacity until a new Decision on Approval of the Government of Western-Herzegovina Canton enters into force in line with Article 3 of this Decision.

Article 3

The Assembly of the Western-Herzegovina Canton may only adopt a new Decision on Approval of the Government of the Western-Herzegovina Canton following express notification by the High Representative that the nominees put forward for the positions subject to the vetting process are suitable.

Article 4

This Decision shall enter into force forthwith and shall be published in the Official Gazette of the Western-Herzegovina Canton without delay.

Sarajevo, 02 September 2010

Dr. Valentin Inzko

High Representative