

Decision Combining the Competencies of the Independent Media Commission and the Telecommunications Regulatory Agency

In the exercise of the powers vested in me 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;

Bearing in mind the exhortations of the Peace Implementation Council Steering Board in its Communiqué of 7 December 2000 acknowledging the High Representative’s intention to reinforce a comprehensive approach to communications by combining the competencies of the Independent Media Commission and the Telecommunications Regulatory Agency; further remembering the Peace Implementation Council’s exhortations in Section 1 of the Brussels Declaration of 23/24 May 2000, directing the High Representative to ensure rapid development of State-level regulatory mechanisms for telecommunications and media and to ensure that there are no duplicative or conflicting regulatory competencies at any level of government; further remembering the Peace Implementation Council’s exhortations in Section 1 of the Brussels Declaration of 23/24 May 2000, drawing the parties’ attention to the need to foster functional and democratically accountable common institutions;

Bearing in mind that, on 11 June 1998, the High Representative issued a Decision establishing the Independent Media Commission;

Noting that telecommunications plays a major role in the economic development of nations and that opening the telecommunications field to competition offers economic benefit to consumers and the business sector alike; further noting that economic development is a key strategic goal of the High Representative in Bosnia and Herzegovina, and fostering a competitive environment for telecommunications is an integral part of that process;

Bearing in mind that the clear trend in the communications industry worldwide toward convergence of both technology and transmission methods requires a clear and comprehensive regulatory approach and policy; that a single regulator for communications will allow for swift and efficient reactions to economic and industry conditions, a necessity in this dynamic and economically crucial sector; and that other European countries have chosen to address this issue with a single regulator.

This all considered, being borne in mind and noted, I hereby issue the following

DECISION

Combining the Competencies of the Independent Media Commission and the Telecommunications Regulatory Agency

Article 1 General

1.1 This Decision, by combining the competencies of the Independent Media Commission (hereafter: IMC) and the Telecommunications Regulatory Agency (hereafter: TRA), produces a single communications regulator having jurisdiction over both broadcasting and telecommunications. The name of the single communications regulator

shall be “Communications Regulatory Agency” (hereafter: CRA).

1.2 The regulatory responsibilities of Bosnia and Herzegovina in the field of communications shall be discharged solely by the CRA.

Article 2

Structure of the Communications Regulatory Agency

2.1 The CRA shall be managed by a Chief Executive, who shall be appointed by the High Representative. The Chief Executive shall be responsible for the day-to-day operations of the CRA including, but not limited to, the implementation of relevant law and policy, technical oversight, industry affairs, administration and staffing.

2.2 The organization of the CRA shall include a broadcasting division and a telecommunications division among possible others. Each division shall have a Head, who shall be a national of Bosnia and Herzegovina appointed by the Chief Executive. International advisors shall be appointed by the Chief Executive.

2.3 The CRA shall have a Council comprised of seven members. The Council shall guide the CRA with regard to strategic issues of policy implementation and will confer with and receive reports from the Chief Executive. The Council shall adopt codes of practice and rules for broadcasting and telecommunications and shall adopt internal procedural rules. Additionally, the Council shall serve as an appellate body for CRA decisions. All seven members of the Council shall be appointed by the High Representative. There shall be appointed four nationals of Bosnia and Herzegovina and three internationals. The Council shall meet a minimum of four times a year. The Chief Executive shall report to the Council on strategic issues of policy implementation. The Chief Executive shall attend all meetings of the Council as a non-voting participant.

2.4 The CRA shall have an Enforcement Panel comprised of seven members, four nationals of Bosnia and Herzegovina and three internationals, appointed by the High Representative. The Enforcement Panel is empowered to deal with any cases concerning violation of licensing conditions or other rules applied by the CRA and to impose appropriate remedies and sanctions.

2.5 The members of the Council and the Enforcement Panel of the IMC shall remain in office until the appointment of a new Council and Enforcement Panel for the CRA.

Article 3

Enforcement Measures

In securing compliance with CRA codes of practice, rules, regulations and decisions, the CRA shall have the authority to impose such enforcement measures as shall be in accordance with European regulatory practices.

Article 4

Independence of the Communications Regulatory Agency

The CRA shall be an independent body with the status of a legal person in Bosnia and Herzegovina and shall carry out its duties pursuant to the principles of telecommunications policy as enumerated in Article 3 of the Law on Telecommunications and the Telecommunications Sector Policy of Bosnia and Herzegovina. In fulfillment of its duties, the CRA shall act in accordance with the principles of objectivity, transparency and non-discrimination.

Article 5

Communications Regulatory Agency Financial Matters

5.1 As a state-level agency, the overall budget of the CRA is an integral part of the budget of the Common Institutions of Bosnia and Herzegovina. The budget of the CRA shall directly relate to the Council of Ministers' sector policies. The Chief Executive shall submit a budget for each fiscal year, previously approved by the CRA Council, to the Council of Ministers of Bosnia and Herzegovina for approval. It is recognized that the funding of the CRA shall come from the following sources:

- i. licence fees;
- ii. resources allocated by the Common Institutions of Bosnia and Herzegovina;

iii. grants or donations received by CRA in so far as they are in conformity with general principles of law.

5.2 Funds received by the CRA shall be used by the CRA in accordance with the budget approved by the Council of Ministers.

5.3 The use of funds by the CRA shall be subject to review by the Supreme Audit Institution.

Article 6

Precedence and Continuity

6.1 This Decision, subject to the constitution of Bosnia and Herzegovina, shall have precedence over all inconsistent laws, regulations and decisions or specific provisions thereof at all levels of government in Bosnia and Herzegovina. This Decision replaces the High Representative's Decision on the establishment of the Independent Media Commission, issued 11 June 1998. The responsibilities and obligations ascribed therein to the IMC are hereby transferred to the CRA.

6.2 All acts, codes, rules, guidelines and decisions made by the IMC and the TRA shall remain in force unless replaced or amended by decisions made by the CRA.

6.3 Ongoing initiatives of the IMC and the TRA shall continue unabated, including, for example, the issuance of long-term broadcasting licences by the IMC. In furtherance thereof, all written communications from the IMC and the TRA shall be the official correspondence of the CRA.

6.4 It is confirmed that all financial transactions of the IMC were undertaken by the IMC as a Commission established under Annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina. These transactions therefore retain the diplomatic privilege under which they were conducted and shall not be subject to any retrospective claim.

6.5 If assets are transferred to the CRA that were originally purchased from funds donated by international organizations and/or governments and were purchased without payment of tax, customs or duties, they shall be transferred to the CRA without any future liability for the payment of tax, customs or duties.

6.6 In accordance with general principles of donor funding, all funds received from donors and as may be transferred to the CRA, shall be exempt from taxation on the basis that the funds are donated for the benefit of the peoples of Bosnia and Herzegovina.

Article 7

Entry into Force and Publication

The Decision shall enter into force with immediate effect and shall be published without delay in the Official Gazettes of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and Republika Srpska.

Sarajevo, 2 March 2001

Wolfgang Petritsch
High Representative

Office of the High Representative