

Decision Enacting the Law on Amendments to the Law on Financing of the Institutions of Bosnia and Herzegovina

n. 04/22

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 Constitution of Bosnia and Herzegovina, in its Article VIII (1) established that the Parliamentary Assembly shall each year, on the proposal of Presidency, adopt a budget covering the expenditures required to carry out the responsibilities of the institutions of Bosnia and Herzegovina and the international obligations of Bosnia and Herzegovina, and that Article VIII (2) envisages that if no such budget is adopted in due time, the budget for the previous year shall be used on a provisional basis;

Interpreting that the rationale of the imperative provision of Article VIII(2) of the Constitution of BiH is to ensure the effective functioning of the State and its institutions in a situation where the legislator was not able to adopt a budget on time;

Deploring that the Law on Financing of the Institutions of Bosnia and Herzegovina, by requiring a decision of the Council of Ministers of Bosnia and Herzegovina to adopt the quarterly financing of the institutions, departs from Article VIII(2) of the Constitution of BiH and limits the effectiveness of the said provision, including by giving those who have failed to adopt a budget in line with Article VIII(1) of the Constitution the possibility to block the continued financing of the institutions;

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;

Considering that the Central Election Commission of Bosnia and Herzegovina adopted on 4 May 2022 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 2, 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;

Considering that the BiH Election Law, in Article 1.2a. Paragraph 1 and 6 regulates that the Budget of the Institutions of Bosnia and Herzegovina and International Obligations of Bosnia and Herzegovina 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;

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 Law on Amendments to the Law on Financing of the Institutions of Bosnia and Herzegovina

The Decision Enacting the Law on Amendments to the Law on Financing of the Institutions of Bosnia and Herzegovina (hereinafter: the Decision) set out hereunder forms an integral part of this Decision.

The Decision shall be in force on an interim basis, until such time as the Parliamentary Assembly of Bosnia and Herzegovina adopts this Decision in due form, without amendments and with no conditions attached.

The Decision Enacting the Law on Amendments to the Law on Financing of the Institutions of 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

Law on Amendments to the Law on Financing of the Institutions of Bosnia and Herzegovina

Article 1

Article 11 (Temporary Financing) Paragraph 2 of the Law on Financing of the Institutions of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina nos. 61/04, 49/09, 42/12, 87/12 and 32/13) is hereby amended to read:

“(2) In order to perform the activities of budget users as established by law, temporary financing shall be realized in the amount of one quarter of the budget for financing the institutions of Bosnia and Herzegovina, in accordance with the latest law on the budget of the institutions of Bosnia and Herzegovina and international obligations of Bosnia and Herzegovina. The Minister of Finance and Treasury of Bosnia and Herzegovina shall be obliged to execute this provision and shall be obliged to do so in a timely manner.”

Article 11 Paragraph (6) of the Law on Financing of the Institutions of Bosnia and Herzegovina is hereby amended to read:

“(6) The Parliamentary Assembly of Bosnia and Herzegovina shall adopt the law on budget of Bosnia and Herzegovina and international obligations of Bosnia and Herzegovina by 31 March. If the Parliamentary Assembly of Bosnia and Herzegovina fails to adopt the budget for the current fiscal year by March 31 of the current year, only current expenditures necessary for the functioning of the institutions of Bosnia and Herzegovina shall be realized within the amount of expenditures as specified by Paragraph (2) of this Article.”

In Article 11, after Paragraph (6), a new Paragraphs (7), (8) and (9) are hereby added to read:

“(7) Notwithstanding the provisions of Paragraph (2) of this Article, during the temporary financing, the expenditures envisaged for financing the elections conducted by the Central Election Commission, which are covered from the budget of the institutions of Bosnia and Herzegovina and international obligations of Bosnia and Herzegovina in accordance with the Election Law of Bosnia and Herzegovina (“Official Gazette of Bosnia and Herzegovina” nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, 32/10, 18/13, 7/14, 31/16 and 41/20) shall be considered as current expenditures and shall be realized in accordance with the budget request of the Central Election Commission.

(8) Ministry of Finance and Treasury of Bosnia and Herzegovina shall be responsible for the execution of the request of the Central Election Commission. Notwithstanding any other Law, if the Minister of Finance and Treasury of Bosnia and Herzegovina is unable or unwilling to execute the Central Election Commission’s request for financing the elections within the prescribed deadline, the Deputy Minister of Finance and Treasury of Bosnia and Herzegovina shall execute such a request the day following the expiry of said deadline.

(9) The penalty provisions as provided for in Article 34, Paragraph (2) of this law shall apply to the Minister and Deputy Minister of Finance and Treasury of Bosnia and Herzegovina in case of failure to execute obligations as specified by Paragraph (2) and (7) of this Article.”

Article 2

Article 23 (Conducting of Control) of the Law on Financing of the Institutions of Bosnia and Herzegovina shall be amended in a way that the words “and which is not based on appropriate procedures” shall be deleted.

Article 3

In Article 34 Paragraph (2) of the Law on Financing of the Institutions of Bosnia and Herzegovina, new item a) shall be added and reads:

“a) act contrary to the provisions of Article 11 of this law;”

Current items a) and b) shall be marked as items b) and c).

Article 4

This Law shall enter into force on the eight day after its publication on the official website of the Office of the High Representative or one day after the date of its publication in the “Official Gazette of Bosnia and Herzegovina”, whichever comes first.