

Order Declaring that the Conclusions of the Republika Srpska National Assembly No. 02/1-021-1562/24, No. 02/1-021-1563/24 and No. 02/1-021-1564/24 adopted at its 16th Special Session held on 24 and 25 December 2024 violate Republika Srpska's obligations and commitments under Annex 4 and Annex 10 to the General Framework for Peace in Bosnia and Herzegovina and prohibiting their implementation

03/25

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”;

Further Recalling 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”;

Mindful of the most recent Communique of the Steering Board of the Peace Implementation Council, which reiterated its full support for the High Representative in ensuring complete respect for the GFAP and in carrying out his mandate under Annex 10 and relevant UN Security Council Resolutions and which also strongly condemned the continued pressures on the judiciary and attempts to limit judicial independence, impartiality, and integrity underscoring that undermining the organization or functioning of the BiH Constitutional Court,

including by not respecting its decisions, is incompatible with the BiH Constitution and international standards;

Remembering that the UN Security Council, in Resolution 2549 (2020) "urges the parties, in accordance with the Peace Agreement, to abide to their commitment to cooperate fully with all institutions involved in the implementation of this peace settlement, as described in the Peace Agreement";

Considering that the obligations assumed by Annex 10 of the GFAP by the parties to the agreement, including Republika Srpska, cover that (Article IV) "the Parties shall fully cooperate with the High Representative and his or her staff, as well as with the international organizations and agencies as provided for in Article IX of the General Framework Agreement" and that "the High Representative is the final authority in theater regarding interpretation of this Agreement on the civilian implementation of the peace settlement";

Recalling that the Constitutional Court of Bosnia and Herzegovina is a central institution of the State of Bosnia and Herzegovina established by the Constitution of Bosnia and Herzegovina as an independent guardian of the Constitution of Bosnia and Herzegovina vested with exclusive jurisdiction to decide any dispute that arises under the Constitution of Bosnia and Herzegovina between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina;

Reminding that under Article I.2 of the Constitution, Bosnia and Herzegovina "shall be a democratic state which shall operate under the rule of law," that article VI.5 of the Constitution provides that "decisions of the Constitutional Court shall be final and binding," and that Article III.3(b) requires the Entities and any subdivisions thereof to fully comply with the Constitution of Bosnia and Herzegovina and with the decisions of its institutions;

Emphasizing that the Constitution of Bosnia and Herzegovina is the only source of competencies and that the legitimate constitutional exercise of such responsibilities by the institutions of Bosnia and Herzegovina cannot be limited by other lower levels of government;

Emphasizing further that the Constitutional Court of Bosnia and Herzegovina, the Court of Bosnia and Herzegovina, the Prosecutor's Office of Bosnia and Herzegovina and the High Judicial and Prosecutorial Council of Bosnia and Herzegovina in their functioning and fulfilment of their roles in a democratic state governed by the Rule of Law are independent of all other governmental bodies in Bosnia and Herzegovina and that all such bodies are obliged to respect their independence;

Reminding that the judiciary is cornerstone to the Rule of Law and that its independence, professionalism and authority require that it is free from external pressure and political influence, and that such a requirement is an integral part of the fundamental democratic principle of the separation of powers;

Stressing that non-implementation of courts' decisions in general directly undermines the constitutional order, the rule of law and the division of powers;

Bearing in mind that the Republika Srpska National Assembly, at its 16th Special Session held on 24 and 25 December, following consideration of the Proposed Law on Border Control of BiH and the Proposed Law on the Protection of Personal Data of BiH that have been forwarded to the parliamentary procedure in the House of Representatives of the Parliamentary Assembly of BiH and following consideration of the "*Information on the Collapse of the Legal Order in BiH Caused by Violations of the Dayton Peace Agreement*" adopted the Conclusions No. 02/1-021-1562/24, No. 02/1-021-1563/24 and No. 02/1-021-1564/24 (hereinafter collectively referred to as "the

Conclusions");

Declaring that Conclusions are in violation of the Republika Srpska's obligations and commitments under Annex 4 and Annex 10 to the General Framework for Peace in Bosnia and Herzegovina;

Noting that under the Rules of Procedure of the Republika Srpska National Assembly, the Conclusions, *inter alia*, determine policies for the Republika Srpska authorities and provide instruction as to how to carry out those policies and set out the obligations of the Government, ministries and special organizations in regard to implementation of these policies;

Noting further that some of the Conclusions which specifically instruct and/or demand from certain authorities or representatives of Republika Srpska and the State-level officials "from the Serb constituent people" elected or appointed from Republika Srpska to take actions to implement the policies contained in said Conclusions are particularly problematic, including in its segregative intension directed against the multiethnic character of Bosnia and Hercegovina and of Republika Srpska, in which, according to Article 1 of the Constitution of Republika Srpska "The Serbs, Bosniaks, Croats, as constituent peoples, Others and citizens shall participate in executing the functions of authority in the Republic equally and without discrimination", and that it is necessary to prevent their implementation;

Reminding that under the Constitution of Bosnia and Herzegovina, the Entities and any subdivisions thereof are obliged to comply fully with the Constitution of Bosnia and Herzegovina and with the state-level legislation and that conclusions adopted by the Entity legislature or an entity law may not amend the state level legislation, restricting it or otherwise altering it and that state level authorities' are required to act under the laws regulating their jurisdiction

and work;

Reminding further that attacks on the sovereignty of the State of Bosnia and Herzegovina, its key institutions, including the Constitutional Court of Bosnia and Herzegovina, the Court of Bosnia and Herzegovina, the Prosecutor's Office of Bosnia and Herzegovina and the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, constitute serious violations of the GFAP and to peace and stability in the country and the region, and consequently deserve an unequivocal and appropriate response;

Concerned by the fact the Conclusions oblige the RS Government to submit a law which will regulate the procedure for considering issues decided by the Parliamentary Assembly of BiH in a way that the RS National Assembly has to take a position on those issues first and thereby to give the Republika Srpska National Assembly the mechanism to trigger the entity voting procedure provided for in the Constitution of Bosnia and Herzegovina, in violation of the provisions of the Constitution of Bosnia and Herzegovina providing for the responsibilities of the Parliamentary Assembly of Bosnia and Herzegovina and decision-making process as provided therein and undermining the functionality of the Parliamentary Assembly of Bosnia and Herzegovina;

Aware that the interests of the entities within the institutions of Bosnia and Herzegovina are adequately protected through the representatives elected from the territory of those entities or delegated by the entity institutions;

Recalling that under Article I.2 of the Constitution of Bosnia and Herzegovina "Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections", that in accordance with the Election Law of Bosnia and Herzegovina a mandate belongs to the elected office holder and cannot be terminated except

where prescribed by law, ***recalling further*** the importance of the democratic principle of the independence of parliamentary mandates, including the freedom not to be subject to an “imperative mandate” and that the attempts of the Republika Srpska National Assembly to bind state-level officials elected from the territory of Republika Srpska in their decision-making undermines the democratic principles promoted and guaranteed under the Constitution of Bosnia and Herzegovina;

Respecting the jurisdiction of the BiH Constitutional Court to uphold the Constitution of Bosnia and Herzegovina, including the exclusive jurisdiction to decide any dispute that arises under this Constitution between, inter alia, Bosnia and Herzegovina and an Entity;

Underscoring that under the constitutional framework in place, Republika Srpska and its public authorities, including the Republika Srpska National Assembly reflect its multiethnic character where all three constituent peoples and members of the group of Others are equal;

Underscoring further that elected and appointed officials at the institutions of Bosnia and Herzegovina exercise their respective mandates and duties in accordance with the Constitution of Bosnia and Herzegovina and that Conclusions which seek to oblige elected and appointed state-level officials in the institutions of Bosnia and Herzegovina constitute a direct attack on the autonomy and independence of State-level officials and institutions of Bosnia and Herzegovina;

Being conscious that the Conclusions although having no effect to the mandate of the High Representative, nor to the status and legal effect of the High Representative’s decisions substituting for domestic authorities nor those enacted pursuant to the High Representative’s international mandate, disregard obligations and commitments of Republika Srpska arising under Annex 10 to the GFAP and represent one in the

series of activities denying cooperation with the High Representative, thereby constituting violation of Annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina.

Having in mind that any act or activity to implement specific Conclusions whose implementation is prohibited pursuant to my Order provided below or the implementation in any manner whatsoever of the said Conclusions may constitute a criminal offence under the Criminal Code of Bosnia and Herzegovina and therefore may be subject to criminal prosecution;

Noting that pursuant to Article VI(3)(a) of the Constitution of Bosnia and Herzegovina, the Constitutional Court has exclusive jurisdiction to decide any dispute that arises under this Constitution between, *inter alia*, Bosnia and Herzegovina and an Entity and that authorized proponents referred to in Article VI(3)(a) of the Constitution of Bosnia and Herzegovina are entitled to initiate proceedings for the resolution of dispute before the Constitutional Court of Bosnia and Herzegovina concerning the said Conclusions;

Calling on Republika Srpska National Assembly to **proactively** reconsider undertaken acts and activities which do not meet the Republika Srpska's obligations and commitments under Annex 4 and Annex 10 to the General Framework for Peace in Bosnia and Herzegovina and repeal the Conclusions and to refrain from any implementation;

Convinced that the behavior described above seriously undermines the civilian implementation of the GFAP;

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

ORDER

Declaring that the Conclusions of the Republika Srpska National Assembly No. 02/1-021-1562/24, No. 02/1-021-1563/24 and No. 02/1-021-1564/24 adopted at its 16th Special Session held on 24 and 25 December 2024 violate Republika Srpska's obligations and commitments under Annex 4 and Annex 10 to the General Framework for Peace in Bosnia and Herzegovina and prohibiting their implementation

Article 1

It is hereby declared that the Conclusions of the Republika Srpska National Assembly No. 02/1-021-1562/24, No. 02/1-021-1563/24 and No. 02/1-021-1564/24 adopted at its 16th Special Session held on 24 and 25 December 2024 violate Republika Srpska's obligations and commitments under Annex 4 and Annex 10 to the General Framework Agreement for Peace in Bosnia and Herzegovina.

Article 2

The implementation of the below listed specific Conclusions referred to in Article 1 of this Order is hereby prohibited:

Conclusion No. 02/1-021-1562/24:

"The RS National Assembly hereby obliges the RS Government to submit for further procedure, within 30 days, a law which will regulate the procedure for considering issues decided by the Parliamentary Assembly of BiH in a way that the RS National Assembly has to take a position on those issues first."

Conclusion No. 02/1-021-1563/24:

"The RS National Assembly hereby instructs the Legislative Committee of the RS National Assembly to prepare amendments

to the Proposed Law on the Protection of Personal Data of BiH and the position on the Proposed Law on Border Control of BiH and deliver them to the Serb representatives in the BiH Parliamentary Assembly.”

Conclusions No. 02/1-021-1564/24:

“4. The RS National Assembly notes that the EU legal system does not accept the possibility that an unelected foreign national passes laws instead of democratically elected institutions; the RS National Assembly requires from the appointed and elected RS representatives from the Serb constituent people in the joint institutions to suspend decision-making in the domain of European integrations until such time as the conditions ensuring that the European integration process takes place in line with the principles of democracy and rule of law are met.”

“5. The RS National Assembly demands that the acts resulting from the unconstitutional actions of a foreign individual, who according to the Constitution is neither an authorized proponent of laws nor a legislator, be annulled, and that the deviations caused by such unconstitutional acts be removed in order to progress towards the European Union in an unhindered way.”

“8. The RS National Assembly warns that the European legal standards prohibit conducting inhumane and degrading court proceedings against persons in a state of health risk, which the Court of Bosnia and Herzegovina is currently doing, thereby moving Bosnia and Herzegovina further away from the European path. The RS National Assembly considers that the RS President and the Director of the RS Official Gazette should cease to respond to the subpoenas of the BiH Court, until such time as the RS President is medically fit to participate in the proceedings.”

“9. The RS National Assembly requests from the appointed and

elected RS representatives from the Serb constituent people in the joint institutions of BiH to suspend decision-making at the BiH level, except in cases when the decision-making concerns the transfer of competences from the Republika Srpska to the joint institutions or when the RS position is put at risk in a different way, until such time as the European Union ensures the conditions and standards allowing for a normal and fair trial in BiH, which is currently not the case due to the unconstitutional and illegal decision-making process by an unelected individual, whose stay in BiH can no longer be justified in any way.”

“11. The RS National Assembly notes that the abuse of the Prosecutor’s Office of BiH and the attempt to interfere in the work of the RS highest representative body must be individually identified and prosecuted. Otherwise, the RS National Assembly will be compelled, in order to protect the General Framework Agreement for Peace in BiH and the RS constitutional order, to take special measures aimed at protecting the Dayton Agreement.”

Article 3

This Order is issued pursuant to the international mandate of the High Representative and is not issued by way of substitution for any domestic authority. It shall have precedence over any inconsistent provisions of the Constitution of Republika Srpska, any law, regulation or act, existing or future. This Order shall be directly applicable and no further act is required to ensure its legal effect.

Article 4

The High Representative reserves the right to amend this Order or take other measures as he judges necessary to ensure implementation of this Order.

Article 5

This Order shall enter into force immediately upon publication on the official website of the Office of the High Representative.

This Order shall be published on the official website of the Office of the High Representative and shall be published without delay in the "Official Gazette of Bosnia and Herzegovina".

Sarajevo, 2 January 2025

Christian Schmidt
High Representative