

Decision Enacting the Law on Changes and Amendments to the Law on the Council of Ministers 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 implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities, as well as the smooth running of the common institutions";

Recalling further Article III. of the Annex to the Declaration of the Peace Implementation Council issued at Madrid on 16 December 1998, in which the Peace Implementation Council identified the need to make the common institutions effective, in the role set out for them in the GFAP as a key task and went on to indicate its support for the High Representative in working with the authorities of Bosnia and Herzegovina to "reform the operation, in accordance with its constitutional procedures, of the Council of Ministers in order to improve its ability to take decisions and implement them in a business-like and efficient fashion" ;

Mindful of the communiqué issued by the Steering Board of the Peace Implementation Council at Brussels on 7 December 2000 in which the necessity of co-operation in the building of a functioning state, particularly through an effective Council of Ministers which was fully supported politically and financially by the Entities and capable of interaction on a basis of equality with other states and international organisations, was emphasised;

Recalling that the Steering Board of the Peace Implementation Council, in its communiqué issued at Brussels on 03 February 2005, emphasized the central role of the Council of Ministers in delivering the reforms required by the European Union's Stabilisation and Association process and called upon the Council of Ministers to continue this pace of reform and demonstrate its leadership to Bosnia and Herzegovina's institutions and to act quickly if Bosnia and Herzegovina is to meet the requirements of the EC Feasibility Study in the near future;

Considering that the Council of Ministers has passed only a dozen of new Laws in its nine month mandate as well as roughly twenty Laws amending existing legislation and has failed to pass crucial decisions such as the appointment of the new Director of Communication Regulatory Agency;

Bearing in mind that the principle of continuity of public service relies on the right for the citizens of Bosnia and Herzegovina to expect that decisions will be made and the business of governance will be completed on their behalf at all time;

Noting that a pattern of postponement, delay and absenteeism contributes to the reduced capacity of the Council of Ministers;

Considering that in order to give Bosnia and Herzegovina stable, effective and functional government, the Council of Ministers and its decision making processes require to be reformed;

Having considered, borne in mind and noted all the matters aforesaid, the High Representative hereby issues the following:

DECISION

Enacting the Law on Changes and Amendments to the Law on the Council of Ministers of Bosnia and Herzegovina

(Official Gazette of Bosnia and Herzegovina Nos. 38/02, 30/03, 42/03, 81/06 and 76/07)

The Law which follows and which forms an integral part of this Decision shall enter into force as provided for in Article 7 thereof on an interim basis, until such time as the Parliamentary Assembly of Bosnia and Herzegovina adopts this Law in due form, without amendment and with no conditions attached.

On the day of entry into force of this Law, any contrary provision of the Rules of Procedures of the Council of Ministers of Bosnia and Herzegovina (O.G. BiH 22/03) shall cease to be applicable.

This Decision shall be published on the official website of the Office of the High Representative and shall come into effect forthwith.

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

Sarajevo, 19 October 2007

*Miroslav Lajčák
High Representative*

LAW ON CHANGES AND AMENDMENTS TO THE LAW ON THE COUNCIL OF MINISTERS OF BOSNIA AND HERZEGOVINA

Article 1

In Article 7, Paragraph (3) of the Law on the Council of Ministers of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina" No. 38/02, 30/03, 42/03, 81/06 and 76/07), the words "Unless otherwise provided by this Law," shall be added before the words "Deputy Ministers shall act on behalf of Ministers".

In Article 7, current Paragraph (4) shall be replaced by a new Paragraph (4) which shall read as follows:

"When Deputy Ministers participate in a session of the Council of Ministers on behalf of an absent Minister pursuant to Paragraph (3) of this Article, they shall have the right to make decisions on his/her behalf on all or certain issues, in accordance with the competencies delegated to him/her by the absent Minister. The said Minister shall inform the Chair of the Council of Ministers of such delegation in writing."

Article 2

In Article 14, Paragraph (3), the words: "no later than 15 days following the date of his/her resignation and/or following the date when the permanent inability of the Minister or Deputy Minister to perform his/her duty was established" shall be added after the words "shall nominate his/her successor".

In Article 14, new Paragraphs (4) and (5) shall be added and shall read as follows:

"(4) The Deputy Minister shall temporarily perform the duties of the Minister during the period occurring between:

a. the day upon which the Minister resigns and the day upon which the successor of the said Minister takes office

pursuant to the procedure set forth in this Law; or

b. the day upon which the permanent inability of the Minister to perform his/her duties is established and the day upon which the successor of the said Minister takes office pursuant to the procedure set forth in this Law.

(5) In the event that the temporary performance of duties referred to in Paragraph (4) of this Article occurs in relation to the resignation of the Minister of Defense or that the establishment of the permanent inability to perform duties occurs in relation to the Minister of Defense, the Chair of the Council of Ministers shall designate which Deputy Minister of Defense shall temporarily perform the duties of the said Minister during the applicable period prescribed in Paragraph (4) of this Article.”

Article 3

In Article 15, new paragraphs (3) and (4) shall be added and shall read as follows:

“(3) Should the Parliamentary Assembly of Bosnia and Herzegovina approve the dismissal of the Minister pursuant to paragraph (1) of this Article, the Deputy Minister shall temporarily perform the duties of the said Minister during the period between the day upon which the said approval occurs and the day upon which the newly appointed Minister takes office pursuant to the procedure set forth in this Law.

(4) Should the Parliamentary Assembly of Bosnia and Herzegovina approve the dismissal of the Minister of Defense pursuant to paragraph (1) of this Article, the Chair of the Council of Ministers shall designate which Deputy Minister of Defense shall temporarily perform the duties of the said Minister during the period between the day upon which the said approval occurs and the day upon which the newly appointed Minister takes office pursuant to the procedure set forth in this Law.”

Article 4

In Article 16, Paragraph (2), after the first sentence, the following text shall be added:

“ As a rule, the sessions of the Council of Ministers shall be held at least once per week, except in justified cases as determined by the Rules of Procedure of the Council of Ministers of Bosnia and Herzegovina. Should the Chair of the Council of Ministers fail, in contravention to the provisions of this Law and the provisions of the said Rules of Procedure, to convene two consecutive sessions of the Council of Ministers, the Deputy Chairs shall jointly convene a session.”

In Article 16, Paragraph (3), after the words “of the members of the Council of Ministers” the comma shall be replaced by a full stop and the remaining text shall be deleted.

Article 5

In Article 18, Paragraph (1), the words: “of its whole number” shall be replaced by the words: “of those members present and voting”.

In Article 18, Paragraph (2), after the word “consensus” and before the words “on all other issues”, the words: “of those members present and voting” shall be added.

In Article 18, Paragraph (3) the words: “a majority decision will be taken which must include the votes of at least two members of each constituent people” shall be replaced by the words: “the decision of the Council of Ministers shall be taken in accordance with Paragraph (1) of this Article provided that the said majority includes the vote of at least one member of each constituent people”.

In Article 18, a new Paragraph (4) shall be added and shall read as follows:

“(4) When a Deputy Minister replaces a Minister in accordance with this Law, the vote of the said Deputy Minister

shall be counted for the purpose of calculating the majority prescribed in Paragraph (1) of this Article and for the purpose of determining the existence of the consensus prescribed in Paragraph (2) of this Article. When calculating the majority prescribed in Paragraph (3) of this Article, the vote of the said Deputy Minister shall be counted but shall not be considered as a vote of any member of a constituent people.”

Article 6

Article 32 shall be deleted and replaced by a new Article 32 which shall read as follows:

“Article 32

The Chair of the Council of Ministers shall, when absent or otherwise unable to perform his/her duties, be replaced by the youngest of the Deputy Chairs of the Council of Ministers. In such a case, the said Deputy Chair shall be entitled to all the rights and duties of the Chair of the Council of Ministers”

Article 7

This Law shall enter into force on the date of its publication in the “Official Gazette of Bosnia and Herzegovina”.