

Decision Prohibiting Transfer Or Conveyance Of Real Property Assets Of City-Municipalities And Suspending Recruitment Of New Personnel Of City Municipalities

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 which “may include actions against persons holding public office or officials...who are found by the High Representative to be in violation of legal commitments made under the Peace Agreement or the terms for its implementation”;

Mindful of the need to consolidate the functional and legal unity of the City of Mostar in a manner that promotes efficiency in the delivery of services to citizens, promotes the fundamental rights of all citizens and ensures the collective rights of the constituent peoples, in accordance with European standards;

Acknowledging the work of the Commission for Reforming the City of Mostar established on 17 September 2003 by my Decision 160/03 (hereinafter: “the Commission”);

Convinced that the solution developed by the Commission offers all guarantees, safeguards and contains carefully negotiated power-sharing provisions that gives everyone in Mostar an opportunity to gain, while protecting everyone’s vital interests;

Reminding that the Steering Board committed itself to give its full support to the implementation of a solution to the issue of Mostar based on a single coherent city administration with effective guaranteed power-sharing mechanisms which prevent any one people from having majority control of the City Council; and to act to ensure that implementation of the plan in the coming months has the necessary political and economic support;

Noting that the successful implementation of such a solution, and in particular the restructuring of the City Administration in the light of its new responsibilities, will raise complex issues that will require sufficient resources to be put at the disposal of the City authorities as well as the support of all representatives of the units of local self-government units currently existing on the territory of the City;

Noting further that the conditions which ought to enable the relevant authorities in Mostar to dispose of or otherwise allocate state-owned real property, including former socially-owned property, in a manner that is non-discriminatory and in the best interests of the citizens of the City, do not currently exist as Mostar engages this delicate period of transition;

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

Decision

PROHIBITING TRANSFER OR CONVEYANCE OF REAL PROPERTY ASSETS OF CITY-MUNICIPALITIES AND SUSPENDING RECRUITMENT OF NEW PERSONNEL OF CITY MUNICIPALITIES

Article 1

This Decision is hereby effected in order to preserve the real property assets of any City-municipality, as may be necessary to provide adequate protection and conserve the value thereof.

This Decision further imposes a moratorium on recruitment and hiring of employees, whether civil servant or otherwise, by any City-Municipality”.

For the avoidance of doubt it is hereby declared that this Decision is taken, any internal laws and regulations notwithstanding.

This decision in no way affects the ability of any company partially or wholly owned by a City Municipality or group thereof, to conduct affairs in the ordinary course of business.

Article 2

Notwithstanding any provision in any contract, lease, or any applicable law or regulation that may permit otherwise, the sale, lease, disposal, or encumbrance of any real property over which any City-Municipality holds a disposal or use right, whether infrastructure, facilities, or land, undeveloped or otherwise, by any City-Municipality is hereby prohibited.

Specifically, such prohibition shall include and apply to:

1. Real property sold, leased, or allocated for use, by any City-municipality;
2. Fixtures and appurtenances held by any City-municipality. For the purposes of this Decision, a fixture or appurtenance is an article of personal property which has subsequently been attached to real property with the intention that it become a part of the real property;
3. Any and all easements, covenants, zoning restrictions, and building permit requirements;
4. Loans on real property, or encumbrances of any kind, to or for the benefit of a third party.
5. Cash collateral held against real property; meaning cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the City-municipality has an interest;
6. Assignment of the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use of any real property; and,
7. Any other contracts or any documents concerning real property which create liabilities in the name of the City-municipality.

Article 3

The prohibitions set out in Article 2 do not apply to the execution or entry into any contract of sale for socially owned apartments with occupancy rights.

Article 4

With respect to civil servants and other employees, no recruitment, appointment of any kind and/or internal transfer shall be permitted, after the entry into force of this Decision, in services of the administration of the City-Municipalities, institutions and of all other bodies, services and legal entities whose employees are paid from the budgets of the City Municipalities, until or unless it may otherwise be decided by the High Representative.

Article 5

All pending competitions for recruitment, appointment and/or internal transfer, regardless of their status, are hereby suspended. The provision of this Article shall not apply to final decisions (following lapse of the appeals period) issued in such open competitions prior to the entry into force of this Decision.

Article 6

Any decision referred to in the previous Articles made by the authorities of the City-Municipalities of Mostar South,

Mostar South-West, Mostar West, Mostar South-East, Mostar North, and Mostar Stari Grad after entry into force of this Decision shall be null and void, and of no legal consequence whatsoever.

Article 7

The Mayor of any City-municipality, the Municipal Assembly, or any other person who may be acting on behalf of the aforesaid parties, are hereby directed to implement this Decision to the extent it applies to them.

Article 8

For the avoidance of doubt, it is hereby specifically declared and provided that the provisions of the Decision contained herein are, as to each and every one of them, laid down by the High Representative pursuant to the authority vested in the High Representative under Annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina and are not, therefore, justiciable by the Courts of Bosnia and Herzegovina or its Entities, and no proceedings may be brought in respect of duties carried out thereunder before any court whatsoever at any time hereafter.

Article 9

This Decision shall enter into force on the 9th day of January, 2004, and shall remain in full force and effect until the High Representative decides otherwise.

Article 10

This Decision shall be published without delay in the Official Gazette of the Federation of Bosnia and Herzegovina, of the Herzegovina-Neretva Canton and in the City Official Gazette of the City of Mostar.

Sarajevo, 9 January 2004

*Paddy Ashdown
High Representative*