

Decision on the Liquidation Procedure to be Applied in the Winding-Up of the Public Enterprise Radio and Television of Bosnia and Herzegovina

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;

Recalling the Decision of the High Representative on the Restructuring of the Public Broadcasting System in Bosnia and Herzegovina of 30 July 1999 (O.G. Bosnia and Herzegovina No 14/99) establishing the Public Broadcasting System and two of its three public broadcasters which requires the transfer of all assets and liabilities of Radio and Television of Bosnia and Herzegovina to the public broadcasters and which establishes the requirement to settle property and financial claims among the public broadcasters;

Noting that on 27 October 2001, the Founding Board of the Public Broadcasting Service of Bosnia and Herzegovina issued a decision to begin the liquidation of Radio and Television of Bosnia and Herzegovina effective 1 December 2001;

Bearing in mind that prior to the existence of the State of Bosnia and Herzegovina, Radio and Television of Bosnia and Herzegovina's predecessor company, Televizija Sarajevo, was a public company established by the Assembly of the Socialist Republic of Bosnia and Herzegovina for which responsibility was assumed by the Republic of Bosnia and Herzegovina in 1994 via amendments to the law thereon and that has always been and continues to be situated at State-level;

Noting that because Radio and Television of Bosnia and Herzegovina is situated at State-level, neither of the post-Dayton Entity level laws governing public companies nor the procedures to be applied during their liquidation are applicable to the dissolution of Radio and Television of Bosnia and Herzegovina;

Bearing in mind that a law of Bosnia and Herzegovina on public companies appropriate to deal with the matters herein referred to does not exist;

Having considered and borne in mind the totality of the matters aforesaid, I hereby issue the following:

DECISION

on the Liquidation Procedure to be Applied in the Winding-Up of the Public Enterprise Radio and Television of Bosnia and Herzegovina

1. The procedure to be applied in the liquidation of the Public Enterprise Radio and Television of Bosnia and Herzegovina ("RTV BiH") shall be carried out in accordance with this Decision. The liquidation procedure shall not be subject to the laws of Bosnia and Herzegovina that regulate cessation of operation of enterprises, business companies and other legal entities. Unless otherwise specified in this Decision, in carrying out the liquidation of RTV BiH the liquidator shall where necessary apply general legal principles relating to the dissolution of companies in so far as the principles to be applied are based upon equity and fairness and meet international legal standards.

2. In terms of this Decision liquidation shall be defined as all those acts that are reasonably necessary to cease the business operations of RTV BiH in an orderly manner (and terminate its legal existence) including the transfer of all RTV BiH assets, rights and liabilities to the Public Broadcasting Service of Bosnia and Herzegovina ("PBS BiH") or the Radio and Television of the Federation of Bosnia and Herzegovina ("RTV FBiH").

3. The Broadcasting Agent of the High Representative, Mr. John Shearer, or his successor, shall carry out the function of the liquidator. The liquidator may authorize employees of PBS BiH and RTV FBiH to carry out certain professional tasks. The liquidator shall closely co-operate with the Executive Committee of the Founding Board of the Public Broadcasting Service of Bosnia and Herzegovina or its successor within the liquidation procedure.

4. Based on this Decision the liquidator shall file or

cause to be filed an application for the registration of RTV BiH liquidation procedure with any responsible court.

5. The words "In Liquidation" shall be added to the title of RTV BiH so the full title shall read "The Public Enterprise Radio and Television of Bosnia and Herzegovina – In Liquidation".

6. Except in so far as is necessary to enable the liquidator to carry out its duties herein, the function of all RTV BiH administrative bodies shall cease upon the day of liquidation commencement, and its authorities shall be transferred to the liquidator.

7. The assets and liabilities to be transferred shall be determined on the basis of the annual financial statement of RTV BiH dated 30 November 2001, which will be prepared in accordance with the applicable regulations of the Federation of Bosnia and Herzegovina.

8. In accordance with the provisions of the two previous Decisions of the High Representative on the Restructuring of the Public Broadcasting System, including without limitation, Article 3 of the Decision dated 30 July 1999 (O.G. Bosnia and Herzegovina No 14/99) and Articles 2.1.5 and 3.3. of the Decision dated 23 October 2000 (O.G. Bosnia and Herzegovina No 28/00), assets, rights and liabilities of RTV BiH shall in the course of the liquidation procedure, be transferred to PBS BiH and RTV FBiH each in respect of the transferred function to which the assets, rights and liabilities concerned are attached. Until the liquidator issues specific decisions on transfer, all liabilities and credits of RTV BiH, including, without limitation, loans, fixed costs, investments and maintenance and depreciation, as well as the liquidation expenditures shall be registered and/or transferred and dealt with by PBS BiH.

9. As of the beginning of the liquidation procedure PBS

BiH and RTV FBiH shall assume the capacity of a party in all administrative and judicial proceedings the party in which was RTV BiH in accordance with the liquidator's decisions under the criteria set in Paragraph 8 of this Decision. The liquidator shall inform the court in writing about the transfer of capacity of a party in each individual case. After the transfer of capacity of a party to either PBS BiH or RTV FBiH, neither party's subsequent actions or decisions shall bind the other party.

10. Within thirty (30) days from the day of publishing this Decision in the "Official Gazette of Bosnia and Herzegovina" the liquidator shall appropriately make all identified creditors and debtors of RTV BiH aware of the circumstance that their credits or liabilities have been transferred (without admission or acceptance of liability) to PBS BiH or RTV FBiH.

11. The liquidator shall also be bound to address all creditors of RTV BiH with a public call to report, in writing, their lawful claims to him within thirty (30) days from the day of a public call. Within thirty (30) days from the day of receiving the information on the claims the liquidator shall inform each creditor about acceptance or rejection of the reported claim as well as to which legal entity the respective claim has been transferred.

12. Claims not reported within the deadline referred to in Paragraph 10 of this Decision shall be settled by the legal entity to which the assets subject to the respective claims were transferred.

13. Within six (6) months of the day of publishing this Decision in the "Official Gazette of Bosnia and Herzegovina" the liquidator shall submit a report on the liquidation procedure of RTV BiH to the PBS BiH Founding Board or its successor.

14. The liquidator and his successor shall, notwithstanding the provisions of any local law or laws to the contrary, have full immunity for all time from all proceedings brought before any court in respect of actions carried out by him or his successor or by virtue of the mandate bestowed by the said Decision and in the course of duties carried out thereunder before any court whatsoever.

15. This Decision, which is made pursuant to the international mandate bestowed upon the High Representative shall not be justiciable before any Court in Bosnia and Herzegovina, shall enter into force forthwith and shall be published without delay in the Official Gazette of Bosnia and Herzegovina, the Official Gazette of the Federation of Bosnia and Herzegovina and the Official Gazette of Republika Srpska.

Sarajevo, 23 May 2002

Wolfgang Petritsch

High Representative