

Decision Enacting the Law on Amendments to the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina

01/22

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 that the Declaration of the Peace Implementation Council Steering Board, adopted at the level of Political Directors in Sarajevo on 24 September 2004, called for a “lasting solution” to “the issue of State Property”;

Noting that pursuant to the aforesaid Declaration, a Commission for State Property, for the Identification and Distribution of State Property, the Specification of Rights and Obligations of Bosnia and Herzegovina, the Entities and the Brcko District of Bosnia-Herzegovina in the Management of State Property (hereinafter: “Commission”), comprised of expert representatives from both Entities of Bosnia and Herzegovina, the Brcko District of Bosnia and Herzegovina, and the Institutions of Bosnia and Herzegovina, was formed in December 2004 by a Decision of the Council of Ministers of Bosnia and Herzegovina (“Official Gazette of Bosnia and Herzegovina” No. 10/05, 18/05, 69/05, 70/05, hereinafter: “Decision”);

Considering that, in accordance with the aforementioned Decision, the Commission is tasked, among other things, with proposing legislation that regulates the identification of which property is owned by Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska and Brcko District of Bosnia and Herzegovina, and that specifies their respective rights of ownership and management of State Property;

Noting that the Peace Implementation Council Steering Board, at their meeting on 27 February 2008, defined the “Acceptable and Sustainable Resolution of the Issue of Apportionment of Property between State and other Levels of Government” as the first of five objectives that will need to be delivered by the authorities of Bosnia and Herzegovina prior to Office of the High Representative’s transition” into the Office of the European Union Special Representative, called upon the authorities in Bosnia and Herzegovina to “achieve these objectives and contribute to fulfilling these conditions as soon as possible,” and further requested that the “High Representative undertake all appropriate measures to ensure that the above objectives are met”;

Considering that the Constitutional Court of BiH rendered a decision in the Case No. U-1/11 on 13 July 2012, in which it established that the State of Bosnia and Herzegovina is title holder of State Property and that the exclusive responsibility of the State of BiH, i.e. the Parliamentary Assembly to regulate the issue of State Property derives from Article I(1), Article III(3)(b) and Article IV(4)(e) of the Constitution of BiH;

Considering further that the Constitutional Court of BiH reiterated these principles and views in subsequent decisions dealing with agricultural land (U-8/19), rivers and waters (U-9/19) and forests and forestland (U-4/21);

Recognizing that in the absence of relevant state-level legislation, the protection of the interests of Bosnia and

Herzegovina and its subdivisions from the potential prejudice posed by further disposals of State Property prior to the enactment of appropriate legislation requires existence of a mechanism of the temporarily prohibition the disposal of State Property;

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

DECISION

Enacting the Law on Amendments to the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina

(“Official Gazette of Bosnia and Herzegovina” No.18/05, 29/06, 85/06, 32/07, 41/07, 74/07, 99/07 and 58/08)

1. The Law which follows and which forms an integral part of this Decision shall enter into force as provided for in Article 4 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.
2. This Decision 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, 12 April 2022

Christian Schmidt
High Representative

LAW

ON AMENDMENTS TO THE LAW ON TEMPORARY PROHIBITION OF DISPOSAL OF STATE PROPERTY OF BOSNIA AND HERZEGOVINA

Article 1

In the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina (“Official Gazette of Bosnia and Herzegovina” No.18/05, 29/06, 85/06, 32/07, 41/07, 74/07, 99/07 and 58/08), Article 1 Paragraph 2 shall be amended to read:

“For the purpose of this Law, State Property is considered to be:

1. **Immovable property, which belongs to the State of Bosnia and Herzegovina pursuant to the international Agreement on Succession Issues, signed on 29 June 2001 by the states of Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Slovenia, and the Federal Republic of Yugoslavia**
2. **Immovable property, for which the right of disposal and management belonged to the former Socialist Republic of Bosnia and Herzegovina before 31 December 1991**
3. **Agricultural land, considered as State Property by the Constitutional Court of Bosnia and Herzegovina in its decisions in Case No. U-8/19**
4. **Rivers, forests, and forestland, considered as State Property by the Constitutional Court of Bosnia and Herzegovina in its decisions in Case No. U-9/19 and Case No.**

U-4/21”

Article 2

Article 2 Paragraph 1 shall be amended to read:

“Notwithstanding the provisions of any other law or regulation, State Property may be disposed of only by the State of Bosnia and Herzegovina, as its titleholder, in accordance with the provisions of this Law.”

Article 3

Article 4 shall be amended to read:

“The temporary prohibition on the disposal of State Property in accordance with this Law shall be in force until entry into force of State-level legislation regulating the rights of ownership and management of State Property, adopted by the Parliamentary Assembly of Bosnia and Herzegovina, or the High Representative decides otherwise.”

Article 4

This law shall enter into force on the eighth day after the date of 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.