# Decision on enacting the Law on Amendment to the Criminal Code of Bosnia and Herzegovina

*n.10/23*

***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;

***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;"

***Guided*** by the need to strengthen the integrity of elections in particular by efficiently sanctioning any instances of bribery of elected officials;

***Bearing in mind*** that corruption activities continue to infringe on the democratic, economic and other rights and interests of the citizens of Bosnia and Herzegovina, and that it is of the vital importance to Bosnia and Herzegovina to ensure that the rule of law is strengthened and followed in order to create the foundation for economic growth and foreign investment;

***Taking into account*** the Communiqué of the Peace Implementation Council Steering Board of 12 September 2022 where the PIC called again for effective, timely, and sustained action against organized crime and systemic political corruption, while regretting that nepotism and corruption remain fundamental stumbling blocks, causing massive damage to the

economy, citizens' daily lives, and the political climate, and underlining that action here would demonstrate commitment to the rule of law and transparency, key to the European path, and contribute to the safety and the well-being of all citizens of Bosnia and Herzegovina;

***Noting*** the 2022 Report of the European Commission on Bosnia and Herzegovina, which describes the situation in Bosnia and Herzegovina as widespread corruption and political capture directly affecting the daily life of citizens, and further underlines that "criminal justice policy and the legislative framework throughout the country is largely ineffective and inadequate for the fight against corruption";

***Considering*** the fact that Bosnia and Herzegovina ranks by far the lowest in the region and the third worst in Europe when it comes to the state of corruption in the country according to the 2022 Corruption Perception Index (CPI) published by Transparency International (TI);

***Having also in mind*** the obligations of Bosnia and Herzegovina concerning the United Nations Convention against Corruption in criminalizing basic forms of corruption such as bribery;

***Aware*** of the need for Bosnia and Herzegovina to engage meaningfully in reforms needed for the country to advance its integration into European Union and to be able to do so as early as possible;

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

**DECISION**

**Enacting the Law on Amendment**

**to the Criminal Code of Bosnia and Herzegovina**

(Official Gazette of BiH Nos. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15, 40/15,

35/18 and 46/21)

1. The Law which follows and which forms an integral part of this Decision shall enter into force as provided for in Article 2 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, 27 April 2023

Christian Schmidt

High Representative

**LAW**

**ON AMENDMENT**

**TO THE CRIMINAL CODE OF BOSNIA AND HERZEGOVINA**

**Article 1**

**(New Article 219b)**

In the Criminal Code of Bosnia and Herzegovina (Official Gazette of BiH Nos. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15, 40/15, 35/18 and 46/21) after Article 219a, a new Article 219b shall be added to read:

**"Bribery in Elections and Duty Financed by Public Funds**

**Article 219b**

(1) Whoever solicits, requests or takes, directly or

indirectly, money or any financial instrument or other value or other material or immaterial benefit or advantage or favor or any kind of inducement for oneself or for another, including a legal person, or an offer or a promise of a such a benefit or advantage or inducement for oneself or for another, including a legal person, in order to do something that he otherwise would not do or not to do something that he otherwise would do in a course of an official duty or prospective official duty, in the legislative, executive, judicial, administrative or any body financed by public funds in whole or in part at the level of Bosnia and Herzegovina, or who mediates in such passive bribing,

shall be punished by imprisonment for a term between one and ten years, and by a fine.

(2) Whoever solicits, requests or takes, directly or indirectly, money or any financial instrument or other value or other material or immaterial benefit or advantage or favor or any kind of inducement for oneself or for another, including a legal person, or an offer or a promise of such a benefit or advantage or inducement for oneself or for another, including a legal person, in order to do something that he otherwise would do or not to do something that he otherwise would not do in a course of an official duty or prospective official duty, in the legislative, executive, judicial, administrative or any body financed by public funds in whole or in part at the level of Bosnia and Herzegovina, or who mediates in such passive bribing,

shall be punished by imprisonment for a term between six months and five years, and by a fine.

(3) Whoever offers, promises or gives, directly or indirectly, money or any financial instrument or other value or other material or immaterial benefit or advantage or favor or any kind of inducement, to a person, and for that person or another including a legal person, who can use an official duty

or prospective official duty in the legislative, executive, judicial, administrative or any body financed by public funds in whole or in part at the level of Bosnia and Herzegovina, to do something he otherwise would not do or not to do something he otherwise would do, or who mediates in such active bribing,

shall be punished by imprisonment for a term between six months and five years, and by a fine.

(4) Whoever offers, promises or gives, directly or indirectly, money or any financial instrument or other value or other material or immaterial benefit or advantage or favor or any kind of inducement, to a person, and for that person or another including a legal person, who can use an official duty or prospective official duty in the legislative, executive, judicial, administrative or any body financed by public funds in whole or in part at the level of Bosnia and Herzegovina, to do something he otherwise would do or not to do something he otherwise would not do, or who mediates in such active bribing,

shall be punished by imprisonment for a term not exceeding three years, and by a fine.

(5) Whoever, in a course of an official duty in the legislative, executive, judicial, administrative or any body financed by public funds in whole or in part at the level of Bosnia and Herzegovina, does what he otherwise would not do or does not do what he otherwise would do, were it not for money or financial instrument or other value or other material or immaterial benefit or advantage or favor or another inducement for oneself or for another, including a legal person, regardless of when such an undue inducement was received or promised,

shall be punished by imprisonment for a term between one and ten years, and by a fine.

(6) Criminal offences from this Article exist regardless of

whether the perpetrator from paragraph (1), (2) and (5) or the person whom the perpetrator from paragraph (3) and (4) of this Article sought to induce was not qualified to act because he had not yet assumed office or lacked jurisdiction, or for any other reason.

(7) For the criminal offences from paragraph (1) to (5), the security measure of ban of carrying out a duty from paragraph (1) to (5) of this Article shall be imposed.

(8) Money or financial instrument or other value or benefit or other inducement from paragraph (1) to (5) of this Article shall be forfeited.

(9) The material gain acquired by the perpetration of the criminal offences from paragraph (1) to (5), income, profit or other benefit resulting from that material gain and any other benefit resulting from a value or benefit or advantage or favor or other inducement from paragraph (1) to (5) of this Article shall be confiscated.

(10) In accordance with Articles 113 and 114 of this Code, sentences for criminal offences from paragraph (1) to (5) of this Article shall entail as legal consequences incident to conviction:

a) the cessation of an official duty in the legislative, executive, other administrative or judicial body or service or any body financed by public funds in whole or in part at the level of Bosnia and Herzegovina, and termination of such employment;

b) deprivation of decorations;

c) ban on the performance of an official duty in the legislative, executive, judicial, administrative or any body financed by public funds in whole or in part at the level of Bosnia and Herzegovina, for five years from the day on which the punishment has been served, pardons or amnestied, or has

been barred by the statute of limitation; and

d) ban on the acquisition of an official duty in the legislative, executive, judicial, administrative or any body financed by public funds in whole or in part at the level of Bosnia and Herzegovina, for five years from the day on which the punishment has been served, pardoned or amnestied, or has been barred by the statute of limitation.

**Article 2**

**(Entry into Force)**

This Law shall enter into force on the eighth day after its publication on the official website of the Office of the High Representative or the day following its publication in the “Official Gazette of Bosnia and Herzegovina”, whichever comes first.