

Measures to improve Federation Functionality

The measures are aimed at improving the functionality of the Federation of Bosnia and Herzegovina (FBiH) and ensuring timely implementation of the results of the October 2022 elections.

This sets the stage for further electoral and constitutional reform, including to meet BiH's commitments for EU integration and to address concrete problems facing the country. These measures also strengthen the constitutional safeguards provided by the Dayton Peace Agreement and the Constitution for constituent peoples while preventing abuse or paralysis of the system.

The package includes amendments to the Election Law and the Federation Constitution, and only relates to the post-election establishment of indirectly elected bodies.

The measures in this Functionality Package will:

- Streamline **legislative decision making** by notifying both houses of the Federation Parliament on their obligation to cooperate and obliging them to consider acts of the other house within a specified period.
- Streamline the **appointment of judges** to the Federation Constitutional Court by obliging institutions and individual officials to fulfill their part of the appointment process within a specified period or abdicate their responsibility to the next authority in the process.
- Help prevent **abuse of Vital National Interests** by specifying the range of issues on which vital national interest can be invoked, eliminating an unlimited,

indeterminate category of interest and by ensuring that VNI invocations are always reviewed by the VNI panel.

- Ensure the adjudication of VNI invocations through streamlining the appointment of **VNI Panel members** by giving authority to the Constitutional Court to appoint the panel from its members.
- Implement the Constitutional Court decision in the *Ljubic* case by **improving the proportionality of representation** of constituent peoples from each canton in the Federation House of Peoples. This measure increases the number of seats in each constituent people's caucus from 17 to 23. The resulting distribution would correct the most severe over-representation of all three constituent peoples in cantons with very small populations of each people. Every constituent people in every canton would maintain the possibility to have at least one representative in the House of People. The measure increases the number of seats in the "Others" caucus from 7 to 11. For the first time, "Others" from all cantons may be represented in the House of People of the Federation. The election law on this issue and on the application the latest census would be amended to be consistent with the Federation Constitution.
- Ensure **timely election of delegates of the House of Peoples** by Cantonal Assemblies by empowering the Central Election Commission to redistribute seats from cantons where assemblies do not fulfill this responsibility within a specified period.
- Ensure **nominations for President and Vice Presidents** of the Federation by the caucuses of the House of Peoples by lowering the level support needed in a caucus to nominate them in successive rounds. An initial threshold of eleven votes out of 23 members allows each caucus to

nominate a maximum of two candidates. In the absence of support of eleven delegates, successive rounds allow nominations by seven members or then four members, ensuring nominations and promoting pluralism.

- Improve transparency and expediency in the **approval of slates of candidates** for Federation President and Vice Presidents by specifying timelines and methods of voting on slates in the Federation House of Representatives and simplifying approval in the Federation House of Peoples.
- Clarify and codify **limits on representation** by members of constituent peoples in key executive and legislative positions in the Federation, to encourage coalition building and prevent over-representation.
- Require parliamentary bodies of the Federation to solicit **citizen, including youth, participation** in the legislative work of House of Representatives and House of Peoples. A measure obliges those bodies to develop procedures for considering citizen initiatives to encourage a more responsive and accessible legislative process.

These decisions do not implement amendments to the state constitution to implement court decisions about the rights of "Others" (*Sejdic-Finci, Zornic*, and others) as doing so is *ultra vires*, or outside the jurisdiction of the High Representative. The High Representative offers his **good offices in support of parliamentary initiatives** aimed at these amendments.