

Notice on the Application of the High Representative's Order of 12 April 2022 to the RS Law on Immovable Property Used for Functioning of Public Authority

01/23

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 “[f]acilitate, 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 Paragraph 4 of Resolution 1174 (1998) of the United Nations Security Council of 15 June 1998, by which the Security Council, under Chapter VII of the United Nations Charter “... reaffirms that the High Representative is the final authority in theatre regarding the interpretation of Annex 10 on civilian implementation of the Peace Agreement and that in case of dispute he may give his interpretation and make recommendations, and make binding decisions as he judges necessary on issues as elaborated by the Peace Implementation Council in Bonn on 9 and 10 December 1997”;

Bearing in mind that the Peace Implementation Council Steering Board, ever since its Declaration of 24 September 2004 at the level of Political Directors, called for a lasting solution to the issue of State Property;

Recalling that the Political Directors of the Peace Implementation Council Steering Board, in its declaration of 26 and 27 February 2008, requested the High Representative to undertake all appropriate measures to ensure that the objective of reaching an “acceptable and sustainable resolution of the issue of apportionment of property between state and other levels of Government” is met;

Taking into account the *Decision of the High Representative Amending the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina* enacted on 12 April 2022 (Official Gazette of Bosnia and Herzegovina, No. 22/22) which clearly establishes that “State Property may be disposed of only by the State of Bosnia and Herzegovina, as its title holder”;

Emphasizing that 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, 58/08 and 22/22) is in force and applies at the entire territory of Bosnia and Herzegovina and that authorities of Republika Srpska must comply with the obligations imposed on them through the laws of Bosnia and Herzegovina;

Reminding that the application of the previous *Law on Immovable Property Used for the Functioning of the Public Authority* (Official Gazette of the Republika Srpska, No. 29/22) was suspended pursuant to my Order from 12 April 2022 (Official Gazette of Bosnia and Herzegovina, No.22/22) until a final decision of the Constitutional Court of Bosnia and Herzegovina on said Law enters into force;

Considering that on 22 September 2022 the Constitutional Court of Bosnia and Herzegovina adopted Decision in case No. U 10/22 determining, in line with its constant jurisprudence (Decisions of the BiH Constitutional Court in cases No. U 1/11 of 13 July 2012; No. U 8/19 of 6 February 2020, No. U 9/19 of 6 February 2020, No. U 4/21 of 27 September 2021 and No. U 10/22 of 22 September 2022), that Republika Srpska lacks constitutional competence to regulate legal matters that are subject matter of that Law, as the regulation of the issue of State Property falls

within the exclusive competence of the Parliamentary Assembly of BiH;

Considering that, on 28 December 2022, the National Assembly of Republika Srpska adopted a new *Law on Immovable Property Used for Functioning of Public Authority* (Official Gazette of Republika Srpska, No. 16/23) and that the scope of that Law again includes State Property assets;

Noting further that the *Law on Immovable Property Used for Functioning of Public Authority*, by declaring such assets and respective re-registrations as ownership of the entities exercising public authority in Republika Srpska, disregards a number of final and binding decisions of the Constitutional Court of Bosnia and Herzegovina, as well as the State Property Disposal Ban;

Considering further that the application of the *Law on Immovable Property Used for Functioning of Public Authority* precludes an acceptable and sustainable resolution of the issue of State Property;

Noting that several requests for the review of the constitutionality of the *Law on Immovable Property Used for Functioning of Public Authority* before the Constitutional Court of Bosnia and Herzegovina have been announced;

Taking into consideration that, until the Constitutional Court of Bosnia and Herzegovina reaches a final decision on the matter concerning the disputed legislation, the preservation of the ownership interests of the State of Bosnia and Herzegovina requires the timely suspension of the application of legal acts undermining the State of Bosnia and Herzegovina as the titleholder of State Property;

Recalling that compliance with and enforcement of decisions of the Constitutional Court of Bosnia and Herzegovina is paramount to the Rule of Law and in particular Article I(2) of the Constitution of Bosnia and Herzegovina under which "*Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections*", Article III(3)(b) of the Constitution of Bosnia and Herzegovina under which, "*The Entities and any subdivisions thereof shall comply fully with this Constitution, which supersedes inconsistent provisions of the law of Bosnia and Herzegovina and of the constitutions and law of the Entities, and with the decisions of the institutions of Bosnia and Herzegovina*" and Article VI(5) of the Constitution of Bosnia and Herzegovina under which "*Decisions of the BiH Constitutional Court shall be final and binding*";

Recalling in this regard that the *the stability of institutions guaranteeing democracy and the rule of law* contained in the Copenhagen political criteria constitute an important membership criteria to be achieved by Bosnia and Herzegovina for negotiations on accession to the European Union as provided in the European Commission's Opinion on Bosnia and Herzegovina's application for membership of the European Union of May 2019;

Noting that the Rules of the Constitutional Court do not presently enable the Court to react expeditiously in a situation where such legal acts put the interest of the State in severe jeopardy and/or could produce harmful consequences upon their entry into force;

Considering that in accordance with Article 2 of my *Order Suspending the Application of the Law on Immovable Property Used for Functioning of Public Authority* of 12 April 2022 ("Official Gazette of Bosnia and Herzegovina", No.22/22) "*[i]t shall have precedence over any inconsistent provisions of any law, regulation or act, existing or future.*"

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

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to the RS Law on Immovable Property Used for Functioning of Public Authority
(Official Gazette of Republika Srpska, No. 16/23)**

Article 1

The Order of 12 April 2022 (Official Gazette of Bosnia and Herzegovina, No. 22/22) shall apply to the Law on Immovable Property Used for Functioning of Public Authority (Official Gazette of Republika Srpska, No. 16/23), which is hereby suspended until a final decision of the Constitutional Court of Bosnia and Herzegovina enters into force or until the Constitutional Court of Bosnia and Herzegovina decides on interim measures in respect to the said Law.

Article 2

The High Representative reserves the right to further extend the application of the Order of 12 April 2022 in order to suspend any future legislation or other legal act that unilaterally regulates State Property assets in a manner that the High Representative considers as precluding an acceptable and sustainable resolution of the issue of State Property.

Article 3

This Notice enters into force forthwith and shall be published on the official website of the Office of the High Representative. This Notice shall be published without delay in the "Official Gazette of Bosnia and Herzegovina".

Sarajevo, 27 February 2023

Christian Schmidt

High Representative