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HIGH REPRESENTATIVE DECISION ENACTING THE AUTHENTIC INTERPRETATION OF THE LAW ON CHANGES AND AMENDMENTS TO THE LAW ON THE COUNCIL OF MINISTERS OF BOSNIA AND HERZEGOVINA ENACTED BY THE DECISION OF THE HIGH REPRESENTATIVE OF 19 OCTOBER 2007

“Official Gazette of Bosnia and Herzegovina”, 94/07

NOTE: High Representative Decision Enacting the Law on Changes and Amendments to the Law on the Council of Ministers of Bosnia and Herzegovina, No. 11/07, was published in the “Official Gazette of Bosnia and Herzegovina, 81/07.

**High Representative Decision Enacting the Authentic Interpretation
of the Law on Changes and Amendments to the Law on the Council
of Ministers of Bosnia and Herzegovina Enacted by the Decision of
the High Representative of 19 October 2007**

December 3, 2007

No. 12/07

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, as well as the smooth running of the common institutions";

Recalling further the Decision of the High Representative of 19 October 2007 Enacting the Law on Changes and Amendments to the Law on the Council of Ministers of Bosnia and Herzegovina;

Considering that, pursuant to Articles 137 through 140 of the Rules of Procedures of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina and Articles 131 through 134 of the Rules of Procedure of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, the said Houses can adopt authentic interpretations of a law.

Noting that the running of the institutions of Bosnia and Herzegovina must be guided by a spirit of compromise between all constituent peoples of Bosnia and Herzegovina and between representatives appointed from the different Entities of Bosnia and Herzegovina;

Noting further that the Decision of 19 October 2007 has been enacted in line with that spirit and should consequently be interpreted and implemented accordingly;

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

DECISION

Enacting the Authentic Interpretation of the Law on Changes and Amendments to the Law on the Council of Ministers of Bosnia and Herzegovina Enacted by the Decision of the High Representative of 19 October 2007

This Authentic Interpretation shall become an integral part of the Law on Changes and Amendments to the Law on the Council of Ministers of Bosnia and Herzegovina enacted by the Decision of the High Representative of 19 October 2007 (“Official Gazette of Bosnia and Herzegovina”, No. 81/07) and shall have force of Law.

This Authentic Interpretation shall be published in the “Official Gazette of Bosnia and Herzegovina” without delay and shall enter into force on the date of its publication.

This Authentic Interpretation shall be deemed to be applicable as of the day of entering into force of the Law on Changes and Amendments to the Law on the Council of Ministers of Bosnia and Herzegovina enacted by the Decision of the High Representative of 19 October 2007 on an interim basis, until such time as the Parliamentary Assembly of Bosnia and Herzegovina adopts this Authentic Interpretation together with the said Law in due form, without amendment and with no conditions attached.

This Decision shall be published on the official website of the Office of the High Representative and shall come into effect forthwith.

This Decision shall be published in the “Official Gazette of Bosnia and Herzegovina” without delay.

Sarajevo, 3 December 2007

Miroslav Lajčák
High Representative

**Authentic Interpretation
of the Law on Changes and Amendments to the Law on the Council of Ministers
of Bosnia And Herzegovina Enacted by the Decision of the High Representative
of 19 October 2007**

1. The aim of the Law on Changes and Amendments to the Law on the Council of Ministers of Bosnia And Herzegovina enacted by the Decision of the High Representative of 19 October 2007 (hereinafter “Law”) is to facilitate the operation of the Council of Ministers (hereinafter “CoM”).

2. These changes and amendments apply equally to all members of the CoM without any distinction.

3. The changes and amendments do not touch upon the overall composition of the CoM, and in particular the equal representation of the constituent peoples of Bosnia and Herzegovina (see Art. 6 of the Law on the Council of Ministers of Bosnia and Herzegovina (“Official Gazette of Bosnia and Herzegovina” 38/02, 30/03, 42/03, 81/06, 76/07) and Art.IX.3 of the Constitution).

4. The changes and amendments ensure that none of the members of the CoM can obstruct its work simply by an unjustified and illicit absence from sessions and the need for the Council of Ministers to be able to take decisions at all times.

5. The changes and amendments are not to the detriment of any constituent people and any Entities of Bosnia and Herzegovina. They shall be implemented in good faith.

6. The changes and amendments address the following issues in particular:

a) **Replacement of the Chair of the Council of Ministers by a Deputy Chair and replacement of a Minister by his Deputy.**

i) *Replacement of the Chair of the Council of Ministers*

7. As far as the replacement of the Chair of the Council of Ministers is concerned, Article 32 of the Law on the Council of Ministers provides:

“The Chair of the Council of Ministers shall, when absent or otherwise unable to perform his/her duties, be replaced by the youngest of the Deputy Chairs of the Council of Ministers. In such a case, the said Deputy Chair shall be entitled to all the rights and duties of the Chair of the Council of Ministers.”

8. For the avoidance of any doubt, the replacement mechanism foreseen in Article 32 of the Law on the Council of Ministers applies only in cases of absence or inability to perform duties which are **temporary** in nature and shall not be interpreted in any manner, either directly or indirectly, as allowing a Deputy Chair of the Council of

Ministers to replace the Chair of the Council of Ministers in cases of permanent inability to perform his/her duties. Article 32 must be read in conjunction with Article 12 (3) of the Law on the Council of Ministers which explicitly regulates cases of **permanent** inability of the Chair of the Council of Ministers to perform his/her duties.

9. Article 12 (3) stipulates that if the Chair of the Council of Ministers is permanently unable to perform his/her duties, the Council of Ministers as a whole shall resign and a new procedure of nomination and approval of all members of the Council of Ministers, including the Chair, must take place in accordance with the relevant provisions of the Law on the Council of Ministers. Article 12 (3) provides:

“If the Chair of the Council of Ministers resigns or is **permanently** unable to perform his/her duty, the Council of Ministers shall resign as a whole, and continue to perform its duties pending the approval of a new Chair and members of the Council of Ministers. In such case, the procedure outlined in Articles 9 and 10 of this Law shall be followed.”
(emphasis added)

10. The manner in which a temporary absence or inability to perform duties is determined is a matter to be regulated by the Rules of Procedures of the Council of Ministers. Additionally, and for the avoidance of doubt, Article 32 does not exempt the Deputy Chair acting in replacement of the Chair of the Council of Ministers from the conditions that restrict the capacity of a Deputy Chair to convene a session of the Council of Ministers. For example, a Deputy Chair who acts in replacement of the Chair of the Council of Ministers under Article 32 can only convene a session jointly with the other Deputy Chair in cases where the Chair of the CoM has failed, in contravention to the provisions of this Law and the provisions of the said Rules of Procedure, to convene two consecutive sessions of the Council of Ministers.

ii) *Replacement of a Minister*

11. The Law amended Articles 14 and 15 of the Law on the Council of Ministers in order to ensure that, for the period between the day of resignation, dismissal or permanent inability of a Minister and the day upon which the successor of the Minister takes office, the Deputy Minister shall temporarily perform the duties of the concerned Minister. Such possibility to act on behalf of an absent Minister already existed in the Law on Council of Ministers enacted in December 2002 but was limited in scope. The exception introduced by the Amendments also limits the decision-making power of the Deputy Minister.

12. As far as the impact of a replacement by a Deputy Minister on decision-making in the Council of Ministers is concerned, the above mentioned amendments should be read in conjunction with the amendments brought to Article 18 of the Law on the Council of Ministers by the Law. The Law added a new Paragraph (4) to Article 18 and has thus ensured, *inter alia*, that the vote of a Deputy Minister cannot be counted as a vote of any member of a constituent people. New Paragraph (4) provides explicitly:

“(4) When a Deputy Minister replaces a Minister in accordance with this Law, the vote of the said Deputy Minister shall be counted for the purpose of calculating the majority prescribed in Paragraph (1) of this Article and for the purpose of determining the existence of the consensus prescribed in Paragraph (2) of this Article. When calculating the majority prescribed in Paragraph (3) of this Article, the vote of the said Deputy Minister shall be counted but **shall not be considered as a vote of any member of a constituent people.**” (emphasis added)

b) Quorum for sessions to be held:

13. The Law amended Article 16 (3) of the Law on the Council of Ministers in order to enable the CoM to hold a session if such a session is attended by more than one half of its members. This amendment reduces possibilities to block the Council of Ministers by the mere absenteeism of members of a constituent people. The rule applies equally to any such member without any distinction and does not violate Article IX,3 of the Constitution of Bosnia and Herzegovina which provides that “[o]fficials appointed to positions in the institutions of Bosnia and Herzegovina shall be generally representative of the peoples of Bosnia and Herzegovina” [emphasis added].

c) Obligation to hold session of the CoM:

14. The amendments to Article 16 Paragraph 2 of the Law on Council of Ministers brought by the Law provide that the sessions of the Council of Ministers shall be held at least once per week. The amendment however allows exceptions to this rule in justified cases and as determined by the Rules of Procedure of the CoM. In addition, the amendment provides that if the Chair fails to convene two consecutive sessions without falling within the scope of an exception provided for by the Rules of Procedures, the Deputy Chairs shall jointly convene the session.

15. As to whether or not a session may be called by surprise or in the absence of certain members, it must be recalled that the working schedule of the Council of Ministers will be transparent and known to all its members and that the new provision explicitly allows the rules of procedures to derogate from the principle of weekly sessions for justified reasons (e.g. holiday or seasonal recess). Furthermore, the convening of a session by the Deputy Chairs is subjected to certain conditions:

- (1) The Chair must have failed to convene two consecutive sessions of the CoM;
- (2) Such a failure must be in contravention to the provisions of the Law and Rules of Procedures of the Council of Ministers; and
- (3) The session needs to be jointly convened by the two Deputy Chairs.

16. By way of illustration, a session could not be convened by surprise by the Deputy Chairs on a day where the CoM should not, for a justified case prescribed by the rules of procedures (e.g. holiday celebrated by certain members of the CoM), convene.

Article 16, Paragraph (2) enacted by the Law provides explicitly:

“ As a rule, the sessions of the Council of Ministers shall be held at least once per week, **except in justified cases as determined by the Rules of Procedure of the Council of Ministers of Bosnia and Herzegovina**. Should the Chair of the Council of Ministers fail, **in contravention to the provisions of this Law and the provisions of the said Rules of Procedure**, to convene **two consecutive sessions** of the Council of Ministers, the Deputy Chairs shall **jointly convene** a session.” (emphasis added)

17. It will belong to the Council of Ministers to define in its Rules of Procedure such *justified cases*, i.e. the circumstances that justify that a session of the CoM is not held (e.g. holiday celebrated by certain members of the CoM).

18. As a rule, such justified cases shall include, but shall not be limited to:

- (1) The absence of all members (Ministers and Chairman of the CoM if applicable) representing a given constituent people and,
- (2) The absence of all members appointed from the territory of a given entity.

To that end, a mechanism shall be established by which the person(s) convening a session and the person chairing a session shall make their best efforts to ensure that at least one such member from each constituent people and at least one member appointed from the territory of each entity is present at the session. Should these efforts fail, the person(s) convening or the person chairing the session shall postpone holding of the session for a minimum of three (3) days and a maximum of seven (7) days.

The absence at the re-convened session of the members representing the same constituent people and/or appointed from the territory of the same entity shall not prevent its holding provided that the quorum specified under Article 16(3) of this Law exists and that no other applicable justified case prevents its holding. By way of illustration, if no member from constituent people A can be present when a session is convened, the person(s) convening the session or the person chairing such session shall postpone its holding. When the session is re-convened, the absence of all the members of the same constituent people will not constitute a justified case for not holding the session. In addition, assuming that the members representing constituent people A were appointed from the territory of entity X, the absence of all members appointed from the territory of entity X when the session is reconvened shall not constitute a justified case for not holding the session.

d) Decision-making of the CoM:

19. The Law maintains the distinction between (1) decisions taken by the CoM on issues that are finally decided by the Parliamentary Assembly (e.g. Laws) and (2) final decisions of the CoM (appointments, bylaws, etc)

- On issues that are finally decided by the Parliamentary Assembly: the amendments brought by the Law do not change the majority decision-making requirement enshrined in Article 18 (1) of the Law on the Council of Ministers. However, the Law provides that such a majority shall be calculated on those members who are present and voting. This provision must be read in accordance with Article 16 (1) of the Law on the Council of Ministers which explicitly provides that the members of the CoM are obliged to participate in the work of the Council of Ministers. The amendments brought by the Law are fully in accordance with this obligation and ensure that the work of the Council of Ministers cannot be blocked by mere absenteeism. The old rule according to which the majority of the total number of members was needed to pass decisions that are finally decided by the Parliamentary Assembly in practice amounted to considering absent Ministers as voting against decisions considered by the Council of Ministers. The provision applies equally to any member of the Council of Ministers without any distinction. It must be recalled finally that these decisions are forwarded to the Parliamentary Assembly where the decision-making procedure prescribed by the Constitution in Article IV is applicable.
- On all other matters, including final decisions of the CoM: the amendments brought by the Law do not change the decision-making requirement of consensus provided in Articles 18 (2) of the Law on the Council of Ministers. For the sake of clarity, the amendments provide that the consensus shall be calculated based on those members who are present and voting. This provision, just like the amendment to Article 18 (1), must be read in conjunction with Article 16 (1) of the Law on the Council of Ministers which explicitly provides that members of the CoM are obliged to participate in the work of the Council of Ministers. The amendments brought by the Law are fully in accordance with this obligation and ensure that the work of the Council of Ministers cannot be blocked by mere absenteeism. The provision applies equally to any member of the Council of Ministers without any distinction.

The amendments brought by the Law to Article 18 (3) of the Law on the Council of Ministers ensure a better functioning of the Council of Ministers by requiring that if a consensus is not reached, the prescribed majority shall include the vote of at least one (1) member of each constituent people. This provision applies equally to all members of the Council of Ministers without any distinction. It must be emphasised that the rule relates to constituent peoples and not Entities. In that respect, it is recalled that the previous provision did not refer to Entity representation either. As such, the rule does not fall under the scope of Article V,4,(b) which provides that “no more than two-thirds of all Ministers may be *appointed* from the territory of the Federation” [emphasis added]. Such constitutional provision applies to appointments and does not constitute a quorum or decision-making rule in the Council of Ministers.

It is worth reiterating that the requirement that a final decision of the Council of Ministers be supported by one Minister of each constituent people is not

affected by the absence of one or two other Ministers of said constituent people.

It must be recalled also that the procedure of nomination and approval of members of the CoM prescribed by the Constitution ensures that the Presidency nominates the Chair of the Council of Ministers and that all members of the Council of Ministers must be approved by the Parliamentary Assembly. Entity interests regarding the composition of the Council of Ministers may be addressed through the Vital Entity Interest procedure prescribed in Article V (2) d) of the Constitution and through the decision making procedure of the Parliamentary Assembly prescribed in Article IV (3), d) of the Constitution.

Article 18 Paragraph 3 must be read in conjunction with Article 6 of the Law. Article 6, Paragraph 1 of the Law provides that:

"The overall composition of the Council of Ministers shall, throughout its mandate, be and remain fully respectful of the Constitution of Bosnia and Herzegovina and in particular of Articles V(4)(b) and IX(3) thereof and, subject thereto, shall ensure equal representation of the constituent peoples of Bosnia and Herzegovina."

For the purpose of Article 18, Paragraph 3, the vote of a member of the Council of Ministers cannot be counted as a vote of a given constituent people if the said member was not appointed to the Council of Ministers as a representative of the same constituent people. Any other interpretation would lead to a situation in which the protection granted to the constituent peoples in the decision-making process under Article 18, paragraph 3 as well as the guarantee of equal representation of the constituent peoples provided under Article 6, Paragraph 1 would become ineffective.

Considering Article 6, Paragraph 2 of the Law which stipulates that the Chair and Deputy Chairs of the Council of Ministers shall not be from the same constituent people, Article 18, Paragraph 3 of the Law on Council of Ministers shall be interpreted as requiring that best efforts be made in order to ensure that the vote of at least one member of each constituent people referred to in the said provision be cast by the Chair of the Council of Ministers and the Deputy Chairs of the Council of Ministers. In the event that the Chair or Deputy Chairs are absent or otherwise unable to cast the said votes, they shall mandate a member of the Council of Ministers belonging to the same constituent people to cast their vote on their behalf. In the event that the Chair or Deputy Chairs fail to duly mandate a member of the Council of Ministers or in the event that a duly mandated member of the Council of Ministers is absent or otherwise unable to cast the said vote, any other member of the Council of Ministers belonging to the concerned constituent people shall be entitled to cast the said vote.