

Decision amending the Law on the Banking Agency of the FBiH

In the exercise of the powers vested in me by Article 5 of Annex 10 to the General Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theater regarding interpretation of his mandate; and considering in particular Art. II.1. (d) of the same Agreement, entrusting on the High Representative the power to facilitate, as he judges necessary, the resolution of any difficulties arising in connection with civilian implementation; recalling the interpretation of such a power given in paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn the 10 December 1997, particularly sub-paragraph (b) thereof, in terms of which the High Representative is entitled to make binding decisions, as he judges necessary, on the adoption of measures aiming at ensuring implementation of the Peace Agreement throughout Bosnia and Herzegovina, including *“interim measures to take effect when parties are unable to reach agreement ...”*;

Considering that Federation Banking Agency law does not provide protection for officials, examiners, staff, contract persons, appointees (provisional administrators, receivers, liquidators, auditors, outside attorneys, etc.) from personal liability arising from the normal performance of their duties and that the Agency is a non-profit organization responsible to the Parliament.

Bearing in mind that such protection is customary and necessary for a strong and independent supervisory function. While supervisors are required to use reasonable care in their actions, Agency employees require protection from undue government and non-government persons and frivolous lawsuits. Such protection is one of the key *“Pre-conditions for Effective Bank Supervision”* established by the Basle Committee and supported by most western countries. Threats and acts of intimidation interfere with the banking agencies’ exercise of authority, independence and supervisory actions, distracts and reduces the pace of examinations; cripples the ability of the agencies to supervise the banking sector. Without such internationally recognized protection and due process, Agency personnel and examiner performance is undermined and banking agencies cannot operate as fully independent regulatory agencies. It is recognized that the Agency is not an independent financial institution taxed on revenues received.

All this considered, born in mind and noted, I hereby issue the following

DECISION

On Amending the Law on the Banking Agency of the Federation of Bosnia and Herzegovina

Article 1

In the Law on Banking Agency of the Federation of BiH (“Official Gazette of the Federation of BiH” No. 9/96, and 27/98) in Article 1, Paragraph 2, word “financial” is replaced by a word “nonprofitable”.

Article 2

In Article 5, after Paragraph 1, Paragraph 2 is added as follows:

“From the establishment of the Agency, the Director of the Agency, Deputy Director of the Agency, employees of the Agency, as well as individuals recommended or appointed by the Agency to perform certain activities from the mission of the agency, cannot be subject to prosecution for criminal offenses nor held responsible in civil law procedure for any actions done in good faith while performing acts within the scope of their authority. The Agency will indemnify its employees against legal action taken against the employee for acts done in good faith in the performance of their duties within the scope of their authority.”

Current Paragraph 2 becomes Paragraph 3.

Article 3

In article 20, Paragraph 3 words: “of the Government of the FBiH” is replaced by a word: “of the Parliament”

Article 4

In Article 21, after Paragraph 2 the following is added as Paragraph 3:

“Based on the annual accrual, overage of income over expenses is transferred to the following year”.

Article 5

In all other aspects, the Law on Banking Agency in the Federation of Bosnia and Herzegovina is unchanged.

Article 6

This Law comes into effect on the eighth day after it is published in the “Official Gazette of the Federation of BiH”.

Sarajevo, 22 May 2000

Wolfgang Petritsch
High Representative

Office of the High Representative