

Decision removing Mr. Bosko Lemez from his position in the Management Board of Elektroprivreda Republika Srpska

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 the Peace Agreement throughout Bosnia and Herzegovina and its Entities which "may include actions against persons holding public office";

Noting that in paragraph X. 4 of the Annex to the Declaration of the Peace Implementation Council issued at Madrid on 16 December 1998 it was stated that the Council acknowledged that those whom the High Representative barred from official office "may also be barred from running in elections and from any other elective or appointive public office and from office within political parties until further notice";

Noting that the Peace Implementation Council at its meetings held in Bonn on 10 September 1997, in Madrid on 16 December 1998 and in Brussels on 23/24 May 2000, expressed its deep concerns regarding ingrained corruption in BiH which can lead to the undermining of democratic governance and the wasting of public resources and can hinder the development of the market economy;

Bearing in mind that at Madrid on 16 December 1998 the Peace Implementation Council set out its concerns as follows: "The Council expresses deep concern about continuing corruption and evasion of public funds. It welcomes the High Representative's development of a comprehensive anti-corruption strategy ... The High Representative will take the lead in co-ordinating International Community efforts aimed at eliminating opportunities for corruption, tax evasion and diversion of public revenue, ensuring transparency in all phases of governmental operations.....";

Noting that at Brussels on 23/24 May 2000 the Peace Implementation Council issued a Declaration in which it urged, "the High Representative to use his authority to ensure full and accelerated reform in all sectors of civilian implementation, including removing obstacles that stand in the way of economic reform". Further noting that in referring to critical reforms, the Council expressly mentioned its strong support for "immediate reform in the area of public utilities, with an emphasis on telecommunications and energy.";

Considering in addition that in the last said Declaration of 23/24 May 2000 the Peace Implementation Council stated that: "The Council remains deeply concerned over ingrained corruption in BiH which undermines democratic governance, wastes public resources and hinders the development of the market economy. The OHR comprehensive Anti-corruption Strategy is the solid basis for the fight against corruption. All public officials are expected to give their active and unreserved support to this Strategy and to the institutions which are implementing it.";

Further taking into account the provisions of the Decision of the High Representative of 1 August 2002 on the Special Auditor for the Republika Srpska (Official Gazette of the Republika Srpska 50/02) and the report of the said Special Auditor on Elektroprivreda Republika Srpska released on February 25, 2003 (hereinafter referred to as the "Report").

Bearing in mind the totality of the matters hereinbefore and hereinafter set out, the High Representative hereby issues the following:

DECISION

To remove Mr. Bosko Lemez from his position in the Management Board of Elektroprivreda Republika Srpska and to bar him from holding any official, elective or appointive public office and from running in elections and from office within political parties unless or until such time as the High Representative may expressly authorise him so to do or to hold the same. Any entitlement to receive remuneration or any privileges or status arising out of his said position ceases forthwith.

This Decision has immediate effect and does not require any further procedural steps to be taken. Mr. Lemez must vacate his office immediately.

This Decision shall be published without delay in the Official Gazette of Republika Srpska.

Reasons for Removal

Mr. Bosko Lemez was appointed to a position on the Management Board of the Elektroprivreda Republika Srpska ("Elektroprivreda") on 3 February 2003 despite the provisions of Article 5 of the Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina (BiH 13/02). Until 17 January 2003, Mr. Lemez held the position of Minister of Energy and Mining in the Government of Republika Srpska. The Elektroprivreda Republika Srpska fell under the portfolio of the Ministry of Energy and Mining in the Government of the Republika Srpska and the said Ministry had certain responsibilities for the said Elektroprivreda, which is and was a public enterprise.

The Report shows that during the period of the audit (19 September 2002 through 31 January 2003), the control and management of the Elektroprivreda has been so conducted that a significant financial loss of public funds in the said Elektroprivreda has been incurred, whether through misappropriation, wilful neglect and/or mismanagement.

The Report shows that individuals, who were placed in a position of trust and confidence vis-à-vis the Elektroprivreda, flagrantly breached that position and personally made financial gains from the misuse of their office. The particulars of breach include, inter alia, (i) wilful or negligent failure to introduce or maintain the minimum measures necessary for ensuring the effective and proper management and control of the said Elektroprivreda and its property; (ii) wilful or negligent failure to introduce minimum financial controls and record keeping resulting in millions of Konvertible Marks which should have been held to the credit of the said Elektroprivreda being unaccounted for; (iii) the wilful or negligent and consistent failure to act in the interests of the said Elektroprivreda either by awarding contracts significantly below the market value or contrary to the rules and procedures regarding award of tenders or by giving such contracts to favoured vendors .

The Report also shows that the Minister of Energy and Mining in the exercise of his public duties in respect of Elektroprivreda, consistently failed to so exercise them in a transparent manner and in accordance with the principles of open and accountable government. An instance of such non-transparent intervention includes the award of a contract in excess of four million Konvertible Marks over the lowest bidder to what appears to have been a favoured bidder. As a minimum, proper governance of the said Elektroprivreda would require that proper records be maintained in the enterprise showing the justification for the award in this, and other cases.

Mr. Lemez, in his capacity of Minister of Energy and Mining, owed a duty of care to the said Elektroprivreda and, in particular, had a duty to ensure that the property of the same was properly safeguarded and not the subject of misappropriation, mismanagement or neglect. Mr. Lemez, in such capacity also knew or ought to have known of the conditions of gross neglect, mismanagement and misappropriation that prevailed in Elektroprivreda. Based on the aforesaid Report, as Minister of Energy and Mining with special responsibilities for Elektroprivreda and, as therefore a public trustee, he clearly failed to discharge his duty of care in respect of the said Elektroprivreda and public funds. The extent of the misappropriation, mismanagement and neglect revealed in the Report is evidence that Mr. Lemez could not have been other than grossly or wilfully negligent in the discharge of the duties that lay upon him. His tenure of office was accompanied by significant financial and other losses to the said Elektroprivreda and in consequence to public property and funds.

In addition, Mr. Lemez has consistently blocked the implementation of the Power III project which foresees the privatisation and restructuring of electricity companies in Bosnia and Herzegovina. In particular, Mr. Lemez has attempted to stall progress in the preparation of legislation and plans needed to reform the energy sector, as called for by the Peace Implementation Council.

Sarajevo, 26 February 2002

*Paddy Ashdown
High Representative*