

Decision enacting the Law on Amendments to the Law on Civil Service in the Institutions of Bosnia and Herzegovina

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 the importance which the international community has attached to the Law on Civil Service in the Institutions of Bosnia and Herzegovina in the context of establishing the rule of law and reinforcing the common institutions in Bosnia and Herzegovina;

Noting, by way of example of the said attachment, the priority given by the Peace Implementation Council at its meeting held in Madrid on 16 December 1998 to the creation of a professional and apolitical civil service as a vital component of any effectively functioning state; and noting further the full support it expressed for the High Representative’s determination to strengthen the common institutions by working with the Bosnia and Herzegovina authorities to provide for a professional and politically independent civil service in governmental institutions of Bosnia and Herzegovina;

Recalling that the Law on Civil Service in the Institutions of Bosnia and Herzegovina, was adopted by the Parliamentary Assembly of Bosnia and Herzegovina on 3 July 2002 (Official Gazette of Bosnia and Herzegovina, 12/02, 19/02, 8/03, 35/03, 4/04);

Endorsing the recommendation of the Public Administration Reform to streamline public administration at all levels of Government and rationalising the employment in the public sector to make it cost-effective;

Considering that Bosnia and Herzegovina is in the process of establishing new institutions or of developing existing ones following transfers of competencies from the Entities to Bosnia and Herzegovina or following the adoption of legislation pursuant to which the State of Bosnia and Herzegovina has assumed, under the Constitution of Bosnia and Herzegovina, responsibilities that were previously undertaken by the Entities;

Further considering that the timely establishment of certain of those institutions constitutes a prerequisite for further integration into Euro-Atlantic institutions as well as for fulfilling the conditions put forward in the European Union’s feasibility study and the NATO requirements for Partnership for Peace.

Conscious that the proper functioning of the said institutions in a manner that enables efficient and timely delivery of services will require transfer of those civil servants who have experience in the relevant field;

Mindful that the transfer of civil servants between institutions of the Entities and institutions of Bosnia and Herzegovina will be faithful to the principle embodied in Article IX.3 of the Constitution of Bosnia and Herzegovina that “all officials appointed to the institutions of Bosnia and Herzegovina shall be generally representative of the peoples of Bosnia and Herzegovina”;

Having considered and borne in mind the totality of the matters aforesaid, the High Representative hereby issues the following

DECISION

enacting the Law on Amendments to the Law on Civil Service in the Institutions of Bosnia and Herzegovina

The Law hereunder constitutes an integral component of this Decision and shall enter into force on the date provided for in Article 5 hereof on an interim basis until adopted by the Parliamentary Assembly of Bosnia and Herzegovina in due form, without amendments and with no conditions attached.

This Decision shall enter into force forthwith and shall be published without delay in the Official Gazette of Bosnia and Herzegovina.

Sarajevo, 20 April 2004

*Paddy Ashdown
High Representative*

Law on Amendments to the Law on Civil Service in the Institutions of Bosnia and Herzegovina

Article 1

After Paragraph 3 of Article 19 of the Law on Civil Service in the Institutions of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina No. 12/02, 19/02, 8/03, 35/03, 4/04), a new Paragraph 4 shall be added to read as follows:

“4. Notwithstanding Paragraph 1 through 3 of this Article, in case of establishment of a new Institution of Bosnia and Herzegovina pursuant to a transfer of competence[ies] from the Entities to Bosnia and Herzegovina, or upon assumption by Bosnia and Herzegovina, under the Constitution, of responsibilities previously exercised by the Entities, a vacant position may be filled through an internal transfer or an external transfer of a civil servant from the relevant civil service body[ies]/authority[ies] of an Entity to the said Institution of Bosnia and Herzegovina or by open public competition, in accordance with Article 32a of this Law.”

Article 2

In Article 20, Paragraph 2 the words and numerals “twenty (20) days” shall be replaced by the words and numerals “eight (8) days” and the words “in the Official Gazette of Bosnia and Herzegovina and” shall be deleted.

Article 3

After Article 32, a new Article 32a shall be added and read as follows:

“Article 32a

Recruitment in Case of Establishment of a New Institution Pursuant to Transfer or Assumption of Competencies

1. Under the circumstances provided for in Paragraph 4 of Article 19 of this Law, the Institution of Bosnia and Herzegovina shall decide whether the position shall be filled through an internal or external transfer of a civil servant or by open public competition. The Institution of Bosnia and Herzegovina may decide to follow any of these procedures concurrently or consecutively.

2. Under the circumstances provided for in Paragraph 4 of Article 19 of this Law, the Agency for Civil Service shall apply the following procedure:

- a) Notwithstanding Paragraph 2 of Article 20 and Paragraph 2 of Article 21 of this Law, the Agency

for Civil Service shall immediately announce the vacancy[ies] on its official web-site or by any other means that the Institution of Bosnia and Herzegovina deems appropriate, at least eight (8) days before the application deadline. The advertisement of the vacancy shall contain all items referred to in Paragraph 3 of Article 20 of this Law, and, in case of open public competition, the general requirements for appointment as a civil servant.

b) The Agency for Civil Service shall establish a Selection Committee which shall carry out the selection of the applicants to the new position[s] within the said Institution of Bosnia and Herzegovina.

c) The Selection Committee shall be composed of five members. Two members shall be civil servants of the relevant Institution of Bosnia or, should that not be possible, of other Institutions of Bosnia and Herzegovina. The Agency for Civil Service will appoint a member. The Civil Service Agency of Republika Srpska and the Agency for Civil Service of the Federation of Bosnia and Herzegovina will each appoint a member.

d) The Selection Committee shall submit to the Civil Service Agency a list of candidates who meet the requirements to be transferred or otherwise appointed to the Institution of Bosnia and Herzegovina.

e) The appointment of the civil servant(s) shall be based upon the recommendation of the Selection Committee and shall be carried out in accordance with Article 28 of this Law. The said civil servant(s) shall henceforth be transferred or otherwise appointed to the Institution of Bosnia and Herzegovina and be subject to this Law.

3. If an external transfer recruitment procedure conducted pursuant to Paragraph 2 of this Article does not provide enough candidates for transfer to the Institution of Bosnia and Herzegovina, the said Institution may decide to initiate a procedure of re-assignment of civil servants instead of advertising the position for open public competition. The Selection Committee referred to in item c) of Paragraph 2 of this Article will recommend to the Head of the relevant Civil Service body of the Republika Srpska or Civil Service authority of the Federation of Bosnia and Herzegovina a list of civil servants employed in the relevant civil service body/authority of the Entity[ies] for reassignment to the Institution of Bosnia and Herzegovina pursuant to relevant Entity legislation. When recommending such a list, the Selection Committee shall pay due respect to the scope of duties of all civil servants employed in the said body/authority as well as the nature of the competencies transferred to or assumed by Bosnia and Herzegovina under the Constitution.

4. The Civil Service Agency shall further regulate the procedure of transfer or appointment of (a) civil servant(s) described in Paragraph 2 of this Article.

5. To be considered for transfer or appointment a civil servant shall meet the requirements set out under Article 22 and 64 of this Law and additional requirements provided for in the Rulebook on internal organization of the institution of Bosnia and Herzegovina.

6. The promotion procedure referred to in Article 31, Paragraph 1 of this Law shall not apply to transfer or reassignment conducted under this Article.

Article 4

In Article 40, after Paragraph 2, a new Paragraph 3 shall be added to read as follows:

"3. The civil servants recruited through an external transfer provided for in Paragraph 4 of Article 19 of this Law whose current residence is at the distance of more than 60 kilometers from the place where they are transferred to perform their official assignments shall be entitled, within the following one year from the day of their transfer, to family separation allowances and fees for accommodation at the place of work.

Article 5

This Law shall enter into force on 21 April 2004, shall be immediately published on the official website of the Office of the High Representative and shall be published in the Official Gazette of Bosnia and Herzegovina without delay.