

Decision Amending the Law on the Temporary Prohibition of Disposal of State Property 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 “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”;

Recalling further that the Declaration of the Peace Implementation Council Steering Board, adopted at the level of Political Directors in Sarajevo on 24 September 2004, called for a “lasting solution” to “the issue of State Property”;

Noting that pursuant to the aforesaid Declaration, a Commission for State Property, for the Identification and Distribution of State Property, the Specification of Rights and Obligations of Bosnia and Herzegovina, the Entities and the Brcko District of Bosnia-Herzegovina in the Management of State Property (hereinafter: “Commission”), comprised of expert representatives from both Entities of Bosnia and Herzegovina, the Brcko District of Bosnia and Herzegovina, and the Institutions of Bosnia and Herzegovina, was formed in December 2004 by a Decision of the Council of Ministers of Bosnia and Herzegovina (“Official Gazette of Bosnia and Herzegovina” No. 10/05, 18/05, 69/05, 70/05, hereinafter: “Decision”);

Considering that, in accordance with the aforementioned Decision, the Commission is tasked, among other things, with proposing legislation that regulates the identification of which property is owned by Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska and Brcko District of Bosnia and Herzegovina, and that specifies their respective rights of ownership and management of State Property;

Recalling 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) temporarily prohibits disposals of a State Property until the earlier of either the entry into force of the above-mentioned legislation on ownership rights and management of State Property or on 30 June 2008;

Bearing in mind the Conclusion of Council of Ministers of Bosnia and Herzegovina, adopted at its 11th session held on 24 May 2007, by which it called for negotiations with Entity and Brcko District governments towards an intergovernmental agreement on State Property, and by which it called upon the Public Attorney of Bosnia and Herzegovina to undertake measures to ensure the protection of State Property, including through the preparation of appropriate legislation;

Recalling that, in its Declaration of 19 June 2007, the Steering Board of the Peace Implementation Council expressed deep dissatisfaction with “the three-year failure of the State and Entity authorities to reach an agreement on the issue of apportionment of State Property”;

Recalling further that the Peace Implementation Council Steering Board at their meeting on 30 and 31 October 2007 “reminded the three prime ministers of the urgent need to reach an inter-governmental agreement on this question and requested the High Representative to undertake all appropriate measures to bring this issue to a conclusion”;

Noting that the Peace Implementation Council Steering Board, at their meeting on 27 February 2008, defined the

“Acceptable and Sustainable Resolution of the Issue of Apportionment of Property between State and other Levels of Government” as the first of five objectives that will need to be delivered by the authorities of Bosnia and Herzegovina prior to Office of the High Representative’s transition” into the Office of the European Union Special Representative, called upon the authorities in Bosnia and Herzegovina to “achieve these objectives and contribute to fulfilling these conditions as soon as possible,” and further requested that the “High Representative undertake all appropriate measures to ensure that the above objectives are met”;

Regretting that, in accordance with the Decision of the High Representative Amending the Law on Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina (“Official Gazette of Bosnia and Herzegovina” No. 99/07), the temporary prohibition on disposals of State Property will expire on 30 June 2008 prior to the enactment of the legislation on the ownership rights and management responsibilities of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska and Brcko District of Bosnia and Herzegovina regarding State Property;

Recalling the 25 June 2008 Communiqué of Peace Implementation Council by which the Steering Board Political Directors noted that “the four-year failure of the State and Entity authorities to reach an agreement on the first objective, thereby necessitating the High Representative to yet again extend the ban on disposal of State Property,” and called upon political leaders to “build on the progress they have made in other areas and to take the lead and to reach an agreement on this matter that enables the State to conduct its constitutional responsibilities”;

Recognizing that the protection of the interests of Bosnia and Herzegovina and its subdivisions from the potential prejudice posed by further disposals of State Property prior to the enactment of appropriate legislation requires another extension of the laws temporarily prohibiting the disposal of State Property by Bosnia and Herzegovina, the Entities or any of its subdivisions;

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

DECISION

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which is hereby attached as an integral part of this Decision.

The said Law shall enter into force as a law of Bosnia and Herzegovina on the date provided for by Article 2 therein.

The Decision of Council of Ministers of Bosnia and Herzegovina on Establishing the Commission for State Property, for the Identification and Distribution of State Property, the Specification of Rights and Obligations of Bosnia and Herzegovina, the Entities and the Brcko District of Bosnia and Herzegovina in the Management of State Property, (“Official Gazette of Bosnia and Herzegovina” No. 10/05, 18/05, 69/05, 70/05) shall be amended to conform with this Law.

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

Sarajevo, 25 June 2008

Miroslav Lajčák
High Representative

LAW

**ON AMENDMENTS TO THE LAW ON TEMPORARY PROHIBITION OF DISPOSAL OF STATE PROPERTY OF
BOSNIA AND HERZEGOVINA**

Article 1

In Article 4 of 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 and 99/07) the words "but not later than 30 June 2008" shall be replaced with the words "or until either an acceptable and sustainable resolution of the issue of apportionment of State Property between the State and other levels of government has been endorsed by the Peace Implementation Council Steering Board, or the High Representative decides otherwise."

Article 2

This Law shall enter into force on the day of its publication in the "Official Gazette of Bosnia and Herzegovina."