

Decision on unblocking the Appointment of the Government of the Federation of Bosnia and Herzegovina

n. 09/23

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 Paragraph 4 of Resolution 1174 (1998) of the United Nations Security Council of 15 June 1998, by which the Security Council, under Chapter VII of the United Nations Charter “... reaffirms that the High Representative is the final authority in theatre regarding the interpretation of Annex 10 on civilian implementation of the Peace Agreement and that in case of dispute he may give his interpretation and make recommendations, and make binding decisions as he judges necessary on issues as elaborated by the Peace Implementation Council in Bonn on 9 and 10 December 1997”;

Underscoring that the Peace Implementation Council Steering Board has already in 2021 condemned “the stagnation and dysfunctionality in the FBiH, including the failure to appoint Federation-level (...) governments for three and a half years since the 2018 General Elections, which is a constitutional, and therefore a General Framework Agreement for Peace in Bosnia and Herzegovina obligation;

Recalling that Bosnia and Herzegovina is a democratic state which operates under the rule of law and with free and democratic elections;

Bearing in mind that elections are a crucial element of democratic governance and that if election results are not reflected in the institutional setting, the entire democratic structure and all legitimacy of government is placed at risk;

Emphasizing that a repetition of a situation where elections are held but never given proper effect would have severe and even disastrous consequences as it would stifle the ability of the country to advance the reform agenda needed for EU integration and foment widespread scepticism towards the elections and distrust in democracy as a whole;

Noting that it is the unwillingness or inability of the relevant political actors to compromise on electoral reform and government formation for so long which led to my Decisions of October 2, 2022;

Deploring that the constitutional deadline for the appointment of the government of the Federation of BiH passed without the Federation President being able to make a nomination with the agreement of the two Vice-Presidents;

Regretting that the Federation is faced with a political stalemate and that, instead of seeking compromise, political blocs have used maximalist demands, ethnonationalist scare tactics, and the lack of acceptance of political reality and responsibility towards the citizens;

Always mindful of the need to ensure that guarantees and safeguards built in the Constitution of the Federation are not used to the detriment of good governance and the functionality of institutions;

Noting that several initiatives have been taken in the institutions of the Federation of BiH to identify a long-term solution to situations where government formation is obstructed, including one initiative by which “the House of Representatives of the Federation Parliament instruct[ed] the Constitutional Commission (...) [to] initiate the harmonization and/or amendment of the constitutional provisions for the election of the Government of the Federation of Bosnia and Herzegovina, in order to achieve a permanent constitutional solution that will enable the appointment of the Government of the Federation of Bosnia and Herzegovina (...);

Welcoming these and other initiatives seeking to identify such long-term solutions in the future;

Calling on the Parliament to address these issues as part of the reforms needed to remove discrimination against the group of Others and improve functionality in the Federation within a process that is both inclusive and relies on consultations with the broadest possible range of interested parties;

Recalling that while the Constitutional Court has emphasized on several occasions that such reforms should take place in the wake of the implementation of judgements of the European Court of Human Rights in the Sejdic-Finci group of cases, such implementation is now overdue and solutions should be found to end discriminations under entity Constitutions in the two first years of the mandate of the existing legislature;

Noting that the formation of a new government cannot await these efforts to bear fruits;

Convinced that the current deadlock cannot continue and that, without a stable Federation, there can be no functional State and no progress towards the future the citizens of this country deserve;

Conscious therefore of the importance of overcoming the current stalemate in the institutions of the Federation in order for Bosnia and Herzegovina to engage meaningfully in reforms needed for the country to advance its integration into European Union and to translate the Decision of the European Council at its summit of 15 December 2022 to endorse the decision to grant the status of EU candidate country to Bosnia and Herzegovina;

Persuaded that no law or constitution can impose political goodwill and that deadlocks in consensus-based system can always be surmounted through political compromise and that no political party has monopoly over representation of any

constituent peoples in Government which is guaranteed under Article IV.B.4, paragraph (1) of the Constitution of the Federation;

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

DECISION

Unblocking the Appointment of the Government of the Federation of Bosnia and Herzegovina

Article 1

(1) The Prime Minister, Deputy Prime Ministers and Ministers of the Government of the Federation put forward by the President of the Federation of BiH in the proposed decision signed by her on 30 March 2023, agreed by one of the Vice-Presidents on 3 April 2023 and amended on 27 April 2023, are hereby deemed appointed in accordance with Article IV.B.5, Paragraph (1) of the Constitution of the Federation.

(2) Each and every signature required to be made, agreement to be given, in particular by the Vice-Presidents of the Federation, and consultations to be held with a view to effecting the appointment of the Government of the Federation in accordance with Article IV.B.5, Paragraph (1) of the Constitution of the Federation are hereby deemed to have been made in proper and due form.

Article 2

(1) The Government of the Federation shall be elected after its appointment is confirmed by a majority vote of the House of Representatives of the Federation of BiH in accordance with Article IV.B.5, Paragraph (1) of the Constitution of the Federation.

(2) The Chair of the House of Representatives shall convene an urgent session to be held no later than 28 April 2023. The confirmation of the appointed Government shall be the only item on the agenda for this session.

Article 3

(1) The Parliament of the Federation shall make its best efforts to initiate the process of amending to Article IV.B.5 of the Constitution of the Federation of BiH that could, if adopted pursuant to Article VIII.1 of the Constitution of the Federation of BiH, ensure that the relevant institutions in the Federation abide by their obligation to ensure that the Government of the Federation is elected.

(2) The Amendment attached hereto, which forms an integral part of this decision, shall enter into force on 1 May 2024 provided that the Parliament of the Federation of BiH does not decide otherwise before that date by amending the Constitution of the Federation as provided by Paragraph 1 of this Article.

(3) Notwithstanding Paragraph (2) of this Article, the Amendment attached hereto shall enter into force on the day the Legislature of the Federation or any House thereof is dissolved pursuant to Article IV.A.16 of the Constitution of the Federation if this dissolution occurs before the date provided for in Paragraph (2) of this Article.

(4) Following its entry into force, the amendment attached hereto shall have precedence over any inconsistent provisions of laws, regulations and acts. No further normative act is required to ensure its legal effect. Nevertheless, authorities in the Federation of BiH remain under the obligation to harmonize such laws, regulations and acts with the Constitution of the Federation of Bosnia and Herzegovina.

Article 4

This decision shall be published without delay in the Official Gazette of the Federation of Bosnia and Herzegovina and on the Official website of the Office of the High Representative and shall enter into force forthwith while the Amendments to the Constitution of the Federation of BiH attached to this Decision shall enter into force as prescribed and under the conditions spelled out in Article 3 of this Decision.

Sarajevo, 27 April 2023

High Representative

Christian Schmidt

AMENDMENT TO THE CONSTITUTION

OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Constitution of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, nos. 1/94, 1/94, 13/97, 13/97, 16/02, 22/02, 52/02, 52/02, 63/03, 9/04, 20/04, 33/04, 71/05, 72/05, 32/07, 88/08, 79/22 and 80/22) shall be amended as follows:

Amendment CXXXI

In Article IV.B.5, Paragraphs (1) and (2) shall be amended to read:

(1) The President of the Federation shall, after consultation with the Chairman and Vice-Chairmen of both Houses, the Heads of caucuses and the Vice-Presidents of the Federation, designate a Prime-Minister nominee who has credible chances to gather support in the Parliament of the Federation. The Prime Minister nominee shall report within 15 days to the President on the formation of a Government that could, if appointed by the President of the Federation in agreement with both Vice-Presidents of the Federation pursuant to Paragraph (2) of this Article, be supported by a majority in the House of Representatives.

(2) The Government of the Federation shall be appointed by the President of the Federation, in agreement with both Vice-presidents of the Federation, within 30 days of the election of the President and two Vice-Presidents. The Government shall be elected after its appointment has been confirmed by a majority vote of the House of Representatives of the Federation.

After Paragraph (2), new Paragraphs (3) to (7) shall be added to read:

(3) If the President of the Federation fails to appoint a Government of the Federation in agreement with both Vice-Presidents of the Federation in line with Paragraph (2) of this Article, the President shall have an additional 30 days to repeat the procedure regulated under the first two Paragraphs of this Article.

(4) If the President of the Federation again fails to appoint a Government of the Federation in agreement with both Vice-Presidents of the Federation in line with Paragraph (3) of this Article, the Government proposed by the President of the Federation in agreement with one Vice-President shall be forwarded to the Parliament of the Federation. This proposed Government shall be considered elected if confirmed by majority vote in the House of Representatives, and then by majority vote in the House of Peoples provided that the dissenting votes do not include three-fifth or more of the delegates in one or more caucus(es) of constituent peoples.

(5) Any vacancy in the Government shall be filled under the procedure provided in Paragraphs (2) and (4) of this Article, except as otherwise provided by law.

(6) If the Government is not elected pursuant to Paragraph (4) of this Article, the President of the Federation, in agreement with the Vice-Presidents of the Federation, shall repeat again the procedure referred to in Paragraph (2) of this Article.

(7) If the Government is not appointed under Paragraphs (6) of this Article or if the Government appointed under that Paragraph is not confirmed by the House of Representatives, notwithstanding Article IV.A.16, Paragraph (1), the Parliament of the Federation and the Cantonal Assemblies shall be considered dissolved. Early elections shall be announced pursuant to the Election Law of BiH for the House of Representatives of the Federation and the Cantonal Assemblies. The mandate of the President and the two Vice-Presidents of the Federation shall cease upon their replacement following these early elections.

The current Paragraph (3) shall become Paragraph (8).