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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**DRAFT AMENDMENTS
TO THE CONSTITUTION
OF REPUBLIKA SRPSKA¹**

¹ Unofficial translation.

The draft amendments reproduced in this document are currently in procedure within the RS National Assembly and, as such, will be subject to further changes and amendments. Pursuant to the RS Constitution, they shall be discussed in public debate for a period of 45 days starting from 19 March 2008.

The translation of the amendments contained in this document is an unofficial translation and should be used for information purpose only.

A M E N D M E N T S
to the Constitution of the Republika Srpska
(CXXII - CL)

Amendment CXXII

In Article 3, new paragraph 2, shall be added to read:

"The transfer of powers from the Republika Srpska to the institutions of Bosnia and Herzegovina shall be carried out under the procedure and method prescribed for the amending the Constitution of the Republika Srpska".

This amendment amends the item 1 of the Amendment LVI, which replaced the Article 3 of the Constitution.

Amendment CXXIII

In Article 4, the words **"the Federal Republic of Yugoslavia and its member republics"** shall be replaced with the words **"the neighboring countries the Republic of Serbia and Montenegro"**.

This amendment shall amend Item 2 of Amendment LVI, which replaced Article 4 of the Constitution.

Alternative to amendment CXXIII

In Article 4, the words "the Federal Republic of Yugoslavia and its member republics" shall be replaced with the words **" neighboring countries"**.

This amendment shall amend Item 2 of Amendment LVI, which replaced Article 4 of the Constitution.

Amendment CXXIV

In Article 9, the word "Sarajevo" shall be replaced with the words **"Banja Luka"**.

This amendment shall amend Article 9 of the Constitution.

Amendment CXXV

In Article 10, after the words "enjoy", the words **"without discrimination"**.

This amendment shall amend Article 10 of the Constitution.

Amendment CXXVI

In Article 11, paragraph 2 replaced with the Amendment V, shall be deleted.

This amendment shall repeal the said provision of the Constitution.

Amendment CXXVII

In Article 12, after paragraph 2, new paragraph shall be added to read as follows:

"No one shall be held in slavery or servitude ."

This amendment shall amend Article 12 of the Constitution.

Amendment CXXVIII

In Article 13, after the words "inviolable", a comma shall replace the full stop, and the following text shall be added: **"except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.**

This amendment shall amend Article 13 of the Constitution.

Amendment CXXIX

In Article 15, after paragraph 1, new paragraph shall be added to read:

"No one shall be deprived of his liberty merely on the ground of inability to fulfill a contractual obligation."

The current paragraph 2 shall become paragraph 3 and other paragraphs shall be renumbered accordingly.

This amendment shall amend Article 15 of the Constitution.

Amendment CXXX

In Article 20, paragraph 2 shall be amended to read as follows:

" Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law ".

This amendment shall amend paragraph 2 of Article 20 of the Constitution.

Amendment CXXXI

In Article 21, after paragraph 3, new paragraphs shall be added to read:

"No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the Republika Srpska of which he is a citizen .

No citizen of the Republika Srpska shall be deprived of the right to enter the territory of the Republika Srpska".

This amendment shall amend Article 21 of the Constitution.

Amendment CXXXII

Article 25 shall be amended by adding the following text after the full stop:

"This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent the public authorities from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms may be subject to such conditions or restrictions as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

This amendment shall amend Article 25 of the Constitution.

Amendment CXXXIII

In Article 31, paragraph 2 shall be amended to read as follows:

"Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the

protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the public administration ."

This amendment shall amend Article 31 of the Constitution.

Amendment CXXXIV

In Article 36, after paragraph 1, new paragraphs shall be added to read as follows:

"Children shall enjoy human rights without discrimination of any kind and irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

The rights of the child and their protection shall be regulated by law."

The current paragraphs 2 and 3 shall become paragraphs 4 and 5 and other paragraphs shall be renumbered accordingly.

This amendment shall amend Article 36 of the Constitution.

Amendment CXXXV

In Article 50, the words "enterprises and other forms of organisation" shall be replaced with the words **"economic operators"**.

This amendment shall amend Article 50 of the Constitution.

Amendment CXXXVI

Article 54 shall be amended to read as follows:

"Private and public property shall be guaranteed.

Public property shall be the ownership of the Republika Srpska (entity level) and of the local self-government.

All forms of ownership shall enjoy equal legal protection.

Natural resources in the territory of the Republika Srpska, assets for which it has been prescribed by law that they are of general interest and immovable assets the authorities of the Republika Srpska dispose of shall be the property of the Republika Srpska. Among the items of the Republika's property may also be other assets and rights, in accordance with law.

Natural and legal persons may acquire certain rights to certain assets in general use, under terms and methods prescribed by law.

Natural resources shall be exploited under terms and methods prescribed by law."

This amendment shall amend Article 54 of the Constitution.

Amendment CXXXVII

Article 56 shall be amended to read:

" Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law.

The Republika Srpska shall have the right to enforce such laws as it deems necessary to control the use of property in accordance with the general interests or to secure the payment of taxes or other contributions or penalties."

This amendment shall amend Article 56 of the Constitution supplemented with Item 1 of the Amendment XXXI.

Amendment CXXXVIII

In Article 58, paragraph 1, the words "socially owned" shall be replaced with the word "**public**", and in paragraph 2, the words "Socially- or state-owned" shall be replaced with the word "**public**".

This amendment shall amend Article 58 of the Constitution supplemented with Item 2 of the Amendment XXXI.

Amendment CXXXIX

In Article 65, paragraph 1, the words "shall have" shall be replaced with the words "**may have**".
This amendment shall amend paragraph 1 of Article 65 of the Constitution.

Amendment CXL

In Article 87, paragraph 1, after the words "in case of his resignation", a comma shall be inserted instead of word "or", and after the word "recall", a comma and the words "**disability or death,**" shall be inserted.

After paragraph 1, new paragraph shall be added to read as follows:

„The manner of discharge of duties falling within the competence of the RS President in the cases referred to in paragraph 1 of this Article, until the election of a new RS President, shall be regulated by law.“

The current paragraph 2 shall become paragraph 3.

This amendment shall amend Article 87 of the Constitution supplemented with Item 6 of the Amendment XL.

Amendment CXLI

The title of Chapter "VI. Territorial organization" shall be supplemented with the words "**and local self-government**".

In Article 100, after the words "territorial organization", the words "**and local self-government in the Republika Srpska**" shall be added, and word "**uređuje**" (regulated – as the singular form of the verb in the local language) shall be replaced by word "**uređuju**" (regulated – as the plural form of the verb in the local language). **(Translator's remark: this change does not affect the English translation, i.e. both words are translated with the same word "regulated").**

This amendment shall amend Chapter VI. Territorial organization and Article 100 of the Constitution.

Amendment CXLII

Article 101 deleted by Amendment XXXII shall be amended to read as follows:

"The right to local self-government shall be guaranteed to the citizens.

The citizens shall exercise the right to local self-government in the units of the local self-government, directly or through their freely elected representatives, in accordance with law."

This Amendment shall add the new text to Article 101 of the Constitution, which was in its entirety deleted by Amendment XXXII.

Amendment CXLIII

After the Article 101, new Article 101.a) shall be added to read:

"The units of local self-government are municipalities and cities.

The cities in the Republika Srpska are Banja Luka and East Sarajevo and their statuses shall be regulated by law.

Other municipalities may also attain the status of cities , as provided by law ."

This Amendment, by adding the new Article, shall supplement Chapter VI. "Territorial organization and local self-government" of the Constitution.

Amendment CXLIV

In paragraph 1 of Article 102, the word "**municipality**" shall be replaced with the words "**unit of local self-government**", whereas after the item 7, new item 7a shall be added to read as follows:

"7.a) May establish the forms of local self-government, in a settlement or a part of a settlement, as provided by law and the statute of the unit of local self-government."

Paragraphs 2 and 3 shall be deleted.

This amendment shall amend Article 102 of the Constitution.

Amendment CXLV

After Article 102, new Article 102.a) shall be added to read:

"Article 102.a)

The unit of local self-government shall have its property.

The bodies of the local self-government unit shall manage the property of the local self government unit, as provided by law.

This Amendment, by adding the new Article 102.a), supplements the Chapter VI. of the Constitution titled "Territorial organization and local self-government".

Amendment CXLVI

After Article 102.a), new Article 102.b) shall be added to read to read as follows:

Article 102.b)

"In the discharge of tasks falling under their competences, the bodies of the local self-government unit shall be independent and shall only be subject to the control of constitutionality and legality by the responsible government authorities ".

(Note: Instead of "government authorities" the author is using the term "državnih organa" which, if translated verbatim, stands for "state authorities")

This Amendment, by adding the new Article 102.b), supplements the Chapter VI of the Constitution titled "Territorial organization and local self-government".

Amendment CXLVII

Article 103 shall be amended to read as follows:

"The local self-government unit shall be entitled to its own incomes and it shall, as provided by law, freely dispose of such incomes in the discharge of the tasks falling under its competences. It shall also be entitled to the funds required for the discharge of the assigned tasks, which funds shall be defined by law ".

This amendment shall amend Article 103 of the Constitution.

Amendment CXLVIII

Article 108 shall be amended to read as follows:

"Laws, statutes, and other general enactments must be in conformity with the Constitution.

Statutes and other general enactments must be in conformity with the law."

This amendment shall amend Article 108 of the Constitution.

Amendment CXLIX

In Article 113 paragraph 4 shall be deleted.

Amendment CL

In paragraph 1 of Article 119, after the word "are", the word "**final**," shall be added.
This amendment shall amend Article 119 of the Constitution.

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Reasoning

Given that the Constitution of Republika Srpska does not regulate the procedure and authorization for the transfer of powers from Republika Srpska to institutions of Bosnia and Herzegovina, supplement to Article 3 of the Constitution of Republika Srpska, Amendment CXXII adds paragraph 2 which regulates the procedure for transfer of powers from Republika Srpska to institutions of Bosnia and Herzegovina.

Right of Republika Srpska to establish special parallel relations, on the basis of Constitution of Bosnia and Herzegovina, is regulated by Article 4 of the Constitution of Republika Srpska saying that such relations may be established with Federal Republic of Yugoslavia. Given that this provision is obsolete due to the state of facts, amendments to this provision are foreseen by inserting the legal successors: Republic of Serbia and Montenegro, i.e. neighboring states as this right is defined in the said provision of Constitution of Bosnia and Herzegovina.

Amendment to Article 9 of the Constitution of Republika Srpska pursuant to Amendment CXXIV, is proposed due to the change in the state of facts considering that practically the capital city of Republika Srpska is Banja Luka and not Sarajevo.

Supplement to Article 10 of the Constitution of Republika Srpska, according to Amendment CXXV, is proposed in order to meet the requirements under Article 14 of the European Convention on Protection of Human Rights and Fundamental Freedoms prohibiting discrimination.

Paragraph 2 under Article 11 shall be deleted in entirety by Amendment CXXVI because Article 1 of the ratified Protocol 6 of the European Convention foresees abolishment of death penalty. Existence of death penalty in the Constitution of Republika Srpska is not in accordance with European Convention.

Amendment CXXVII supplements Article 12 in terms of adding paragraph 3 in order to harmonize this provision with Article 4 of European Convention prohibiting slavery and forced labor.

Amendment CXXVIII supplements Article 13 of the RS Constitution with the objective to harmonize this Article with Article 8 of the European Convention which provides guarantees for the right to privacy and family life, by stipulating that there may not be interference by authorities with privacy of any person except in specific cases as prescribed.

Article 15 of the RS Constitution shall be supplemented by Amendment CXXIX, in accordance with Article 5 of the European Convention which guarantees right to personal liberty and safety.

Under Article 20 of the Constitution of Republika Srpska, paragraph 2 shall be changed and harmonized with Article 6, paragraph 2 of the European Convention pertaining to the right to a

fair trial by presumption of innocence until completion of the proceedings, until all legal remedies are used.

Article 21 of the Constitution shall be supplemented by adding new paragraphs 4 and 5 in the sense of the regulation under Article 3 of Protocol 4 of the European Convention prohibiting expulsion and deprivation of right to enter the territory of the State of his/her citizenship.

Articles 25 and 31 of the Constitution shall be changed in view of harmonization with Article 10 and 11 of the European Convention, which guarantee the freedom to hold opinion and freedom to peaceful assembly.

Anticipated supplement to Article 36 of the Constitution is based on the provisions of the Convention on the rights of the child.

Amendment CXXXV changes Article 50 of the Constitution since the concept of enterprises is surpassed in terms of terminology but also the contents and shall be replaced with the words "economic operators".

Article 54 of the Constitution is supplemented with definitions of private and public property and its protection. Also, Constitution guarantees private and public property and its equal protection.

Article 56 of the Constitution is amended through Amendment CXXXVII that harmonizes this Article with Article 1, paragraph 1 of the European Convention Protocol consisting guarantees to peaceful enjoyment of property.

Amendment CXXXVIII amends Article 58 of the Constitution supplemented with the item 2 of the Amendment XXXI. This change is initiated because the relevant Article is entirely surpassed, i.e. it is not adapted to practical property and economic relations.

In the Amendment CXXXIX, paragraph 1 under Article 65 is amended so the words "shall have" shall be replaced with the words "may have" which adds relativity to this right.

Article 87 of the Constitution supplemented with item 6 of the Amendment XL shall be supplemented with Amendment CXL. This supplement was made because the practice has shown certain deficiencies, i.e. it did not regulate potential situations.

Amendment CXLI supplements the Chapter VI. Territorial Organization with the words "and the local self-government" as well as Article 100 of the RS Constitution. In essence this supplement was made so that units of local self-government can receive better protection according to the principles set forth under European Charter on Local Self-Government.

Article 101 deleted by Amendment XXXII shall be amended by Amendment CXLII, where the new text is added because the RS Constitution does not contain general principle concerning the rights of citizens to local self-government under full capacity of the European Charter on Local Self-Government.

Amendment CXLIII, by adding the new Article, supplements the Chapter VI. Territorial Organization and Local Self-Government of the Constitution, given that the issue of cities as units of local self-government has not been regulated at all under the RS Constitution. This issue has not been constitutionally defined and it is necessary to regulate it.

Under Amendment CXLIV, Article 102 of the Constitution has been edited in terms of vocabulary and supplemented with regard to constitutional competencies of units of local self-government to establish forms of local self-government (Local Communities) on the basis of criteria that will be outlined in their Statutes.

Amendments CXLV and CXLVI introduce new Articles 102a and 102b supplementing Chapter VI. Territorial Organization and Local Self-Government of the Constitution. These provisions supplement the Constitutions in the sense of European Charter on Local Self-Government prescribing that municipalities or cities have their own property and that they are independent in discharge of tasks falling under their competencies, i.e. that central authorities cannot assess the appropriateness of decisions adopted by local authorities.

Amendment CXLVII changes the Article 103 of the Constitution with the objective to strengthen local self-government under the principles of European Charter on Local Self-Government, for it provides that units of the local self-government shall be financially autonomous guaranteed under Constitution.

Article 108 is amended through Amendment CXLVIII for the reason that the text needed adjustments and more precise wording.

Under Article 113, paragraph 4 is deleted by Amendment CXLIX because this paragraph is contrary to provisions of Article 6 of the European Convention, because it enables that the law may exclude the right to initiate administrative proceedings, and the right to access to court may not be excluded or denied.

Article 119, paragraph 1 of the Constitution is supplemented under Amendment CXL with regard to court decisions being final.