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Follow-up to Committee of Ministers decisions regarding Monitoring of commitments and implementation of Post-accession co-operation Programme

Document presented by the Secretary General

Second quarterly report

(July-October 2002)

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I. INTRODUCTION

1. On 24 April 2002, Bosnia and Herzegovina (BiH) joined the Council of Europe (CoE) as its 44th Member State. Accession of BiH to the CoE was made possible following the adoption of Opinion No. 234 (2002) of the Parliamentary Assembly of the Council of Europe (PACE), which lists a series of commitments to be undertaken by BiH following its accession to the Organisation.

2. On 29 May 2002, the Ministers' Deputies agreed with the procedure proposed by the Secretary General concerning the monitoring of commitments by BiH. This procedure, which is closely linked to the implementation of a post-accession programme of cooperation, provides for quarterly Secretariat progress reports on the honouring of commitments, as well as developments in the cooperation programmes (and their possible up-dating). These regular reports are discussed at the Committee of Ministers (CM) Rapporteur Group for Democratic Stability (GR-EDS) meetings.

3. The first quarterly report¹ was discussed by the Rapporteur Group on 6 September 2002. The Group encouraged the authorities of BiH to continue their efforts in the implementation of the country's commitments and agreed to reconsider the matter in the light of the next Secretariat report to be prepared after the general elections of 5 October 2002. A third report would follow the Secretariat's second visit, once the new authorities had been installed.

4. During the discussions on 6 September, the Representative of Bosnia and Herzegovina emphasised his country's commitment to active co-operation with the Council of Europe in the post-accession and monitoring programme.

5. The period covered by the present report (July-early October 2002) was dominated by the preparation and holding of elections at all levels (State, Entities, Cantons) in BiH. This explains why, apart from the very important step represented by the ratification of the European Convention on Human Rights (ECHR) and other human rights instruments, little progress could be registered in the fulfilment of commitments to the CoE. The new period which will follow the setting-up of new institutions with a four-year mandate will be crucial for the State-building of BiH and the fulfilment of all its obligations as a member State of the CoE.

6. The present document will be limited to an update of the very preliminary evaluation of the fulfilment of commitments and presentation of CoE post-accession activities presented in the 1st report, as well as to a preliminary assessment of the results of the October elections. A more substantial assessment of these elections will be presented in the reports of the observers of the CoE Parliamentary Assembly and of the Congress of Local and Regional Authorities of Europe.

7. As previously, the structure of this 2nd report follows the outline agreed by the Ministers' Deputies on 29 May 2002². In that respect, a distinction has been made between commitments of special importance to the Committee of Ministers, of a more political nature (part II) and other commitments for which CoE assistance activities have been foreseen (part III, IV and V).

¹ SG/Inf (2002) 27, 15 July 2002; Bosnia and Herzegovina, Follow-up to Committee of Ministers decisions; First quarterly report following the 1st secretariat's information and assistance mission to BiH (2-6 July 2002).

² See Decisions of 29 May 2002 and document GR-EDS (2002) 24 revised, of 5 June 2002 (restricted).

8. The Secretariat would like to express its gratitude to the Permanent Representation of BiH in Strasbourg which provided information on the activities of the Parliamentary Assembly of BiH in 2002 relating to the fulfilment of commitments (see Appendix I).

II. PRIORITY ISSUES OF A POLITICAL NATURE

A. IMPLEMENTATION OF THE DAYTON PEACE AGREEMENTS (DPA)

PACE Opinion 234 requests from BiH:

para. 15 i. *“to cooperate fully and effectively in the implementation of the Dayton Peace Agreements, which notably require the settlement of internal and international disputes by peaceful means”*;

9. The Summit held in Sarajevo on 15 July 2002 between Croatian President Stipe Mesic, President of the Federal Republic of Yugoslavia (FRY) Vojislav Kostunica and members of the joint BiH Presidency, Beriz Belkic, Zivko Radisic, and Jozo Krizanovic, was acknowledged as a benchmark for political stability of the region. The participants issued a joint declaration agreeing in particular to respect international borders, implement the 1995 Dayton agreement, promote refugee return, European integration and regional cooperation.

10. In September, however, a polemic about the future territorial integrity of BiH cast a shadow over relations between BiH and FRY. This controversy should probably be seen in the context of the upcoming Serbian Presidential elections and the 5 October general elections in BiH. The origin was a statement by President Kostunica, allegedly expressing a claim to the territory of the Republika Srpska (RS). Mr Solana, the High Representative for EU Common Foreign and Security Policy, consequently stressed that “the future for BiH lies in a unified and stable state, within its internationally recognised borders, moving towards closer European integration”. On that occasion, he also called upon citizens of BiH to seize the opportunity on 5 October to make the European vision a real possibility and to vote for reform. The CoE for its part, can only confirm its commitment to the intangibility of borders and to the respect of territorial integrity of its member States.

B. THE 5 OCTOBER 2002 ELECTIONS

11. For the first time since the end of war, the BiH authorities have been totally in charge of organising the presidential and legislative elections of 5 October 2002. The institutions concerned by these elections were the following:

- *at State level*: the BiH joint Presidency and House of Representatives of the BiH Parliamentary Assembly
- *at Entity level*: the House of Representatives of the Federation of Bosnia and Herzegovina (FBiH), RS President and Vice Presidents and RS National Assembly;
- *at Cantonal and municipal level*: ten Cantonal Assemblies in the FBiH, as well as a two-year mandate for the Municipal Council of Žepče.

12. A delegation of the CoE Parliamentary Assembly (PACE), as well as a delegation of the Congress of Local and Regional Authorities of Europe (CLRAE) took part in the International Election Observation Mission. These delegations will report in due course to their respective organs³.

³ See PACE and CLRAE websites: <http://assembly.coe.int> and <http://www.coe.fr/cplre>

13. According to observers of OCSE/ODHIR, PACE and to international representatives in Sarajevo, the elections took place without incidents, in accordance with international standards (see Appendix III). The BiH authorities and the people of BiH should be congratulated on the successful organisation of the elections. This positive assessment of the election procedure is in contrast with the level of the electoral campaign which was dominated by personal attacks and internal political disputes.

14. These elections give a four-year mandate to the newly elected authorities, be they the Presidency of BiH, or the State Parliament and Entities Parliaments, whereas previous legislatures were limited to two years. This longer term in office should allow the implementation of major reform programmes, started by the coalition for change, elected in November 2000.

15. During the campaign, nationalism played less of an overt role than in previous elections, but remained an underlying issue; the international community, as well as some local NGOs, have repeatedly encouraged BiH citizens “to vote, and to vote for change”.

16. As indicated in the previous report, concerns were expressed with respect to a likely very high level of abstention. Finally, voter turnout was 54 % and the elections have been won by “ethnic” parties. The ‘Alliance’, the most European-oriented coalition, will therefore not be able to continue ruling the country. Only the politics developed and acts of the new coalitions to be established will tell whether the victory of the “ethnic” parties will lead - or not- to radical changes in the course of reforms necessary to fulfil post-accession commitments to the CoE.

17. The disappointment of the Alliance voters on one side (largely due to the poor results in raising the standard of living of BiH citizens), and the strong mobilisation of the “ethnic” parties on the other, explain, to a large extent, the outcome of these elections. Finally, the great number of political parties, 57, could not allow strong majorities for any of them, but contributed on the contrary to splitting the votes among a greater number of candidates.

18. The newly elected members of the BiH Presidency are: Mirko Sarovic SDS, outgoing President of the Republika Srpska, Dragan Covic, HDZ for the Croatian community and Sulejman Tijic for the Bosniac community.

19. No party won absolute majority in the Parliaments, so negotiations are underway to form cabinets for the State and Entities. This process could take several weeks, taking into account the decision issued the day after the elections by High Representative Ashdown, to bring the composition of federal and cantonal governments into line with the constitutional Court’s decision on “constituent peoples” (see paras 22-23 below).

PACE Opinion 234, para. 15.iv.b. “*to review within one year, with the assistance of the European Commission for Democracy through Law (Venice Commission), the electoral legislation in the light of Council of Europe standards, and to revise it where necessary*”;

20. The Venice Commission will review the electoral legislation after these October 2002 elections. This expertise could be given a high priority, in order to produce results and lead to the adoption of new electoral legislation well before the next elections.

C. CONSTITUTIONAL AND LEGISLATIVE AMENDMENTS NECESSARY TO COMPLY WITH THE CONSTITUTIONAL COURT'S DECISION ON THE "CONSTITUENT PEOPLES OF BOSNIA AND HERZEGOVINA"

PACE Opinion 234, para. 15.iv.a. *"to adopt and to implement, within one year after its accession, constitutional and legislative amendments necessary to comply with the decision of the Constitutional Court on the "constituent peoples of Bosnia and Herzegovina" of June-July 2000"*;

21. At its session held in July 2002, the Venice Commission invited its members to prepare a draft opinion on the constitutional amendments adopted by the RS for discussion at its next plenary session on 18-19 October 2002.

22. On 6 October, just after the elections, the High Representative, issued a Decision amending the FBiH Constitution allowing the prompt establishment of cantonal governments that comply with the April amendments to the FBiH Constitution ensuring fair representation for all constituent peoples. The Federation Parliament and cantonal assemblies have tried to find a solution but unfortunately were unable to come to an agreement. One of the main objectives of this Decision is to get governments formed at the cantonal level as quickly as possible, allowing the politicians elected on 5 October to start work without delay.

23. The Decision also clarifies the mechanisms that will ensure fair representation of constituent peoples in cantonal administrations.

D. COOPERATION WITH THE HAGUE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY)

PACE Opinion 234, para. 15 ii. *"to co-operate with the International Criminal Tribunal for former Yugoslavia and to actively assist it by handing over to the Tribunal persons accused of war crimes, crimes against humanity and genocide without delay and with the active cooperation of both Entities"*.

24. On 3 September – in the context of the pre-election period - the RS Bureau for Relations with the International Criminal Tribunal for Former Yugoslavia (ICTY) presented a report on Srebrenica, allegedly in order to "reveal the whole truth about the crimes in the Srebrenica area" in 1995.

The said report plays down the number of victims and declares, in particular, that many were in fact BiH soldiers killed while fighting.

25. The International Community strongly reacted to this report, calling "all responsible people and institutions to reject the study". The RS government began backtracking almost immediately and RS Prime Minister Ivanic stated that the report does not represent the government policy. He reportedly added, however, that the Srebrenica issue should be openly discussed after the October elections.

26. The RS Helsinki Committee for Human Rights categorically condemned the report and also stressed that a large number of public officials still in office took part in the ethnic cleansing or in its organisation.

27. On 30 September 2002, the ICTY made public an indictment against former Bosnian Serb commander Ljubomir Borovcanin in conjunction with his role in the Srebrenica massacre.

E. SAFE RETURN OF REFUGEES AND IDPS AND CREATION OF SUSTAINABLE CONDITIONS FOR RETURN

PACE Opinion 234, para. 15.v.i *“to take all necessary measures for the expedient and safe return of refugees and displaced persons and to create conditions for sustainable return”*

28. Representatives of International Organisations in BiH announced in September a New Strategic Direction for the full implementation of the property laws by the end of 2003. They stressed that some local officials still violate the law in order to allow privileged groups, such as judges, politicians, police or war veterans, to remain illegally in other people’s homes. Consequently, the international community called on the authorities to put an end to selective implementation of property laws.

III. FULL RESPECT FOR EUROPEAN HUMAN RIGHTS STANDARDS, INCLUDING THROUGH AN EFFECTIVE PROTECTION SYSTEM, AND PROMOTION OF TOLERANCE, SOCIAL COHESION AND SOCIAL RIGHTS

A. ACCESSION TO ALL RELEVANT HUMAN RIGHTS MECHANISMS, INCLUDING THE EUROPEAN SOCIAL CHARTER

PACE Opinion 234, para. 15. iii.

- a. *“when it becomes a member, to sign the European Convention on Human Rights and its Protocols Nos. 1, 4, 6, 7 and 12”*;

- b. *“to ratify as soon as possible and not later than within one year the ECHR and its Protocols Nos. 1, 4, 6, 7 and 12”*;

29. The ECHR and Protocols Nos 1, 4, 6 and 7 were ratified on 12 July 2002. Protocol 12 has been signed but not ratified.

PACE Opinion 234, para. 15.iii. c. *“to examine continuously the compatibility of all legislation with the ECHR”*;

30. The Ministry of European Integration of BiH and Entity Ministries of Justice are in charge of the harmonisation, at all levels, of legislation in BiH with European norms. The CoE should provide sustained support to the State Ministry of European Integration to assist it in its task of harmonising State and Entities legislation with European standards.

31. Copies of previous “compatibility exercises” carried out in other countries have now been forwarded to the Ministry of European Integration. On 18 September 2002, the Ministry organised a meeting with senior officials from the Ministry of Human Rights and Refugees and Entity Ministries of Justice with a move to initiating the “compatibility exercise”, and the Deputy Special Representative was invited to lead the discussion. The launch Conference for the “compatibility exercise” will be held on 12-13 December 2002.

PACE Opinion 234, para. 15.iii. d. *“to sign and ratify, within one year after its accession, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its protocols”*;

32. The Convention was ratified on 12 July 2002.

- e. “ to sign and ratify, within one year after its accession, the General Agreement on Privileges and Immunities of the Council of Europe and its protocols”;
- f. “ to sign and ratify, within one year after its accession, the Geneva Convention relating to the Status of Refugees and its 1967 Protocol”;
- j. “ to sign, within two years after its accession, the Council of Europe’s Social Charter, to ratify it as soon as possible, and to endeavour to implement a policy in accordance with the principles it contains immediately”;

33. The Secretariat was informed by BiH representatives that the BiH Ministry for Human Rights and Refugees is involved in the preparation for signature and ratification of the CoE Social Charter.

B. CO-OPERATION WITH THE INSTITUTIONS ACTIVE IN THE HUMAN RIGHTS FIELD AT STATE LEVEL AND IN THE ENTITIES, INCLUDING EFFECTIVENESS OF DOMESTIC REMEDIES

PACE Opinion 234, para.15.v. a. “ to co-operate with the institutions active in the human rights field at state level and in the Entities and, in particular, to comply fully with the decisions and recommendations of the Human Rights Chamber and Human Rights Ombudsman”;

34 The BiH Ministry for Human Rights and Refugees has appointed a liaison officer with the BiH Human Rights Ombudsman in order to improve implementation of decisions and recommendations.

PACE Opinion 234, para.15.v.b. “to ensure adequate funding of the human rights institutions, in particular of the Human Rights Chamber, the Human Rights Ombudsman and the Commission for Real Property Claims (CRPC) immediately and continuously (with a yearly minimum of 600 000 convertible marks to be progressively increased over time)”;

(No new major development to report).

PACE Opinion 234, para.15.v.c. “to work towards establishing multi-ethnic ombudsmen and to consider establishing, in the long term, a single, unified human rights ombudsman’s office at state level, which would include the present ombudsmen institutions at Entities level”;

(No new major development to report).

PACE Opinion 234, para.15.v.d. “ to ensure the full implementation of the property laws and, in particular, to abide fully by the decisions of the CRPC”;

(No new major development to report). See comments under section II.E.

PACE Opinion 234, para.15.v.e. “to continue restructuring human rights protection mechanisms in accordance with the recommendations of the Venice Commission, including the merger of the Constitutional Court and the Chamber of Human Rights, and in co-operation with the Council of Europe and the Office of the High Representative”;

35. There is now agreement among the major international institutions in BiH to work towards merger, mainly because the main donors (US Government and EC) are not willing to continue to fund the Chamber *ad infinitum*. The OSCE has the mandate to coordinate the “merger” process, and has initiated a process to develop a strategy paper for presentation to the Peace Implementation Council (PIC) for mid-November. Ensuring appropriate funding for the Constitutional Court is also essential. Further, it should be noted that if the authorities implemented a number of leading decisions, through legislative reform, then the backlog could be reduced substantially.

PACE Opinion 234, para.15.v.f. *“to implement the legislation to guarantee the independence of the ombudsman institutions at state as well as Entity levels, including amendments to the Federation of Bosnia and Herzegovina Law on Ombudsmen drafted by the Venice Commission”*;

(No new major development to report).

C. MINORITY PROTECTION (including Roma)

PACE Opinion 234, para.15.iii. g. *“to sign and ratify, within two years after its accession, the European Charter for Regional or Minority Languages”*;

36. According to information provided by the Permanent Representation of BiH in Strasbourg, the adoption of the Law on national minorities is expected shortly after the constitution of institutions resulting from the elections. In addition, an Advisory Council on Roma has been established.

37. There is no information regarding the future ratification of the European Charter for Regional or Minority Languages.

D. FREEDOM OF THE MEDIA AND OF THOUGHT

PACE Opinion 234, para.15.v.l. *“to continue reforms in the field of the media, in order to guarantee freedom of expression and the independence of journalists”*;

- *State level:*

38. In September 2002, the Permanent Representation of BiH to the CoE informed the Secretariat that the ‘Law on the Basis of the Public Broadcasting System and on the Public Broadcasting service of BiH’ (PBS Law), imposed by the then High Representative in May 2002, has now been adopted by the BiH Parliament. A copy of the said Law was also provided.

39. A conference on CoE standards concerning the regulation of the media will be organised in Sarajevo on 15 November 2002, in co-operation with the BiH Communications Regulatory Agency (CRA).

- *Entity level: FBiH*

40. Following widespread criticism, the Federation Government withdrew the “Draft Law on Protection Against Defamation” from parliament. According to journalist Associations, the draft effectively restricts freedom of expression by broadening the definition of defamation,

creating artificial deadlines for court rulings and removing the right of journalists to protect confidential sources.

E. PROMOTION OF SOCIAL COHESION, IN PARTICULAR THE RETURN OF REFUGEES AND IDPS THROUGH REINTEGRATION POLICIES (see also part II, E)

PACE Opinion 234, para. 15.v.i “*to take all necessary measures for the expedient and safe return of refugees and displaced persons and to create conditions for sustainable return*”

(No new major development to report).

IV. STRENGTHENING DEMOCRATIC INSTITUTIONS AT STATE-LEVEL AND IN THE ENTITIES AND DEVELOPING COMMON EDUCATION STANDARDS, RESPECTFUL OF DIVERSITY AND EMPHASISING A EUROPEAN DIMENSION

A. RATIFICATION OF COUNCIL OF EUROPE CONVENTIONS IN THE FIELD OF LOCAL AND REGIONAL SELF-GOVERNMENT AND TRANSFRONTIER CO-OPERATION

PACE Opinion 234, para.15. iii.h. “*to sign and ratify within two years after its accession, the European Charter of Local Self- Government*”;

41. The legal appraisal of the FBiH “Draft Law on Amendments to the Law on Local Self-Government has been achieved. CoE experts assessed the compatibility of the draft Law with the principles of the European Charter of Local Self-Government (ECLS-G) and formulated comments and proposals in agreement with current European Standards. The CoE’s written opinion is about to be submitted to the authorities of the FBiH.

42. With regard to the unhelpful atmosphere during and following general elections, the Secretariat came to a decision to postpone the organisation of both seminars on local finance and municipal budget management, planned to be held in September and October 2002, in Sarajevo (FBiH). However, the Secretariat foresees the organisation of these events at the beginning of 2003.

43. The CoE has expressed its willingness to assist the Authorities of RS (Ministry of Finance) in revising the text of the RS Draft Law on Budget System before its adoption by the Entity Parliament. Regrettably, the authorities of RS did not request such assistance and the Law on Budget System was recently adopted without CoE involvement.

44. Therefore, it is noted with regret that the text of this Law does not respect the principles of the ECLS-G. Moreover, further to the adoption of this law, the RS Law on Local Self-Government will require some amendments. Further steps with a view to assessing and improving the texts of the above-mentioned laws, are necessary. The CoE will put forward suggestions to the RS Authorities.

45. Recently, the authorities of RS (Ministry for Local Self-Government) confirmed their willingness to support the CoE in the implementation of the project on “Development of Democratic Citizenship and Responsive Leadership in Bosnia and Herzegovina”. Consequently, the launching conference of the project in RS will be held in Banja Luka on 5-6 November 2002. The aim of this Project is to assist the regional and local authorities - of both the Federation and the Republika Srpska- in developing innovative mechanisms of citizen

participation in the management of public affairs at local level, thus contributing to the implementation of the principles of the ECLS-G.

46. In their letter of 29 August 2002, the authorities of the FBiH suggested postponing the launching of the project to a later date because of the forthcoming elections. The CoE Secretariat intends to contact the Ministry of Justice shortly with a view to setting the date for the launching of the project in early 2003.

PACE Opinion 234, para.15.iii.i. *“to sign and ratify, within two years after its accession, the Council of Europe’s European Outline Convention on Transfrontier Co-operation between Territorial Communities and Authorities and its protocols”*,

47. A conference on transfrontier co-operation in the border regions of BiH, Croatia and the Republic of Montenegro (FRY) was organised by the CoE in cooperation with the East-West Institute on 28-29 September 2002 in Dubrovnik, Croatia.

48. The conference contributed to further develop the work underway in the Southern Adriatic region to foster mutually beneficial, systematized cross-border cooperation in locally identified, common-interest fields.

49. No specific progress as regards signature and ratification of the Outline Convention on Transfrontier Co-operation and its Protocols has been registered so far.

B. PROMOTION AND STRENGTHENING OF THE CIVIL SOCIETY

PACE Opinion 234, para.15.iv. d. *“to adopt and implement the following laws in conformity with Council of Europe standards, within two years after its accession:[...]the Law on Associations and Foundations (Bosnia and Herzegovina, Entities) [...]”*;

(No new major development to report).

C. REFORM OF EDUCATION, ELIMINATION OF DISCRIMINATION, ADOPTION OF THE LAWS ON SCHOOLS

50. In order to strengthen the impact of the CoE’s role in the field of education, and to support the BiH authorities in meeting their accession commitments, DGIV, Education, seconded an education officer to the CoE Sarajevo office in August 2002.

51. One of the responsibilities of the education officer is to co-chair, on behalf of the CoE, two of the six working groups set up by the OSCE to identify and implement strategic objectives for reforming the education system in BiH: the Working Group for Quality and Modernisation of Higher Education (co-chaired with the European Commission) and the Legislative Reform Working Group (co-chaired with the OSCE). As stated in the last report, the OHR recently transferred its co-ordinating and monitoring mandate in the field of education to the OSCE. Weekly meetings of the working groups have been held for the last month and a half in order to meet the short-term goal: to produce an education strategy paper which will be presented by the Ministers of Education at the Peace and Implementation Council meeting on 21 November 2002 in Brussels.

52. The finalised short-term Action Plan and medium-term Framework Programme of Co-operation in the field of education were approved by the Education Ministers in August and have been distributed to all relevant stakeholders. These proposals form the basis for the development of targeted co-operation and assistance activities in education until 2004, most of which address the specific accession commitments.

PACE Opinion 234, para.15.iv. d. *“to adopt and implement the following laws in conformity with Council of Europe standards, within two years after its accession: [...] - the Law on Schools (Bosnia and Herzegovina, Entities)”*

53. In January 2002, prior to the accession of BiH, and at the request of the OHR, the CoE began work on a draft law on primary and secondary education. Following accession, the draft text was submitted, through OHR, to the BiH Minister for Human Rights and Refugees (MHRR) as well as the Entity Ministers of Education.

54. In September 2002, an intense process of revision and negotiation was started by a working group of Bosnian experts. The working group is chaired by the MHRR and the CoE education officer; an OSCE representative participates in the weekly meetings. It should be noted that the most contentious issue by far is the establishment of a common core curriculum in BiH, leaving the majority of regulations concerning education to the Entities. It is also still not clear whether the notion of a state-level education law, given the constitutional situation in BiH, will be accepted by some parliamentarians; close CoE support in this process will continue to be vital to ensure that this commitment is fulfilled.

55. Regarding the timetable, the commitment states that the legislation should be adopted and implemented within two years of accession. For this reason it will be necessary to ensure that all the appropriate legislation be adopted within 12 months of accession, in order to allow the time required for preparation and adoption of corollary regulations and the establishment of the mechanisms and governance bodies called for in the legislation within the 2 year time-frame. The MHRR has communicated to the CoE that it expects to finalise the text by mid-October for submission to the Council of Ministers, which may approve the law by the end of the year. It would be a few months before the first readings before the new Parliament, with possible adoption by summer 2003.

56. Complementary legislation at the canton (FBiH) and Entity levels for the relevant authorities will be prepared with the help of CoE experts as from November 2002 in order to ensure compatibility and transferability of education throughout BiH. Due to the asymmetrical structure of education governance provided by Dayton: Entity level responsibility in the RS and Cantonal competence in the FBiH, it will be especially important that agreement be found on a combination of some delegation of authority to the State level while maintaining the real educational management capacity at the Entity, Cantonal and even municipal level. In addition, the CoE considers that a co-ordination function for education at the State level could facilitate the fulfilment of commitments

PACE Opinion 234, para.15.iv.k. *“to maintain and continue reform in the field of education and to eliminate all aspects of segregation and discrimination based upon ethnic origins”;*

57. The common core curriculum defined in the draft state-level law will provide the framework for revising and unifying the three separate curricula now in use in BiH and will be a defining force in starting to end segregation and discrimination in classrooms.

58. An Independent Commission for Textbook Review is identifying objectionable material which is then removed from textbooks and the CoE can continue to support this process. Other provisions of inter-Entity agreements, such as training for human rights and civic education teachers, improvements to the school curriculum, also substantially improve the quality of education, thereby assisting to attain the above-mentioned objective. Activities in this field could be intensified through a future EC/COE Joint Programme for BiH, at present under consideration.

59. In addition, there is a need to encourage and support a regular dialogue of education Ministers at Cantonal and Entity level, with significant input from representative of local or municipal government. For the time being, within the Federation, all educational decisions, including financing, curriculum and recognition of periods of education undertaken elsewhere, fall within the competence of the Cantons. As a result there are significant differences in the level of financing for public education per pupil across BiH, as well as significant variation in the level and quality of education and the accessibility of public education. These elements, amongst others, represent a difficulty for effectively ending segregation and/or discrimination based on place of origin and therefore in most instances ethnic origin. The Director of Education (CoE) will be co-chairing the next meeting of Entity and cantonal ministers in Banja Luka on 14 October 2002.

60. There is a need to clarify the means of application and implementation of the “national components” – meaning ethnically differentiated rather than national - of the curricula, including guarantees as to the script used in education, as well as the place and role of religious education or alternative courses on comparative religion in the public schools.

61. All of the competent authorities have expressed their agreement and support to the development of education policy and legislation to guarantee mobility of students and professionals throughout BiH. This needs to be translated into legislation as well as into a consensus on curriculum development, “common core curriculum”, and teacher training.

62. The CoE will continue to support (in cooperation with OHR and the OSCE) the Conference of Entity Ministers of Education as the primary forum for establishing shared education reform policies and shared strategies for ending discrimination or segregation in the education system. In addition, the CoE should, together with the OHR and the OSCE and in co-operation with the Federation Ministry of Education, seek out partnerships to provide support for a similar regular forum of exchange and collaboration between the sub-Entity education authorities.

PACE Opinion 234, para.16. *“The Assembly further wishes to see Bosnia and Herzegovina undertake to sign and ratify, within two years of accession, the joint Council of Europe and Unesco Convention on the Recognition of Qualifications concerning Higher Education in the European Region”.*

63. Both the educational authorities of RS and of the Federation have expressed the high priority they place on higher education reform with a view towards signature, ratification and full participation in the structures of the joint Council of Europe and Unesco Convention on the Recognition of Qualifications concerning Higher Education in the European Region (Lisbon Convention). In order to attain this objective it will be necessary to engage in a structural reform of the public governance of higher education in the whole of BiH, as at the moment higher education qualifications are not necessarily recognised from one Entity to the other or from one sub-Entity to the next, making international recognition difficult if not impossible.

This work will be launched by the CoE during its first meeting on the Lisbon Convention and the Bologna process to be held from 11-12 November 2002 in Sarajevo.

64. The establishment and recognition given by the public authorities to the Higher Education Co-ordination Board (HECB) is a very positive step towards the agreed goal of higher education reform and participation in European higher education networks (such as those in place through the Lisbon Convention).

65. Support should be provided for the development of the National Information Centre on Academic Recognition and Mobility (ENIC) and the use of the diploma supplement. Specific legal and policy expertise is needed for a legal framework for higher education legislation, in co-operation with the HECB, the higher education institutions and the public authorities.

D. ARMED FORCES

66. The new High Representative has called for reforms in the field of defence structures and NATO recently stressed the necessity of State control over the armed forces in order for BiH to join the Partnership for Peace.

- PACE Opinion 234, para.15. vii. a. *“to strengthen co-operation between armed forces on the basis of common defence policy”*;
 - PACE Opinion 234, para.15. vii. b. *“to restructure the armed forces in Bosnia and Herzegovina aiming at compatibility with international standards and procedures, in particular with regard to the principles of democratic control of defence forces and transparency in defence planning and budgeting processes”*.

(No new major development to report).

PACE Opinion 234, para.15.v. j. *“to adopt, within three years after its accession, laws on conscientious objection and alternative service”*;

67. In August 2002, the Ministry of Defence of the Federation of BiH wrote to the CoE (and OSCE, UNHCHR, UNHCR and OHR) requesting assistance in this field.

V. ENSURING THE RULE OF LAW, BASED ON EUROPEAN STANDARDS

A. ORGANISATION OF THE JUDICIARY

68. Ambassador Fassier, Senior Deputy High Representative, is now heading the Rule of Law pillar in BiH. He's responsible for co-ordinating the restructuring the BiH judicial system.

PACE Opinion 234, para.15.v. g. *“ to continue the reforms aimed at the establishment of a professional and independent judicial and prosecution system as well as to continue facilitating the expeditious and fair review of judges and prosecutors presently in office, and to assist the Independent Judicial Commission”*;

1. High Judicial and Prosecutorial Councils

69. In August 2002, the High Representative appointed members of the three High Judicial and Prosecutorial Councils at State and Entity levels and issued a Decision giving the Independent Judicial Commission (IJC) a new mandate, making it clear that its primary purpose is now to serve as the secretariat for the Councils in the selection of judges and prosecutors in the re-structured judicial and prosecutorial system.

70. The FBiH and RS Entity Councils will have each sixteen members - both will include the same eight international members, together with six national members from that Entity and two national members from the Council of the other Entity. The BiH Council will have all eight international and the twelve national members of the Entity Councils, plus five more national members, giving a total of twenty-five.

71. The Councils are charged with the selection and appointment of all judges and prosecutors in BiH, with some exceptions such as the Constitutional and Minor Offence Courts. They will also conduct proceedings against judges and prosecutors alleged to have committed disciplinary offences. In addition to appointing and disciplining judges and prosecutors, the Councils will in the future carry out a range of other activities, such as supervising advanced professional training for judges and prosecutors. From the year 2004 the Councils will also make Court budget recommendations to Parliaments to ensure that Courts are properly and independently funded and supported.

72. On 4 October 2002, the deadline for applications to the approximately 90 most senior judiciary posts - BiH State, Entity Constitutional and Supreme Courts – expired. More than 280 applications have been received so far.

73. The CoE remains actively involved in matters related to the judicial reforms, notably through the active presence in Sarajevo of the recently appointed Deputy Special Representative and a CoE resident expert, Mrs Macovei. The latter took up her duties in August 2002, within the Independent Judicial Commission (IJC). She is particularly involved in the setting-up of the rules of procedure of the High Judicial and Prosecutorial Council, contributing to make them, as far as possible, compatible with the European norms and practices.

74. Discussions are taking place, notably on the oral nature of the currently proposed selection procedure (interviews), which potentially could challenge the requirement of objectivity, impartiality and fairness of the decisions to be taken by the Councils.

75. In coordination with OSCE, the CoE is also working with the High Judicial and Prosecutorial Council and OHR on the establishment of the Judicial Training Centres, the nomination of the Steering Boards and Directors and the general approach towards training. The CoE is at present negotiating with the EC (CARDS Programme) a specific Joint Programme to develop Judicial Training Centres, notably the elaboration of the statutes and curricula, as well as provision of specific training courses. If approved the project will enter into force in Spring 2003 and run until December 2004.

2. New State Court and State Prosecutor's Office

76. In August, the High Representative also issued a number of Decisions establishing a Prosecutor's Office at State level and amending the Law on the Court of BiH.

77. The Prosecutor's Office will be responsible for investigating and prosecuting all criminal acts that fall within the jurisdiction of the Criminal Division of the BiH Court.

78. A special Department within the Prosecutor's Office, as well as Special Panels in the Criminal and Appellate Divisions of the State Court have been established to tackle organised crime, economic crime and corruption.

3. Harmonisation of Entity prosecutorial systems

79. A decision of the High Representative issued in August has harmonised the prosecutorial systems of both Entities.

4. BiH Constitutional Court

80. The new judges (international and local) have recently been appointed. However, in September, the High Representative cancelled the appointment of two judges from the RS since the procedure laid down by law for such appointments had not been followed.

81. The CoE plans to invite the newly appointed judges of the Court for a study visit to Strasbourg (end 2002/beginning 2003) and will organise an ECHR training seminar for the staff of the Constitutional Court (and of the Human Rights Chamber) in 2003. The Venice Commission and CoE have offered the Constitutional Court advice in revising their Rules of Procedures.

PACE Opinion 234, para.15.v.h. *"to ensure adequate funding for the Constitutional Court and for the judiciary with a view to reinforcing their independence"*;

82. The Constitutional Court is initiating its discussions with the Treasury regarding the 2003 budget but is not in a position to evaluate the additional financial needs if "merger" was to be initiated in 2003.

B. ADOPTION AND IMPLEMENTATION OF DOMESTIC LEGISLATION

- PACE Opinion 234, para.15.iv.c. *"to adopt, within six months after its accession, if it has not yet done so, the laws which have been temporarily imposed by the High Representative"*;
 - PACE Opinion 234, para.15.iv. d. *"to adopt and implement the following laws in conformity with Council of Europe standards, within two years after its accession"*;

- *the Law on Immigration and Asylum (Bosnia and Herzegovina)*;

83. The Deputy Minister of Human Rights and Refugees has requested the opinion of the CoE on the draft law on Movement and Stay of Foreigners and Asylum. The opinion was delivered in mid-September. The Law had already been submitted to BiH Parliament and adopted on 1st Reading. A subsequent expert meeting should be held with the BiH Ministry of Human Rights and Refugees to discuss the concerns the draft law raises.

- *the Law on Recognition of Public Documents (Bosnia and Herzegovina)* [*"within two years after its accession"*];

(No new major development to report).

- the Law on Citizenship (Federation of Bosnia and Herzegovina) [“within two years after its accession”];

84. The CoE has received an official request from the Ministry of Civil Affairs and Communications to provide an opinion on the proposed amendments to the State Law on Citizenship. Some of the amendments raise potentially serious concerns as to their conformity with European standards.

- the Criminal Code and Criminal Procedure Code (Bosnia and Herzegovina, Entities) [“within two years after its accession”];

- *State level:*

85. - Draft BiH Criminal Code: The comments of the three CoE experts were sent to the OHR on 19 September 2002 and are presently under consideration, although the draft code has already passed the first reading before the BiH Parliament. In the context of the post-accession programme, further expert meetings and round-tables might be organised on the Code.

86. - Draft BiH Criminal Procedure Code: the three CoE experts are currently preparing their comments as to the compatibility of the draft with European norms and practices. These comments should be ready by mid-October. Discussions with the OHR are under way to organise an expert meeting to address the expert's potential concerns on the draft.

- *Entity level: Republika Srpska*

87. The Secretariat has not yet received the RS's draft Criminal Procedure Code for expertise.

88. The CoE has also offered its assistance to participate in the training of judicial staff on changes brought by the adoption of the new criminal codes in criminal justice. A reasonable period of time should be defined between their adoption and their entry into force.

PACE Opinion 234, para.15.iv.e. “to adopt and to implement fully in conformity with Council of Europe standards, within two years after its accession, the Law on the Civil Service in the Governmental Institutions of Bosnia and Herzegovina, already adopted by the Council of Ministers of Bosnia and Herzegovina”;

(No new major development to report).

C. RATIFICATION AND FULL IMPLEMENTATION OF COUNCIL OF EUROPE CONVENTIONS IN THE FIELD OF CRIMINAL JUSTICE

PACE Opinion 234, para.15.iii.i. “ to sign and ratify, within two years after its accession, the Council of Europe’s [...] the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and the Convention on the Transfer of Sentenced Persons and, in the meantime, to apply their fundamental principles;

*15.iii. k. to sign and ratify, within two years after its accession, the following conventions:
– the European Convention on the Suppression of Terrorism;*

– *the European Convention on the Transfer of Proceedings in Criminal Matters;*
 – *the European Convention on the Compensation of Victims of Violent Crimes;*
and, within three years after its accession:
 – *the European Convention on Cybercrime”;*

(No new major development to report).

D. FIGHT AGAINST CORRUPTION

PACE Opinion 234, para.15.v.o. “*to increase efforts to combat corruption within the judicial and prosecution system and the police, as well as in the administration”;*

89. In August the High Representative issued a number of decisions aimed at strengthening the capacity of the judicial system to tackle organised crime, economic crime and corruption (see also para. 78 above).

90. In addition, the OHR, UN, SFOR and Entities’ Ministers of the Interior have launched a new initiative aimed at strengthening the law enforcement authorities in BiH and enhancing their ability to fight organised crime. Special Police forces of both Entities will be trained to take part in joint police operations.

E. PROGRESS AS CONCERNS THE POLICE AND INTERNAL AFFAIRS

91. In July 2002, the UN Security Council approved the extension of the mandate of the United Nations Mission in Bosnia-Herzegovina (UNMIBH) until 31 December 2002. The European Union Police Mission will take over on 1 January 2003 as foreseen.

92. It should also be noted that Bosnia and Herzegovina’s State Border Service (SBS) has now taken full control of the country’s international borders.

PACE Opinion 234, para.15. v.

- m. “*to institutionalise the police academies set up under the aegis of the international community and to continue reforms aimed at establishing multi-ethnic police forces”;*
 -n. “*to abide by the decisions of the United Nations International Police Task Force (IPTF) and to fully co-operate with it”;*

93. Accreditation of all police administrations is under way.

-p. “*to adopt and to implement a revised law on internal affairs in both Entities”;*

94. The High Representative issued a Decision in August harmonising the texts of the FBiH Law on Internal Affairs. This legislation replaces the existing FBiH Law on Internal Affairs.

95. The CoE opinion on the RS Law on Internal Affairs was delivered to the RS Ministry of Interior and a meeting between the CoE and the Ministry was held in Banja Luka on the 19 of September. The RS Ministry of Interior is to draft new amendments to the law in the light of the discussions during the meeting.

VI. CONCLUDING REMARKS

96. The 5 October general elections are particularly significant for three main reasons. Firstly, elections were administered by the authorities of BiH for the first time since the Dayton Peace Agreement. In this respect, the BiH authorities and the people of BiH should be congratulated on the successful organisation of these elections. Secondly, State and Entity officials have been elected for four-year terms (instead of two), which give them sufficient time and continuity. Thirdly, these elections have paved the way to ensuring fair representation for all constituent peoples, following the decision of the Constitutional Court on the “constituent peoples of Bosnia and Herzegovina” of June-July 2000.

97. The longer term in office should be used to implement courageous and long-term reform programmes. The change of parties in power following the 5 October elections should in no case be detrimental to the course of reforms.

98. The building of a secular, independent and multicultural BiH should not be jeopardised, neither by internal political forces nor by external ones. As stressed by the international community, the future for BiH lies in a unified and stable state, within its internationally recognised borders, moving towards closer European integration.

99. Continuation of reforms is necessary to fulfil post-accession commitments to the CoE. The newly elected authorities will have to prove their capacity to adopt relevant and adequate legislation in conformity with European norms in due time and to contribute to the state-building of BiH. In that respect, the CoE reiterates its readiness to offer assistance to the country, notably through the post-accession co-operation programme. In this context, a second CoE Secretariat visit to BiH will be carried out as soon as the elections results are implemented.

APPENDIX I

Letter from Ambassador I. Gaon, Permanent Representative of Bosnia and Herzegovina to the Council of Europe, on “Activities of the Parliamentary Assembly of BiH in terms of adoption of laws during the course of 2002”



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OFC-COE-SXB-233-03-950/02
Strasbourg, 27 September 2002

Dear Mr. Laurens,

Subject: Activities of the Parliamentary Assembly of Bosnia and Herzegovina in terms of adoption of laws during the course of 2002

With reference to your second monitoring report in respect of Bosnia and Herzegovina due shortly after the general elections early in October, let me inform you about the activities of the Parliamentary Assembly of Bosnia and Herzegovina during the course of this year in terms of adoption of laws.

It is my pleasure to say that there were 30 laws adopted and accordingly, they are now in force on the entire territory of Bosnia and Herzegovina. Despite the fact that majority of them do not fall in the category of post-accession requirements, it is important to underline that they were adopted in line with current needs of the country and our wish to build and harmonise the legal system of Bosnia and Herzegovina with European standards.

These laws are:

1. Law on free trade zones in Bosnia and Herzegovina (adopted on 16 January 2002),
2. Law on industrial property of Bosnia and Herzegovina (17 January 2002),
3. Law on de-mining in Bosnia and Herzegovina (12 February 2002),
4. Law on transmission regulatory and operator of the electric energy system in Bosnia and Herzegovina (21 March 2002),
5. Law on authorial and similar rights in Bosnia and Herzegovina (21 March 2002),
6. Law on advocacy of Bosnia and Herzegovina (21 March 2002),

Mr. Jean-Louis LAURENS
Director of Strategic Planning
Council of Europe

7. Law on establishment of the Institute for accrediting of Bosnia and Herzegovina (19 April 2002),
8. Law on changes and amendments of the Law on customs policy of Bosnia and Herzegovina (19 April 2002),
9. Law on use and protection of the Red Cross logo and name of the red Cross Association (29 April 2002),
10. Law on purpose and use of the part of property belonging to Bosnia and Herzegovina as per the Succession Agreement (18 May 2002),
Law on implementation of the budget of institutions of Bosnia and Herzegovina and international commitments of Bosnia and Herzegovina for 2002 (31 May 2002),
12. Budget of institutions of Bosnia and Herzegovina and international commitments of Bosnia and Herzegovina for 2002 (31 May 2002),
13. Law on the Agency for information and protection of Bosnia and Herzegovina (20 June 2002),
14. Law on interests disputes in institutions of Bosnia and Herzegovina (20 June 2002),
15. Law on changes and amendments of the Framework law on privatisation of enterprises and banks in Bosnia and Herzegovina (3 July 2002),
16. Law on changes and amendments of the Law on occupation of vacant post of member of the Presidency of Bosnia and Herzegovina (3 July 2002),
7. Law on administrative taxes (3 July 2002),
18. Law on changes and amendments of the Law on administrative taxes (3 July 2002),
19. Law on the Court of Bosnia and Herzegovina (3 July 2002),
20. Law on protection of consumers in Bosnia and Herzegovina (25 June 2002),
21. Law on administrative disputes of Bosnia and Herzegovina (25 June 2002),
22. Law on civil service in institutions of Bosnia and Herzegovina (3 July 2002),
23. Law on Ombudsman for human rights of Bosnia and Herzegovina (3 July 2002),
24. Law on legal assistance and official co-operation in criminal matters between Federation of Bosnia and Herzegovina, Republika Srpska and Brcko District of Bosnia and Herzegovina (3 July 2002),
25. Law on changes and amendments of the Electoral law of Bosnia and Herzegovina (9 July 2002),
26. Law on ensuring of deposits in banks in Bosnia and Herzegovina (18 July 2002),

27. Law on administrative procedure (25 June 2002),
28. Law on the basis of the public radio-TV system and on the public radio-TV service of Bosnia and Herzegovina (1 August 2002),
29. Law on changes and amendments of the Law on customs tariffs of Bosnia and Herzegovina (1 August 2002),
30. Law on changes and amendments of the Law on Central Bank of Bosnia and Herzegovina (5 September 2002).

With warm thanks for your fruitful engagement in respect of Bosnia and Herzegovina, I remain at your disposal for any further information you might need.

With best regards,

Yours sincerely,

Dr. Igor GAON
Ambassador



APPENDIX II

CoE database (CEAD) report on selected activities in the context of the post-accession programme

CEAD Advanced Search

[Advanced Search](#) [Basic Search](#) [Help](#)

List based on a search for:

- Text fields containing "post-accession"
- Country is "Bosnia and Herzegovina"

04 October 2002

4 activities meet the search criteria

- Activities are sorted by Begin Date descending
- Activities with no Begin Date are at the end of the list

Example activity

<u>ID#</u>	Begin Date - End Date Status Last modified	<u>Title of the Activity</u> - Location, Country - Directorate - CoE Contact Person	(count)
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- click on the title or ID number of an entry to view details

List of activities

1635	15/11/02 - 15/11/02 Planned 30/09/02	Conference on the implementation by Bosnia & Herzegovina of Council of Europe standards in the Broadcasting field - Sarajevo, Bosnia and Herzegovina - DG II Human Rights - Ramon PRIETO-SUAREZ	(1)
3812	26/08/02 - 20/09/02 Completed 30/09/02	Expert appraisal on the draft Rules of Procedure of the High Judicial and Prosecutorial Council. - Sarajevo & Banja Luka, Bosnia and Herzegovina - DG I Legal Affairs - Humbert DE BIOLLEY	(2)
3393	01/06/02 - 15/09/02 Completed 30/09/02	Legal assistance on the draft law (Fed BiH) on local self government: translation followed by the legal expertise - Several locations, Bosnia and Herzegovina - DG I Legal Affairs - Humbert DE BIOLLEY	(3)
3206	26/04/02 - 07/05/02 Completed 30/09/02	Expert assistance on the draft law on the High Judicial Council. - Sarajevo & Banja Luka, Bosnia and Herzegovina - DG I Legal Affairs - Humbert DE BIOLLEY	(4)

APPENDIX III: **International Election Observation Mission's statement, 6 October 2002**

EUROPEAN PARLIAMENT



INTERNATIONAL ELECTION OBSERVATION MISSION

General elections in Bosnia and Herzegovina largely in line with international standards

SARAJEVO, 6 October 2002 – Yesterday's general elections in Bosnia and Herzegovina were largely in line with international standards considering the country's unique constitutional framework, concluded the International Election Observation Mission in a statement issued today (attached). Over 400 international observers monitored the first election since the Dayton Peace Agreement that was administered by the authorities of Bosnia and Herzegovina.

"These elections mark important progress toward the consolidation of democracy and rule of law under domestic control", said Pieter de Crem, Special Co-ordinator of the OSCE Chairman-in-Office for these elections and head of the OSCE Parliamentary Assembly delegation.

"These elections – the first since Bosnia and Herzegovina's accession to the Council of Europe earlier this year – are a positive step towards meeting the country's obligations which it assumed upon joining the organization", said Baroness Hooper, the head of the delegation of the Council of Europe's Parliamentary Assembly.

"We call on all those elected yesterday to continue the process of national reconciliation and to create conditions for sustainable return", said Doris Pack, the head of the European Parliament's delegation. "We encourage all newly elected politicians to assume ownership of the process of tackling the country's main challenges by implementing the necessary economic and legal reforms, and to co-operate in mutual trust for the strengthening of the State of Bosnia and Herzegovina."

"The new national election administration has successfully passed its first test, but the final judgement will depend on the results of the tabulation and the complaints processes. These need to be completed efficiently and swiftly", added Peter Eicher, head of the Observation Mission of the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

The international observers noted that in what was a broad and active campaign involving 57 political parties, candidates were able to move unhindered and they engaged in substantially more cross-entity campaign activities than during previous elections. Nationalist rhetoric was

less overt in this campaign but remained an underlying issue. An active print and electronic media provided extensive and diverse coverage.

The adoption of election legislation and the creation of electoral administration bodies at the national level resulted in a normalization of the electoral process after years of direct international supervision. However, the elections were held within a unique constitutional framework in which ultimate responsibility still rested with the international community. As in previous elections, the international community took a number of steps affecting key aspects of the electoral process which, while in line with its mandate, would have been irregular by international standards under other circumstances. Such measures will hopefully be unnecessary in future elections.

Shortcomings included the highly negative and often personalized nature of the campaign with little meaningful debate on reform issues, and the failure of the authorities to make timely decisions on a number of important electoral issues. The long-term mission also noted considerable distrust among party officials as regards important aspects of the electoral process, including the complaints procedure, the composition of polling station committees and the counting process for absentee and out-of-country ballots.

On election day, the voting took place in a calm and peaceful atmosphere, and the voting procedures were conducted generally in a well-ordered and efficient way. Overall, the election administration was impressive.

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