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## **METHODOLOGICAL FACTSHEETS**

**Milestones & strategies for investigating complex financial crime and corruption cases**

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# INTRODUCTORY REMARKS

Financial crime can be defined as any non-violent crime resulting in financial loss.<sup>1</sup> Its specificity can be found in many different aspects: it is multiform, as it may encompass the different type of crimes, such as corruption, tax evasion, money laundering, fraud, etc., and specificity; and it is often a “victimless” crime, as it impacts the society as a whole by affecting the economy of a state resulting in poorer public services, fewer opportunities, instability, and insecurity. For the purposes of this Factsheet, it is important to note its specificity in terms of investigative techniques that must be employed to effectively uncover financial crimes in general and the different crimes mentioned above.

In addition to human and drug trafficking, one of the main threats to Bosnia and Herzegovina is an economic crime. Bosnia and Herzegovina is fertile soil for financial crime, primarily due to the lack of single economic space that existed until 2006, i.e., until the introduction of value-added tax. One of the main mechanisms for widespread public revenue evasion was fictitious companies that were relatively easy to register. Crimes against the economy, market unity, and crimes in the field of customs include several forms of criminal offences, which leave immense negative consequences thus leading to a reduced economic growth rate. The increasing number of these criminal offences leads to economic inequality in society, which is increasingly pronounced in Bosnia and Herzegovina, and makes it difficult to create a stable democratic society.

Great efforts have been made in Bosnia and Herzegovina in the past few years in the field of taxation and business registration to improve the internal connectivity and unity of the tax system. Tax and customs fraud is primarily based on fictitious legal entities registered based on false personal documents (forged or stolen), which are used for trade, and which, by the time they are due to pay tax, have either disappeared or “went bankrupt”. Fictitious legal entities usually engage in double-entry bookkeeping and use other common means. Such legal entities are usually managed by corporate vehicles which register companies, open bank accounts, and organize contacts with owners of private or state-owned enterprises in order to sell or buy goods from them. Payment of customs duties is avoided by declaring the true value of imported goods, which are most often sold on the black market.

All these criminal offences lead to consequences such as the creation of unfair competition, job cuts, the gray economy, and the like. All these activities of organized criminal groups adversely affect the fiscal system, social and legal security, and the overall security situation in Bosnia and Herzegovina.

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<sup>1</sup> <https://www.imf.org/external/np/ml/2001/eng/021201.pdf>

This document has been prepared to show the complex investigations that are being conducted in this type of crime. The following section presents the specifics of financial investigations conducted by the prosecution, with reference to the international investigations. The efficient conduct of these investigations by the competent authorities undoubtedly requires the support of all public/private persons in a system to reduce the commission of this type of crime. In addition to the joint work of all state-level institutions on detecting and preventing the further commission of these crimes, each state must have an effective legal framework, system of institutions, actions, and measures that will contribute to conducting extensive investigations.

Therefore, the most important role in this process is certainly played by prosecutors who, together with other bodies, such as the Indirect Taxation Authority of BiH, the Tax Administration, and the State Investigation and Protection Agency of BiH (SIPA), strive to improve the institutional framework for more efficient investigations in financial crimes.

This Factsheet is a practical guide through different steps in the investigation of complex financial crime and corruption. It goes through the procedural stages of an investigation, underling the range of techniques and strategic decisions that must be considered by the prosecution and the LEAs. The specific features of financial investigation are presented, with particular attention to the distinction between domestic and international financial investigations, as these two processes present different and distinct challenges requiring specific approaches.

As these investigations are specific, the largest ones among them are also characterized by an international dimension. Cooperation is essential and conditions the success of such investigations. There are keys to action to be aware of. Sources of information are immeasurably wider than in other areas the prosecutors work in. These investigations require special attention on the part of the prosecutors – they must organize and manage the investigations.

The aim of this Factsheet is to outline the steps to be taken in complex financial investigations. It is addressed to the prosecutors of Bosnia and Herzegovina, whom the authors had the opportunity to meet on several occasions during the workshops and discussions organized by the EU4Justice Project. The Project's experts shared their expertise with BiH judges, prosecutors, lawyers, and investigators who had the opportunity to contribute with their own observations on the legal framework and practice in Bosnia and Herzegovina.

The offered solutions were developed based on over 20 years of experience in high-profile cases of Mr. Renaud Van Rymbeke who shared the lessons learned based on the achieved success and the suffered failures in an area that has significantly evolved. The help of a seasoned investigator Mr. Claude Chaillou made it possible to convey the way of work in these investigations through discussions. The sense of synthesis and narration of the international expert Mr. Francesco de Sanctis and references to national legislation and practice given by Mr. Mirza Hukeljic, prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, were decisive for drafting a high-quality document on the topic.



# OPENING OF A CRIMINAL CASE

- **MILESTONE N°1: PREPARATION OF A FULL-FLEDGED FINANCIAL AND ASSETS ORIGIN INVESTIGATION IS CRITICAL AT THE VERY EARLIEST STAGE.**
- **MILESTONE N°2: SUSPICIOUS FACTS INVOLVING NATURAL AND LEGAL PERSONS SHALL BE VERIFIED PROPERLY.**

## A. Initial information

### Introduction

Under the provisions of the Criminal Procedure Code of BiH, the competent prosecutor, after receiving information that there are grounds for suspicion that a crime was committed, issues an order to conduct an investigation, based on which he further conducts investigative actions following the investigation plan, i.e., supervises the implementation of investigative actions in accordance with his powers relative to the imprisonment envisaged for that offence.

Prosecutors' offices obtain information on the alleged criminal offences in various ways. The information on the commission of these types of criminal offenses most often comes from the Indirect Taxation Authority, tax administration, or the State Investigation and Protection Agency. In the course of the regular controls, as well as through its data collection and analysis systems, the Indirect Taxation Authority usually learns about certain criminal offenses being committed. Upon receiving a report by these bodies about the grounds for suspicion that a certain criminal offense has been committed, the prosecutor's office takes action, i.e., orders the investigation, which includes the collection of material documentation, witness interviews, and the conduct of a series of investigative actions to establish that a particular crime was committed to a reasonable degree of suspicion.

In addition to the above-mentioned method of obtaining information about the committed crime, information of crimes is also obtained in a traditional way, which involves the filing of criminal charges, often by interested persons who have suffered damage as a result of the committed criminal offense. It is often the case that persons who report financial crime are the persons who are direct victims of the consequences of the committed crimes. Namely, we often see such reports in the criminal offenses of a violation of equality in the performance of an economic activity, which directly affect the business operations of some individuals.

Investigations are initiated based on information about suspicious activities. Sometimes they come from the news and sometimes they are obvious, such as seeing a

person spending money beyond his/her capacities when it is evident that activities of that person should be looked into. Another example would be taking loans in foreign countries and from foreign banks, which represents a prime example of an activity which raises suspicion of potential criminal activities where funds without any coverage point towards corruption.

Information may also come from a case being handled by a police service or a prosecutor's office. Such is the case when new facts are uncovered during investigations or from statements by various persons. While these features are common to different types of investigations, criminal cases with a financial element are specific and different as the offence normally comes to light only once it is signaled or reported by someone, usually a competitor (in the case of tender procedures for example) or by banks filing suspicious activity reports to financial intelligence units (FIUs) according to anti-money laundering obligations. As a result, investigations in financial crimes (and corruption as well) are mainly opened based on the information the prosecutor, police or other law enforcement agency (LEA) receives in a report on the commission of a criminal offence or suspicious financial transaction. There are numerous sources of information providing grounds for suspicion that a criminal offence of corruption or an offence with a financial element has been committed.

Based on what information will the prosecutor launch an investigation? What are the sources of intelligence? What indications must be present to launch an investigation?

Traditionally, the police are present at the initiation of an investigation. They find out that a criminal offence has been committed and open an investigation at their own initiative, generally after they have notified the responsible prosecutor. This is certainly how it works when it comes to financial crimes and corruption. A person convinced that a public procurement procedure featured unlawful preferential treatment can report these facts to the police service specialised for financial crimes as the first point of contact for further action.

The difficulty faced by the police service is that the informer will very often decline to appear in person. Such is the case with reports from competitors rejected in public procurement procedures. Namely, they will fear that the municipal mayor or elected official they are reporting will seek retribution against them in some future public procurement procedure.

If that is the case, the police will draw up a report with the intelligence, which will have no probative value, but will enable initiating checks and, if the information is confirmed, also investigations.

Information can also come from a person prosecuted in a different case who, under pressure of sanctions, reports facts against a third person.

## **B. Sources of information specific to financial crimes**

In the financial field, however, there are many other specific sources that are available. The list cannot be exhaustive, but the following sources should provide an overview.

First of all, many countries have financial intelligence units (FIUs) as non-judicial authorities usually attached to the ministries of finance. These institutions are responsible for combatting all forms of money laundering. FIUs are also recipients of intelligence on suspicious operations that many professions are obliged to report, such as financial institutions, notaries, etc.

As soon as these professionals find out about a money laundering operation, they must report it to the FIU, without informing the subject of the report about this. They will be held responsible for failing to do so. For them, it is an obligation. Thus, the FIUs process many reports of suspicious operations received from members of these professions.

FIUs are not authorised to conduct detailed investigations. They categorise reports of suspicious operations and keep only those that seem relevant in order to conduct basic checks. If this initial information checks out and the FIUs feel it has been confirmed, it is then their duty to report it to the specialised prosecutor who will issue a warrant to initiate a detailed investigation.

Other public authorities acting within their capacity may also convey information to the police or the specialised prosecutor. Such is the case with the Auditor's Court in France which inspects the accounts of territorial communities and the public administration. It is not authorised to conduct coercive investigations. Only the prosecutor's office may conduct such investigations.

Tax administrations may also provide various information to the prosecutor's office.

Information may also come from reports or intelligence provided by a foreign judicial body seeking legal assistance.

These few examples demonstrate the variety of sources.

The media may also uncover facts of a criminal nature. The prosecutor's office must, of course, take care to avoid any manipulation, but when credible information is published, it cannot act as if it does not exist. The prosecutor's office may open an investigation based on information from news reports.

Regardless of the source of information, it is fundamental to bear in mind that the prosecution should be proactive in the detection of financial crimes and corruption. This means that it should not passively wait for the input and reports of the LEA's, but constantly cultivate its network of contacts with different external subjects, partners and stakeholders that can be a source of information.

The strategic commitment of all public authorities to fight crimes against property is one of the essential preconditions for successful criminal proceedings. The successful investigation of this type of criminal offence requires special knowledge in the field of both finance and business operations, hence certain non-judicial institutions can be said to play a significant role in a financial system of a country.

Legal frameworks in the legal system of Bosnia and Herzegovina, i.e., the Law on the Prevention of Money Laundering and Financing of Terrorist Activities, as a *special law*, imposes an obligation onto the authorities to report to competent prosecutor's office any suspicion that points to the commission of a criminal offence. Due to the specificity of the crimes and the possibility of detecting them, the statutory obligation to provide information is imposed on the following entities: banks, insurance undertakings, tax administrations, Indirect Taxation Authority of BiH, Securities Commission, Banking Agencies, notaries, and others. All these persons are required to provide to the competent prosecutor's office all necessary information and documents indicating that a criminal offence has been committed.

In addition to the obligation to report this type of crime, these bodies are also required to take actions and measures to help the prosecution detect criminal offences, as they have direct insight into the business and financial operations of the suspects.

Effective work and coordination of all these bodies with the prosecutor's office is a prerequisite for the efficient investigation of tax evasion and money laundering because the active work of the prosecutor's office and open cooperation of these bodies can undoubtedly contribute to creating a safer legal system.

## **TO SUMMARIZE:**

### **Possible types of sources of information are:**

- written or oral criminal reports by citizens or legal persons
- criminal reports or notifications by official and responsible persons in the governmental bodies
- official reports by authorized officials about the commission of a criminal offense (the so-called police criminal report)
- direct knowledge obtained by the prosecutor in their work on another case or other data from the prosecution records and files
- public speeches and public announcements, media reporting
- pseudo-anonymous and anonymous criminal reports
- other information of the prosecution indicating that the criminal offense was committed.



When it comes to criminal offences in the field of economic crime, in Bosnia and Herzegovina the sources of information are the following:

- criminal reports filed by companies;
- criminal reports or notices filed by officials in state institutions;
- information obtained during the conduct of other criminal proceedings;
- other information and procedures that indicate the crime committed.

### **Institutional channels**

Information could be sent to POs and LEAs by public and private institutions as well as by other entities such as:

- Taxation authorities
- Audit offices
- Financial intelligence unit (FIU) and Financial police
- Banking agencies
- Anti-corruption teams at state, entity and cantonal levels
- Notaries

Important information can be obtained from various public bodies, but also from private individuals, some of which are:

- Tax authorities the FBiH, RS, BD
- Indirect Taxation Authority
- Banking Agencies of the FBiH and RS
- Commercial banks
- Insurance undertakings
- Securities commission of BiH
- Notaries

## FOR DISCUSSION

- How is the flow of information from public institutions to PO/LEAs?
- Are the protocols on the co-operation between POs and LEAs which are already in place useful in practice?
- What is the quality of the reports sent to the POs? Do they disclose grounds of suspicion?
- If these reports are not satisfactory, what needs to be improved, perhaps the drafting of the presentation of facts, the legal elements or something else?
- What are the avenues/channels for a pro-active role of the POs in detecting possible offences from different sources, including open sources indicating disproportion between lifestyle and income?
- To which extent the police officers make some initial checks before sending a report to PO?
- Which official databases are open to the POs?
- In addition, what kind of information the public administration can provide to the police officers at this stage?

Some of the questions that arise in practice are the following:

- Is there successful cooperation between prosecutor's offices and public institutions?
- Do public authorities in the course of their operations provide all relevant information to the prosecutor's office?
- Has there been any positive outcome of the cooperation between a prosecutor's office and other institutions in practice?
- What is the quality of the submitted information?
- How can the cooperation of the prosecutor's office and institutions and other companies in terms of information sharing be improved in practice?

# PRELIMINARY INVESTIGATION

→ **MILESTONE N°3: IN ADDITION TO THE INFORMATION PROVIDED BY INSTITUTIONAL ENTITIES, THERE IS A NEED TO RESORT TO PUBLIC SOURCES, SOCIAL MEDIA, MULTINATIONAL SOURCES OF INFORMATION AND ANALYTICAL COMPANIES TO COLLECT INFORMATION AND DATA.**

A preliminary investigation is needed to enquire into the allegations of the initial information/report and to determine whether an investigation should be opened.

In this connection, the POs/LEAs will focus on:

- Whether the facts alleged or detected constitute a violation of relevant laws
- Whether it is reasonable to believe that evidence of the criminal offence can be collected in a lawful manner
- Whether the criminal offences are sufficiently serious to justify the conduct of an investigation
- Whether the prosecutor's office and the LEAs have sufficient resources to conduct the investigation in the case properly. A comprehensive list of all the needed resources for the investigation to be successful - either human, financial or material, is a relevant initial step to organize the investigative work from the beginning.

Immediately after obtaining information on a potentially committed criminal offense, the competent prosecutors conduct investigative actions to examine the allegations. Under the legal provisions of the Criminal Procedure Code of BiH, the competent prosecutor performs shall assess whether there are grounds for suspicion of a criminal offense.

## **Role of law enforcement agencies (LEAs)**

When information reaches the prosecutor's office, if it is judged to be reliable, the prosecutor's office may entrust the investigation to police services. However, it must adapt the initiated investigations to the relevance of the initial intelligence. It is up to the prosecutor's office to assess and control investigations conducted by the specialised police.

In this phase, where confidentiality is full, the prosecutor/LEA should gather all relevant information which can be obtained without the opening of an official investigation, while being careful in preserving the legality of possible evidence.

While a larger team will be formed during the investigation, it is important that at least a financial advisor is involved in the preliminary phase.

Possible enquiries include:

- Background analysis and profiling of reported persons, and their possible links with politicians and businessmen (Lexis Risk Solutions database, for example)
- Analysis of information contained in public registries, including business documents, management of firms linked to the reported persons
- In case of a tender: was the tender open, is the vendor contract available to public, what is the status of the deliverables under the tender?

If the submitted information of criminal offense gives rise to the suspicion that a criminal offense has been committed, the competent prosecutor shall take actions to determine the elements of the criminal offense. To this end, under the criminal procedure codes in Bosnia and Herzegovina, the prosecutor can use all legal actions for proving the crime.

To identify illegal assets in the course of financial investigation, the prosecutor often has to take several investigative actions. For this purpose, the prosecutor usually forms a team of people who will help in conducting these types of investigations. It is of great importance for the efficient conduct of the investigation that the persons involved in the investigation are equipped with the necessary knowledge and skills, particularly knowledge of economic, financial, banking, and tax operations. In the investigation of economic crime offenses, it is important to include and engage professional staff.

From all the above, we see that the manner of collecting the necessary information depends on the very nature of the crime committed. Also, as per the relevant provisions of the Criminal Procedure Code of BiH, the information in the evidence-gathering process must be obtained in a lawful manner. This can be best demonstrated through an example of tax evasion. When conducting an effective investigation of tax evasion crime, the information which the prosecutor can obtain from analyzing public data on the operations of the reported company is of exceptional importance. In such a case, the prosecutor's investigation is mainly guided by the report on control and decision on the tax assessment issued by the BiH Indirect Taxation Authority. In addition to these documents, the Indirect Taxation Authority, which most often reports the suspicion of this type of criminal offense, submits several other accounting documents that the prosecution further uses during the process. The Prosecutor's Office of BiH, together with the Indirect Taxation Authority, collects evidence - mainly business documentation of the legal entity in question, which is then referred to an expert witness in economics for expert opinion. It is important to note that in this type of crime, the finding and opinion of an economics expert play an important role in proving the commission of the criminal offense. Expert witnesses are persons who, using their professional knowledge and expertise, help the prosecutors in the process.

One of the tasks when proving this type of economic crime is to detect and identify proceeds of crime, vehicles for money laundering, and other assets to be ultimately

forfeited. Consequently, the aim of carrying out these actions is to find evidence of a causal link between a given criminal offense and the proceeds.

According to the legal setup of Bosnia and Herzegovina, tax administrations fall under the jurisdiction of the Entities. Although Entity tax administrations operate based on different legal strongholds, it is important to note that the legal provisions of the Laws on Tax Administration of the Federation of BiH, Republika Srpska, and Brčko District of BiH impose an equal obligation for tax administrations to cooperate and forward all information to the competent prosecutor's office. In the process of detecting, investigating, and collecting documents, competent tax administrations are required to take all actions and measures in accordance with the powers and orders of the competent prosecutors, as laid down in the provisions of the Criminal Procedure Code. The cooperation so far has shown that all these bodies have extremely good cooperation with the prosecutor's offices in conducting investigations.

It is also up to the investigating service to identify assets of suspects in order to determine whether such property coincides with their official income and, as the case may be, plan the seizure of movable and immovable property.

In order to do that, the investigating service will seek information from the tax administration which generally has valuable documents, such as the tax returns of the suspects. In this investigation or assets, the investigating service will have to look into how the acquired assets were financed in order to determine the potentially criminal origin of funds.

With respect to **tenders**, the most important thing is to perform operational checks. In that sense, use the information on those who were not selected in the tender procedure and why the selected one was better, and then focus on the chosen contractor, identify a common background and contacts who are frequent. An informant would be key as we do not know what happened and there are no witnesses to lead us to the details.

When all of that is done, the investigating service will compile a detailed report on all conducted checks and violations found in order to enable the prosecutor's office to make the final decision on whether an official investigation should be opened.

## FOR DISCUSSION

- What is the use, if any, of the information gathered by intelligence agencies for security purposes?
  - Before the official investigation is initiated, what kind of checks are possible without judicial authorisation?
  - Can the information gathered in this phase be used as evidence later if obtained in compliance with the law?
- In relation to the discussion on the points above, for information on tax administration authorities in BiH, see **Annex 1: Tax Administration Authorities in BiH -Comprehensive Summary.**



# INVESTIGATION

## → MILESTONE N°4: NEED TO URGENTLY ASSESS THE RISK OF LOSS OF EVIDENCE AND TO BUILD UP A STRATEGY TO COLLECT AND PRESERVE EVIDENCE.

The prosecutor drafts the order to conduct an investigation when the preliminary investigative actions have demonstrated that **grounds for suspicion** that a criminal offence has been committed exist. The prosecutor's order should enumerate the facts which will be investigated. An order to conduct an investigation is an internal prosecution act.

Suspects and accused persons will, as always, try to forestall and anticipate the steps of the investigation by hiding the evidence or trying to contaminate them. The primary target of every investigation should be the person who is factually criminally responsible for money laundering, tax evasion, fraud, and the primary goal of every investigation should be the confiscation of illegally obtained assets.

Under Article 216 of the BiH Criminal Procedure Code, the Prosecutor shall order the conduct of an investigation if grounds for suspicion that a criminal offense has been committed exist. The prosecutor is obliged to state in the order the circumstances from which it follows that a criminal offense was committed, the perpetrator if known, the circumstances that need to be investigated and investigative measures to be undertaken. When investigating economic crime, care should be taken to ensure that the investigation is conducted in the most efficient manner possible and that actions are taken to prevent the proceeds from being dissipated i.e., to propose and obtain orders to temporarily restrain the assets. There is a concern that if the criminal proceedings are not effective, the suspects will try to cover up the committed criminal offenses using legal means (purchase of real estate, transfer of ownership, acquisition of shares). The primary goal of an investigation into this type of crime should be to locate and identify proceeds, vehicles for money laundering, and other assets. While on the other hand, the secondary goal is the confiscation of illegally acquired assets: money, real estate, and objects of significant value.

## **A. Planning the investigation**

The first step of an effective investigation is its planning. Investigators should begin by identifying the standards, rules, and procedures that govern the circumstances under investigation and the information already available. They must determine what additional information will be required before findings and recommendations may be made to the competent authority, and therefore should elaborate an understanding

of the steps which are required to obtain the necessary evidence, including, among others, a list of potential sources of information and specific strategies for witnesses interviewing, in order to reach a conclusion on the merits.

The first step towards a successful criminal proceeding in any type of crime is an investigation plan. Investigation planning is a multidisciplinary activity that requires establishing known facts and circumstances, setting the hypotheses, identifying which investigative actions need to be undertaken, as well as the subjects from whom the information will be collected.

## **B. Forming the investigation team**

- The necessary skills to conduct large-scale corruption investigations include financial investigations and information technology skills, knowledge of international conventions, standards, and international cooperation mechanisms, specific expertise in undercover and surveillance operations, proper experience in interviewing and witness preparation, and the ability to analyze intelligence.
- Division of tasks between the prosecutor, police investigators and experts should be clear from the start.
- The investigating service is tasked with conducting searches, taking statements and intercepting telephone communications, all under the control of the prosecutor's office.
- As far as economic crimes are concerned, it has already been said that with this type of crime, criminal investigations are complemented with the so-called financial investigations. Financial investigations as a relatively young term in criminal law should be viewed separately from criminal investigations. Financial investigations have found their fertile soil in the field of economic crime, primarily in money laundering and other forms of acquisitive crimes that lead to the enormous enrichment of individuals, which triggers a comprehensive financial investigation and requires the involvement of law enforcement agencies, primarily State Investigation and Protection Agency (SIPA) and the Financial Intelligence Unit (FIU), which investigate these suspicious transactions. In other words, financial investigations are nothing more than "collecting, controlling, comparing, processing and analyzing financial and other actual data for the purposes of law enforcement agencies. For the efficient conduct of financial investigations, it is very important for the staff involved in such investigations to have the relevant knowledge and skills. This knowledge and skills must be a combination of basic knowledge of police operational and criminal activities and knowledge of business operations, which also implies the use of professional staff, such as specialists and experts in certain areas (accounting, bookkeeping, banking, etc.).

- Intelligence obtained in the financial investigation process may lead to some very useful information such as the value of proceeds of crime and the origin thereof. And that information can further lead to the seizure and confiscation of the proceeds, and other forms of assets resulting from the commission of crimes. Hence, the prosecutor and law enforcement officials should conduct financial investigations in all cases where there are grounds for doing so, i.e., in all acquisitive crimes, not only economic crimes but also corruption and all other crimes resulting in the acquisition of material gain.

## **C. Evidence gathering**

- What evidence is needed? Evidence should be linked to alleged facts and elements of crime.
- When, where and how evidence should be obtained? Investigative actions should be linked to the persons and enterprises linked to the alleged criminal conduct.
- Coercive vs. voluntary techniques of investigation: regarding the selection of a particular technique, this should be assessed as part of the overall investigative plan or framework. Typically, the investigator should first use the most basic investigative techniques (simple data checks) before implementing more complex techniques (e.g., wiretaps). In addition, investigators should use covert techniques (e.g., surveillance, public information search, information from other government agencies, trash run) before moving to overt techniques (e.g., search warrant) to avoid tipping-off the target. Practitioners must also keep in mind that the use of one technique can provide leads or information that will become grounds to take additional measures.
- When planning an investigation, it is necessary to determine what evidence is relevant to the further course of the investigation. The precondition is that the obtained evidence is causally related to the committed crime. It is important to note that the prosecutor must conduct the investigation following the principle of economy, but not to detriment of the legality and efficiency. During the investigation, the competent prosecutor should determine from which authorized persons he/she will receive the most important information and evidence so that he/she could direct the investigation in the right direction.

### **FOR DISCUSSION**

- Role of Financial Intelligence Units (FIU): flow of information should be open enabling a proactive approach
- Role of informers, insiders, and whistle-blowers during the investigation
- Role of police and prosecutors' associates in carrying out investigative actions, including seizures.

The competent tax administrations in Bosnia and Herzegovina, the Indirect Taxation Authority of BiH and their employees, as well as the competent prosecutor's offices should strive for improved and more efficient cooperation and communication, which is one of the preconditions for a more efficient investigation.

In relation to the discussion on the points above, for information on financial intelligence bodies in BiH, see **Annex 2: Financial Intelligence Bodies in BiH - Comprehensive Summary.**

# FINANCIAL INVESTIGATION IN ORDER TO SEIZE ASSETS

- **MILESTONE N°5: TRACK THE FLOW OF MONEY / SOURCE OF WAY OF LIFE.**
- **MILESTONE N°6: INVOLVE THE FINANCIAL INTELLIGENCE UNIT AT THE VERY EARLY STAGE IF IT DID NOT INITIALLY REPORT THE SUSPICIOUS FLOW OF MONEY.**

## **A. Goals of a financial investigation**

A financial investigation should provide an answer to the key questions, such as:

- Have the proceeds been obtained by a criminal offense?
- What assets still exist?
- Has a part or all the proceeds acquired through a criminal offense been transferred into other valuables?
- Which assets have been legally acquired?

**According to national legislation**, the prosecutor issues a special order for conducting a financial investigation that has the following goals:

- establish the manner of acquisition of illicit proceeds in the form of assets originally acquired by a criminal offense or income from those proceeds
- identify assets that can be real property, movables, business shares, securities, cash in bank accounts, cash, receivables or debts
- identify suspects, accused, affiliated or third parties
- determine the relationship to assets, whether it is ownership, possession or control
- obtain data, information and evidence of assets through regular and special investigative measures.

Investigations into these types of crime require a systematic approach to analyzing economic and social relations as possible indicators of criminal activity. Economic and financial crimes are acquisitive crimes. Knowing that these crimes are solely driven by profit, the financial investigation should aim at the following:

- identifying the proceeds of crime;
- establishing the form of the proceeds of crime and how they were obtained;
- establishing the ratio of proceeds of crime;
- identifying the suspects and persons related to the suspects;
- collecting data and evidence on proceeds of crime.



## B. Steps of financial investigation

- establishing an income resulting from a criminal offense
- establishing of assets that can be seized
- submission of a motion for asset seizure (provisional and final)

The most important step is to determine the methods for evidence collection. The investigation and collection of evidence should primarily “follow the money” or focus on discovering the transfer of funds and identifying the suspect’s assets.

One of the most important goals of the investigation is the confiscation of proceeds of crime. In view of the above, one should first establish whether the identified assets can be seized from the suspect. Article 392 of the Criminal Procedure Code of BiH stipulates the obligation of the prosecutor to collect evidence that is important for the establishment of the gain acquired through the commission of a criminal offense. Having in mind the above, it is the obligation of the prosecutor running the financial investigation to collect all relevant evidence of illegally acquired gain. The law does not specify what the proceeds of crime are, but only what it may comprise. Proceeds of crime mean any increase in assets resulting from the commission of a crime. Proceeds of crime include any asset obtained by the commission of a crime or resulting from such a crime. Proceeds of crime obtained through the commission of a crime mean any increase in assets directly or indirectly linked with the committed crime. Hence, there is a causal link between the criminal gain and criminal offence, because if there were no such a link there would be no criminal offence.<sup>2</sup>

Proceeds from crime can be defined as the net profit i.e., excess of assets obtained by unlawful activity, which may comprise money, securities, or items in whole or in part. The proceeds from crime may also be any proceeds of crime or illicit proceeds, which may be composed of any kind of assets, tangible or intangible, movable or immovable, and which includes legal acts or documents proving the right to such assets.<sup>3</sup> The law explicitly stipulates that money, valuables and any other proceeds obtained by crime shall be confiscated from the perpetrator. Only if this is not possible will the offender undertake to pay a sum of money in proportion to the illegal proceeds.

It is however important to note that such a legal solution is not in line with the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, which obliges the Member States to adopt such legislative and other measures as may be necessary to enable them to confiscate proceeds or property the value of which corresponds to such illegal proceeds. The Convention obliges the Member States to accept such measures as may be necessary to enable them to confiscate any property the value of which corresponds to illicit proceeds, and not merely the obligation to pay a sum of money corresponding to the value of proceeds if the property on which the confiscation can be enforced is not available.

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2 Babić, M. (2005). *Commentary of the Criminal Codes in Bosnia and Herzegovina*. Sarajevo: Council of Europe and the European Commission, 428.

3 Ivičević, E. (2004). *Utvrđivanje imovinske koristi stečene kaznenim djelom u hrvatskom pravu*(vol. 11). Zagreb: Hrvatski ljetopis za kazneno pravo i praksu, 217-238.

When it comes to proceeds of crime which are mixed with the lawful assets, such assets may be subject to confiscation to the extent that it does not exceed the estimated value of the proceeds of crime. Forms of proceeds may change as a result of disposing of assets, most frequently through financial transactions, which also makes it more difficult to identify the proceeds from crime, i.e., its origin.<sup>4</sup> Our case law rejects the possibility of confiscating any assets the value of which corresponds to the proceeds of crime precisely because of the legal provision which provides that, if it is not possible to confiscate money, items of value, and any other proceeds of crime, the offender shall be required to pay a sum of money corresponding to the value of proceeds.<sup>5</sup>

Proceeds of crime can also be confiscated from a third party<sup>6</sup>, if the proceeds of crime were transferred to that person free of charge or with compensation not corresponding to the actual value and if that person knew or could have known that the assets in question are proceeds of crime. The basic legal condition for the confiscation from third parties is that such a person knew or could have known that the assets in question are proceeds of crime. This provision provides legal protection of persons who in good faith came into possession of certain assets, and who at the time of its acquisition did not know or could not have known that it was illicit proceeds.<sup>7</sup> Once the above-stated conditions are satisfied, the court may confiscate the proceeds of crime either from the criminal, by ordering him/her to pay a sum of money corresponding to the value of proceeds or from the person to whom proceeds were transferred. Where the proceeds of crime are to be confiscated in such a way as to order the criminal to pay a sum of money corresponding to the value of proceeds, the question is how the amount should be established. According to the case law, and according to the legal provision on the confiscation of proceeds, the value of assets shall be established based on the market value of the assets at the time of the commission of the crime.

The fact that the perpetrator, after committing the crime and obtaining the proceeds, donated, destroyed, damaged, or sold at a price lower than the market value an item obtained through the commission of the crime is irrelevant for determining the value of proceeds. If the perpetrator sold the item at a price higher than its market price at the time of the commission of the offense, the amount so obtained represents the proceeds of crime, because it originated from crime and what has been obtained therefrom.<sup>8</sup>

If the proceeds of crime are mixed with the lawful assets, such assets are subject to confiscation but only up to the estimated value of the proceeds of crime. In such cases, the court may confiscate the proceeds of crime in two ways:

- a) by ordering the payment of a sum of money corresponding to the value of proceeds mixed with the lawful assets;
- b) by confiscating the mixed assets up to the assessed value of proceeds of crime.

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4 Ivičević, E. (2004). *Utvrđivanje imovinske koristi stečene kaznenim djelom u hrvatskom pravu*(vol. 11). Zagreb: Hrvatski ljetopis za kazneno pravo i praksu, 220.

5 Babić, M. (2005). *Commentary of the Criminal Codes in Bosnia and Herzegovina*. Sarajevo: Council of Europe and the European Commission, 429.

6 A person who is not the actual perpetrator of the crime in this context may appear as a natural or legal person.

7 Mujanović, E. (2007). *Oduzimanje ilegalno stečene imovine*. Sarajevo: Transparency International, 11.

8 Babić, M. (2005). *Commentary of the Criminal Codes in Bosnia and Herzegovina*. Sarajevo: Council of Europe and the European Commission, 430.

The court can use the second option only when the mixed assets can be divided so as to distinguish a part of it that corresponds to the estimated value of the proceeds of crime.

When it comes to income or other proceeds of crime, the law clearly stipulates that income or other gain obtained from the proceeds of crime - be it the assets to which the proceeds have been converted or assets with which the proceeds have been mixed, is also subject to confiscation by a court decision establishing that the crime was committed.

For the confiscation of the proceeds of crime to happen, two conditions must be met. The first condition for confiscating the proceeds of crime is to establish that such proceeds indeed exist, i.e., that the offender has obtained the illegal proceeds. For a measure of confiscation of proceeds of crime to be imposed, it is not enough to establish that the manner of obtaining the proceeds was unlawful, but it is necessary to show that the obtained proceeds are unlawful too. The second condition for confiscating the proceeds is to have a court decision establishing that the crime was committed.<sup>9</sup>

Some of the problems related to determining the proceeds are the difficulties in assessing the value of proceeds due to destruction or disappearance of items, sale or giving away such items, or lack of knowledge about the value of such items because they have been withdrawn from circulation, or lack of information about the quality of the item, manufacturer, buyer, etc. In addition to this, the problem may be that the procedure of determining the proceeds will directly affect and significantly delay the criminal proceeding. In cases where the items are destroyed or alienated, the court shall confiscate the monetary equivalent.

The proceeds shall be confiscated *ex officio* regardless of the financial situation of the accused, even when the accused is released from the duty to pay the costs of the criminal proceedings.<sup>10</sup> This is why the amount of the proceeds in the aforementioned situation is established by a free estimate. This means that the basis for confiscation - the committed criminal offence and proceeds of crime - must be established in advance beyond any doubt. This is an exception to the general rules on the free assessment of evidence regarding the existence or non-existence of facts. The law here gives priority to the principle i.e., the right to a trial without delay, because otherwise deciding the criminal matter, which is the main subject of criminal proceedings, would be slowed down.<sup>11</sup>

Concerning the dilemmas as to the type of decision ordering the confiscation of proceeds, it should be noted that the law stipulates that confiscation may be carried out based on a judgment finding the accused guilty, a decision on a court reprimand, a decision imposing a rehabilitative measure, as well as based on a judgment finding that the crime was committed in a state of mental incompetence or diminished capacity.

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9 Simović, M. i Simović, V. (2011). Criminal procedure law II Istočno Sarajevo: Law School of the University in Istočno Sarajevo

10 Sijerčić-Čolić, H. (2008). *Criminal procedure ) law (Volume II)*. Sarajevo: Law School of the University of Sarajevo, 221

11 Sijerčić-Čolić, H. (2005). Commentary of the Criminal Procedure Codes in BiH. Sarajevo: Council of Europe, 940-950

Also, under certain conditions, this measure may be imposed in summary proceedings by issuing a warrant for pronouncement of the sentence. According to the law, the prosecutor in the indictment may request from the Court to issue a warrant for pronouncement of the sentence in which a certain sentence or measure shall be pronounced to the accused without holding the main hearing. In that proceeding, the prosecutor may also request the imposition of a measure of forfeiture of proceeds of crime. The precondition for this is that the principal penalty prescribed for the crime concerned is a fine or imprisonment up to five (5) years.

## **C. Strategy for evidence gathering - What is the strategy?<sup>12</sup>**

**→ MILESTONE N°7: DOCUMENTATION ON BANK ACCOUNTS IS THE KEY EVIDENCE IN ESTABLISHING THE FLOW OF MONEY AND IN RECONSTRUCTING THE CRIMINAL NETWORK.**

### **Uncovering the criminal network**

Tax evasions are, in fact, not committed by the persons who are evading taxes. They, as well as frauds, are often carried out by several persons acting in a highly organized group. The particularity of this criminal offence is that the mentioned group usually acts for one beneficiary only, where a small percentage or a pre-agreed price is paid to the factual perpetrators of the act. This group also represents a facade behind which the main culprit is hiding, and they are only “marionettes” led by the main culprit for profit or based on a close relationship they have.

During the investigation of these criminal offences, it is of utmost importance to pay attention to the connections between the persons being investigated. For example, the real and factual manager of one company can hide behind his spouse’s role of a manager, where the spouse is only a marionette used for signatures and as a front name on the document, but the factual managing and decision making in the company is done by the husband who is the main culprit.

Technological advancement has brought us e-banking services, where **bank accounts** can be managed electronically by mobile applications, online accounts and similar.

Regarding **tax evasions**, bank accounts are almost always managed by the perpetrators of the criminal offence. Usually, they do it through a “marionette”, as described above, but when it comes to e-banking services, they only use the “marionette” for the purpose of attributing identity and opening of the bank account where all the details needed for access to the bank account are given for the factual manager of assets. The procedure of opening a bank account and the provision of detailed information is usually done through a middleman, where the “marionette” is just a tool. The “marionette”, almost always, never meets the factual manager, or knows any details about him/her which makes the investigation more difficult and complex.

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<sup>12</sup> Based on the output of the discussion during the workshop on the subject led by Mr Renaud Van Ruymbeke on 3- 4 July 2019 in Sarajevo, BiH.

Investigations in cases which involve bank accounts, especially offshore bank accounts, need to be envisaged as a ladder on which investigator climbs one step at the time in order to reach the factual perpetrator of the criminal offence. During the investigation, all tools at the disposal of the investigator should be utilized, for example, house searches and asset seizure. There is a high probability that the investigation will lead to the “marionette”, in other words to the factual perpetrator of actions or to the middleman.

In order to **uncover the factual perpetrator**, the following steps have proven to be the most useful to extract the necessary information from the above-mentioned persons:

- all evidence should be put in front of the suspect during interrogation,
- the suspect should be informed that, based on the presented evidence, it is most likely to be convicted for a criminal offence and put in prison for a certain period,
- it should be explained to the suspect that all of the assets acquired by the commission of a criminal offence will be confiscated.

It is most likely that then the suspect will provide the name of the factual perpetrator and the beneficiaries of the criminal offence.

When dealing with this type of crime, it is important to note that these crimes are often committed by an organized group of persons who together participate in the commission of crimes. This fact is an additional difficulty for the investigations of the BiH Prosecutor’s Office. In these types of crimes, the Prosecutor’s Office must first collect information about the persons who are part of the criminal network and then establish the contribution of each of them in the commission of criminal offenses.

The first and most important step is to seize the original documentation from the legal entity managed or owned by the suspect as well as documentation from the suspect i.e., from the accountant of the legal entity. The original documentation shall be seized based on a court order issued at the motion of the prosecutor. In the motion submitted to the preliminary hearing judge, the prosecutor usually specifies exhaustively all the original documentation to be seized. Following the seizure of the documentation, the law enforcement officers who have enforced the court order are required to issue a receipt with a list of the seized items. Where necessary, in more complex cases of tax evasion and customs fraud, the prosecutor may file a motion to the court requesting a search warrant for certain premises, apartments, buildings, etc. to find evidence that points to the commission of the crime.

Tax evasion is one of the most commonly investigated offenses in the field of economic crimes. According to Article 210 of the BiH Criminal Procedure Code, *modus aquirendi* (the way of acquisition) of this type of criminal offense is by tax evasion i.e., providing false information. Consequently, the perpetrator of this criminal offense is a legal entity that is required to pay tax, but the responsible persons within such entity are also held criminally responsible. Lately, in Bosnia and Herzegovina noted is many shell companies, which were established for the sole purpose of committing criminal



offenses. In addition to shell companies, prosecutor during investigations often encounters situations where the director, i.e. the person registered in the court register as a responsible person in the company is not actually managing the company but is rather a “marionette” executing the orders of the “superiors”. It is the superiors who conduct criminal activities, while the so-called “subordinate” performs all necessary actions to facilitate the commission of the crime. The subordinates are responsible for opening bank accounts, executing transactions, and issuing fictitious invoices. The practice has shown that authorized subordinates are often related by blood to their superiors, i.e., the crime lords.

This crime is general, it contains a blanket provision that calls for the application of other regulations. The act of crime is an evasion of payment of taxes and contributions. The act of crime was defined alternatively as avoiding the payment of taxes and social security contributions by not providing the required information and by providing false information. In either case, it has to be about data on earned taxable income or other facts that affect the amount of tax liabilities, i.e., the amount of contributions.

### FOR DISCUSSION

- What are the methods for proving the illegal nature of the assets? Direct and indirect link between the offence and the assets
- Link between the investigation on the predicated offence and the financial investigation – the financial investigation is not only instrumental to seizure but can disclose additional offences (money laundering for example)
- Running two investigations in parallel

It is often the case that investigators during investigation learn of some other forms of financial crime. Such other forms of financial crimes are investigated in parallel with the original crime. Some of the questions that may be raised are:

- What methods should be used to detect illegally acquired assets?
- What is the consequential link between the crime and the acquired assets?

### Focus on money laundering and banks' accountability

With respect to **money laundering**, the basic principle is that money laundering by itself does not exist as a criminal offence – there must always be a forefront of the crime, i.e. the so-called predicate offence. The crime must also exist in the country in which we wish to investigate – it may be called differently, but the context must be the same.

The characteristic of money laundering is that the transactions are carried out very quickly, in one day even, which is why the reactions have to be swift - we have all the needed information available online and at one click.

One way of laundering money relies on paying fictitious bills to use market research as a reason for remittance. “Over-invoicing” is one of the methods of money laundering also.

Cash is a problem with money laundering because the trace of cash money is easily lost and then nothing can be done. However, a certain lifestyle and the properties owned by a certain person can be quite indicative.

When a bank fails to comply with the procedures for the prevention of money laundering, it may also be held accountable in terms of inspection and adequate sanctioning or even criminal prosecution of a legal person.

When the electronic data is seized, with the necessary knowledge and skills of IT experts, a mirror copy of the data in electronic form is made in order not to seize the data and interrupt the bank's business. The bank is also searched, and video surveillance taken to identify the persons using the account. Payment orders and other documents such as the cash register record are requested. Identification can also be done by looking into the file of deposited signatures to identify the persons with access to the account.

Operating an account with funds from abroad may indicate money laundering, as one small part of it remains in the home country and the other part goes to another offshore destination.

When a case is being investigated, only what indicates a fraud scheme and a large organization is investigated and proven. It is impossible to investigate everything and reach everyone, but it is important to prove the abnormal functioning of the account and the bank's silence on such practices to claim its responsibility, i.e. to look for a responsible person within the legal entity.

It is necessary to be able to prosecute the bank as it would introduce order in the system and other banks would then pay attention to their business more closely. Joint investigation teams for the prosecution of banks are essential and they are used in exceptional cases.

One of the national interlocutors who is a prosecutor stressed that in BiH the Prosecutor's Office of BiH is competent to handle MLA requests regarding international financial transactions. The acting prosecutor does not directly execute the orders, but it is done by the authorized officials. When a request is received in BH, the prosecutors act only within the request and do not go beyond it unless the Prosecutor's Office of BiH itself is interested in the case.

Any larger financial amount is monitored by the Financial Intelligence Department (FID) and SIPA monitors any suspicious transactions and actions. Only large transactions in cash are reported as suspicious (10.000-15.000 KM and above).

Money laundering is another economic crime. Essentially, money laundering is a process of concealing the origins and ownership of assets obtained through criminal activities. The ultimate goal is to "put" the illegally acquired assets into the legitimate financial systems and thus conceal the commission of a crime. The most common forms of money laundering are through the purchase of real estate, money transactions abroad, the establishment of shell companies, the granting of unsecured loans, the purchase of ownership shares, and the use of cash.

Certain shortcomings in the banking sector, weak control of the identity of the parties participating in the payment system, and insufficient verification of the authenticity of the attached documentation are conducive to the commission of economic crimes. The so-called “Internet banking” has opened the doors for transferring funds through anonymous channels, which led to an increased rate of criminal activity. When conducting investigations, it is quite likely that the person involved in criminal activities is a bank clerk, who allows criminal activities to be carried out. To be able to identify the criminal activity and the bank employees involved in it, the investigative teams should be made up of people who have specialized knowledge in banking. As a first step, it is important to establish the criminal responsibility of the bank in the committed crime. If the criminal responsibility of the bank is established, the next step is to establish the criminal responsibility of bank employees.

Establishing the responsibility of employees in a commercial bank can significantly affect the work of other banks. The banking sector whose business operations are based on the principle of legality is a way to preserve the economic stability of a country. Manifestations of financial crimes also adversely affect the stability of the banking sector. A stable banking sector is a prerequisite for economic growth and growth of investments, especially in transition countries such as Bosnia and Herzegovina. Namely, it has often happened in the last few years that money has been withdrawn from the bank accounts of both individuals and legal entities, using false documents. Most often, the perpetrators of these crimes would leave the borders of Bosnia and Herzegovina immediately after withdrawing the money, thus making the investigation and prosecution of these crimes and criminals very difficult. One example of a suspicious transaction is the case of Sberbank BiH from February 2020. Members of the Una-Sana Canton Ministry of the Interior arrested two Ukrainian citizens for withdrawing larger amounts of money from the Sberbank’s ATM. In just three days, the two Ukrainian citizens withdrew at least BAM 2.7 million from a Sberbank account in BiH. Shortly before arriving in Bosnia and Herzegovina, they withdrew money from Sberbank ATMs in Montenegro. This example shows the suspicious transaction activities of foreign nationals in Bosnia and Herzegovina.

Criminal activities often have an international character. Consequently, the BiH Prosecutor’s Office is required to undertake necessary activities in response to mutual legal assistance requests.

Under the law, the SIPA Financial Intelligence Unit (FIU) is obliged to take actions and measures against the reporting entities to prevent money laundering. The FIU may be involved in all investigations of acquisitive crime to provide expert support to the prosecutors. According to legal provisions, one of the most important functions of the FIU is the international data and information exchange with foreign financial intelligence units and international organizations established to prevent money laundering.

## TO SUMMARIZE:

### Type of facts which can be proved by evidence

- Private
- Family
- Business
- Legal/normative

### Documents which may contain evidence:

Useful information on criminal offences with a financial element that may be used as evidence is available in numerous official private and public records, such as:

- Data on bank accounts, including bank statements and records, bank cards deposits, payments, cheques, loan applications, SWIFT wire transfers, withdrawal orders, cash transactions, client communication records
- All documents needed to open a bank account, whether it is for a natural or a legal person
- Date of transfer of the money to a third bank and to which account, analytical cards and account traffic, data on all payments and the payment orders from those accounts
- Records on keeping the money in safety deposit boxes and the deposit receipts
- Records of companies dealing with securities or brokers, such as records on client accounts, trading records, loan applications, accounts for cash transactions, transfer of shares, records on the deposit of securities, client communication records
- Register of credit cards from banks and other financial services, including all declarations of clients and client-related records, or payment slips
- Tax records, such as income taxes, value added tax, gross income tax, property taxes
- Insurance policies, including life insurance, property insurance, car insurance, liability insurance
- Real estate records, including title deeds, construction permits, inheritance records, transfer of title, leases, mortgages
- Personal property records, such as car registration certificate
- Media accounts of the activities of individuals and economic operators
- Digital records, including email user accounts, computers, mobile phones, mobile electronic devices, etc. (these records are very important as they can lead to offshore accounts, storages of precious metals, etc.)
- Register of business companies
- Civil aviation register
- Register of ships, yachts and other craft
- Notary's records of transfer of title
- Records of microfinancing organizations
- Records of associations and foundations
- Cadastre records
- Records of privatization of companies

## Institutions which may be holding evidence:

- Custom
- Tax authorities
- Indirect Taxation Authority
- Financial police
- Securities Commission
- Land registry
- Banking agency
- Corporate or business registry
- Auditing registry

Useful information on the elements of criminal offenses can be recorded in public or private documents. Some of the documents that can provide relevant information about criminal activities are:

- bank accounts, excerpts from the client's business books, records of money transactions;
- securities trading records;
- data from the FBiH/RS/BD BiH Tax Administration;
- insurance policies;
- records on the possession of the real estate and movables;
- media headlines;
- notarial documents, namely sales contracts, i.e., contracts of transfer of ownership;
- registers of companies at municipal or basic courts.

Institutions that can participate in financial investigations:

- banks;
- insurance undertakings, insurance brokerage companies licensed to conduct life insurance business;
- leasing companies;
- microcredit organizations;
- authorized intermediaries trading in financial instruments, foreign exchange, exchange, interest rates, index instruments, transferable securities, and commodity futures;
- electronic money transfer companies;
- investment and pension companies and funds, regardless of legal form;
- posts;
- casinos, gambling-houses and other organizers of games of chance and special lotteries, in particular betting games, slot machines and games of chance on the Internet and other telecommunication means;
- exchange offices;
- pawnshops;
- notaries;
- lawyers;

- accountants;
- auditors;
- legal and natural persons performing accounting and tax consulting services;
- real estate agencies;
- legal and natural persons engaged in the following activities:
- receiving and/or distributing money or property for humanitarian, charitable, religious, educational or social purposes,
- transferring money or value,
- factoring,
- forfeiting,
- guarding, investing, maintaining, managing or advising on the management of third party assets,
- issuing, managing and doing business with payment and credit cards and other means of payment,
- issuing financial guarantees and other guarantees and obligations,
- lending, borrowing, offering and mediating in loan negotiations, organizing and conducting auctions,
- trading in precious metals and precious stones and their products,
- trading in art objects, vessels, vehicles and aircrafts.

### **Types of investigative actions:**

- Interviews
- Seizure of objects and property
- Search of apartments, premises, and persons
- Special investigative actions

### **Analysis of evidence:**

- High value bank or cash transactions may indicate disproportionate wealth.
- To go beyond the official company organigrams, you need to follow the money: paper trail, transfer of money, access to bank accounts.
- Mapping the network: structure of companies (shell and main companies) strawmen, money mules, middlemen and group leaders.
- Who signs the documents that bind the company?
- Who has access to money and can transfer it?
- Who can open a bank account and have access to it remotely?
- Check for real estate transfers/ expensive renovations: who is the owner and who has power of attorneys (notaries as sources of evidence).
- Special investigation measures (SIM) and surveillance can identify the circle of trust (family, friends, etc.).

The analysis of the submitted evidence should focus on the following:

- Checking the suspect's bank transactions. Inspecting the suspect's bank file to establish who else has access to transaction accounts. Checking and analysing the suspect's bank transactions to identify illicit proceeds.
- Financial investigation results i.e., results of the analysis of collected evidence often contribute to detecting undiscovered criminal offenses and other suspects. In other words, it leads to discovering and identifying all actors of a criminal group. The crime is not exclusively committed by a single person. Financial patterns of crimes imply the action and participation of several persons who make up a criminal group.
- To obtain credible evidence, the prosecutors running the financial investigation often have to investigate into or oversee the operations of some persons close to the suspect.
- One of the ways to identify the assets is by analyzing the suspect's ownership rights over real estate and possible transfers of real estate ownership by the suspect.

#### **Preliminary identification of suspects:**

- In order to identify potential targets of the investigation it is important to —**follow the money** or other forms of gain or benefits and determine who profited from the alleged facts act and how. To such end, the following suggestions should be taken into account:  
tax returns, financial disclosure forms, employment records, and loan applications should be reviewed; life insurance; receipts for home improvements; living expenses; trusts, etc.
- Once a particular suspect has been identified (or grounds for suspicions arise), the screening process should include persons with whom they have strong ties (family members, business associates, etc.) considering that bank accounts, real estate, land or stocks are often in the names of people of the suspect's trust.

The focus of the bodies responsible for conducting financial investigations is on detecting and identifying illegally acquired assets. To this end, it is necessary to determine the flow of illegally acquired money. The ultimate goal of criminal activities is to “put” the illegally acquired money into the legal financial system. To achieve the objectives of financial investigations, it is necessary to analyze the documentation submitted by the tax authorities administration, Indirect Taxation Authority, commercial banks, and other persons.

The initial investigative actions are not limited exclusively to the suspect. The close connection of the suspect with certain persons may point to the fact that the suspect transferred illegally acquired assets to close family persons or friends. Having in mind the above, persons close to the suspect often need to be subjected to special investigative actions.



## FOR DISCUSSION

- What is the evidence threshold for conducting coercive investigative actions?
- Ensuring the chain of custody of evidence
- Presence of expert accountant during the search to assist in identification of items (documents) to be seized
- Dealing with digital evidence: mobile/computers (asking for passwords is alright); otherwise software for cracking is necessary
- Seizing cash
- How to ensure legality as evidence of documents/items voluntarily given to the prosecution
- Importance of expert evaluation on seized objects
- What about financial disclosures combined with open sources showing disproportion between salary and lifestyle?

### Questions for discussion:

- How are illegally acquired assets confiscated?
- What is the importance of professionals with financial knowledge in conducting a financial investigation?
- How should the legality of evidence in this type of crime be ensured?
- What is the importance of electronic data and electronic systems in a financial investigation?

# INTERNATIONAL INVESTIGATION

→ **MILESTONE N° 8: IN INTERNATIONAL INVESTIGATIONS, THE SHARING OF INFORMATION IS KEY.**

## **A. General features**

The most prominent financial cases have an international dimension. This is because the dirty money resulting from the financial crime committed in BiH needs to be “laundered” before being reinvested, in BiH or elsewhere. Hence the link between money laundering and the predicate offence (for example corruption, illicit trafficking or tax evasion). Money laundering for large sums is typically carried out through financial operations in different countries.

In this relation, the use of offshore circuits is key, as their role is to provide secrecy and hide illegal activities by protecting the identity of the owner of the illegal assets. According to a 2017 European Parliament Study on *Money Laundering and Offshore Activities*, money laundering is realized in three phases:

The first phase of money laundering occurs at placement where the proceeds of crime are deposited at a bank, smuggled over a border or infused with the turnover of a legitimate business. This phase can be called the placement or pre-wash phase. The second phase is the layering phase (the main wash) where money is circulated many times, either nationally or all over the globe to hide its illegal source. In this phase complicated financial constructions such as complicated hedging and derivative constructions can occur. It is this second phase where offshore centers play an important role. The more often the money gets transferred around the globe in the layering phase, the less traceable its criminal origins are. The third phase is the reintegration phase, where the by now clean money is parked permanently, like in the bond market or in the real estate sector, buying companies or buying expensive cars and jewels. Criminals often like to permanently park their money to close where they live.<sup>13</sup>

Offshore circuits are used to create offshore companies, which are very often just shell companies, i.e. companies without any economic activity, which are used to transfer the money from one place to another. In its 2015 study on offshore centers, Van Koningsveld distinguishes four types of offshore companies: international business companies, non-resident companies, exempt companies, zero tax companies.<sup>14</sup>

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<sup>13</sup> See [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/595371/IPOL\\_STU\(2017\)595371\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/595371/IPOL_STU(2017)595371_EN.pdf), p. 15.

<sup>14</sup> Ibidem p. 42

Given this background, international investigations require a special approach because the investigation will be conducted outside national borders, meaning that the prosecutor from the Bosnian-Herzegovinian prosecutor's office will have to count on good cooperation with foreign counterparts. Investigations in cases of tax evasion, fraud and money laundering with international elements come with many obstacles. Developing cooperation with foreign countries is not always easy. Sometimes the countries are not keen to respond quickly and deliver the necessary information which makes the case even more complicated. Specialization and training of investigators are key to successful investigations.

All actors in the investigation should be familiar with their duties and responsibilities as it is the only way to avoid miscommunication as well as to fulfil all the crucial steps

Concerning international investigations, the beginning phases are the most important. In these phases, it is of utmost importance to utilise the available common tools and to do that jointly with the teams from other countries. The best example would be EUROJUST.

Sharing the information is of immense importance when it comes to complex investigations of money laundering. Information about the flow of money and its final destination are essential for uncovering the perpetrator. There is only one conclusion that can be withdrawn from that - during the investigation, all participants should be familiar with their duties and responsibilities as it is the only way to avoid miscommunication as well as to fulfil all the crucial steps.

After the perpetrator has been uncovered, it is reasonable to expect that the foreign state will not allow the extradition of its citizen. It is also easier to arrange the trial in the perpetrator's country than to go through the extradition process. Persons with diplomatic immunity cannot be arrested in a foreign country, but with enough cooperation between the two states, the foreign country in question can lift the immunity upon notification of the committed criminal offence. During the investigation phases, the investigator has to have in mind that one person cannot be tried twice for the same criminal offence (*ne bis in idem*), but can be investigated twice in two different countries. The fundamental rule in international investigations is that every country convicts its own citizens.

Every case needs evidence which show the intention to commit the criminal offence in question. The essential moment for proving intent is the time of the criminal offence in question or the time when fictional insolvency occurred, as well as the transfer of ownership on some property. All the above-mentioned reasons are directing the investigators towards fraud and can be the basis for house searches and confiscation of property. Fifty percent of all court decisions is on rejecting the prosecutor's proposal, and it is the prosecutor's responsibility to put in more effort and reach the goal of the investigation.

Economic crimes in their manifestations often have an international character. The criminal offense of money laundering in its forms includes the movement of illegally acquired assets through international financial systems. In practice, the suspicious

money that is being laundered in Bosnia and Herzegovina often comes from the so-called “offshore zones” and money acquired through illegal activities in Bosnia and Herzegovina is transferred to accounts in the “offshore zones”. Preventing, detecting, and sanctioning criminal groups whose activities have an international character requires a high degree of international cooperation and coordination between states. International organizations which have committed to the implementation of international standards regarding the confiscation of proceeds of crime play an important role in fighting all the forms of international financial crime. International cooperation in such investigations most often is about finding and securing evidence of illegally acquired assets, joint investigations, and implementation of special investigative actions and temporary measures, i.e., seizure of assets and assistance in confiscating the proceeds of crime.

If proceeds of crime are suspected to exist in foreign countries, all possible actions shall be taken through police cooperation between states based on a concluded international agreement. One of the ways to conduct investigations is directly through the cooperation of individual prosecutor’s offices or agencies, provided that such type of cooperation is agreed based on a contract or an MLA agreement. International cooperation is usually enforced through international letters rogatory. The practice has shown that this type of cooperation is a “static instrument” due to the very long deadlines for delivery of the requested information, which is burdened with numerous linguistic and legal difficulties. On the other hand, there is the possibility of forming joint investigation teams. The form of cooperation through JITs is much more flexible because there are fewer language problems and there is a free flow of information.

Establishing JITs is also financially more favorable for investigating cross-border forms of financial crime. A positive example of the above is the cooperation of the BiH Prosecutor’s Office implemented through the EUROJUST agreement.

Forms of international financial crime are not an obstacle to respecting the *ne bis in idem* principle. Article 92a of the Law on Mutual Legal Assistance in Criminal Matters defines the manner of informing about the existence of parallel criminal proceedings.

## **B. Addressing mutual legal assistance (MLA) requests from other countries**

The special feature of international investigations is that initial information may lead to a request for assistance submitted by a foreign judicial authority.

A frequent scenario is that the foreign prosecutor’s office has found illegal activity in its territory, while the money issuing from the fraud has been sent to Bosnia. It may have arrived directly, or it may have gone down a complex route involving other countries before arriving in Bosnia and Herzegovina. Under that assumption, the main criminal offence (theft, embezzlement, drugs or human trafficking, etc.) has been committed in the country of the prosecutor’s office that requested assistance. In this case,

the money laundering activities were committed in Bosnia and Herzegovina. What should the BiH prosecutor do when s/he receives such a request for assistance?

The prosecutor leading the case in Bosnia and Herzegovina will have to act on the request. First, s/he will have to contact the bank where the crime proceeds have been transferred and obtain all the bank documents related to the account(s) in question. S/he must obtain identification of the user or account holder (or any other authorised person), bank statements, etc. S/he must also obtain additional documents such as swift codes and significant operations recorded on the account. These documents are key because they will enable the precise identification of the origin of the funds arriving into the account(s) and the ultimate destination of such funds.

The BiH prosecutor will also have to send to the foreign counterpart, as agreed and, if necessary, based on an additional request, any intelligence related to the persons identified from the bank documents. It is important that all these operations are conducted with the full compliance of the requesting authority. Namely, it would be good to establish a direct line of communication, by phone or e-mail, so as to avoid any delays in execution. In particularly significant cases, meeting in person can also be useful.

Mutual legal assistance is aimed at obtaining documentation and data on the committed crime. The specificity of such investigations comes to the fore if the criminal offense was committed on the territory of the requested state. Under the law, the communication between the BiH Prosecutor's Office and judicial bodies of foreign countries goes through the Ministry of Justice of BiH, but in case of the urgency of criminal matters, the communication can go through and via international organizations. Bearing in mind that the BiH Prosecutor's Office often conducts investigations into criminal acts with the so-called foreign elements, the BiH prosecutors are required to collect data on financial flows in Bosnia and Herzegovina, and to coordinate the collection of financial documentation with foreign judicial authorities. During these investigations, two countries usually form joint teams to conduct joint investigations. When it comes to international money laundering, it is important to note that some countries have different financial and banking provisions. Since it is not possible to harmonize all legal regulations, it is important to find a common solution for preventing money laundering, hence, cooperation, communication, and joint investigation teams should be one of the goals of joint actions. Mutual cooperation with the application of modern and effective methods is one of the ways to prevent money laundering. Individual efforts of one state without the involvement of other states in the process of investigating crimes with international elements can only cause additional costs without yielding any results.

## **C. Opening of a domestic investigation following a MLA request**

The execution of a mutual legal assistance (MLA) request from a requesting country should lead to initiating a criminal investigation in BiH in order to prosecute both natural and legal persons, including banks, that committed a crime in BiH, such as money laundering.

It is up to the BiH prosecutor to make this decision. Of course, the requesting authority must be notified in order to avoid overlapping.

This decision may prove key in a money laundering case. This is particularly true when, as we described in our example, the initial illegal activities were committed in the requesting country, and Bosnia and Herzegovina must investigate facts related to the money laundering committed in BiH. The BiH prosecutor will have to deal with the bank, the person responsible for that client's bank account and the bank's policy in these matters.

A search of the bank may also prove useful. The bank as a legal person must also be treated as a suspect if it failed to carry out its obligations in relation to money laundering. For example, this is the case when the bank allows frequent withdrawals of large sums in cash without additional checks, when it does not conduct any check to ascertain the origin of the funds and when it does not abide by laws and regulations against money laundering, etc. Prosecuting the bank (and any managers involved) for money laundering or complicity in money laundering will have to result in considerable monetary fines. The credibility of Bosnian-Herzegovinian financial institutions is at stake.

The reverse is also possible: a third country may discover suspicious money laundering operations, for example Cyprus or Switzerland, and may then request that Bosnia and Herzegovina conduct an investigation into the initial illegal activity. Such was the case when some Bosnians and Herzegovinians committed offences and laundered money in Cyprus or Switzerland. In that case, it is important that the BiH prosecutor initiate an investigation and convey the findings of that investigation to Switzerland or Cyprus so that they can qualify the

operations as money laundering and seize the funds they found.

Right there lies the essence of the issue: seizing funds collected by fraudsters. That is the objective of the financial investigation. If the case has an international dimension, the funds will be located elsewhere, not in Bosnia and Herzegovina. That is why full cooperation of the countries involved is paramount. Only then will the investigation be successful.

In conducting international investigations into this type of crime, prosecutors use cash flow reconstruction, proving, and source analysis methods that can help detect international financial links and operations between criminal organizations operating in different countries. The practice has shown that national prosecutors involved in



international financial investigations are often asked to help establish the criminal responsibility of certain persons, i.e., banks in their home countries.

International economic crime has a detrimental effect on the economies of all countries. The prevention of international financial crimes requires the improvement of the law enforcement agency cooperation at the operational level through cooperation with international bodies, timely exchange of information at the regional and international levels, and participation in international operations.

### **TO SUMMARIZE:**

- Exclusive reliance on official channels (i.e., requests through MoJs) is insufficient.
  - Informal network of cooperation with colleagues abroad is key in order to smooth and prepare the implementation of official requests.
  - Bilateral agreements can be very efficient.
  - Role of foreign field missions
  - Gathering of evidence in accordance with the law
  - Receiving a request for MLA can be the trigger to open a parallel investigation in the receiving country.
- 
- Communication between national prosecutors and foreign judicial authorities via Ministry of Justice is a very slow process.
  - One of the ways to provide international legal assistance is through strengthening the cooperation and communication through professional training of prosecutor from Bosnia and Herzegovina and other countries.
  - Effective cooperation can be based on bilateral or multilateral agreements.
  - Better communication needs to be established through international organizations.

# CLOSING OF THE INVESTIGATION

## A. Questioning the suspect

During this stage, the prosecutor's office will officially notify the person under investigation about allegations against them, after it has assessed the elements of the investigation. At this stage, it is important that the person under investigation has access to a lawyer of their choice (or appointed ex officio if the person lacks funds), and above all, that the lawyer has access to case files prior to any questioning of their client.

The investigation thus becomes adversarial, in the sense that the person under investigation may, if they see fit, since they have the right to remain silent, provide explanations that may change the course of the prosecution or even suspend it. The prosecutor will have to weigh the elements provided by the defence against information from the investigation to draw conclusions, one way or the other. But first, the prosecutor will order further investigations, as necessary, having considered the statements of the person under investigation.

This stage is important because often the explanations provided by the person in question throw new light onto the investigation. This is an essential principle of adversarial procedure. Only after a new consideration, based on such statements and subsequent checks, will the prosecutor be able to decide on closing the case. Whether the investigation findings are partially or completely confirmed, or whether they are refuted. In the former situation, the case will be referred to a court for consideration of precise, reasoned and substantiated qualifications. In the latter, the prosecutor will decide to terminate the procedure.

Under Article 217 of the Criminal Procedure Code of Bosnia and Herzegovina, during the investigation, the prosecutor is obliged to interrogate the suspect and make a record of the interrogation, without which the prosecutor cannot file an indictment. The interrogation of a suspect is the first action through which the suspect is informed by the authorized officials of the crimes he/she is charged with. Under the law, during the questioning, a suspect should be enabled to exercise all his/her rights. In other words, the suspect's right to privacy and dignity should be respected during interrogation.

Although the suspect is not bound to present his defense or answer questions posed to him, according to the principle of adversarial proceedings, the prosecutor or an authorized person must provide the suspect with an opportunity to make a statement regarding the charges. In the case suspect is charged with more serious crimes, the practice has shown that the suspects tend to make statements only in the presence of defense counsel, regardless of whether it is a crime that under the law requires a mandatory defense.

## **B. Confiscation of assets from the convicted person**

If the convicted person possesses assets obtained through the commission of a criminal offence, it is fairly easy to confiscate those assets. However, if the convicted person does not have any assets, which is mostly the case, in France, confiscation of assets which are the counter value of assets obtained through criminal offence is done.

Bosnia and Herzegovina has a similar institute, but it can be used only after the final judgement is reached. The counter value is charged through the enforcement procedure. In addition, the CPC of BiH allows the confiscation of assets to be made and the revenues obtained through selling of the illegally obtained assets. It should be pointed out that the confiscation of assets in BiH is not a punishment and it has to be proved that the assets come from the perpetration of a criminal offence.

Article 110 of the Criminal Code of Bosnia and Herzegovina states that no one may retain the proceeds of crime. The precondition for confiscation of proceeds of crime is to have a court judgment establishing that the crime has been committed. Looking at this legal provision, we could conclude that confiscation of proceeds of crime is not a sanction. The institute of confiscation of proceeds of crime is based on the fundamental principle that no one can retain illegally acquired assets.

The legislator in Bosnia and Herzegovina specified money, valuables, and any other property as proceeds subject to confiscation. Under Article 111 of the BiH CC, if confiscation is not possible, - the perpetrator shall pay an amount of money corresponding to the value of proceeds of crime.

In practice, the problem arises if the proceeds of crime cannot be confiscated. Namely, the perpetrators of financial crimes, sometimes even during the criminal proceedings, make a fictitious transfer of assets to their family members. Given the conduct of the perpetrator of the criminal offense, initiating enforcement proceedings to settle the equivalent would be ineffective. Consequently, it is necessary to take legal action to ensure the recovery of the proceeds of crime. Any form of confiscation of assets from the financial crime perpetrator is the biggest punishment for them.

Confiscation of proceeds of crime from large criminal groups would contribute to restoring citizens' trust in the legal system and would have a preventive effect on other criminal groups.

## FOR DISCUSSION

- When is the right time to close the investigation?
- Charging strategy: focusing on the big fishes is a priority, but what if the evidence is insufficient? What about prosecuting the straw and the middlemen?
- Challenges of indictments with multiple defendants: are there options to avoid lengthy trials?
- Immunity and plea bargain agreements as tools
- Charging legal entities
  
- Additional points for further discussion (**Annex 3**) are to be considered as well.

# **ANNEX**

**1. Tax Administration Authorities in BiH - Comprehensive Summary**

**2. Financial Intelligence Bodies in BiH - Comprehensive Summary**

**3. Additional points for discussion**

# I. Tax Administration Authorities in BiH - Comprehensive Summary

## I. Introduction

Due to its distinct constitutional set-up, the BiH tax system is very complex. Tax laws and executive bodies are divided into several levels of power. Institutional basis for taxation, i.e. division of fiscal and tax spheres of competence with pronounced decentralization of the tax authority, contributes further to the complexity of the current tax system and produces numerous negative implications.

Specifically, BiH has **four tax administrations** which are competent for the application of tax legislation as follows:

- a) BiH Indirect Taxation Authority
- b) FBiH Tax Administration
- c) Republika Srpska Tax Administration
- d) Brčko District Tax Administration

The legislative framework and frequent amendments to the legislation strongly affect their performance, effectiveness and operational excellence.

## II. Tax Administration Authorities in BiH

### A. Indirect Taxation Authority of BiH

The Indirect Taxation Authority is a **state level institution** and a **sole body** in Bosnia and Herzegovina responsible for the **collection of all indirect taxes on the entire territory of BiH.**

It was established in 2003 by the Law on Indirect Taxation System in Bosnia and Herzegovina ("Official Gazette of BiH", No. 44/03, 52/04, 34/07, 49/09) as an **autonomous administrative organisation** responsible for its activities to the Council of Ministers of Bosnia and Herzegovina through the Governing Board.

During the course of 2004, the merger of customs administrations and the delegation of power took place, and a Tax Sector at state level was established for the first time tasked with developing and maintaining a unique value added tax (VAT) system. The Indirect Taxation Authority (hereinafter: ITA) has been functioning as an integral entity at the entire territory of Bosnia and Herzegovina as of January 1, 2005. A year and half later, the ITA began with registration of VAT taxpayers as the final phase of preparations for the VAT introduction and consequently successfully introduced a new taxation system.



The ITA is an **autonomous administrative organization** responsible for its activities, through its Governing Board, to the Council of Ministers of Bosnia and Herzegovina. The Governing Board consists of six members out of which three are ministers of finance as ex officio members.

The headquarters is in Banja Luka. Its field activities are run by four regional centres in Sarajevo, Banja Luka, Mostar and Tuzla, 30 customs sub-offices and 59 customs posts, out of which 40 are passenger border crossings, 4 airports, 8 railway border crossings, 3 overseas mail offices and 4 free zones. The organizational structure is the following: five sectors and four departments comprising the Office of the Director.

## Legal framework

- Law on Indirect Taxation System in Bosnia and Herzegovina (“Official Gazette of BiH”, No. 44/03, 52/04, 34/07, 49/09)

In addition:

- Law on Value Added Tax (“Official Gazette of BiH”, No. 09/05, 35/05, 100/08)
- Law on the Prevention of Money Laundering and Financing of Terrorist Activities (“Official Gazette of BiH”, No. 53/09, 47/14, 46/16), IX DUTIES OF OTHER AUTHORITIES UNDER THIS LAW, Article 59-60 and Article 66 (Deadline for Keeping Data by Indirect Taxation Authority of BiH)

*Note from the author: Due to the specifics of the Indirect Taxation Authority of BiH within the system and legal framework of BiH, the relevant information is presented in a slightly adjusted manner.*

## B. Tax Administration of the Federation of Bosnia and Herzegovina

The FBiH Tax Administration is a **federal administration within the FBiH Ministry of Finance** established in 2002 by the Law on the Tax Administration of the Federation of Bosnia and Herzegovina (“Official Gazette of FBiH”, No. 33/02, 28/04, 57/09, 40/10, 27/12, 7/13, 71/14 and 91/15).

It is managed by a director who has a deputy, and both are appointed and dismissed by the Government of the Federation of Bosnia and Herzegovina upon proposal of the federal Minister of Finance for a period of four years with the possibility of reappointment. The FBiH Tax Administration (TA) is organised in two levels as follows:

- Central Office in Sarajevo,
- cantonal tax offices with the belonging tax outposts (10 cantonal tax offices with 73 outposts).

## Legal framework

- **Law on the Tax Administration of the Federation of Bosnia and Herzegovina (“Official Gazette of FBiH”, No. 33/02, 28/04, 57/09, 40/10, 27/12, 7/13, 71/14 and 91/15)**

The FBiH Tax Administration is regulated by the Law on the Tax Administration of the Federation of Bosnia and Herzegovina (“Official Gazette of the Federation of BiH, No: 33/02, 28/04, 57/09, 40/10, 27/12, 7/13, 71/14 and 91/15). This Law provides the basis for the application of all tax laws, the Law on the Single System of Registration, Control and Collection of Contributions, the Law on Fiscal Systems and the Law on Contributions in the Federation of Bosnia and Herzegovina and related subordinate legislation, and it stipulates specific tax-related offenses and sanctions thereof.

## Mission

The FBiH Tax Administration is competent for conducting and implementing activities in relation to all types of federal, cantonal, city and municipal taxes and contributions, charges, fees, tourist board membership fees, membership fees of chambers of trades and crafts and tax offence fines.

The main tasks of the FBiH Tax Administration are as follows:

- taxpayer registration and identification,
- registration of payers of contributions and insured persons,
- receipt and processing of tax returns and statements, tax assessment, tax collection and refund,
- regular and enforced collection of tax arrears,
- establishing the timeliness, legality and accurateness of filed tax returns,
- conducting audits,
- conducting tax investigations,
- issuing tax rulings,
- cooperation with tax and other authorities and other tasks in accordance with the Law.

## Relations and co-operation with the police, prosecutors, tax authorities and other bodies, institutions and authorities

The Tax Administration (hereinafter: TA), when determining the facts and (or) circumstances that give reason to doubt in the existence of tax crimes, will investigate the relevant information and, after the decision that the basis for raising criminal charges for a criminal offence exists, will pass the relevant evidence and recommendations to the competent **prosecutor’s office** (hereinafter: PO).

At the PO’s request, the tax authorities will assist in gathering data in the investigative proceedings due to the violation of tax laws.

At the request of the TA, the **federal and cantonal authorities for internal affairs** are obliged, without compensation, to ensure the necessary assistance for the execution of tax activities, especially in cases of detaining persons or providing other types of assistance during field work.

**Tax authorities** are obliged to co-operate with each other during the execution of duties related to enforcement and the execution of tax laws.

For the purpose of mutual co-operation, the Indirect Taxation Administration will, without compensation, make available to the TA the information for the following:

- inspection surveillance of people who are subject to tax payments that emerge from cross-border transfer of goods,
- application of tax obligations that emerge from cross-border transfer of goods.

Tax authorities and **other governmental institutions and authorities in BiH** are obliged to co-operate with each other, without compensation, in executing tax authorities' duties, and are obliged to exchange information that are relevant for conducting the duties entrusted to tax authorities.

The TA is obliged to exchange information with the appropriate authorities in Republika Srpska and the Brcko District with the purpose of better respect of the tax laws of both entities and the District.

The TA and the Indirect Taxation Administration are obliged to co-ordinate activities and mutually exchange information with the appropriate authorities in Republika Srpska and the Brcko District with the purpose of better respect of the tax laws of both entities and the District.

## **International legal aid**

Providing international legal aid is based on **international agreements**. If there is no international agreement, it is provided based on the following conditions:

- reciprocity,
- if the state receiving legal aid assumes the obligation that the received notifications and documentation will be used only for the purposes of tax, misdemeanour and criminal proceedings, and that these will be available only to those persons, administration authorities and courts that run the specified procedures,
- if the data delivery does not jeopardise the public order and other important interests of the Federation, that there is no danger of giving away trade, industrial, technological or professional secrets, as well as that giving the data will not cause to the taxpayer the damage which is incompatible with the purpose of legal aid.

Before delivering notifications and documentation to a foreign state, the person to which they refer shall be notified.

If an international agreement does not envisage the possibility of mutual direct contact with the foreign authorities, domestic authorities are in contact with the foreign authorities through the administrative authority of Bosnia and Herzegovina for foreign affairs.

### **C. Tax Administration of Republika Srpska**

The Tax Administration of Republika Srpska was established in 2001 by the Law on the Tax Administration ("Official Gazette of RS", No. 51/01, 74/04, 2/05, 96/05, 75/06, 112/07 - consolidated version, 22/08 and 34/09) as a **body of the republic administration within the RS Ministry of Finance**.

It is managed by a director who is appointed and dismissed by the Government of Republika Srpska. The RS Tax Administration organisation includes the central office, regional centres, local offices and temporary offices, as well as other organisational units as prescribed by the act on internal organisation and systematisation of workplaces in the Tax Administration. Its headquarters is in Banja Luka.

#### **Legal framework**

- Law on the Tax Administration ("Official Gazette of RS", No. 51/01, 74/04, 2/05, 96/05, 75/06, 112/07 - consolidated version, 22/08 and 34/09)
- Law on the Tax Procedure of Republika Srpska ("Official Gazette of RS", No. 102/11, 108/11 - corrigendum, 67/13, 31/14, 44/16 and 11/19)

Upon entry into force of the Law on the Tax Procedure of Republika Srpska on 1 January 2012, the Law on the Tax Administration ceased to have effect.

The Law on Tax Administration regulates the unified approach in application of material tax laws and provides the RS Tax Administration the competence to administer all tax laws.

The crucial principle introduced in the RS tax system under this Law is the **self-assessment principle**, whereby taxpayers hold legal responsibility to declare their obligations in line with the procedure and deadlines prescribed under the Law on Tax Administration or other material tax laws. The new approach also dictated the organization of the RS Tax Administration in the following sense:

- separate organizational units have been established within the Tax Administration dealing specifically with education, information, and service to taxpayers,
- a special division was established for the audit of big taxpayers, as well as the very new type of audit – desk audit,

- a separate investigations and intelligence division was set up with the primary task to collect information and properly document any criminal acts perpetrated pertaining to the Tax Administration's competences, using classical criminal investigation procedures,
- audit is organizationally wise separated from collection – in the moment when the inspector's decision on established due liability becomes enforceable, the case is transferred to the team for enforced collection,
- the Law provides for the payment of tax arrears in instalments,
- a collective second instance body for the appeals was established as the Tax Appeals Board whose members from the Ministry of Finance and the Tax Administration are appointed by the Minister of Finance,
- the internal audit was set up with the fundamental task to audit the work of Tax Administration's staff.<sup>1</sup>

## **Mission**

Main task of the RS Tax Administration is to consistently, impartially, and efficiently collect public revenues thus providing service to both Republika Srpska and its citizens. In accomplishing this task, it must steer by the principles of integrity, legality, impartiality and reliability to ensure public trust which is as an important premise for the accomplishment of its task.

In accordance with Article 7 of the Law on the Tax Procedure of Republika Srpska, the RS Tax Administration is competent for the following:

- a) registering and identifying taxpayers,
- b) assessing tax liability in line with the law,
- c) auditing legality and regularity in the application of tax regulations, including calculation and payment of taxes and interest,
- d) regular and enforced collection of taxes and surtaxes,
- e) auditing calculations of gross salaries of employees for the purpose of this Law and provisions of the General Collective Agreement and other agreements concluded in reference thereto,
- f) detecting and preventing perpetration of crimes and tax violations within the scope of its competence, and filing reports to the competent prosecutor's office,
- g) conducting first instance tax procedures,
- h) imposing protection measures and penalties for tax violations, in line with the law,
- i) keeping tax records and tax books, j) keeping the fiscal real estate register and other prescribed registers,

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<sup>1</sup> For more organizational details, please see the organizational chart provided on the website.

- k) informing and educating taxpayers, at their request, about current taxes, procedures and tax payment requirements, their rights and obligations, and tax regulations,
- l) issuing certificates pertaining to data kept in its official records,
- m) preparing activity reports and publishing them on the web page of the Tax Administration, where the form, the contents, the method and requirements of publishing shall be prescribed by the Minister of Finance (hereinafter 'the Minister'),
- n) other tasks in accordance with the law.

### **Relations and co-operation with other bodies, institutions and authorities**

In accordance with Article 8 of the Law on the Tax Procedure of Republika Srpska, the **republican administrative bodies, organisations, public enterprises, institutions and funds** provide necessary professional assistance to the Tax Administration for the purpose of implementation of tax regulations.

### **International Legal Aid**

In accordance with Article 9 of the Law on the Tax Procedure of Republika Srpska, the RS Tax Administration has the **right to seek international legal aid in its work**. In the sense of this Law, international legal aid means the right of the Tax Administration to refer to a foreign tax body with a request for assistance in resolving a certain tax case, as well as to deliver to this body available information and documents pertaining to a specific taxpayer.

Provision of international legal aid is based on **international agreements**. If no international agreement has been concluded, it shall be provided under the following conditions:

- a) reciprocity, or
- b) delivery of information does not endanger public order and other interests of the Republic, there is no danger of disclosing official, commercial, industrial, technological or professional secrets, and delivery of information shall not cause damage to the taxpayer which is inconsistent with the purpose of the legal aid.

The person to which the information and documents relate shall be notified before the delivery of information and documentation to a foreign tax authority.



## **D. Tax Administration of the Brcko District of BiH**

The Tax Administration of the Brcko District of BiH was established in 2002 by the Law on the Tax Administration of the Brcko District of BiH ("Official Gazette of the BD BiH", No. 03/02, 42/04, 08/06, 03/07, 19/07, 02/08, 06/13, 35/17, 03/19, 08/19 and 11/20) as an **independent institution of the District** responsible for its work to the Government and the Assembly of the District. The BD BiH Tax Administration is one the **organisa-tional units of the Directorate for Finance of the Brcko District of BiH.**<sup>2</sup>

It is managed by a director appointed by the mayor with a three-fifth majority of the votes of the Assembly. The director is appointed for a period of five years with the possibility of re-appointment and can only be replaced by the Assembly with a three-fifth majority of votes.

### **Legal framework**

- Law on the Tax Administration of the Brcko District of BiH ("Official Gazette of the BD BiH", No. 03/02, 42/04, 08/06, 03/07, 19/07, 02/08, 06/13, 35/17, 03/19, 08/19 and 11/20)

### **Mission**

The BD BiH Tax Administration performs the following tasks:

- preparing the pre-drafts and drafts of laws and other regulations as well as of analysis, information and reports in the field of tax policy,
- analyses the effects of application of the existing laws and proposes measures for amendments to the laws in order to achieve higher revenues,
- prepares the analytical basis for the issuance of tax regulations,
- monitors the impact of tax on economic trends,
- implements the Law on Tax Administration of the Brcko District of BiH,
- performs other activities set forth by programmes and work plans.

Article 9 of the Law on the Tax Administration of the Brcko District of BiH prescribes the main tasks and competencies of the Tax Administration (hereinafter: TA) as follows:

- determine tax obligation,
- create and manage the taxpayer registry on the basis of identification numbers of the taxpayers,
- carry out tax control,
- carry out forced collection,

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<sup>2</sup> The Directorate for Finance of the District was established by the Law on the Directorate for Finance of the Brcko District of BiH with the following organizational units for the performance of its activities: Office of the Director, Treasury and Tax Administration.

- conduct a search of the taxpayer's business premises or apartment in accordance with the law,
- collect evidence of potential criminal activities and inform the Public Prosecutor's Office about the criminal offences,
- conduct proceedings for misdemeanours,
- request the suspension of the procedures for liquidation and change of status of the legal entity or the termination of performance of entrepreneurs, for the period up to sixty days, for the execution of tax obligations,
- requests from the courts to undertake actions to facilitate the implementation of the tax law,
- issue regulations for the implementation of tax laws in accordance with this Law,
- call the taxpayer or any other person to make a statement and present the books, records and other documentation relating to the implementation of the tax law,
- conduct other activities established by this Law.

### **Relations and co-operation with other bodies, institutions and authorities**

Article 11 of the Law on the Tax Administration of the Brcko District of BiH regulates the mutual co-operation of the TA with other bodies and institutions.

The TA is obliged to co-operate with the **authorities and institutions** of the District, Republika Srpska and the Federation of BiH.

**Courts, police, inspection and other bodies of the District** are obliged to provide the TA with information related to violations of tax laws.

The **customs authority** that performs the customs of goods in the District is obliged to, based on the headquarters/place of residence of the taxpayer, deliver to the TA and the Tax Administrations of Republika Srpska and the Federation of BiH customs documents and other data on the basis of which the customs of goods were made within fifteen days.

The TA is obliged to submit to the **Tax Administrations of Republika Srpska and the Federation of BiH** all information and evidence related to the taxpayers' business based on their headquarters/place of residence.

### III: Sources

→ Official websites:

<http://www.new.uino.gov.ba/en>

<http://www.pufbih.ba/v1/>

<https://poreskaupravar.org/SiteEn/>

[http://df.bdbih.gov.ba/Content/Read/poreska\\_uprava](http://df.bdbih.gov.ba/Content/Read/poreska_uprava)

→ Relevant legislation:

- Law on the Prevention of Money Laundering and Financing of Terrorist Activities ("Official Gazette of BiH", No. 53/09, 47/14, 46/16)
- Law on Indirect Taxation System in Bosnia and Herzegovina ("Official Gazette of BiH", No. 44/03, 52/04, 34/07, 49/09)
- Law on Value Added Tax ("Official Gazette of BiH", No. 09/05, 35/05, 100/08)
- Law on the Tax Administration of the Federation of Bosnia and Herzegovina ("Official Gazette of FBiH", No. 33/02, 28/04, 57/09, 40/10, 27/12, 7/13, 71/14 and 91/15) - *in local languages*
- Law on the Tax Administration ("Official Gazette of RS", No. 51/01, 74/04, 2/05, 96/05, 75/06, 112/07 - consolidated version, 22/08 and 34/09) - *in local languages*
- Law on the Tax Procedure of Republika Srpska ("Official Gazette of RS", No. 102/11, 108/11 - corrigendum, 67/13, 31/14, 44/16 and 11/19)
- Law on the Tax Administration of the Brcko District of BiH ("Official Gazette of the BD BiH", No. 03/02, 42/04, 08/06, 03/07, 19/07, 02/08, 06/13, 35/17, 03/19, 08/19 and 11/20)

## 2. Financial Intelligence Bodies in BiH Comprehensive Summary

The **Financial Intelligence Department (FID)** is the **only financial intelligence unit in BiH** operating in accordance with the binding international standards on the prevention and fight against money laundering and financing of terrorist activities.

The FID was established in 2004 by the Law on the State Investigation and Protection Agency (“Official Gazette of BiH”, No. 27/04, 63/04, 35/05, 49/09 and 40/12) as **one of the main organisational units of the State Investigation and Protection Agency (SIPA)**. It became operational on 28 December 2004 and was admitted to the membership of Egmont Group of Financial Intelligence Units on 29 June 2005.

In its internal organisational structure, it consists of three sections as follows:

- Analytical Section
- Investigation Section
- Section for Legal Affairs, International Cooperation and Support

### Legal framework

- **Law on the State Investigation and Protection Agency (“Official Gazette of BiH”, No. 27/04, 63/04, 35/05, 49/09 and 40/12)**
  - Article 11 (Composition of SIPA)
  - Article 13 (Duties and tasks of the Financial Intelligence Department)
- **Law on the Prevention of Money Laundering and Financing of Terrorist Activities (“Official Gazette of BiH”, No. 53/09, 47/14, 46/16)**
  - VIII. TASKS AND COMPETENCES OF THE FINANCIAL-INTELLIGENCE DEPARTMENT, Section A – FID Procedure, Article 45-58
  - X - DATA PROTECTION AND STORAGE, Article 61-64 and 67
  - XI SUPERVISION, Article 68-73
  - XIII JURISDICTION FOR ISSUING SUB-LEGAL ACTS, Article 74

Unlike neighbouring countries, where the financial intelligence units are of administrative type and operate as independent organisations within ministries of finance, in accordance with Article 11 of the Law on SIPA, the **FID is one of the main organisational units of SIPA, with all police and investigative powers**. Article 13 of the same Law prescribes its main tasks and competences.

Apart from these, the Law on the Prevention of Money Laundering and Financing of Terrorist Activities provides a **special power not only to the FID but to SIPA** as well and the entire system of combating organised and economically motivated crime in BiH. This Law regulates the tasks and competences of the FID in an extensive manner, mechanisms of personal and secret data protection as well as its relations with the prosecutor's offices, law enforcement agencies, foreign financial intelligence units, etc.

## **Mission**

Tasks and competence of the FID are provided for by the **Law on SIPA** and the **Law on the Prevention of Money Laundering and Financing of Terrorist Activities**. Based on these, the FID does the following tasks:

- receives, collects, records and analyses data, information and documents,
- investigates and submits the findings of the analyses and/or investigations, data and documents to prosecutor's offices and other relevant authorities in BiH and abroad,
- performs the tasks pertaining to the prevention of money laundering and financing of terrorist activities,
- promotes cooperation between the relevant authorities of BiH, FBiH, RS and Brcko District of BiH, as well as with the relevant authorities of other countries and international organisations.

In the sense of the **special power** provided by the Law on the Prevention of Money Laundering and Financing of Terrorist Activities, in case of a suspicion of money laundering or financing of terrorist activities, the FID, with **strong mechanisms of personal and secret data protection** and for the **purpose of performing its duties for the prosecutor's offices, law enforcement agencies and foreign financial intelligence units, independently, without a court or prosecutorial order**, may:

- collect necessary information and documentation from financial and non-financial institutions and all state-level authorities in BiH,
- in compliance with the principles of the Egmont Group, collect / provide information within international cooperation from / to all 146 financial intelligence units, members of the Egmont Group ,
- issue an order to suspend (block) transactions for up to five working days
- order financial institutions to monitor and report on financial operations of a client, for up to six months.

## **Relations and co-operation with the police, prosecutors, financial and non-financial institutions and others**

Based on the relevant legislation, within its competences, the FID is:

- a) involved in all major investigations into organised and economically motivated crime in BiH** by providing available and/or collected information, carrying out complex fi-

financial analyses, providing expert support to prosecutors by participating in investigation teams, or direct guidance of investigations of money laundering / financing of terrorist activities,

**b) involved in the training of employees of financial and non-financial institutions in BiH, prosecutor's offices and law enforcement agencies,**

**c) responsible for indirect overseeing all financial and non-financial institutions in BiH** that are subject to the Law on Prevention of Money Laundering and Financing of Terrorist Activities as well as to **conduct direct supervision over certain categories of obligors under the Law,** and to **actively cooperate with banking agencies and other supervisory authorities,**

as well as that

d) it has a **leading role in drafting laws, secondary legislation and strategic documents in this area,**

e) officials of the FID chair the **Working Group of BiH Institutions for Preventing Money Laundering and Financing Terrorist Activities,**

**f) represents Bosnia and Herzegovina in the Council of Europe Moneyval Committee and similar international bodies** adopting and/or evaluating compliance with binding standards on prevention and fight against money laundering and financing of terrorist activities.

### **Sources:**

→ Official website: <http://www.sipa.gov.ba/>

→ Relevant legislation:

- Law on the State Investigation and Protection Agency ("Official Gazette of BiH", No. 27/04, 63/04, 35/05, 49/09 and 40/12)
- Law on the Prevention of Money Laundering and Financing of Terrorist Activities ("Official Gazette of BiH", No. 53/09, 47/14, 46/16)

### 3. ADDITIONAL POINTS FOR DISCUSSION<sup>3</sup>

In reference to the section **B. Sources of information specific to financial crimes** of the ground paper for discussion **Methodological Factsheets - Milestones & Strategies for Investigating Complex Financial Crime and Corruption Cases** (pg. 3-5), consider the following additional points for discussion:

- Related to the quality of the reports sent to the POs, if they are not satisfactory, what needs to be improved? The drafting of the presentation of facts, the legal elements?
- Related to the official databases open to the POs, in addition, what kind of information the public administration can provide to police officers at this stage?

In reference to the section **Role of law enforcement agencies (LEAs)** of the above-mentioned ground paper for discussion (pg. 5-6), consider the following additional points for discussion:

Considering that seeking bank statements requires an authorization of the preliminary proceedings judge, initiation of a formal investigation is necessary. Therefore, at the stage of the preliminary investigation, the arising questions could be as follows:

- can the police verify if a private / legal person has an account in a specific bank,
- are the checks with Western Union, for instance, legally possible.

The same questions apply to the requests by the police to the public administration.

In reference to the section **Focus on money laundering and banks' accountability** of the abovementioned ground paper for discussion (pg. 10-14), consider the following additional observations:

When it comes to **financial transactions**, it is needed to have a broader picture of the character and connections behind the crime. The absolute maximum of what can be obtained through the MLA request should be achieved.

What is important is the expression "actual account user" as in offshore structures there are companies which are used for opening bank accounts (in the Cayman Islands, Virgin Islands, etc.).

The prosecutors are always looking for accounts of interest to them including infor-

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<sup>3</sup> During the retreat in Paris taking place in Spring 2021



mation on other accounts as part of the so-called “fishing expedition”. Apart from the documents and data on the SWIFT number, persons and transactions over 10.000 KM, the same data is sought for other accounts, including the accounts for which the actual user has the power of attorney.

The bank has the obligation to identify the actual user even when the account is open to an offshore company. If the bank fails to do so, it can be held accountable.

The level of evidence received from the bank about the account holder with a copy of the passport and all the supporting documents for opening the account is enough for a court in the EU. If it happens that the account has been manipulated in such a way that someone is hiding behind the registered holder, the account holder who only “borrows” his/her name must know about it. In any way, if the account is used by a token or if the account holder draws and sends money on behalf of and for another person, the account holder has to be identified and arrested to give information on what is happening behind the scene because there is no chance that he/she did not know.

Generally, the smallest fish come first, i.e. those who come last in the chain of organized crime. If they refuse to give the information, then the account holders are told that they will be the ones explaining that to the court.

The laws in BiH and France differ from each other and it is difficult to reconcile those perspectives.

When sending an **MLA request**, it is best to make two identical copies - one to be sent and the other one to be used for the point of contact in the foreign country who should enable easier and faster communication and exchange of information.

There are three possible directions in judicial cooperation: directly, through the Ministry of Justice, and through the Ministry for Foreign Affairs, which is the slowest one. Even if the third option is pursued, it is necessary to be proactive and follow the case and urge that it is not processed last.

A warrant is issued against the persons from the account information if they are out of reach, regardless of how the legislation treats them, i.e. as the responsible persons or as those hiding the responsible ones.

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