

Bosnia and Herzegovina's anti-fraud campaign: regulatory and legal challenges

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Abstract

The article presents the analysis of the legal perspective of the actions taken by Bosnia and Herzegovina in combating financial fraud. The text begins with a presentation of the country's social and political history, which allows for understanding the difficulties in building appropriate regulations that create a stable legal framework capable of protecting the country's financial or tax system from rapidly adapting financial crime. Various aspects of financial fraud are analysed in this research. The presented path of creating legal regulations in Bosnia and Herzegovina is an overview of legislative reforms, institutional restructuring, and judicial practice. The main research problem is based on the analysis of jurisdictions' reactions to financial fraud, taking into account the context of the post-war reconstruction of the country's legal and institutional structures and the influence of the international environment in this area. The main research question is: what types of legal actions taken by Bosnia and Herzegovina to combat financial fraud are the most effective?

Keywords: financial fraud, Bosnia and Herzegovina, judicial practice, legal framework, forensic expertise on business records

Kampania Bośni i Hercegowiny przeciwko nadużyciom finansowym: wyzwania regulacyjne i prawne

Streszczenie

W artykule scharakteryzowano perspektywę prawną działań podejmowanych przez Bośnię i Hercegowinę, które dotyczą zwalczania oszustw finansowych. Na wstępie została przedstawiona historia społeczna i polityczna kraju, umożliwiającą zrozumienie trudności w budowaniu właściwych regulacji tworzących stabilne ramy prawne, zdolne ochronić system finansowy czy podatkowy kraju przed adoptującą się szybko przestępczością finansową. Analizie poddano różne aspekty oszustw finansowych. Prezentowana ścieżka tworzenia prawnych regulacji w Bośni i Hercegowinie to prze-

gład reform legislacyjnych, restrukturyzacji instytucjonalnej oraz praktyki sądowej. Główny problem badawczy został postawiony na analizie reakcji jurysdykcji na oszustwa finansowe, uwzględniając kontekst powojennej odbudowy struktur prawnych i instytucjonalnych państwa oraz wpływ otoczenia międzynarodowego w przedmiotowym zakresie. Głównym pytaniem badawczym jest: jaki rodzaj działań prawnych zwalczających oszustwa finansowe, podejmowanych przez Bośnię i Hercegowinę, okazuje się najbardziej skuteczny?

Słowa kluczowe: nadużycia finansowe, Bośnia i Hercegowina, praktyka sądowa, ramy prawne, ekspertyza sądowa w zakresie dokumentacji biznesowej

In the contemporary landscape of transnational crime, the nexus between law and finance has evolved into a critical battleground, where nations grapple to safeguard their economic integrity. This study is focused on Bosnia and Herzegovina (hereinafter: BiH) as a poignant case, exemplifying the ongoing struggle against financial fraud – a legal odyssey characterised by challenges, resilience, and innovative approaches. The research provides essential background information, outlining the subject, structure, purpose, and the central research problem, thus laying the foundation for a comprehensive understanding. BiH, situated at the crossroads of historical and geopolitical complexities, offers a compelling backdrop for exploring the legal measures, institutional frameworks, and policy interventions employed in the relentless pursuit of combating financial fraud.

The overarching **research question** guiding this study is: what type of legal action against financial fraud taken by BiH is proving most effective? Various aspects of financial fraud are analysed in this research. The presented path of creating legal regulations in BiH is an overview of legislative reforms, institutional restructuring, and judicial practice.

The main research problem is based on the analysis of jurisdictions' reactions to financial fraud, taking into account the context of the post-war reconstruction of the country's legal and institutional structures and the influence of the international environment in this area.

Against the canvas of economic reconstruction, political restructuring, and the establishment of a rule of law framework, Bosnia and Herzegovina's journey unfolds as a microcosm of global imperatives. The effectiveness of any legal system in addressing financial malfeasance is paramount, acting as a litmus test for the broader stability and prosperity of a nation.

Research methodology

The proliferation of financial fraud poses a significant challenge to legal systems globally, necessitating focused research to comprehend its manifestations in specific jurisdictions. This study concentrates on BiH, aiming to unravel the complexities surrounding financial fraud through a meticulous methodological design. The dogmatic-normative method, rooted in legal doctrine, serves as the cornerstone of our analytical approach. This method involves a systematic examination of legal principles, statutes, and jurisprudential doctrines relevant to financial fraud in BiH. By scrutinising the norma-

tive framework, we aim to elucidate the legal underpinnings that define, prohibit, and punish financial fraud. This method involves a thorough review of statutory provisions, judicial decisions, and legal commentaries pertinent to financial fraud. Analysing the legal texts provides a foundation for understanding the conceptual boundaries, elements, and sanctions associated with financial fraud within the legal system of BiH. In tandem with the dogmatic-normative method, this study incorporates a comprehensive case study analysis to bridge the gap between legal theory and real-world application. Multiple case studies involving instances of financial fraud in BiH will be examined to extract valuable insights into the practical challenges faced by law enforcement agencies, prosecutors, and the judiciary. The case study analysis involves a qualitative exploration of specific financial fraud cases, examining investigative processes, legal proceedings, and the outcomes of adjudication. By contextualising legal principles within actual cases, this approach enhances the applicability of our findings and offers a practical perspective on the efficacy of existing legal frameworks in addressing financial fraud.

Substantive criminal legislation in Bosnia and Herzegovina

In the context of BiH, characterised by its status as an asymmetric federation, a nuanced delineation of jurisdiction concerning criminal legislation exists, distributed between the overarching state authority and its constituent federal entities, comprising two entities and one distinct district. This intricate legal framework results in a dispersion of incriminations related to financial fraud across four distinct substantive criminal laws.¹ The intricate nature of this jurisdictional division necessitates a comprehensive analysis that extends beyond the mere identification of individual criminal acts. Our examination will encompass all criminal offenses contributing to the manifestation of the deleterious phenomenon of financial fraud within the jurisdiction. This multifaceted exploration aims to unravel the interconnected complexities inherent in the legal landscape governing financial improprieties and their adverse implications for the stability and integrity of the financial system.

Individual criminal acts (financial crimes) in BiH's criminal legislation

Tax evasion or tax fraud (Art. 210 CC BiH). The criminal transgression of tax evasion or fraud within the jurisdiction of BiH pertains to the deliberate avoidance of meeting the fiscal obligations stipulated by the extant tax legislation. This may manifest through the deliberate withholding of requisite information or the dissemination of false particulars concerning one's taxable income or other determinative factors influencing the quan-

¹ Such laws are the following: *Krivični zakon Bosne i Hercegovine* 2003 (Criminal Code of Bosnia and Herzegovina, CC BiH); *Krivični zakon Republike Srpske* 2017 (Criminal Code of Republika Srpska – CC RS); *Krivični zakon Federacije Bosne i Hercegovine* 2003 (Criminal Code of Federation of Bosnia and Herzegovina – CC FBiH); *Krivični zakon Brčko Distrikta Bosne i Hercegovine* 2020 (Criminal Code of Brčko District of Bosnian and Herzegovina – CC BDBiH).

tification of fiscal obligations. The act of committing the offense, therefore, consists of providing false information to competent authorities regarding income, assets, or other facts that are relevant to the determination of the amount of tax or other prescribed obligations. Providing false information that does not relate to tax or other prescribed obligations does not constitute the commission of this criminal offense. The manner in which false information is provided (e.g. orally, in writing, or by other means) is irrelevant to the existence of this criminal offense (Radovanović, Dorđević 1967: p. 253).

It is imperative to note that the severity of this offense is contingent upon the evaded tax amount surpassing the threshold of BAM 10 000.² The perpetrator of such a criminal offense can be any individual with the status of a taxpayer, who fails to furnish mandated information about the tax obligations (termed as *tax evasion*) or, alternatively, provides deliberately inaccurate or false information in relation to the same (referred to as *tax fraud*). In instances of tax fraud, the critical element is the deliberate misleading or deception of the authority tasked with ascertaining tax liability. This pertains to the intentional manipulation or misrepresentation of facts crucial for determining the quantum of tax liability. For the aforementioned action to be legally constituted as a criminal offense, it is incumbent that the sum of tax evaded through fraudulent means exceeds BAM 10 000. The subjective aspect of the act involves a direct intention, encompassing a deliberate intent to evade the payment of taxes (Nešić 1995: p. 377). In the context of this foundational form of the crime, the prescribed penalty for the perpetrator ranges from a minimum of six months to a maximum of five years of imprisonment. This statutory framework seeks to underscore the gravity of such fiscal malfeasance and aims to serve as a deterrent against the intentional subversion of the established tax regime within the jurisdiction of BiH (Badžak 2019: p. 160–177).

Elevating the gravity of the offense, a more severe variant materializes when the monetary obligation exceeds BAM 50 000. A further escalation occurs with a particularly severe form of the offense, denoted by an obligation surpassing BAM 200 000. In the case of the more severe variant, the statutory penalty encompasses a prison sentence extending from one to ten years, underscoring the heightened culpability associated with evasive actions involving larger fiscal sums. The particularly severe manifestation warrants a minimum imprisonment term of three years, reflecting the profound societal and economic impact engendered by offenses of this magnitude.

Paralleling this legal framework, analogous provisions are discernible for the more challenging and notably challenging special form of this transgression, thereby underscoring the legislative intent to address the varying degrees of culpability associated with offenses that involve greater intricacies and financial implications. The penal sanctions prescribed for these aggravated forms of the offense underscore the imperative to deter and penalise acts of financial deceit and malfeasance that undermine the integrity of the taxation system within the legal jurisdiction of BiH.

² The exchange rate of the Bosnian Convertible Mark (BAM) against the euro (EUR) is fixed at 1.9558 BAM for 1.00 EUR.

Customs fraud (Art. 216 CC BiH). The regulation of customs policy falls within the exclusive purview of state authorities in BiH, namely, state institutions. As an embodiment of national sovereignty within the financial domain, the national Criminal Code safeguards customs duties. Within the CC BiH, the commission of customs fraud is delineated as the intentional act, wherein an individual, with the objective of evading customs duties or other import-related obligations exceeding the amount of BAM 5 000, fabricates or submits to the customs authority a counterfeit customs document, certificate, or any other document containing false information.

Customs fraud, beyond being a distinct form of financial malfeasance, represents a specialised variant of document forgery. The protected object of this criminal offense extends to the customs system, an integral component of the unified Public Revenue System. The targeted artifact is a customs document, certificate, or any other document containing pertinent details for determining customs duties or related obligations (Petrović, Jovašević 2005: p. 88).

Crucial to this criminal offense is the presentation of falsehoods within the document, leading to a deceptive representation of legally pertinent facts before the customs authority during the customs procedure. The criminal act is alternatively construed and encompasses the generation or submission of a document with inaccurate content, whether in whole or in part. Two essential conditions underpin this criminal offense: (1) the perpetrator's intent to evade customs duties or other associated obligations, either wholly or partially, and (2) the monetary value of customs duties or other obligations surpassing BAM 5 000 (Petrović, Jovašević 2005: p. 89). This constitutes an objective criterion for incrimination, encapsulating the inherent wrongfulness of the perpetrator's actions. Any person may be deemed the perpetrator of this offense, with the requisite subjective element being a direct intention to circumvent payment of customs duties or obligations. The basic form of the crime attracts penalties of either a fine or imprisonment for up to three years.

Further nuances of the criminal offense of customs fraud are elucidated in its more severe iterations. The first aggravating circumstance arises if the evaded customs amount exceeds BAM 20 000, while the second intensification applies when the evaded customs amount surpasses BAM 80 000. For the former, a prison sentence ranging from one to ten years is prescribed, while the latter mandates a minimum three-year imprisonment.

Fraud (Art. 230 CC RS; Art. 294 CC FBiH; Art. 288 CC BDBiH). Fraud, employed to secure material gains, frequently gives rise to legal ramifications within the purview of civil law, crossing into the realm of criminal offenses. The utilisation of deceit in legal relations transcends a mere encroachment upon an individual's property rights. It also constitutes an affront to intellectual integrity and the foundational underpinning of mutual trust inherent in legal transactions. Fraud, when categorised as a criminal offense, encompasses a peculiar type of collaboration, characterised by a (false) complicity or an indirect execution, wherein the perpetrator manipulates a passive subject as an instrument of execution (Babić, Marković 2018: p. 208). The victim becomes an unwitting tool in the hands of the perpetrator, unwittingly participating in a premeditated scheme aimed

at realising the perpetrator's ulterior, self-serving objectives. Within the criminal justice framework of BiH, the offense of fraud manifests itself in various gradations: (1) light fraud, (2) serious fraud, and (3) particularly serious fraud.

The foundational manifestation of the criminal offense of fraud materialises when an individual, with the intent to acquire illicit financial gain for oneself or another party, engages in the deliberate act of misleading another person through the presentation or suppression of facts. This calculated manipulation induces the deceived party to undertake actions or refrain from actions detrimental to their property or the property of others. The operationalisation of this offense involves the dissemination of false information or the intentional withholding of relevant facts (Sržentić, Stajić 1970: p. 387). False representation of facts occurs when the perpetrator asserts the existence of non-existent facts or presents facts that deviate from actuality, thereby proffering an untruthful depiction. Conversely, concealment of facts transpires, when the perpetrator either misleads an individual regarding the non-existence of factual elements or conceals their actual existence, especially when there exists an obligation to communicate said facts.³ Notably, concealment may be effectuated through both affirmative actions and abstention from action (Sokanović, Orlović 2017: p. 588).

Consequently, the perpetrator shapes a distorted understanding of certain facts in the victim's perception, thus leading them astray. The prolongation or intensification of the victim's delusion is achieved through the perpetrator's strategic use of fact concealment, exploiting pre-existing misconceptions for manipulative ends (Babić, Marković 2018: p. 209).

³ On this issue, the Court of Appeal of the Brčko District of BiH took the following position in case of 96 0 K 124261 21 Kž: "...an obligatory legal relationship can take on the characteristics of a criminal offense of fraud in a situation where, at the time of entering into such a relationship or during its duration, one of the contracting parties enters with the intention to mislead the other contracting party into doing something to the detriment of his property by falsely presenting facts to obtain illegal property benefits for himself or another..." The position of the Court in this case reflects a nuanced understanding of the intersection between civil and criminal law, particularly regarding the criminal offense of fraud. By affirming that an obligatory legal relationship can evolve into a criminal act of fraud under certain conditions, the court underscores the role of *mens rea* – the fraudulent intent – as a decisive factor in delineating civil liability from criminal culpability. Fraud, as defined in the criminal codes of BiH, emerges as a compound offense that simultaneously infringes upon property rights and undermines the integrity of legal relations. The court's acknowledgment of fraudulent intent during the formation or execution of a contractual relationship resonates with the theoretical perspectives advanced by scholars. As Babić and Marković (2018) argue, fraud often exploits the inherent trust within legal relationships, manipulating victims. From a doctrinal standpoint, the Court's decision highlights key elements of the offense of fraud: (1) The role of deceptive intent, i.e. the intentionality behind the misrepresentation or concealment of facts, which aligns with Sržentić and Stajić's observation that fraud requires an active or passive distortion of reality. (2) Fraud undermines the intellectual integrity and trust in legal relations. By emphasising the misuse of contractual trust, the Court draws attention to fraud's dual harm – economic and moral – thereby reinforcing its characterisation as a criminal offense rather than merely a civil wrong. (3) The victim as an instrument of fraud. (4) Gradations of fraud: light, serious, and particularly serious fraud. The contextual factors determining the severity, such as the scale of deception and resulting harm, could further refine the classification of the act within these categories.

Fraud, or the act of misleading, must be executed with the explicit intention of procuring illicit property benefits, either for oneself or for another party. Crucially, for the instantiation of this criminal offense, it is imperative that the obtained property benefit be unlawful, signifying that the perpetrator acquired it without a legal foundation. Completion of the criminal offense of fraud is contingent upon the perpetration of harmful actions against the property of the party held liable. It is noteworthy that the acquisition of a corresponding material benefit by the perpetrator is not a requisite condition for the fulfillment of the offense. Rather, the essential criterion resides in the perpetrator's deliberate engagement in the act of execution with the specific intent of securing an unlawfully acquired property benefit. Within the realm of criminal law theory, a conceptual distinction emerges between the execution of fraud in a material and formal sense. The former pertains to the consummation of the criminal offense when the perpetrator successfully obtains an illicit financial benefit, while the latter is confined to the perpetration of an act of execution with the deliberate aim of securing an unlawful financial gain, irrespective of whether such gain is ultimately realised (Babić, Marković 2018: p. 209).

The conceptual framework further encompasses the notion of attempted fraud, which materialises when the perpetrator perpetrates a deception without a resultant claim on the property of a passive subject or another individual. In other words, attempted fraud occurs when no injurious disposition of property is effectuated. The subjective dimension of the act is characterised by direct intention (*dolus directus*), encompassing the deliberate intent to secure a property benefit without a legal basis (*animus lucri faciendi*). The basic form of fraud carries a prison sentence of six months to three years.

The gradation of the form of fraud is contingent upon both the quantum of unlawfully acquired property benefit and the intent of the perpetrator. Light fraud is discerned when the property benefit does not exceed BAM 300 (exclusive to CC RS; in CC FBiH and CC BDBiH, solely damage of diminutive value is specified), and the perpetrator harbors an intention to secure a modest property benefit or induce negligible damage. In such instances, the perpetrator is liable to face fines or imprisonment for duration of up to one year (as per CC RS) or six months (as per CC FBiH and CC BDBiH). The commission of a serious form of fraud transpires when the property damage surpasses BAM 10 000 but does not exceed BAM 50 000. Particularly serious fraud is identified when the resultant damage exceeds BAM 50 000. Notably, these thresholds pertain exclusively to the jurisdiction of Republika Srpska. In the Federation of BiH and the Brčko District of BiH, serious fraud materialises when the amount is less than BAM 30 000 and does not constitute damage of minor value. Conversely, amounts exceeding this threshold are classified as particularly serious fraud.

Penal consequences in Republika Srpska dictate that the punishment for serious fraud entails imprisonment ranging from one to five years, while particularly serious fraud incurs a penalty ranging from two to ten years. In the alternative entity and district, the prescribed penalty for particularly serious fraud is imprisonment spanning from six months to five years. Importantly, in Republika Srpska, an attempt to commit this crime is punishable and subject to ex officio prosecution, whereas light fraud is prosecutable solely upon the

victim's suggestion. Specific provisions within the Criminal Codes of Republika Srpska, the Federation of BiH, and the Brčko District of BiH delineate that an individual who perpetrates the criminal offense of fraud solely with the intent to cause harm to another, devoid of the intention to attain illegal property benefits, shall face punitive measures. As per CC RS, the prescribed punishment encompasses a fine or imprisonment for duration of up to two years, whereas in CC FBiH and CC BDBiH, the penalties consist of either a monetary fine or imprisonment for a period not exceeding one year.

Fraud in business operations (Art. 272a CC RS; Art. 251 CC FBiH; Art. 245 CC BDBiH). It represents a distinct manifestation of fraud, constituting a *lex specialis* in comparison to conventional fraud. Certain aspects discussed previously will not be reiterated herein. Within the realm of criminal law literature, it is posited that economic operations encompass various forms of production, activities, or services undertaken by individual economic entities in either the private or public sector. Understanding the term „economic operation“ necessitates reference to relevant norms within commercial and tax law (Sokanović, Orlović 2017: p. 593–594). This form of fraud materialises, when an individual, in the course of business operations, deliberately misleads or deceives another to secure illicit property benefits for the legal entity they represent or another legal entity. This misinformation induces the affected party to take actions or refrain from actions detrimental to their own or another's property (Bojanić, Kuharić 2007: p. 575–576).

The criminal act is manifested through the false presentation or concealment of facts pertinent to business operations. Similar to the basic form of fraud, fraud in business operations can be perpetrated with direct intent.⁴ This intent must encompass the false

⁴ According to the Judgement of the Court of Appeal of the Brčko District of BiH in the case of 96 o K 097825 22 Kž: “The criminal offense of fraud in business operations can only be committed with direct intent, as a form of culpability.” This decision of the Court reflects a consistent application of the principles of subjective culpability and the *lex specialis* nature of this offense in the broader framework of fraud-related crimes. Direct intent (*dolus directus*) is a critical element of criminal culpability for offenses involving deception or misrepresentation, as it reflects a purposeful engagement in the act with a clear goal. The court's finding aligns with the understanding of fraud in business operations as a crime that requires the perpetrator to intentionally deceive or mislead another party during business dealings to secure material gain for the legal entity they represent or another entity. This intent must extend to both the act (misrepresentation or concealment of facts) and the consequence (property damage or gain). Without this specific subjective state, the act lacks the necessary mental element to meet the threshold of criminality under the *lex specialis* provisions. Fraud in business operations is a *lex specialis* to general fraud, emphasising its specialised nature. General fraud, as a *delictum communis omnium*, may be committed by any individual and applies broadly. Fraud in Business Operations, a *delictum proprium*, requires the perpetrator to act in the capacity of a business representative or similar position of authority, introducing a heightened standard of culpability. In both instances, direct intent is indispensable. However, the specific nature of fraud in business operations necessitates an added layer of intent: the goal of obtaining benefits for a legal entity or causing harm during the course of economic activities. The court's emphasis on direct intent underscores the importance of a precise mental state when prosecuting fraud in business operations. This interpretation, *inter alia*, prevents over-criminalisation of negligent or reckless mismanagement in economic operations, which might otherwise fall under commercial or civil law remedies. The scholarly works (e.g. Maršavelski 2005; Sokanović, Orlović 2017) provide a robust theoretical foundation for this interpretation. The Court's decision aligns with the view that understanding the term „economic operation“ necessitates reference to commercial and tax law norms. The

representation or concealment of facts, aiming to obtain material benefits without a legal basis for the represented legal entity or another legal entity.⁵ Notably, fraud in business operations is classified as *delictum proprium*, or *deluctum proprium sui generis*, distinct from „ordinary“ fraud, which is considered *delictum communis omnium*, given its requirement for the special characteristic that the perpetrator must be a representative of a legal entity – specifically, a business entity – when engaging in legal transactions (Maršavelski 2005: p. 90). The fundamental penalties for the basic form of this crime, according to the CC RS, encompass both a prison sentence ranging from one to five years and a fine. Conversely, the CC FBiH and CC BDBiH exclusively prescribe a prison sentence spanning from six months to five years.

More severe forms of this crime exist, yet they exhibit distinctions within the antithetical criminal laws of the respective regions. In the Republika Srpska, the initial severe form materializes in situations where a greater property benefit is attained or significant damage is inflicted, subject to the court's assessment. In such instances, a prison sentence ranging from two to ten years and a fine may be imposed. Conversely, in the Federation

interplay between these domains ensures that criminal law interventions target only the most egregious and intentional abuses. By maintaining a direct intent requirement, the Court avoids diluting the specific characteristics that distinguish fraud in business operations from general fraud or regulatory violations. The Court of Appeal's insistence that such fraud can only be committed with direct intent is doctrinally sound and aligned with the *lex specialis* nature of this offense. It reflects the principle that criminal liability should only attach to deliberate, purposeful misconduct in the realm of economic activities.

- ⁵ "It is visible from the legal description of the criminal offense of fraud in business operation from Article 251 [...] that for existence of the basic form of this criminal offense [...] it is necessary that the perpetrator act with the purpose of obtaining an illegal material benefit to the legal entity [...]. As perpetrators of the criminal offense of fraud in business operation under Article 251 [...] the Criminal Code does not specify a responsible person, but the one who undertakes actions as a representative of a legal entity..." (Judgement of the Supreme Court of the Federation of BiH in the case of 09 0 K 000374 10 Kž 6). The first position underscores the necessity for the purpose of obtaining illegal material benefits for the basic form of this offense. This requirement serves several purposes in distinguishing Fraud in Business Operations from related but distinct criminal and non-criminal acts: (1) Specific intent requirement: The decision reinforces the principle that fraud in business operations requires a specific intent to secure an illicit material gain for the legal entity. The „purpose“ (*animus lucrandi*) differentiates this offense from cases of mere negligence or recklessness in business operations. (2) The focus on benefit for the legal entity emphasises the collective dimension of this crime. Unlike general fraud, where individual gain is often at issue, fraud in business operations centres on the entity's advantage. In the context of practical implications, prosecutors must prove not only the misrepresentation or concealment of facts but also the perpetrator's intent to benefit the legal entity. On the other hand, defense arguments may revolve around demonstrating the absence of intent or establishing that any misrepresentation was incidental or unrelated to material gain. The second position clarifies the scope of potential perpetrators by emphasising that the offense can only be committed by individuals acting as representatives of a legal entity. This aligns with the understanding of fraud in business operations as a *delictum proprium*, requiring a specific status or role for the perpetrator. The offense can only be committed by individuals who, by virtue of their position, have the authority to act on behalf of the legal entity in business dealings. This excludes other employees or individuals without such authority. Unlike other economic crimes that limit liability to „responsible persons“ (as defined under certain legal frameworks), this position highlights a broader scope. Anyone performing actions as a representative – whether formally designated as a „responsible person“ or not – can be held liable.

of Bosnia and Herzegovina and the Brčko District, a more severe form is established when the acquired property benefit or anticipated damage exceeds BAM 10 000, carrying a potential prison sentence of one to eight years. The CC FBiH and CC BDBiH outline an especially serious form of fraud in economic operations, triggered when the property benefit or damage surpasses BAM 50 000, warranting imprisonment from one to ten years. The CC RS introduces a distinctive form of this criminal act, denoted as a special form of fraud in economic operations. This variant occurs when the basic form of the act is committed solely with the intention of causing harm to another. In such cases, the perpetrator may face fines or imprisonment for up to one year.

Computer fraud (Art. 410 CC RS; Art. 395 CC FBiH and Art. 389 CC BDBiH). Computer fraud, inherently distinctive as a specialised form of fraud, encapsulates a range of unauthorised activities that undermine the integrity of computer systems. The fundamental manifestation of this offense encompasses actions wherein an individual, with the intent of securing an illicit financial gain for oneself or others, unlawfully accesses, damages, alters, or conceals computer data or programs. In doing so, the perpetrator influences the outcome of electronic data processing, leading to material harm inflicted upon others. The core objective of legal provisions in this domain is the safeguarding of computer systems against the infiltration of false data and fostering trust in these systems (Novaković 2022: p. 88–89).

The commission of the criminal offense hinges on the unauthorised manipulation of electronic data processing outcomes. For an act to qualify as a crime, it necessitates that such actions are undertaken with the overarching goal of obtaining financial benefits, whether for the perpetrator or other parties. The resultant consequence of these actions materializes in causing economic harm to another, irrespective of the magnitude of the damage incurred. The potential perpetrator of this criminal offense is not restricted to a specific category of individuals, and culpability, in terms of guilt, necessitates premeditation. Penalties for computer fraud range from six months to five years of imprisonment for the basic form of the offense (Petrović, Jovašević 2005: p. 326–327). A more severe iteration of the offense transpires when the illicit actions result in the acquisition of property benefits exceeding BAM 10 000, attracting a prison sentence ranging from two to ten years. Furthermore, an even graver form materialises when the ill-gotten gains surpass BAM 50 000, warranting a prison term spanning two to twelve years. A mitigated version of the offense occurs when the criminal act is perpetrated solely with the intention of causing harm to another. The criminal codes prescribe a fine or imprisonment of up to three years for this offense. This variant is characterised by actions such as disseminating incorrect information, failing to input accurate data, or engaging in other deceptive practices that manipulate the outcomes of electronic data processing and transmission. The completed act results in financial losses suffered by the victim (Babić, Marković 2018: p. 370).

The severity of this offense escalates when the basic form leads to the acquisition of property benefits exceeding BAM 10 000 or BAM 30 000. For the basic offense, penalties include a fine or a prison sentence of up to three years. In cases where the offense

takes a more serious turn, the legislated punishment comprises a prison sentence ranging from one to eight years or two to ten years. Additionally, if the perpetrator is motivated solely by the intention to harm another, a fine or a prison sentence of up to six months may be imposed, indicative of a lighter form of this criminal act envisioned by the legislator.

Procedural mechanism

Financial fraud, encompassing a wide range of illicit activities such as embezzlement, money laundering, and corruption, has emerged as a global concern, transcending geographical boundaries. BiH, a state grappling with the complexities of transitioning from post-conflict reconstruction to economic development, recognises the critical importance of effective measures to combat financial fraud. The four criminal procedure laws provide legal framework and govern the procedural aspects of criminal investigations and trials.⁶ It establishes the framework for the collection and presentation of evidence, safeguarding the rights of both the accused and the state. Notably, the codes facilitate the use of modern investigative techniques, such as electronic surveillance and forensic analysis, in financial fraud cases.

The investigation of financial fraud in BiH involves a collaborative effort among various law enforcement agencies, regulatory bodies, and prosecutorial offices. The State Investigation and Protection Agency (SIPA) and the Indirect Taxation Authority play pivotal roles in coordinating and executing financial fraud investigations, as well as police authorities in the entities and in district. SIPA, as the primary agency responsible for investigating organised crime and corruption, employs specialised units with expertise in financial investigations. The Indirect Taxation Authority, mandated with ensuring compliance with tax laws, contributes to financial fraud investigations by scrutinising financial transactions, monitoring tax evasion, and uncovering fraudulent schemes. Collaborative efforts between SIPA and the Indirect Taxation Authority exemplify the synergistic approach adopted by Bosnian authorities in addressing financial fraud.

The most important procedural mechanisms, in addition to all the others, available to law enforcement agencies and prosecutors are: (1) expertise in business records and (2) financial investigation.

Expertise in business records. Business records constitute a reservoir of transactional, financial, and operational data that forms the bedrock of economic analysis and decision-making. In essence, they epitomise a critical facet of contemporary economic architecture, serving as indispensable conduits for tracing market dynamics, resource al-

⁶ These laws are the following: *Zakon o krivičnom postupku Bosne i Hercegovine* 2003 (Code of Criminal Procedure of Bosnia and Herzegovina – CCP BiH); *Zakon o krivičnom postupku Republike Srpske* 2012 (Code of Criminal Procedure of Republika Srpska – CCP RS); *Zakon o krivičnom postupku Federacije Bosne i Hercegovine* 2003 (Code of Criminal Procedure of Federation of Bosnia and Herzegovina – CCP FBiH); *Zakon o krivičnom postupku Brčko Distrikta Bosne i Hercegovine* 2013 (Code of Criminal Procedure of Brčko District of Bosnian and Herzegovina – CCP BDBiH).

locations, financial performance, and strategic maneuvering within the business sphere (Budimir 2017: p. 101–113). The expertise required for the examination and interpretation of business records is a result of interdisciplinary knowledge drawn from economics, accounting, finance, and information systems. The ability to discern subtle patterns, identify anomalies, and synthesise complex data into coherent narratives distinguishes a proficient expert in business records (Ivanović 2015: p. 84–97).

Furthermore, expertise in this domain necessitates a comprehensive grasp of economic theories, financial intricacies, interdisciplinary methodologies, and contextual nuances. This contribution is substantive to economic scholarship, corporate governance, policy formulation, and strategic enterprise decisions.

The authority overseeing criminal proceedings when deemed necessary often enlists this particular expertise. The same authority is obligated to specify the direction and scope of the expertise, along with the facts and circumstances the experts need to establish. Since maintaining proper business records is an obligation for every legal entity, it logically follows that if there is a need to „organise“ the business records of a company, association of citizens, foundation, sole proprietor, or other legal entity, the associated costs fall upon that entity or sole proprietor. In cases where organising records is necessary, the court issues an expert examination order instructing the legal entity or sole proprietor to deposit the required amount as an advance for organising the records. The reimbursement of costs, if not advanced, is made in favour of the authority that has incurred the costs and remuneration for the experts.

Financial investigation. Financial investigation, as a pivotal tool in the fight against organised crime, money laundering, and corruption, finds its conceptual foundation in international legal instruments. While the CPC BiH does not explicitly delineate the contours of financial investigation as a component of the property confiscation process resulting from criminal activities, this lacuna is addressed by specialised legislation within the entities and the Brčko District. Specifically, these enactments govern the confiscation of assets derived from criminal offenses. Within the legislative frameworks of the entities and districts, a financial investigation is construed as a series of evidentiary measures directed towards scrutinising the (il)legal income of a suspect or accused individual, as well as associated parties. These measures encompass an examination of their living expenses and the legitimate avenues through which property may be acquired. This scrutiny is triggered by suspicions that the property in question was derived from criminal activities (Buha 2023: p. 84).

The focal point of financial investigations lies in property suspected of emanating from criminal enterprises. These investigations entail the collection of evidence pertaining to the assets, income, and expenditures of the property owner. Furthermore, details such as earnings, registered real estate, and movable property are scrutinised, typically relying on documentation held by relevant authorities whose collaboration is indispensable for the effective conduct of financial investigations. The confidential nature of the information or its classification as an official secret does not impede the acquisition of requested data, such as records maintained by public services, institutions, or other relevant bodies,

aiming to substantiate the criminal origin of the property. The overarching objective of financial investigations is the provisional and permanent confiscation of assets derived from criminal acts. Participants in financial investigations are tasked with unearthing evidence establishing a causal link between a specific criminal act and the ensuing property gains (Ivičević Karas 2011: p. 15). During the course of financial investigations, actions are taken to uncover and validate the predicate crime, as well as to trace the flow of money and assets acquired through criminal means (Buha 2023: p. 85).

Crucially, a financial investigation operates autonomously and is not contingent on the progression of criminal proceedings. In stark contrast, permanent confiscation explicitly hinges on the initiation of an indictment. Consequently, a financial investigation may be initiated against an individual who is not under criminal accusation but is merely the proprietor of ostensibly „suspicious“ property. Additionally, it can be instigated against an individual who, due to lack of mental capacity at the time of the crime, is deemed not criminally liable. Irrespective of the circumstances, the financial investigation must conclude before the indictment is affirmed in the criminal proceedings, at which point a petition for the permanent confiscation of property is submitted. The initiation of a financial investigation is contingent upon reasonable grounds for suspicion or a belief, supported by collected evidence, that the property significantly surpasses the legal income of the owner, thereby compelling the public prosecutor to proceed (Lajić 2010: p. 349–362).

Despite the strides made in establishing a robust legal and investigative framework, BiH faces several challenges in effectively combating financial fraud. One of the primary challenges is the intricate and cross-border nature of many financial crimes. Transnational elements complicate investigations, necessitating enhanced international cooperation and information exchange. Moreover, the rapid evolution of technology presents a dual challenge. On one hand, technological advancements provide new tools for financial criminals, facilitating sophisticated fraud schemes. On the other hand, law enforcement agencies must continually adapt to harness technological solutions for effective investigation and evidence gathering, such as blockchain analysis and digital forensics. Another challenge is the need for increased capacity building and specialised training for law enforcement and judicial personnel involved in financial fraud investigations. Given the dynamic nature of financial crimes, continuous professional development is essential to ensure investigators possess the requisite skills to navigate complex financial transactions and emerging trends in financial fraud. The criminal investigation of financial fraud in BiH is characterised by a comprehensive legal framework, collaborative investigative mechanisms, and a commitment to international standards. While the nation has made significant strides in addressing financial crimes, challenges persist, requiring a sustained effort to adapt to evolving trends and enhance capacities. By focusing on international cooperation, technological advancements, and ongoing training initiatives, BiH can further strengthen its ability to combat financial fraud and contribute to the global effort to maintain economic integrity.

Aligning BiH's approach to financial fraud with international trends

The globalised nature of financial systems necessitates robust international cooperation to combat financial fraud effectively. In BiH this imperative is underscored by the complexities of its domestic legal framework and the transnational nature of many financial crimes. Aligning national legislation and practices with international trends not only enhances the country's ability to address financial fraud but also reinforces its commitment to meeting global standards.

One of the most significant international influences on Bosnia and Herzegovina's legal framework for combating financial fraud stems from the European Union (EU). While not an EU Member State, BiH's aspirations for EU membership necessitate compliance with EU anti money laundering directives (such as Directive (EU) 2024/1640), Directive (EU) 2018/843).⁷ For example, Directive (EU) 2018/843 emphasises enhanced due diligence, the role of financial intelligence units (FIUs), and improved transparency in ownership structures. Bosnia and Herzegovina has taken steps to align its domestic legislation with these requirements, including the enactment of the (new) Anti-Money Laundering and Counter-Terrorism Financing Law (*Zakon o sprečavanju prava novca i finansiranju terorističkih aktivnosti* 2024). However, challenges remain in achieving full compliance due to institutional fragmentation and varying levels of implementation at the state and entity levels. Notably, EU reports have pointed out the need for improved coordination between the Financial Intelligence Department (FID) of SIPA and other law enforcement agencies in the country.

BiH has made strides in fostering international cooperation, which is essential given the cross-border dimension of many financial crimes. Collaboration with organisations such as INTERPOL and EUROPOL facilitates the exchange of intelligence and joint investigations. For example, the country's cooperation with EUROPOL's European Financial and Economic Crime Centre (EFECC) has enhanced its capacity to combat large-scale financial fraud schemes. Additionally, the country's participation in the Egmont Group of Financial Intelligence Units underscores its commitment to global efforts in tracking illicit financial flows. However, operationalising these partnerships often encounters obstacles, including resource constraints and varying procedural standards.

⁷ In October 2022, the European Commission recommended granting Bosnia and Herzegovina candidate status, contingent on the implementation of specific measures. Subsequently, in December 2022, the European Council officially granted Bosnia and Herzegovina the status of a candidate country (see: European Council 2022). A year later, in December 2023, the European Council announced that accession negotiations would commence once Bosnia and Herzegovina demonstrated sufficient compliance with the membership criteria. The Council also requested the Commission to report on the country's progress by March 2024 to facilitate a decision. Based on the Commission's report of 12 March 2024, the European Council resolved in the same month to open accession negotiations with Bosnia and Herzegovina. It further tasked the Commission with preparing the negotiating framework, which would be adopted once all the requirements outlined in the Commission's recommendation of 12 October 2022 were fulfilled (see: European Commission 2024; European Council 2024).

In assessing the alignment of BiH's legal responses to financial fraud with European practices, notable gaps emerge. Many EU jurisdictions have adopted sophisticated technological tools for real-time monitoring of financial transactions, such as artificial intelligence-based fraud detection systems and blockchain analytics tools. In contrast, Bosnia and Herzegovina's reliance on traditional investigative techniques limits the efficiency of its responses. Furthermore, the lack of a unified national database on financial crimes hampers information sharing and coordination among domestic agencies. Studies, such as those by the OECD and the European Commission, emphasise the critical role of integrated databases in enhancing investigative efficiency and fostering inter-agency cooperation.

The internationalisation of financial fraud presents both challenges and opportunities for BiH. On the one hand, the rapid evolution of fraud schemes, facilitated by advancements in technology, necessitates continuous updates to the legal framework and the acquisition of specialised expertise. For instance, the rise of cryptocurrency-based fraud schemes demands enhanced regulatory oversight and investigative capacity. On the other hand, international collaborations offer avenues for capacity building and knowledge exchange. Participation in regional initiatives, such as the Southeast European Law Enforcement Center (SELEC), has already shown promise in strengthening cross-border cooperation and harmonising practices. Additionally, initiatives like the Council of Europe's Economic Crime and Cooperation Division (ECCD) offer tailored training programs to address the unique challenges faced by transitional economies like BiH.

To enhance its alignment with international standards, BiH should prioritise the following:

- 1) *Legislative harmonisation*: Acceleration of the adoption of EU-aligned anti-money laundering and anti-fraud regulations. Specific focus should be placed on implementing the recommendations outlined in the FATF's Mutual Evaluation Reports and the EU's Stabilisation and Association Agreement progress reports.
- 2) *Technological upgrades*: Investment in advanced monitoring and analytical tools to detect and prevent financial fraud effectively. The adoption of platforms such as the Europol Financial Intelligence Platform could significantly bolster real-time data analysis capabilities.
- 3) *Capacity building*: Providing specialised training for law enforcement and judicial personnel to address the complexities of transnational financial crimes. Programs developed by the International Anti-Corruption Academy (IACA) could serve as effective models.
- 4) *Institutional coordination*: Establishment of the centralised national database to improve inter-agency cooperation and streamline investigative processes. This should be complemented by a comprehensive legal mandate to ensure data interoperability across state and entity jurisdictions.

By addressing these priorities, BiH can bolster its legal and institutional frameworks to combat financial fraud effectively while demonstrating its commitment to global imperatives in maintaining economic integrity.

Conclusions

Criminal legislation governing BiH's campaign against financial fraud unveils a comprehensive yet multifaceted legal landscape. The existence of four distinct criminal laws, each addressing financial fraud at various levels of jurisdiction, reflects the nation's commitment to combating economic crimes comprehensively. However, as this paper has elucidated, the simultaneous presence of national, entity-level, and district-level laws leads to inevitable overlaps and, more significantly, a nuanced divergence in the sanctions prescribed for similar fraudulent offenses. The foundational strength of BiH's legal framework lies in the meticulous delineation of financial fraud incriminations across these four laws. The clarity in definitions and the extent of coverage leave little room for ambiguity, providing a solid foundation for the prosecution of economic crimes. This comprehensive approach ensures that financial fraud, regardless of its manifestation, is met with a legal response that aligns with the severity of the offense.

Nevertheless, the observed disparities in sanctions among the various jurisdictions pose a challenge that merits careful consideration. The existence of identical definitions of fraudulent crimes within different laws, coupled with varying penalties, raises concerns about legal uniformity and the potential for disparate treatment of offenders based on geographical boundaries. This incongruity in sanctions not only undermines the principle of equality before the law but also poses practical challenges for law enforcement agencies and judicial bodies operating in a harmonised manner across the nation. Addressing this issue requires a delicate balance between the autonomy granted to entities and districts in legislating criminal offenses and the imperative of establishing a cohesive national response to financial fraud. While acknowledging the benefits of local laws tailored to the specific needs of entities and districts, efforts must be directed towards harmonising the sanctions for financial fraud across all levels of jurisdiction. A cohesive approach will not only promote legal consistency but also foster a sense of justice that transcends regional boundaries.

In light of the global context, where financial crimes often transcend national borders, BiH must consider international best practices and standards in refining its legal framework. Collaborative efforts with international organisations and neighboring nations can provide valuable insights, enabling the incorporation of effective strategies to combat the evolving tactics of financial criminals. The pursuit of a more streamlined and harmonised legal framework should not be construed as a critique of the existing system. Rather, it is an acknowledgment that the legal landscape is dynamic, and continuous refinement is essential to meet the challenges posed by sophisticated financial crimes. The commitment of BiH to the fight against financial fraud is commendable, and the nation stands at the threshold of further enhancing its legal mechanisms for a more effective and equitable response.

In conclusion, the legal campaign of BiH against financial fraud is characterised by a robust foundation, intricate challenges, and a commitment to continuous improvement. As the nation charts its course in refining the legal framework, it must strive for a harmonised approach that not only addresses the nuances within different jurisdictions but

also aligns with global standards, ensuring a resilient defense against the ever-evolving landscape of financial crime.

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