Discovering the Money Trail: Money laundering Prevention and Enforcement in Bosnia and Herzegovina

Experts Conclusions and Recommendations

Claire A. Daams

Stanley E. Morris

Table of Contents

Page
List of Materials 3

Introduction 4

1. *The organisational structure of Bosnia and Herzegovina 7*
2. *The money laundering situation in Bosnia and Herzegovina 11*
    1. *The crime problem 11*
    2. *The criminal justice response 12*
    3. *The vulnerabilities of the financial system during the economic Transition 13*
    4. *The governments approach 15*
3. *Recommendations 17*
    1. *legal reform 17*
    2. *system improvements 21*
    3. *capacity building 23*
    4. *outreach 24*

Appendices:

1. *Brief Biographies of the experts 26*
2. *Analysis of the anti money laundering law in the Federation of Bosnia and Herzegovina and the Republika Srpska 27*
3. *Principal International Conventions, Standards and Recommendations relating to anti money laundering measures 37*

List of Materials

- *European Stability Initiative in particular its Background papers 3, 4, 7, 8 and the Papers on Reshaping International Priorities in Bosnia and Herzegovina part one and two*
- *The Comprehensive anti-Corruption Strategy for Bosnia and Herzegovina prepared by the Anti-Fraud Unit, Economics Department, OHR (February 1999).*
- *Facts about the Central Bank of Bosnia and Herzegovina from the webside www.cbbh.gov.ba.*
- *The Council of Europe's' Report on the Planning workshop on corruption, organised crime and money laundering in Bosnia and Herzegovina (Banja Luka, 16-17 December 1999).*
- *The anti-corruption strategy for Federation of BiH-Federation Government, February 2000.*
- *A set of draft materials provided by the Macroeconomic Technical Assistance Project on the existing payments systems and how reform proposals will affect them.*
- *The Law on the Prevention From Money Laundering in the Federation of Bosnia and Herzegovina.*

- *The Working Version of the Republic Srpska Money Laundering Law (Banja Luka, January 2000).*

INTRODUCTION

Money laundering is the process of concealing the illegal source of the proceeds of criminal activity in order to put them into legitimate financial commerce. The issue of money laundering is integrally connected with the problems of corruption, organised crime, fraud, smuggling and other crimes for profit. The problem has serious consequences if it is not adequately addressed. The ability of criminals to assemble and legitimize wealth has the potential to undermine democratic institutions and to pervert economic systems. Illegally derived proceeds permits criminals to develop political and economic power at the expense of honest citizens and legitimate businesses. Countries that have not dealt adequately with the issue of money laundering have found that there officials are subject to corruption and that legitimate international investment dries up. Therefore anti-money laundering programs are more than simply a law enforcement tool to deal with the proceeds of crime. They are essential components in protecting a nations democratic institutions and economic freedoms.

Also, Money laundering increasingly is an international activity, taking place on a global scale. As a consequence numerous international organisations have established standards, procedures and recommendations to address this phenomenon. Today money laundering is considered a serious crime by most nations, and it is generally accepted that without adequate laws and procedures to address the prevention, detection, investigation and prosecution of money laundering, governments are at risk at being undermined by organized crime and corruption. It is also recognised that because financial commerce is inherently international, there should be consistency in the application of these laws. Therefore, the Council of Europe, the European Union, the Financial Action Task Force (FATF), created by the G-7, and the United Nations among others have laid out a roadmap for achieving effective anti-money laundering programs for their member nations.

Bosnia and Herzegovina (BiH) has recently begun to take some preliminary steps to address this problem. In the Federation of Bosnia and Herzegovina (FBiH) a law on money laundering prevention was enacted in March 2000. The Republic Srpska (RS) has a draft law on money laundering, but it is not clear whether this draft will pass parliament in its current form.

Following a combined initiative of the Swiss Ambassador in Bosnia and Herzegovina and the Anti-Fraud Unit of the Office of High Representative, the latter requested that an expert assessment of these laws and related procedures be undertaken. With the support of the Swiss Agency for Development and Co-operation, an expert mission was conducted from May 1 -5, 2000 in Sarajevo and Neum, BiH. This report, presented to the Office of the High Representative, is the result of that mission. It represents the views of Ms. Claire A. Daams, senior researcher and lecturer, University of Basel and Mr. Stanley E. Morris, International Financial Consultant and Scientific Expert on Money Laundering to the Council of Europe.

The aim of this report is to give an assessment of the anti-money laundering efforts taken in BiH. It is important to note however that this report does not pretend to give a complete picture of the situation. In the time available, the experts were not able to meet with representatives from civil society, the Bar Association, auditors, and non-governmental organisations. In order to get a full picture, such discussions would be useful. The report mainly focuses on the situation in the Federation of BiH. The report is organised into three parts. First, a brief description of the organisational structure of the government and the sources used in the report (both interviews and documents) upon which the experts drew their observations and recommendations; Second, an assessment of the money laundering situation in BiH; Third, and finally, four sets of recommendations for developing a foundation for an effective anti-money laundering program. The recommendations cover four areas: (1) legal reforms, (2) system improvements, (3) capacity building and (4) outreach. An analysis of the law is to be found in appendix 2

It is the experts' view that a comprehensive four part program is essential to attack the money laundering problem in BiH and that simply enacting a set of laws, even if they would meet international standards, is insufficient. Apart from creating an adequate regulatory framework, it is therefore of vital interest to develop and maintain a financial system that is credible and capable of detecting, preventing and controlling money laundering.

1. The organisational structure of Bosnia and Herzegovina

Being a state in transition and a post war country, democratic institutions and traditions are still weak in BiH. Furthermore various interethnic conflicts play an important role. Therefore the formal institutions of government may fall under the control of power structures, including political parties, bureaucracy and organized crime, which could manipulate them in order to maximize their own influence or access to resources. It is necessary to improve the quality of governance. This applies not only to the administration of law and order but to a whole range of administrative institutions, particularly those involved in regulating the economy and controlling financial flows and public expenditure. To achieve success, a legislative framework, which provides a basis to make the involved institutions strong, is needed.

Effective action and measures against fraud, corruption, money laundering and organised crime are important to develop democracy and a sound market economy. This requires knowledge and awareness about those crimes. To assist BiH in April 1998 an Anti-Fraud Unit (AFU), was established as a component of the Economics Department of the Office of the High Representative in Sarajevo. It started with 3 professional staff-members. Part of its tasks is to obtain more knowledge about fraud, corruption and economic crimes in BiH. The AFU provided the experts both materials and access to key institutions and representatives of the FBiH government. They organised the program for this mission, arranged interviews, provided translation services and transportation. Without their assistance, the expert mission would have been impossible.

Even in the short period of time available to the experts, it became clear that designing an anti-money laundering program would be unusually complex. The Dayton Peace Agreement has been in place for four and a half years, but the complex governmental structure, designed to establish the peace process and the transitional nature of both public and private institutions, suggest that adapting international standards will be a unique challenge. The fact that two separate governmental entities make up Bosnia and Herzegovina (the Federation of BiH and the Republic Srpska) is only one manifestation of the governmental challenge, not to mention the difficulties to conceptualise and consolidate a governmental structure in BiH given the economic situation and the interethnic differences. In addition to the two entities with responsibility for “national” law and administration, the FBiH is made up of ten cantons. Each canton has its own governmental structure, including a prime minister and assorted ministers to conduct the business of government, including policing and prosecution. While some laws are the exclusive province of the Federation, the majority of criminal law is administered at the cantonal level. (The RS has no similar local structure).

If this structure were not complicated enough, the Federation often administers its responsibilities through a dual system because of the failure to achieve a unified government to serve the Croat and Bosniak communities. For example, in a divided city like Mostar, FBiH custom and tax administration are organisationally and administratively split. This complicated governmental bureaucracy in a country of less than 4 million people makes it difficult to administer consistently and effectively relatively simple laws. Unfortunately, regulatory and enforcement programs to address money laundering are complex, require transparency and a high level of expertise. Multi agency coordination and close cooperation are of vital interest. The existing system in BiH is further complicated by a poorly coordinated and integrated system of justice. The relationship between police investigators, prosecutors and judicial officials are the subject of reforms being considered by the authorities.

While many of these issues are unique to BiH, this new nation also has the problems that affect most other transitional democracies and economies. Corruption is a serious problem, old style political parties assert pressure on government officials in important and non-transparent ways, official pay is very low and a large underground economy exists resulting in an inadequate tax base. Organised crime is another important problem. These issues are well known to the Office of the High Representative and to senior officials in the various governments that make up BiH. Efforts are underway on a number of fronts to address them. There is no purpose served by the experts to recount them in detail. However, it is important to note that recommendations for anti-money laundering reforms must take into account the difficult conditions that currently exist in the BiH.

While the experts did not visit Banja Luka, the main city of the Republic Srpska (RS), they did meet with its public prosecutor and were briefed on the situation in the RS. The findings and recommendations by the experts are intended to suggest reforms in both entities.

During the week of May 1-5 2000 the experts were able to meet and discuss the money laundering situation in BiH with numerous officials. In all cases the discussions were candid and the officials were well informed and prepared. The interviews included the following:

1. The Anti-Fraud Unit, Economics Department, Office of the High Representative (OHR): Ms. Vanja Buljina, Ms. Kristina Hemon, and Mr. Adrian Rausche were extremely helpful and provided excellent information on the situation in the country, the work of the Anti-Fraud Unit, as well as important context for many of the issues of interest to the experts.

2. Mr. Roger Robinson, Economics Department OHR provided an assessment of the economic and financial situation in BiH.

3. Swiss Ambassador Wilhelm Schmid and Dr. Derek Mueller, Deputy Coordinator, Swiss Agency for Development and Cooperation and Secretary of the Embassy were helpful in placing the experts mission in the context of other key events underway in the BiH.

4. Dr. David Whitehead, Mr. Peter Bosnic and Mr. Radomir Djuric of the US AID funded Macroeconomic Technical Assistance Project described cogently the changes underway in the BiH financial system and the issues surrounding the Payment Bureaus.

5. Mr. Faik Lusija, Head of the Crime Police, Ministry of Interior, FBiH, outlined the law enforcement issues and the role of the police in the Federation.

6. Deputy Federal Minister of Justice, Sahbaz Dzihanovic, presented the legal framework within the FBiH as well as the status of numerous reforms underway.

7. Judge Amir Jaganjac, President Cantonal Court Sarajevo, outlined the role of the judiciary and the unique status of investigative judges.

8. Director Zlatko Bars, FBiH Banking Agency and his deputy Mr. Mustafa Brkic provided an overview of the financial regulatory system, the condition of the banking system and the antipated changes.

9. Chief Mirsad Bajraktarevic, FBiH Financial Police, Ministry of Finance outlined changes underway in the financial police as well as issues surrounding the recently enacted money laundering prevention law.

10. Chief FBiH Prosecutor Suljo Babic and Chief RS Prosecutor Vojislav Dimitrijevic as well as their colleagues from several cantons presented a candid and very useful perspective on issues surrounding money laundering and organised crime. (This session was held at Neum in the margins of a judicial training conference.)

11. Mr. Bahrija Dautovic, Tuzla Canton Minister of Interior and former Tuzla Canton Prosecutor provided a

Cantonal perspective on criminal justice issues as well as his experiences in prosecuting the first major anti-corruption case in FBiH against the former Tuzla Prime Minister.

These interviews provided the experts a wealth of ideas and, it is hoped, improved the quality of the findings and recommendations. It is recognised, however, that there were important players who because of their other commitments or lack of time by the experts were not able to be interviewed. The recommendations call for an inclusive and comprehensive process to be followed as BiH develops its anti-money laundering program and all relevant viewpoints clearly should be taken into account during that process.

Several documents were also useful in helping the experts understand the framework within BiH in which their recommendations would be considered. They are to be found in the list of materials.

2. The Money Laundering Situation in Bosnia and Herzegovina

1. The Crime Problem

As stated before, BiH is a country in transition. Consequently, one can expect major changes underway in the nature of criminal activity. Nearly all the interviewed officials conceded that corruption and fraud against the government and in some cases organised crime, are serious problems generating significant illegal proceeds. These problems hamper legal foreign investments, the development of democracy and the market economy. It was less clear that money laundering is regarded as a separate threat, since it was often confused with corruption. As BiH is primarily a cash based economy much of this illegal activity operates outside the financial system which makes it difficult for the authorities to investigate and prosecute such activities. In addition, the 5 billion dollar post-war reconstruction program has made corruption and fraud a potentially lucrative illegal activity. Major cases of bank fraud have occurred and the government has seemed ill-equipped to deal with this type of crime or to trace effectively the proceeds that were taken. Indeed the most significant case prosecuted to date in the canton of Tuzla against the former prime minister was a mixture of both fraud and corruption. The case outlined a series of payments of government funds to friends and supporters of senior government officials as well as the awarding of numerous fraudulent contracts. The ability of the prime minister to “rob the public purse” is a direct result of a lack of transparency, accountability and effective controls over public revenues and expenditures. Reforms are being put in place to address this problem.

The other primary area of criminal activity is smuggling. The Council of Europe report from its December 1999 conference concluded that…

“…the large scale smuggling of cigarettes or petrol, the production and sale of pirate audio CDs and software, the trafficking in human beings or in stolen vehicles could be explained by organised crime. Participants suggested that these phenomena may be linked to war profiteers and the control of the economy by political parties”

The report went on to recommend further research. Nevertheless, it is clear that the essentially open borders with over 400 border crossings and the weakness of customs and border controls makes smuggling into BiH or transiting through it a profitable criminal activity. The long land borders, mountainous terrain and historic association with the “Balkan route” make BiH uniquely vulnerable to organised criminal groups engaged in all forms of smuggling including drugs, arms and human beings, all very profitable illegal activities. These criminal problems can be expected to worsen as changes in the financial system create new vulnerabilities and possibilities for concealing illegal criminal proceeds.

2. The Criminal Justice Response

As criminal activity can be expected to become more lucrative and sophisticated, the systems of criminal justice, as currently organised, are unlikely to keep pace. The European Commission' efforts to strengthen the Customs and Fiscal Assistance Office and the UN's International Police Task Force are attempting to address many of the fundamental weaknesses in the police, customs and border control responsibilities of the BiH. The FBiH is also considering legal reforms which would strengthen "national" controls to deal with the problems of fraud, corruption, smuggling and organised crime. Nevertheless, the proliferation of police and prosecutive organisations and the unique investigative role of the judiciary create difficult barriers to effective investigation and prosecution of complex criminal activities.

The sharing of information between cantons is problematic at best and the communication and cooperation between police, prosecutors and investigative judges is often inadequate. To address money laundering requires close coordination and cooperation that simply does not exist at present in BiH. The crime police of the FBiH Department of the Interior are attempting to deal with this by establishing intelligence units in each of the 10 cantons and assigning 43 officers to these units. This effort is assisted by the UN and will focus initially on drugs. Over time it will be expanded to address all economic crimes. There is a clear need to coordinate this effort with the Financial Police. However, the crime police are currently in the process of setting up a separate unit and because of corruption and control concerns, are putting this unit with 12 new officers at their headquarters. How all these units will coordinate with cantonal police forces or even with one another is not clear. There appear to be similar failures in communication between prosecutors.

3. The Vulnerabilities of the Financial System during the Economic Transition

BiH is on the edge of a revolution in its economic structure. The transition from a state operated financial system that was designed to meet the governments' needs for centralised economic planning and controls on the allocation of credit, to a free market approach will create major risks and opportunities. The payment bureau's that serve the three communities are scheduled to be eliminated by the 1st January 2001. At the same time the banking system which is still in its infancy is expected to assume the credit allocation and banking duties previously assigned to the payment bureau's.

The Dayton Peace Agreement established a legal basis for the Bosnian monetary union and the creation of a common Central Bank (CBBH). This is the sole authority for the countries currency and monetary policy. The currency is strictly related to the German Mark and CBBH maintains a reserve amount of liquid German Marks backing 1 to 1 the amount of KM. The CBBH does not make credits, lend capital to private or governmental concerns and is not a lender to the banking system. It also does not regulate the banks, interest rates, payment system or the financial system in general. The Central Bank will merely establish a clearing house function as a substitute for the all-controlling role played by the payment bureau's. This will result in a much fairer, efficient and more transparent system to serve the needs of the BiH citizenry.

However, the loss of government control over the information that was collected and maintained by the payment bureau's and the reduction in the powers of the financial police to demand records will create serious challenges for the collection of tax revenue and the prevention of money laundering. It is important to note that when BiH abolishes the payment bureau's it will be moving into uncharted territory. Neither Croatia nor Slovenia to date have taken such action and their payment bureau systems remain. It is important that steps be taken now to ensure that these changes do not accrue to the benefit of organised crime, corruption and money laundering.

Both the Central Bank and the FBiH's Banking Agency are given credit for professional and effective

administration. However, it is generally assumed that there are too many banks for an economy and country the size of BiH, and there have been significant cases of bank fraud and bank failures. If the banking system is to assume the duties of full service banks, the Banking Agency will need to play a critical role. Some progress is being made. In the past three years the number of banks has been reduced from 55 to 39 and eleven licenses were withdrawn in 1999 alone.

In addition, ten of the remaining banks are still state operated. The BiH Federation intended to privatise these institutions by August 2000 but is running behind schedule and is unlikely to meet this due date. These issues are being addressed at the same time that new effective and proportionate anti-money laundering measures will be expected from the banking system. As in other countries in transition, because of the absence of effective regulations, corruption, money laundering and other economic crimes (e.g. insider dealing) can penetrate these banks. Indeed in Russia and elsewhere lack of care in the granting of licenses has resulted in organised crime actually running their own banks. It is important that the Federation Banking Agency be given the resources and support to protect the banking system from such occurrences. They should also be seen as major participants in all key deliberations regarding anti-money laundering strategies and legal and regulatory requirements.

An additional problem is the existence of the large underground economy. While not all of this economic activity is illegal, clearly there are unsupervised financial services being provided that are susceptible to providing money laundering services for corrupt officials and/or organised criminals. An example, is the discrepancy between what the government of Croatia shows as benefit payments to Croatian beneficiaries in Bosnia and what is actually declared by those beneficiaries as received for tax revenue purposes. One can also expect that if the banks develop effective prevention measures dealing with money laundering, the non-bank financial system will grow, as well as the underground economy. Currency exchange houses and money remitters have often been used for money laundering, even in more advanced economies like the United States and many countries in western Europe. There is currently no regulatory structure for such entities. Regulatory oversight will be necessary to meet international standards and care must be taken to ensure that such businesses do not proliferate and become conduits for concealing the proceeds of crime.

Finally, as privatisation grows and government owned entities are sold, care must be taken that these purchases do not provide opportunities or mechanisms for money laundering. For example, the vouchers that have been granted as payment for war veterans serve essentially as a bearer instrument that can be sold and resold. Such instruments should be treated as currency and reported accordingly in any anti-money laundering reporting system.

4. The FBiH Governments' Approach

The initial impetus for this expert review of money laundering in BiH was, in part, to examine the draft of a proposed parliamentary bill titled: *The Draft Law on the Prevention from Money Laundering in the Federation of Bosnia and Herzegovina.* A similar but not identical draft law was developed in the Republic Srpska by the Public Prosecution Office and it is simply titled: *Money Laundering Law*. A brief legal analysis of these documents is attached at Appendix #2.

At the time of the expert visit the FBiH parliament had enacted the draft law but no steps had been taken to implement it. The RS draft law is still under revision, and it is unclear whether it will be enacted in its present form. The most interesting fact regarding the new FBiH law was that no one interviewed seemed to be involved in its drafting and everyone felt that it was inadequate. Some officials felt that it actually was a step backward in FBiH's efforts to address the problem of money laundering. As a result of a last minute cancellation, the experts were unable to meet with representatives of the Parliament, and therefore were unable to discover the impetus to this particular law. However, in light of the government's lukewarm support for it, effective implementation will be a significant challenge.

The law is essentially a mixture of a civil- and an administrative approach to money laundering. It establishes a set of reporting requirements on a range of financial institutions including banks, casinos, the post office, pawnbrokers, etc. Certain categories of financial activity must be reported to a newly established unit of the Financial Police and failure to report will result in civil fines both for individuals and institutions. As it is a civil law, it does not make the act of money laundering a criminal offence nor does it permit the seizure and confiscation of criminally derived assets. The latter two requirements are central to meeting the minimum international anti-money laundering standards. While the law attempts to define the conduct of money laundering, it does nothing to strengthen the governments ability to deal with the crime other than mandating reports of activity that might indicate the existence of money laundering. It places the primary implementation responsibility for the law with the Financial Police in the Ministry of Finance. However, effective implementation will require the cooperation and coordination with many other governmental elements of the Federation as well as the cantons. No efforts appeared to be underway to establish a coordinated implementation effort nor does their appear to be any anti-money laundering strategy into which this new law will fit. Despite these serious shortcomings, the new law could provide the impetus for the development of a strategy as well as form the basis for improving communication and coordination among the various agencies with responsibility for anti-money laundering. This is a primary component of the recommendations outlined below.

3. Recommendations

Despite the serious administrative and transitional problems confronting the BiH, the experts were impressed with the commitment of the representatives of the governments with whom they met to take action. There is a clear recognition of the importance of addressing the money laundering aspects of corruption, fraud and organised (economic) crime. In addition, there is a desire to coordinate the governments' efforts and also a general sense that the OHR needs to aid in bringing about an effective set of programs.

It is clear that the development of an integrated strategy needs to bring together all relevant ministries both in the BiH Federation and Republic Srpska as well as the cantonal authorities, business and professional groups. An effort comparable to the excellent work that went into the OHR's Comprehensive anti-corruption strategy ought to be undertaken. It should be noted however that a number of officials seemed to believe that the existence of an anti-corruption strategy would be sufficient to deal also with money laundering. This is however not the case. Although corruption and money laundering are related in some respects, they are two different issues. Outlined below are a set of recommendations organised into four categories which are intended to help guide the development of a BiH anti-money laundering strategy. These suggestions cover both process and substance and are organised into (1) legal reforms, (2) system improvements, (3) capacity building and (4) outreach.

3.1 Legal Reform

1. Enact BIH State level anti-money laundering law

   The OHR should work with the FBiH and RS entities to enact a comprehensive, overarching criminal and civil statute addressing the money laundering problem in Bosnia and Herzegovina. This framework law would serve as the foundation upon which each of the entities could construct their individual statutory regimes. Such a step is essential if BiH is to ensure that its anti-money laundering program is consistent with acceptable international standards. This framework law should include criminalizing the act of money laundering, as well as requirements for detecting and preventing the activity. (See detailed discussions described below).

2. Enact criminal anti-money laundering legislation

   The FBiH legislation that was passed in March 2000 addresses reporting and coordination requirements to address money laundering and establishes a set of civil or administrative remedies. However, it does not give any tools and powers to the law enforcement components of the government to address money

laundering. The criminal offender who succeeds in laundering his illegal profit from crime can not be prosecuted for this behaviour under this law. Even the reporting that is required does not include suspicious reports but instead routine reporting of all transactions that meet certain criteria. During four days of discussions, no one indicated that they thought the law was adequate. In discussions regarding the RS draft bill which is similar to the FBiH enacted law, it was made clear that the Republic is considering broadening its approach to include criminal and civil elements. The BiH overarching law as recommended above, should criminalize the act of concealing illegal proceeds and the criminal codes in theFBiH and the RS should amend their criminal codes and codes of criminal procedures accordingly. This would ensure that both entities have the same set of rules. and that BiH meets the minimum international standards. The cantons should also make the act of money laundering a criminal offense. This will permit police and prosecutors at all levels to investigate and prosecute both the underlying crimes that generate the criminal profits as well as the actions of those who attempt to conceal the illegal nature of the proceeds. Making money laundering a crime will also mean that banks and other financial institutions will have an obligation to report suspicious activity to the authorities. Bringing to bear all of the resources of the governmental entities on the money laundering problem is an important first step in any successful anti-money laundering program.

3. Examine Slovenia and other nations for guidance

Slovenia was one of the first eastern European nations to enact money laundering legislation and has gone through several adjustments as it has attempted to adapt its legal system to addressing the problem. As BiH shares a similar legal system and other (cultural) affinities, it would be useful to examine Slovenia's successes and failures. Their money laundering prevention unit in the Ministry of Finance has been a world leader in this area and has been willing candidly to outline not only what they do well, but where they have fallen short. Other experiences might be looked at as well because in some cases,(for example, the continuing role of the payment bureau) Slovenia has had an easier path than BiH. Switzerland's efforts to share information among its 26 cantons and its approach to setting up its system of suspicious reporting could also provide useful lessons.

4. Include all serious crimes as a predicate offence to money laundering

The crime of money laundering is often charged along with the underlying crime that produced the illegal profits. While the initial impetus for money laundering laws were related to drug trafficking, the tools have proven as effective for other crimes including smuggling, fraud, corruption and all activities of organized crime. It is therefore essential to include all serious crimes as a predicate offence to money laundering.

5. Enact Seizure and Forfeiture Law

It is not always adequate to arrest and convict a criminal for money laundering, but it is important to take away the proceeds of crime. In order to create the possibility to seize and/or confiscate the illegal profit, legislation dealing with these elements should be enacted. Again this is a core international standard and an important tool. The experts have some reservations, however, regarding the Council of Europe's suggestion that these proceeds be turned over to the police. (See Report of December 1999 Conference in Banja Luka.) Some caution on the handling of property and cash is clearly warranted in light of the administrative problems existing throughout the BiH. In addition, there are significant resource needs throughout all elements of the BiH criminal justice and giving the police an independent source of revenue would probably be undesirable at this time.

6. Examine Criminal Justice Information Sharing arrangements

Money laundering is by nature a fluid criminal activity that takes advantage of the ease by which money can be transferred around a nation or indeed around the world. This requires systems that are sufficiently flexible to permit the sharing of information with other governmental entities. Communication between the cantons, the BFiH and the RS is often a problem and failures in law enforcement communication inevitably accrue to the benefits of criminals. Similar problems exist between nations. BiH should examine barriers to sharing information both domestically and internationally and, if necessary, changes in law and regulation should be undertaken to eliminate them. This is a key component in the international standards and bank secrecy laws or cumbersome legal protections on law enforcement data exchanges need to be examined. Again, the Swiss and Slovenian experiences could be helpful in determining how to balance individual rights and privacy with the domestic and international needs of law enforcement.

7. Consider enactment of a Cross Border Currency Reporting Requirement

The open nature of BiH borders and the smuggling vulnerability presented by the historic “Balkan route” create many potential criminal problems for BiH law enforcement authorities. In addition, post war changes in population movements and a large BiH “diaspora” make the challenge of determining whether proceeds are derived from legitimate or illegal sources difficult. A valuable tool for law enforcement would be a requirement that large movements of currency and other negotiable instruments (travellers checks, privatisation vouchers, etc.) in or out of BiH be declared to Customs. Failure to do so could be made a criminal or a civil offence and result in the seizure of the undeclared funds. Many countries including the United States have such requirements and they have proven to be a valuable tool. Legitimate currency movements are declared and there should be no restrictions on the amounts that are being transported. Criminals and tax evaders, however, will attempt to avoid disclosure, but failing to do so will make it more difficult for them to “legitimise” their proceeds. Banks will be suspicious about large currency deposits if no reports have been filed with the customs authorities. Explanations are more difficult to fabricate, if the criminal must create a money trail that is explainable by activities only within BiH. While this type of reporting tool has been valuable for some countries, it might be tried for three to five years to determine whether it is useful for BiH authorities. As the infant banking system matures and the administrative problems settle, it may not be as necessary . However, the experts recommend that such a program be put in place at least for an interim period.

8. Coordinate Regulatory Process for new Law

While there are clearly inadequacies in the recently enacted BFiH Money Laundering Prevention law, steps need to be taken to implement it. This should not be left to the Finance Ministry or the Financial Police alone. The law itself contemplates coordination with the Banking Agency and the Customs and Fiscal Administration, but the process needs to be even more inclusive. Federation and cantonal prosecutors and police should be consulted as well as the Judiciaries investigative judges. There should be discussions with the elements of the private sector who will be expected to begin reporting. This process which should begin soon could be the first step in developing a process for designing a BiH anti-money laundering strategy. Nearly all of the officials interviewed were concerned about the implementation process and felt that the OHR would need to play a leadership role to ensure the broadest participation. The experts agree and an organising meeting should be set up as soon as possible so that early mistakes are not made that will lead to ill-feelings and unnecessary parochialism among the many organisations that need to be involved.

3.2 System Improvements

1. Develop BiH anti-money laundering strategy

   As with anti-corruption programs, effective anti-money laundering requires the contribution and cooperation from multiple ministries of government and an important link with civil society. Therefore a strategy needs to be developed which lays out a clear program of action. A useful model is the anti-corruption strategy developed by OHR and published in February 1999. It should be noted that the process for developing the strategy may be as important as the final document itself. There are clear gaps in communication and even trust between some of the components of the government. They will need to work together if BiH is to have a successful anti-money laundering program Therefore a strategy development process that is seen as fair, inclusive and comprehensive can help build bridges to more effective cooperation in the future implementation of the anti-money laundering efforts.

2. Establish the Financial Intelligence Unit

   The recently enacted FBiH Prevention of Money Laundering law, among other provisions, requires that "an Office shall be established as a basic organisational unit for carrying out the administrative and technical tasks aimed at prevention from money laundering." The new unit is to be located within the Financial Police, a component of the Federation Ministry of Finance. The experts were informed by the Chief of the Financial Police that this unit was being set up and that 12 officers were being assigned to it.

   Given the shortcomings of the new law, the new unit would probably not meet the standards for Financial Intelligence Units (FIU's) that have been set by the Egmont Group, a consortium of 53 such organisations world-wide. Nevertheless, it is a useful starting point and the new FBiH organisation could grow into a fully operational FIU. However, one caution should be taken into account. Effective FIU's almost always develop close working relations with other key components of the government and with the private financial sector. Many of them operate with seconded personnel from other ministries working within them. There must be a practice of sharing information and assisting foreign counterparts. Therefore it is important that this new unit be set up in the context of a comprehensive and inclusive BiH anti-money laundering strategy. It is destined to fail if it attempts to be the sole repository of the governments money laundering prevention programs. Therefore its creation must be supported not only by the Finance Ministry but also by the Customs and Fiscal Affairs Office, the Banking Agency, the Ministry of Interior, the Entities prosecutors as well as the law enforcement components of the cantons and the judiciary. This is difficult in any governmental system and will be even more of a challenge in BiH because of the existing complex administrative structures.

3. Establish an on-going money laundering forum

   Even if a strategy is set and an FIU created, there needs to be a way to adapt procedures to the changing nature of the problem, resolve conflicts and learn from successes and failures. The experts recommend that, at least in the beginning, a bi-monthly meeting be held and that all relevant governmental agencies be included. It might be desirable to have different ministries and agencies host the meetings to create "ownership" of the anti-money laundering strategy and its implementation. Bureaucratic problems that are left to fester can turn into very serious wounds. Regular meetings provide an opportunity to air conflicts and attempt to resolve them. OHR should start in the lead but work to phase down its role as BiH develops more experience. In addition, OHR could invite experienced officials from other governments and FIU's to attend the meetings on occasion and make presentations on what kinds of efforts are underway in similarly situated countries.

4. Establish compliance programs

Banks and other financial institutions should develop internal standards and compliance programs in order to prevent and detect money laundering. It will be important that requirements be established to ensure that financial institutions know their customers and that standards are set for identification of the true beneficial ownership of accounts. Compliance officers need to be designated in each institution and they should be trained jointly with government officials whenever possible. Among the obligations of these officers is the identification of suspicious activities and the reporting of such activities to the authorities if an acceptable explanation for the activity cannot be found. The Banking Supervisory authorities should also have individuals trained in this area to assist that banks and other regulated institutions to meet these standards.

3.3 Capacity Building

There are at least three areas where training is necessary to help build expertise within the BiH. These should be carried out as soon as a Strategy is developed and should, indeed, be one of the first "deliverables" of the strategy. As good as laws and strategic intentions are, people must carry them out. Thus there needs to be an effort to ensure that people understand the features – and complexity of money laundering, the importance of the new laws and how to implement them.

1. Law Enforcement Training

   Police, Customs, Prosecutors and Investigative Judges should be brought together in a training program. A one week program that included both lectures and seminars with all participants as well as focused break out sections along professional or similar lines would, in addition to the training provided, serve two additional purposes. First, it would make it clear that a systems approach is necessary and that compartmentalising efforts at anti-money laundering are unlikely to work. Second, a certificate issued at the end of the training could be used to enhance the perception of the importance of the new laws and the BiH anti-money laundering strategy.

2. "Prevention" agency training

   A similar program should be conducted for the regulatory agencies (including the new financial police prevention unit and Customs) who will have responsibilities for seeing that the new law is implemented. The Banking Agency, the Post Office and those in the Judiciary responsible for granting business licenses and others should be involved.

3. Bankers Conference

Although there did not appear at present to be plans for holding a bankers conference in preparation for the elimination of the payment bureau's and the privatisation of the remaining government banks, it would be surprising if one is not held in the next six months.. This would be an excellent opportunity to also train bankers to address the money laundering risks presented by the payment bureau's abolition as well as the responsibilities envisioned under the new money laundering prevention law.

3.4 Outreach

In addition to engaging those private and public organisations directly involved in anti-money laundering, the issue needs to be understood by other members of the BiH government and civil society. It is important that the broader public understand why the hiding of criminal proceeds is a problem for a democratic nation and why it is antithetical to the operation of a free economy. The risks to society of corrupt officials, fraudsters and organised criminals of assembling wealth by accessing the legitimate financial system gives them power to undermine that society. There are at least three important sectors that need to be fully aware of the importance of the anti-money laundering strategy.

1. Parliamentary Committees and Staff

   The legislative bodies of the FBiH, the RS and the cantons should be briefed as a part of the development of the BiH anti-money laundering strategy, and after it is adopted. It might be desirable that the High Representative personally meet with key politicians and explain how these efforts fit into the process of democratisation and the development of a free economy. The Council of Europe, the European Commission, the United Nations and the FATF might be asked for materials that could be used in such briefings.

2. Civil Society

   A forum that brings together academics, business and professional associations, non-governmental organisations and others should be considered. The publication of the strategy could provide the basis for such a forum. Again experts from elsewhere in Europe might be invited to make presentations. In this area academics, bankers, etc. might be invited to explain how civil society is involved in other nations.

3. The Media

Money laundering issues are often complex and as a consequence not always understood by journalists who must write on deadlines and often prefer to cover simpler law enforcement issues. Every effort should be made to invite the press to key events and provide background briefings when experts are available or major cases developed. The importance of an issue is often related to whether the press covers it. Thus newspapers and magazines should be encouraged to focus on the financial side of criminal activity. Major money laundering cases in other countries could be brought to reporters attention to show how important they can be. This is an on-going program, but a very important one.

Appendix 1 Biography

Mrs. Claire A. Daams, MA, Advocate is senior researcher and lecturer at the law faculty of the University of Basel, Switzerland with a focus on international economic crime. Her main field of research is transnational organized crime concentrating on money laundering and corruption. She has been a scientific expert to the Council of Europe in the area of transnational organized crime and is at present consultant to the Council of Europe in this area. She is also assistant to the president of the OECD Working Group on Bribery. Regarding anti-money laundering measures she is a member of a research group set up by the Max-Planck-Institute for international and comparative criminal law in Freiburg, Germany. This research group focuses on money laundering and asset confiscation.

Mr. Stanley E. Morris is an international expert on money laundering and corruption. He is currently an international financial consultant providing advice to governments, financial institutions, international organisations and non-governmental organisations. He is a scientific expert to the Council of Europe's (CoE) anti-money laundering program (PC-R-EV) and has participated in numerous assessments of Eastern European nations' compliance with the CoE convention. He is a former US Treasury official and Director of the Financial Crimes Enforcement Network, the primary anti-money laundering regulatory and enforcement unit of the US government. He headed the US delegation to the Financial Action Task Force in Paris and was co-founder of the "Egmont Group" which is the international organisation of 53 national financial intelligence units.

Appendix 2

Analysis of the Law on the Prevention from money laundering in the Federation of BiH and the Draft Money Laundering Law of the Republic Srpska

Criminals use various techniques of money laundering, to give an apparently legitimate origin to the proceeds of their activities. They do so on an expanding and increasingly international scale. Economies in the process of

transformation, such as Bosnia and Herzegovina, are considered to be especially vulnerable to criminal activities, and therefore also to money laundering. The most common reason for this is that their financial regulatory framework, both in the banking and the non-banking sector, is still in a developing stage and therefore less stringent then in other countries. Furthermore there are various country specific reasons that create additional opportunities for money laundering.

In order to build up the country it is necessary to develop a healthy economic climate leading to a market economy in Bosnia and Herzegovina. In order to do so it is of vital interest to create and maintain a credible financial system that enables to detect, prevent and control money laundering. Such a financial system can not only focus on the domestic situation but needs also to be in compliance with the existing international standards, as contained in e.g. the 40 Recommendations of the FATF, the 1988 UN Convention on illicit traffic in narcotic drugs and psychotropic substances, the 1991 EC Directive on the prevention of the use of the financial system and the 1990 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime. At present the FBiH legislation as well as the draft money laundering law of the Republic Srpska fall short to meet such standards. In addition a number of elements in both the FBiH law and the RS draft law, outlined below, are unclear. Therefore the development of implementation rules will be very difficult and additional legislation will be needed. Finally it seems that there are some differences between the contents of the FBiH law and the RS draft law. To some extent this may be caused by translation of the original version of the law, respectively the draft law into English, but there are also substantial differences. The experts would like to stress that consistency in language, numbering of – and reference to paragraphs and articles and consistency in substance in both laws is essential.

The law on the prevention from money laundering in FbiH

Art. 1 What is the intended character of this law? The law does not criminalise money

laundering and seems to be an administrative statute.

Not included are non-bank financial institutions and other financial institu-

tions. The focus seems to be on the detection and prevention of money laun-

dering. No reference is made however to the controlling of money laundering.

Art. 2 Definition of money laundering.

§1. What criminal actions are meant in this paragraph? All serious crime should be

included whereas petty criminal offences do not necessarily to be included.

Unclear is at present whether it is intended to consider serious criminal offences as

a predicate offence to money laundering. And if so which serious criminal offences

would be regarded so. What is the character of the legal consequences mentioned?

§2. There is reference to the situation when it is comprehended that property originates

from criminal activities. Is there a reason that there is no reference towards the

situation when this should be comprehended?

§3. It seems that the description given here aims to deal with money laundering in the

same way as in cases of dealing with stolen goods. Is this a correct understanding

of the intention? If so why is there no reference to the according article in the

criminal code. If this should be the case then this might be insufficient to deal with money laundering. Not in all cases where there is dealing with stolen goods there is also a situation of money laundering. But more importantly experience in other countries, that started with such a provision, has shown that in many cases it is not possible to qualify money laundering under such a provision for which reason a conviction could not be reached.

§5. The intention, cognition or objective might have focused on the predicate offence. This does not necessarily include intention, cognition or objective for money laundering, especially in cases where different persons are be involved in the predicate offence than in the laundering of the proceeds. It is not clear what will happen in such cases.

§ 6. This paragraph should be inserted after paragraph 4. Has this already been criminalised?

Art. 3 Definition of property

Unclear is whether e.g. vouchers that have been granted for war veterans, which serve as bearer instruments and others are included under rights or securities and other means of payment.

Art. 4 Actions

This article does not specify what actions will be taken. It does not include the control of money laundering. Furthermore it suggests that action must be taken in all cases as a sort of standard procedure. This might cause a heavier workload than can be sufficiently dealt with. Therefor a certain threshold should be included, in combination with a specification of the circumstances under which action should be taken. This article is a little vague and the question is whether such a provision is in line with the principle of legality.

Art. 5 Persons obliged

The terminology referring to legal persons, parties and natural persons in this article varies throughout the law. It would be clearer when legal persons or parties are called “legal entities” and natural persons would be called “natural entities.”

Unclear is what level of responsible persons in a legal entity is meant. It seems that a large part of the financial sector is included under this provision. Not regulated are vulnerable professions. Finally there is no reference to debit cards.

Art. 6 Identification of a Party

In § 1 reference is made to the establishment of a partnership with the party. Not all business relations are or include a partnership. It might therefore be clearer to refer to the establishment of a business relation.

§ 2 lists some transactions. Unclear is why there is no reference to “other highly valued commodities.

Art. 7 Exceptions of identification

The exceptions for the requirement of identification seem to be too wide.
Formulated in this way there are a number of possibilities for (organised) criminals to abuse the financial system.

Art. 8 Means of identification

As far as identification documents are concerned other public documents should be suitable and/or officially recognised as identification documents.

Paragraph 5 of this article is possibly to wide. It should be sufficient when the proxy is authorised in a valid way by the entity for whom he acts.

From articles 6-8 it is not clear that beneficial owners should be identified, nor is it clear how the persons under obligation would do this. The period for saving such information in cases mentioned under art. 21 last § seems to be very and possibly too short.

Art. 9 Is the office mentioned here intended to be a Financial Intelligence Unit? If so it is not clear what the competencies and responsibilities are and how it will cooperate with the reporting persons and with the public prosecution in handling the information. Such coordination and cooperation is however necessary.
During the experts’ visit, it seemed that this unit was still in the process of being established. How does this relate to the legislation that has already entered into force.

Art. 11 A written statement may be asked. According to what criteria?

Art. 12 § 1. In the copy of the law the experts received there is no § 5 under art. 6.

Art. 15 Unclear is how § 1 will work in practise in cases where the persons under obligation reported the information required according to articles 12, 6, 8. 10 and 11. What are the other justified reasons mentioned in § 3 and who is competent to decide?

Art. 16 In § 1 there is no period of time indicated, in which the mentioned information will be given to the persons under obligation.

Art. 17 It is not entirely clear why no reference is made in the listing in § 1 to money laundering.

Art. 18 This article seems to focus only on disguising illegally obtained money and not on other illegally obtained profits. What is the reason for doing so?

Art. 22 Reference is made in § 1 to the authorisation under article 9. Is it correctly understood that in this case article 8 § 5 is meant? It is also not entirely clear what is meant by the data in art. 17.

How can will the value of unfulfilled responsibilities mentioned in § 3 be measured? Does this refer to the value of the transaction? What is meant by “other things?”

The sanctions mentioned in this law seem only to apply on persons under obligations and responsible persons. There seems to be no provision for the criminal who launders his ill-gotten proceeds. This is not sufficient.

The draft Money Laundering Law of the Republic Srpska

Art. 1 What is the intended character of this draft law? The draft does not criminalise money laundering and seems to be an administrative statute.

Not included are non-bank financial institutions and other financial institutions. The focus seems to be on the detection and prevention of money laundering. No reference is made however to the controlling of money laundering.

Art. 2 Definition of money laundering

§ 1. What criminal actions are meant in this paragraph? All serious crime should be included whereas petty criminal offences do not necessarily to be included.

Unclear is at present whether it is intended to consider serious criminal offences as

a predicate offence to money laundering. And if so which serious criminal offences would be regarded so. What is the character of the legal sanctions mentioned?
The word evade suggests to be more general then e.g. disguise. Is there a reason for not including participation in criminal activities?

§2. There is reference to the situation when it is comprehended that property originates from criminal activities. Is there a reason that there is no reference towards the situation when this should be comprehended?

§3. It seems that the description given here aims to deal with money laundering in the same way as in cases of dealing with stolen goods. Is this a correct understanding of the intention? If so why is there no reference to the according article in the criminal code. If this should be the case then this might be insufficient to deal with money laundering. Not in all cases where there is dealing with stolen goods there is also a situation of money laundering. But more importantly experience in other countries, that started with such a provision, has shown that in many cases it is not possible to qualify money laundering under such a provision for which reason a conviction could not be reached.
Instead of the word obtaining, accumulation could be used, which expresses slightly more the gradual process.

§ 4. It could be considered to use involvement instead of participation in this context.
Is it correctly understood that “making it easier” is meant as facilitation?

§5. It is somewhat difficult to read this § correctly. The information, intention, or aim might have focused on the predicate offence.
This does not necessarily include information, intention, or aim for money laundering, especially in cases where different persons are be involved in the predicate offence than in the laundering of the proceeds. It is not clear what will happen in such cases. Do the facts and indicating circumstances refer to the criminal activities mentioned in § 1?

§ 6. This paragraph should be inserted after paragraph 4. Will this be criminalised?

Art. 3 Definition of property

Instead of the words immovable objects the wider term goods could be used. Unclear is whether e.g. vouchers that have been granted for war veterans, which serve as bearer instruments and others are included under rights or securities and other means of payment.

Art. 4 Activities

This article does not specify what activities will be taken. It does not include the control of money laundering. Furthermore it suggests that activities must be taken in all cases as a sort of standard procedure. This might cause a heavier workload than can be sufficiently dealt with. Therefor a certain threshold should be included, in combination with a specification of the circumstances under which action should be taken. This article is a little vague and the question is whether such a provision is in line with the principle of legality.

It is not clear to what § and article the last sentence refers. Is this article 1 of the draft law or § 1 of this article 4?

Art. 5 Persons obliged

The terminology referring to legal persons, parties and natural persons in this article varies throughout the law. It would be clearer when legal persons or parties are called “legal entities” and natural persons would be called “natural entities.” Unclear is what level of responsible persons in a legal entity is meant. It seems that a large part of the financial sector is included under this provision. Not regulated are vulnerable professions. What is meant by specialist workers? Does the purchase of debts and requirements include credits? There seems to be no reference to the issuing of credit cards. Does the transfer of estate markets mean the transfer of real estate?

Art. 6 Identification of a Party

§ 2 lists some transactions. Unclear is why there is no reference to “other highly valued commodities.”

Are joint transactions in § 3 to be understood as related transactions?

Paragraph 4 mentions doubt. It might be clearer to use the word suspicion instead.

Art. 7 Exceptions of identification

The exceptions for the requirement of identification seem to be too wide. Formulated in this way there are a number of possibilities for (organised) criminals to abuse the financial system.

Art. 8 Means of identification

As far as identification documents are concerned other public documents should be suitable and/or officially recognised as identification documents.

In § 2 it would be clearer to use the terminology conducting a transaction on behalf of a legal entity.

It is not clear why in § 4 there is only reference made to power of attorney. It seems that representatives of other vulnerable professions, carrying out a transaction on behalf of a legal or natural entity are not included?

From articles 6-8 it is not clear that beneficial owners should be identified, nor is it clear how the persons under obligation would do this. The period for saving such information in cases mentioned under art. 21 last § seems to be very and possibly too short.

Art. 9 Is the section mentioned here intended to be a Financial Intelligence Unit? If so it is not clear what the competencies and responsibilities are and how it will cooperate with the reporting persons and with the public prosecution in handling the information. . Such coordination and cooperation is however necessary.

Art. 10 In the last § of this article identification shall be carried out.

Art. 11 A written statement can be asked. According to what criteria? The second § is very difficult to read in the current translation. Is it understood correctly that the second sentence intends to say that (…) if the data mentioned in articles 8 and 10 are not established, the person obliged shall refuse the transaction?

It seems that the following heading should bear number 3 instead of 1.

Art. 12 § 1. In the copy of the law the experts received there is no § 5 under art. 6.

§ 3. Is it correctly understood that the meaning of the words to do it is “to inform

the section?”

Art. 14 The word doubt in the second § could be replaced by “a justified suspicion of .”

This goes for all the cases where doubt is used in the draft law.

Art. 15 Unclear is how § 1 will work in practise in cases where the persons obliged

report the information required according to articles 12, 6, 8. 10 and

11.

Art. 16 In § 1 there is no period of time indicated, in which the mentioned information

will be given to the persons obliged.

The numbering of the articles goes from 17 to 19. And from 27 to 29.

Art. 18 This article seems to focus only on disguising illegally obtained money and not on

other illegally obtained profits. What is the reason for doing so?

Art. 21 The first § should be made stronger. The Section and a person obliged **shall not**

inform etc.

Art. 22 What is the character of the fine? Is this an economic offence? Is it intended to

include a sort of criminal liability for legal entities?

Reference is made in § 1 to the authorisation under article 9. Is it correctly

understood that in this case article 8 § 4 is meant? It is also not entirely clear what

is meant by the information out of article 1. IS by responsible person meant a

person obliged?

What is meant by the value items and by “other things?”

The sanctions mentioned in this law seem only to apply on persons under obligations and responsible persons. There seems to be no provision for the criminal who launders his ill-gotten proceeds. This is not sufficient.

Appendix 3

Selected International Agreements, Conventions and Recommendations related to Money Laundering

1. Group of Ten – Committee on Banking Regulations and Supervisory Practices (Commonly referred to as the Basle Committee) A statement of Principles was adopted in December 1988 that called for inter alia that financial institutions should identify the true identity of customers and cooperate with law enforcement authorities in order to avoid facilitating criminal activity including money laundering. See for further information: www.bis.org.

2. The United Nation’s Drug Control program led the adoption in 1988 of the *UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.* The convention called for criminalizing the laundering of drug proceeds, extradition laws to facilitate international cooperation and the confiscation of profits and assets derived

from drug trafficking. A model law was developed in November 1993 to assist states in developing anti-money laundering changes to criminal and civil laws. See for further information: www.undcp.org.

3. The Financial Action Task Force on Money Laundering (FATF) was created by the G-7 nations in 1989 to establish detailed recommendations to be followed by nations in their anti-money efforts related to drug trafficking. The 40 recommendations were revised and expanded in 1996 to address all serious crimes that generate proceeds. The recommendations lay out recommendations to be adopted by financial institutions, law enforcement as well as changes in domestic law and procedures for international cooperation. The FATF is now composed of 29 nations and has been developing regional associations who would also commit to the adoption of these recommendations. The two primary organizations established to date are the Council of Europe money laundering committee (the PC R EV) that includes European nations not members of the FATF and a Caribbean Financial Action Task Force which was created in November 1992. See for further information: www.oecd.org//fatf/recommendations.

4. The Council of Europe in 1990 adopted *The Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime.* This instrument commonly referred to as the "Strasbourg Convention" established requirements to criminalize money laundering, to establish procedures for the confiscation of drug trafficking proceeds and to improve international cooperation. See for further information: http://conventions.coe.int/.

5. The European Council (now the European Union) adopted the *Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering* on June 10, 1991. This Directive requires members of the European Union to require their financial institutions to identify their customers, increase cooperation within and among the member states and ratify the 1988 Vienna Convention. See for further information: http://europa.eu.int/.

6. Interpol, at its general assembly meeting in Beijing, China in October 1995 adopted a resolution on money laundering which inter alia recommends nations adopt legislation criminalizing money laundering, strengthen law enforcement authorities to seize and confiscate criminal proceeds and encourage financial institutions to report suspicious activities to the appropriate governmental authorities. See for further information: http://www.kenpubs.co.uk/interpol-pr/Index.html.

Summary – The above cited international conventions, agreements resolutions and recommendations are the primary sources for the international consensus on money laundering. This list is not exhaustive and amendments and revisions are underway in several forums. Both the United Nations and the European Union have significant efforts underway to revise their current standards. Further detail on these international documents are available from the websites of the individual organizations. An overview of these materials is also retrievable at the website of the US Financial Crimes Enforcement Network, US Department of the Treasury.

---

1. This commerce does not only refer to the banking system. One should also think of possibilities to launder money through casino's, bureau de change the purchase of real estate, jewelry and other techniques.

2. See Appendix 3 for a partial list of international conventions, agreements and recommendations addressing the issue of money laundering.

3. The following are the abbreviations used in this report for governmental entities in Bosnia and Herzegovina. BiH refers to the entire nation including the Federation of Bosnia and Herzegovina, its Cantons and the Republic of Srpska. FBiH refers to the Croat and Bosniak Federation and RS refers to the Republic of Srpska.

4. Biographies of the experts are attached in Appendix 1.

5. Legislative, executive and judicial institutions

6. See the introduction to this report.

7. It was clear in the discussions with the prosecutor of this case that the investigative tools that exist at present are inadequate to follow the trail of this illegal money.

8. The Central Bank of Bosnia and Herzegovina began its operations on August 11th 1997.

9. The currency is called Konvertibilna Marka (KM) or convertible mark and is a nationwide legal tender currency.

10. Although both nations have taken significant measures to address money laundering.

11. By the end of 1998 there were 55 banks. During the days the mission was conducted there were still 39 supervised banks.

12. In 1999 the permits of 11 banks were withdrawn, 6 because they did not fulfill the conditions for operating and 5 because of mergers. In 2000 5 permits were withdrawn, 3 because of liquidation, 1 because of bankruptcy and 1 because of a merger.

13. This support should not be limited to financial support but should also include the transfer and share of knowledge, and training activities.

14. See Appendix 3 where the source of these standards identified. These include the 40 Recommendations of the FATF, the 1988 UN Convention on illicit traffic in narcotic drugs and psychotropic substances, the 1991 EC Directive on the prevention of the use of the financial system and the 1990 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime.

15. This is No. 308/91/EEC Directive.

16. This is however not specific for FBiH. In many other countries vulnerable professions are also not regulated yet. One could think if auditors, lawyers, notaries and others.
17. This is however not specific for RS. In many other countries vulnerable professions are also not regulated yet. One could think if auditors, lawyers, notaries and others.