

Interview: Donald Hays, Principal Deputy High Representative: “Banking will experience further changes”

In some instances, banks have served as the means of fraud and embezzlement * Not all banks fulfill the obligation to report cases of money laundering * BIH has undertaken a number of steps towards establishing a modern commercial banking system * OHR regards highly the work of major audit institutions

The International Community's Principle Deputy High Representative, Mr. Donald Hays kindly responded to our request to answer a few questions for the magazine *BH Banke u BiH*. As the interview was “conducted” in such a fashion that questions were sent to Mr. Hays and answers returned in a written form, we kindly ask our readers for understanding as not all the answers have been fully spelled out. This is a consequence of the way in which the interview was conducted. We thank Mr. Hays for his time and attention.

Banke Magazine: OHR's Anti-Fraud Department has assessed that financial experts in BiH “are standing too close to the parties who have an interest in court cases; they have no experience...” On what evidence is this based – could you give concrete examples?

DH: In discussions with judges and prosecutors throughout BiH, the problems associated with court experts have been raised many times. They have been able to give the AFD concrete examples where in our judgement there is an indication that experts have not performed their duties in a professional way. In a number of cases the AFD has gathered information that the appointed court expert is cooperating with the party under

investigation or with the suspect himself, without disclosing this working relationship.

Because of this we have come to the conclusion that a Code of Ethics for court experts is urgently needed. Judges and prosecutors often complain about the lack of quality of expert testimony. This is often the reason courts and prosecutors have to request additional testimony or testimony from a different expert.

A review of the professional qualifications of court experts is a serious requirement within the overall judicial reform programme in BiH. In corruption cases, that are being monitored by the AFD, it has often been observed first hand, that the judges have been forced to order amendments to the initial financial court experts' report because the report was too weak or not focused on the issue. In one complex corruption case, where sophisticated transactions and transfers were involved, the financial court expert produced a single-page report. Such a situation often delays the entire procedure, not to mention the fact that these court experts' reports are very expensive and courts do not have the budget to spend large amounts of money on reports which at the end of the day cannot be used because they are not drawn up professionally. Clearly this is a waste of money and time.

We believe that this situation should be changed and strict criteria should be set up in the law for appointing of court experts. We should also look into the possibility of hiring specialized court experts from specialized institutions (for example, restructuring the Financial Police into the Anti-Fraud Service) or using acknowledged experts from universities. At the same time, the use of court experts should be reduced for routine cases. In our view it is not necessary to use financial court experts' opinions in every case, but only in cases of complex economic crime. It would also be helpful to establish deadlines for drawing up court experts' reports. This should be regulated by law in order to

avoid delays to court procedures. When it comes to ensuring that these reports are objective, one possible solution might be to use a team approach (one to three people) for court experts in complex corruption cases.

Banke Magazine: Regarding areas of corruption and abuse, the AFD has identified banking, energy and forestry, with special focus on “a system problem” in banking. Could you please explain this standpoint?

DH: There are several cases (already with the prosecutor or under investigation) in BiH where banks have been used as instruments for fraud and embezzlement. It is clear that there is a systemic problem involving the banking control system. Improvements have been made, but additional steps are still needed. For example, when it comes to the money-laundering reporting system, not all the banks adhere to this requirement, and therefore improvement is needed. Actually, the Federation Law on Banks is under review. The Draft Law that the AFD has had an opportunity to review will be an improvement. However, here as elsewhere the implementation is critical.

Banke Magazine: The AFD’s estimation/assessment is partly in collision with the High Representative’s statement to the OSCE Standing Committee at the end of last year that “in BiH very quickly is starting to live a modern commercial banking system”. Why and where is this difference of opinion coming from?

DH: There is no contradiction. Much has been done to improve the situation in the banking system. In this respect BiH has taken many steps towards a modern commercial banking system. The banking sector will undergo further change with the aim of establishing a banking system that will fully meet international standards and warrants the complete trust of the people of BiH. Note that the High Representative did not state that the present banking system was perfect. He was commenting

on progress made. However, we recognise that there is still a need for further improvements.

Banke Magazine: A new FBiH Banking Law is being prepared. Could you tell what exactly will be changed i.e. what will be new compared to the existing Law?

DH: Discussions are underway and several agencies are involved in improving the Banking Law. In general, the changes are focused on making banking procedures more transparent and efficient. At the same time, the law will define the competence, of the Banking Agency on the one side and the law enforcement agencies on the other. This is an ongoing discussion.

Banke Magazine: The AFD has noted weak points in the existing Banking Law, underlining control mechanisms “which are insufficient”. Could you tell what is missing, where are the failures?

DH: The main concern is inadequate implementation of the money-laundering reporting system. This is regulated by the Entity money-laundering prevention legislation. However, it is not regulated by the existing Banking Law. Reporting on suspicious transactions which exceed a certain amount (in BiH the figure is 30.000 KM or above) is regulated in the money-laundering prevention legislation, but not in the Law on Banking. This has resulted in inadequate reporting to the respective agencies. Again, implementation appears to be the area where improvement is needed.

Banke Magazine: How do you estimate the level of co-ordination among the various control and regulatory institutions in BiH? There is a feeling sometimes that they compete among themselves instead of working in a synchronised fashion?

DH: Many of these institutions have been established since the war. We have to keep in mind that it takes time to get used to new responsibilities, and that cooperation among institutions

is in some cases a relatively new thing. Consider the work of the Supreme Audit Institutions, which is held in high regard by the OHR. Their reports have uncovered a number of probable corruption cases. The Police and the Prosecutors have to learn that Supreme Audit Institution reports are an important source of information. This exercise is now underway in both Entities, and the relevant authorities have initiated proceedings. That is a step forward. We can see here another example of improved cooperation. I am confident that with time the situation will continue to improve.

Banke Magazine: Many independent experts see the investigations into Hercegovacka banka as “clumsy/unskilfully lead” especially at the beginning. What is your answer to this?

DH: It was our first such undertaking and we have learned a lot from it. At the same time, no one should lose sight of the object of this exercise, which was to take steps to secure ordinary people’s deposits and prevent the further criminal misuse of the bank. In the spring of 2001 there were widespread expressions of serious concern, in public and in private, about the performance of the bank and in particular of the people who were running it. Everyone is entitled to their own opinion about the action that was taken, but at the end what counts are the results produced.

Banke Magazine: You announced that there will be “many criminal charges” bound to the Hercegovacka banka case, but as time passes, it seems that the center of gravity of the investigation has moved, and former arguments for the introduction of the provisional administration there are going into the shade, little by little. Do you wish to comment on this thesis?

DH: I would take issue with that view. The arguments for introducing the PA are still valid. It is a normal aspect of such cases that during the investigation of a

sophisticated/complex case, such as the HB, new elements or focuses arise. The introduction of the PA was a normal consequence of such an action and was not done without sufficient evidence.