ANALYSIS
OF THE SYSTEM OF ENGAGING EXPERT WITNESSES IN CRIMINAL PROCEEDINGS, WITH FOCUS ON ECONOMIC CRIME AND CORRUPTION CASES

USAID’S JUSTICE PROJECT IN BOSNIA AND HERZEGOVINA
USAID’S JUSTICE PROJECT IN BIH

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USAID’S JUSTICE ACTIVITY IN BOSNIA AND HERZEGOVINA
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<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>BD</td>
<td>Brčko District of Bosnia and Herzegovina</td>
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<td>BiH</td>
<td>Bosnia and Herzegovina</td>
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<tr>
<td>CEPEJ</td>
<td>Council of Europe European Commission for the efficiency of justice</td>
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<td>CEST</td>
<td>Center for training of judges and prosecutors</td>
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<tr>
<td>Diagnostic Analysis, DA</td>
<td>Dijagnostička analiza integriteta pravosudnog sektora u BiH i mogućih rizika od nastanka korupcije ili neetičnog ponašanja u pravosuđu</td>
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<tr>
<td>ECTS</td>
<td>European Credit Transfer and Accumulation System</td>
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<td>FBiH</td>
<td>Federation of Bosnia and Herzegovina</td>
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<td>CPO</td>
<td>Cantonal Prosecutor’s Office</td>
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<td>MoJ</td>
<td>Ministry of Justice</td>
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<td>DPPO</td>
<td>District Public Prosecutor’s Office</td>
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<td>JC BD</td>
<td>Judicial Commission of the Brčko District of BiH</td>
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<td>Justice Activity</td>
<td>USAID’s Justice Activity in BiH</td>
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<td>RS</td>
<td>Republika Srpska</td>
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<td>HJPC</td>
<td>High Judicial and Prosecutorial Council of BiH</td>
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<td>CPC</td>
<td>Criminal Procedure Code</td>
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USAID’s Justice Activity in Bosnia and Herzegovina (JA) is a five-year rule of law initiative running from October 2014 until October 2019. Its purpose is to help justice sector institutions in Bosnia and Herzegovina (BiH) effectively combat government corruption and prosecute economic, organized, and other serious crime cases. At the same time, the JA helps increase public confidence in the judiciary by strengthening its integrity and ensuring greater self-accountability and transparency within the justice sector.

To achieve these objectives, the JA is implemented through two components:

- Component 1: Strengthening the Professional Status and Performance of Prosecutors
- Component 2: Strengthening Justice Sector Institutions to Uphold Public Integrity and Combat Corruption

In implementing its activities, the JA works in partnership with key actors and stakeholders in the justice system in BiH. These partners include the High Judicial and Prosecutorial Council (HJPC) of BiH, prosecutor offices (POs), ministries of justice (MOJs), professional associations in the judiciary, civil society, and other donors.

One of the specific activities of the JA is the development of in-depth diagnostic assessments of key issues related to the JA’s scope of work, particularly that of strengthening the capacity of POs to combat corruption and prosecute economic and organized crime.

This analysis was conducted in Year 3 to enable better understanding of the system of using expert witnesses in these high crime cases and to identify problems in the system. The Analysis concludes with recommended solutions that will enable POs to more successfully conduct these crucial prosecutions.

We would like to thank all prosecutors, expert witnesses, judges and other colleagues lawyers who participated in the creation of this Analysis through comments, discussions, expressed opinions and advice, and in particular to Aleksandra Martinović, Judge of the Constitutional Court of the Federation of Bosnia and Herzegovina, who, through her experience and advice, provided an objective approach and verification of the Analysis from the point of view of the long term practicing professional with respectable experience in using expert witnesses in criminal cases.
EXECUTIVE SUMMARY

The Analysis of the System for Engaging Expert Witnesses in Cases of Corruption and Organized and Economic Crime (the Analysis) was conducted for the purpose of understanding the problems faced by POs and courts in BiH in selecting and using expert witnesses when prosecuting complex cases involving corruption and serious economic and organized crime. The Analysis is an outgrowth of a previous and broader analysis by the JA on corruption in the judiciary known as the Diagnostic Analysis of the Integrity of the Justice Sector in BiH and the Potential Risks of Corruption or Unethical Conduct in the Judiciary (Diagnostic Analysis or DA). One of the areas of weakness in the judicial system identified by the DA was the system of engaging expert witnesses, including the manner in which expert witnesses were appointed by the courts and POs, the lack of oversight on the work they performed, and problems of integrity among experts. This led to a specialized analysis of the current BiH system of engaging and using expert witnesses by POs in their efforts to prosecute serious crime. In addition, this Analysis also assessed the legal, institutional, and organizational framework regulating the engagement of expert witnesses by POs and made recommendations for improvements based on international standards, regional best practices, and the findings of the Analysis.

In BiH, the public has very high expectations that authorities will investigate and prosecute economic crime and corruption. However, the complexity of such cases frequently results in costly, time-consuming, and elaborate investigations. Prosecutors often require the support of experts to
effectively investigate and present these cases. The use of modern forensic science and technology has influenced the means by which crimes can be detected, investigated, and presented. Expert witnesses are critical, as their findings can bolster the prosecutor’s case and their testimony can help explain complex technical facts in a criminal proceeding. Yet the experience of many POs in BiH is that some expert witnesses lack the proper credentials to prepare useful findings and in some cases create delays when they take too long to deliver their findings. The end result is to slow the entire process of investigations and prosecutions, particularly those related to corruption and financial and economic crime.

The Analysis has identified a number of problems that frequently recur in the engagement of expert witnesses. These issues have consistently contributed to the failure of POs to conduct successful prosecutions in these high crime cases. These issues include:

1. The availability of qualified and experienced expert witness who can provide testimony in complex cases of economic crime and corruption
2. Experts refusing to provide testimony and taking too long to deliver their findings
3. The lack of resources available to the courts and POs for engaging expert witnesses and the lack of a systematic approach for determining expert witness fees
4. The lack of integrity of some of the expert witnesses who are frequently used by the court and prosecutors, and problems of oversight of experts and their work.
The Analysis used a combination of methods to assess the problems faced by prosecutors in using expert witnesses. This included: 1) an analysis of international documents and domestic legislation related to expert witnesses; 2) a comparative analysis of the system for engaging expert witnesses in the region; and 3) an analysis of data collected during interviews with prosecutors, judges, and expert witnesses, results of survey of prosecutors and data related to the system of engagement of expert witnesses in POs.
OVERVIEW OF THE ANALYSIS AND FINDINGS

The Analysis focuses on current practices and the problems encountered by prosecutors in the use of expert witnesses in cases of corruption and economic crime. The opinion of expert witnesses is also analyzed to gain a fuller understanding and corroborate some of the data. The Analysis concludes with suggestions and guidelines for improving the system, such as how to avoid undermining a criminal proceeding with an expert witness whose professional integrity and testimony comes under question.

The Analysis is divided into five sections and comprises the following:

1. The Introduction
2. The use of expert witnesses in cases of corruption and serious economic and organized crime by the POs and courts
3. The quality and efficiency of the current system for engaging expert witnesses
4. The integrity and accountability of expert witnesses
5. Recommendations and proposed solutions.
INTRODUCTION

In the introduction, the JA describes the scope and the objective of the Analysis and the methodology used by the research team. This includes an overview of the key findings of the assessment of the legal and practical framework for the engagement of expert witnesses in BiH and explores the importance and the procedural role of expert witnesses in prosecutions. In addition, the Analysis presents the results of a quantitative analysis of data collected from 12 POs in BiH related to the use of expert witnesses in 2015 and 2016. The data includes information related to the average time required to obtain an expert opinion, the cost of economic and financial expertise, an overview of the number of expert witnesses engaged by POs compared to the overall number of expert witnesses available, and the frequency in which particular economic and financial expert witnesses are used.

THE USE OF EXPERT WITNESSES IN CASES OF CORRUPTION AND SERIOUS ECONOMIC AND ORGANIZED CRIME

In the JA’s first- and second-year efforts to provide support to partner POs, the Project identified numerous challenges with the use of expert witnesses. Some of the most challenging problems were related to the excessive time required by experts to develop their findings, which led to delays in the prosecution, while other challenges involved getting experts paid on time. The average amount of time for an expert to produce a finding and opinion also varied significantly from place to place. The District PO in Trebinje averaged 207 days per expert, while the District PO in Istočno Sarajevo averaged 41 days per expert. There was also a wide disparity in fees paid to experts. The average fee in Doboj was 1801 KM while in Trebinje the fee was only 354 KM. Although every PO had budgeted funds to engage expert witnesses, delays in payments for expert witnesses were a persistent problem across all BiH POs.

In this section, the Analysis also describes the qualitative methodology used to show how the time required by POs to investigate financial and economic crimes is determined by the level of complexity of these high crime cases. The use of experienced experts who can quickly identify possible crimes or areas of corruption can reduce the time spent investigating these crimes, and therefore these experts are crucial in assisting POs to conduct their prosecutions more efficiently. Our analysis showed that the current payment of fees for expert witnesses in BiH can be restrictive, especially when expert witnesses are needed for complex cases of economic crime and corruption. The collected data reflects that fees are not always paid according to the invoices submitted by the expert witness and that in many cases a lower sum is paid. However, in the Federation of Bosnia and Herzegovina (FBiH), where the Tariff on awards and expert fees limits the amount to 4,000 KM, there were some cases where fees were paid by the Cantonal POs in amounts higher than 4,000 KM, which is above the established limit.
POs hire individuals as expert witnesses more frequently and only rarely legal persons (in less than six percent of cases). Expert witnesses were most frequently hired to provide financial and economic expertise for the crimes of “Abuse of Office or Official Authority” and “Embezzlement in Office.”

THE QUALITY AND EFFICIENCY OF THE CURRENT SYSTEM OF ENGAGEMENT OF EXPERT WITNESSES

In this section, the Analysis presents findings on the quality and the efficiency related to the established system for engaging expert witnesses. This data was collected through a review of the system and the underlying assumptions for appointing and using expert witnesses, and through interviews with prosecutors on the quality of the experts’ findings and opinions. A comparative analysis of regional and international best practices was also conducted to better understand the BiH system and its practices and to help develop recommendations for reform.

International standards for using expert witnesses emphasize qualifications, experience, and knowledge when choosing an expert. It was found that the BiH system lags behind other countries in the region for three major reasons. First, in BiH, professional associations do not play an important role in appointment procedures or in the development and delivery of training for expert witnesses, nor do they conduct oversight of expert witnesses’ performance. Second, there is a lack of established criteria for the appointment of experts, which has resulted in a system that does not provide or guarantee experienced and qualified candidates. Third, the expert witnesses, until recently, have not been required to attend continuous training or to demonstrate that they are maintaining their level of knowledge or skills in the subject area where they provide expertise.

An analysis of the law related to expert witnesses in BiH showed that the criteria for serving as a court expert is quite general and does not contain any provisions that guarantee the quality of persons appointed as expert witnesses. A comparative analysis showed that other countries in the region have well defined criteria regarding the years of experience and the educational background of persons applying to serve as an expert witness.

The Analysis revealed that POs often rely on the lists of permanent court witnesses as a way to ensure the quality of an expert witness. The study also revealed that at least 38% of prosecutors frequently recycle the same witnesses and that the sole criteria for selecting experts for this group was based on past experiences and established trust. However, these criteria are ad-hoc and no institutional approach has been identified in determining the criteria for selecting an economic and financial expert, which may pose a risk of abuse of discretion when selecting a particular expert. The Analysis also noted that POs perform no analysis on the impact of expert witnesses on the outcome of individual cases. There were noted improvements in the Republika Srpska (RS) with the adoption of the Law on Expert Witnesses and the Rulebook on the Conditions, Process, and Procedure of Registration on the List of Permanent Court Experts in Brčko District, both of which define the conditions and criteria for the registration of expert witnesses in a more concise and clear manner than earlier.

1 Respective numbers of official gazettes are cited in the text of the Analysis.
Regional disparities in the application of rules and requirements is another issue identified by the Analysis. Continuing education and training are not mandatory requirements for all expert witnesses in the BiH system, and the application of rules is not geographically uniform. The FBiH Ministry of Justice drafted and adopted a new Rulebook on the training of expert witnesses. However, the Ministry of Justice of RS did not adopt a rulebook, although the same obligation was established in the former Law on Expert Witnesses of RS. The Rulebook on the conditions, manner, and procedure for enrollment on the list of permanent court expert witnesses in the Brčko District does not foresee the adoption of a special act regulating the issue of training of expert witnesses. The lack of such regulation represents a significant risk that can affect both the use of expert witnesses and the quality of the expert witnesses registered on the official lists. An example of a best practice was found in Croatia, which has a condition for appointing a certain expert witness: mandatory mentoring by an existing expert witness as part of the process of registering permanent witnesses.

A total of 86% of the interviewed prosecutors stated that only a limited number of experts from the court expert lists were able to provide expertise in cases of economic crime and corruption and to submit high-quality findings and opinions. More than 50% of prosecutors working on economic crime and corruption said that in some cases they were not satisfied with the findings and opinions of the current financial and economic expert witnesses during trials.

Interviews with prosecutors also revealed that expert witnesses’ shortcomings present a major challenge in terms of cost efficiency in criminal proceedings. Over 85% of prosecutors agreed that there are major shortcomings in the reports and findings of expert witnesses which produces a need for additional explanation and findings to support the original opinions and findings of experts, while 47% of prosecutors claimed that many experts were unable to follow a prosecutor’s instructions and that in those cases new opinions and findings had to be ordered. This in part explains the quantitative findings of this analysis, which revealed that the average duration of an expert engagement is high (207 days) which bring into question the efficiency of proceedings. Despite this, some best practices were observed in BiH, such as prosecutors meeting with expert witnesses to discuss problems and ways to overcome obstacles in obtaining higher quality expert reports and testimony. Also, some POs have formalized cooperation with law enforcement agencies, which has helped prosecutors define the type of expertise needed and guide the oversight of the work of the expert witnesses in their cases.

THE INTEGRITY AND ACCOUNTABILITY OF EXPERT WITNESSES

This section of the Analysis evaluates POs’ internal mechanisms for monitoring the integrity of expert witnesses and identifying possible violations of professional integrity by the expert witnesses. The Analysis confirmed that there were inadequate internal mechanisms for carrying out due diligence before engaging an expert witness. Many prosecutors revealed that only some of the experts have a sufficient degree of integrity to qualify as expert witnesses. Furthermore, most prosecutors felt that alleged violations are not sufficiently reported to institutions mandated for the supervision and sanctioning of experts. In addition, the Analysis has also found cases where
Expert witnesses had a record of previous criminal convictions or indictments. The lack of these internal mechanisms in POs for conducting due diligence in the selection of expert witnesses in these complex cases was identified as one of the main reasons expert witnesses allegedly lacking integrity were engaged, which led to problems for the prosecution when their testimony was challenged in the court.

RECOMMENDATIONS

In the last part of the Analysis, a set of comprehensive recommendations is offered for the improvement of the expert witness system in BiH with a special focus on financial and economic expertise. These recommendations are based on the findings of the Analysis and conform to international and regional best practices. Some of the recommendations suggest revisions to the BiH legal framework, particularly with respect to the role and importance of professional associations in appointing, training, and disciplining expert witnesses, establishing the criteria for selecting a court expert, and improving the curriculum for the training of expert witnesses. Recommendations also focus on the need to better supervise the work of expert witnesses, improve communication between experts and POs, and strengthen the capacities of POs and the courts to engage highly qualified expert witnesses. The Analysis also recommends raising the level of professional integrity of expert witnesses through clearer ethical standards and increasing the level of reporting and sanctioning of possible unprofessional conduct. Through this Analysis and the recommendations set forth below, it is hoped that legislative and practical changes will be made to the system for engaging and using expert witnesses so as to strengthen the capacity of POs to investigate corruption and prosecute serious economic and organized crimes.
1. INTRODUCTION

1.1. SCOPE AND GOALS OF THE ANALYSIS

Expert evaluations are one of the most frequently used actions aimed at collecting evidence in criminal proceedings. In practice, cases which do not involve expert witnesses are very rare, regardless of the type of crime. It can be assumed that this will continue to be the case for several reasons. The key reason lies in the fact that the subject-matter, especially when it comes to financial and economic expert evaluations, is becoming increasingly complex due to various, new methods of committing crime in this field. Scientific and technological progress has influenced both the means and modalities of committing crimes and the ability to detect such crimes. Furthermore, the criminal law system in BiH can be characterized as a combination of two different models where the standard “beyond reasonable doubt”, which, although not prescribed by domestic criminal legislation, is used in practice, while degrees of suspicion and establishment of guilt are at the same time defined in line with the principles of criminal law contained in the earlier criminal codes. This, together with the erroneously and incompletely established facts as grounds for appeal, directly binds the court to clarify all decisive facts, although the burden of proof lies with the prosecution, in order to render a lawful judgment. However, it could be argued that this standard, which has come into use in the legal community, possibly offers more opportunities for the defense to dispute the allegations made in the indictment. It can also allow the defense to introduce evidence that is not directly linked with the alleged perpetrator, object or means of perpetration, damage or proceeds of crime. Therefore, in order to avoid reversal of judgments and retrial due to violation of the right to defense or equality of arms in the proceedings, the court may allow the defense to present less relevant or completely irrelevant evidence by way of expert evaluation.

This makes expert evaluation one of the chief actions aimed at collecting evidence in criminal proceedings, but also one that is often criticized due to its potential to delay or complicate the court proceedings, especially when it comes to financial and economic expertise, which in itself is generally rather complex.

Therefore, with the development of criminal proceedings expert evaluations have become a tool frequently used to ensure maximum accuracy in proving disputable facts, but also a tool on which the court relies and which the parties use to obtain a favorable court ruling by way of an objective,
professional and often scientific examination of an item, document, body or body part, file, computer or cell phone. Due to dynamic technological progress, prosecutors and judges are not able to keep up and acquire the necessary knowledge about an ever increasing number of technical, scientific, financial and other innovations in everyday business, which can also be used for the perpetration of crimes. "The most common objections, both in theory and in practice, are related to the fact that, in some situations, due to scientific progress, prerogatives of judges are being delegated to expert witnesses which leads to a sort of expertization of judiciary."

One of the critical issues identified in the JA's first- and second-year efforts to provide support to partner prosecutor's offices aimed at strengthening the capacities of prosecutor's offices to efficiently prosecute corruption and economic crime was related to the quality and use of financial and economic experts, as well as other experts, by prosecutor's offices in BiH. It has been concluded that currently there is a number of challenges related to the use of expert witnesses, especially financial and economic experts.

According to prosecutors, despite the large number of registered financial and economic experts, only a limited number of them are able to provide financial and economic expertise, or other required expertise. Lack of qualified financial and economic experts represents a major challenge for prosecutor's offices in prosecuting economic crime and corruption cases. On the other hand, those expert witnesses who do possess the required knowledge and experience are over stretched with work which prevents them from producing their findings and opinions within the deadlines defined by prosecutors in their orders. Over the years, many prosecutors' offices have developed problems with delays in payments to expert witnesses. Irregular payments and outstanding fees may have a negative effect on the willingness of expert witnesses to accept work. Also, debts from previous years may cause the funds allocated for costs of expertise to be insufficient.

Initial interviews with prosecutors working on economic crime and corruption cases have revealed that the quality of expert reports is often unsatisfactory, that in some cases these reports are mere copies of criminal reports filed by law enforcement agencies, and that expert witnesses do not possess sufficient knowledge of the elements of crime which may lead them astray in the process of preparation of their reports, especially when orders and instructions related to expert evaluations are not sufficiently clear; which can have a direct effect on the outcome of the criminal proceedings.

Adequate oversight of the work of experts is not in place as there is no regular supervision of the work of expert witnesses and continuous evaluation of their knowledge and ethics. The Analysis showed that courts and prosecutor's offices lacked a structured system for evaluation of experts' work and an adequate system to record any deficiencies in their work. Committees responsible for the supervision of the work of expert witnesses do not receive any complaints related to the work of expert witnesses or any other circumstances that could suggest that the integrity of an expert witness has been compromised. The lack of such information prevents any evaluation of the level of

4 FBiH Law on Expert Witnesses (Official Gazette of FBiH, 49/05) uses the term "Expert Committee"; RS Law on Expert Witnesses (Official Gazette of RS, 74/17) uses the term "Committee"; while according to the Rulebook on Conditions, Manner and Procedure of Registration on the List of Permanent Court Experts in BD BiH (Official Gazette of BD BiH, 38/10), the Administrative Department of the BD Judicial Commission is responsible for the list of expert witnesses and other tasks. For the purpose of this Analysis, these three bodies will be jointly referred to as the "Committee", where appropriate.
the standard of knowledge of experts, sanctioning or revoking the status of an expert and striking an expert off the official list.

The Analysis of the Expert Witness System has identified certain issues related to the professional integrity and level of knowledge of financial and economic experts. Prosecutors also reported cases of false, inaccurate and negligent expert testimonies, as well as gross violations of the rules of profession. However, according to prosecutors, processing of such violations, especially intent, is difficult and implies numerous difficulties. These findings are supported by the Diagnostic Analysis which identified a risk of corruption and a negative effect on the efficient use of experts in court proceedings.

Since this issue had not been given sufficient attention before, especially when it comes to previously described challenges, in years 2 and 3, the JA prepared a comprehensive Analysis of the System of Engaging Expert Witnesses in Criminal Proceedings with Focus on Economic Crime and Corruption Cases. The purpose of the Analysis was to assess the legal, institutional and organizational framework regulating the use of expert witnesses in criminal proceedings by prosecutor’s offices, as well as the practice of the use of expert witnesses in criminal proceedings by prosecutor’s offices.

The Analyses focuses on the existing legal, institutional and organizational framework, including the existing practices in the process of appointment of experts and ensuring that they possess adequate level of professional knowledge, in order to assess the influence of the current situation on the availability of expert witnesses, with special focus on efficiency and quality of findings and opinions of financial and economic experts, including the adequacy of the existing system of supervision of the work of experts.

Special attention is given to the practice of engaging and using financial and economic experts by prosecutor’s offices in economic crime and corruption cases. This Analysis also includes an overview of the practice of financing the work of expert witnesses in prosecutor’s offices in terms of allocation of funds for remuneration of expert witnesses and the amount of funds allocated for financial and economic evaluations compared to other types of expert evaluations.

Furthermore, this Analysis looks at the existing cooperation between prosecutor’s offices and other state authorities, such as tax administration and financial police, who could contribute to the detection and prosecution of criminal offenses. The Analysis also reviews the efficiency of prosecutor’s offices in using these authorities, including any effects on the saving of budget funds.

Since the integrity of expert witnesses has been identified as one of the challenges that could have a negative effect on the outcome of court proceedings, special attention is given to potential gaps in mechanisms which ensure the integrity of expert evaluations by identifying, preventing and holding accountable experts who violate the integrity of expertise.
I.2. METHODOLOGY OF THE ANALYSIS OF EXPERT WITNESS SYSTEM

This Analysis relied on a combination of qualitative and quantitative methods to research and collect data which informed a comprehensive assessment of the expert witness system in criminal proceedings focusing on the use of financial and economic experts.

Qualitative methods primarily include analysis of local and regional legal frameworks and results of consultations with representatives of the professional community, including expert witnesses. The main goal was to identify and propose mechanisms which would ensure an efficient, high-quality system of expert evaluations that would, among others, minimize violations of the integrity of criminal proceedings. Goal number two was to identify gaps in the system that could contribute to the lack and unavailability of qualified financial and economic experts, time required to obtain findings and opinion and supervision of experts’ work and their integrity. Furthermore, this Analysis identified good solutions used by the countries in the region which are applicable to gaps identified in the legal and institutional framework in Bosnia and Herzegovina.

Also, reports, research papers and recommendations of the European Commission for the Efficiency of Justice (CEPEJ) related to the role and importance of expert witnesses in court proceedings were analyzed. Namely, CEPEJ intensively addresses the importance and role of expert witnesses in judicial systems of the Council of Europe Member States. Analyzed reports include CEPEJ European judicial systems: Efficiency and quality of justice editions 20125 and 20146 which include special chapters dedicated to expert witnesses in court proceedings in the Member States, selection of expert witnesses in court proceedings, number of expert witnesses, and the quality and protection of the function of expert witnesses. In September 2014, CEPEJ also published the Study on the role of experts in judicial systems of the Council of Europe Member States7 which provides an overview of different approaches to the role and status of expert witnesses in the Member States, legal and institutional framework regulating the selection, sanctions, training and remuneration of expert witnesses, principle of efficiency and overview of good practices for expert evaluations in judicial systems in the Member States. Another document published by CEPEJ that was analyzed for the purpose of this Analysis is titled Guidelines on the role of court-appointed experts in judicial proceedings of Council of Europe’s Member States8. This document provides a reference framework, criteria and principles for legislators, judicial institutions and other interested parties as regards the role and importance of expert witnesses.

A special method included evaluation of data collected by way of a survey related to the practice of engagement and use of financial and economic experts in prosecutor’s offices. The questionnaire

7 Study on the role of experts in judicial systems of the Council of Europe Member States, available at https://static1.squarespace.com/static/534f89ee4b0a6cbe40ae270/558a6d15e4b0d1b0a2afcc8/1435135253774/3rev_2014_CEPEJ-GT-QUAL_RoleExperts_en.pdf
was distributed to 11 partner cantonal and district prosecutor’s offices. The questionnaire was completed by prosecutors investigating and prosecuting economic crime and corruption cases. The main goal of the questionnaire was to collect statements and opinions of prosecutors related to their experiences in and practice of engaging and using financial and economic expert evaluations as evidence in economic crime and corruption cases. The questionnaire is divided into following sections:

1. Section “Quality and efficiency of expert witnesses”
2. Section “Practice and quality of prosecution”; and
3. Section “Integrity and accountability of expert witnesses”

Quantitative methods primarily include the descriptive statistical method, i.e. an analysis of data related to the use of financial and economic expert evaluations in criminal cases and costs and duration of expert evaluations. Data obtained through the application of this method were collected by 12 partner prosecutor’s offices and they cover all individual expert evaluations ordered in the period between 1 January and 31 December 2015. The largest number of economic crime and corruption cases prosecuted in BiH prosecutor’s offices was recorded in 2015. From the statistical point of view, this represents an additional challenge in the analysis of results from 2015 as a reference year.

The following data were collected for the defined period:

- date of the order for expert evaluation;
- date of submission of findings/opinion by expert witness;
- type of criminal offence for which the order for expert evaluation was issued;
- type of ordered expert evaluation;
- name of person or institution that conducted the expert evaluation;
- costs of each individual expert evaluation;
- date and amount paid for the expert evaluation based on the prosecutor’s office order.

The reason for collecting this data was, among others, to obtain indicators suggesting the time required to obtain an expert opinion, with special focus on financial and economic expert evaluations, the cost of economic and financial expert evaluations, an overview of the number of expert witnesses engaged by prosecutor’s offices compared to the overall number of engaged financial and economic experts (both natural and legal persons), and the frequency in which particular economic and financial expert witnesses are used.

9 Questionnaires were distributed to CPO in Tuzla Canton (CPO TC), Cantonal Prosecutor’s Office of the Sarajevo Canton (CPO SC), Cantonal Prosecutor’s Office of the Zenica-Doboj Canton (CPO ZDC), Cantonal Prosecutor’s Office of the West Herzegovina Canton (CPO WHC), Cantonal Prosecutor’s Office of the Herzegovina-Neretva Canton (CPO HNC), Cantonal Prosecutor’s Office of the Posavina Canton (CPO PC), District Public Prosecutor’s Office in Doboj (DPPO Doboj)), District Public Prosecutor’s Office in Trebinje (DPPO Trebinje), District Public Prosecutor’s Office in Istočno Sarajevo (DPPO Istočno Sarajevo), District Public Prosecutor’s Office in Bieljina (DPPO Bieljina) and the Prosecutor’s Office of the Brčko District BiH (Prosecutor’s Office of BD).

10 In addition to prosecutor’s offices listed in the previous footnote, for the purpose of the quantitative analysis we also received data from the District Prosecutor’s Office in Banja Luka (DPPO Banja Luka).
In order to additionally support the data related to the use of financial and economic experts in criminal cases and costs and duration of expert evaluations, we also collected and analyzed data for 2016 from 4 partner prosecutor's offices, which were then compared with the presented data for 2015.

Preliminary results of this Analysis were presented at the 11th Conference of Prosecutors in Bosnia and Herzegovina held in Neum on 28-30 September 2016. The results were presented as part of a discussion in one of the panels: Investigation and prosecution of criminal offenses with financial elements and elements of corruption. These findings initiated a discussion among a wide circle of professionals which resulted in additional data, findings and conclusions that were very useful and helped direct the research in the process of the preparation of the Analysis.

For the purpose of this Analysis, we used annual work plans and reports on the implementation of work plans from cantonal and district prosecutor's offices in order to identify the best practices and experiences related to cooperation with expert witnesses and using expert evaluations in economic crime and corruption cases. A special focus was placed on those prosecutor's offices with a significant increase in the number of economic crime and corruption cases. Some prosecutor's offices indicated in their reports on the implementation of annual plans certain problems they faced with regard to engaging expert witnesses and pointed out the effects of the lack of an adequate system of expert evaluations on the efficiency and quality of the work of prosecutor's offices.

Finally, on 5 April 2017, the JA in cooperation with the Standing Committee for the Efficiency of Prosecutor's Offices of the High Judicial and Prosecutorial Council of BiH (HJPC), organized a consultative meeting dedicated to the preliminary findings of the Analysis. The consultative meeting was attended by the representatives of the BiH HJPC, FBiH MoJ and the FBiH MoJ Expert Committee, Judicial Commission of the Brčko District BiH, prosecutors from all levels, expert witnesses and presidents of their associations, JA's experts and other specialists in this field. All participants gave a significant contribution to the review of issues covered by the Analysis and possible improvements in this field.

Some important recommendations are highlighted and presented in textboxes at the end of each respective section.
2. ENGAGEMENT AND USE OF EXPERTS IN CRIMINAL PROCEEDINGS, WITH FOCUS ON ECONOMIC CRIME AND CORRUPTION CASES

2.1. GENERAL LEGAL FRAMEWORK REGULATING THE SYSTEM OF EXPERTISE IN BIH

Status of expert witnesses and the system of expertise in criminal proceedings in BiH are regulated by a number of regulations. Laws on Expert Witnesses (LEW) in FBiH and RS and the Rulebook on requirements for expert witnesses in BD regulate requirements and procedures for appointment of expert witnesses, their rights and duties, supervision of the work of expert witnesses by authorities in charge of the proceedings or other persons, keeping a registry of expert witnesses, and other issues relevant for the work of expert witnesses. All three regulations regulate these issues in a similar manner with certain specificities resulting from different administrative structure. There is no legislation on expert witnesses at the level of BiH that would regulate requirements, appointment, supervision of the work of experts and other issues.

Before the adoption of the new RS LEW, the structure and contents of the entity-level laws were almost identical. Although the structure of the new RS LEW is changed and the law introduces some more advanced solutions, both LEWs regulate issues such as the status of expert witnesses, legal persons conducting evaluations, violation of duties by expert witnesses and respective sanctions. The new RS LEW introduces some new solutions which do not significantly change the situation with respect to the subject-matter that is being regulated. For example, the definition of expert evaluations, Article 2, paragraph (2), says: “Expert witness shall perform his/her work individually or on behalf of a public or private institution or a company registered to perform expert evaluations.” The same Law uses the legal solution from the previous law and defines that “The list of expert witnesses … shall not be mandatory for courts or other authorities, unless otherwise prescribed by the rules of procedure.” (Article 10, (5)). According to the applicable RS LEW, the Minister of Justice is the only one who may, based on a proposal from the Committee, impose sanctions, including dismissal from duty (Article 17, Violations and Sanctions), which is a novelty compared to...

11 Law on Expert Witnesses (Official Gazette of RS, 74/17) and Law on Expert Witnesses (Official Gazette of FBiH, 49/05 and 38/08)
12 Rulebook on requirements to serve as an expert witness in the Brčko District (Official Gazette of the Brčko District of BiH, 38/16)
the previous RS LEW (Official Gazette of RS, 16/05 and 65/08) according to which the Committee was authorized to issue written warnings and public warnings.

However, one major novelty in the 2017 RS LEW comes in the form of a set of requirements for the appointment of expert witnesses. Article 3 of the Law prescribes that persons appointed as expert witnesses shall have a university degree and minimum five years of professional experience in the fields stated by the candidate in his/her application for appointment. Persons with secondary school qualifications may also be appointed as expert witnesses provided that they have completed additional cycle of studies, earned ECTS and possess relevant professional experience.

The Rulebook on requirements for expert witnesses in BD also introduces some new solutions which essentially do not change the approach to this issue. Specificities of this Rulebook will be discussed in Section 3 of the Analysis of the Expert Witness System.

2.2. IMPORTANCE AND PROCEDURAL ROLE OF EXPERT WITNESSES IN CRIMINAL PROCEEDINGS

Applicable criminal procedure codes in BiH13 regulate issues related to orders for expert evaluations and status of expert witnesses in criminal proceedings identically. Expert evaluations in criminal proceedings are ordered by an authority in charge of the proceedings when the findings and opinion of a person possessing the necessary specialized knowledge are required to establish or evaluate certain important facts. If scientific, technical or other specialized knowledge will assist the Court in understanding the evidence or determining the facts, an expert as a special witness may testify by providing their findings on the facts and opinion that contains the evaluation of the facts. Also, at the stage of the main hearing, the parties, the defense attorney and the Court may call for an expert witness14 and the costs of the expert shall be paid by the party who engaged the expert. Expert witnesses hired, for example, by the defense should have the same responsibilities in terms of the quality and integrity of expert evaluations as those hired by the prosecution. In case of opposing findings, it is up to the Court to decide which expert evaluation the Court will give credence to and provide reasoning for this decision.

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13 Criminal Procedure Code of Bosnia and Herzegovina (Official Gazette of BiH, 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 9/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09 and 72/13, hereinafter: BiH CPC), Criminal Procedure Code of the Federation of Bosnia and Herzegovina (Official Gazette of FBiH, 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07 and 9/09, hereinafter: FBiH CPC), Criminal Procedure Code of Republika Srpska (Official Gazette of RS, 50/03, 111/04, 115/04, 29/07, 68/07, 119/08, 55/09, 80/09, 88/09 and 92/09, hereinafter: RS CPC), and the Criminal Procedure Code of the Brčko District of Bosnia and Herzegovina (Official Gazette of BD BiH, 10/03, 48/04, 6/05, 14/07, 19/07, 21/07, 2/08, 17/09 and 9/13, hereinafter: BD CPC).

14 Article 269 of the BiH CPC, Article 284 of the RS CPC, Article 284 of the FBiH CPC and Article 269 of the BD CPC.
In procedural terms, when it comes to disqualification, the status of expert witnesses is equal to that of judges and prosecutors, whereas in all other aspects, expert witnesses have the status of special witnesses.

Expert evaluations are ordered in writing by the prosecutor’s office or the court. The order indicates the facts in regard of which the evaluation is conducted. If there is a specialized institution that performs a particular type of expert evaluation, or if the expert evaluation could be performed by a state body, such expert evaluation, especially if it is complicated, shall as a rule be assigned to that institution or body. The institution or body shall name one or more specialists who will make the expert evaluation. Also, in case of a need for urgent action, the Law allows an expert evaluation to be ordered by an authorized official.

Throughout the proceedings, the body that ordered the expert evaluation shall manage the expert evaluation. The body shall advise the expert witness of the duty to present the opinion without bias and in conformity with the rules of science or profession, and that giving a false testimony represents a criminal offense. When providing findings and opinion, an expert witness shall rely on evidence presented to him by authorized officials. Therefore, an expert witness may testify only about the facts derived from firsthand knowledge, except such information that the expert may have used in the preparation of his/her findings and opinion that would reasonably be used by other experts in the same field. Also, an expert may propose presentation of evidence or obtaining items that are of relevance for the presentation of his/her findings and opinion. If an expert witness participates in a crime scene investigation, reconstruction or other investigative procedure, the expert may suggest circumstances that should be clarified or questions that should be asked to persons who are interviewed.

An expert witness must submit a report that contains the following: the evidence examined, the tests performed, findings and opinion supported by detailed reasoning, and any other relevant information that the expert deems necessary for a fair and objective analysis.

Criminal procedure codes regulate the procedure of conducting expert evaluations and actions related to examination, autopsy and exhumation of bodies, fetuses or newborn children, toxicological tests, expert evaluation of bodily injuries, physical examination and other actions, psychiatric expert evaluation, audit of business books and DNA analysis.

There are no special rules for the conduct of financial and economic expert evaluations. This type of expert evaluations is conducted in accordance with the laws regulating specific fields, including the application of international financial reporting and accounting standards. Although this issue is more relevant for the work of expert witnesses in economic crime and corruption cases, establishment of clear rules of procedure and standards in this field (which should be established by the professional community, or the relevant scientific disciplines) and knowledge of these uniform rules and standards would certainly contribute to the improvement of legal and practical framework for this type of expert evaluations and therefore to a higher quality of expert witness findings.

15 Article 99 of the BiH CPC, Article 113 of the FBiH CPC, Article 164 of the RS CPC and Article 99 of the BD CPC.
The authority that orders an expert evaluation must advise the expert witnesses about the line of inquiry and the scope of evaluation, as well as the facts and circumstances to be established. This provision has proved to be very challenging in practice for prosecutor’s offices in economic crime and corruption cases because often, due to the volume of material that should be evaluated by experts, prosecutors are not able to clearly define the scope and direction of expert evaluations in one order. The general formulation of expert evaluations given in the CPC, which refers to the audit of books, does not provide sufficiently clear instructions on what prosecutor’s offices and courts should do in these situations, where business books represent only a segment of the evidentiary material.

Criminal procedure codes prescribe that, if the books of a business enterprise, other legal entity or an individual entrepreneur first need to be put in order before being audited, the costs of putting books in order shall be charged to their account. The decision to put books in order shall be made by the authority conducting the proceedings on the basis of a written documented report of experts engaged to audit the business books. The decision shall also indicate the amount that the legal entity or the individual entrepreneur must deposit with that authority as an advance against the cost of putting its books in order. These provisions of the CPC do not clearly define who should put the business books in order. Instead, the Law says that the need for this is established based on a written report by the expert engaged to conduct the audit. This Article, also defines the duty of the entity whose books are being put in order to provide an advance payment for this action.

Criminal codes prescribe criminal offences and sanctions related to obstruction of justice, as well as unlawful conduct related to the participation of expert witnesses in criminal proceedings. On the one hand, these provisions safeguard the integrity of both the entire court proceeding and the expert witness (criminal offense “Tampering with Evidence”), while on the other hand they sanction expert witnesses who give false testimonies (criminal offense “Giving False Testimonies”).

2.3. DATA ON FINANCING AND USE OF EXPERT WITNESSES IN PROSECUTOR’S OFFICES

The work that expert witnesses, including financial and economic experts, perform for prosecutor’s offices is funded from the budget of each individual prosecutor’s office. The issue of the budgeting of judicial institutions has already been analyzed on several occasions. These analyses identified gaps and defined recommendations and opinions. However, the situation cannot be changed without systemic changes in BiH, which are not likely in the near future. Until then, prosecutor’s offices have to operate within the existing budget system. This framework includes a procedure whereby the Ministry of Finance notifies the prosecutor’s office about the funds allocated for the coming year.
Costs of expert evaluations are planned under the item “Contracted and other services”. However, the format of the table used for the planning of those costs does not allow any breakdown of the costs or detailed explanation of their purpose. This means that the executive and legislative powers cannot receive documented projections of potential costs for financial and economic experts for the coming year.

Data presented in this Section show that the costs of financial and economic evaluations in economic crime and corruption cases do not exceed 12% of total costs of expert evaluations. In some prosecutor’s offices, this percentage is only 5%. The data also indicate that prosecutor’s offices should adopt the practice of filing an annex to the budget request where they would elaborate reasons for requesting additional funds to cover the costs of financial and economic evaluations. Since the fight against corruption is a matter of common interest, in addition to the use of financial and economic experts, the state should recognize the need to provide more funds for the services of financial and economic experts in economic crime and corruption cases.

### 2.3.1. SUMMARY OVERVIEW OF FINANCIAL AND ECONOMIC EXPERT EVALUATIONS IN 2015 - NUMBER, COSTS AND DURATION

As previously mentioned, data collected from 12 partner prosecutor’s offices are related to expert evaluations conducted in the period between 1 January and 31 December 2015. The following data were collected for the defined period:

- date of the order for expert evaluation;
- date of submission of findings/opinion by expert witness;
- type of criminal offence for which the order for expert evaluation was issued;
- type of ordered expert evaluation;
- name of person or institution that conducted the expert evaluation;
- costs of each individual expert evaluation;
- date and amount paid for the expert evaluation based on the prosecutor’s office order.

The reason for collecting this data was, among others, to obtain indicators suggesting the time required to obtain an expert opinion, with special focus on financial and economic expert evaluations, the cost of economic and financial expert evaluations, an overview of the number of expert witnesses engaged by prosecutor’s offices compared to the overall number of engaged financial and economic experts (both natural and legal persons), and the frequency in which particular economic and financial expert witnesses are used.

All 12 prosecutor’s offices have not submitted all data for each parameter. Therefore, the tables below do not include prosecutor’s offices that have not submitted the data for the respective parameters.

A summary overview of financial and economic expert evaluations in 2015 is given below. Individual elements are later additionally elaborated for specific parameters.
Table 1: Summary overview of financial and economic expert evaluations for 2015 – number, cost and duration

<table>
<thead>
<tr>
<th>Prosecutor’s Office</th>
<th>Total number of orders for financial expert evaluations</th>
<th>Average duration of fin. expert evaluations* (in days)</th>
<th>Maximum duration of fin. expert evaluations (in days)</th>
<th>Minimum duration of fin. expert evaluations (in days)</th>
<th>Total cost of fin. expert evaluations (in BAM)</th>
<th>Average cost of fin. expert evaluations (in BAM)</th>
<th>Maximum cost of fin. expert evaluations (in BAM)</th>
<th>Minimum cost of fin. expert evaluations (in BAM)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecutor’s Office of BD</td>
<td>22</td>
<td>80</td>
<td>466</td>
<td>7</td>
<td>14,957</td>
<td>680</td>
<td>1,729</td>
<td>150</td>
</tr>
<tr>
<td>CPOTC</td>
<td>22</td>
<td>52</td>
<td>210</td>
<td>5</td>
<td>9,620</td>
<td>437</td>
<td>2,500</td>
<td>100</td>
</tr>
<tr>
<td>DPPO I. Sarajevo</td>
<td>20</td>
<td>41</td>
<td>115</td>
<td>4</td>
<td>11,890</td>
<td>529</td>
<td>2,075</td>
<td>180</td>
</tr>
<tr>
<td>CPO HNC</td>
<td>14</td>
<td>81</td>
<td>227</td>
<td>8</td>
<td>10,660</td>
<td>761</td>
<td>2,640</td>
<td>330</td>
</tr>
<tr>
<td>DPPO Doboj</td>
<td>6</td>
<td>88</td>
<td>245</td>
<td>15</td>
<td>10,807</td>
<td>1,801</td>
<td>5,612</td>
<td>170</td>
</tr>
<tr>
<td>CPO WHC</td>
<td>8</td>
<td>24</td>
<td>52</td>
<td>9</td>
<td>4,488</td>
<td>561</td>
<td>785</td>
<td>281</td>
</tr>
<tr>
<td>DPPO Trebinje</td>
<td>7</td>
<td>207</td>
<td>480</td>
<td>01</td>
<td>2,480</td>
<td>354</td>
<td>640</td>
<td>220</td>
</tr>
<tr>
<td>DPPO Banja Luka</td>
<td>6</td>
<td>165</td>
<td>339</td>
<td>27</td>
<td>4,277</td>
<td>713</td>
<td>1,679</td>
<td>330</td>
</tr>
<tr>
<td>CPO PC</td>
<td>5</td>
<td>97</td>
<td>182</td>
<td>19</td>
<td>2,538</td>
<td>507</td>
<td>1,000</td>
<td>200</td>
</tr>
<tr>
<td>CPO SC</td>
<td>101</td>
<td>59</td>
<td>681</td>
<td>1</td>
<td>105,402</td>
<td>1,044</td>
<td>5,341</td>
<td>236</td>
</tr>
<tr>
<td>DPPO Bijeljina</td>
<td>14</td>
<td>134</td>
<td>808</td>
<td>20</td>
<td>9,218</td>
<td>658</td>
<td>1,115</td>
<td>300</td>
</tr>
<tr>
<td>CPO ZDC</td>
<td>25</td>
<td>157</td>
<td>686</td>
<td>3</td>
<td>12,211</td>
<td>488</td>
<td>1,771</td>
<td>201</td>
</tr>
</tbody>
</table>

* Means number of days between the order and the submission of expert opinion.

These 12 prosecutor’s offices used as a sample had 250 financial and economic expert evaluations in 2015, which means an average of 21 expert evaluations per prosecutor’s office. In 2015, CPO SC had the largest number of expert evaluations – 101, while CPO PC had the smallest number – 5.

In 2015, the average duration of expert evaluations – the number of days between the order and the submission of expert opinion – ranged between 207 days in DPPO Trebinje and 41 day in DPPO I. Sarajevo. The maximum duration of individual expert evaluations in 2015 in the observed sample was recorded in DPPO Bijeljina - 808 days (completed in 2015), while the minimum duration of one day was recorded in CPO SC and DPPO Trebinje. The data on the average duration of financial and economic evaluations confirm that this type of expert evaluations does require a longer period of time. Some of the reasons for long duration of these expert evaluations will be elaborated below.
Overview of the costs of expert evaluations

This section provides the data on average, maximum and minimum costs of financial and economic expert evaluations per individual prosecutor’s offices. A table showing an overview of ranges of costs of those expert evaluations is also given below.

Average costs of individual expert evaluations ranged between BAM 1,801 in DPPO Doboj and BAM 354 in DPPO Trebinje. Maximum cost of an individual expert evaluation in the amount of BAM 5,612 was recorded in DPPO Doboj, while the minimum cost in the amount of BAM 100 was recorded in CPO TC. Figure 2 below shows an overview of average costs, including maximum and minimum costs broken down by prosecutor’s offices.
Table 2 shows indicators related to ranges of costs for financial and economic evaluations per individual prosecutor’s offices. Ranges of costs are divided into six groups. Most of the costs of expert evaluations in the observed sample in 2015 ranged between BAM 501 and 1,000 KM (40%), while 39% of expert evaluations ranged between BAM 100 and 500. Costs of 34 expert evaluations (or 14%) ranged between BAM 1,001 and 1,500, while the costs of 19 expert evaluations exceeded BAM 1,500 KM (8%).

Table below provides an overview of costs of individual expert evaluations broken down by ranges:

Table 2: Overview of costs of financial and economic evaluations in 2015 broken down by ranges

<table>
<thead>
<tr>
<th></th>
<th>BAM 100 - 500</th>
<th>BAM 501 - 1,000</th>
<th>BAM 1,001 - 1,500</th>
<th>BAM 1,501 - 2,000</th>
<th>BAM 2,001 - 2,500</th>
<th>&gt;BAM 2,501</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPO HNC</td>
<td>4</td>
<td>9</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>14</td>
</tr>
<tr>
<td>Prosecutor's Office of BD</td>
<td>10</td>
<td>9</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>22</td>
</tr>
<tr>
<td>CPO TC</td>
<td>18</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>22</td>
</tr>
<tr>
<td>CPO WHC</td>
<td>2</td>
<td>6</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>DPPO Banja Luka</td>
<td>1</td>
<td>4</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td>DPPO I. Sarajevo</td>
<td>15</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>20</td>
</tr>
<tr>
<td>DPPO Trebinje</td>
<td>6</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td>DPPO Doboj</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>CPO PC</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>CPO SK</td>
<td>12</td>
<td>50</td>
<td>29</td>
<td>5</td>
<td>2</td>
<td>3</td>
<td>101</td>
</tr>
<tr>
<td>DPPO Bijeljina</td>
<td>6</td>
<td>7</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>14</td>
</tr>
<tr>
<td>CPO ZDC</td>
<td>19</td>
<td>5</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>25</td>
</tr>
<tr>
<td>Total</td>
<td>97</td>
<td>100</td>
<td>84</td>
<td>14</td>
<td>6</td>
<td>0</td>
<td>250</td>
</tr>
</tbody>
</table>

It is evident that the cost of most expert evaluations, i.e. 79%, performed by financial and economic experts was below BAM 1,000, while the cost of 21% of evaluations was BAM 1,000 or more. This data is very important as it shows that most of the individual expert evaluations do not present a significant financial burden for prosecutor’s offices. In order words, most of the paid costs of expert evaluations are relatively low compared to overall costs of expert evaluations in prosecutor’s offices.
In 2015, 12 observed prosecutor’s offices spent BAM 198,548 for financial and economic evaluations. The highest spending in the amount of BAM 105,402 was recorded in CPO SC, while DPPO Trebinje had the lowest spending in the amount of BAM 2,480.

For prosecutor’s offices which submitted the data on total costs of all expert evaluations in 2015, it is possible to make a comparison, or determine the ratio of total costs for financial and economic evaluations compared to other expert evaluations. The highest percentage share was recorded in CPO SC where costs of financial and economic evaluations represented 21% of total costs. In five other prosecutor’s offices (CPO PC, DPPO I. Sarajevo, CPO ZDC, DPPO Bijeljina and CPO WHC) the percentage of financial and economic evaluations ranged between 10% and 14% compared to the total number of conducted evaluations. The share in other prosecutor’s offices was below 10%, as shown in the table below:

Table 3: The share of costs of financial and economic evaluations in total costs of expert evaluations in 2015

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Financial and economic evaluations</th>
<th>% share</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPO SC</td>
<td>492,066</td>
<td>105,402</td>
<td>21%</td>
</tr>
<tr>
<td>CPO PC</td>
<td>17,881</td>
<td>2,538</td>
<td>14%</td>
</tr>
<tr>
<td>DPPO I. Sarajevo</td>
<td>92,955</td>
<td>11,890</td>
<td>13%</td>
</tr>
<tr>
<td>CPO ZDC</td>
<td>105,441</td>
<td>12,211</td>
<td>12%</td>
</tr>
<tr>
<td>DPPO Bijeljina</td>
<td>85,007</td>
<td>9,218</td>
<td>11%</td>
</tr>
<tr>
<td>CPO WHC</td>
<td>45,847</td>
<td>4,488</td>
<td>10%</td>
</tr>
<tr>
<td>CPO HNC</td>
<td>135,621</td>
<td>10,660</td>
<td>8%</td>
</tr>
<tr>
<td>DPPO Trebinje</td>
<td>40,939</td>
<td>2,480</td>
<td>6%</td>
</tr>
<tr>
<td>DPPO Doboj</td>
<td>227,166</td>
<td>12,347</td>
<td>5%</td>
</tr>
</tbody>
</table>
For prosecutor’s offices which submitted the data for all ordered expert evaluations in 2015 (CPO SC submitted only data about total amounts of costs of expert evaluations in 2015), it is evident that the number of financial and economic evaluations is significantly lower compared to the overall number of expert evaluations.

Figure 4: Overview of total costs of financial and economic evaluations broken down by prosecutor’s offices

![Chart showing total costs of financial and economic evaluations]

Table 4: The share of ordered financial and economic evaluations in the total number of ordered evaluations in 2015

<table>
<thead>
<tr>
<th>Prosecutor’s Office</th>
<th>Total number of ordered expert evaluations</th>
<th>Total number of financial and economic evaluations</th>
<th>% share</th>
</tr>
</thead>
<tbody>
<tr>
<td>DPPO Doboj</td>
<td>566</td>
<td>9</td>
<td>2%</td>
</tr>
<tr>
<td>CPO HNC</td>
<td>459</td>
<td>14</td>
<td>3%</td>
</tr>
<tr>
<td>CPO WHC</td>
<td>137</td>
<td>8</td>
<td>6%</td>
</tr>
<tr>
<td>CPO PC</td>
<td>95</td>
<td>5</td>
<td>5%</td>
</tr>
<tr>
<td>DPPO Trebinje</td>
<td>133</td>
<td>7</td>
<td>5%</td>
</tr>
<tr>
<td>DPPO I. Sarajevo</td>
<td>297</td>
<td>20</td>
<td>7%</td>
</tr>
<tr>
<td>DPPO Bijeljina</td>
<td>311</td>
<td>14</td>
<td>5%</td>
</tr>
<tr>
<td>CPO ZDC</td>
<td>625</td>
<td>25</td>
<td>4%</td>
</tr>
</tbody>
</table>
When it comes to payment of costs of financial and economic evaluations, the situation varies from one prosecutor’s office to another, including district prosecutor’s offices which are funded from a single source, namely:

- In CPO SC, out of the total amount of BAM 105,402 ordered for payment of financial and economic evaluations in 2015, BAM 103,193 (98%) was paid. Out of that amount, 61% was paid in 2015, while the remaining 39% was paid in March 2016.

- In CPO HNC, all costs of financial and economic evaluations ordered in 2015 in the amount of BAM 10,660 were paid. Out of that amount, 80% was paid in 2015, while the remaining 20% was paid in January 2016.

CPO TC submitted data related to the costs of expert evaluations which represent amounts from expert witness cost estimates reduced by taxes and contributions. The amount of BAM 9,620, which represents the total amount of costs for financial and economic evaluations in CPO TC in 2015, had still been not paid to experts at the time of submission of data. The payment of these fees started as late as mid 2017.

- In CPO PC, all costs of financial and economic evaluations ordered in 2015 in the amount of BAM 2,536 were paid. However, no data about the time of payments have been submitted.

- In CPO WHC, net amount of BAM 3,700 was paid for financial and economic evaluations (compared to the gross amount of BAM 4,488). Before the end of 2015, 62% of the net amount for financial and economic evaluations was paid, while the remaining 38% was paid by February 2016.

- In DPPO Doboj, the amount of BAM 10,807 for financial and economic evaluations ordered in 2015 was not fully paid. The amount of BAM 4,646 (or 42%) was paid, while two financial and economic evaluations in the amount of BAM 6,161 were not paid. Out of the amount that was paid, 48% was paid in 2015, while the remaining 52% was paid in April 2016.

- In DPPO Trebinje, all costs of financial and economic evaluations in the amount of BAM 2,480 were paid. Two expert evaluations, which made up 23% of total financial and economic evaluations, were paid before the end of 2015, while the remaining amount of BAM 1,920 was paid in January 2016.

- In DPPO I. Sarajevo, all costs of financial and economic evaluations in the amount of BAM 11,890 were also paid. However, they were paid as late as November 2016.

- DPPO B. Luka submitted data which show that out of the total costs of financial and economic evaluations in the amount of BAM 4,277, BAM 1,734 KM (41%) represented costs of the expert evaluations performed by the Institute for Expert Evaluations “Zenit” d.o.o. Banja Luka, and this amount was paid on 18 May 2016 by way of a multilateral compensation between “Zenit” d.o.o. Banja Luka and the RS Ministry of Finance.

- In DPPO Bijeljina, out of the total costs of financial and economic evaluations in the amount of BAM 9,218, 78% was paid (BAM 906 or 10% remained unpaid). Out of that amount, 25% was paid in 2015, while 43% was paid in 2016 and 10% (expert evaluation in the amount of BAM 948) was paid in 2017.

- In Prosecutor’s Office of BD, total costs of financial and economic evaluations in 2016 amounted...
to BAM 14,957. Out of that amount, 97% (BAM 14,566) was paid before the end of 2015. The remaining amount of BAM 391 was paid by 12 January 2016.

- In CPO ZDC, 89% of costs of financial and economic evaluations were paid before the end of 2015, while the remaining 11% or BAM 1,300 was paid by the end of January 2016.

This sample shows that the dynamics of payment of financial and economic experts, including all other experts, varies largely in the observed prosecutor’s offices. In the observed sample, CPO TC had the longest delays in payments for financial expertise, with payments for 2015 outstanding at the time of the submission of data. The payment of these fees started as late as mid 2017.

In the observed sample, the Prosecutor’s office of BD is the most expedient when it comes to the dynamics of payment of the costs of financial and economic evaluations.

2.3.2. FREQUENCY OF USE OF FINANCIAL AND ECONOMIC EXPERTS AND OVERVIEW OF CRIMES FOR WHICH THIS TYPE OF EXPERT EVALUATIONS WERE ORDERED

Frequency of use of financial and economic experts

In 2015, 12 prosecutor’s offices representing the observed sample hired 62 financial and economic experts. Out of that number, 60 expert witnesses were natural persons, while one legal entity, the Institute for Expert Evaluations “Zenit” d.o.o. Banja Luka, was hired by two prosecutor’s offices, specifically CPO SC and DPPO B. Luka.

Majority of the prosecutor’s offices used experts from official lists of expert witnesses, except the Prosecutor’s Office of BD which used experts outside of the official list of expert witnesses. Out of 60 experts used in 2015 by the observed prosecutor’s offices, 16 were not registered in the lists of expert witnesses established by relevant institutions.

The largest number of expert evaluations conducted by single financial and economic experts was recorded in CPO SC, where one expert witness conducted 56 expert evaluations in 2015 (out of 101 evaluations ordered in 2015).

Table 5: Summary overview of financial and economic evaluations - who conducted expert evaluations

<table>
<thead>
<tr>
<th>Prosecutor’s Office</th>
<th>Total number of hired expert witnesses</th>
<th>Number of expert witnesses -natural persons</th>
<th>Number of expert witnesses – legal persons</th>
<th>Number of expert witnesses from the MoJ list</th>
<th>Number of expert witnesses who were used more than once</th>
<th>Number of expert evaluations conducted by a single expert who was used most frequently</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPO HNC</td>
<td>7</td>
<td>7</td>
<td>0</td>
<td>5 (71%)</td>
<td>3</td>
<td>6 (43% out of 14)</td>
</tr>
<tr>
<td>Prosecutor’s Office of BD</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0 (0%)</td>
<td>3</td>
<td>16 (73% out of 22)</td>
</tr>
</tbody>
</table>
Type of crimes for which financial and economic expert evaluations were ordered

As regards the type of crimes for which the prosecutor’s offices ordered financial and economic evaluations, those were mainly cases where there were grounds for suspicion or grounded suspicion for crimes of “Abuse of Office or Official Authority” and “Embezzlement in Office”. The table below gives an overview of crimes for which financial and economic evaluations were conducted:

Table 6: Financial and economic evaluations broken down by type of crime

<table>
<thead>
<tr>
<th>Prosecutor’s Office</th>
<th>Most frequent crime for which financial and economic evaluations were used</th>
<th>Ratio of expert evaluations for that crime</th>
<th>Other crimes occurring in more than 10% of expert evaluations</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPO HNC</td>
<td>Economic mismanagement, Abuse of Authority in Economic Business Operations, Embezzlement in Office</td>
<td>Approx. 20% each (64% in total)</td>
<td>Irregular Allocation of Funds of a Legal Person (14%)</td>
</tr>
<tr>
<td>Prosecutor’s Office of BD</td>
<td>Undetermined</td>
<td>41%</td>
<td>Undetermined-Abuse of Office (18%)</td>
</tr>
<tr>
<td>CPO TC</td>
<td>Embezzlement in Office</td>
<td>41%</td>
<td>Abuse of Office or Official Authority (36%)</td>
</tr>
<tr>
<td>CPO WHC</td>
<td>Abuse of Office or Official Authority, Embezzlement in Office</td>
<td>25% each (50% in total)</td>
<td>Other crimes occurred in less than 10% of expert evaluations</td>
</tr>
<tr>
<td>DPPO B. Luka</td>
<td>Embezzlement</td>
<td>67%</td>
<td>Other crimes occurred in less than 10% of expert evaluations</td>
</tr>
<tr>
<td>Location</td>
<td>Main Crime Type</td>
<td>Percentage</td>
<td>Other Crimes occurred</td>
</tr>
<tr>
<td>------------------</td>
<td>------------------------------------------</td>
<td>------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>DPPO Trebinje</td>
<td>Abuse of Office or Official Authority</td>
<td>71%</td>
<td>in less than 10% of expert evaluations</td>
</tr>
<tr>
<td>DPPO Doboj</td>
<td>Abuse of Office or Official Authority</td>
<td>33% each (66% in total)</td>
<td>Other crimes occurred in less than 10% of expert evaluations</td>
</tr>
<tr>
<td>CPO PC</td>
<td>Abuse of Office or Official Authority</td>
<td>60%</td>
<td>Other crimes occurred in less than 10% of expert evaluations</td>
</tr>
<tr>
<td>CPO SC</td>
<td>Embezzlement in Office</td>
<td>28%</td>
<td>Abuse of Office or Official Authority (20%)</td>
</tr>
<tr>
<td>DPPO Bijeljina</td>
<td>Abuse of Office or Official Authority</td>
<td>43%</td>
<td>No qualification of crime (14%)</td>
</tr>
<tr>
<td>CPO ZDC</td>
<td>Abuse of Office</td>
<td>68%</td>
<td></td>
</tr>
<tr>
<td>DPPO I.Sarajevo</td>
<td>Abuse of Office or Official Authority</td>
<td>20%</td>
<td>Tax and Contributions Evasion (15%)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Lack of Commitment in Office (15%)</td>
</tr>
</tbody>
</table>

**Information on the use of expert witnesses in 2016**

To be able to identify trends, we asked four prosecutor’s offices to provide data for 2016, in addition to the data for 2015. The data were collected from DPPO B. Luka, CPO TC, CPO WNC and DPPO Bijeljina. Data sought from these prosecutor’s offices include the following:

- Total number of expert evaluations ordered in 2016;
- Total number of financial and economic evaluations ordered in 2016 in economic crime and corruption cases;
- Total amount of funds allocated for payment of expert evaluations in 2016;
- Total amount of funds allocated for payment of financial and economic evaluations in 2016 in economic crime and corruption cases;
- How much of that amount was paid to financial and economic experts as at 31 December 2016, and how much was paid by 30 June 2017;
- Total number of financial and economic experts hired in economic crime and corruption cases in 2016;
- Total number of financial and economic experts who provided expert evaluations in more than one economic crime and corruption case in 2016.

Trends related to the total number of ordered expert evaluations and the number of ordered financial and economic evaluations in the observed prosecutor’s offices varied in 2016 compared to 2015:
Figure 5: Total number of ordered expert evaluations and ordered financial and economic evaluations for 2015 and 2016

For two prosecutor’s offices, it is possible to make a comparison of the percentage share of ordered financial and economic evaluations in the total number of ordered expert evaluations in 2015. This percentage share remained unchanged in 2016:

Table 7: Share of financial and economic evaluations in the total number of ordered expert evaluations for 2015 and 2016.

<table>
<thead>
<tr>
<th></th>
<th>% share of fin. and econom. evaluations in the total number of expert evaluations in 2015</th>
<th>% share of fin. and econom. evaluations in the total number of expert evaluations in 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPO HNC</td>
<td>3%</td>
<td>3%</td>
</tr>
<tr>
<td>DPPO Bijeljina</td>
<td>5%</td>
<td>5%</td>
</tr>
</tbody>
</table>

In two prosecutor’s offices that submitted the data on the total amount of funds allocated for the payment of expert evaluations in 2015 compared to 2016, CPO HNC and DPPO Bijeljina, there was an increase of these funds in 2016 compared to 2015. In those prosecutor’s offices there was an increase of the total amount of funds allocated for the payment of financial and economic evaluations in 2016 compared to 2015. DPPO B. Luka also recorded an increase of the total amount of funds allocated for the payment of financial and economic evaluations in 2016 compared to 2015, while CPO TC recorded a decrease of these funds:
For two prosecutor’s offices, it is possible to make a comparison of the percentage share of the amounts of funds allocated for payment of financial and economic evaluations in the total amount of funds allocated for the payment of expert evaluations in 2015 and 2016. In 2016, this percentage share is slightly lower in CPO HNC and slightly higher in DPPO Bijeljina:

Table 8: Share of costs of financial and economic evaluations in the total amount of costs of expert evaluations for 2015 and 2016

<table>
<thead>
<tr>
<th></th>
<th>% share of the amount of funds for fin. and econ. evaluations in the total amount of funds for expert evaluations in 2015</th>
<th>% share of the amount of funds for fin. and econ. evaluations in the total amount of funds for expert evaluations in 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>DPPO Bijeljina</td>
<td>11%</td>
<td>25%</td>
</tr>
<tr>
<td>CPO HNC</td>
<td>8%</td>
<td>7%</td>
</tr>
</tbody>
</table>

As regards the dynamics of payments to financial and economic experts in 2016, in DPPO Bijeljina 49% of the amount was paid before the end of 2016, while the remaining amount was paid by 30 June 2017. In CPO HNC, BAM 13,000 (which includes outstanding amounts from previous years) was paid by 31 December 2016, while BAM 1,720 was paid by 30 June 2017. In CPO TC, amounts for 2016 were not paid; while in DPPO B. Luka nothing was paid by 31 December 2016, however
the total amount was paid by 30 June 2017. This shows that the same problems with payment of fees of financial and economic experts that were recorded in 2016 were still present in 2016.

Table below gives a comparative overview of the total number of financial and economic experts who were hired in 2015 and 2016, as well as the number of experts who were used more than once both in 2015 and in 2016:

Table 9: Comparative overview of the total number of financial and economic experts who were hired in 2015 and 2016

<table>
<thead>
<tr>
<th>Prosecutor’s Office</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total number of hired fin. and econ. experts</td>
<td>Number of experts who were hired more than once</td>
</tr>
<tr>
<td>CPO HNC</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>CPO TC</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>DPPO B. Luka</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>DPPO Bijeljina</td>
<td>6</td>
<td>4</td>
</tr>
</tbody>
</table>

2.3.3. EXPERT WITNESS FEES AND EXPENSES

In BiH, the issue of expert witness fees and expenses is regulated by bylaws. In FBiH, expert witness fees and expenses are regulated by the Tariff of Fees and Expenses of Expert Witnesses. In RS, this issue is regulated by the Price List for Fees and Expenses of Expert Witnesses. According to prosecutors interviewed for the purpose of this Analysis, financial and economic expert evaluations in complex organized crime and corruption cases are generally complicated and demanding and require high professional standards and lengthy engagement of expert witnesses. Complex expert evaluations, which may take months, are normally more expensive than some other shorter and less complicated evaluations. Prosecutors, especially those working in the FBiH prosecutorial system, identified the Tariff of Fees and Expenses of Expert Witnesses as a particularly restrictive factor in their work since it is limited to BAM 2,000. This is often unacceptable for expert witnesses who work on complex expert evaluations where it takes months to prepare findings and opinion. Prosecutors also reported that expert witnesses often refuse to accept complex expert evaluations due to previously undertaken obligations, while prosecutors believe that this is just an excuse and that the real reason lies in the unreasonably low tariffs compared to the scope of evaluations. Prosecutors also identified tariff-related restrictions in cases where it would be most effective to hire a legal person, i.e. a forensic institution, to perform complex financial and economic evaluations, but due to the price of their services this was not possible.

The analysis of the data obtained through the application of the quantitative method, i.e. the analysis of the data on the use of expert witnesses in criminal proceedings and the costs and duration of expert evaluations, shows that that fees are not always paid according to the invoices submitted by
expert witness and that in many cases a lower sum is paid. On the other hand, the data showed that some prosecutor’s offices paid fees exceeding BAM 4,000, which is above the limit defined in the Tariff in FBiH. During discussions at the 11th Conference of Prosecutors in BiH held in Neum on 28-30 September 2016, chief prosecutors gave different explanations as to how they manage to find solutions for the payment of the requested fees for expert evaluations in accordance with the applicable legislation.

It is also not clear how exactly fees and expenses are calculated for individual financial and economic evaluations. Article 2, paragraph 3 of the Tariff of Fees and Expenses of Expert Witnesses in FBiH prescribes that fees for complex expert evaluations should range between BAM 300 and 2,000. Article 3 of the same Tariff prescribes that fees may be increased by maximum 100% depending on the complexity of the subject-matter of an expert evaluation and in cases where special expertise, knowledge and/or experience are required. The largest differences in reimbursement of expenses of expert evaluations were identified in case of financial and economic expert evaluations. At the same time, there are no clearly and specifically prescribed criteria based on which the value of individual complex expert evaluations is determined, which may lead to certain discrepancies in the process of approving the amount of fees.

For criminal cases prosecuted according to the BiH CPC, BiH Council of Ministers has adopted a Decision on reimbursement of costs of criminal proceedings conducted in accordance with the BiH CPC. According to Article 14 of this Decision, the amount of fees is determined by the authority in charge of the proceedings, at its discretion, taking into consideration the amount of work and the complexity of a particular expert evaluation. According to the representatives of the Prosecutor’s Office of BiH, this judicial institution sets up committees which review the received statements of expenses and approve or reduce the stated amounts at their discretion. The representatives of the Prosecutor’s Office of BiH stated that determination of expert witness fees poses a challenge for the staff of the Prosecutor’s Office (Committee members) and that more specific criteria would make this task much easier.

RS Price List for Fees and Expenses of Expert Witnesses was more specific in terms of the amount of fees and expenses and prescribed amounts of fees for all types of expert evaluation services. The Price List defined hourly rates for each service thus enabling adequate compensation for complex and lengthy expert evaluations and a more precise method for determining the amount of fees for expert evaluations based on hours of work.

Article 17, paragraph 2 of the BD Rulebook on Requirements for Expert Witnesses prescribes that the amount of fees and expenses shall be determined by the authority or institution to which the expert evaluation is presented. Therefore, BD also has vague rules for determination of the amount of fees and expenses for individual expert evaluations.

Survey respondents confirmed that prosecutor’s offices lack precise and clear criteria for determination of the amounts of expenses that should be reimbursed to expert witnesses. In the survey, expert witnesses argued that prosecutors, and in particular other employees of prosecutor’s offices responsible for the review and approval of statements of expenses, were not sufficiently competent to adequately assess the expenses related to the production of findings and opinions. They also
stated that prosecutor’s offices failed to provide any reasoning in cases when they did not approve the entire requested amount. Almost 76% of surveyed prosecutors identified another problem in practice where expert witnesses often submit relatively different statements of expenses for similar financial and economic expert evaluations. This makes determination of amounts that should be paid for similar expert evaluations challenging for prosecutor’s offices.

Recommendations

1. Amendments to the applicable legislation regulating the issue of expert witness fees and expenses should be initiated to enable adequate reimbursement of expert witnesses in complex financial and economic expert evaluations.

2. Adoption of new tariffs of fees and expenses of expert witnesses at the level of BiH and BD should be initiated. At the level of FBiH, amendments to the existing Tariff should be initiated to include more specific criteria for determination of fees and expenses that would be commensurate with the amount of work and knowledge of expert witnesses. In FBiH, amendments to the existing Tariff should be initiated to include adequate and specific criteria for determination of fees and expenses.

3. Financial and economic expert evaluations do not make up the largest portion of expenses for expert witnesses and do not represent a major budgetary burden for prosecutor’s offices and courts. Therefore, if the government wishes to see higher efficiency of anti-corruption measures, it should allocate more funds for this purpose.

4. Prosecutor’s offices should developed criteria for adequate determination of fees and expenses of expert witnesses. These criteria should be defined based on budgetary capacities of each prosecutor’s office. At the same time, efforts should be made to achieve maximum alignment of the criteria at the level of entities, BD and BiH. Also, professional associations of expert witnesses and institutions conducting expert evaluations should be involved in the process of defining these criteria.
3. QUALITY AND EFFICIENCY OF THE CURRENT SYSTEM OF EXPERT EVALUATIONS IN BiH

3.1. COMPETENCE AND APPOINTMENT OF EXPERT WITNESSES

3.1.1. PROCEDURES AND CRITERIA FOR SELECTION AND APPOINTMENT OF PERMANENT COURT EXPERTS IN JUDICIAL SYSTEM

3.1.1.1. Procedures for selection and appointment of expert witnesses

There is no special legislation at the level of BiH regulating the issues related to expert witnesses and their status. Consequently, selection and appointment of expert witnesses also remains unregulated. At the entity level, experts are appointed and dismissed from duty by ministers of justice, based on a proposal from the Committee. In BD, court presidents jointly appoint and discharge expert witnesses. Expert witnesses are appointed by way of a public call announced by the entity level ministers of justice and Judicial Commission in BD. However in BD, expert witnesses may be appointed based on a personal request. Ministers of Justice appoint respective Committees responsible for verification of candidates’ qualifications and their impartiality and integrity. Companies that have a team of experts in a particular field of expertise who meet the requirements from the LEW and have adequate technical equipment may also be registered in the directory of expert witnesses. The laws stipulate that the list of expert witnesses is not mandatory for courts or other authorities in charge of the proceedings and other parties to the proceedings, while the BD Rulebook does not address this issue at all.

According to the entity-level LEWs, ministers of justice announce public calls for the appointment of expert witnesses and appoint respective committees composed of permanent members. In FBiH, this Committee comprises the President of the FBiH Supreme Court or a judge designated by the President, President of the Entity Bar Association or an attorney designated by the President, Chief FBiH Prosecutor or a prosecutor designated by the Chief Prosecutor, a representative of the entity-level ministry of justice, and three non-permanent members from among the leading experts in the respective fields of expertise who are appointed by the permanent members by a majority of votes. In RS, according to the new LEW adopted in August 2017, the Committee comprises two members from among the experts in the respective field of expertise and one representative of the RS MoJ.
As it has been mentioned in the Introduction, methods used in this Analysis also included a comparative analysis of the regional systems for engaging expert witnesses in criminal proceedings. The comparative analysis covered systemic and specific practices in Slovenia, Croatia, Serbia and Montenegro. In some of the examined jurisdictions, particularly in Montenegro and Croatia, professional associations play an important role in the appointment of expert witnesses. Thus, for example in Croatia, expert witnesses are appointed by cantonal or commercial courts, i.e. presidents of those courts, who receive the applications from persons who believe that they possess adequate qualifications to serve as expert witnesses. Candidates who have been verified by the President to meet the criteria are referred to the Association of Expert Witnesses where they have to complete professional training prior to their appointment as expert witnesses. The Association of Expert Witnesses appoints mentors for the respective candidates. As part of its role in the appointment of expert witnesses in Croatia, this Association also develops and delivers the training, which is mandatory for expert witness candidates, and appoints mentors responsible for the implementation of this training.

In Montenegro, expert witnesses are appointed by the Administrative Office of the Supreme Court of Montenegro and the Committee appointed by the Supreme Court President. This Committee is composed of five members: two members from among the judges, two representatives of the Association of Expert Witnesses and one representative of the Ministry of Justice of Montenegro. The Committee is appointed for a term of four years. The Committee members from among the judges are appointed based on a nomination by the General Session of the Supreme Court. Representatives of the Association of Expert Witnesses are nominated for appointment by a body designated in the Association’s Articles of Association, while the representative of the Ministry of Justice is nominated for appointment by the Minister. This system defines the role and responsibilities of the professional association in the appointment of Committee members from the candidate’s field of expertise. This allows the representatives of expert witnesses and experts in particular fields to appoint a representative of their own who they believe is sufficiently competent to assess the knowledge of a particular expert witness candidate.

Interviews with some expert witnesses in BiH have shown that they believe that non-permanent members of entity-level committees responsible for appointment of expert witnesses do not possess adequate competence. Specifically, they believe that, in some cases, candidates possess higher levels of expertise and competence than some non-permanent Committee members and yet sometimes expert witness candidates with such level of competence fail to meet the criteria and be registered in the list of expert witnesses. Croatia and Montenegro addressed this issue by mandating professional associations to appoint persons who are qualified to serve as mentors and Committee members and evaluate the competence of expert witness candidates.

Ministries of justice and the Administrative Department of the BD Judicial Commission maintain records of appointed expert witnesses in the form of lists of expert witnesses. Expert witnesses are appointed for a period of six years at entity level and four years at BD level and are eligible for re-appointment at all three levels of government upon expiration of this period. Appointed expert witnesses have their rights and duties. The rights primarily include registration in the list of expert
witnesses, right to reimbursement of fees and expenses and the right to be issued a seal used solely for the purpose of expert evaluations. Duties of expert witnesses include duty to be independent in their work, duty to accept assignments, duty to maintain a record of conducted expert evaluations, duty to perform within set deadlines and duty of official secrecy.

### Recommendations

1. The possibility of strengthening the role of professional associations in the process of appointment of expert witnesses in line with the regional best practices should be explored.

2. The possibility of delegating the appointment of non-permanent members of entity-level committees to professional associations should be explored.

### 3.1.1.2. Criteria and requirements for appointment of expert witnesses

According to the survey respondents, the procedure for appointment of expert witnesses is not sufficiently clearly and specifically defined in the BiH legal system in terms of professional criteria and integrity for serving as a court expert. International standards on the criteria for expert witnesses emphasize that expert witnesses should possess adequate qualifications, experience and knowledge for expert evaluations. Also, international standards emphasize that it is crucially important that there are rules at national level guaranteeing the independence, impartiality and integrity of the expert. Indeed, clearly and specifically defined requirements and criteria for the appointment of expert witnesses are a primary guarantee which should ensure that individuals of high professional standard and personal integrity are included in the lists of expert witnesses.

FBiH LEW’s definition of requirements and criteria is too general without a clear and precise definition of qualities that a candidate expert witness should possess. This law stipulates that an expert witness must have BiH citizenship, adequate education, prior experience and expertise in a certain field, proven work ability and ability to present the findings in a professional and clear manner, proven professional competencies, reputation of a prudent, objective and expeditious expert in a specific field, integrity and high moral standards in both professional and personal endeavors. It is clear that requirements in terms of education, professional experience and expertise are not clearly defined since “adequate education” and “adequate professional experience and expertise” are too broad definitions.

The new RS LEW is more specific in terms of criteria for appointment of expert witnesses. Article 3 of the Law prescribes that persons appointed as expert witnesses shall have a university degree and minimum five years of professional experience in the fields stated by the candidate in his/her application for appointment. Persons with secondary school qualifications may also be appointed as expert witnesses provided that they have completed additional cycle of studies, earned ECTS and possess relevant experience. This certainly is a progress towards regulating the requirements

Requirements and criteria are defined too broadly and as such do not specify clear and specific qualities that candidate expert witnesses should possess.
for appointment of expert witnesses. This provision will contribute to a more elaborate filtration of professional profiles of individuals who strive to become expert witnesses, force them to pursue additional training and meet the requirements for appointment and thus help increase the number of expert witnesses available to courts and prosecutor’s offices, including financial and economic experts.

Compared to the rules in BiH, the rules in other examined jurisdictions in the region are more specific in terms of education requirements for expert witnesses. The Law on Expert Witnesses of Montenegro prescribes that a candidate expert witness should have a second-cycle university degree (graduate - master studies, specialist academic studies, specialist vocational studies). As an exception to this rule, the Law prescribes that persons with secondary school qualifications may also be appointed as expert witnesses in those fields of expertise where there is a lack of expert witnesses.

Croatian Rulebook on Court-appointed Experts provides even more specific and detailed requirements in terms of education and relevant professional experience of candidates. This Rulebook prescribes that an expert witness must have a relevant specialist degree, and undergraduate or graduate university degree. In exceptional cases, persons with secondary school qualifications in relevant fields may be appointed as expert witnesses. The Croatian Rulebook on Court-appointed Experts defines the exact number of required years of prior professional experience for expert witnesses. The Rulebook prescribes that candidate experts with a graduate university degree or specialist degree must have minimum 8 years of professional experience, those with undergraduate university degree or undergraduate specialist degree must have minimum 10 years of professional experience, while those with relevant secondary school qualifications must have minimum 12 years of professional experience and may be appointed in those professions where relevant undergraduate university studies or undergraduate specialist and graduate university studies or graduate specialist studies are not available.

In FBiH, requirements in terms of relevant professional experience of candidate expert witnesses are general and the rules merely prescribe that a candidate expert witness must have adequate professional experience and expertise. RS LEW is slightly more specific when it comes to this requirement and it prescribes that a candidate expert witness “shall have minimum five years of professional experience in the fields stated by the candidate in his/her application for appointment”. All examined jurisdictions in the region have more specific rules regarding the required professional experience for expert witnesses. Namely, the rules in examined jurisdictions in the region specify the minimum number of years of professional experience that a person should have to be appointed as an expert witness. For instance, applicable laws on expert witnesses in Montenegro and Serbia prescribe that, in order to be appointed as an expert witness, a person must have minimum five years of relevant professional experience; while the Slovenian Rulebook on Court-appointed Experts and Valuers requires six years of professional experience.

Also, the rules in FBiH are not clear on the method and criteria used to assess whether a person possesses an ability to present his/her opinion in a professional and clear manner, to perform expert evaluations with impartiality, diligence, industriousness, resoluteness and accountability, or how to
assess the persons conduct outside of work, his or her integrity and reputation. The 2017 RS LEW avoided this formulation.

The newly adopted Rulebook on Conditions, Manner and Procedure of Registration on the List of Permanent Court Experts in BD also represents a progress towards regulating these issues in BiH since it provides precise and clear requirements and criteria for appointment of expert witnesses. According to this Rulebook, to be appointed as an expert witness, a person must have proven work ability, must not have prior prison convictions for certain crimes, must have a university degree and possess adequate expertise and qualifications, practical skills and experience, must have minimum five years of relevant professional experience in the field, must not perform other duties that are incompatible with the duties of an expert witness and must have high moral qualities.

Since the economic and financial expert evaluations cover a broad field, it would be useful to have more specifically defined sub-fields of required specialization of expert witnesses. For example, the list of expert witnesses in FBiH shows that most expert witnesses cite “finances” as the field of their sub-specialization, which does not help courts and prosecutor’s offices in choosing those experts with real expertise in particular sub-fields, e.g. banking and bank operations in the broadest sense, customs procedures and actions, public procurement, budgeting of public institutions, hedge funds, etc.

In Croatia, in addition to these academic professional and other formal requirements, to be appointed as an expert witness, a person must successfully complete professional training. Candidate’s ability to serve as an expert witness is verified based on a report on professional training conducted by an appointed expert witness under whose supervision the candidate must conduct minimum five expert evaluations and prepare relevant findings and opinion. According to the training program, the candidate should also be informed about the provisions of relevant codes of ethics in order to reinforce the integrity of the future expert witness. In Croatia, the issue of integrity of expert witnesses is addressed by a rule according to which persons that are not eligible for appointment in the civil service may not be appointed as expert witnesses. This introduces a more stringent criterion for integrity of expert witnesses, which is in line with the growing importance of expert witnesses and expert evaluations in judicial and other proceedings and with the public accountability of the justice system.

In BiH, despite the progress made with the adoption of the new RS LEW and BD Rulebook, due to general and vague definitions, subjective criteria still play an important role in the evaluation requirements and criteria for appointment of expert witnesses. This system of criteria and requirements does not ensure that persons who do not possess a high standard of expertise and required integrity will not be appointed as expert witnesses.

When it comes to the requirements and procedure for appointment of expert witnesses, it should be mentioned that most of the interviewed prosecutors, more precisely 86%, believe that only a limited number of experts from the expert witness lists are able to provide expertise in cases of economic crime and corruption and to submit high-quality findings and opinions; while only 14% of prosecutors believe that all experts from the expert witness lists are able to provide expertise in
cases of economic crime and corruption, submit high-quality findings and opinions and present those findings at the main hearing.

**Recommendations**

1. Amendments to the legislation on experts should be initiated. The amendments should seek to harmonize the existing legislation and define precisely the required level of education and professional experience for expert witnesses, in line with the best practices in the examined jurisdictions in the region, RS and BD.

2. Clearer and more precise requirements ensuring high level of integrity of expert witnesses should be introduced.

3. Training, including tests for candidates, should be introduced as a mandatory requirement, in addition to formal requirements, following the Croatian example. This would ensure that only persons with high level of expertise and integrity are registered in the lists of expert witnesses.

4. A more precise definition of the fields/sub-fields of required knowledge and qualifications for expert witnesses (banking industry in general, customs procedures, public procurement, budgeting of public institutions, tax system, hedge funds, etc.) would be preferable.

**3.1.2. PROFESSIONAL TRAINING AND DEVELOPMENT OF EXPERT WITNESSES**

Ability of experts to produce findings and opinion in complex expert evaluations, such as financial and economic evaluations generally are, is directly linked with continuous education and training. International standards require that experts should possess and maintain a high level of professional knowledge and practical experience. Furthermore, it is very important to ensure that expert witnesses undertake regular trainings focusing on presentation of findings during main trial. International standards also emphasize that experts should regularly update and improve their knowledge of the role and importance of expert witnesses in judicial proceedings and the rules of proceedings i.e. criminal proceedings.

Entity-level LEWs prescribe that newly appointed expert witnesses must undertake a training on principles guiding the expert’s activity in accordance with the rulebook issued by the respective Minister of Justice. In 2007, in accordance with the provisions of the Law, FBiH MoJ drafted and adopted the Rulebook on Expert Witness Training in FBiH. This Rulebook was repealed by the new Rulebook on Expert Witness Training in FBiH from 2017. RS MoJ failed to draft and adopt this bylaw during the time while the old RS LEW was in effect. Article 26, Professional Development of Expert Witnesses, of the new RS LEW prescribes
that: “Professional development shall be organized and delivered by the Ministry at least once during a calendar year” and that “Expert witnesses shall have an obligation to undertake professional development”. The text of the Law does not indicate whether the RS MoJ should conduct the training for each category of expert witnesses minimum once a year, which would definitely be a positive practice. The Minister of Justice issues the Rulebook on Professional Development of Expert Witnesses which regulates the process of professional development of expert witnesses. BD Rulebook on Requirements for Expert Witnesses does not foresee adoption of a separate document regulating the issue of expert witness training. Failure of RS MoJ to adopt a rulebook regulating the issues related to expert witness training and lack of obligation to adopt a rulebook regulating the issues related to expert witness training in BD represent a significant gap that could influence the expertise and quality of expert witnesses included in the official lists. Prusuant to the RS LEW, the Minister of Justice is, inter alia, obligated to adopt the Rulebook on Professional Development of Expert Witnesses within six months from the entry into force of the LEW.

The FBiH 2007 Rulebook on Expert Witness Training prescribed that newly appointed expert witnesses had to receive training in court proceedings, administrative and minor offense proceedings. The Rulebook also prescribed that the training should focus primarily on the rights, duties and tasks of expert witnesses, as well as on the procedure of conducting expert evaluations. This meant that expert witnesses were trained primarily in legal issues instead of issues related to their field of expertise and practical work. However, the new Rulebook from 2017 prescribes trainings that should focus on expertise and practical issues. The training is conducted by permanent and non-permanent members of expert committees, with a possibility to engage experts from the academic or legal community, if required. Another important aspect of the new Rulebook is the fact that the training is mandatory. Actually, those expert witnesses who fail to undertake the mandatory training following an invitation of the Expert Committee shall not be re-appointed as expert witnesses. The Rulebook also prescribes that certificates of completion of the training shall be filed in expert witnesses' personal files. Curriculum of expert witness training and its implementation plan is adopted by the Federal Minister of Justice based on an agreed proposal by the permanent and non-permanent members of the Expert Committee. Implementation of trainings foreseen in this curriculum has already started for financial and economic experts.

The newly adopted Rulebook does not stipulate mandatory continuous training, except in case of amendments to procedural laws and changes in professional rules in specific scientific fields, when additional training may be organized. Professional organizations of expert witnesses have no influence on the contents of the training curriculum in FBiH.

Respondents stated that, despite the large number of financial and economic experts compared to other categories of expert witnesses, the number of experienced experts who are able to provide expertise in complex cases of economic crime and corruption is limited, in particular having in mind the disproportionate availability of expert witnesses across BiH. Also, there is a serious lack of experienced expert witnesses in the following fields: banking and finance, hedge funds, money laundering, corporate management, stock market, forfeiture of proceeds of crime for the purpose of proving the volume of proceeds of crime which is disproportionate to legal income. Lack of forensic
financial and economic experts, i.e. lack of a forensic approach in this field of expertise, was stressed as a particularly important issue.

An interesting and good practice in professional training has been established in Croatia where a candidate expert must prepare minimum five expert findings and opinions under the supervision of a mentor assigned to him/her. This is a form of practical training of newly appointed expert witnesses who, actually, cannot be appointed until they undertake this practical training. Duration of expert witness training is minimum six months. Also, professional training in Croatia is conducted based on a curriculum prepared by relevant professional associations in each field of expertise.

FBiH LEW is very general when it comes to additional professional development of expert witnesses. Information on additional professional development and specialized training is submitted by experts to a body responsible for maintaining records on expert witnesses. The body in charge of the records on expert witnesses must updated all relevant documents to include information on the training and promptly communicate any changes to courts and prosecutor’s offices. Information indicating that a particular expert witness undertakes continuous training and professional development could certainly be used as one of the criteria in the process of selection of expert witnesses and evaluation of their expertise. However, prosecutor’s offices do not monitor professional development and therefore this criterion is not taken into consideration in the process of selection of expert witnesses for particular cases. RS LEW does not regulate the availability of data on additional professional development of expert witnesses and access of courts and prosecutor’s offices to such data. As a result of such approach, competent experts can be overlooked, while those who do not possess specialized knowledge are engaged.

Pursuant to the Montenegrin Law on Expert Witnesses, annual trainings of appointed expert witnesses are the responsibility of professional associations. General curriculum for professional development of expert witnesses is prepared by the Administrative Office of the Supreme Court of Montenegro. Based on this general curriculum, the organizer (professional association) prepares a special training curriculum.

Respondents interviewed for the purpose of this Analysis indicated legislation regulating the initial and continual professional development of expert witnesses should be amended. Professional development should, among other things, focus on forensic expert evaluations, presentation of findings and opinions, procedural status and role of expert witnesses in judicial proceedings, etc.

Majority of the interviewed prosecutors, 86% of them, stated that only a limited number of experts from the court expert lists were able to provide expertise in cases of economic crime and corruption and to submit high-quality findings and opinions; while only 14% of prosecutors believe that all experts from the expert witness lists are able to provide expertise in cases of economic crime and corruption and to submit high-quality findings and opinions. More than 50% of prosecutors working on economic crime and corruption cases said that in sometimes they were not satisfied with the findings and opinions of the current financial and economic expert witnesses during trials. Also, in their responses to the questionnaires, respondents stated that a very small number of expert witnesses were able to adequately present their findings and opinion during main trial. This opinion was confirmed both during interviews with individual prosecutors and at the consultative meeting.
held on 5 April 2017 in Sarajevo. Prosecutors stated that expert witnesses often engaged in legal analysis and references to the legal elements of criminal offenses, which shows that they are not adequately informed about their role in criminal proceedings.

Based on these findings, respondents recommended that a manual should be prepared that would provide clear and precise definition of the roles and tasks of prosecutors and expert witnesses in the process of proving economic crimes and corruption.

**Recommendations**

1. Rulebooks on professional trainings should be drafted and adopted in RS and BD, and those in FBiH should be amended. These rulebooks should prescribe mandatory continuous training for expert witnesses, contents of the trainings based on international standards on expert evaluations in judicial proceedings, and institutions charged with delivering and monitoring the delivery and attendance at trainings.

2. The training curriculum should focus on improving experts’ skills in the presentation of findings during the main trial.

**3.1.3. CRITERIA FOR THE SELECTION OF EXPERT WITNESSES AND AVAILABILITY OF FINANCIAL AND ECONOMIC EXPERT WITNESSES TO PROSECUTOR’S OFFICES**

Financial and economic expert evaluations are ordered when the findings and opinion of a person possessing the necessary specialized knowledge are required to establish and evaluate certain important facts. Most of the surveyed prosecutors, specifically 57% of them, stated that financial and economic expert evaluations in economic crime and corruption cases are most frequently ordered to determine the amount of proceeds of crime or incurred damage. A significant number of surveyed prosecutors, 41% of them, cited establishment of grounds of suspicion/grounded suspicion that a crime has been committed as a reason for ordering financial and economic expert evaluations.

According to international standards, criteria that should be taken in consideration in the process of selection of expert witnesses include professional knowledge, independence and personal integrity of the expert, availability and technical capacities of the expert to conduct expert evaluations, foreseeable costs of the expert opinion, benefits of engaging an expert witness who is a national of the country where the expert evaluation is to be conducted, expert witness’ commitment and proven experience, including previous performance. According to international standards, the selection criteria have to be considered in an overview and should inform the decision on the most appropriate expert witness for a particular case.
The requirement related to the professional knowledge of an expert witness is a primary and essential requirement for any expert evaluation, regardless of its normative definition, therefore it should be one of the main factors for the selection of a particular expert witness. Criminal procedure codes in BiH prescribe general requirements for candidate expert witnesses. Criminal procedure codes in BiH do not define methods or criteria that prosecutor’s offices and courts should use when selecting expert witnesses to produce findings and opinion.

Lists of expert witnesses, which are normally mandatory for the court, or the body in charge of the proceedings, are the most commonly used method for controlling professional references and knowledge of expert witnesses in criminal proceedings in the countries in the region. The purpose of the list of expert witnesses is to serve as an acknowledgement of competence of those persons appointed to conduct different expert evaluations both in criminal proceedings and in other judicial proceedings. Criminal procedure codes of the countries in the region prescribe that the body in charge of the proceedings shall order an expert evaluation by way of issuing a written order and that, where there are expert witnesses on the list of experts, expert witnesses outside of the list may be engaged only in case of a risk of delays, if court-appointed expert witnesses are not available or if that is necessary due to other circumstances. Furthermore, LEWs in Montenegro and Serbia prescribe that, when selecting an expert witness for a particular case, the court should normally select an expert witness residing in the territory of that court, and must in particular take into account equal distribution of cases among expert witnesses from that jurisdiction. This rule limits recycling of a limited number of expert witnesses in cases where other expert witnesses are available on the list. It also significantly reduces the risk of abuse of discretion on the part of the body ordering an expert evaluation which may otherwise favor a certain expert witness or a group of expert witnesses.

Interviews with prosecutors in BiH who work on economic crime and corruption cases have revealed that institutions do not have defined criteria and procedures for the selection of financial and economic experts for particular cases. Also, a lack of evaluation of performance of expert witnesses engaged by prosecutor’s offices has been identified. It has also been also observed that prosecutor’s offices recycle a limited number of financial and economic experts despite the fact that there are other experts registered on the lists of expert witnesses.

According to the survey results, 38% of prosecutors cited trust as the primary criterion they relied on when selecting financial and economic experts. Prosecutors also cited experience in the presentation of finding and opinion during main hearing, low rate of contested opinions and availability of experts as very important criteria they relied on in the process of selection of expert witnesses. Lack of institutional approach in defining the criteria for selection of expert witnesses has been identified, as well as the use of ad-hoc approach in practice. This approach poses a risk of abuse of discretion in the process of selection of experts. In other words, it enables recurrent use of particular expert witnesses, when there may be other competent experts who are able to provide efficient and high-quality expertise.

However, there is another problem that should be noted here and that is the lack of a sufficient number of expert witnesses with specialized knowledge in the financial and economic field who provide services in criminal proceedings compared to the total number of financial and economic experts and their availability to prosecutor’s offices. Therefore, some prosecutor’s offices organize
regular meetings with financial and economic experts to determine their availability and willingness to be engaged in criminal proceedings in order to establish a registry of available expert witnesses. Another purpose of these meetings is to discuss challenges in economic crime and corruption cases and the way forward.

During the survey and interviews, prosecutors cited duration of expert evaluations and breach of deadlines for submission of reports due to expert witnesses being overstretched with work on other cases as major issues. However, according to the survey only 12% of prosecutors identify this as a major issue, while voluminous documentation (44%) and complexity of expert evaluations (44%) are perceived as being more critical for lengthy expert evaluations. Therefore, in addition to previously given recommendations related to a more equal distribution of work among experts, it would be preferable to set more realistic deadlines for expert evaluations in consultation with the respective expert witness or institution selected to conduct the expert evaluation.

Easily accessible and reader friendly records on continuous professional development and specialized training could very well serve as one of the key tools for definition of more detailed criteria for the selection of financial and economic experts which is critical in order to ensure high-quality expert reports. Therefore, prosecutor’s offices should be provided with direct access to updated information on professional development and specialized training of expert witnesses. On the other hand, until such approach is introduced, expert witnesses should submit the information on their professional development and specialized training at least to the those courts and prosecutor’s offices whose jurisdiction covers their registered place of residence or business activity. This approach would help motivate expert witnesses to improve their references and thus create a transparent list of experts in particular fields and sub-fields. This would support the achievement of several goals – it would increase the number of financial and economic experts available to prosecutor’s offices, the increased number of qualified expert witnesses would reduce the pressure on those who are regularly engaged by prosecutor’s offices during the drafting of indictments and trials, expert evaluations would take less time which would reduce the length of criminal proceedings, etc. This information, if adequately updated and made accessible, could bring multiple benefits in the form of more efficient trials in general, and in particular in prosecuting corruption, organized and economic crime cases.

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<th>Recommendations</th>
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<tr>
<td>1. Lists of expert witnesses should, as a rule, be prescribed as mandatory or as a priority for selection of expert witnesses.</td>
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<td>2. A registry of available expert witnesses in the jurisdiction of individual prosecutor’s offices should be established and efforts should be made to ensure equal distribution of work among the experts on the list.</td>
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<td>3. The criteria and procedure for the selection and summoning of experts and the monitoring of their performance should be defined by the prosecutor’s offices. When determining the criteria for selection, the experts’ professional record and their attendance at trainings should be considered.</td>
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<td>4. Joint meetings of prosecutors and expert witnesses organized by some prosecutor’s offices to discuss the challenges and the way forward in cases of economic crime and corruption should be promoted as a positive example.</td>
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3.2. QUALITY OF EXPERT WITNESS FINDINGS AND OPINION ACCORDING TO THE SURVEY IN PROSECUTOR’S OFFICES IN BIH

85% of surveyed prosecutors stated that additional explanation and findings to support the original opinions and findings of experts was frequently needed in practice, while 47% of prosecutors claimed that many experts were unable to follow prosecutor’s instructions.

Criminal procedure codes in BiH prescribe that the expert selected by the Prosecutor or the Court must present a report to the Prosecutor or the Court that shall contain the evidence examined, the tests performed, the findings and opinion reached, and any other relevant information the expert considers necessary for a fair and objective analysis. The expert shall provide a detailed explanation of how he came to a particular opinion. Entity-level LEWs prescribe the obligation of expert witnesses to comply with the deadlines set for particular expert evaluations and the procedure in case they are unable to complete the expert evaluation within the set deadline for justified reasons. In this case, no later than ten days prior to the expiration of the deadline, the expert witness must submit to the body or the court that ordered the expert evaluation a report detailing the reasons preventing the expert from completing the expert evaluation, short summary of the results of activities undertaken until that time, and a deadline by which the expert will complete the expert evaluation, unless otherwise prescribed by the rules regulating the rules of procedure. In complex expert evaluations with longer deadlines, expert witnesses must submit to the body that ordered the expert evaluation brief monthly reports summarizing the results of activities undertaken in that period, unless otherwise prescribed by the rules regulating the rules of procedure.

In the process of preparation of their findings and opinions, expert witnesses have the right to seek additional clarifications in case of any doubts in terms of the expert evaluation order, and they may be allowed to examine the records. An expert witness may propose presentation of evidence or obtaining items that are of relevance for the preparation of his/her findings and opinion. If an expert witness participates in a crime scene investigation, reconstruction or other investigative procedure, the expert may give input relating to circumstances that should be clarified or anz questions that should be asked to persons who are interviewed.

As for the results of the survey related to the quality of expert evaluations in line with the previously mentioned rules, most of the prosecutors stated that they were generally satisfied with the quality of the findings and opinions produced by financial and economic experts. However, 85% of prosecutors stated that additional explanation and findings to support the original opinions and findings of experts was frequently needed during trial, while 47% of prosecutors claimed that many experts were unable to follow prosecutor’s instructions and that in those cases new opinions and findings had to be ordered. This significantly affected the efficiency and cost effectiveness of criminal proceedings since orders for new expert evaluations contributed to the delay of criminal proceedings and increased the costs. This survey data can be correlated with the information according to which average time required to obtain an expert opinion in one of the prosecutor’s offices was 207 days. Prosecutor’s
offices should define the criteria based on which it would be easy to determine whether an expert witness should receive additional payment for additional opinion or not, especially where it is clear that the order for expert evaluation was clear and precise. This would reduce any risk of manipulation and submission of incomplete findings in order to increase the costs of expertise.

Regardless of the results of the survey presented at the beginning of this section, some prosecutors reported cases where reports of certain financial and expert witnesses were of such poor quality that they could not be used as evidence in court.

Some respondent also mentioned cases where some expert witnesses would file several findings and opinions in one day changing only the case number, while the contents of the findings would be almost identical. They also stated that in some cases these reports were mere copies of criminal reports filed by law enforcement agencies and therefore had no value that an expert evaluation should have. Prosecutors also stated that the quality of expert evaluations was often affected because expert witnesses sometimes provided opinions related to responsibility for criminal offences, i.e. they engaged in legal analysis or provided opinions on some other issues that were clearly outside of the scope of work of financial and economic experts. Additionally, prosecutors stated that expert witnesses often gave references to the legal elements of criminal offences and criminal responsibility during the trial and that the prosecution and the court should advise the experts in such cases to present their findings and opinion and not take the prerogatives of other parties to the proceedings.

The respondents highlighted that the development of sophisticated methods of abuse of progress in financial business multiplies the problems due to the lack of experienced expert witnesses in the following specific fields: banking and finance, hedge funds, money laundering, corporate management, stock market, forfeiture of proceeds of crime for the purpose of proving the volume of proceeds of crime which is disproportionate to legal income. Lack of forensic financial and economic experts, i.e. lack of a forensic approach in this field of expertise, was stressed as a particularly important issue. This means that prosecutors who work on specific complex cases sometimes face challenge related to the lack of good expert witnesses with specialized knowledge in specific fields and knowledge of the rules of procedure concerning the expertise in some criminal cases.

All prosecutors and other respondents in the survey agree that the ability of expert witnesses to adequately present their findings and opinion in court is a significant factor in proving the crimes and convicting the perpetrators, and that it may be critical. However, 47% of surveyed prosecutors said that they were frequently not satisfied with the presentation of expert findings and opinion during trials, even when they were satisfied with the submitted written findings and opinion. In addition to a limited number of expert witnesses who are able to produce high-quality findings and reports, prosecutors complained that even those expert witnesses lacked the necessary skills for presentation of their findings at the main hearing. Thus, expert witnesses often modify their findings and opinion when pressed by the defense during the main hearing or are insecure during cross-examinations. Continuous training for expert witnesses focusing on this segment would largely improve skills of expert witnesses in presentation of their findings and opinion at the main hearing.
Some prosecutor’s offices engage newly appointed expert witnesses to perform expert evaluations in simple cases in order to facilitate gradual development of their skills in both the preparation of their findings and opinion and its presentation at the main hearing. This approach represents an example of good practice that could be used by other prosecutor’s offices in the process of defining the criteria and procedures for the selection of expert witnesses.

### Recommendations

1. Prosecutor’s offices should analyze expert evaluations that require additional explanations and/or new expert evaluations in order to reduce the number of any unnecessary additional expert evaluations in future.

2. The work of expert witnesses and the quality of their findings and opinions should be continuously monitored in order to prevent copying of previous findings or criminal reports filed by law enforcement agencies. Where the body ordering the expert evaluation, or any other party to the proceedings, identifies such a situation, they should immediately report this to the bodies in charge of the appointment of expert witnesses.

3. Continuous trainings for expert witnesses focusing on presentation of expert findings and opinions at the main hearing should be organized in cooperation with prosecutor’s offices.

### 3.2.1. DURATION OF EXPERT EVALUATIONS AND EFFECTS ON EFFICIENT PROCESSING OF CASES

Time required by experts to develop their findings currently represents one of the major problems significantly affecting the efficiency of case processing. As it has already been mentioned, the applicable laws prescribe that one of the main duties of expert witnesses is to comply with the deadlines set in orders for expert evaluations. The survey has identified the time required by expert witnesses to develop their findings as one of the major problems related to the engagement of financial and economic experts, which significantly affects the efficiency of case processing in both prosecutor’s offices and courts. The Analysis has identified numerous reasons directly affecting the time required to obtain findings and opinion from financial and economic experts. The primary reason is the lack of a sufficient number of qualified and reliable expert witnesses, while those who are frequently hired by prosecutor’s offices are under constant pressure of a growing number of orders. This is why case files containing evidence that require expertise are kept by some expert witnesses for a long time. However, a logical question arises as to why, despite the fact that financial and economic experts represent the largest group of experts in official lists of expert witnesses in BiH, there is still only a limited number of them who, according to prosecutors, are able to provide high-quality expertise in line with the orders for expert evaluations? A trend has been identified where many financial and economic experts are more willing to accept assignments in lawsuits and commercial cases since they can earn higher fees for a relatively similar amount of work. Prosecutors identified the Tariff

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of Fees and Expenses of Expert Witnesses in FBiH as a particularly restrictive factor in their work since it is limited to BAM 2,000 even in very complex cases or BAM 4,000 in exceptional cases. Therefore, it is obvious that expert witnesses will not accept complex assignments in criminal cases, which often imply analysis of several thousands of pages of business books and other documents, for the fees prescribed in the applicable Tariff.

Lack of adequate funds for payment of expert witness fees and expenses represents a particular problem for prosecutor’s offices. Interviews with prosecutors have revealed that regular delays in reimbursement of expert witness fees also have a negative effect on timely enforcement of orders for expert evaluations. In some cases, experts simply intentionally delay the submission of their findings and opinion until they receive payment for the previous reports. Some experts refuse new assignments due to previous outstanding fees. A group of 70% of surveyed prosecutors stated that delays in reimbursement affected the availability of expert witnesses and the timeliness and quality of findings and opinions of financial and economic experts in economic crime and corruption cases. Since financial and economic experts are often engaged in lawsuits as well, this adds to the problem related to availability of these experts in economic crime and corruption cases.

In addition to delays in reimbursement of expert fees and expenses, which directly affects the length of proceedings in individual cases, the Analysis has also identified other reasons for lengthy proceedings. Those are primarily reasons related to the complexity of expert evaluations in economic crime and corruption cases, as well as the complexity of documentation that should be analyzed by experts. Some of the recommended solutions include engaging a team of experts from different fields of expertise for these complex expert evaluations or engaging a forensic institution. However, although this would certainly improve the quality of expert findings and opinions, it could also have a negative effect on timeframes. At the same time, this would increase the costs of expert evaluations which is unacceptable for some prosecutor’s offices due to limited budgets.

In addition to objective reasons affecting the duration of expert witness evaluations which were presented above, the survey has also identified some subjective reasons. Namely, more than 52% of prosecutors reported cases of expert witnesses who breached the deadlines set in the orders for expert evaluations without any justified reason. Breach of defined deadlines for the submission of expert witness findings and opinion without justification represents a serious breach of expert’s duty as a result of which the expert can be sanctioned by the Committee, dismissed from duty and stricken off the official list of expert witnesses. However, the prosecutors who cited unjustified breaches of deadlines by financial and economic experts, had never reported any of these breaches to authorities responsible for monitoring of expert witnesses. This indicates that prosecutors also bear some degree of responsibility for some delays in the preparation of findings and opinions.
3.2.2. SUPERVISION OF THE QUALITY OF FINDINGS AND OPINIONS OF FINANCIAL AND ECONOMIC EXPERTS / ISSUING ORDERS FOR EXPERTISE

The quality of findings and opinions significantly depends on the order for expert evaluation, i.e. on the contents, details and instructive nature of the order in terms of the tasks and goals expected from the future findings and opinions.

Supervision of the work of expert witnesses and the quality of their findings and opinions is not sufficiently formally regulated either by entity-level LEWs or by BD Rulebook. Entity-level LEWs prescribe a general responsibility of authorities in charge of the proceedings to supervise the work of experts and communicate their comments and information on imposed fines to the relevant ministry of justice and to propose disciplinary actions against expert witnesses in accordance with this law. The new BD Rulebook is more stringent when it comes to these issues. Article 22, paragraph (2) of the Rulebook prescribes the obligation (“shall”) of courts and the Prosecutor’s Office in BD, as well as other authorities ordering expert evaluations, to monitor the work of expert witnesses and communicate their opinions to the Administrative Office, including the sanctioning of expert witnesses in accordance with Article 23 of the Rulebook (Article 23 - Dismissal from Duty).

In FBiH, the Expert Committee is still responsible for periodical evaluation of expert witnesses and their sanctioning when required, while legislation in RS and BD no longer prescribes such responsibility.

These provisions do not prescribe strict supervision of the work of expert witnesses. They also do not assign this duty to anyone in particular. The existing rules, except the BD Rulebook which does define this responsibility of authorities, leave it up to any party to the proceedings to file a complaint against an expert witness, and only if they want to. Furthermore, it is obvious that rules only allow

Recommendations

1. A possibility of a more equal distribution of work among different financial and economic experts should be analyzed, especially in case of simple expert evaluations in economic crime and corruption cases, in order to reduce the workload of some experts.

2. Further efforts should be made to advocate for allocation of sufficient funds to prosecutor’s offices to ensure efficient prosecution of cases and payment of complex financial and economic expert evaluations.

3. Amendments to provisions of the Tariff of Fees and Expenses of Expert Witnesses in FBiH, which limit the maximum expert witness fees that prosecutor’s offices are allowed to pay, should be initiated.

4. Prosecutors should promptly communicate any suspicions about unjustified delays in the submission of expert witness findings and opinions to the relevant authorities.
the filing of complaints i.e. negative opinions on the work of experts. There are no instruments that could be used to verify the competence of an expert witness, his or her commitment to the work on a particular case or file, scientific and other professional qualities of an expert witness that helped prove a crime and convict perpetrators, any influence on the case law, etc.

Apart from the system of supervision that is based on a reactive and repressive approach, there is almost no structured system of supervision of the quality of the work of experts. In practice, prosecutors are those who assess whether an expert witness report complies with the requirements defined in the order for expert evaluation. Courts also evaluate the quality of expert evaluations, and they do it indirectly by deciding which findings of the expert they accept or do not accept as proven.

The quality of findings and opinions significantly depends on the order for expert evaluation, i.e. on the contents, details and instructive nature of the order in terms of the tasks and goals expected from the future findings and opinions. Criminal procedure codes prescribe that an expert witness shall rely solely on evidence presented to him by authorized officials, Prosecutor or the Court, in forming opinions or inferences on the examined items. Therefore, expert witnesses should be included in the process of collecting evidence from the very beginning which would allow them to specify in time the materials they need in order to meet the requirements from the order for expert evaluation. Although some prosecutors already use this practice, it would be useful to expand and standardize it to ensure uniform application in all prosecutor’s offices in BiH.

The survey has identified the need to provide expert witnesses with clear and precise instructions regarding the direction and scope of the expert evaluation, as well as the facts and circumstances that should be established. Orders for complex financial and economic expert evaluations should not be issued without prior detailed consultations with all parties involved in the preliminary investigation and investigation in order to make sure that the order clearly defines all circumstances that the expert should focus on. Examples of good practice have been observed in some prosecutor’s offices which have improved the templates for orders for financial and economic expert evaluations and made sure that consistent terminology is used, that orders are specific and comprehensive, at the same time allowing subsequent activities depending on each individual cases. These templates define both the mandatory and optional sections of the order. Some prosecutors even suggested that suspects and all witnesses should be interviewed prior to the drafting of the order for expert evaluation to make sure that information obtained from them is also taken into consideration. Another example of good practice found in some prosecutor’s offices is to discuss the ways to draft more specific orders at prosecutor staff meetings in order to exchange opinions on how to draft more specific orders and which documentation should be obtained.

The practice of organizing regular meetings with financial and economic experts to discuss challenges related to expert evaluations in economic crime and corruption cases could be used as a solid basis for preparation of precise orders for expert evaluations and avoiding any vagueness. Some prosecutor’s offices have also prepared templates for orders for expert evaluations that can also be used as checklists for verification of tasks completed by a certain date or the stage of investigation. This practice in prosecutor’s offices proved to be very useful especially for newly appointed prosecutors who are less experienced.
This approach is considered reasonable bearing in mind that some prosecutors reported cases where the same financial and economic experts submitted different findings and opinion following an order to conduct a new expert evaluation in the same case. They most frequently justified this situation by saying the defense provided additional documentation that was not available at the time of the first expert evaluation. Therefore, collecting the entire relevant documentation is very important in order to make sure that all relevant data are analyzed during the expert evaluation. One of the reasons why expert witnesses fail to analyze all required documentation during the first expert evaluation can be found in the fact that some orders for expert evaluation are too general without clear definition of the tasks of financial experts. Out of the surveyed prosecutors, 48% of them believe that some prosecutors do not issue sufficiently detailed and precise orders for expert evaluations in economic crime and corruption cases and that their orders are too general. These orders leave a possibility for preparation of findings and opinions that could misdirect the investigation in economic crime and corruption cases.

We also find it very important that 42% of surveyed prosecutors believe that sometimes orders for financial and economic expert evaluations are ordered although economic crime and corruption cases could be proven without them.

In order to avoid issuing vague orders, prosecutors often meet and consult with financial and economic experts prior to issuing a formal order for expert evaluation. All surveyed prosecutors stated prosecutor’s knowledge related to the issuing of orders and supervision of the work of financial and economic experts should be improved, especially in economic crime and corruption cases.

All surveyed prosecutors also believe that it would be very useful if all prosecutor’s offices had an economist as a member of staff who would be responsible for the initial review, collection and selection of relevant documentation for individual cases. After a certain period of time, once when they acquire the necessary experience, these persons would provide critical assistance to prosecutors in the preparation and conduct of investigations, including drafting precise orders for expert evaluations. According to the prosecutors, employment of such persons would also reduce the costs of expert evaluations because it would significantly reduce the number of cases requiring additional findings and opinion. This would also strengthen the role of prosecutors in the supervision and control of the work of financial and economic experts.

Respondents stated that prosecutors should be continuously trained in order to improve their ability to issue more precise orders for financial and economic expert evaluations and that these trainings should be initiated with the relevant judicial and prosecutorial training centers. The prosecutors agreed that continuous internal training of newly appointed prosecutors by their more experienced peers was necessary in order to improve their ability to issue more precise orders for financial and economic expert evaluations. All these recommended activities would contribute to the strengthening of the role of prosecutors in the supervision of the work of experts.
3.2.3. COOPERATION WITH RELEVANT INSTITUTIONS AND AGENCIES

The success of prosecutor’s offices in fulfilling their function greatly depends on capacities, timely response and efficiency of law enforcement institutions and agencies. The level of cooperation with those institutions and agencies should be high in terms of communication and mutual support. Cooperation between prosecutor’s offices on the one hand and relevant institutions and agencies on the other hand, primarily entity-level tax authorities, indirect

Recommendations

1. The need for a more precise regulation of the supervision of the work of expert witnesses and the quality of their work should be promoted, with special focus on financial and economic expert evaluations.

2. The level of prosecutors’ capacity to issue more precise orders for expert evaluations should be raised, since such orders enable a better control over the process of expert evaluations and thus a better control over investigations and the quality of indictments, and strengthen the position of the prosecution in criminal proceedings before the court.

3. Prior to issuing an order for financial and economic expert evaluations, all relevant documentation and other evidence should be collected to ensure that adequate and precise orders.

4. Use and improvement of templates for orders for financial and economic evaluations should be promoted, including the use of consistent terminology.

5. Joint meetings between prosecutors and financial and economic experts should be initiated and organized in order to overcome challenges. Also, internal trainings focusing on orders for financial and economic expert evaluations should be initiated and organized.

6. Prosecutor’s offices should have at their disposal financial experts who would provide better and more efficient initial analysis of available data and facilitate making of clear and precise orders for expert evaluations, which would contribute to the strengthening of the role of prosecutor’s offices in the supervision of the work of expert witnesses in economic crime and corruption cases.

7. The annual curricula of the FBiH and RS Judicial and Prosecutorial Training Centers should foresee continued training for prosecutors in the area of financial and economic investigations, including their work with court experts, in order to raise their level of proficiency in such investigations and to enable the prosecutors to compose better orders for expert evaluations.

8. The practice of training newly appointed prosecutors internally by their more experienced peers should be introduced in prosecutor’s offices. Such training should focus on the issuing of precise and clear orders for expert evaluations.

Some prosecutor’s offices do not have adequate cooperation with other institutions (primarily financial police and tax administrations) that play an important role in economic crime and corruption investigations.
taxation authorities, financial police, audit agencies, inspection and other authorities, is perceived as particularly important in the process of detecting and prosecuting economic crime and corruption cases.

Complex cases, which economic crime and corruption cases generally are, require multidisciplinary teams consisting of the prosecutor who works on the case and representatives of different police agencies and other government authorities.

According to the respondents in the survey, it is questionable whether expert evaluations are always necessary or whether additional expert evaluation of facts already established by tax inspectors, who are specially trained and certified to control the calculation and payment of taxes, should be ordered. Similar dilemma exists when it comes to indirect taxes, customs duties, excise duties, VAT etc., or reports of the SIPA Financial Intelligence Department, a special unit at BiH level specialized for countering money laundering and financing of terrorist activities. As it has already been mentioned, 42% of surveyed prosecutors believe that orders for financial and economic expert evaluations are often ordered even in cases where this investigative action is not necessary in order to prove the crime. This situation should strengthen the cooperation between prosecutor’s offices on the one hand and institutions and agencies on the other hand. However, some prosecutors stated that they had very poor communication and cooperation with certain relevant institutions which should work closely with prosecutor’s offices to fight corruption and economic crime. Prosecutors cite the FBiH Financial Police as an example of an institution which should improve its cooperation with prosecutor’s offices.

Representatives of the FBiH Financial Police also reported a low level of communication and cooperation with relevant cantonal prosecutor’s offices. They pointed out that prosecutor’s offices mostly did not keep the Financial Police informed about any actions taken following their reports on criminal offences. They also stressed that capacities and experience of the Financial Police was at the disposal of prosecutor’s offices for better preparation and conduct of investigative actions, including help in issuing and drafting orders for expert evaluations in economic crime and corruption cases. Representatives of this agency stated that they had capacities to perform preliminary reviews of expert witness findings and opinions and suggest ways to supplement and improve them in order to meet the requirements set in orders for expert evaluations.

However, some prosecutor’s offices highlight good cooperation with relevant institutions and agencies. They state that they never order complex financial and economic expert evaluations without prior consultations with tax authorities or financial police. CPO TC organizes monthly meetings with the representatives of law enforcement agencies and tax administration to exchange information and discuss all issues relevant for the work on cases.

At the 11th Conference of Prosecutors in Bosnia and Herzegovina held in Neum on 28-30 September 2016, representatives of the Croatian Office for the Suppression of Corruption and Organized Crime (USKOK), pointed out that cooperation with these institutions, primarily with the Financial Police of the Croatian Ministry of Finance, was their main tool for detection and prosecution of economic crime and corruption cases. They also stated that cooperation with Financial Police in the process of drafting orders for expert evaluations was very useful, especially with regard to issuing
precise orders for financial and economic expert evaluations and selection of documentation that should be given for expert evaluation.

BiH has enacted the Instruction on the role of authorized official persons and prosecutors in collection of evidence during investigations and their mutual cooperation17 which, among other things, prescribes organization of meetings between the management of prosecutor’s offices and the police at least once a month, as well as organization of formal meetings between prosecutors assigned to particular cases and police officers. According to the interviewed prosecutors, this cooperation proved to be useful and effective in an increasing number of cases. Introduction of similar forms of communication could ensure cooperation between law enforcement agencies and other relevant authorities that would certainly contribute to a more efficient and better use of financial and economic experts.

Recommendations

1. Ongoing communication and cooperation between prosecutor’s offices and relevant institutions and agencies should be ensured in order to increase the level and intensity of cooperation, which will also have a positive effect on the use of financial and economic experts.

2. The possibility of establishing strategic and operative platforms between prosecutor’s offices and institutions relevant for prosecution of economic crime and corruption cases should be explored, in cases where such platforms have not been established before.

17 Agreement on the enactment and implementation of the Instruction on the role of authorized official persons and prosecutors in collecting evidence during investigations and their mutual cooperation was signed on 27 September 2013 under the auspices of HJPC.
4. INTEGRITY AND ACCOUNTABILITY OF EXPERTS

4.1. PERCEPTION OF INTEGRITY AND INDEPENDENCE OF EXPERT WITNESSES

The issue of integrity and independence among financial and economic experts, including breaches of integrity and independence, is something that was repeatedly brought up by the respondents. The findings of the Diagnostic Analysis also showed that there were cases where the outcome of criminal proceedings was compromised due to unqualified and unreliable expert witness testimonies, which might be a result of their bias. Respondents in the survey confirmed these findings of the Diagnostic Analysis and stated that some financial and economic experts were very biased and that they lacked the requisite level of integrity to conduct expert evaluations in judicial proceedings. However, due to the lack of adequate evaluation of the work of expert witnesses and regular communication between prosecutors about these issues, experts with a questionable level of integrity get repeatedly engaged to conduct expert evaluations, which can have a significant negative effect on the course of the criminal proceedings.

Respondents mentioned the example of an expert witness who had been convicted for corruption in relation with his findings and opinion. However, both the court and the prosecutor’s office failed to promptly notify the relevant ministry of justice of the fact that the expert witness had been convicted.

Respondents also mentioned that prosecutors sometimes engaged expert witnesses although they knew that these experts did not possess the required level of integrity and were generally known as persons who did not abide by the rules of profession. Some prosecutors mentioned that some prosecutor’s offices had filed indictments against certain expert witnesses for the criminal offence of Accepting Gifts and Other Forms of Benefit. These experts had been engaged by the respective prosecutor’s offices to conduct expert evaluations. However, they had received bribe from the respective suspects in return for a favorable expert findings and opinion. Furthermore, some prosecutors said that they believed that some expert witnesses deliberately provided false findings and opinion. However, even after other expert witnesses provided totally opposite findings, prosecutors who worked on those cases never raised any issues about the criminal liability or any other form of accountability of those experts. Failure to raise these issues certainly does not have a preventive effect on expert witnesses and does not discourage them from compromising the integrity of judicial proceedings by providing findings and opinions which are non-compliant with the rules of profession and ethics.
This practice also raises the issue of the professionalism of prosecutors who, despite the clues about unprofessional and unethical conduct of some expert witnesses, fail to further investigate those clues or report them to the relevant ministries. Moreover, in some cases, those expert witnesses continue to be engaged by courts and prosecutor’s offices.

As it has already been mentioned, data shows that prosecutors often recycle the same witnesses. Thus, CPO SC engaged the same financial and economic expert in 56 expert evaluations, out of the total number of 101 evaluations ordered in 2015. Also, data from other prosecutor’s offices which participated in the survey show that they used the same expert in more than 50% of cases. All surveyed prosecutors stated that only a limited number of experts from the list of expert witnesses was used, while 38% of surveyed prosecutor’s cited trust in the work of an expert witness as the primary criterion they relied on when selecting financial and economic experts.

Furthermore, it has been pointed out that, in complex and high profile economic crime and corruption cases, the integrity, independence and impartiality of expert witnesses can be significantly compromised by the suspects/defendants themselves, especially if the expert witness lives in the same area as the suspect/defendant. In such cases, prosecutors believe that, when hiring financial and economic experts, especially in complex and high profile cases, prosecutor’s offices should hire an expert who does not live in the same area as the suspect/defendant in order to ensure full impartiality and reduce the risk of pressure and influence on the work of the expert.

It has already been mentioned that the criminal procedure codes and other rules regulating the expert witness system in BiH do not regulate the criteria based on which experts should be selected for individual cases or balanced use of available expert witnesses from the lists. However, some countries in the region have regulated the issue of balanced use of experts from the lists. LEWs in Montenegro and Serbia prescribe that, when selecting an expert witness for a particular case, the court should normally select an expert witness with a place of residence in the court’s jurisdiction, and must in particular take into account equal distribution of cases among expert witnesses from that jurisdiction. This rule limits recycling of a limited number of expert witnesses when there are other expert witnesses on the list. This mechanism significantly reduces the risk of abuse of the system for selection of expert witnesses through recurrent use of the same witnesses, possibly for unethical reasons.
4.2. SUPERVISION OF THE WORK OF EXPERT WITNESSES IN TERMS OF THEIR INTEGRITY AND DILIGENCE

The work of expert witnesses is supervised directly by court presidents, prosecutors and other bodies in charge of the proceedings who monitor the work of experts and communicate their comments and information on imposed fines to the ministry of justice and to propose disciplinary actions against expert witnesses. However, the work of experts is practically also supervised by the Committees and MoJs, who are authorized to conduct periodic performance evaluations of experts. Generally speaking, the work of expert witnesses may also be supervised by the opposing party in the proceedings whose comments, opinions and confrontation to the expert’s testimony may compromise the quality of the findings and thus the credibility of the expert witness. In case of unprofessional and negligent conduct, unjustified breaches of deadlines, contempt of court or other parties to the proceedings, failure to accept assigned cases, or other serious complaints against an expert witness, the FBiH Expert Committee may issue a public warning. In RS, the Minister of Justice, based on a recommendation by the Committee, may issue a written warning, public warning or dismiss the expert from duty. In BD, parties to the proceedings, their representatives, professional associations and associations of expert witnesses may file complaints against expert witnesses with the Administrative Office. Courts, the Prosecutor’s Office and other authorities in charge of the proceedings have an obligation to monitor the work of experts and communicate their observations, comments and any imposed sanctions to the Administrative Office and recommend disciplinary action against an expert in accordance with Article 23 of the BD Rulebook. This situation is significantly different from the one in RS and FBiH, since Article 23 of the BD Rulebook prescribes only one type of sanction i.e. dismissal from duty. Committees in BiH charged with the appointment of expert witnesses are also authorized, in different ways, to conduct disciplinary proceedings against expert witnesses. As it has already been mentioned, 52% of surveyed prosecutors reported cases of unjustified breaches of deadlines by financial and economic experts or unjustified delays in submission of findings and opinion. However, prosecutors have not reported these breaches to the relevant ministries or expert committees. Interviewed members or the FBiH Expert Committee stated that they had information that some prosecutors complained that some expert evaluations were biased and non-compliant with the rules of profession and science. They also stated that it was symptomatic that the Expert Committee had still not received any official complaints from courts and prosecutor’s offices regarding the quality of expert evaluations which the Committee could examine and possibly dismiss such experts from duty. This situation could affect the professional reputation and role of the Committees in the process of supervision of the work of experts. According to the respondents, failure to communicate information to the ministries of justice has resulted in a situation where a certain smaller number of persons who are convicted or indicted for corruption are still on the official lists of expert witnesses.

Those expert witnesses who commit serious breaches of expert witness duty, who are sentenced to prison for offences rendering them unfit for expert witness duty, who are subsequently found not to meet the requirements to serve as expert witnesses, who lose their work ability to serve as expert witnesses, and those who request to be dismissed from duty, are dismissed from duty in a decision.
issued by the minister, or in BD jointly by BD court presidents. Although the consequences are identical, in addition to serving as a sanction, dismissal may simply be ordered based on an expert’s request for dismissal or in situations where experts lose their work ability to serve as experts. Since there is no rule in BiH prescribing mandatory use of experts from official lists, it is possible that, due to poor coordination, a person who is dismissed from duty and is no longer registered in the list of expert witnesses is engaged to conduct an expert evaluation. This situation would pose a significant problem if the person has been dismissed from duty due to unprofessional conduct, lack of integrity or perpetration of a crime or any other offence that rendered the person unfit to serve as an expert witness. Therefore, a mechanism should be introduced to ensure timely exchange of information in order to prevent any prosecutor’s office in BiH from engaging an expert who has been dismissed from duty, in particular if the expert has been dismissed due to unprofessional conduct, lack of integrity or perpetration of crime or any other offence that rendered the person unfit to serve as expert witness.

The following facts should be taken in consideration when deciding on an appropriate sanction for witnesses: gravity of the breach of expert witness duty and its consequences, degree of liability, circumstances surrounding the breach, expert’s previous performance and conduct, and any other circumstances that could affect the decision on the severity and type of sanction. It should be mentioned that all sanctions that can be imposed on an expert witness are subject to legal remedies.

Rules on expert witnesses in BiH do not prescribe the breach of duty of official secrecy as a separate breach that can be sanctioned. This could be treated as a gap in the BiH rules on expert witnesses, since the comparative analysis has shown that examined jurisdictions apply a different approach to this aspect of accountability of expert witnesses.

All surveyed prosecutors stated that they were not aware of any cases of dismissal of expert witnesses, although, as they stated, they were aware of certain breaches of the rules of profession or unethical conduct. This is so due to a small number of reports filed with relevant institutions by prosecutor’s offices.

There are no codes of ethics in BiH which address the issue of ethical conduct of expert witnesses in judicial proceedings. Namely, RS does have the Ethical Code of the RS Association of Expert Witnesses, however it only applies to the members of the Association and the LEW does not regulate the membership in professional associations. Legislation in our country does not recognize associations of this type as bodies that may have any role in the process of appointment, professional development or sanctioning of expert witnesses.

Few criminal proceedings have been initiated against expert witnesses so far, although prosecutors reported experiences with non-compliance with the rules by experts which could be qualified as criminal offences. Again, the issue arises as to why this has not been reported by prosecutors.

Associations of expert witnesses exist at entity level in BiH. However, as it has been already mentioned, the role and importance of these associations is not recognized in the laws on expert witnesses. These associations could play an important role in the process of appointment and training of expert witnesses, but also in the process of supervision of the work of expert witnesses and all other relevant matters in this field. Examples of this can be found in some of the examined
jurisdictions in the region which have laws and bylaws that recognize a very important role of these bodies. In Montenegro, the Law on Expert Witnesses prescribes the role of the Association of Expert Witnesses in the Committee for appointment and dismissal of expert witnesses which is set up by the President of the Supreme Court of Montenegro. As it has already been mentioned, the Committee is composed of five members, including two representatives of the Association of Expert Witnesses. Members of the Association of Expert Witnesses are nominated to the President of the Supreme Court by the relevant bodies of the Association of Expert Witnesses. The Association of Expert Witnesses in Montenegro is also responsible for additional review of compliance of candidate experts with qualification criteria. The Law on Expert Witnesses prescribes that the additional review of professional knowledge and practical experience of candidates should be performed by minimum three members of the Association of Expert Witnesses who possess scientific or specialist qualifications and are appointed by the body designated in the Association’s Articles of Association. In addition to its role in the process of appointment, the Law also prescribes that the Association is also responsible for professional development of appointed expert witnesses.

Croatian Rulebook on Court-appointed Experts also prescribes an important role of associations. This role primarily includes development and delivery of training, which is a mandatory requirement for the appointment of expert witnesses, and appoints mentors responsible for the implementation of this training. This rule de facto means that no one can be appointed as an expert witness without prior approval of the Association. Namely, the Rulebook on Court-appointed Experts prescribes that the ability of a candidate to serve as an expert witness shall be verified based on a report on professional training conducted by an appointed expert witness who supervised the candidate. Within one month after the completion of the professional training, the relevant professional association must prepare a written opinion, based on the report of the expert witness (mentor) who supervised the candidate, on the results of the training and candidate’s fitness to serve as an expert witness. This report is then forwarded to the president of the relevant cantonal or commercial court. In addition to this role, the Rulebook also stipulates that professional associations may file complaints about the work of expert witnesses with the presidents of relevant courts. This additionally strengthens the role of professional associations in the supervision of the work of expert witnesses. These rules may significantly contribute to the quality of the entire process of selection, training and supervision of expert witnesses since they imply involvement of qualified persons from specific professional fields. Rules in BiH do partly foresee involvement of specialists in the overall process through their membership in Committees. However, these specialists are selected by relevant ministries of justice and not by other specialists or their associations. Legislation on expert witnesses could institutionalize a certain professional association and thus assign it a more important role which would also open possibilities for improvement of the quality of expert evaluations, status of expert witnesses, etc.
4.3. PROVISIONS ON SAFEGUARDS AND LIABILITY OF EXPERTS IN CRIMINAL PROCEEDINGS

Criminal legislation in BiH regulates both the protection and criminal prosecution of parties in criminal proceedings. Protection is guaranteed, including for expert witnesses, through those provisions of criminal codes which incriminate extortion of testimony and tampering with evidence. Extortion of testimony is also sanctioned by sanctioning any attempt to influence witnesses or experts by any person. This approach also protects expert witnesses from attempts of undue influence on their work in judicial, minor offence or administrative proceedings.

Criminal codes in BiH incriminate certain types of conduct by expert witnesses in judicial proceedings. This shows that the legislator has recognized the potential detrimental effect of such conduct on judicial proceedings. Potential unlawful discharge of expert witness duties is sanctioned under the criminal offence of giving false testimony which sanctions the conduct of witnesses and expert witnesses.

Interviews with prosecutors have revealed that very few criminal proceedings have been initiated against expert witnesses, although prosecutors have had situations where they suspected potential criminal activity in the discharge of expert witness duties. According to the survey, 5% of surveyed prosecutors stated that they had had situations where they suspected that financial and economic experts had deliberately provided false findings and opinions in economic crime and corruption cases. Also, 38% of surveyed prosecutors said they had come across unlawful and negligent expert witness findings and opinions ordered by the defense in criminal proceedings. However, 90% of surveyed prosecutors said that they had never initiated any criminal proceedings against such expert witnesses or that they were not aware any criminal proceedings against such witnesses. Prosecutors explained that the main reason for not prosecuting such expert witnesses was the fact that intent
in these cases was very difficult to prove, especially in complex expert evaluations such as financial and economic expert evaluations.

Those prosecutor’s offices that have initiated criminal proceedings against expert witnesses prosecuted expert witnesses who also provided expertise in other proceedings (lawsuits, minor offense proceedings, administrative proceedings, etc.) and not exclusively in criminal proceedings. Reports against these expert witnesses are normally filed with prosecutor’s offices by other parties in the lawsuit or other proceedings. Criminal prosecution of expert witnesses suspected of having committed a criminal offence in the course of discharge of their expert witness duties would certainly be extremely important regardless of the type of proceedings in which the expertise was ordered, be it criminal proceedings or another type of proceedings. In addition to the legal purpose of punishment, this would primarily be important for preventive reasons and in order to avoid future use of those experts. One of the examples of criminal conduct cited by prosecutors in the survey was active accepting of gifts and other forms of benefit. In those cases, expert witnesses engaged by prosecutor’s offices sought bribe from defendants in return for preparing findings and opinions that would be favorable for the defense.

According to the respondents, proving the intent of expert witnesses to provide false findings and opinion, as an element of a crime, is very difficult because, according to the case law, expert witnesses cannot be held liable for their findings and opinion, except in case of forged findings, or false testimony. Therefore, it is obvious that prosecutors should receive additional training on all aspects of proving intent, including cases of expert witnesses as suspects/defendants.

It is certainly still problematic that bodies responsible for dismissal of expert witnesses are not informed about pending criminal proceedings against expert witnesses. As a result of that, there was a case where an expert who had been convicted for a criminal offence of forging an official document was engaged by the court, on the proposal of the defense, to provide expertise. The relevant ministry of justice had not been informed about the final judgment and the expert was still registered on the official list of expert witnesses at that time.

Recommendations

1. The practice of opening investigations promptly upon establishing grounds for suspicion that an expert witness has committed a criminal offence should be introduced.

2. Relevant bodies should be promptly notified about any indictments or final judgments against expert witnesses in cases of false testimony or other criminal offences rendering the expert witnesses unfit for duty. This is necessary in order to enable those bodies to take appropriate steps to prevent future engagement of those expert witnesses.

3. A mechanism for exchange of information should be established to make sure that those expert witnesses who are on the lists of expert witnesses, but whose unethical conduct or negligence has been reported or proven, are prevented from conducting expert evaluations in BiH.
5. RECOMMENDATIONS AND PROPOSED SOLUTIONS

ACTIVITIES TO IMPROVE LAWS AND BYLAWS

1. Amendments to the legislation on experts should be initiated. The amendments should seek to harmonize existing legislation and define precisely the factors that should be considered in selecting experts, based on international and regional best practices.

2. Training should be introduced as a mandatory requirement for the appointment of an expert, following the Croatian example. This would significantly contribute to the appointment of experts who have the requisite professional qualifications and personal integrity.

3. The role of professional associations in the process of appointment, professional development, and sanctioning of experts should be institutionalized and strengthened.

4. Bodies competent for appointment of expert witnesses should adopt international and regional best practices as much as practicable in the appointment of court experts.

5. The possibility of appointing representatives of professional associations as temporary members of the commissions responsible for the appointment of court experts at the Entity level should be explored.

6. A set of required qualifications should be developed for the employment of each expert. Requirements should include skills, knowledge, education, credentials (PhD, MBA, CA, etc.), training, professional experience, and prior experience as an expert witness, all of which are international and regional standard factors. The area of knowledge and qualifications related to each area of expertise (e.g., banking and bank operations in the broadest sense, customs procedures and actions, public procurement, budgeting of public institutions, the tax system, etc.) should be scrutinized thoroughly.

7. The courts and POs should be obliged to select the experts from the existing lists, or at least to consider those lists as a priority.

8. Rulebooks should be adopted for professional trainings. The availability and use of these rulebooks will help build capacity for those institutions charged with organizing, delivering, and monitoring the delivery and attendance at trainings. Trainings should be developed in accordance with international standards.

9. The training curriculum should focus on improving experts’ skills in the presentation of findings during the main trial, helping experts avoid improper references to the legal elements of criminal offenses, and providing them with a strong understanding of the role that an expert witness plays during criminal proceedings.

10. Relevant Laws on Expert Witnesses and related bylaws, as well as a Code of Ethics for expert witnesses should be adopted that clearly states the expected ethical conduct of experts. Ethical
standards should be considered during the selection of experts.

11. Amendments to the laws dealing with the compensation of experts should be developed to establish new and standardized fees for that are scaled to an expert’s level of experience and other credentials. The amendments should ensure that POs are paying market rates for experts’ services.

12. POs should have at their disposal financial expert associates/advisers as employees, who will work on analysis and selection of evidence and prepare them in such manner to facilitate the prosecutor’s action in making the accurate order for expertise, but also enable the prosecutor to concentrate on relevant documents and facts which require the expertise. These expert associates/advisers should strengthen the functional link between prosecutors and expert witnesses.

ACTIVITIES IN PROSECUTOR’S OFFICES

13. A registry of available experts should be established, and efforts should be made to ensure that those appointed to the list have the requisite credentials and experience and that the registry is a balanced representation of the specialized areas of expertise.

14. The criteria and procedure for the selection and summoning of experts and the monitoring of their performance should be defined by the POs. When determining the criteria for selection, the experts’ professional record and their attendance at trainings should be considered.

15. Methods of increasing the pool of available experts should be explored, and POs should move away from hiring the same experts for every case, which, as the DA noted, may raise ethical issues and problems of bias. Increasing the pool of qualified experts will help avoid these pitfalls, and at the same time it will also increase the capacity of less experienced experts for each type of specific expertise.

16. Orders (requests) for expert analyses should not be made without the collection of all relevant documentation and background information related to the case. A list of relevant documents and templates should be established and agreed upon.

17. Joint meetings of prosecutors and financial and economic experts should be held on an ongoing basis to discuss the challenges and the way forward in cases of economic crime and corruption.

18. Ongoing communication and cooperation between POs and law enforcement, financial police, audit agencies and other relevant state bodies should be ensured, in order to mobilize the resources of these bodies to enable more efficient and better use of financial and economic experts.

19. Internal rules should be developed in POs to ensure that experts are hired for their integrity, independence, and impartiality, in addition to their professional criteria.

20. When hiring financial and economic experts, especially in complex and high profile cases, prosecutors should consider the possibility of hiring an expert who does not live in the same area as the suspect/defendant, in order to ensure greater impartiality and reduce the risk of pressure and influence on the work of the expert.

21. Training should be developed to assist experts in presenting findings and opinions at a trial in a
way that does not undermine the prosecution. These trainings should be conducted by or with prosecutorial assistance and input.

22. The annual training curricula of the FBiH and RS Judicial and Prosecutorial Training Centers should foresee continued training for prosecutors in the area of financial and economic investigations, including their work with court experts, in order to raise their level of proficiency in such investigations and to enable the prosecutors to compose better orders for expert analyses.

23. The practice of training of newly appointed prosecutors internally by their more experienced peers should be introduced in POs. Such training should cover cases of economic crime and corruption, focusing in particular on the issuing of precise and clear orders for financial and economic expertise.

24. A more thorough analysis should be conducted on why expert reports and opinions take so long to be delivered. The aim should be to reduce the time invested in producing these reports.

25. A system for monitoring the quality of the findings and opinions of experts should be established. The detection of any possible disciplinary problems should be reported immediately.

26. POs’ reporting of all potential misconduct and non-compliance with rules by experts in their findings and opinions should be promoted.

27. More efficient mechanisms should be established for reporting experts’ non-compliance with rules and standards to the relevant bodies. The Entity MOJs and BD JC should promptly investigate any offenses and disseminate their findings to all courts and POs in BiH.

28. The Entity MOJs and BD JC should keep records related to all expert witnesses. Where indictments or criminal offenses have been confirmed, these bodies should have an obligation to inform the courts and POs of such offenses.

29. Prosecutors should promptly investigate and charge all cases of reported criminal offenses by experts which are carried out in the commission of their duties as experts.

30. A mechanism for keeping the database updated should be established. This mechanism should ensure that experts who are not on the lists of experts, and whose unethical behavior or misconduct has been documented or proven, cannot act as expert witnesses in BiH.

31. Pending the enactment of relevant regulations, the criteria for determining remunerations and considerations for the work of experts should be defined by individual POs.

32. POs’ capacity to advocate more effectively for their budgets should be strengthened to ensure sufficient funding is available to POs for the engagement of expert witnesses. Factors to take into consideration in developing budgets for expert witnesses should include the higher costs of complex financial and economic expert analyses.

33. Budgets should be developed to ensure that POs have the requisite financial resources to engage the experts needed to prosecute cases of economic crime and corruption.
ADDITIONAL ACTIVITY

34. A glossary of terms used in financial and economic investigation should be developed to facilitate a better understanding of financial and economic terms by prosecutors working on cases of economic crime and corruption.