

A COMPARATIVE ANALYSIS OF AML REGULATION IN THE CZECH REPUBLIC AND BOSNIA AND HERZEGOVINA



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The fight against money laundering (AML) and the financing of terrorism is a crucial aspect of global financial regulation. Money laundering is a necessary component of many criminal activities such as drug trafficking, organised crime, and corruption, as it allows perpetrators to conceal the criminal origin of their earnings. Thus, by fighting money laundering, governments can decrease the profitability of criminal activity, limit the shadow economy, and prevent the ciphering of taxpayer money from the state budget. As financial systems become increasingly interconnected, countries must establish robust AML frameworks that not only comply with international standards but also to limit cross-border flows of dirty money and international criminal networks.

Effective AML/CFT legislation and implementation play a key role in upholding the rule of law and protecting human rights. Structures that enable the laundering of proceeds of crime and corruption are often used by representatives of authoritarian regimes and oligarchs as well as individuals involved in organised crime and terrorist groups. Failure to address the AML/CFT agenda therefore indirectly enables the funding of regimes, organisations and individuals who suppress human rights, disregard the rule of law, engage in illegal activities and thus pose an economic and security threat on both the national and the global level.

In the past, Bosnia and Herzegovina (BiH) has fallen short of international standards in combatting money laundering and terrorist financing, having been classified as a jurisdiction under increased monitoring or 'grey listed' by the Financial Action Task Force (FATF) until 2018.¹ National AML/CTF regulation did not comply with FATF recommendations and its implementation

1 https://www.savjetministara.gov.ba/saopstenja/saopsten-ja_predsjedavajuceg/default.aspx?id=27645&langTag=en-US

was impeded by significant institutional and legal fragmentation and limited collaboration between relevant institutions. Due to a lack of meaningful progress, BiH faced a potential return to the FATF grey list as the Fifth Round Evaluation by the Council of Europe's MONEYVAL loomed in early 2024.²

To address this risk and avert the associated economic, political and financial consequences, the Law on The Prevention of Money Laundering and Terrorist Financing (AML/CTF Law) was passed by the Parliament of Bosnia and Herzegovina on February 16th, 2024. The law brought BiH in line with key EU standards such as directives (EU) 2015/849 and (EU) 2018/843 and regulation (EU) 2018/1672 and broadened the scope of entities covered as well as the scope of the local Financial Intelligence Unit (FIU).

This analysis aims to compare the AML regulatory frameworks of the Czech Republic and Bosnia and Herzegovina. While the Czech AML Act, established in 2008, has been in effect for over a decade, BiH AML legislation is rather new and untested in the realm of implementation. This comparative analysis will explore the key differences and similarities between these two frameworks and set out concrete recommendations for the effective implementation of the new AML regulation in BiH.

² https://www.eeas.europa.eu/delegations/bosnia-and-herzegovina/eu-office-bih-calls-bih-house-peoples-urgently-adopt-law-anti-money-laundering-and-countermeasures_en?s=219

Czech Regulatory Framework

In the introductory provisions, Act No. 253/2008 Coll., on Selected Measures against Legitimation of Proceeds of Crime and Financing of Terrorism (hereinafter referred to as the "AML Act") defines the subject of the law, obliged entities and key terms.

Obliged entities are defined in Section 2 (1) and (2) and can be divided into three groups³:

1. Financial sector - banks and other credit and financial institutions, including foreign entities operating in the Czech financial sector.
2. Non-financial sector - obligated Czech and foreign entities listed in Section 2(1)(c) to (m). This includes, for example, real estate traders, auditors, tax advisors, executors, notaries, or art dealers.
3. Other – any entrepreneur in the case of a cash transaction exceeding EUR 10,000 and any legal person authorised to carry out any of the activities falling within the financial or non-financial sector or in the case of a cash transaction in excess of EUR 10,000 (Section 2(2)).

An entity is considered an obliged entity from the moment it begins to perform the relevant activity, not the moment when the authorisation is granted, or the registration obligation is fulfilled.⁴

³ <https://fau.gov.cz/povinnou-osobou-krok-za-krokem>

⁴ *ibid.*

AML Responsibilities

The AML Act stipulates a number of responsibilities for obliged entities (Section 7 et seq.) Key responsibilities include customer identification and due diligence, rejection of transaction, suspicious transaction reporting, suspension of customer's order, the obligation to inform, and the obligation of confidentiality.

Customer Identification and Due Diligence

The obliged entity must identify the customer prior to any transaction exceeding EUR 1,000 and in other cases stipulated by law such as in case of a suspicious transaction or the establishment of a new business relationship. The obliged entity must carry out the identification in the physical presence of the customer or in the presence of their representative in the case of a legal person. The identification data should be recorded and verified based on the presented documents. In addition to "physical" identification, the law allows electronic identification.

If the client, transaction, or business relationship are found to pose an increased risk of legitimisation of proceeds of crime or terrorist financing, enhanced identification and due diligence should be carried out (Section 9a). On the other hand, a simplified identification and customer due diligence procedure is permitted for customers, transactions, and business relations with lower risk. The Act also provides for exceptions from the obligations of identification and customer due diligence (Section 13a). In certain situations, the customer can also be identified via an intermediary such as a notary or a public administration contact point (Section 10).

As part of customer due diligence, the obliged entity gathers and assesses information concerning the purpose and nature of the transaction or business relationship, verifies the identity of the beneficial owner or the ownership and management structure, continuously monitors the business relationship and the transactions carried out, reviews the sources of funds and, in the case of exposed persons, takes adequate measures to identify the origin of their funds. The customer due diligence is carried out to the extent necessary to assess the potential risk of money laundering and terrorist financing. It will therefore vary depending on the client type, business relationship and risk level.

With a few exceptions, the obliged entity must notify the customer of any discrepancies found during identification and customer due diligence.

From the practice we are aware that the only obliged entities, which follow the described rules, are banks. The rest of the obliged entities are not following the rules (in many cases because they are not aware that they are obliged entities, because they feel that it is strong administrative burden and so on), or their processes are not strong enough. We are aware that Czech Financial Investigation Unit is trying to educate such obliged entities, but only with limited results. We are not aware of any sanctions imposed for not following customer identification and due diligence. We are aware only about limited number of entities fined for not following the customer identification rules entirely.

Rejection of Transaction

If the client refuses identification, refuses to present an authorisation or fails to cooperate in any other way, the obliged entity must refuse to carry out the transaction or establish a business relationship, or terminate the already established relationship. The same applies in cases where identification and customer due diligence cannot be carried out for other reasons, the obliged entity has doubts about the accuracy of the information provided by the customer, or if the source of funds of a politically exposed person cannot be ascertained.

Record Keeping

Identification data, copies of documents and other documents related to identification and customer due diligence must be kept by the obliged entity for a period of ten years following the transaction or the termination of a business relationship.

Suspicious Transaction Reporting

The obliged entity must report suspicious transactions to the Financial Analytical Office (Finanční analytický úřad, the Czech Financial Intelligence Unit, hereinafter referred to as the "FAO") without undue delay. The suspicious transaction report must include identification data of the subject of the report and any other subjects involved in the transaction as well as any other information which may be relevant to the suspicious transaction. The obliged entity must designate a contact person should the FAO wish to contact them for further communications.

We are aware that the banks are the only obliged entities with significant number of reports per year. In the past it is quite common that there were less than five reports per year from all the notaries in the Czech Republic. As they are presented in almost all notable transactions, it seems that the implementation of this law is somehow lacking.

Suspension of Customer's Order

In the event that there is a risk that the immediate execution of the customer's order could impede or significantly hinder the seizure of proceeds of crime or funds intended for financing terrorism, the obliged entity must execute the transaction no earlier than 24 hours after the suspicious transaction report was submitted to the FAO. The FAO may extend the deadline.

In addition to the above-mentioned key obligations, the AML Act also stipulates a number of other duties and obligations for obliged entities. These include, for example, the obligation of confidentiality, the obligation to perform a risk assessment and put in place adequate internal procedures to mitigate and manage the identified risks of money laundering and terrorism financing. The risk assessment must be regularly updated, in particular prior to launching new products or introducing new technology. Furthermore, obliged entities must designate a permanent contact person for the FAO and conduct regular employee training.

Further, the AML Act stipulates special provisions for certain types of obliged entities such as credit institutions, payment providers, auditors and tax advisors. For example, credit and financial institutions are not permitted to enter into correspondent relationship with entities from jurisdictions that do not apply anti-money laundering measures equivalent to the requirements of European AML law.

Reporting Obligation for Cross-border Transactions

The AML Act also stipulates the obligation to report any cross-border cash transfers crossing the external border of the European Union. Every person is obliged to report any import or export of cash in excess of EUR 10,000 in writing to the customs authority.⁵

Activities of the Financial Analytical Office and Other Authorities

The AML Act establishes the FAO as an independent administrative authority with nationwide competence, which fulfils the function of a Financial Intelligence Unit of the Czech Republic. The FAO is subordinate to the Ministry of Finance. The Office is headed by a director whose selection, appointment, and dismissal are governed by the Civil Service Act. The Chamber of Deputies is tasked with oversight of the FAO's activities, establishing for this purpose a Permanent Commission of minimum seven members with at least one representative from every parliamentary group. The Commission has no right to intervene in the powers of the director of the FAO concerning human resources or managerial competencies, but the FAO is obliged to submit an annual report on its activities to the Commission. The FAO may request information from the Police of the Czech Republic, all Czech intelligence services and public authorities. It regularly prepares risk assessments at the national level and collects and analyses the data it obtains.

⁵ <https://fau.gov.cz/prevoz-penez-pres-hranice>

⁶ <https://fau.gov.cz/>

Bosnian Regulatory Framework, as Compared to the Czech AML Act

Like the Czech AML Act, the Law on The Prevention of Money Laundering and Terrorist Financing of Bosnia and Herzegovina sets out the subject of the regulation, obliged entities, and key terms in the introductory provisions, and refers to the relevant European directives and regulations on which it is based. The definition of terms and subject matter is essentially identical in both cases.

The list of obliged entities, which includes both the financial and non-financial sectors, is similar. Unlike the Czech legislation, which defines any entrepreneur carrying out a transaction exceeding EUR 10,000 as an obliged entity, only entrepreneurs in selected fields (Article 5 (2)) – precious metals and stone dealers, art dealers and real estate transaction brokers, including landlords with a monthly rent in excess of KM 20,000 (which corresponds to approximately EUR 10,000) – are considered as such in the BiH AML Act.

AML obligations (Article 9 et seq.)

Similarly to the Czech legislation, the Bosnian AML Act stipulates an obligation for obliged entities to implement a number of measures and procedures. The measures include regular risk assessments and the implementation of internal procedures, including their regular evaluation and updating, customer identification and customer due diligence, regular employee trainings, and record keeping. As in the Czech AML Act, the Bosnian AML Act provides for enhanced or, conversely, simplified measures in cases where potential risk is assessed to be higher or lower respectively.

The regulation basically corresponds to the Czech AML Act. While enhanced measures must be implemented, for example, in situations where a correspondent relationship is established, new technologies are introduced or a transaction involves high-risk countries (Article 35), simplified measures can be implemented in low-risk cases (Articles 29 and 30).

The list of obligations in both AML Acts is very similar, including identification and customer due diligence, internal procedure obligations, record-keeping obligations and so on. The key obligations are discussed in more detail below.

Risk Assessment (Article 10)

Obliged entities must regularly perform an assessment of the money laundering and terrorist financing risks that may arise in the course of their activities. The assessment must take into account risk factors related to clients, countries and geographical areas, products, services, transactions, and distribution channels. The scope of the risk assessment is not the same in all cases and will depend on a number of factors, such as the size of the obliged entity or the size of the transaction. The risk assessment must be updated at least once a year and submitted to the competent supervisory authority (Article 93).

Customer Due Diligence (Article 11)

The BiH AML Act contains a list of measures that obliged entities must carry out in order to be able to state that they proceed with due diligence and caution. These measures include:

1. Identification of the client and verification of their identity on the basis of submitted documents or other reliable sources:

As in the case of Czech legislation, identification must take place prior to the execution of a transaction or the establishment of a business relationship. Identification can be carried out in the physical presence of the client by viewing the documents provided by the client, electronically (Article 21), or via an intermediary (Article 24), provided that they meet the conditions prescribed by the Law.

2. Identification and verification of the identity of the beneficial owner:

The obliged entity must establish and verify the identity of the beneficial owner of a legal person using relevant information and data obtained from a reliable source.

3. Obtaining and assessing information about the intended purpose and nature of the business relationship or transaction.

4. Ongoing monitoring of the business relationship, including the monitoring of all transactions carried out within the relationship:

The exact nature of this measure is defined in more detail in Article 27. This includes monitoring that the client's transactions and business operations are in accordance with the purpose and objective of the established business relationship, ensuring that transactions are consistent with the obliged entity's knowledge of the client, and ensuring that all relevant data and documents are up to date.

5. Determining whether a client is a politically exposed person: Special measures when establishing a business relationship (or carrying out a transaction) with a politically exposed person are further regulated by Article 34. As in the case of Czech legislation, the key obligation is to obtain information on the source of funds.

Obligated entities must carry out the customer due diligence measures in all cases stipulated by law (Article 12), e.g. when establishing a business relationship with a client or carrying out a transaction exceeding 30,000 KM, as well as when there is a suspicion of money laundering and terrorist financing. Like the Czech legislation, the Bosnian legislation also contains exceptions for the handling of electronic money (Article 13). The exact method of implementation of the customer due diligence measures is largely left to the obliged entity. Thus, the quality of such measurements is not matter of the law itself and it strongly depends on practice build on the law. The obliged entity shall set out the methods of implementations of these measures in its internal regulations.

[Data Collection](#) (Article 15)

The obliged entity must collect certain data about the client listed in Article 15, such as the name, surname, and date of birth of a natural person or the name and type of a legal person, when performing customer due diligence.

[Ban on Establishing a Business Relationship](#) (Article 26)

The ban on establishing a business relationship corresponds to a large extent to the rejection of transaction obligation in the Czech AML Act. The provision prohibits the obliged entity from establishing a business relationship under certain circumstances, for instance where identification and customer due diligence was not possible, or the obliged entity has doubts about the credibility of the data provided by the client.

[Establishment of correspondence](#) (Article 31)

When establishing correspondence relationships, the law stipulates a number of other obligations beyond the general ones. In addition to gathering sufficient information about the institution with which the relationship is established, it is necessary to familiarise yourself with the AML legislation in force in the given country and to make sure that the institution complies with the AML legislation of the given country.

[Suspicious Transaction Reporting](#) (Article 42 et seq.)

Obligated entities, regardless of the amount of the transaction, are obligated to report any suspicious transaction or customer in writing to the FID (the equivalent of the FAO in Bosnia and Herzegovina). For this purpose, the obliged entity may postpone the execution of the transaction. There are exceptions to suspicious transaction reporting obligation, for example if the obliged entity is a lawyer representing a client in court. In addition to suspicious transactions, obliged entities are obligated to report to the FID all cash transactions exceeding KM 30,000 (roughly EUR 15,000) (Article 43).

[AMLS Software](#) (Article 47)

The law mentions the existence of software for the prevention of money laundering and terrorist financing that should allow obliged entities to securely electronically report suspicious transactions to the FID and the FID to secure access to all data.

Establishment of Internal Control, Internal and External Audit

In addition to the above-mentioned measures, the obliged entity must establish internal control and carry out an internal and external audit at least once a year to determine whether the effectiveness of their system for managing money laundering and terrorist financing risks (Article 55). Like the Czech legislation, the Bosnian legislation requires the development of a system of internal procedures and control mechanisms (Article 56) and risk assessment (Article 57). The risk assessment system must comply with FID requirements.

Obliged entities must also have the option to anonymously report violations of the AML Act.

Tasks and Competencies of the FID (Article 62)

The Bosnian FID (Financial Intelligence Department) is largely similar to the Czech FAO and is tasked with a wide range of activities, from receiving and analysing suspicious transaction reports to general ML/TF prevention and international cooperation. The Act emphasises that all activities must be carried out by the FID independently and without undue influence from the political or private sector. Activities are carried out by FID with the cooperation of other state authorities, and it should be granted access to any data necessary for its activities. The FID should notify the relevant law enforcement authorities if it suspects a criminal offence. Upon a reasoned request from a national or foreign competent authority, the FID should forward any available data, information, and documents that may be of importance to these authorities.

Summary and recommendations

In their fundamental aspects, which are mainly identification, customer due diligence, rejection of transaction, and suspicious transaction reporting, the AML regulatory framework of the two countries does not differ in principle and variation will depend primarily on their application in practice. The Bosnian legislation is somewhat broader and more detailed, including some aspects that are not regulated by the Czech AML Act. In addition to the AML obligations, which in principle apply only to obliged entities, the Bosnian AML Act also regulates the physical transportation of cash across borders, where all persons must declare any physical transportation of cash across the country's border to the customs authority (Article 81 et seq.).

On the other hand, the BiH legislation is very recent, which makes it difficult to estimate the success and effectiveness of its enforcement. The Czech FAO serves as an example of best practice in this area as an independent and effective enforcement institution.

Recommendations:

- **Beneficial Ownership Transparency**

Contrary to some expectations, the new AML Act does not clearly set up a Beneficial Ownership Registry (BOR) of Bosnia and Herzegovina. While the new legislation sets out the obligation to establish and verify the identity of the client's beneficial owner, there is no centralised source to access such information, or any guarantee for transparency of the register to the public. Thus, the lack of transparency in beneficial ownership remains a critical weakness in BiH's AML framework. The country should establish a centralised, publicly accessible register of beneficial ownership, such as the Czech BOR⁷ (*Evidence skutečných majitelů* or ESM), as recommended by international organisations

⁷ <https://esm.justice.cz/ias/issm/rejstrik>

like the Financial Action Task Force (FATF) and the European Union. Ensuring that the real owners behind legal entities are identified and monitored will significantly reduce the opportunities for money laundering and other financial crimes.

- **Awareness and Compliance Among Obligated Entities**

In the Czech Republic, it has been observed that many obliged entities outside the banking sector are either unaware of their obligations or find compliance to be overly burdensome. The Czech FAO has responded to this issue by organising training and talks for obliged entities to raise awareness and improve compliance. BiH could benefit from similar awareness-raising and capacity-building activities for obliged entities, especially considering the new AML Act has broadened the scope of entities covered.

- **Institutional Capacity Building**

As the new AML Act broadened the scope of competencies of the FID, it is crucial to ensure that there are enough institutional and law-enforcement capacities to accommodate the new regulatory framework. This includes providing adequate resources and training to employees of the FID, law enforcement agencies, and judicial bodies to ensure they can effectively carry out their duties.

- **Interagency Cooperation and Coordination**

Effective AML enforcement requires close cooperation between various national authorities, including tax authorities, law enforcement agencies, and financial regulators. BiH should focus on improving interagency coordination to ensure that information is shared promptly and effectively. This can be achieved by establishing formal mechanisms for cooperation and ensuring that all relevant agencies have access to the necessary data and resources.

- **International Cooperation**

Given the transnational nature of money laundering, BiH should enhance its cooperation with international partners, including neighbouring countries, EU member states, and global financial institutions. This includes sharing information on suspicious transactions with international counterparts and participating in global AML initiatives.

By addressing these key areas, Bosnia and Herzegovina can significantly strengthen its AML framework, align itself more closely with international standards, and contribute to the global fight against financial crime. This will not only enhance the country's financial integrity but also promote broader economic and political stability.



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