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Ministry of Industry, Business and Financial Affairs
Slotsholmsgade 10-12
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Translation from original text in Danish. In case of discrepancies, the Danish version prevails.

Report on the Danish FSA's supervision of Danske Bank as regards the Estonia case

Background

In Danske Bank's Estonian branch, there have been significant violations of the European and Estonian money laundering rules. Furthermore, there has been an inadequate overall control environment in Danske Bank in the head office in Copenhagen in relation to managing money laundering risks in the Estonian branch.

The case has led to several questions being raised regarding the Danish FSA's responsibilities and behaviour in the case, including the Danish FSA's cooperation with the Estonian Financial Supervisory Authority (EFSA).

The Minister for Industry, Business and Financial Affairs has therefore asked the Danish FSA to clarify the actual facts of the case, and describe the Danish FSA's actions in the case. In connection with this, the Danish FSA's board has asked the Danish FSA to prepare a report on the case.

Since 2014, the Danish FSA has had an independent board with its own powers, among other things responsibility for approving the organisation and strategic objectives of supervision and deciding on supervisory responses in cases of principle and cases with significantly wide-ranging consequences. Board members are appointed by the Minister for terms of two years, and cannot be dismissed during the period. This independence is a key part of the framing of Danish supervision of financial companies and is in line with European practice. The Danish FSA's decision of 3 May 2018 was thus made by the board.

The Danish FSA's report of 28 January 2019 in the Estonian case provides a detailed account of the Danish FSA's actions in relation to the case. The report has been presented to the Board. The report is attached to this letter.

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In the preparation of the report, the Danish FSA has consulted with the Legal Adviser to the Danish Government. The Legal Adviser to the Danish Government has contributed to the assessment of the division of responsibilities in the money laundering area, and of what information the Danish FSA's confidentiality requirement allows disclosure of, including publishing.

The Estonia case is the subject of massive media coverage. In addition, the Minister for Industry, Business and Financial Affairs has repeatedly been called into consultation in the Danish parliament's Business, Growth and Export Committee on the matter. Both Danske Bank, the EFSA and the whistleblower have provided comprehensive and detailed information to the public on the matter. On numerous occasions, the Danish FSA's actions and omissions have been referred incorrectly in the debate, or in a way which gives a misleading impression of facts. In consultation with the Legal Adviser to the Danish Government, the Danish FSA has concluded that the Danish FSA may publish the information, which is not marked in grey, with respect to the confidentiality requirement.

Under criminal liability, the Danish FSA's employees are required to protect the confidential information that they come to know through the supervisory activities. The law allows the Danish FSA an opportunity to disclose confidential information to the Minister as part of the Minister's general oversight of the Danish FSA. Sections marked in grey in the report contain confidential information, which the Danish FSA can only disclose to the Minister. The same is true of Annexes 4 and 7, which are not published. The parts of Annex 4 and 7 which are not confidential have already been reflected in the report. The requirement of confidentiality follows the information, and the Danish FSA must point out that the Minister thus becomes subject to the same confidentiality as the Danish FSA in relation to the information in the report, which is marked in grey. This means that the information marked in grey cannot legally be disclosed, which includes publication. This assessment has also been made in consultation with the Legal Adviser to the Danish Government.

The board can confirm that the information contained in the parts of the report that cannot be disclosed to the public (the sections marked in grey in the report) does not change the overall results of the report, and is not contrary to the report's conclusions. Correspondingly, the Legal Adviser to the Danish Government has issued a statement that the parts which cannot be published are not contrary to the report's conclusions. The statement has been attached to the report as Annex 1.

The board's assessment of the Danish FSA's handling of its responsibilities in the case

The division of responsibilities between the Danish FSA and EFSA with regard to Danske Bank's branch in Estonia follows from EU legislation. As the

host country supervisor, the EFSA is responsible for the money laundering supervision of the Estonian branch. As responsible for the supervision of the Danske Bank group, the Danish FSA's task in relation to the money laundering supervision of the Estonian branch is to ensure the integration of the work carried out by the EFSA into the overall supervision of Danske Bank.

It is the assessment of the board that, throughout the period 2007-2018, the Danish FSA has fulfilled its obligations as the responsible supervisory authority for Danske Bank and acted in accordance with the division of responsibilities between the Danish FSA and EFSA in the money laundering area. The Danish FSA answered all inquiries from the EFSA on money laundering risks in the Estonian branch and regularly informed the college of supervisors of risks in the money laundering area and the handling thereof.

Like most other supervisory authorities, the Danish FSA conducts a risk-based supervision. This means that the supervisory resources are allocated according to how significant the risks are within the Danish FSA's area of responsibility. In the money laundering area, throughout all the years, the Danish FSA prioritised supervision of Danske Bank's Danish activities.

Again, like most other supervisory authorities, the Danish FSA is highly dependent on receiving accurate information from the companies it supervises. The Danish FSA checks the information they get from the company. Throughout the period, the Danish FSA has both received documentation for the content in Danske Bank's replies to inquiries, and in relation to the Estonian branch has compared this information to the results of the EFSA's money laundering inspections. Similarly, orders have been followed up on, in order to ensure that the necessary measures have been implemented. The fact that the information provided by the bank to the Danish FSA has been inadequate and erroneous has had consequences for the bank, including in the form of a police report of the bank in 2016 for failure to comply with an order. The requirements for the bank's reporting to the Danish FSA have also been tightened.

When in 2017 it became clear that the amount of suspicious transactions in the Estonian branch was significantly higher than the bank had previously told the Danish FSA, the Danish FSA launched an investigation of Danske Bank's overall governance and management in relation to money laundering risks in the branch. On that basis, the Danish FSA made a decision on May 3, 2018, issuing eight orders and eight reprimands to Danske Bank for deficiencies in the bank's overall governance in relation to the Estonian branch.

In connection with the decision, the Danish FSA thoroughly analysed the legal basis for holding the bank's management accountable for the failures that had occurred in the case. The Danish FSA's board is of the opinion that the eight orders and eight reprimands given in the decision of 3 May 2018 constituted the right response to the findings. In the ensuing public debate, nothing has

been revealed which, in the view of the board, might lead to a different assessment based on the information available at the time.

Since then, further information has emerged which is still being processed and which might give rise to a renewed presentation for the board.

Danske Bank is continuing its work to uncover the activities in the Estonian branch. The Danish FSA also reopened its investigation into the bank and is investigating if the bank's own investigations supervised and directed by a law firm provides new information compared with the information which was the basis for the Danish FSA's decision in May 2018. In addition, the case is being investigated by the State Prosecutor for Serious Economic and International Crime (SØIK) and by both the Estonian as US authorities. Issues that can be uncovered in these processes are not included in the report.

Possible initiatives

The Minister for Industry, Business and Financial Affairs has asked the Danish FSA to consider the need for changes in legislation following the Estonia case, as well as the need to strengthen the Danish FSA, including through additional resources.

The intention is for Denmark to have a money laundering supervision in the European elite. This will inherently involve stricter requirements for banks operating in Denmark, and for the overall governance of foreign branches and subsidiaries of the Danish banks.

On this basis, the report outlines a number of proposed initiatives on tightening of legislation, strengthening of the money laundering supervision and the allocation of additional resources to the Danish FSA. Some of the proposals concern supervisory activities where the Governing Board lays out the priorities for the Danish FSA. It will require a political decision to allocate additional resources to the Danish FSA, if these proposals are to be implemented. If resources are allocated, the proposals could be initiated relatively quickly. Other proposals will require legislative changes.

Furthermore, it is desirable that the Danish FSA is given significantly greater flexibility within its budget to set the remuneration of key employees and new employees whose skills are particularly sought after.

The proposals aim to address issues exposed by the case, but there are also proposals which more generally can contribute to ensuring that Denmark has a regulation and a supervision in the area which are in the European elite. The proposals are grouped into four main areas:

A: Better and more effective lines of defence in banks

B: Duty to disclose and criminal liability, as well as improved protection of whistleblowers

C: Tougher consequences when bank management fails to live up to its responsibility

D: A money laundering supervision in the European elite

A number of other investigations of the Danish FSA's actions in the Estonia case, as well as of the Danish FSA's money laundering supervision more generally, have or will be initiated. Among other things, the European Banking Authority (EBA) is investigating the Danish FSA's actions in relation to the specific case. The Public Accounts Committee has also asked the National Audit Office (Rigsrevisionen) to examine the Danish AML supervision at the more general level. Finally, the Danish FSA has agreed with the IMF that, later this year, the IMF will benchmark Danish regulation and supervision in the money laundering area against other relevant countries. These investigations may lead to further proposals to strengthen the money laundering supervision and the money laundering regulation in Denmark.

The Danish FSA's board will do its utmost to ensure that, the large resource drain that this case has warranted notwithstanding, the supervision maintains its focus on other risks in the financial system. There is a need to focus on e.g. the build-up of risks in favourable economic times, as well as on cyber risks.

Yours sincerely,

David Lando
Chairman of the Board