

## NOTAT

**Danish Financial Supervisory Authority**

Translation from original text in Danish. In case of discrepancies, the Danish version prevails.

19. November 2018

## Jesper Berg's speaking notes from the Folketing's hearing on Danske Bank

**Speaking notes used by the Director General of the Danish Financial Supervisory Authority (Danish FSA), Jesper Berg, in his presentation at the hearing on Danske Bank at the Folketing's Business, Growth and Export Committee on Monday 19 November 2018. The spoken word may have deviated from the speaking notes.**

### Money laundering: Scope and challenges (slide 1)

- Thank you for the invitation.
- I understand full well the interest in this matter. I also understand the sense of the lack of justice stemming from recent events and, before this, the financial crisis.
- I have wanted the opportunity to tell you what the Danish FSA does in this area for some time.
- This applies both in relation to money laundering in general and to Danske Bank's case in particular.

### +The global situation is also ours (slide 2)

- Russia is the biggest risk factor in relation to money laundering in our part of the world. The Baltic countries are particularly vulnerable.
- We cannot change our geographic location.
- There is a huge amount of money that is trying to get out of Russia.
- The IMF estimates that, in 2018, Russia had a current account surplus in its balance of payments of USD 100 billion.
- That money must be placed abroad. Some of it legitimately, and the rest less so.

### There are still many 'non-resident customers' in the Baltics (slide 3)

- The figure here shows the development of deposits by non-resident customers in:
  - Danske Bank Estonia (the light blue bars)
  - In Estonia in total (the dark blue)

- And in the Baltics in total (the grey)
- Non-resident customers are those that represent the greatest risk of money laundering. They do not reside in the countries concerned. Presumably, the vast majority of them are customers associated with Russia.
- Note that the figures are for deposits at year-end and not for transactions during the year. Therefore, they are much less than the €200 billion that passed through Danske Bank's branch between 2007-15. Please also note that we do not know the relationship between deposits and transactions for banks other than Danske Bank.
- There are four things to take into account in these figures:
  1. Danske Bank took over some of these customers when it bought the Finnish Sampo Bank and hence its Baltic branches, cf. the size of the light blue bar in 2007.
  2. The business grew over the years, but was shut down in 2015, as can be seen again from the light blue bar.
  3. Although Danske Bank had a very large market share of these customers in Estonia (up to 50%), it had only a small share of the total Baltic market (less than 10% at its peak).
  4. There are still many of this kind of customer in the Baltics. The extent to which there is money laundering associated with these accounts, I do not know.

What is money laundering? The Danish Money Laundering Act's definition (slide 4)

- The definition of money laundering is based on the EU Anti Money Laundering directive (AML directive).
- The key part as far as banks are concerned is primarily the second point:
- Banks may not help criminals to hide, keep or transport funds from crime.
- The financing of terrorism is an equally important area for supervision and criminal investigation, but here we are dealing with money laundering.
- Our collective aim is that criminals will be stopped when they try to get their money into banks. The police must be involved in this situation so that they can go after the criminals and their money.

The role banks play in monitoring (slide 5)

- How can we ensure that criminals do not get into the financial system?
- Banks generally have five tasks:
  1. **Identification:** When a bank gets a new customer, it must make sure that they are who they say they are.
  2. **Knowing your customer:** The bank must determine the purpose of the client relationship, the expected transaction scope and the types of transactions.

3. **Monitoring:** Based on its knowledge of the customer, the bank must monitor the customer's transactions.
  4. **Reacting to suspicion:** If a transaction arouses suspicion, it should be investigated further.
  5. **Reporting:** If suspicion cannot be discounted, the bank must inform the State Prosecutor for Serious Economic and International Crime.
- Most of us are familiar with a bank asking for a copy of our passport as a form of identification.
  - There are many front line bank personnel that make a massive contribution in this area, for which they deserve more thanks than they receive.

#### Prevention and prosecution take place in a chain (slide 6)

- Banks are therefore charged with monitoring their customers and reporting suspicious transactions to the police.
- The Danish FSA's task is to supervise that the banks do so. The Danish FSA's task is not to monitor customers, nor individual money transfers.
- The Danish FIU is located at the office of the State Prosecutor for Serious Economic and International Crime.
- There are other authorities that ensure compliance by non-banking businesses with the Money Laundering Act.
- Ultimately, the courts decide whether rules have been violated.

#### The supervisory role in the AML area (slide 7)

- What does the Danish FSA do in practice?
- The Danish FSA has a three-pronged strategy:
  1. We prevent. Prevention is achieved by providing information about the rules. We recently issued a 150-page guide developed in cooperation with banks. The length reflects the complexity of the area.
  2. We oversee compliance with the law by banks.
  3. We respond to violations of legislation. In the worst case, we report the bank to the police.

#### Many undertakings under supervision (slide 8)

- The Danish FSA conducts supervision not only in relation to banks, but also in relation to many other kinds of undertakings.
- There are more than 1,400 undertakings under AML supervision of the Danish FSA.
- Recently, we have also become responsible for supervising currency exchange businesses.
- There are also many transactions going through the financial system.
- Payments made through the single payment infrastructure in 2017 alone reached DKK 500 million per business day.

- The Danish FSA can therefore never supervise at transaction level. Nor is it the case in other countries.
- The monitoring of transactions must take place in banks.

#### Risk-based supervision (slide 9)

- The Danish FSA carries out risk-based supervision. As do all financial supervisory authorities.
- What does that mean?
- It means that the Danish FSA concentrates most of its resources on the areas we believe have the most dangerous combination of risk and consequence if things go wrong.
- This also applies to AML supervision.
- We can make mistakes when assessing risks.
- Less likely outcomes can of course also occur. When things go wrong in this sort of area, it can make us seem inattentive in the eyes of the public.
- However, in the case of Danske Bank, we allocated considerable resources to supervise the bank. This is a reflection of the fact that the consequences of non-compliance at Danske Bank are large, and that Danske Bank's more complex business model entails greater risks. I will come back to that shortly.

#### How do we supervise? (slide 10)

- What do we do when we supervise?
- Compared to other countries, the Danish FSA focuses a lot on actually being out there in the banks. In many other countries, supervision is largely deskwork.
- There are five steps in our on-site supervision:
  1. We request material in advance and review it.
  2. We interview the bank's officials at their place of work.
  3. We conduct random checks of customer files to verify the bank's information.
  4. We report back to the bank.
  5. We issue a public inspection report on our findings.
- The public inspection report is an unusual thing for a financial supervisory authority. It is not something our foreign colleagues do. The Folketing introduced the requirement after the financial crisis. It has proved to be a very effective instrument for keeping banks in line.
- But despite being able to make random checks, the FSA in Denmark (and in other countries) is dependent on the banks giving us the correct information. This applies not only to financial supervision, but also to most other types of supervision.

#### Joint statement from the Estonian and Danish Financial Supervisory Authorities (slide 11)

- One of the important things I have to say today is that AML supervision is a host country task. This is evident from the EU rules and the second point in the joint declaration issued by the Estonian FSA and the Danish Financial Supervisory Authority in May after much confusion in the press.
- What does that mean?
- Specifically, it means that the Estonian Financial Supervisory Authority is responsible for AML supervision at Danske Bank's Estonian branch. Estonia is the host country for Danske Bank's Estonian branch.
- Similarly, we supervise Nordea's Danish branch.
  
- The division of responsibility in the AML area is different from that in most other areas of supervision.
- In most other areas, there is home-country supervision. That is, the supervisory obligation for a bank and its branches lies in the country where the bank is headquartered.
- It makes sense that there is host country supervision in the AML area. It is easier for the supervisory authority to be from the same country as the police authority with whom it has to cooperate.
- Experience also indicates that clear division of responsibility is the best solution. Overlapping responsibility often ends up with one authority thinking the other is on the ball, and vice versa.

#### AML inspections in Danske Bank: Estonia and Denmark (slide 12)

- The division of responsibility is also reflected in the many inspections that we and the Estonian FSA have performed over the past ten years.
- The Estonian FSA undertook AML inspections at Danske Bank's Estonian branch in 2007, 2009 and 2014.
- We have undertaken similar inspections four times in Danske Bank in Denmark – five times, if a shorter inspection in 2012 is included.
- In addition, we conducted a major governance investigation related to AML in 2017-2018.
- Each time the Estonian FSA expressed concern about affairs in the branch, we followed up on the conclusions with the Danish management and reported back to our Estonian colleagues.
- The Estonian FSA's observations on money laundering at Danske Bank's Estonian branch in 2007 were less critical than the concurrent inquiry from the Russian central bank and, in 2009, were not critical.
- In contrast, the Estonian FSA was very critical in 2014. The Danish Financial Supervisory Authority was informed of the Estonian FSA's criticism early in 2015. We followed up later in 2015 as reflected in a final inspection report from March 2016.
- All of this is also apparent from the Bruun & Hjejle report prepared for Danske Bank.

#### Decision on management and control in the Estonian branch (slide 13)

- In September 2017, the Danish FSA initiated an investigation of management and control in relation to the money laundering case at the Estonian branch.
- The investigation was started because skilled journalists in Berlingske's investigation group had access to information that revealed suspicious transactions at the Estonian branch.
- In addition to the point on host country supervision, I have another central and closely related point to make. It is that the May 3 decision did not concern money laundering in Estonia. It concerned the management in Copenhagen's response to information on money laundering in Estonia.
- As we are not responsible for supervising AML in Estonia, we were unable to make any decision regarding this.
- On the other hand, it was and is very important to us that management responds to information about problems. This applies not only in relation to AML, but also to all other problems. If management does not respond to problems, then we have an even bigger problem.
- The conclusion in our decision was the five points that appear on the slide. This is unusually tough criticism of a big bank.
- The FSA's primary task is to stop the bleeding. That is, to get the bank to rectify the identified weaknesses. We did so through a series of orders. Among other things, the bank was told to set aside more capital to be able to cope with the problems that could result from the deficiencies in its defences.

#### The range of reactions open to the Danish FSA (slide 14)

- The decision reflects some of the reaction options of the Danish FSA.
- We gave 8 reprimands that reflected the violations that were addressed. We also gave the bank 8 orders that reflected violations to be addressed.
- There were other orders besides the one for more capital. There was an order to hire a Compliance Officer at the board level, to raise problems in the area to the executive management level. There was also an order to assess the management of the Estonian branch, which ended with the dismissal of the director of the branch.
- The Danish FSA can also report a bank to the police, dismiss management members and withdraw the bank's licence.
- A police report could have been filed either based on management failure or disclosure of incorrect information to the Danish FSA. In this instance, the Danish FSA believed that it was not possible to report the bank to the police or to dismiss senior management.
- The Supervisory Board of the Danish FSA can call in external experts. The Board took advantage of this opportunity in connection with the decision, due to its importance.

- Unlike our Swedish colleagues, the Danish FSA cannot impose fines within the money laundering area, and only relatively small fines in other areas.

#### The latest examples of firm decisions (slide 15)

- The Danish FSA has reacted quickly to money laundering in Denmark.
- The two largest banks in the country, Danske Bank and Nordea, were reported to the police in 2016. Both cases concerned violations of the Money Laundering Act in Denmark. Danske Bank received a fine as a consequence. Nordea's case is still pending with the State Prosecutor for Serious Economic and International Crime. This may reflect that the charges against Nordea were more extensive.
- Most recently, the Danish FSA has reported the Københavns Andelskasse bank to the police for several violations of the Money Laundering Act. The Danish FSA subsequently shut down the bank.

#### The Danish FSA's initiatives since 2016 (slide 16)

- Since 2016, the Danish FSA has increased its focus on combating money laundering.
- The fight against money laundering became one of seven strategic focus areas in the 2020 strategy published in 2016.
- In consequence, increased funding was requested for supervising efforts against money laundering. When the funds were granted in the summer of 2017, the Danish FSA set up a dedicated AML division, which is now clearly the largest in the Nordic region with 15 full time employees in place.
- The Danish anti-money laundering effort was evaluated in the summer of 2017 by international supervisory authority FATF. The result was hard but justified criticism of Denmark. This has led to a number of initiatives across the country. For this reason, FATF upgraded its assessment of Denmark in a number of areas in October this year.

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#### So what can we conclude? (slide 17)

- The two key points are:
  - AML supervision is a host country task, and practice has reflected this in relation to Danske Bank's Estonian branch.
  - Therefore, our May 3 decision was about management and not about AML. The decision focuses squarely on the fact that the problems were not escalated in Danske Bank's organisation.
- In addition, we have reopened our work on the governance issue.
- I understand that the Minister of Industry, Business and Financial Affairs will open discussions with you once he has received the report and we have completed our reopening of the case.

- If I were to give you any advice, it's to think about three things in relation to the case of Danske Bank:
  1. Do you agree with our description of course of events?
    - If not, then please get back to me. We have not yet found any errors, but we are not infallible and, of course, are evaluating the entire course of events.
  2. Do you agree with our description and use of the law?
    - Again, views are welcome. For us, it has been very important to act with respect for legislation.
  3. Even if you agree with points 1 and 2, dissatisfaction with the consequences can still be justified.
- If so, then you have the opportunity to change the law that will be the basis of our actions in future cases.
- Thank you for your time.