

***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**

### **Table of contents**

Summary

Introduction

Chapter 1: Description of the course of events in Danske Bank's Estonian branch

Chapter 2: The supervision of AML in Danske Bank 2007-2018

Chapter 3: The Danish FSA's supervision of Danske Bank in a wider context

Chapter 4: Criticisms of the Danish FSA's supervision of Danske Bank

Chapter 5: Possible initiatives

### **Appendix**

1. The Legal Adviser to the Danish Government's statement regarding consistency between the published and the confidential parts of the report
2. The Legal Adviser to the Danish Government's analysis of the division of responsibilities between the Danish FSA and the EFSA
3. Joint statement from the EFSA and the Danish FSA regarding the supervision of Danske Bank's Estonian branch
4. Elaboration on the AML supervision in Danske Bank's Estonian branch 2007-2018 (Not published)
5. The Danish FSA's decision regarding Danske Bank of 3 May 2018
6. PA Consult's benchmark analysis of AML supervision compared to other countries
7. Detailed description of the Danske Bank college (Not published)

## Summary

In Danske Bank's Estonian branch, there have been significant violations of the European and Estonian money laundering rules. In December 2018, ten former employees in the branch were arrested in Estonia. By all accounts, for a number of years employees in the Estonian branch actively carried out and covered up the violations both to the bank's senior management in Copenhagen and to the Estonian Financial Supervisory Authority (EFSA).

A major reason that the violations were not identified by the bank in a timely manner was the inadequate overall control environment in Danske Bank in the head office in Copenhagen. Thus, in the period 2007-2015, the bank has made a number of wrong decisions or failed to make necessary decisions, which did not prevent money laundering of a potentially very large amount through the bank's Estonian branch. The bank opted not to integrate IT-systems in the branch with those of the rest of the group, which impeded the effective monitoring of the business in Estonia. This decision was not compensated for through stronger risk management. The control system did not adequately and timely detect signs of violations of the law.

In the course of 2015 and until January 2016, Danske Bank closed the International Banking department in the Estonian branch, which was the department where the violations of the money laundering regulations primarily took place. The closing down occurred following orders issued by the EFSA in 2015 after the EFSA's two money laundering inspections in 2014. However, in that connection the bank failed to examine transactions and customer relationships back in time to determine whether there had been previous transactions that were suspicious, and which should thus be reported to the Estonian FIU<sup>1</sup>. The bank did not decide to carry out such an examination until the autumn of 2017.

### *The division of responsibilities between the Danish FSA and EFSA*

The division of responsibilities between the Danish FSA and the EFSA with regard to Danske Bank's branch in Estonia follows from the EU legislation. As the host country supervisor, the EFSA is responsible for the AML supervision of the Estonian branch. This follows from the AML directives, and this division of responsibilities was also followed in practice. Thus, the EFSA conducted four AML inspections in the branch in 2007-2014, analysed the branch's customer mix, in a number of cases requested information from the branch about customers that might be suspicious, had the dialogue with the bank regarding the branch's AML risks and issued orders to the bank regarding the handling of the branch's AML risks. Suspicious transactions and activities must be reported to the Estonian FIU. The Estonian FIU has continuously received a large number of reports of suspicious transactions from the branch, and the

---

<sup>1</sup> Financial Intelligence Unit – similar to the Money Laundering Secretariat at the Public Prosecutor for Serious Economic and International Crime (SØIK) in Denmark. A FIU is the authority which receives reports of suspicious transactions and reviews these, i.a. to forward them to the police and other authorities for further investigation and prosecution.

FIU has continuously requested information from the branch on a large number of customers that might be suspicious.

The EFSA had the power to stop the violations when the EFSA became aware of them during the inspections in 2014. The EFSA was not dependent on possible actions from the home country supervisor (the Danish FSA). When the extent of the problems became clear to the EFSA, the EFSA put pressure on Danske Bank, which contributed to the bank closing the International Banking department in 2015.

As responsible for the supervision of the Danske Bank Group, the Danish FSA's task in relation to the AML supervision of the Estonian branch was to ensure the integration of the work carried out by the EFSA into the overall supervision of Danske Bank. The Danish FSA answered all inquiries from the EFSA, and in one case from the Russian central bank, regarding AML risks in the Estonian branch.

In 2007, the Russian central bank warned the Danish FSA about AML risks related to a number of Russian customers in Danske Bank's newly acquired Estonian subsidiary. On the basis of this inquiry, the Danish FSA asked Danske Bank for a report and discussed the matter with Danske Bank's Head of the Legal department (who was also the person responsible for AML) and the bank's Chief Audit Executive. The feedback received from both was that there were no problems in relation to AML risks in the Estonian subsidiary. The Danish FSA informed the EFSA of this and in that context also took into consideration that the EFSA was aware of the area, as that year the EFSA had completed an AML inspection of the Estonian subsidiary. Here, the EFSA found deficiencies in relation to the subsidiary's management of AML risks and on that basis issued an order for the subsidiary on further measures to investigate new non-Baltic customers (non-resident customers) and to strengthen internal AML procedures. However, neither Danske Bank nor the EFSA identified problems on a scale anywhere near what was later identified.

In 2009, the EFSA conducted a follow-up AML inspection in the branch (the now former subsidiary). In that connection, the EFSA found that the branch had appropriately followed up on the order from 2007.

In 2012, the EFSA contacted the Danish FSA regarding the Estonian branch, as the EFSA had become concerned about the number of non-resident customers in the branch. On that background, the Danish FSA made contact with Danske Bank and asked the bank to address the EFSA's concerns. The Head of the Legal department and the Head of Compliance and AML replied that they were very aware of the risks associated with the branch's non-resident customers, and that processes in the branch took particular account of these

risks. They also stated that the group's Internal Audit had assessed the processes related to AML in the branch in the autumn of 2011 and found them satisfactory.

However, the Danish FSA did not find the bank's explanation satisfactory and requested further information. Therefore, the Head of Compliance and AML submitted a detailed description of the Estonian branch's management of AML risks. The Danish FSA informed the EFSA of the reply, enclosing the two letters from Danske Bank. The Danish FSA concluded that the large concentration of customers from high-risk countries could be problematic, but that the Danish FSA's preliminary conclusion, based on a review of the business procedures, was that the bank's procedures and controls were satisfactory.

In 2013, the EFSA contacted the Danish FSA again regarding AML risks in the Estonian branch. The inquiry was based on a warning from the Russian central bank which included a list with a number of the branch's Russian customers, which the Russian central bank considered to be suspicious, and on the EFSA's own analysis of the branch's customer mix. The Danish FSA asked Danske Bank to address EFSA's request. The bank's acting Head of the Legal Department replied that the Estonian branch had a special setup in the light of the elevated AML risk in the branch. Additionally, the acting Head of the Legal Department referred to the detailed description of the setup, which the bank had sent the year before. The Danish FSA informed the EFSA about this.

The EFSA subsequently informed the Danish FSA that the EFSA had requested from the branch documentation on the Russian customers in the branch mentioned in the warning from the Russian central bank, and had made an assessment of them. The EFSA had not found significant breaches of internal procedures or legal requirements and generally considered the branch's AML procedures to be in accordance with statutory requirements. The EFSA also found that while the EFSA remained concerned, there was no reason for immediate regulatory action. However, in the following months the EFSA would decide whether to carry out an inspection in the branch and inform the Danish FSA thereof.

Regardless, the Danish FSA found that it might be relevant to conduct an AML inspection in the branch, and offered the EFSA to participate in such an inspection, should the EFSA consider it appropriate. The Danish FSA repeated the offer several times. Subsequently, the EFSA conducted two AML inspections in 2014. The Danish FSA was not asked to attend. The inspections showed significant weaknesses in the branch's AML procedures and led to orders from the EFSA and the replacement of the branch's local management. They also contributed to the bank in 2015 closing down the branch's International Banking department.

Furthermore, the Danish FSA has ensured that AML supervision in the Estonian branch were part of the annual risk assessments carried out in 2013-2018 in the Danske Bank supervisory college, with the participation of supervisory authorities from countries where Danske Bank operates, as well as the European Banking Authority (EBA).

When it became clear in 2017 that the extent of suspicious transactions in the Estonian branch was significantly higher than the bank had previously told the Danish FSA, the FSA launched an investigation into the bank's overall management and governance in relation to the AML risks in the branch. On that basis, the Danish FSA made a decision in May 2018 and issued eight orders and eight reprimands to the bank for deficiencies in the bank's overall governance in relation to the Estonian branch. The decision was made by the Danish FSA's Governing Board. In that context, the Governing Board took advantage of the option of consultation with specially summoned qualified experts, primarily in relation to the assessment of whether there were grounds for taking action under the fit & proper rules against management or key function holders in the bank at that time.

#### *Criticism of the Danish FSA*

In connection with the case, criticism has been raised against the Danish FSA, and it has been questioned whether the Danish FSA has lived up to its supervisory obligations. In this report, some of the main criticisms are addressed.

This includes the question of whether the Danish FSA should have discovered the extent of suspicious transactions in the Estonian branch at an earlier stage. It is evident from this report, that the Danish FSA responded to the warning which came from the Russian central bank in 2007 as well as the inquiries from the EFSA in 2012 and 2013, cf. above. The Danish FSA based its actions on the assessments from the EFSA, and the information the bank provided. Danske Bank's own investigations have subsequently revealed that by all accounts, employees in the Estonian branch actively carried out and covered up violations to the bank's overall management in Copenhagen and to the EFSA for a number of years.

It has been argued that the Danish FSA has been overly trusting of the information received from Danske Bank, and that the Danish FSA should have verified the information to a higher degree.

The Danish FSA requested additional detailed documentation, depending on the quality of the information, and compared it with the information from the EFSA's AML supervision of the branch, cf. above. However, the evidence shows that the bank did not always provide the FSA with accurate information, and that in several cases this was due to the bank not being sufficiently thorough in its investigation of the facts before replying to the Danish FSA. Thus,

the Danish FSA did not uncritically trust the information from the bank – neither information on AML in the branch in Estonia or on the Danish activities.

It is clear, however, that the efforts in making further inquiries, involving the information from the EFSA's AML supervision of the Estonian branch and going into more detail to get accurate information did not yield the desired result, as in the end the information was still not correct in all cases. For this reason and others, the Danish FSA has ordered the bank to ensure that the Danish FSA receives adequate information, and that the Board of Directors and the Executive Board are sufficiently involved herein.

This report also addresses whether the Danish FSA has sufficiently involved knowledge from the internal whistleblower in Danske Bank. The FSA's considerations regarding this subject were, on the one hand, whether information from the whistleblower could provide better insight into the case, and on the other hand, the fact that the Danish FSA's investigation of Danske Bank was confidential information that would be unjustifiably disclosed if the Danish FSA approached the whistleblower. Furthermore, the case was sufficiently clarified to allow the Danish FSA to make its decision in May 2018, even without further information from the whistleblower, as the Danish FSA had received the information from the whistleblower from Danske Bank in 2017 and 2018, and largely took it into account in the decision.

In the media, the whistleblower was quoted as saying that there were deficiencies in the presentation of facts in the Danish FSA's decision, without specifying which deficiencies. Therefore, the Danish FSA contacted him repeatedly. This has not led to the whistleblower wanting to speak to the Danish FSA.

There has been criticism of the Danish FSA for not reporting Danske Bank to the police in connection with the decision in May 2018. According to general principles of Danish administrative law, the Danish FSA may only report a firm or a person to the police when, on the basis of its knowledge and professional assessment of the case in conjunction with court practice, the Danish FSA considers it likely that the report might lead to conviction. In a number of cases with Danish banks in the period following the 2008 financial crisis, it has proved to be very difficult to bring cases of mismanagement to conviction according to the management rules in the Financial Business Act. Despite the bank's managerial failures and the seriousness of the matter, it was not likely that a police report for violation of the management rules in the Financial Business Act would lead to a conviction.

The Danish FSA has also been criticised for not demanding members of Danske Bank's management removed to be from their positions. In connection with the Danish FSA's investigation of Danske Bank's management and governance in the spring of 2018, the Danish FSA assessed whether, as a

result of their handling of the Estonia case, the involved management members continued to live up to the fit and proper requirement. However, there was no basis for initiating fit and proper proceedings.

In the media, it has been criticised that the decision from May 2018 does not mention a meeting at Danske Bank in October 2013, where it was discussed whether the bank should scale down the International Banking department of the Estonian branch as a result of AML risks. In the meeting, the CEO requested that a middle ground was found and that the topic should be debated in another forum. The Danish FSA was aware of the statement, and it was thus also part of the basis for the decision. However, the Danish FSA considered it more appropriate to include a similar quote from the Board of Director's strategy seminar in June 2014, where the strategy in the Baltic countries was discussed. At this time, the CEO had much more extensive knowledge than in October 2013 regarding the shortcomings of AML in the Estonian branch. Therefore, it was considerably more significant that the CEO warned against a quick phase-out of Baltic activities in June 2014, than it was when he did it in October 2013.

There has been criticism that, as a former executive in Danske Bank, the Danish FSA's chairman at the time in the period 2016-2018 may have affected the Danish FSA's conclusions in regard to the processing of the decision regarding Danske Bank from May 2018. Throughout the period when the Danish FSA's Governing Board processed the case against Danske Bank, the Danish FSA's chairman at the time declared himself to be disqualified, and thus did not participate in the meetings at this point. Thus, there has been no risk that the Danish FSA's decision would be influenced by the chairman at the time's personal interests in the case. This is underlined by the fact that the Danish FSA's decision contains significant criticism of the FSA's chairman at the time for his work in the role as the bank's CFO and executive responsible for compliance and AML.

#### *Possible initiatives*

The Danish FSA has developed a catalogue containing a number of proposals concerning tightening of legislation, strengthening of AML supervision and the allocation of extra 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.

The proposals aim to address issues exposed by the case, but there are also proposals which 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 and elaborated in chapter 5:

*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: An AML supervision in the European elite*

Danske Bank is continuing its work to uncover the activities in the Estonian branch. The Danish FSA has 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.

A number of other official investigations of the specific case, as well as the Danish FSA's AML supervision in general, will be or have been launched. The European Banking Authority (EBA) is thus in the process of investigating i.a. 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 both regulation and supervision in the AML area against other, relevant countries. These investigations may lead to further proposals to strengthen the AML supervision and the AML regulation in Denmark.



## Introduction

Danske Bank's violations of the AML legislation involved substantial amounts, and the shortcomings in the bank's overall governance went on for several years. The case has had serious consequences for the bank, and it has damaged public confidence in the financial system as well as Denmark's reputation. It is essential to address these issues.

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 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.

Furthermore, the Minister of Industry, Business and Financial Affairs has asked the Danish FSA to look at the need for changes in legislation following the Estonia case, as well as the need to strengthen the Danish FSA, including through additional resources, in order to minimise the risk of recurrence.

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 AML 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 strong 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 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 is attached to the report as Annex 1.

## Chapter 1: Description of the course of events in Danske Bank's Estonian branch

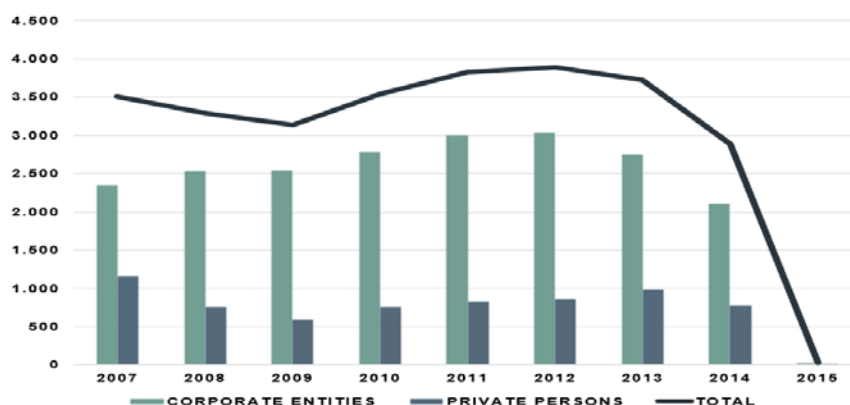
In late January 2007, Danske Bank acquired Finnish Sampo Bank, including the bank's Estonian subsidiary, AS Sampo Pank. In 2008, the subsidiary was converted into a branch of Danske Bank A/S.

At the time of the acquisition in 2007, the subsidiary in Estonia had several so-called non-resident customers, i.e. customers not from the three Baltic states. Of these, the majority came from Russia and other former Soviet states.

In 2013, the branch established the International Banking Department, which kept records of non-resident customers in the department. The Bank's legal inquiry made by Bruun & Hjejle has concluded that, at the time of Danske Bank's acquisition in 2007, there were 3,500 customers of this type, which in 2013 were placed in the International Banking department.

According to the bank's legal inquiry, the number of these customers increased to approximately 4,000 in 2012 and then declined until the department was closed down in 2015 with the phasing out of the last customers in January 2016, cf. Figure 1. There was a significant continuous replacement of non-resident customers. According to the legal inquiry, in the period from 2007 to January 2016 there were a total of approximately 10,000 customers of the type which from 2013 were placed in the International Banking department.

Figure 1: The development in the non-resident portfolio

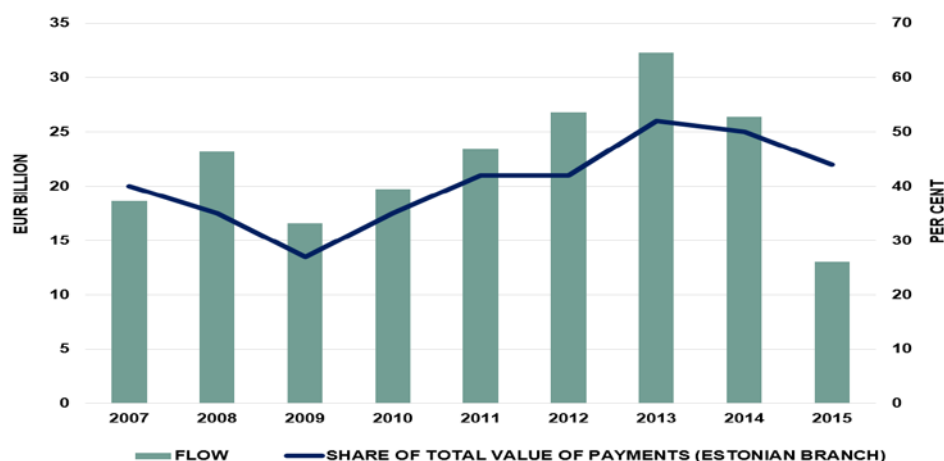


Source: Bruun and Hjejle's report on the non-resident portfolio in Danske Bank's Estonian branch, p. 24. The figures are stated at the end of the year.

There were also non-Baltic customers outside the International Banking Department, and some customers in the International Banking Department were transferred to other departments in the branch before the department was closed. Overall, there were around 15,000 non-Baltic customers in the branch

in the period, i.e. the 10,000 mentioned above and an additional 5,000. These 15,000 customers accounted for transactions totalling approx. DKK 1,500 billion from 2007-2015, cf. Figure 2. Thus, external parties have transferred about DKK 1,500 billion to non-resident customers, and the non-resident customers have forwarded a largely similar sum to external recipients.

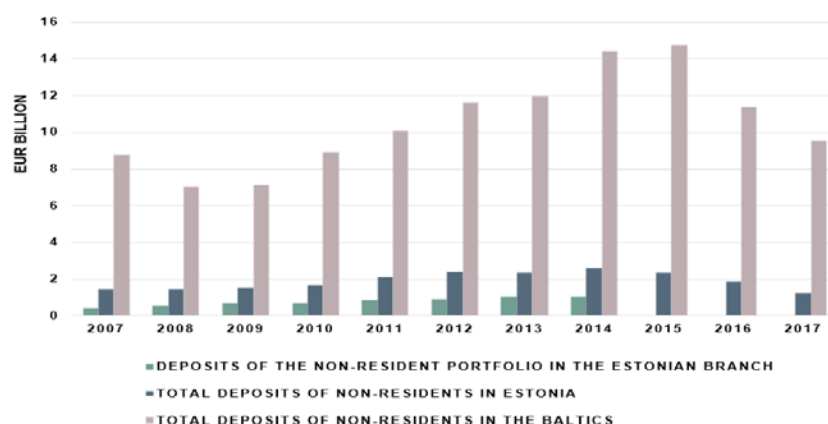
*Figure 2: Transaction flow for non-resident customers*



Source: Bruun and Hjejle's report on the non-resident portfolio in Danske Bank's Estonian branch, p. 30. The figures are stated at the end of the year.

Figure 3 shows the Estonian branch's deposits from non-resident customers, relative to all non-resident customers in both Estonia and the Baltic countries as a whole. As it appears, the volume of deposits from non-resident customers is large in the Baltic countries.

*Figure 3: The Estonian branch's deposits from non-resident customers compared to all deposits from non-resident customers in Estonia and in the Baltic countries as a whole*



Source: Bruun and Hjejle's report on the non-resident portfolio in Danske Bank's Estonian branch, p. 26. The figures are stated at the end of the year.

Since the acquisition of the Estonian subsidiary (later branch) in 2007, Danske Bank had been aware of the elevated AML risk. Therefore, the bank had implemented special procedures for handling such risks in the branch. Apparently, Danske Bank's management was not aware of the possible violations of AML rules in the Estonian branch until the second half of 2013. At first, one of the branch's two correspondent banks<sup>2</sup> announced in July 2013 that it wanted to discontinue cooperation with the branch as a result of AML risks. Then in December 2013, the Head of the Markets Department (hereinafter "the whistleblower") in the branch contacted a member of the Executive Board as well as other executives at the headquarters in Copenhagen, warning about potential money laundering in the Estonian branch's International Banking Department. In January 2014, the whistleblower made further accusations, and subsequently he made several comprehensive descriptions of significant problems in the branch, including with respect to management of the branch and the branch's business model.

On this background, in 2014 Danske Bank's Internal Audit and an external consultant firm examined AML risks in the branch. The studies confirmed the significant deficiencies that the whistleblower had pointed out. On that basis, the bank launched internal initiatives. However, these initiatives were insufficient. Only after pressure from the EFSA and after one of the branch's correspondent banks had completely ended the collaboration and the other correspondent bank had partially done so, the International Banking department was closed down during 2015 and January 2016. The process is described more closely in the Danish FSA's decision of 3 May 2018 (Annex 5).

During 2017, there was media coverage of the so-called Russian Laundromat case, where there were clear signs of money laundering from Russia and Moldova through i.a. Danske Bank's Estonian branch. Later, there was also media coverage of likely money laundering through the Estonian branch in relation to i.a. customers from Azerbaijan. On the basis of these cases, the Danish FSA asked Danske Bank to account for the specific allegations and for their management of AML risks in the Estonian branch in general. The Danish FSA's follow-up questions led to the bank delivering a comprehensive written material of approx. 4,000 pages. The investigation led to a series of orders and reprimands for Danske Bank in May 2018, cf. below.

In September 2017, Danske Bank itself took the initiative to an independent legal inquiry of the suspicious transactions in the Estonian branch in 2007-2015. The bank later decided that the investigation should also cover non-resident customers in the branches in Lithuania and Latvia. Later in 2017, the bank decided to also launch an independent legal inquiry of potential institu-

---

<sup>2</sup> A correspondent bank is a bank, which another bank uses to process payments and credit mediation to and from abroad. For example, a Danish bank will have a US correspondent bank to complete US dollar payments for those of the bank's customers who provide or receive payments in US dollars.

tional and individual responsibility as a result of actions and omissions by individuals in the bank. Thus, the bank's own examinations of the potentially illegal transactions were not launched until approx. four years after the whistleblower warning and following external pressure on the bank in connection with the extensive media coverage.

In September 2018, Danske Bank published a report of its own independent legal inquiry. The report concluded that non-resident customers had completed transactions totalling approx. DKK 1,500 billion through the Estonian branch in the period 2007-2015, and that a large proportion were suspicious and potentially illegal money laundering activities. Furthermore, the investigation generally confirmed the conclusions in the Danish FSA's decision of May 2018.

In the decision from May 2018, the Danish FSA particularly criticised that it was not until September 2017 that the bank initiated an investigation into the extent of suspicious transactions and customer relationships from the insufficient AML prevention in the branch.

The branch's previous reports of suspicious activity to the Estonian Financial Intelligence Unit (FIU) were not satisfactory, but some activities were reported. It appears from the report published by the bank that for the approximately 10,000 customers in the International Banking Department, the Estonian branch filed reports of suspicious activity for 653 customers in the period 2007-2015. Furthermore, in this period the Estonian FIU made inquiries to the branch about 1,007 of the approx. 10,000 customers.

The independent legal inquiry also looked at an additional approx. 5,000 customers which were not part of the International Banking Department, but which were also non-resident customers. From 2007-2015, 107 of these customers were subject to one or more reports of suspicious activities submitted by the Estonian branch. 61 were the subject of an inquiry by the Estonian FIU.

From the report, it also appears that in the investigations, the bank found 42 employees and agents to have been involved in suspicious activity, and that they were reported to the Estonian FIU in accordance with Estonian law. In addition, eight former employees were reported to the Estonian police by Danske Bank. The bank found it likely that criminal acts had been committed. In December 2018, ten former employees in the branch were arrested in Estonia.

The Danish FSA's investigation also showed that it was likely that members of the management and/or employees in the branch had committed criminal acts. The Danish FSA's decision of 3 May 2018 thus reads as follows:

*"In the period after the whistleblower report, there were several indications that members of the management and/or employees of the branch were colluding with non-resident customers in criminal activities or, at least, knew of such activities. The bank did not, however, investigate this, and there were no managers or employees who were dismissed or relocated because of such a suspicion.*

This observation gave rise to this order in the decision:

*"With reference to section 71(1) of The Financial Business Act and section 17(1) of the Danish Executive Order on Management and Control of Banks etc., the Danish FSA orders the Board of Directors and the Executive Board to ensure that when there is suspicion of the bank's managers or employees colluding with customers in criminal activities or knowing of customers' criminal activities, the bank shall conduct adequate investigations and take the suspicion into consideration on an ongoing basis when allocating tasks to these managers or employees."*

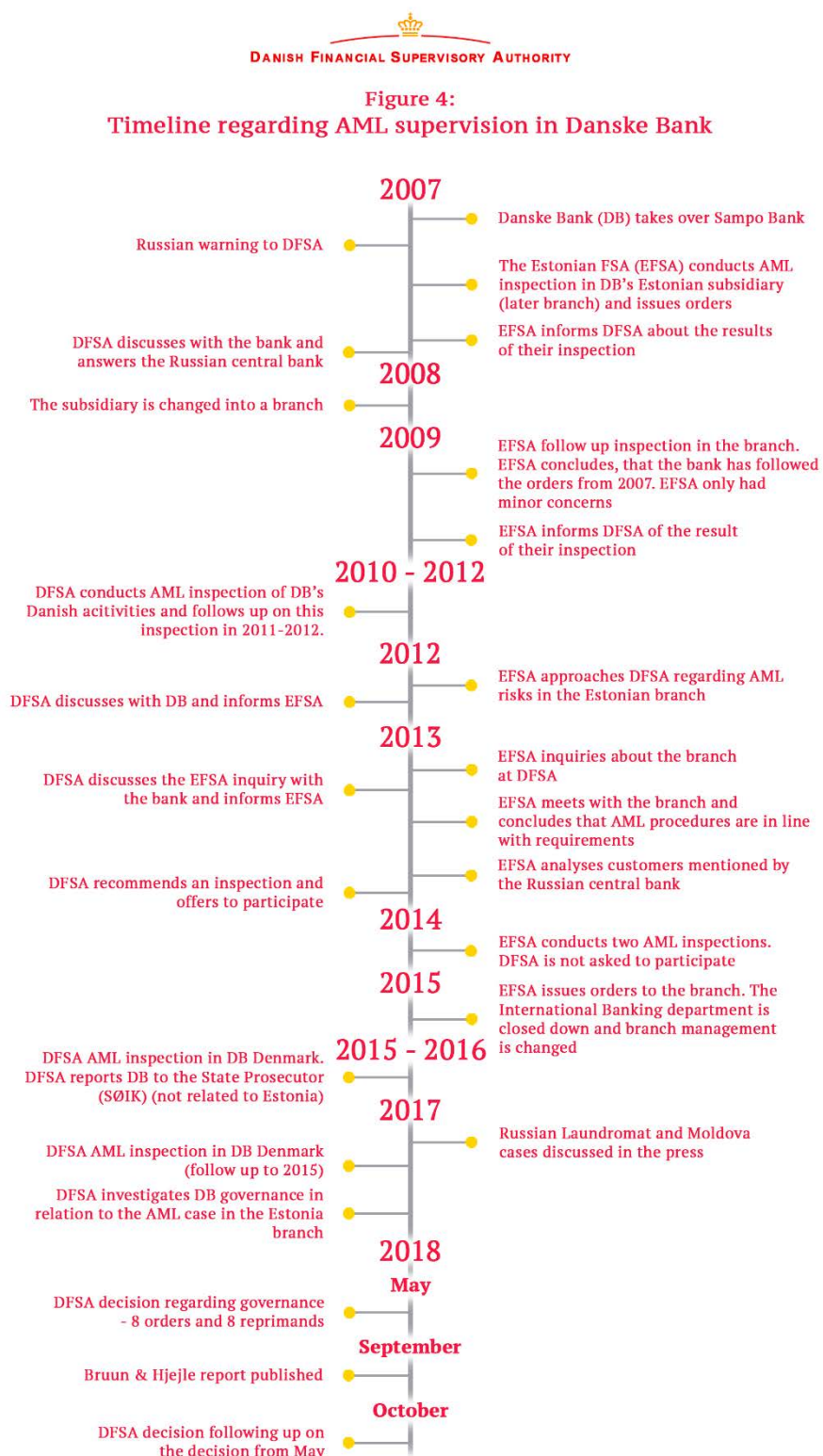
The Bank's independent legal inquiry of the completed transactions has not been finalised. Thus, a number of customers have not been reviewed, i.a. non-resident customers in the branches in Lithuania and Latvia.

Furthermore, screenings against sanctions lists are still ongoing.

The CEO, other executives, the chairman of the Board of Directors and the chairman of the board's audit committee have subsequently left their positions in the bank. Thus, as of the end of 2018, all senior executives in Danske Bank who were involved in the case have left their positions in the bank.

## Chapter 2: The supervision of AML risks in Danske Bank 2007-2018

The following describes the EFSA's AML supervision of Danske Bank's Estonian branch in the period 2007-2015, the Danish FSA's AML supervision of Danske Bank's Danish operations, and the Danish FSA's supervision of Danske Bank's overall management and governance. There is a detailed not published description in Annex 4 with related sub-annexes. The process is illustrated as a timeline in Figure 4.





### 2.1 The distribution of responsibilities between the Danish FSA and the EFSA

Under EU rules, as the host country supervision for Danske Bank's Estonian branch, the EFSA is responsible for the AML supervision of the branch's activities. As the home country supervision of Danske Bank, among other things the Danish FSA is responsible for monitoring that the group has sufficient capital and liquidity, and for supervising the group's overall governance of its activities. The Danish FSA is also responsible for the AML supervision of Danske Bank's Danish activities. This division of responsibility is described by the Legal Adviser to the Danish Government, cf. Annex 2.

The division of tasks between the Danish FSA as responsible for the group supervision and the EFSA as responsible for AML supervision in Estonia is also reflected in the supervisory practice since 2007. Thus, the EFSA conducted four AML inspections in the Estonian branch in the period 2007-2014, and between inspections had a number of supervisory activities in the AML area related to the branch. The Danish FSA conducted similar AML inspections of Danske Bank's Danish operations, cf. the description below.

There is a similar division of tasks in the AML area in the collaboration with supervisory authorities in other countries where Danske Bank operates. The AML inspections in Danske Bank's subsidiaries and branches in these countries have thus been completed by the supervisory authority in the relevant countries, which also handle contact with the subsidiary or branch about AML. The Danish FSA estimates that the AML supervision of the Estonian branch was more extensive than the corresponding supervision of Danske Bank's subsidiaries and branches in other countries.

The division of tasks has also been established in a joint statement by the Danish FSA and the EFSA from May 28, 2018<sup>3</sup>:

*The Estonian financial supervision and resolution authority Finantsinspeksioon and the Danish FSA in this statement express their shared understanding of the supervisory responsibilities between the two regulators, as a response to numerous respective inquiries from media.*

*According to the European Union banking directives, as a general rule, the prudential<sup>4</sup> supervising activity for cross-border operating banks lies with the Financial Supervisory Authority of the home country.*

*According to the European AML regulation, specifically section 48 in the Fourth European AML Directive, AML measures are supervised by the competent authorities of the host country. Where the bank operates*

<sup>3</sup> The original version of the statement can be found in Annex 3.

<sup>4</sup> The prudential supervision covers the supervision of the bank's capital, liquidity etc.

*establishments in another Member State, the competent authority of the home Member State is responsible for supervising the obliged entity's application of group-wide AML/CFT policies and procedures. The competent authority of the home Member State should cooperate closely with the competent authority of the host Member State and should inform the latter of any issues that could affect their assessment of the establishment's compliance with the host AML/CFT rules.*

*As an example of the division of the supervisory responsibilities, the Danish FSA has recently conducted an investigation into Danske Bank's management and control related to the branch in Estonia, whereas Finantsinspeksioon of Estonia has conducted investigations on AML organization and compliance within Danske Bank's Estonian branch. In Estonia and Denmark, criminal law matters with regard to money laundering, terrorist financing and respective criminal procedure is decided and carried out by police and public prosecutor. Finantsinspeksioon and the Danish FSA are not national FIUs either. Financial supervisory authorities concentrate on prudential and conduct of business supervision of financial intermediaries, according to applicable law.*

*Finantsinspeksioon and the Danish FSA are both committed to perform their respective supervisory duties and to collaborate and share information.*

## 2.2 AML supervision in practice

By money laundering is meant unlawfully receiving or acquiring for oneself or others a financial gain obtained by criminal offense. It will also be considered money laundering if one hides or otherwise secures the economic gains from a criminal offense<sup>5</sup>.

The prevention of money laundering is primarily done by the institutions covered by the law knowing their customers and monitoring their transactions. The transaction monitoring shall take place very close to customers, and it must occur regularly, so that institutions can react quickly.

---

<sup>5</sup> The definition follows from section 3 of the Anti-Money Laundering Act: For the purposes of this Act "money laundering" shall mean

1) unlawfully to accept or acquire for oneself or others a share in profits, which are obtained by a punishable violation of the law,  
 2) unlawfully to conceal, keep, transport, assist in disposal or in a similar manner subsequently serve to ensure the profits of a punishable violation of the law, or  
 3) attempting or participating in such actions.

Subsection (2). The provision in subsection (1) shall also cover actions carried out by the person who committed the punishable violation of the law from which the profits originate.

Identifying the suspicious transactions is a complicated task, as the total transaction volume, which includes suspicious as well as ordinary transactions, is very large. In Denmark, there are transactions of over DKK 500 billion per banking day through central payment systems alone.

The Danish FSA supervises the approximately 1,400 financial institutions covered by the Anti-Money Laundering Act. Other Danish authorities supervise a large number of other institutions that are also covered by the Act.

The Danish FSA supervises whether financial institutions comply with the law, including whether they have procedures, systems, and an organisation that ensure that they know the customers, monitor their transactions and inform the Money Laundering Secretariat at the State Prosecutor (SØIK) about suspicious transactions and suspicious behaviour.

The Danish FSA does not supervise or examine individual transactions since that obligation lies with the institutions. However, in connection with an inspection, the Danish FSA will usually take out one or more samples of the customers in order to test whether the institutions' internal procedures and systems work in practice.

### *2.3 The supervision of AML risks in Danske Bank's Estonian branch*

In June 2007, the Russian central bank warned the Danish FSA about AML risks related to a number of Russian customers in Danske Bank's newly acquired Estonian subsidiary, which had not been converted into a branch at that time. In 2007, relations between Russia and Estonia were tense. On the basis of this inquiry, the Danish FSA asked Danske Bank for a report and discussed the matter with Danske Bank's Head of the Legal Department (who was also the bank's person responsible for AML) and the bank's Chief Audit Executive. From both, the feedback was that there were no problems in relation to AML risks in the Estonian subsidiary. The Danish FSA notified the EFSA of this. At around the same time, the Danish FSA also received the conclusions from the EFSA's own AML investigation into the subsidiary the same year, cf. below.

Both before Danske Bank's acquisition of the activities in Estonia, and in the period from 2007 onwards, the EFSA was aware of the branch's large volume of non-resident customers and the risk that money laundering could take place through the branch. Thus, in March-April 2007, the EFSA conducted an AML inspection of the Estonian subsidiary and found deficiencies in relation to the subsidiary's management of AML risks. On that background, the EFSA gave the subsidiary an order to introduce further measures to investigate new non-resident customers and to strengthen internal AML procedures. Danske Bank undertook to make the required improvements in the newly acquired subsidiary.

In 2009, the EFSA conducted a follow-up AML inspection in the branch (the former subsidiary). In that connection, the EFSA found that the branch had appropriately followed up on the 2007 order. Among other things, the EFSA concluded that the branch was aware of the AML risks and had taken measures to deal with AML risks in line with the highest international standards and appropriately in order to maintain non-resident customers. The EFSA also concluded that the EFSA had found some weaknesses but did not find serious shortcomings or problems. The Danish FSA was informed by the EFSA of the conclusions.

Estonia's AML regulation and supervision is evaluated by Moneyval, a monitoring unit under the Council of Europe<sup>6</sup>. The evaluation takes place in relation to international standards on AML supervision (the FATF standards). In 2008, Moneyval concluded that:

*"It seems that Estonia now has a sound legal and institutional AML/CFT system and also the results achieved on the basis of the previous legislation are respectable. This assessment is also supported by the fact that there was a good understanding of AML/CFT issues from representatives of the private sector with which the evaluation team met"*<sup>7</sup>.

In 2014, Moneyval concluded that Estonia had taken several important steps to improve compliance with FATF's recommendations, and had shown progress in several areas since the 2008 assessment. Some new legislation had been adopted and new regulatory instruments and guidelines were issued to address deficiencies in 2008<sup>8</sup>.

From translations of inspection reports prepared by the EFSA, it is the impression of the Danish FSA that the EFSA's AML inspections were comprehensive and thorough, and that the inspection reports contained detailed descriptions of the basis of the EFSA conclusion.

While the Danish FSA, in accordance with the division of responsibilities in this area, has not conducted AML inspections in the Estonian branch, in 2009 and 2011 the Danish FSA did conduct credit inspections in the Estonian branch as part of the home country supervisor's overall solvency supervision of Danske Bank Group. When such preventive inspections are performed, the Danish FSA's approach is to evaluate both first and second line of defence against credit losses.

At the inspection in the spring of 2009, the Danish FSA assessed that there was a need for a significant increase in impairments on branch lending. The

<sup>6</sup> Estonia is not a member of the international AML organisation, FATF.

<sup>7</sup> Committee of experts on the evaluation of anti-money laundering measures and the financing of terrorism (Moneyval), third round detailed assessment report on Estonia, 8-12 December 2008.

<sup>8</sup> Committee of experts on the evaluation of anti-money laundering measures and the financing of terrorism (Moneyval), Report on fourth assessment visit on Estonia, 18 September 2014.

branch was also ordered to improve its impairment calculations. In connection with the follow-up inspection in October 2011, the Danish FSA found that impairments had increased significantly since the spring of 2009, and that the impairment calculations had improved. Therefore, the Danish FSA concluded that the bank had addressed the results of the inspection in 2009. On the basis of the 2011 inspection, the Danish FSA concluded that the branch's credit management of its Estonian customers was satisfactory.

In January 2012, the EFSA contacted the Danish FSA regarding the Estonian branch, as the EFSA was concerned about the extent of non-resident customers in the branch. On that background, the Danish FSA made contact with Danske Bank and asked the bank to address the EFSA's concerns. The Head of the Legal Department and the Head of Compliance and AML replied that they were very aware of the risks associated with the branch's non-resident customers, and that the processes in the branch took these risks into account. They also stated that non-resident customers had been a target for the Estonian bank for many years, and that the bank had special skills in handling these customers. In addition, they stated that the Group's Internal Audit had assessed the processes related to AML in the branch in the fall of 2011 and found them satisfactory.

However, the Danish FSA found that the bank's explanation was not sufficiently detailed and requested further information. Therefore, the Head of Compliance and AML submitted a detailed description of the Estonian branch's management of AML risks. The Danish FSA informed the EFSA of the reply, enclosing the two letters from Danske Bank. The Danish FSA found that the large concentration of customers from high-risk countries could be problematic, but that the Danish FSA's preliminary conclusion, based on a review of the bank's procedures, was that the bank's procedures and controls were satisfactory.<sup>9</sup>

In March 2013, the EFSA again contacted the Danish FSA regarding the AML risks in the Estonian branch. The inquiry was based on a warning from the Russian central bank with a list of a number of the branch's Russian customers, which the Russian central bank considered were suspicious, and on the EFSA's own analysis of the branch's customer mix. The Danish FSA asked Danske Bank to address EFSA's request. The bank's acting Head of the Legal Department replied that the Estonian branch had a special setup in the light of the increased AML risk in the branch. The acting Head of the Legal Department also made reference to the detailed description of the setup, which the

---

<sup>9</sup>



bank had sent the year before, cf. above. The Danish FSA notified the EFSA about this in April 2013.

On this background, the EFSA held a meeting with the Estonian branch manager. From the minutes of the meeting, it appears that the EFSA was focused on AML risks in the branch and estimated that its risk appetite was above average for the Estonian banking sector. From the minutes it also appears that the EFSA found that the branch's AML procedures were in accordance with statutory requirements. The EFSA stressed that it was important that the branch's AML procedures were observed in practice. The following appears from the minutes:

*"Raul Malmstein and Kaido Tropp acknowledged presented information and pointed out that the FSA pays very high attention to the AML prevention in banks and payment institutions. They confirmed that cooperation with the Bank has been effective and constructive. The FSA admits that the Bank's internal AML regulations are in compliance with the established requirements in order to prevent in a satisfactory level, however they pointed out that from FSA perspective risk appetite in Estonian Danske A/S looks above the average comparing with Estonian banking sector in general. There is no reproaches according to the level of regulations in the Bank. The FSA underlines that Know Your Customer Policy must be observed not only in written procedures but also in everyday business activities. It is important to know where and how the customer makes business and that would be in compliance with transactions in bank account."*

The EFSA subsequently informed the Danish FSA about the meeting with the management of the branch and the EFSA's response to the Russian warning. From the branch, the EFSA had requested material about the Russian customers in the branch which were mentioned in the warning from the Russian central bank, and had made an assessment of them. The EFSA had not found significant breaches of internal procedures or legal requirements. The EFSA also found that while the EFSA remained concerned, there was no reason for immediate regulatory action. However, in the following months the EFSA would decide whether to carry out an inspection in the branch and inform the Danish FSA thereof.

Regardless, the Danish FSA found that it might be relevant to conduct an AML inspection in the branch, and offered the EFSA to participate in such an inspection, should the EFSA consider it appropriate. The Danish FSA repeated the offer several times. Subsequently, the EFSA conducted two AML inspections in 2014. The Danish FSA was not asked to attend.

In 2014, the EFSA's AML inspections revealed major weaknesses in the branch's AML procedures. The branch did not follow internal procedures, and

the necessary checks of, in particular, non-resident customers were not conducted. On that background, in 2015 the EFSA issued a number of orders to the branch. This contributed to Danske Bank closing the branch's International Banking department in 2015, and it led to the local management in the branch being replaced. The department was completely shut down by the start of 2016. However, the bank chose to transfer some of the customers to other departments in the branch.

On the basis of the EFSA's conclusions, the Danish FSA included the bank's management of its Estonian branch in an AML inspection of Danske Bank's Danish activities, which was carried out in 2015 and reported in 2016. The Danish FSA gave Danske Bank a reprimand for defects in the bank's overall handling of AML risks in the Estonian branch, cf. below as well.

#### *2.4 The supervision of AML risks in Danske Bank's activities in Denmark*

In parallel with the process regarding AML risks in the Estonian branch, the Danish FSA supervised AML risks in Danske Bank's Danish activities. This included AML inspections in 2010 and 2011. At both inspections, the Danish FSA found that in a number of areas, the group had insufficient AML procedures. On the basis of the inspections, the Danish FSA issued Danske Bank with a number of orders, publishing the orders following the 2011 inspection in 2012.

The Danish FSA ordered Danske Bank to:

- prepare adequate written internal rules on control of training programmes being observed, including at management level, the consequences of non-participation, and whether and when to update the teaching material
- establish procedures to ensure that, at appropriate intervals, the bank carries out appropriate training and instruction programmes tailored to employees engaged in specific business areas, including Danske Markets, Trade Finance, Financial Institutions and Transaction Services
- ensure that there is no expansion of the engagement with existing customers who are not sufficiently legitimised, and that existing engagements are discontinued, if it is not possible to obtain the necessary identification within a short deadline set by the bank
- establish adequate procedures in relation to the creation of customers without a civil registration number, as the bank must ensure that these customers, in addition to documenting the name and national identity number, are also identified by address

- establish procedures so that in the creation of personal customers, it is documented whether the customer has been physically present for identification or not, and to structure its written internal rules so as to clearly state what the bank's policy for acceptance of distance customers is, as well as documentation requirements connected herewith
- ensure that the bank's procedures for corporate customers, including institutional customers, adequately describe the requirements for identification of foreign customers, clarification of ownership and control structure and stricter requirements for identification, and that the files contain evidence of the bank's information about ownership and control structure as well as identification of beneficial owners
- ensure that, in the files, sufficient information is registered about the purpose of the business relationship and the intended extent of it for corporate customers, including institutional customers, as the basis for ongoing monitoring of customer transactions. It is the Danish FSA's opinion that the order issued thereon in the inspection report of 23 September 2010 has not been adequately addressed
- establish adequate procedures in order to ensure that the bank complies with the Anti-Money Laundering Act's rules on cross-border correspondent banking relationships
- establish procedures to ensure adequate monitoring of securities transactions in Danske Markets, customer transactions in Trade Finance and transactions in relation to cross-border correspondent banking relationships.

The identified deficiencies were not related to the same type of deficiencies in the handling of AML risks as those later identified in the Estonian branch. At a follow-up inspection November 12, 2012, the Danish FSA followed up on the orders from the 2011 inspection and, based on the bank's information, found that Danske Bank lived up to all orders.

At this time, Danske Bank had requested the US central bank for permission to open a branch in New York. The US central bank was concerned about the Danish FSA's orders to the bank in June 2012. The orders were not related to matters in the Estonian branch. November 30, 2012, the Danish FSA sent a letter to Danske Bank in a Danish and an English version wherein, based on information from Danske Bank, the Danish FSA confirmed that Danske Bank had complied with the orders issued on AML. The purpose of the English version of the letter was that it could be passed on to the Federal Reserve Bank.

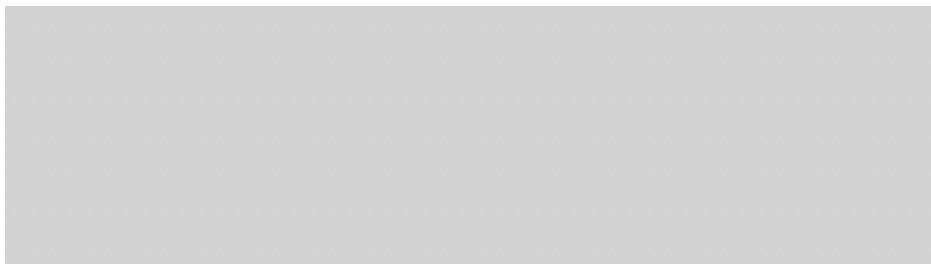


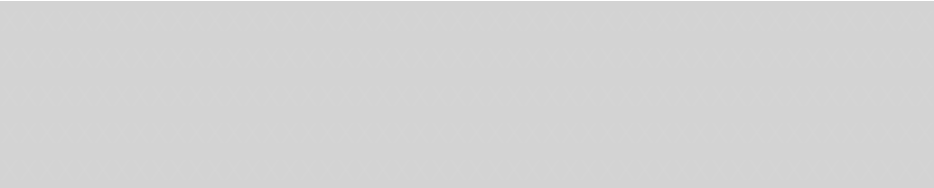
In a follow-up inspection in 2015, the Danish FSA found that, contrary to what Danske Bank had stated in November 2012, the bank did not sufficiently live up to several of the orders issued in 2012, including in particular the order regarding monitoring transactions related to correspondent banking relationships, and that significant risk information in the 2012 report remained relevant. On this background, the Danish FSA reported the bank to the police, leading to the bank accepting a fine of DKK 12.5m in 2017. In addition to the police report, the Danish FSA also issued Danske Bank with a number of orders for other deficiencies in the bank's AML procedures.

In the inspections in 2010, 2011 and 2015, the Danish FSA did not look at AML risks in the Estonian branch since, as mentioned above, the supervision of this was the EFSA's responsibility. Therefore, the police report had no connection to suspicious transactions in the Estonian branch. However, as mentioned above in the 2016 inspection report about the 2015 inspection the Danish FSA chose to issue the bank with a reprimand for deficiencies in the overall governance of the AML risks in the group with reference to the problems in the Estonian branch. The Danish FSA thus found that the bank's Board of Directors had not identified and dealt with the risk and compliance-related deficiencies appropriately, which had created increased reputational risk for the bank.

At the Panama Papers hearing in the Danish parliament's tax committee in April 2016, in its preliminary investigations the bank had found only seven customers with companies registered with the Panamanian law firm Mossack Fonseca, and all seven customers had been acquired from other banks, after the customers had been in contact with the law firm. Later on, the bank had to inform that the branch in Estonia had more than ten times as many customers with companies established by Mossack Fonseca.

In 2017, the Danish FSA conducted a new AML inspection in Danske Bank in order to follow up on the investigation in 2015-2016, which had resulted in a number of orders to the bank. The inspection was completed in March 2018, with the conclusion that the bank had complied with all orders, apart from part of an order relating to correspondent banks where the reporting to the bank's management was still not satisfactory.





It is noted that, in connection with the described AML inspections of Danske Bank's Danish activities, the Danish FSA did not identify specific AML problems.

#### *2.5 Supervision of the overall management and governance of Danske Bank*

The Russian Laundromat case, also called the Moldova case, came into the media spotlight in March 2017. It appeared that Danske Bank's Estonian branch had played a significant role in a large volume of suspicious transactions. On request, in April 2017 the Danish FSA therefore received a copy of quite a bit of written material from the bank on AML in the branch from 2011-2015.

Prompted by the media coverage of the Azerbaijan case in September 2017, where the Estonian branch also played a significant role in the suspicious transactions, the Danish FSA found that there was a need for an actual investigation of the bank's governance of matters in the branch in Estonia. Therefore, in September, the Danish FSA asked the bank's Board of Directors and Executive Board for a written statement on this case and more generally on the AML in the branch. The bank sent the statement in October 2017.

In the following months, the Danish FSA asked the bank's Board of Directors, Executive Board and Chief Audit Executive a series of questions about management and governance of the Estonian branch and requested comprehensive material. In total, the Danish FSA received approx. 4,000 pages, including motions, minutes, audit and compliance reports, a large number of internal emails and answers to the FSA's questions.

In accordance with the Public Administration Act, as part of the case preparation the Danish FSA sent a draft decision into consultative procedure with the bank's Board of Directors, Executive Board and Chief Audit Executive. In that connection, they gave several consultation responses which were included in the clarification of the case.

This comprehensive investigation led to the Danish FSA making a decision on Danske Bank's management and governance in the AML case in the Estonian branch on May 3, 2018. Here, the Danish FSA issued Danske Bank with eight orders and eight reprimands due to a lack of comprehensive governance of the bank in relation to the situation in the Estonian branch. The decision, which was published the same day, is attached as Appendix 5.

According to the Danish FSA's decision, the volume of suspicious transactions could be very large, although as opposed to the report by Danske Bank's investigation headed by a law firm, the decision does not include numbers for the volume of transactions. Thus, it appeared from the decision that there were very serious AML deficiencies, while earnings from the non-resident portfolio were high. In 2013, as specified in the decision, it yielded a profit of DKK 325 million, corresponding to 99 percent of the profit before impairments in the branch in Estonia.

The decision includes the Danish FSA's assessments of Danske Bank's Board of Directors', Executive Board's and managing employees' role in the AML case in the Estonian branch. The Danish FSA decided on whether the rules on management and governance of the bank and other relevant Danish rules were observed.

By contrast, the Danish FSA did not consider compliance with AML rules. This is because, as mentioned, the EFSA is responsible under EU regulation for supervising Estonia-based branches' compliance with these rules.

The Danish FSA did not wait until the bank's investigations headed by a law firm were completed to reach a decision. In the opinion of the Danish FSA, the case was sufficiently clarified to enable the Danish FSA to decide. Therefore, the Danish FSA did not find reason to wait for the bank's own investigations, but rather found it essential to effect a decision as soon as possible. It was important to issue the relevant orders to the Board of Directors and the Executive Board, so that the bank could make the necessary improvements in management and governance as well as increase the calculated solvency need of the group.

From the decision it appears that the Danish FSA finds it particularly worthy of criticism:

- that there were such significant deficiencies in all three lines of defence at the Estonian branch that customers had the opportunity to use the branch for criminal activities involving vast amounts;
- that it was not until September 2017 that the bank initiated an investigation into the extent of suspicious transactions and customer relationships as a result of the insufficient handling of AML at the branch, that is, more than four years after the termination by one of the branch's correspondent banks of its correspondent bank relations and almost four years after the whistleblower report;
- that with the exception of the termination of the cooperation with Russian intermediaries, the bank deferred the decision to close down the part of

the non-resident portfolio that related to customers who did not have personal or business-related links to the Baltic countries until January 2015, and that the close down was not completed until January 2016;

- that the bank's governance in the form of internal reporting, decision-making processes and corporate culture failed to ensure that the problems of the non-resident portfolio were sufficiently identified and handled in a satisfactory way, including by reporting suspicion of criminal activities to relevant authorities. This applies to both the period up until the close down in early 2016 as well as the period since the beginning of 2017;
- that the bank did not inform the Danish FSA of the identified AML issues, even though in early 2014, it should have been clear to some Executive Board members and other senior employees that the information previously provided by the bank to the Danish FSA and the EFSA in 2012 and 2013 was misleading and that it should have been clear to them that the supervisory authorities focused on the area;
- that the bank's information to the Danish FSA since the beginning of 2017 has been inadequate.

The Danish FSA ordered the bank's Board of Directors and Executive Board to:

- strengthen the Executive Board's governance with regard to competencies in the compliance area and at the same time ensure that on the Executive Board, the area responsibilities for compliance are sufficiently independent of business and profitability interests;
- reassess the bank's and the banking group's solvency need in order to ensure an adequate internal capital coverage of compliance and reputational risks as a result of weaknesses in the bank's governance. The Danish FSA estimated that the solvency need should at least be increased by DKK 5 billion;
- ensure that when there is suspicion of the bank's managers or employees colluding with customers in criminal activities or knowing of customers' criminal activities, the bank conducts adequate investigations and takes the suspicion into consideration on an ongoing basis when allocating tasks to these managers or employees;
- strengthen the bank's governance in order to ensure accurate and timely reporting of potentially problematic cases to the Board of Directors and the Executive Board:

- strengthen the bank's governance in order to ensure that the basis for decisions as well as discussions at meetings and decisions made are sufficiently documented and that sufficient attention is given to the bank's compliance with applicable legislation;
- assess management and government at the Estonian branch:
- ensure that the bank provides adequate information to the Danish FSA;
- strengthen the Board of Directors' and the Executive Board's governance in order to ensure sufficient involvement in written replies to enquiries from the Danish FSA to the Board of Directors or the Executive Board.

The Danish FSA reprimanded the following issues:

- the bank's Executive Board not performing its responsibilities to a sufficient extent when it
  - failed to ensure sufficient focus on AML risks for high-risk customers at the branch in Estonia and monitoring of the branch at Business Banking in Copenhagen
  - failed to ensure integration of compliance and AML of the Baltic units into the group functions and to ensure sufficient quality
  - failed to ensure adequate follow-up on the allegations made by the whistleblower and to ensure investigation into suspicions of the bank's employees colluding with customers in criminal activities or knowing of customers' criminal activities and relocation of employees under suspicion
  - failed to ensure that the Danish FSA was informed of the matter until January 2015
  - failed to adequately notify the Board of Directors of the severity of the case and ensure a prompt close down of the part of the non-resident portfolio that related to customers who did not have personal or business-related links to the Baltic countries;
- that the Board of Directors failed to adequately live up to their responsibilities as they:
  - failed, at meetings of the Board of Directors and of the Board of Directors' Audit Committee, to discuss the bank's legislative com-

pliance at the branch in Estonia on the basis of reporting from Internal Audit and Group Compliance & AML or to ensure that such discussions were recorded in the minutes

- failed to ensure a sufficiently prompt close down of the part of the non-resident portfolio that related to customers who did not have personal or business-related links to the Baltic countries on the basis of reporting received by the Board of Directors from Internal Audit and Group Compliance & AML, and in view of the lack of a decision from the Executive Board;
- Group Internal Audit not ensuring the necessary integration and quality of internal audit in the Baltic units prior to the whistleblower report and for not making the Executive Board ensure that the Board of Directors and the Board of Directors' Audit Committee received adequate reporting of AML in the branch after the whistleblower report, and for not drawing the Board of Directors' and the Audit Committee's attention to the inadequacies;
- Group Compliance & AML and Group Legal not sufficiently performing their responsibility in connection with AML at the Estonian branch in the period prior to the whistleblower report and in relation to mitigating the consequences of the inadequate efforts in connection with AML;
- the bank failing to appoint a person responsible for AML activities from the end of 2012 until 7 November 2013, and for only informing the Danish FSA about this on 7 February 2018 after the FSA had asked the Board of Directors and the Executive Board;
- the inadequacies in all three lines of defence at the Estonian branch up until the whistleblower report in December 2013;
- the bank not replacing the management in Estonia until more than one and a half years after the whistleblower report;
- the Board of Directors and the Executive Board not ensuring adequate and timely investigations into conditions at the branch to mitigate the consequences of inadequate AML measures and form a general overview of what had happened. Not until four and a half years after one of the branch's correspondent banks' termination of its correspondent bank relations, four years after the whistleblower report, two and a half years after another correspondent bank's termination of its correspondent bank relations and after external pressure did the bank launch an investigation into

the extent of suspicious transactions and customer relations resulting from the inadequate handling of AML risks at the branch.

The Danish FSA followed up the orders in October 2018 and in this connection ordered the bank to increase the solvency need by at least DKK 10 billion (rather than the minimum of DKK 5 billion ordered in the decision in May 2018) as a result of increased compliance and reputational risks for Danske Bank as a result of the AML case.

The Danish FSA also found that the bank did not fully meet the order to strengthen the bank's governance in order to ensure that decision-making basis, discussions at meetings and made decisions were adequately documented. The bank's Board of Directors and Executive Board were therefore obliged to further detail measures taken with a view to generally strengthening governance regarding decision-making processes. The Danish FSA found that, for the other orders, the bank either complied with the orders or had taken appropriate measures in order to meet them.

In September 2018, Danske Bank published a report on its own investigations headed by a law firm of the bank's handling of possible money laundering through the Estonian branch. On that basis – as had already been announced in connection with the decision in May 2018 – the Danish FSA decided to reopen its investigation in order to clarify whether there was any new information which might give rise to additional supervisory responses. This investigation is ongoing.

### Chapter 3: The Danish FSA's supervision of Danske Bank in a wider context

The Danish FSA's AML supervision of Danske Bank and the AML supervision more generally, including cooperation with other countries' authorities, should be seen in light of the following elements which put the supervision into a broader context:

- the 2017 criticism from the international AML organisation FATF of the Danish AML legislation and the AML supervision
- how the AML supervision is organised in other countries
- the Danish FSA's handling of the role as group supervisor in accordance with EU rules
- the investigation by the European Banking Authority (EBA) of the Estonian and Danish Financial Supervisory Authorities' AML supervision.

This is elaborated in sections 3.1-3.4.

#### *3.1 FATF's criticism of the Danish AML legislation and the AML supervision*

In 2006, the international AML organization, FATF, evaluated the Danish AML legislation and supervision<sup>10</sup>. The evaluation report concluded i.a. that Denmark had a solid AML/CFT framework, recently updated with a new AML/CFT law that should provide a sound basis for an effective AML/CFT regime. In 2010 there was a follow up to this evaluation<sup>11</sup>. The assessment of FATF in 2010 was positive and it was concluded that Denmark had made significant overall progress since the evaluation in 2006.

In 2016-17, there was a new evaluation of Denmark<sup>12</sup>. The basis for the FATF's evaluation in 2016-17 was the now 42 recommendations and 11 immediate outcomes. The recommendations and the immediate outcomes are adopted by FATF's members and they cover all aspects of a country's efforts in the AML area as a whole and all the national authorities involved. FATF's recommendations and the immediate outcomes were changed significantly in 2012 and the EU's fourth AML Directive is based on these recommendations.

The ratings provided by the FATF are C (Compliant, i.e. met), LC (Largely Compliant, i.e. almost met), PC (Partly Compliant, i.e. partially met) and NC

<sup>10</sup> Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Finance of Terrorism, Kingdom of Denmark, 22 June 2006.

<sup>11</sup> Mutual Evaluation Third Follow-Up Report Anti-Money Laundering and Combating the Financing of Terrorism, Kingdom of Denmark, 22 October 2010.

<sup>12</sup> Anti-money laundering and counter-terrorist financing measures, Mutual Evaluation Report, Denmark, August 2017

<sup>13</sup> Agreement between the government (Venstre, Liberal Alliance and the Conservative People's Party) and The Social Democratic Party, The Danish People's Party, The Danish Social Liberal Party and The Socialist People's Party about strengthened efforts against money laundering etc. in the financial sector, 21 June 2017.



(Non Compliant, i.e. not met). Denmark was criticised (rated Partly Compliant or PC) for 19 of the 42 standards and received less criticism (Largely Compliant or LC) for 17 of the 42 points. PC is not considered satisfactory. Furthermore, Denmark received major criticism for having a low efficiency in 2 of the FATF's 11 immediate outcomes, and medium criticism for 6 of the immediate outcomes.

In Denmark, the evaluation covered three regulators, the Danish FSA, the Danish Business Authority and the Danish Gambling Authority, as well as the Danish Bar and Law Society. The main conclusions were:

- that Denmark had a moderate level of understanding of the risk of money laundering and financing of terrorism
- that Denmark had no national strategies or policies governing AML prevention, and that the individual competent authorities' objectives and activities depended on their own priorities and were not coordinated. Coordination and cooperation tended to be informal and ad hoc
- that an efficient functioning of the Money Laundering Secretariat in The State Prosecutor for Serious Economic and International Crime was hindered by a lack of resources and operational independence
- that Denmark did not have a punishment for self-laundering of money
- that Denmark had a robust system for the investigation and prosecution of financing of terrorism
- that overall, there was an inadequate understanding of risks and weak implementation of AML activities in almost all segments of the financial sector
- that the use of a risk-based approach to AML supervision – except for the casino sector – was limited, and that the places where such an approach existed were in the early stages of implementation. Furthermore, the frequency, magnitude and intensity of the supervision were inadequate
- that there were serious concerns as regards the great shortage of resources available to the AML supervision in Denmark. The range of supervisory powers for the enforcement of non-compliance as well as sanctions were inadequate, and police reports in connection with investigation and prosecution were the primary method used to ensure financial institutions' compliance. The imposed sanctions were not proportional to the magnitude of the problem, and they did not deter

- that Denmark had a solid legal framework for all types of international cooperation. Where there was no legal framework for the provision of legal assistance, the authorities used the Danish legislation analogously

In light of the criticism from FATF, the government has taken a number of initiatives to strengthen the AML regulation and AML supervision in Denmark.

Thus, in June 2017 a very ambitious political agreement was concluded between the Danish government and most of the parties in the Danish parliament<sup>13</sup>. The agreement included several significant initiatives to strengthen the efforts to combat money laundering and financing of terrorism (CFT), including:

- a significant increase in resources devoted to AML and CTF in the Danish FSA. The number of staff in the AML/CFT division has risen from 3-4 employees before July 2017 to 15 employees from July 2017. This increase in staffing has made it possible to increase the number of inspections substantially, from on average of 7,6 per annum to 45 in 2018
- a significant increase in the possible sentences for money laundering. The maximum imprisonment was increased from 6 to 8 years. Furthermore, a new provision was introduced to section 290a of the criminal code on money laundering (money fencing), which in some cases also includes actions performed by the perpetrator of the crime (self-laundering of money)
- An ability for the Danish FSA to revoke licenses for financial institutions in case of ML/TF violations. This bill was adopted in the Danish Parliament in June 2018
- introduction of an independent provision on money laundering in the criminal code
- a requirement for currency exchange entities to have a license to operate. This has led half of the currency exchange entities to close down as the Danish FSA did not find that they could be in compliance with the requirements
- issue of a new and very comprehensive guideline covering the entire Anti-Money Laundering Act has been developed. The guideline was developed in close cooperation with the financial sector and published in October 2018. It constitutes an important contribution to guiding the obliged institutions in observing the law

---

<sup>13</sup> Agreement between the government (Venstre, Liberal Alliance and the Conservative People's Party) and The Social Democratic Party, The Danish People's Party, The Danish Social Liberal Party and The Socialist People's Party about strengthened efforts against money laundering etc. in the financial sector, 21 June 2017.

- that the supervisory authorities must conduct annual risk assessments of the institutions and perform the supervision on the basis of this.

In September 2018, the Government and most parties in the Danish parliament agreed to launch a national AML strategy and take further measures in the AML area<sup>14</sup>.

The aim of the new national strategy on AML is among other things to ensure the most efficient way of collaboration and coordination between authorities in order to significantly reduce the risk of money laundering.

The further measures to combat money laundering in the political agreement include i.a.:

- increased fines for not being compliant with AML regulations. For large banks fines can be increased by up to 700%.
- an extension of the fit and proper requirements, which will now include employees with executive powers responsible for compliance with AML regulations.
- increased resources for The State Prosecutor for Serious Economic and International Crime.

Based on the implementation of the Fourth Money Laundering Directive in the Anti-Money Laundering Act and the efforts made since the FATF evaluation, Denmark applied in October 2018 for an upgrade to 12 of the standards by which Denmark had been criticised. Denmark received an upgrade on 10 of them, testament to significant progress. Denmark also received praise by the FATF for its work to improve the AML regime. Up to and including 2020, Denmark will work to improve performance and apply for an upgrade on the remaining 9 recommendations that were only rated as partially compliant and, to the extent possible, those nearly compliant.

For a two-year period, the Danish FSA has seconded a staff member to the FATF secretariat, both to contribute to the work in FATF, and to build up expertise in the area. However, increasing emphasis is being placed on all members of FATF contributing to all parts of the work in the organisation, which will entail increasing demands, including for Denmark, to allocate resources to this.

---

<sup>14</sup> Agreement between the government (Venstre, Liberal Alliance and the Conservative People's Party) and The Social Democratic Party, The Danish People's Party, The Danish Social Liberal Party and The Socialist People's Party on further initiatives for strengthening of the efforts to combat money laundering and financing of terrorism, 19 September 2018.

Like other Danish authorities, the Danish FSA works determinedly to implement the many follow-up measures in the AML area.

However, it is important to emphasise that the criticism by the FATF does not mean that the AML supervision of Danske Bank specifically has been lacking in the period since 2007. As described above, in the period the Danish FSA completed five AML inspections in Danske Bank in 2010, 2011, 2012 (minor follow-up inspection), 2015 and 2017. In connection with these inspections, the Danish FSA has issued numerous orders to Danske Bank, and in one instance also reported the bank to the police. The Danish FSA had in that period a risk based approach to AML supervision where the focus naturally was to perform AML supervision of the largest Danish banks, including in particular Danske Bank.

### *3.2 Benchmark analysis of AML supervision*

PA Consult has conducted a benchmark analysis of the Danish FSA's current AML supervision, benchmarking the AML supervision against a number of relevant European countries – Sweden, Norway, Finland, Holland, Germany, UK, Belgium and Spain. In addition, some experiences from the United States have been included.

The analysis is enclosed as Annex 6.

It identifies a number of trends in other countries, including:

- most of the in-scope supervisors actively moving to increasingly sophisticated risk-based approaches to AML/CFT supervision
- all in-scope regulators were both expanding and up-skilling their AML/CFT supervision and enforcement teams, with the majority prioritizing technology capabilities in new hires
- enforcement was an area of considerable divergence between the reviewed regulators, especially in terms of the range of enforcement mechanisms available and the ability of supervisors to directly enact enforcement measures
- even where supervisors had clear sole responsibility for AML/CFT supervision and enforcement, there was a clear trend towards coordinating bodies being appointed to better support AML/CFT prevention activities in a jurisdiction, such as the UK's introduction of the National Economic Crime Centre (NECC)
- greater usage of intelligence (including in data provided by firms themselves) to inform both supervision and enforcement was noted at a number of the regulators considered.

The analysis also points out a number of matters relating to the Danish AML supervision and regulation in the light of developments in other countries, including:

- the approaches to AML/CFT supervision chosen in Denmark are broadly in line with comparable peers but require substantial further improvement to become best in class in Europe
- the staffing of the Danish FSA in this area is (after a large increase), broadly comparable with many other European countries, when compared to the size of the banking sector (total bank assets under supervision). However, these staffing levels are still some way below e.g. the UK. For Denmark to become best in class, additional resources with specific technical expertise will likely be required, particularly as other countries will continue to expand their teams
- the Danish set-up with coordination in the Money Laundering Forum (and the Financial Crime prevention ecosystem more broadly) should be formalized further and strengthened to be aligned with best practice
- the approach to risk-based supervision in Denmark could be strengthened. The gathering and analysis of more data could be an important component – one which is being increasingly used by peers
- to bring Denmark at par with peers from an enforcement perspective it will be required to leverage a wider range of potential enforcement powers, to enable more proportionate and effective interactions with regulated institutions who require sanctioning.

Based on the benchmark analysis, the Danish FSA has considered which best practices from other countries' AML supervision may be advantageously transferred to Denmark.

On this background, the Danish FSA proposes that the Danish FSA intensifies its work to establish a data-driven, risk-based AML supervision, that the Danish FSA's powers of intervention are strengthened through a legal basis for issuing fixed penalty notices, and that cooperation between the relevant authorities in the AML area is formalised further. In addition, there is a need for more resources for AML supervision. The proposals are detailed in chapter 5.

It would be appropriate to conduct a follow-up benchmark analysis when further initiatives have been adopted in the AML area, in order to assess whether these will achieve AML efforts (regulation and supervision) in the European elite. Therefore, it has been agreed with the IMF that the IMF conducts a benchmark analysis of the Danish AML supervision over the course of 2019.

In the spring of 2019, the supervisory efforts will be examined, and in the autumn of 2019, the legislation's compliance with international standards.

Within the next one to two years, the IMF is also expected to complete an in-depth analysis of the AML regulation and supervision in the Nordic countries, which could provide further input from a group of very comparable countries in relation to the quality of the Danish AML regulation and supervision, as well as the cooperation with the other Nordic countries.

Finally, the Danish FSA and the Swedish FSA have agreed that the two supervisory authorities will jointly work for increased cooperation and exchange of experience between the Nordic and Baltic supervisory authorities. Initially, there will be held a workshop where supervisors can exchange practical experiences with regard to AML supervision. The Danish FSA has offered to host the event and suggested that it be held in March 2019.

### *3.3 The Danish FSA's handling of the role of group supervisory authority*

In the period 2007-2015, as is also the case today, a clear division of responsibilities between the Danish FSA and the EFSA was in place in the AML area, cf. chapter 2. The EFSA is responsible for AML supervision of the Estonian branch, while the Danish FSA is responsible for AML supervision of Danske Bank's Danish operations and supervising the Group's management and governance in general.

The Danish FSA estimates that, in the period, the supervisory intensity from EFSA towards Danske Bank's branch has corresponded to the general Danish supervisory standards in areas other than AML supervision, where inspections have generally been conducted at intervals of 1-6 years, depending on the risk and size of the bank<sup>15</sup>. After an inspection in 2007, where EFSA noted some shortcomings, EFSA thus conducted a new inspection in 2009. EFSA found no major issues in this inspection, and the next two inspections were therefore carried out in 2014. In addition to this EFSA's performed extensive efforts in the AML area in relation to the branch between inspections.

The Danish FSA had no reason to doubt the EFSA's efforts in relation to the Estonian branch. As mentioned, from translations of inspection reports prepared by the EFSA, the Danish FSA had the impression that the EFSA's AML inspections were comprehensive and thorough, and that the inspection reports contained detailed descriptions of the basis for the EFSA's conclusions.

With the latest revision of the EU's Money Laundering Directive, implemented in Denmark in 2017, as responsible for the supervision of Danske Bank, the Danish FSA has now been given extended responsibility for supervising that the parent company makes sure that the bank's units abroad have suitable

---

<sup>15</sup> In the money laundering area, fewer inspections have historically been performed, although the available resources were primarily spent on AML supervision of Danske Bank.

procedures for handling AML risks. This obligation for the Danish FSA did not exist before. However, it is the FSA's opinion that, even before this extension of responsibility, the Danish FSA's practice essentially lived up to the new requirements.

In the period following Danske Bank's acquisition of the Estonian activities, the Danish FSA took a number of measures in order to ensure that AML risks were handled appropriately in the Estonian branch, and that EFSA's assessments were included in the overall risk assessment of Danske Bank. Thus, on several occasions the Danish FSA asked those responsible for the AML area in Danske Bank to deal with inquiries and/or warnings from the EFSA and the Russian central bank, and conveyed the information received to the EFSA. The Danish FSA also made sure that there were no demands from EFSA that the bank would not meet. In addition, in 2013 the Danish FSA repeatedly offered to participate in an inspection of the Estonian branch, if EFSA thought it necessary, cf. the description above and in Annex 4 (not made public).

In 2009, the Danish FSA – in line with EU rules – established a so-called college of supervisors for Danske Bank. In the college, supervisory authorities from countries where Danske Bank operates participate to discuss relevant supervisory issues related to Danske Bank. The Danish FSA leads the college as the authority responsible for Danske Bank. Since 2012, the European Banking Authority, EBA, also participates in the college.

Among other things, colleges of supervisors have an important task in conducting annual risk assessments in a number of areas, including with a view to assessing the relevant bank's capital and liquidity ratios. In the risk assessments carried out in 2013-2018 in the Danske Bank college, descriptions have been included of the status for AML supervision in the Estonian branch. The descriptions were prepared by representatives of the Danish and Estonian FSAs. Danish translations of these descriptions are included in Appendix 7 (not made public).

Before the risk assessments are approved, consultation processes shall ensure that all involved supervisory authorities and EBA's representative in the college get to consider them. It is thus ensured that all the participants involved in the college of supervisors can approve of the risk assessment.

[REDACTED]

In 2015, a separate AML college was established under the college of supervisors, solely focusing on AML risks in Danske Bank<sup>16</sup>. The EBA has also participated in the AML college since 2018.

The AML inspections in Danske Bank's subsidiaries and branches in other countries where the group operates, like for the branch in Estonia, have been carried out by the supervisory authority in that country, which has also had the contact regarding AML prevention with the subsidiary or branch between inspections. The Danish FSA estimates that the AML supervision of the Estonian branch was more extensive than in other countries.

To illustrate the foreign authorities' AML investigations of Danske Bank's foreign units, it is listed below in which countries the authorities carried out inspections in Danske Bank's branches and/or subsidiaries in the period 2015-2017. To this is added the authorities' other AML supervision between inspections, including ad hoc investigations such as those related to the Panama Papers.

[REDACTED]

At these inspections, some of the same AML deficiencies were identified as had been identified in Denmark, and the relevant regulatory authorities followed up on them in accordance with the division of responsibilities. No specific money laundering issues were identified at these inspections.

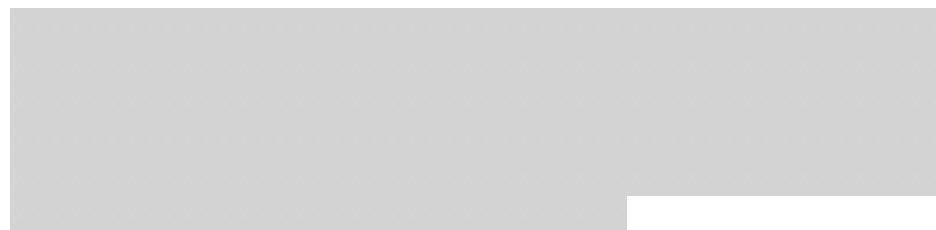
The same division of responsibilities applies in other colleges of supervisors which the Danish FSA participates in as the host country supervisor. The most important one is the college of supervisors for Nordea, in which the Danish FSA participates because of Nordea's large branch in Denmark and the Danish mortgage credit institution Nordea Kredit. Here, the Danish FSA conducts AML supervision of Nordea's Danish activities. Until the autumn of 2018, the Swedish FSA was responsible for the overall supervision of Nordea, including

---

<sup>16</sup> The Danish FSA was one of the first supervisory authorities to establish an AML college. The college has been a sub-group of the college of supervisors and as such had a more loose structure than traditional colleges and not the same degree of formalisation, as it will have under the future regulation in this field. Thus, the AML college has not conducted risk assessments, made other decisions or made recommendations to the college of supervisors.



the college of supervisors. In the autumn of 2018, Nordea moved its headquarters to Finland, and the Finnish FSA is now responsible for the AML supervision of Nordea. The Single Supervisory Mechanism (SSM) under the auspices of the banking union, of which Finland is part, has overall responsibility for the remaining supervision of Nordea. The SSM does not conduct AML supervision.



Even if international cooperation has not been the issue in this case, it is relevant to consider whether the interaction between supervisory authorities in countries where cross-border groups such as Danske Bank operate can be further strengthened. On that background, chapter 5 contains a number of proposals for how cross-border cooperation and exchange of information between authorities might be strengthened, including via a strengthening of the EBA's role in this area.

#### *3.4 The EBA's study of the EFSA and the Danish FSA*

Following the publication of the report from Danske Bank's own independent legal inquiry, on 21 September 2018 the European Commission contacted the chairman of EBA and asked the EBA to examine both the Danish and Estonian FSAs' roles in the AML case in Danske Bank. In particular, the Commission asked the EBA to examine whether the Danish and/or Estonian FSA had breached EU law by failing to conduct adequate supervision of Danske Bank in the AML area.

The EBA visited the Danish FSA on 25-26 October 2018, where the material submitted by the Danish FSA prior to the meeting was discussed, as well as the EBA's detailed questions on the matter. The Danish FSA subsequently responded to a number additional questions from EBA in writing.

The results of the EBA's deliberations are not yet known.

#### **Chapter 4: Criticisms of the Danish FSA's supervision of Danske Bank**

In connection with the Estonia case, there has been criticism of the Danish FSA's actions, and it has been questioned whether the Danish FSA has lived up to its supervisory obligations. Significant criticisms related to the specific case are addressed below.

##### *4.1 Discovery of suspicious transactions in the Estonian branch*

The Danish FSA has considered whether the Danish FSA should have discovered the extent of the suspicious transactions in the Estonian branch earlier than when the case surfaced in the media in 2017.

In the period, the Danish FSA reacted to the warning from the Russian central bank in 2007 and to the inquiries from the EFSA in 2012 and 2013. The Danish FSA used the assessments from the EFSA in 2007, 2009, 2012 and 2013, and the information from the bank, as its basis. Thus, the Danish FSA had no indications of serious violations of the AML rules from Danske Bank's headquarters or the EFSA until after the EFSA's inspections in 2014.

Danske Bank's own investigations have subsequently revealed that, by all accounts, employees in the Estonian branch had actively and for a number of years carried out and covered up violations to both the bank's senior management in Copenhagen and to the EFSA. In December 2018, 10 former employees of the branch were arrested in Estonia.

In early 2014, Danske Bank's management became aware of major problems with the AML measures in the Estonian branch, but did not inform the Danish FSA about this until early 2015. This was despite the fact that, as mentioned, the EFSA contacted the Danish FSA about possible AML problems in the branch in 2012 and 2013, and that executives in Danske Bank therefore sent the Danish FSA detailed descriptions of the branch's apparently adequate AML measures.

In early 2014, it should have been clear to some executives and other managing employees in the bank that the business procedures were not followed and that the bank's detailed information to the Danish FSA and EFSA from 2012 and 2013 therefore was misleading. It must also have been clear that this was an important focus area for supervisors in both Estonia and Denmark.

On request from the Danish FSA, a bank has a duty to provide the Danish FSA the information necessary for its supervisory activities. However, the letter of the law does not include an obligation to subsequently inform the Danish FSA if it later turns out that the information was incorrect, which in practice would presuppose that there is clarity regarding what was previously communicated. A lack of correcting wrong information to the Danish FSA can therefore not be punished.

It would strengthen supervision if banks are required to inform and correct information given to the Danish FSA on their own initiative in cases where the bank has provided information to the Danish FSA which is subsequently found not to provide a truthful representation of the situation. A lack of correction should be punishable for the bank. Similarly, it would strengthen supervision if banks are obliged to notify the Danish FSA on their own initiative when they identify problems that they should realise would have a significant impact on the Danish FSA's supervision of the institution.

On this background, in chapter 5 it is proposed to introduce an obligation by law for financial institutions to without undue delay, and on their own initiative, inform the Danish FSA of matters that they should realise would be of importance to the Danish FSA's supervisory actions. It is furthermore proposed to introduce an obligation to urgently correct information which has previously been submitted to the Danish FSA and which the institution subsequently finds provides an untruthful representation of significant actual circumstances. It is also proposed that the possibility of imposing criminal liability on legal persons for providing incorrect information is laid down in the Financial Business Act, whereby the limitation period is also extended.

#### *4.2 Whether the Danish FSA were too trusting of Danske Bank*

It has been argued that the Danish FSA has been overly trusting of the information received from Danske Bank, and that the Danish FSA should have gone further in verifying the information. This criticism relates to both the bank's information on AML prevention in the branch in Estonia and about the Danish activities.

The starting point for all supervisory activities is that the information and documentation that the Danish FSA receives from the institutions under its supervision is correct. As part of the supervision, the Danish FSA verifies the information and asks for detailed documentation to varying degrees, depending on the quality of the information. This was also the approach the EFSA had to Danske Bank's Estonian branch and which the Danish FSA had to the information received from Danske Bank's headquarters.

The Danish FSA has itself stated that the information received by the Danish FSA from the bank, and used as a basis for its decisions, has subsequently turned out not to be reliable.

The bank thus did not provide the Danish FSA with accurate information in all cases. In several cases, this was due to the bank not being sufficiently thorough in its examination of the facts before replying to the Danish FSA.

In 2007, 2012 and 2013, the Danish FSA received information from Danske Bank's headquarters' person responsible for AML that the AML prevention

measures in the Estonian branch adequately took into account the specific risks concerning the branch's non-resident customers.

In 2007, the Danish FSA discussed a warning from the Russian central bank with Danske Bank's Head of the Legal Department, who was also the bank's person responsible for AML, and with the bank's Chief Audit Executive. Furthermore, the Danish FSA received the conclusions from the EFSA's AML inspection and took into account the EFSA's conclusions and orders to the bank. In 2009, the EFSA informed the Danish FSA that the branch had followed up on the order from 2007 appropriately.

In 2012, the EFSA became concerned about the branch's AML prevention and contacted the Danish FSA. The Danish FSA found the initial response from the Head of the Legal Department and the Head of Compliance and AML to be too general. The Head of Compliance and AML therefore sent a detailed description of the branch's handling of AML risks, which the Danish FSA shared with the EFSA.

In 2013, the EFSA made contact again, based on a warning from the Russian central bank. The Danish FSA contacted the bank, and the acting Head of the Legal Department replied that the branch had a special setup in light of the elevated AML risk in the branch. The acting Head of the Legal Department also referred to the detailed description from the previous year, which the Danish FSA had shared with the EFSA. The EFSA reviewed material from the branch on the Russian customers in the branch, which had been mentioned in the warning from the Russian central bank. The EFSA informed the Danish FSA that the EFSA had not found significant violations of internal procedures or legal requirements. The Danish FSA found that it might be relevant for the EFSA to conduct an AML inspection in the branch, and repeatedly offered to participate in such an inspection, if the EFSA found this appropriate. Instead, the EFSA chose to complete two AML inspections on their own in 2014. These inspections showed major weaknesses in the branch's AML procedures, and led to orders being issued by the EFSA and replacement of the branch's local management. They were also instrumental in the bank shutting down the branch's International Banking Department in 2015.

In 2007, 2012 and 2013, the Danish FSA thus received information from those responsible for the AML prevention at Danske Bank's headquarters. In all three cases, the information stated that the AML prevention measures in the branch were satisfactory. In all three cases, the Danish FSA also received information from the EFSA, which was responsible for supervising the branch's AML measures. In 2007, this information concerned the results of the EFSA's inspection that same year. In 2012 and 2013, the EFSA found no need to conduct an AML inspection.

The Danish FSA conducted inspections of Danske Bank's AML prevention in the bank's Danish units in 2010, 2011, 2012 (a limited follow-up inspection), 2015 and 2017. At the follow-up inspection in 2012, the Danish FSA received information from the bank about the handling of correspondent banks which was incorrect. The Danish FSA discovered this on the next inspection in 2015, when the Danish FSA reported the bank to the police. This led to the bank accepting a fine of DKK 12.5 million in 2017.

Thus, the Danish FSA did not uncritically trust the information from the bank – neither information on AML prevention in the branch in Estonia nor on the Danish activities. It is clear, however, that the efforts in making further inquiries, in including the information from the EFSA's AML inspections and going into more detail to get accurate information did not yield the desired result, as in the end the information was still not correct in all cases. For this reason and others, the Danish FSA has ordered the bank to ensure that the Danish FSA receives adequate information, and that the Board of Directors and Executive Board are sufficiently involved herein.

#### *4.3 Handling of inquiry from whistleblower*

It has also been mentioned that the Danish FSA did not sufficiently include knowledge from the internal whistleblower in its supervision of Danske Bank, including that the Danish FSA has not contacted the whistleblower. The Danish FSA considered whether the Danish FSA should contact the whistleblower before the decision of May 2018. In March 2018, the Danish FSA received the whistleblower's email address from the EFSA.

In that connection, the Danish FSA had to balance on one side whether information from the whistleblower could provide better clarification of the case, and on the other the fact that the Danish FSA's investigation of Danske Bank was confidential information, which would be unduly disclosed to a third party if the Danish FSA contacted the whistleblower. Other factors, such as the whistleblower's possible self-incrimination, were part of the consideration.

The conclusion was that the matter had been clarified adequately for the Danish FSA to make a decision, even without further information from the whistleblower, as the Danish FSA had received the relevant information from Danske Bank in 2017 and 2018.

Thus, after requesting it from Danske Bank, the Danish FSA had received:

- all the whistleblower's reports to the bank
- the e-mail correspondence between him and the directors and other employees of the bank which the reports led to

- The bank's internal memos and internal reporting as a result of the reports.

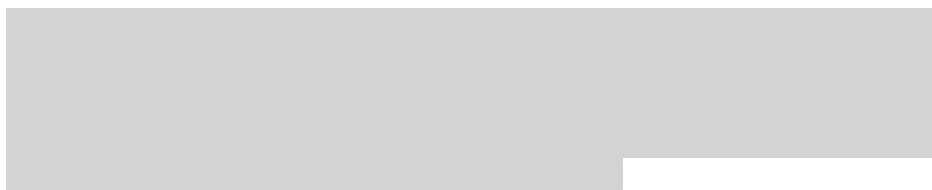
The whistleblower's reports and the bank's handling of them have therefore been described in detail in the decision of May 2018 and form part of the basis for the Danish FSA's conclusions. After the decision of May 2018, no information has emerged which suggests that an inquiry by the Danish FSA to the whistleblower would have produced additional relevant information, if any additional information would have been achieved at all through such an inquiry. On the other hand, had the whistleblower approached the Estonian and Danish supervisory authorities in December 2013 or the following period, and not just the bank's management, this could have led to an earlier supervisory response.

Following the publication of the Danish FSA's decision in May 2018, the Danish FSA's investigation into Danske Bank was no longer confidential information. Therefore, the Danish FSA could contact the whistleblower without issues relating to confidentiality.

Coinciding with this, the whistleblower had been quoted in the media as saying that there were deficiencies in the factual part of the Danish FSA's decision. The Danish FSA was very keen to shed light on this, and therefore contacted him. The whistleblower told the Danish FSA that he was unable to provide information to the Danish FSA, as he was bound by a confidentiality clause from Danske Bank. Nor did he wish to provide the Danish FSA with information, even though Danske Bank gave the bank's consent to this as regards the Danish and Estonian FSAs.

The Danish FSA also found that, even without the bank's waiver of the confidentiality clause, there was nothing in the Danish financial legislation to preclude him providing the Danish FSA with the relevant information. The Danish FSA thus wrote to the whistleblower in July 2018 that it was the opinion of the Danish FSA that, under Danish law, there would be no violation of the clause, if he wanted to inform the Danish FSA – or other Danish authorities – about potential criminal offenses. This has not led to the whistleblower wanting to speak to the Danish FSA.

The whistleblower again refused to talk to the Danish FSA following a renewed inquiry in December 2018.



The case is an example of the effect of a whistleblower inquiry being greater if the whistleblower contacts the Danish FSA directly in the first place, rather than solely the management of the institution. Chapter 5 therefore contains proposals to consider the need to generally strengthen the protection of whistleblowers in order to increase the likelihood that employees with knowledge of violations or potential violations of financial regulation contact the authorities.

#### *4.4. The Danish FSA's decision of 3 May 2018*

As described above, in May 2018 the Danish FSA issued a number of orders and reprimands to Danske Bank for deficiencies in the bank's overall governance in relation to managing AML risks in the Estonian branch.

Subsequently, it has been questioned whether the Danish FSA in connection with the decision fully exploited its options of sanctioning Danske Bank in view of the extent and seriousness of the case. This particularly concerns the fact that the Danish FSA did not report Danske Bank to the police, and that the Danish FSA found no basis for demanding that the management in Danske Bank be removed from their posts on the basis of fit & proper rules.

#### *Reporting to the police*

The Danish FSA did not report Danske Bank to the police in connection with the decision of 3 May 2018. A police report would have had to be related to either managerial failure under the Financial Business Act, submission of false information to the Danish FSA or violation of AML regulations. Under the general principles of administrative law, including the principle of objective administration, the Danish FSA may only report an institution or a person to the police, when on the basis of its knowledge and its professional assessment of the case, in conjunction with the court's practice, the Danish FSA considers it likely that the report may lead to conviction. Among other things, this should also be seen in light of the strict rules on the disclosure of i.a. police reports.

In a number of cases relating to Danish banks in the period following the 2008 financial crisis, it has proven very difficult to bring cases of mismanagement to conviction according to the management rules in the Financial Business Act. Despite the bank's governance failures and the seriousness of the case, the Danish FSA thus did not consider it likely that a police report for violation of the management rules in the Financial Business Act would lead to conviction.

Subsequently, the State Prosecutor (SØIK) has stated that they agreed with the Danish FSA's assessment, and on that basis also found insufficient grounds for opening their own investigation into whether Danske Bank violated the management rules of the Financial Business Act.

As regards whether Danske Bank had deliberately misled the Danish FSA, in a few cases information had been provided that could be considered false or misleading. However, the Danish FSA had no evidence that the information had been submitted in bad faith at the time. Therefore, there was insufficient evidence to report either the bank or its employees to the police for supplying incorrect or misleading information.

The Danish FSA believes that there is reason to consider changes to the existing legislation in the financial area, so as to make it easier to bring cases to conviction, based on the rules on governance and management in the Financial Business Act. Therefore, the Danish FSA proposes the establishment of a working group to consider this, cf. chapter 5. The Danish FSA also proposes conducting an analysis of options for strengthening the expertise in court proceedings for civil cases in the financial area. Furthermore, the Danish FSA proposes the establishment of a legal basis for the Danish FSA to issue fixed penalty notices in specific AML cases.

Additionally, in light of the experiences from the decision to Danske Bank, the Danish FSA will increase focus on holding the Board of Directors and the Executive Board accountable for the information which financial institutions provide to the Danish FSA, so that the Danish FSA can better make the these liable for false or incomplete information.

The decision of 3 May 2018 was made on the basis of an investigation into Danske Bank's management and governance of the Estonian branch. The investigation did not include the bank's compliance with AML regulations, as the supervision and police reporting of violations of the AML regulations in Estonia is the responsibility of the Estonian authorities, as stated above. Therefore, there was no basis for reporting the bank to the police for violation of the Danish AML regulations.

The boundaries of the Danish FSA's supervisory powers and the State Prosecutors (SØIK) ability to investigate and prosecute a criminal case are not identical. SØIK's ability to investigate and pursue a criminal case depends on i.a. if there is a Danish jurisdiction. SØIK may, on its own initiative, decide to initiate investigations of whether the violation of the AML rules in Estonia may have entailed a violation of the Danish Anti-Money Laundering Act, when SØIK consider itself as competent to do this. As is known, in the autumn of 2018 SØIK charged Danske Bank with four violations of the Anti-Money Laundering Act. The Danish FSA's decision of 3 May 2018 and the case material are part of SØIK's investigation. There are no special legal effects of a police report being filed by the Danish FSA rather than by others, or that a case is taken up by SØIK.



*Fit & Proper*

The Danish FSA has been criticised for not requiring members of Danske Bank's management, i.e. members of the Board of Directors, executive directors or other managing employees (key function holders), to be removed from their posts under the fit & proper rules.

The Danish FSA may order a bank to remove a board member, if the person no longer meets the requirements for being fit & proper. Under the fit & proper rules, a member of the management body does not possess propriety if, on the basis of their behaviour, the person can be assumed not to properly fulfil their managerial position in the bank. In connection with the Danish FSA's investigation of Danske Bank's governance and management in the spring of 2018, there was a basis for further investigations of whether, as a result of their handling of the Estonia case, the involved members of management continued to meet the fit & proper requirements. On that basis, the Danish FSA launched a fit & proper inquiry into the management of Danske Bank.

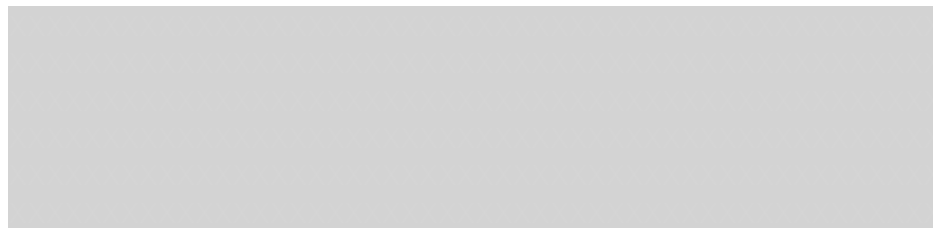
[REDACTED]

[REDACTED]

[REDACTED]

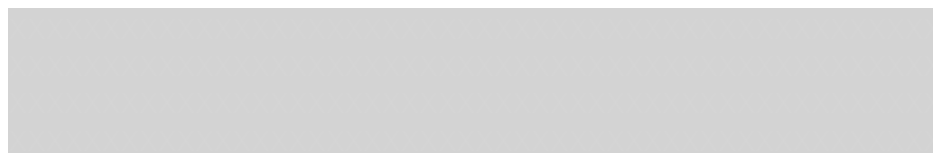
[REDACTED]

[REDACTED]



Following the publication of Bruun & Hjejle's investigation at Danske Bank's request, the Danish FSA has decided to reopen investigations into whether there is a basis for further fit & proper assessments of the involved members of management.

All members of management in Danske Bank, who were involved in the case, have left their positions in the bank as of the end of 2018. The managerial staff's behaviour in Danske Bank can be considered as part of the fit & proper assessment in relation to any potential managerial positions in other financial institutions.



The Estonia case showed that, in the bank, there was a lack of clarity about the distribution of responsibilities between members of the bank's management. In order to strengthen fit & proper rules further and clarify responsibilities, the Danish FSA will establish a specialist working group which will draw up recommendations concerning competence and experience requirements as well as responsibilities for i.a. members of the Executive Board and key function holders in banks.

#### *Other matters*

In the media, it has been criticised that the decision of May 2018 does not mention a meeting in Danske Bank in October 2013, where it was discussed whether the bank should scale down the International Banking Department in the Estonian branch as a result of AML risks. In the meeting, the CEO requested that a middle ground was found and that the topic could be debated in another forum. Instead of a quote, this description is provided in the decision:

*"The termination by one of the branch's two correspondent banks of its cooperation with the Estonian branch in July 2013 due to concerns over*

*the non-resident portfolio led to a review of the activities of the branch. The review was performed by the Estonian/Baltic management and involved employees from the head office in Copenhagen. The review led to Danske Bank's Executive Board and the employees involved expecting a decision to reduce the non-resident portfolio, however, the Executive Board did not take any decisions about changes to the activities prior to the receipt of a whistleblower report in December 2013."*

The Danish FSA's decision of 3 May 2018 was based on very extensive material, and the conclusions of the decision were made based on an overall assessment of the material. The decision's description of the sequence of events is, therefore, a summary which inherently does not explicitly mention all individual annexes.

Under administrative law, a decision must only contain the information that is factual and necessary to justify the result of the decision. I.a. as a result of the extensive material in case, the Danish FSA consulted the Legal Adviser to the Danish Government about the legal framework for the publication of the decision, including the level of detail of the information therein.

The Danish FSA was aware of the CEO's statement, and it was thus also part of the basis for the decision. However, the Danish FSA considered it more appropriate to include a similar quote from the CEO at the Board of Director's strategy seminar in June 2014, when the strategy for the Baltic countries was discussed. The decision thus states the following:

*"At the strategy seminar in June 2014, the bank's CEO pointed out to the Board of Directors that a speedy close-down of the Baltic activities would reduce the value in case it was to be sold without indicating that this was not a relevant consideration in relation to the non-resident portfolio. ("Further, [omitted] found it unwise to speed up an exit strategy as this might significantly impact any sales price."). Also, it was not drawn to the Board of Director's attention that it was important, in view of the major issues regarding AML handling, to close down the non-resident portfolio quickly and report suspicious transactions to the relevant authorities."*

The choice of the quotation from June 2014 was due to the CEO having, at that time, a much more comprehensive knowledge of the shortcomings of the AML prevention measures in the Estonian branch than he did in October the year before, following the report from the whistleblower, as well as Internal Audit and a consultancy firm reviewing the Estonian branch's AML procedures and finding serious deficiencies. Therefore, it was considerably more significant that the CEO warned against a quick discontinuation of Baltic activities in June 2014 than when he did it in October 2013. As the quote from June 2014 also supported the necessary orders and reprimands sufficiently,

it was not necessary to refer to the meeting in October 2013 in the decision's presentation of the case.

#### *4.5 Disqualification in relation to the May 3 decision*

There has been criticism that the Danish FSA's former chairman in the period 2016-2018 as a former executive in Danske Bank may have affected the Danish FSA's findings in regard to the processing of the decision to Danske Bank of May 2018. Among other things, the criticism has concerned that the chairman at the time did not resign from his post until the day the Danish FSA published its decision.

The former chairman disqualified himself, and therefore did not participate in the meetings regarding this case throughout the period during which the Danish FSA's Governing Board processed the case against Danske Bank. Nor did he receive the material on the case which other board members were provided with.

The Danish FSA's decision contains significant criticism of the former chairman, for his role as the bank's CFO as well as the Executive Board member in charge of AML prevention and compliance. Among other things, the decision states the following:

*"At least four members of the bank's Executive Board, the Head of Business Banking and the bank's CRO, CFO and CEO each had received information about problems in Estonia, including that it was not only a question of deficient processes, but that there were also suspicious customers. A review at the branch of the customer due diligence and their activities was launched, but the branch's own follow-up proved inadequate. Thus, the bank failed to initiate an adequate investigation into the extent of suspicious transactions and customer relationships due to the inadequate handling of AML at the branch in order to contain the damage and report to the authorities, which was also not done in connection with the consultancy firm's investigation in February-April 2014."*

*"The lack of considerations also applies to the person responsible for AML, who was also Head of Group Compliance & AML, to the Head of Group Legal and to the person responsible for these areas at Executive Board level. Thus, they had no documented considerations of how the bank could best contribute to mitigating the consequences of its involvement in the potential criminal activities of customers."*

*"Group Compliance & AML, the person responsible for AML, Group Legal and the bank's CFO, who was the person on the Executive Board responsible for the area, did not themselves initiate adequate activities in relation to AML in Estonia, neither before nor after the whistleblower*

*report in December 2013. They only monitored investigations made by GIA, the consultancy firm and the branch's own review of the portfolio.*

*Among other things, they did not raise that the bank ought to look into how the bank could best mitigate the consequences of its involvement in customers' potential criminal activities, including by examining the need for further reporting of suspicious transactions to the relevant authorities.*

*Neither did they question the first line of defence's failure to investigate or handle managers and employees involved in the case."*

All rules on the management of disqualification of a member of a collective administrative organ have been carefully observed. For good measure, it is added that the former chairman fully respected the disqualification and in no way attempted to influence proceedings or the decision, including in relation to his own personal involvement as a former member of the Executive Board of the bank.

No staff or other Governing Board members were found to be disqualified in relation to the case. Nor has information emerged later that raises doubts about participating employees' or board members' disqualification.

## Chapter 5: Possible initiatives

On the basis of the Estonia case, the Minister of Industry, Business and Financial Affairs has asked the Danish FSA to look at the need for changes in legislation and the need to strengthen the Danish FSA, including through additional resources.

The ambition is for Denmark to have an AML supervision in the European elite. This will inherently involve stricter requirements for institutions operating in Denmark and for Danish banks' overall management of their foreign branches and subsidiaries.

On this basis, the Danish FSA makes a number of proposals regarding tightening of legislation, strengthening of AML supervision and an allocation of extra resources to the Danish FSA. The proposals aim to address issues exposed by the case, but there are also proposals which can contribute to ensure that Denmark has a regulation and a supervision in the area which are in the European elite.

Some of the proposals concern the supervisory activities where the Governing Board defines the framework for the Danish FSA. If these proposals are to be implemented, it will require a political decision to allocate additional resources to the Danish FSA. If resources are allocated, the proposals could be implemented relatively quickly. Other proposals will require legislative changes.

The Danish FSA has already initiated a number of activities based on the Estonia case. Thus, in the Danish FSA's decision of 3 May 2018 Danske Bank received a number of orders to strengthen its internal governance, including in relation to reporting to the Executive Board and the Board of Directors, independence of the compliance function and ensuring that there is sufficient documentation of decision-making processes, discussions and decisions at meetings.

In addition, the Danish FSA has significantly increased staffing in AML supervision, and on that basis has already begun strengthening AML supervision substantially.

The proposals are grouped into four main areas, which are specified below:

- 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: An AML supervision in the European elite*

*A: Better and more effective lines of defence in banks*

Many banks work with risk management through three so-called lines of defence. The first line of defence is the business itself, which should ensure a correct, legal and expedient operation. The second line of defence is a risk management function that should identify and mitigate risks, as well as a compliance function monitoring compliance. The third line of defence is the internal audit overseeing whether the first two lines of defence identify the problems. Management receives regular reports from the three lines of defence.

The Estonia case illustrated how all three lines of defence in Danske Bank failed in regards to identifying the significant violations of AML rules that took place in the Estonian branch.

Against this background, it is relevant to consider how banks' internal control systems can be strengthened, including whether the three lines of defence are sufficiently independent. Therefore, in 2019 the Danish FSA will strengthen supervision of banks' governance and internal controls, including by assessing the need for additional rules or guidelines based on the organisation of Danish SII's and foreign experience in the field.

The Danish FSA will also consider whether it is possible to tighten supervision related to a bank's establishment and operation of activities abroad. For example, this might include a detailed description of the business purpose or requiring stronger involvement of headquarter management in relation to the foreign entity.

*1: In 2019, the Danish FSA will strengthen supervision of banks' governance, internal controls and foreign units, including by assessing the need for additional rules or guidelines based on the organisation of Danish SII's and foreign experiences in the field.*

The Danish FSA finds that in the past years, banks have increased their efforts to improve both "Know-Your-Customer" (KYC) and customer monitoring and notification to the AML Secretariat under the State Prosecutor for Serious Economic and International Crime (SØIK).

Denmark has two strengths that can contribute to creating a better and more efficient process for banks' KYC efforts. Firstly, Danish banks have a tradition of developing common infrastructure, e.g. in the payment area. Secondly, Denmark has a well-developed registration of both individuals and enterprises.

A common infrastructure can ease the financial institutions' efforts to meet the requirements of AML legislation. The Danish FSA is aware that banks have taken the first steps in this regard.

Such action could potentially also include the financial institutions having a register of close associates of politically exposed persons. Furthermore, it could include a possibility to share information about customers who have proven to be risky so that these customers cannot switch between banks.

*2: The authorities will support the financial sector's ongoing efforts to build a common infrastructure in relation to strengthening the financial institutions' KYC processes.*

In addition to a joint Danish infrastructure it should be considered whether new systems, platforms etc. that would contribute to an efficient use of AML resources can be developed at a European level. In addition, there is a need for an EU framework that facilitates the implementation of both national and European platforms. Among other things, decisions will be required which balance considerations of AML against data protection and competition. It will be relevant that the EBA initiates an examination of this area and that the Commission is included in this work at a later stage.

*3: The Danish FSA will work to ensure that initiatives are taken at the EBA to uncover the opportunities and constraints for developing new systems, new platforms etc. that may strengthen banks' AML efforts.*

It is the responsibility of financial institutions to monitor their customers and report suspicious transactions to the AML Secretariat at the State Prosecutor (SØIK). In 2018, Danish institutions reported almost 36,000 suspicious transactions related to money laundering and financing of terrorism to the AML Secretariat at SØIK. It is crucial that these reports are of high quality and are continuously improved. The extent to which the reports lead to concrete results may be unclear for the individual employee and institution. The benchmark analysis from PA Consult shows that other countries are well advanced in ensuring an efficient exchange of experiences between authorities and institutions in this area, including ensuring a high quality of the reports and effective use of information among the relevant authorities.

*4: In order to improve institutions' ongoing reporting to the authorities, the Danish FSA, cooperating with the AML Secretariat at SØIK, will take steps to ensure that it is assessed how continuous feedback on notifications can be provided to the financial institutions. In addition, it will be considered how institutions' notifications can be better used in the work of the authorities. Experiences from other relevant countries will be included in this work.*

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



The Danish FSA's supervision relies on information provided by the institutions. It is therefore vital that the Danish FSA receives the relevant information from the institutions, that the information is accurate and that the information is received by the FSA in due time. In order to ensure effective supervision, it should be possible to penalise banks' non-notification or insufficient notification of the Danish FSA.

In Danske Bank's Estonian branch, a small group of employees worked to cover up activities related to money laundering. It made it difficult for both the head office in Copenhagen and for the EFSA to gain insight into the business. Therefore, the Danish FSA repeatedly received misleading answers to specific and repeated inquiries. In addition, the bank itself failed to inform the Danish FSA when it discovered that previously provided information was inaccurate. As mentioned, the bank's lines of defence also failed by discovering the problems too late.

The Danske Bank case shows the importance of the banks notifying the Danish FSA in cases where information that the bank has provided to the Danish FSA is later found to be misleading. Furthermore, banks should notify the Danish FSA on their own initiative if they identify significant problems that may affect the Danish FSA's supervision of the institutions. Introducing a legal requirement that financial institutions are obliged to urgently and on their own initiative inform the Danish FSA of matters, which the institutions realize are relevant to the Danish FSA's supervision, will support the work of the Danish FSA. Similarly, it will support the work of the Danish FSA if an explicit legal obligation to correct information already provided to the Danish FSA is introduced. It should be possible to penalise failure to comply with these obligations under the criminal justice system.

*5: Financial institutions should be obliged to urgently and on their own initiative inform the Danish FSA of matters which they realize are significant to the Danish FSA's supervision. When and under what circumstances the Danish FSA should be informed will be further specified in the legislative process and in guidelines. Financial institutions shall be required to correct information submitted to the Danish FSA, to the extent the institution subsequently finds that the information provides a misleading understanding of significant current issues. Institutions' non-compliance with disclosure and correction duties should be a punishable offence.*

The current rules on incorrect information involve a risk that persons affiliated with the financial institution might be criminally liable for the submission of incomplete, inaccurate or misleading information to the Danish FSA to a greater extent than the financial institution in question. Thus, there is a differ-

ence to whether the action must be conscious or merely negligent. Furthermore, for the financial institution as a legal entity, the limitation period is also just two years, while for natural persons it is five years.

The Danish FSA finds this inappropriate. The opportunities to punish natural and legal persons for supplying incorrect and misleading information to the Danish FSA should be the same.

*6: Financial institutions' failure to comply with the duty to disclose is made punishable by the Financial Business Act. The limitation period for the criminal liability regarding financial institutions' duty to disclose to the Danish FSA is thus changed from two to five years.*

If there is concrete suspicion that a person or institution has committed a punishable offense, provisions in the law regarding the duty to provide information to the authorities do not apply in relation to the suspect. The person or institution has a right not to incriminate themselves. This means that authorities cannot require information that might lead to self-incrimination. Thus, the Danish FSA should provide guidance on the right not to provide self-incriminating information to the Danish FSA when collecting information from financial institutions. As a result, in some cases the Danish FSA does not have access to all information on the institution, although the Danish FSA due to the importance of financial institutions in society has a very broad access to information from the institutions.

On that basis, the Danish FSA sees a need for considering relaxing the right to avoid self-incrimination for financial institutions supervised by the Danish FSA (legal persons), who do not risk imprisonment like natural persons do. In particular, this might be relevant where the statutory duty to disclose is imposed on the institution as a legal person and not natural persons in the institution. The proposal complements the proposal on expanding the duty to disclose, which will apply within the limits of the right to avoid self-incrimination.

*7: It should be considered whether the right to avoid self-incrimination should be relaxed for financial institutions supervised by the Danish FSA that are legal persons, in particular where the statutory duties to disclose are directed at the entity as a legal person.*

Whistleblower schemes are an opportunity to bring crimes and potential crimes to light. Since 2014, it has been a statutory requirement for financial institutions to have a whistleblower scheme for employees. Employees can also make use of the Danish FSA's whistleblower scheme. However, whistleblowers are exposed individuals who should be given a high degree of protection. Against this background, the Danish FSA finds that it should be looked into whether the protection of whistleblowers and potential whistleblowers in general can be strengthened.

In the Estonia case, the whistleblower has been mentioned frequently in the media. The protection of whistleblowers has been questioned, and there have been doubt whether financial institutions can circumvent the purpose of the whistleblower scheme by concluding secrecy clauses with their employees. There should be no doubt that as a whistleblower, you are protected against implications related to employment law when making a report.

The Danish FSA is of the opinion that a secrecy clause leading to an employee or former employee being unable to report crimes to a whistleblower scheme would be inconsistent with the intentions of the requirement for a whistleblower scheme, and that such a clause would not be valid under Danish financial law. However, the Estonia case has created legal uncertainty in this area. This uncertainty may deter employees who have become aware of offenses in the institution from using the whistleblower scheme. It is important to clarify the individual employee's legal position in relation to secrecy clauses, and the Danish FSA therefore proposes a ban on secrecy clauses that limit the employee in reporting offences to whistleblower schemes or in general report offences to the Danish FSA.

Other initiatives to strengthen the protection of whistleblowers could also be considered, e.g. reversing the burden of proof. This will mean that the institution must prove that a termination of employment was not based on the employee reporting to a whistleblower scheme. It could also be considered strengthening the protection of whistleblowers' identities in the context of civil legal proceedings in the form of a publication ban, or by requiring reportings to the institution's whistleblower scheme to be managed by an independent external party, e.g. a lawyer.

The Danish FSA proposes that the need for a whistleblower package is examined. The package should strengthen the protection of whistleblowers, increasing the likelihood that employees with knowledge of violations or potential violations of financial legislation report to the whistleblower schemes.

*8: It is stipulated by law that an employer cannot arrange the employment conditions in a way that makes the employee unable to report the institution's violations or potential violations of financial regulation to a whistleblower scheme, or in general report such information to the Danish FSA. It should also be considered whether there is a need for a larger whistleblower package that further strengthens the protection of whistleblowers.*

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

The financial crisis has shown that it can be very difficult for authorities to hold bank managements accountable within the statutory framework, even when

obvious errors have occurred and blatantly bad decisions have been made in the operation of a bank.

In previous cases, the Danish FSA has filed several police reports on, in particular, violation of the provisions of the Financial Business Act concerning i.a. a lack of effective corporate governance. In a large part of the cases, the public prosecutor found that there was insufficient evidence to prosecute. Where the public prosecutor chose to prosecute, the courts have acquitted the defendants. Thus, within the existing rules in the financial area, it is difficult to subject members of management to criminal liability. On this basis, it is assessed that there are difficulties in meeting the high evidentiary requirements for a conviction in criminal proceedings for violation of criminal provisions of the Financial Business Act.

Finansiel Stabilitet (the resolution authority) has also brought a number of actions for damages against the former managers of the acquired banks, based on assessments that the actions of leading figures have given rise to liability. Almost all claims for damages have resulted in acquittal. The cases have so far shown that the financial legislation's provisions on management responsibility are difficult to enforce in practice.

Recently, the Supreme Court ruled in the Capinordic case, where three management members were not found liable for irresponsible governance and operation of the bank, but only for some specific credit exposures. The Supreme Court ruled that a management member's neglect of fundamental rules of organisation and operation of a bank set out in sections 70 and 71 of the Financial Business Act was not in itself sufficient to consider the management member liable. The ruling is a reason to consider if there is a need to revise the regulation on management of financial institutions, including which responsibilities the individual member of the management is accountable for in regard of the regulation.

The discussion about the lack of consequence is also found in other countries. In the UK, it has led to the introduction of the so-called "senior manager regime", where the responsibility of each individual member of management is specified.

*9: A working group is established which, in the light of case law on criminal and civil liability in relation to managerial responsibility, will consider the need for strengthening the legislation, including whether the rules on managerial responsibilities in both financial institutions and enterprises outside the financial sector should be strengthened.*

Following legislative changes resulting from the political agreement on AML reached in September 2018, the Danish FSA shall establish rules requiring financial institutions to introduce a company policy ensuring and promoting a

healthy culture in the company that prevents money laundering and other financial crime. Responsibility of ensuring this culture should be anchored in the board and in senior management, with a possibility of dismissing the members of these if they do not fulfil their obligations.

The Estonia case showed that there was confusion in the bank about the distribution of responsibilities between members of the bank's management.

The Danish FSA will also establish a specialized working group that will draw up recommendations regarding the competence and experience requirements as well as areas of responsibility for key function holders in banks etc. The Danish FSA finds that the fit & proper regulations will be tightened significantly with the already-agreed initiatives, but that it cannot be ruled out that there may be a basis for further tightening, including of the competence requirements for executive board members. The specialized working group work will therefore also include executive board members.

*10: The Danish FSA establishes a specialized working group that will draw up recommendations regarding competence and experience requirements, as well as responsibilities of key function holders and executive board members in banks etc.*

The Danish FSA's assessment of possibly assigning liability not only depends on the liability provisions in the legislation, but also on court practices. Financial services cases are complex and often require a thorough understanding of operation, control and management of financial institutions. In a number of countries, the processing of such cases has therefore been assigned to specially qualified entities and/or the supervisory authorities have been given the option of issuing fines.

On that basis, the Danish FSA believes it should be examined whether, in civil proceedings concerning financial services, the courts should be supplemented by experts with knowledge of financial services, including how such a potential strengthening could take place.

*11: An analysis is initiated on whether, in civil proceedings in the financial services area, the courts should be supplemented by experts with knowledge of financial services.*

In their benchmark analysis, PA Consult states that the Danish FSA has limited enforcement powers. The inability to issue fines is in stark contrast to supervisory authorities in other EU countries. For example, the Swedish FSA has been given the authority to issue fines of up to 10 percent of turnover, and previously issued a fine of SEK 50 million. In France, the supervisory authority has an independent sanction board, which can impose administrative fines of up to EUR 100 million.

Today, in certain areas of the law the Danish FSA has the option to issue fixed penalty notices, when the conditions are met. But in the Anti-Money Laundering Act, the Danish FSA does not have authority to issue fixed penalty notices for violations of the Act, not even for minor violations.

A legal base for issuing fixed penalty notices in specific AML cases would streamline criminal proceedings and significantly reduce the time needed for processing a case from violation to penalty. A possibility of issuing fixed penalty notices limited to matters only penalised with minor fines will however not be considered as a strengthening of AML supervision, since in such cases, significant resources will not be saved. Furthermore, such an option will not change the gap between competences of foreign supervisory authorities and the Danish FSA concerning the level of fines.

Wide possibilities of issuing fixed penalty notices will also mean that the Danish FSA can see AML cases through to their conclusion, and that the case will thus not have to be re-examined by the public prosecutor leading to an extension of the overall processing time. Therefore, there will also be a cost-saving element.

It is a prerequisite for the use of fixed penalty notices that the entity in question has confessed to the offense. The affected financial institutions involved in the specific cases concluded with a fixed penalty notice will thus often have an interest in a speedier conclusion of the case, and not in having the same case processed first by the Danish FSA, and then partially re-examined by the public prosecutor.

*12: The Danish FSA is given broad access to issuing fixed penalty notices for violations of the Anti-Money Laundering Act.*

The Danish FSA has wide powers to take action against financial institutions that do not comply with AML rules. However, some cases may concern severe violations of the Anti-Money Laundering Act, but violations that are not so severe that there are grounds for closing the institution. PA Consult's benchmark analysis shows that supervisory authorities in some countries have the power of banning an institution from engaging into new customer relationships until the institution has corrected certain severe issues. This power is not available to the Danish FSA today.

The Danish FSA finds that it will strengthen AML supervision of institutions if it is given the power of ordering a temporary ban on engaging new customers in case of severe violations of AML rules. This means that the Danish FSA might decide that an institution in severe violation of e.g. KYC requirements cannot engage in new customer relationships in certain segments before the institution can demonstrate that it is compliant. Such an order would

strengthen the incentive of institutions to quickly correct the violation, and the risk of receiving such an order would likely help to prevent institutions from being non-compliant with AML rules.

*13: The Danish FSA is given the authority to issue orders that an institution cannot take on certain new customers in specific customer segments until serious violations of AML rules have been rectified.*

#### *D: An AML supervision in the European elite*

Around 1,400 financial institutions are subject to AML supervision by the Danish FSA. These are very different in type and size, and the risk that their efforts to prevent money laundering is inadequate or that they are sought used for money laundering, differs greatly. The Danish FSA, as other supervisory authorities, conduct a risk-based supervision. This means that resources are allocated where the risk is the greatest.

Regarding Danske Bank's Estonian branch, substantial resources were allocated to supervising the branch by the EFSA. Similarly, the Danish FSA historically spent a large part of its resources on AML supervision of Danske Bank. It is difficult to assess whether more resources would have made a difference in this case. In Denmark's case, however, the FATF examination shows that – along with the other Nordic countries – we have not been where we wanted to be.

Based on PA Consult's benchmark analysis and experiences of AML supervision so far, the Danish FSA has considered which best practices from other countries' AML supervision can best be implemented in Denmark and whether there are any other areas where AML supervision can be strengthened qualitatively or quantitatively. Furthermore, the Danish FSA has assessed whether there are areas in which the financial institutions' task of complying with the law can be strengthened more generally.

The Danish FSA is building a system for registration and analysis of AML risks in different types of institutions. If the system is to meet best practice in Europe, it must both be quite comprehensive (in terms of data) and feature regular (at least annual) reporting of a list of data from the institutions and possibly also from other authorities, especially the AML Secretariat at SØIK. It must also be a system that can handle the amount of data and present it in a form that makes it viable as a basis for supervisory decisions.

In order for the system to be up and running quickly, i.e. by the end of 2019, and for the system to be of the required quality, the Danish FSA probably need assistance of a consultancy firm in building the system as regards the information to be reported and collected and as regards the processing of the information.

*14: The Danish FSA intensifies its work to establish a data-driven, risk-based AML supervision.*

A by-product of establishing a system for risk assessment is that a number of parameters are established that institutions will find useful or necessary for assessing its risk of being used for money laundering or financing of terrorism. However, these parameters will not necessarily be fully adequate for the specific institution, as specific circumstances may apply. These parameters should be made public as an example of best practice. They will build on the EBA's Risk Factor Guidelines.

*15: The Danish FSA guides on good practice for measuring AML/CFT risks.*

The Minister of Industry, Business and Financial Affairs has asked the Danish FSA to present ideas on how its work can be strengthened in terms of resources in order to increase confidence in the financial system. The Danish FSA sees continued combatting of money laundering as a focus area, while eyes are still on other serious risks in the financial system.

Currently, it is only possible to go on AML inspections in about 35 institutions annually, corresponding to around 2.5 pct. of the total number of institutions, if the inspections are to be of sufficient depth and quality. The Danish FSA estimates that this share should be increased, e.g. to 4 percent, corresponding to about 55 inspections annually.

In order to meet the legislative requirements, the financial institutions must use IT systems extensively in all parts of the customer monitoring. These systems will be – and shall be – increasingly extensive and complex. It requires special expertise to be able to supervise these systems.

Therefore, there is a need for the Danish FSA to review these systems critically on the inspections. The benchmark analysis from PA Consult also shows that this is a focus area for many supervisory authorities.

*16: The Danish FSA increases the extent of AML supervision, and there will be an increased focus on the use of IT systems in the institutions.*

It would be appropriate to conduct a benchmark analysis in order to assess whether AML control (regulation and supervision) in the European elite will be achieved. Therefore, it has been agreed that the IMF can conduct a benchmark analysis of the Danish AML supervision over the course of 2019. The supervisory efforts will be examined in spring 2019, and in the autumn of 2019 the IMF will examine the legislation's compliance with international standards.



Furthermore, the IMF is expected to conduct an in-depth analysis of the AML regulation and supervision in the Nordic countries within the next 1-2 years, which could provide further input from a group of very comparable countries in relation to the quality of the Danish AML regulation and supervision.

*17: The Danish FSA has agreed with the IMF that the IMF conducts a benchmark analysis of the Danish AML supervision over the course of 2019.*

The Nordic-Baltic region is very exposed to AML risks given the significant cash flows associated with Russia. Furthermore, there is a very high degree of cross-border activities and establishments across borders in the region. Therefore, there should be a strengthening of international cooperation, reflecting the exposed position of the Nordic-Baltic region.

The Danish FSA and the Swedish FSA have therefore agreed that the two supervisors will work jointly for increased cooperation and exchange of experience between the Nordic and Baltic supervisory authorities. Initially, a workshop where supervisors can exchange practical experiences with regard to AML supervision will be arranged. The Danish FSA has offered to host the event and suggested that it be held in March 2019.

*18: A strengthened cooperation with the other Nordic and Baltic supervisory authorities is established with a view to exchanging specific experiences as regards AML supervision.*

Although the current case has given rise to much discussion in the media of the cooperation between the Danish FSA and EFSA, there has been, as described in this report, extensive cooperation between the two supervisory authorities. In addition, with the establishment of the special AML supervisory college for Danske Bank, the Danske Bank college of supervisors has been first-movers internationally.

However, given that AML/CFT are highly cross-border in nature, and that large financial institutions largely operate across borders, the goal should be to continuously intensify international cooperation in this field.

In the Anti-Money Laundering Directive, the EU countries have a common AML legislative framework, based on implementing the recommendations from the FATF. The Anti-Money Laundering Directive has been updated and strengthened several times in recent years, most recently with AMLD4 in 2015 and AMLD5 in 2017. The latter is being transposed into Danish law. The changes will take effect in January 2020, which is the deadline for implementing the directive.

The FATF constitutes an international partnership working closely to establish common standards in this area. However, the partnership is characterised by a complete absence of operational cooperation, i.e. cooperation on supervision and law enforcement. This is not least due to the FATF consisting of a number of different types of authorities, including ministries, police authorities and regulators, with very different powers.

Therefore, the Danish FSA believes that there is a need for further action and strengthening of the rules in the EU. Specifically, this could mean introducing requirements in the AML directive regarding:

- AML colleges for groups active in different countries
- cooperation and exchange of information between home and host countries for cross-border groups, including clarification of the group supervisory authority's responsibility and a requirement for the host country's competent AML supervisory authority to inform the home country's supervisory authority of risks, data etc.
- reports should be sent to the FIUs in both home and host country
- stronger whistleblower protection
- require banks, if possible, to warn the bank that receives a customer when they terminate customers due to suspicions of money laundering, or when a customer which has conducted suspicious transactions moves to another bank voluntarily.

On 12 September 2018, the EU Commission presented a proposal to strengthen the powers of the EBA in the AML area. Denmark should in particular support the following elements:

- the establishment of an EBA database that strengthens monitoring of suspicious transactions
- increased exchange of information between the EBA and supervisory authorities, including earlier discussions and notifications regarding potentially suspicious circumstances
- a more efficient organisation in the AML area coordinated by the EBA and a stronger focus on AML in other European supervisory authorities.

EU initiatives should be based on but not overlap FATF recommendations and actions. For example, countries are examined by the FATF with regard to their compliance with international standards, and the EBA therefore does not need to assess the Danish FSA's AML supervision.

*19: The Government and the Danish FSA (at the EBA) work for enhanced European cooperation in relation to the AML supervision.*

For a two-year period, the Danish FSA has seconded a staff member in the FATF secretariat to contribute to the work in FATF and to build up expertise in the area. However, the leading countries increasingly emphasise that all members of FATF should contribute to the entire work of the organisation, which will mean even higher expectations of members, including Denmark, to allocate resources to FATF.

Therefore, the Danish FSA sees a need to allocate additional resources to targeted efforts in the FATF.

*20: The Danish FSA strengthens its participation in the FATF.*

Cooperation between the authorities in Denmark takes place in part through the Money Laundering Forum and in part bilaterally between individual authorities. The national strategy states that authorities' strategic focus and cooperation, coordination and knowledge-sharing are essential to ensure effective and targeted efforts in minimising the extent of money laundering and financing of terrorism. In the strategy, it was noted that the authorities work closely together, but have yet to take advantage of the full potential of the cooperation. Therefore, it was stated that the authorities' efforts in the field so far must be strengthened.

The strengthened effort should be based on the formalised cooperation in the Money Laundering Forum. As chair, the Danish FSA will work to ensure a strengthening of this cooperation. This requires the respective authorities to allocate the necessary resources. Moreover, according to the national AML strategy, authorities in the Money Laundering Forum shall consider how information can be exchanged between the members of the Money Laundering Forum.

With regard to the bilateral cooperation, it should be considered whether to develop agreements (Memoranda of Understanding) between the Danish FSA and the various authorities, including the Danish Tax Agency, and whether existing agreements should be strengthened, as there is already an agreement in place between the Danish FSA and the State Prosecutor (SØIK).

*21: The Danish FSA works to ensure that cooperation between the Danish authorities on AML is strengthened compared to today.*

The Minister of Industry, Business and Financial Affairs has also asked for the Danish FSA to assess how its work can be strengthened in terms of resources

in order to increase confidence in the financial system and implement the above proposals. The Danish FSA sees continued combatting of money laundering as a focus area, while focus is also still on other serious risks in the financial system.

The Danish FSA has the following suggestions for a comprehensive solution (all additional financing will come from the financial sector):

- The Danish FSA's efforts to combat i.a. money laundering are strengthened with an additional allocation of DKK 30 million in 2019, and in the following years DKK 20 million annually. In 2019, the funds are mainly spent on follow-up work concerning the Estonia case. The permanent additional funding is spent increasing the intensity of AML supervision and the supervision of governance etc. in Danske Bank and other institutions, where AML risks and other risks are deemed to be significant
- IT investments are accelerated and are expanded with increased permanent funding of DKK 20 million annually, enabling earlier implementation and expansion of a data-driven supervision by the Danish FSA
- In addition, another DKK 10 million are allocated annually as a permanent increase of funding to strengthen and develop the necessary core IT systems that will be the foundation for the analytical work and the exchange of data with European authorities
- Approx. DKK 6 million are allocated annually to cover expenses which the Danish FSA must bear, but where funding is outstanding. Among other things, this includes the Danish FSA's tasks related to the national IT security strategy and increasing membership fees paid to EU authorities in the financial area
- The Danish FSA will have greater wage flexibility in order to recruit and retain employees in a highly competitive market. This will help ensure that staff of the Danish FSA has the necessary skills, including in cyber security, needed to conduct a modern and effective supervision.

The final point will be sought financed within the Danish FSA's existing budget by implementing the initiatives that have been identified in a budget analysis of the FSA, which was done in agreement with the Ministry of Industry, Business and Financial Affairs and the Ministry of Finance. The aim is that, in 2022, savings of DKK 20 million annually have been achieved.

*22: In view of the above, it is proposed that the Danish FSA is allocated DKK 66 million in 2019 and DKK 56 million in subsequent years. It is*

*also proposed that the Danish FSA will have significantly greater flexibility within its budget to set the salary of key employees and new employees whose skills are particularly sought after.*

The proposal is summarised in Table 1 below.

*Table 1: Resource requirements for the Danish FSA*

Task/initiative	2019	2020	2021	2022	2023
1. Strengthened AML efforts etc.	30.0	20.0	20.0	20.0	20.0
2. IT investments and increased data-driven supervision is accelerated	22.0	19.0	19.0	19.0	19.0
3. Strengthening and developing core IT systems	8.0	11.0	11.0	11.0	11.0
4. Sub-strategy, cyber and information security	2.2	2.2	2.2	2.2	2.2
5. EU membership fees	1.6	1.6	1.6	1.6	1.6
6. Board remuneration <sup>17</sup>	1.0	1.0	1.0	1.0	1.0
7. Payday loans	0.7	0.7	0.7	0.7	0.7
8. Budget Analysis – Efficiency improvements and wage flexibility	0.0	0.0	0.0	0.0	0.0
.....Efficiency measures	-1.0	-3.0	-10.0	-15.0	-20.0
.....Wage flexibility	1.0	3.0	10.0	15.0	20.0
<b>Allocation needs total</b>	<b>65.5</b>	<b>55.5</b>	<b>55.5</b>	<b>55.5</b>	<b>55.5</b>
Thereof payroll	23.3	33.2	37.9	41.6	45.1

Implementation of the proposals, including the allocation of new resources, requires an adjustment of the Danish FSA's organisation. Most of the resources will flow to the Danish FSA's current legal pillar, including the AML office, the legal office and the fintech office (where tasks related to fit & proper are located in the Danish FSA). The pillar's organisation will be revisited, and as a result of the new activities its name will change to "Financial crime and conduct supervision".

*23: The Danish FSA will adjust its organisation to consist of four pillars: Bank and mortgage supervision, Financial crime and conduct supervision, Supervision of insurance and pension companies and Capital markets supervision.*

<sup>17</sup> In the summer of 2014, a Governing Board was set up to govern the Danish FSA. The Danish FSA remunerates board members, but the Ministry of Business, Industry and Financial Affairs determines the level of remuneration. Currently, remunerating the board amounts to DKK 1,5 million a year. When the board was set up, the Danish FSA did not receive additional resources in order to remunerate board members. Remuneration of the Financial Council, which the board replaced, amounted to DKK 0,5 million and has partly covered the additional costs of board remuneration, while the rest is taken from the general budget of the Danish FSA, which because of that has been DKK 1 million lower since 2015. On this basis, these resources should be added to the budget of the Danish FSA in the future.

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

## **Appendix**

1. The Legal Adviser to the Danish Government's statement regarding consistency between the published and the confidential parts of the report
2. The Legal Adviser to the Danish Government's analysis of the division of responsibilities between the Danish FSA and the EFSA
3. Joint statement from the EFSA and the Danish FSA regarding the supervision of Danske Bank's Estonian branch
4. Elaboration on the AML supervision in Danske Bank's Estonian branch 2007-2018 (Not published)
5. The Danish FSA's decision regarding Danske Bank of 3 May 2018
6. PA Consult's benchmark analysis of AML supervision compared to other countries
7. Detailed description of the Danske Bank college (Not published)

## Statement on the Danish FSA's report to the Ministry of Industry, Business and Financial Affairs

For use in a report to the Ministry of Industry, Business and Financial Affairs on the Danish FSA's supervision of Danske Bank A/S (the "Bank") in relation to the Estonia case, the Danish FSA has asked me to make a statement regarding the significance of certain facts and documents, which the Danish FSA has had to omit from the report due to the FSA's strict confidentiality rule, cf. the Financial Business Act, section 354, subsection (1).

The report has been prepared for the Minister for Industry, Business and Financial Affairs in his capacity as supervising the general conduct of the Danish FSA's activities.

For the purpose of providing this statement, I have received the Danish FSA's final report dated January 28 2019, including annex 1-7 in a confidential and public version respectively, the FSA's published decisions regarding the Estonia case, the Bank's independent legal inquiry, as well as corporate and press releases from the Bank regarding the Estonia case.

The statement is made based on the documents and information that I have received at the time of making this statement and prepared in accordance with Danish law at that time.

In agreement with the Danish FSA, this statement can be made public in connection with the submission of the report to the Ministry of Industry, Business and Financial Affairs, and may be attached to the report as Annex 1.

---o0o---

According to the Financial Business Act, section 354, subsection (6), no. 3, the duty of confidentiality in section 354, subsection (1) does not preclude that the Danish FSA may disclose confidential information to the Minister for Industry, Business and Financial Affairs as part of the minister's general supervision.

.....

A complete report will necessarily include confidential information. The report prepared for the Minister for Industry, Business and Financial Affairs thus contains confidential information subject to the Danish FSA's duty of confidentiality ("the confidential report"). The confidential report cannot be disclosed to the public following the duty of confidentiality.

The case related to the Bank's Estonian branch has significant public interest. In order to ensure an accurate and adequate representation of the process of the Danish FSA's supervisory activities, including a description of the measures which the Danish FSA has taken in relation to the Bank, the Estonian supervisor and others, the Danish FSA has decided to prepare a version of the report that can be disclosed to the general public ("the public report").

In the public report, the Danish FSA has deleted certain parts (deletion) containing information which, due to the duty of confidentiality, cannot be disclosed to the public. Furthermore, the Danish FSA has excluded annex 4-7 from the public report since these annexes contain confidential information.

In the report - both in the confidential and the public version - the Danish FSA has described the actual course of events in the Estonia case and, on this basis, made a number of assessments of the process and described the experiences and conclusions that the FSA believes can be inferred from it.

I have had the opportunity to review the final confidential and public reports, and in doing so compared the description of the facts, assessments and experiences of the Danish FSA, as well as the aforementioned conclusions.

On this basis, I can declare that the only substantial differences between the two versions of the report are the deletions performed by the Danish FSA, which contain confidential information covered by the Danish FSA's special duty of confidentiality, cf. the Financial Business Act, section 354, subsection (1).

Regarding the annexes, I declare that the only difference between the two versions of the report is that annex 4-7 in the confidential report is not included in the public report.

In this regard, I can concur that the deleted information and the information in annexes 4 and 7 are rightly considered confidential under the Financial Business Act, section 354, subsection (1), and that they have thus been correctly omitted from the public report.

Furthermore, I declare that neither the parts deleted in the public version of the report nor annex 4-7 change the Danish FSA's assessments or conclusions compared to the confidential version of the report, and that the deleted information, including annex 4-7, does not contradict the Danish FSA's assessments or conclusions.

.....



.....

Copenhagen, January 28, 2019  
Legal Adviser to the Danish Government

Peter Hedegaard Madsen  
- *Lawyer, Partner (H)*

## Translation

# The division of responsibilities between the supervisory authorities of the home and host countries with regard to Anti-Money Laundering

## 1. INTRODUCTION, BACKGROUND AND CONCLUSION

For the purpose of a report to the Danish Ministry of Industry, Business and Financial Affairs (*Erhvervsministeriet*), the Danish Financial Supervisory Authority (*Finanstilsynet*) has requested an opinion on which country's supervisory authority is competent to supervise and sanction breaches of anti-money laundering law when the breaches take place in a branch established in another EU country than the home country of the financial institution. The report is drawn up by the Danish Financial Supervisory Authority to the Danish Ministry of Industry, Business and Financial Affairs and concerns experience from the money laundering matter of the Estonian branch of Danske Bank A/S (the "Bank").

In relation to the Estonian branch's non-compliance with the anti-money laundering rules in the period 2007 to 2015, the question has arisen as to whether the handling and supervision of the critical matters at issue were rightfully subject to the financial supervision of the Danish or the Estonian authorities.

The factual circumstances under review by the Financial Supervisory Authority regarding Danske Bank's management and control of the Estonian branch took place when the Third Anti-Money Laundering Directive<sup>1</sup> was in force. Had the circumstances taken place today, they would have been subject to the Fourth Anti-Money Laundering Directive<sup>2</sup>.

---

<sup>1</sup> Directive (EU) 2005/60 of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

<sup>2</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

---

It is my opinion and conclusion that the division of responsibilities between two supervisory authorities pursuant to both the Third and the Fourth Anti-Money Laundering Directives was - and still is - such that the host country has the supervisory obligation to ensure that national anti-money laundering law is complied with by a branch of a financial institution domiciled in another EU country.

In specific terms, this means that the Estonian financial supervisory authority was - and currently is - responsible for supervising the Bank's Estonian branch's compliance with anti-money laundering law.

## **2. THE LEGAL BASIS**

### **2.1 The Third Anti-Money Laundering Directive**

The intended distribution of powers between the supervisory authorities of the home and the host country is not expressly stated in the Third Anti-Money Laundering Directive, neither in the recitals nor in the body of the Directive.

However, Article 22(1), point (a) states that institutions covered by the Directive are obliged to fully cooperate by promptly informing the Financial Intelligence Unit (FIU) if the institutions suspect money laundering activities.

According to Article 22(2), the proceedings of such notification are the following:

*"The information referred to in paragraph 1 shall be forwarded to the FIU of the Member State in whose territory the institution or person forwarding the information is situated."*

It follows from the preparatory works of the Anti-Money Laundering Act of 2006 then in force<sup>3</sup>, which implemented the Third Anti-Money Laundering Directive, that the Act applies to the branches and agents of foreign undertakings pursuing business in Denmark according to points (1) to (8) and (10), cf. s.1(1), point (9) of the 2006 Act.

In this connection, it follows from s.1(1), point (9) of the preparatory works that:

*"The provisions of point (9) partially implements Article 2(2), cf. Article 3(2) point (f), of the Directive. According to Article 3(2) point (f), the Directive covers branches of undertakings and persons which are financial institutions pursuant to Article 3(2) points (a) to (e), including undertakings which carry out activities of currency exchange and of transmission or remittance of money and other assets."*

---

<sup>3</sup> Act no. 117 of 27 February 2006 on measures to prevent money laundering of dividends and terrorist financing.

---

However, the Bill only covers the branches of foreign undertakings in Denmark which carry out activities in accordance with points (1) to (8). The reason for this is that, within the European Union or countries with which the Union has concluded agreements in the financial area, it is as a general rule the duty of the supervisory authority of the home country to supervise the branch of a foreign undertaking exercising the activities referred to in points (1) to (8).

Hence, it is not for the supervisory authority of the country in which the branch carries out activities to supervise the branch. If, for example, an English bank sets up a branch in Denmark, it is as a general rule the duty of the English supervisory authorities to supervise the branch.

The provisions of point 9 derogate from the general rule of home country supervision in relation to undertakings covered by points (1) to (8) in that s.34 of the Bill entails that it is the responsibility of the Danish Financial Supervisory Authority to supervise compliance with this Act by the branches of the above undertakings in Denmark.

The fact that the Directive derogates from the principle of home country supervision reflects the necessity of leaving the territorial jurisdiction with the Member State in which the activities are carried out (the host country).

A branch of an undertaking outside the European Union or a country with which the Union has not concluded an agreement in the financial area is also covered by point (9).

Investment associations and special-purpose associations, collective investment undertakings, restricted associations, innovation associations as well as hedge funds, see point (10) of the provision, undertakings carrying out activities of currency exchange and transmission or remittance of money and other assets, see point (11), and other persons whose business it is to carry out one or more of the activities referred to in Annex 1, see point (12), are not covered by the basic principle of home country supervision.

If and to the extent that other foreign undertakings than those mentioned in points (1) to (8) are entitled under other legislation to set up branches in Denmark, the activities of, for example, transmission or remittance of money, carried out by the branch will be covered by the Bill. This means that the activities that the branch carries out in Denmark are subject to Danish supervision." (my emphasis)

---

This interpretation of the distribution of responsibilities is emphasised by the Danish implementation of the First Payment Services Directive, which caused changes to the Danish Anti-Money Laundering Act then in force.

With the legislative amendment in 2012, a new provision was introduced in s.34(8)<sup>4</sup> of the Anti-Money Laundering Act with the following wording:

*"The supervision of branches and agents of payment institutions and e-money institutions domiciled in another country within the European Union or in a country with which the Union has concluded an agreement in the financial area is to be carried out in cooperation with the supervisory authority of the home country of the institution." (my emphasis)*

It follows from the preparatory works of s.34(8) of the 2012 Act that:

*"Pursuant to s.34(1), the Danish Financial Supervisory Authority shall supervise undertakings and persons covered by s.1(1), point (12) ("Other undertakings and persons pursuing a business of one or more of the activities referred to in Annex 1") and branches of foreign undertakings carrying out such business.*

*However, Directive 2007/64/EC of the European Parliament and of the Council of 13 December 2007 on payment services in the internal market and Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions, implemented in Denmark by Act on Payment Services and Electronic Money, provides for the scope of home country supervision of payment institutions and e-money institutions domiciled in another country within the European Union or in a country with which the Union has concluded an agreement in the financial area to also cover the branches and agents of such undertakings in other EU/EEA Member States.*

*The Payment Services Directive provides detailed rules for the cooperation between the supervisory authorities of the home and host countries regarding the supervision of branches and agents in the host country, but the power to grant and revoke licences etc. rests with the authorities of the home country.*

*It is therefore proposed that it be specified in the provision that the Danish Financial Supervisory Authority's supervision of branches and agents of payment institutions and e-money institutions domiciled in another EU/EEA country must be carried out*

---

<sup>4</sup> Act no. 155 of 28 February 2012

---

*in cooperation with the supervisory authority of the institution's home country.* (my emphasis)

Finally, the third recital of the Second Anti-Money Laundering Directive<sup>5</sup> provides that:

*"The Directive does not establish clearly which Member State's authorities should receive suspicious transaction reports from branches of credit and financial institutions having their head office in another Member State nor which Member State's authorities are responsible for ensuring that such branches comply with the Directive.*

*The authorities of the Member States in which the branch is located should receive such reports and exercise the above responsibilities.*" (my emphasis)

## **2.2 The Fourth Anti-Money Laundering Directive**

It follows from recitals 52 and 53 of the Fourth Anti-Money Laundering Directive that the host country is the appropriate competent authority with responsibility for ensuring compliance with the Directive, notwithstanding that the financial undertaking in question is otherwise subject to the supervision of the supervisory authorities of its home country.

The supervisory authorities of the home country, however, are responsible for the supervision of the policies etc. at group level that are required under the anti-money laundering rules, see recitals 52 and 53 which provide as follows:

*"(52) Where an obliged entity operates establishments in another Member State, including through a network of agents, the competent authority of the home Member State should be responsible for supervising the obliged entity's application of group-wide AML/CFT policies and procedures. This could involve on-site visits in establishments based in another Member State.*

*The competent authority of the home Member State should cooperate closely with the competent authority of the host Member State and should inform the latter of any issues that could affect their assessment of the establishment's compliance with the host AML/CFT rules.*

*(53) Where an obliged entity operates establishments in another Member State, including through a network of agents or persons distributing electronic money in accordance with Article 3(4) of Directive 2009/110/EC, the competent authority of the host Member State retains responsibility for enforcing the establishment's compliance*

---

<sup>5</sup> Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.

---

with AML/CFT rules, including, where appropriate, by carrying out onsite inspections and offsite monitoring and by taking appropriate and proportionate measures to address serious infringements of those requirements.

*The competent authority of the host Member State should cooperate closely with the competent authority of the home Member State and should inform the latter of any issues that could affect its assessment of the obliged entity's application of group AML/CFT policies and procedures.*

*In order to remove serious infringements of AML/CFT rules that require immediate remedies, the competent authority of the host Member State should be able to apply appropriate and proportionate temporary remedial measures, applicable under similar circumstances to obliged entities under their competence, to address such serious failings, where appropriate, with the assistance of, or in cooperation with, the competent authority of the home Member State.*” (my emphasis)

Article 2 of the Fourth Anti-Money Laundering Directive is implemented into Danish law by s.1(1), point (9) of the Anti-Money Laundering Act which states that the Anti-Money Laundering Act applies to the branches of foreign undertakings which pursue activities as, inter alia, financial institutions in Denmark.

In this connection, the following is provided in the explanatory notes:

*"If establishment has taken place, the authorities of the host country are responsible for supervising the branch's, the distributor's or the agent's compliance with the rules on measures to prevent money laundering and terrorist financing, whereas the home country retains responsibility for supervising the undertaking that provides the cross-border activity, including to ensure that the group has implemented policies and procedures, see in that regard ss.9 and 31 of the Bill.*

*The Fourth Anti-Money Laundering Directive provides in such cases for a close co-operation between the supervisory authorities of the home and host countries, see recital 52 of the Fourth Anti-Money Laundering Directive."*

Similarly, the provisions of s.47(3) of the Anti-Money Laundering Act provide that:

*"The Financial Supervisory Authority shall cooperate with the competent authorities of the EU or EEA Member States on participation in supervisory activities, on-site controls or inspections in Denmark in respect of undertakings and persons covered by s.1(1) point (9) which are subject to supervision in another EU or EEA Member State or a Danish undertaking or person covered by s.1(1) points (1) to (13) which is*

---

---

*subject to Danish supervision, but which operates in other EU or EEA Member States."*

This provision is an implementation of Article 48(5) of the Fourth Anti-Money Laundering Directive.

As a new element, the Fourth Anti-Money Laundering Directive has directly considered how groups of companies domiciled in one Member State but with branches in other Member States are to deal with national anti-money laundering regulation. Accordingly, Article 45(2) provides that:

*"Member States shall require that obliged entities that operate establishments in another Member State ensure that those establishments respect the national provisions of that other Member State transposing this Directive."*

This provision thus establishes that a group of companies is obliged to ensure that the branches comply with the national anti-money laundering rules of the Member State in which the branch is located.

As the supervision of compliance with other legislation than Danish legislation rests solely with the authorities of the Member State concerned, this provision also emphasises that the supervision of branches rests with the financial supervisory authority of the Member State concerned.

The requirement of actual anti-money laundering policies was not introduced until the Fourth Anti-Money Laundering Directive. Therefore, the question of which country's supervisory authorities is responsible under the Third Anti-Money Laundering Directive for anti-money laundering policies, and thereby also the supervision of compliance with anti-money laundering policies etc. at group level, has not been considered separately.

### **3. OPINION**

#### **3.1 The supervision of compliance with anti-money laundering rules locally**

The distribution of supervisory competence and powers in situations where a financial undertaking has set up branches in other Member States is regulated in detail in the EU directives when it comes to, for example, solvency supervision.

A similar explicit regulation of the distribution of responsibilities came somewhat later in the field of anti-money laundering and was thus only very explicit in the Fourth Anti-Money Laundering Directive.

---



---

Although the Third Anti-Money Laundering Directive does not explicitly regulate the distribution of responsibilities between national authorities, the effect of Article 22(2) of the Third Anti-Money Laundering Directive must be that if information of breach of anti-money laundering law is to be forwarded to the local financial intelligence unit, then the power to respond to the branch's breach of national anti-money laundering law must likewise rest with the supervisory authority of the Member State in which the branch is situated.

In my opinion, this means that in regard to money laundering, the supervisory responsibility under the Third Anti-Money Laundering Directive rests with the supervisory authority of the Member State in which the branch is situated, i.e. the host country. This interpretation of the Directive is also very clearly conveyed in the preparatory works of the Danish Anti-Money Laundering Act of 2006 in force at the time.

Similarly, it is my view that the amendment of the Danish Anti-Money Laundering Act in 2012 following the implementation of the First Payment Services Directive is in line with this view of the distribution of powers. The addition to the Danish Anti-Money Laundering Act, i.e. the specification of the supervision of a branch of payment institutions etc., would thus have been unnecessary if the former distribution of powers was not such that the responsibility of supervising branches rested with the supervisory authority of the host country.

In the drafting of the Fourth Anti-Money Laundering Directive, the distribution of responsibilities between the supervisory authorities of the home and host countries is clearly stated in both the recitals and the body of the Directive.

It is emphasised in particular that the supervisory authority of the host country is responsible for enforcing compliance with anti-money laundering rules, including by carrying out onsite inspections. This is motivated by the need for the competent authority to be the Member State in which the activities are in practice carried out, i.e. the host country.

On the basis of the above examination of the Third and Fourth Anti-Money Laundering Directives as well as the Danish implementation of the Directives it is my opinion that the Estonian financial supervisory authority was responsible for supervising compliance with the anti-money laundering rules by the Bank's Estonian branch throughout the entire period under review by the Danish Financial Supervisory Authority.

This opinion of the distribution of responsibilities between the Danish and Estonian financial supervisory authorities is supported by the joint statement by the two supervisory authorities of 28 May 2018.<sup>6</sup>

---

<sup>6</sup> "Joint Statement by the Estonian FSA and the Danish FSA", dated 28 Maj 2018. The statement is available at the website of the Danish Financial Supervisory Authority.

---

According to the statement, the two supervisory authorities share the understanding that, as a general rule, the prudential supervising activity for cross-border operating banks lies with the financial supervisory authority of the home country.

At the same time, it follows from the joint statement that pursuant to the Fourth Anti-Money Laundering Directive the responsibility for supervising compliance with anti-money laundering rules by a branch rests with the supervisory authority of the host country, whereas the responsibility for supervising compliance with anti-money laundering rules at group level rests with the supervisory authority of the home country.

The joint statement does not consider whether the matter should be viewed differently on the basis of the Third Anti-Money Laundering Directive. As seen above, it is my opinion that the same distribution of powers in relation to the specific supervision of branches applied under the Third Anti-Money Laundering Directive.

### **3.2 The supervision of compliance with policies etc. at group level**

As mentioned above, supervision at group level is not considered separately in the Third Anti-Money Laundering Directive, and the question thus remains whether the Danish Financial Supervisory Authority, due to its obligation to supervise the bank's Danish parent at group level, was nevertheless the competent supervisory authority to address breaches of anti-money laundering rules in the Estonian branch.

It is my opinion that the overall distribution of responsibilities, common to both the Third and the Fourth Anti-Money Laundering Directives, is such that the supervision of branches concerning money laundering matters rests with the local financial supervisory authority. The reasons for this according to recitals 52 and 53 of the Fourth Anti-Money Laundering Directive are that precisely a local supervisory authority is required in order to be able to control specific breaches of anti-money laundering law.

It is expressly stated in recitals 52 and 53 that the national supervisory authority is the competent authority, and it is also emphasised that undertakings are obliged to comply with the anti-money laundering rules of the country in which their branches are situated. Accordingly, the powers of the Danish Financial Supervisory Authority are not deemed to include addressing specific breaches committed by the bank's Estonian branch directly with the bank itself. This would be in breach of the principle that the supervision of compliance with anti-money laundering rules is territorial, and would imply a double supervisory obligation for the same matter.

The rule that the home country's supervisory authorities are responsible for supervising the compliance by branches with policies etc. at group level was not introduced until the Fourth Anti-Money Laundering Directive.

---

---

Hence, a similar provision did not apply at the time of the bank's breaches of anti-money laundering rules via the Estonian branch.

The question remains, however, whether the Danish Financial Supervisory Authority was nevertheless obliged, from a group level perspective, to supervise the lawfulness of the practices of foreign branches of Danish financial institutions. This is assessed not to be the case, since the Third Anti-Money Laundering Directive does not grant any real power to the supervisory authorities of the home country. Any active measures on the part of the authorities of the home country are therefore not assessed to be required.

On the basis of the above, it is my conclusion that the supervision of a branch's compliance with anti-money laundering rules rests with the local financial supervisory authorities, i.e. the supervisory authorities of the host country. In the matter at issue this means that the Estonian financial supervisory authority is responsible for supervising the Estonian branch's compliance with the anti-money laundering rules in Estonia. This follows from the territorial delimitation of the anti-money laundering rules. At the same time, pursuant to the Fourth Anti-Money Laundering Directive, the Danish Financial Supervisory Authority, in its capacity of supervisory authority of compliance at group level, is responsible for supervising that the requirements for anti-money laundering policies etc. are complied with.

If it should come to the attention of the Danish Financial Supervisory Authority that the anti-money laundering rules were not appropriately complied with at a group level, so that this had a spillover effect on the compliance with the rules by the bank's foreign branches, this would entail an obligation on the part of the Danish Financial Supervisory Authority to report to the competent supervisory authority of the relevant bank's branch, see recital 52 of the Directive.

As for the money laundering matter at issue, which concerns events that occurred in the period *before* the adoption of the Fourth Anti-Money Laundering Directive, the anti-money laundering law in force at the time did not include such supervisory obligation at group level on the part of the supervisory authority of the home country. Pursuant to the anti-money laundering rules then in force, the Danish Financial Supervisory Authority was not obliged to address matters relating to the bank's Estonian branch, including in relation to the content or enforcement of money laundering policies etc.

If a similar matter should occur today, the Danish Financial Supervisory Authority would due to its supervisory obligation at group level be obliged to notify the national supervisory authorities of any matters at group level that may affect compliance by foreign branches with local anti-money laundering rules, if the Danish Financial Supervisory Authority should be in possession of such information.

---

—————  
Copenhagen, 7. januar 2019  
Kammeradvokaten

Peter Hedegaard Madsen  
- *Attorney, Partner*

**P R E S S E M E D D E L S E**

28 May 2018

J.nr.

/SMC

**Joint statement by the Estonian FSA and the Danish FSA**

The Estonian financial supervision and resolution authority Finantsinspektsioon and the Danish FSA in this statement express their shared understanding of the supervisory responsibilities between the two regulators, as a response to numerous respective inquiries from media.

According to the European Union banking directives, as a general rule, the prudential supervising activity for cross-border operating banks lies with the Financial Supervisory Authority of the home country.

According to the European AML regulation, specifically section 48 in the Fourth European AML Directive, AML measures are supervised by the competent authorities of the host country. Where the bank operates establishments in another Member State, the competent authority of the home Member State is responsible for supervising the obliged entity's application of group-wide AML/CFT policies and procedures. The competent authority of the home Member State should cooperate closely with the competent authority of the host Member State and should inform the latter of any issues that could affect their assessment of the establishment's compliance with the host AML/CFT rules.

As an example of the division of the supervisory responsibilities, the Danish FSA has recently conducted an investigation into Danske Bank's management and control related to the branch in Estonia, whereas Finantsinspektsioon of Estonia has conducted investigations on AML organization and compliance within Danske Bank's Estonian branch. In Estonia and Denmark, criminal law matters with regard to money laundering, terrorist financing and respective criminal procedure is decided and carried out by police and public prosecutor. Finantsinspektsioon and the Danish FSA are not national FIUs either. Financial supervisory authorities concentrate on prudential and conduct of business supervision of financial intermediaries, according to applicable law.

Finantsinspektsioon and the Danish FSA are both committed to perform their respective supervisory duties and to collaborate and share information.

FINANSTILSYNET  
Århusgade 110  
2100 København Ø

Tlf. 33 55 82 82  
Fax 33 55 82 00  
CVR-nr. 10 59 81 84  
finansstilsynet@ftnet.dk  
www.finanstilsynet.dk

ERHVERVSMINISTERIET

**Contact:** Søren Møller Christensen  
**Direct telephone no.:** +45 33 55 82 99

The Board of Directors and the Executive Board of  
Danske Bank A/S

Sent by e-mail  
cc Danske Bank's auditors

3 May 2018

Ref. LS

J.nr. 529-0002

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

## **Danske Bank's management and governance in relation to the AML case at the Estonian branch**

FINANSTILSYNET  
Århusgade 110  
2100 København Ø

Tlf. 33 55 82 82  
Fax 33 55 82 00  
CVR-nr. 10 59 81 84  
finansstilsynet@ftnet.dk  
www.finanstilsynet.dk

This report contains the Danish Financial Supervisory Authority's (the Danish FSA's) assessments of the role of Danske Bank's management and senior employees in the AML case at the bank's Estonian branch. The Danish FSA has thus assessed whether the rules on management and control of the bank and other relevant Danish rules have been complied with.

ERHVERVSMINISTERIET

The Danish FSA has not, however, assessed compliance with rules on measures to prevent money laundering (AML measures). This is so because, pursuant to EU regulation, the Estonian FSA supervises compliance by branches in Estonia with those rules.

The decision has been submitted to the governing board of the Danish FSA.

The assessments are based on the material that the Danish FSA has received from the bank and from former Executive Board members in the bank and on the bank's reply to questions from the Danish FSA. The inspection was begun following stories in the media about the Azerbaijani case in September 2017. The process regarding material and replies is further described in section 3 below.

In its description relating to the knowledge, actions and omissions of individual persons, the Danish FSA has balanced, on the one hand, the consideration that the individuals have an interest in not being assessed independently in connection with a case to which they are not a party with a party's authorities and, on the other hand, the need for the basis for orders and reprimands issued to the bank to be sufficiently clear, also in view of the societal implications of the case.

Technically, some payments were executed via the bank's central systems in Copenhagen. But as customer relations and all other matters relating to the execution of the transactions according to the bank were the responsibility of the branch in Estonia, the technical execution of the transactions is not considered further in this decision.

The bank's Board of Directors and Executive Board have stated that the bank has launched two investigations and that until the investigations have been completed, the Board of Directors' and the Executive Board's replies to specific questions about past activities in Estonia will necessarily be incomplete.

The Danish FSA has assessed whether there are grounds for bringing actions under the fit and proper rules against the bank's current members of management and staff. On the available basis, the Danish FSA does not consider that there are sufficient grounds for bringing such actions.

The bank's ongoing investigations may bring new information to light, which may lead to new assessments and supervisory reactions.

The report is divided into the following sections:

1. Substance of the case and the Danish FSA's assessments
2. Orders and reprimands
3. The Danish FSA's review of material and replies from the bank
4. Complaint instructions

The inspection gives rise to eight orders and eight reprimands. However, the Danish FSA recognises that the bank has made various improvements in the AML and compliance areas in recent years.

The bank has stated that it has increased the number of employees working with AML in the first and second lines of defence from less than 200 to 550 last year and nearly 900 today. Among other things, the bank has also expanded and updated internal AML training, worked to strengthen the compliance culture and made considerable investments in IT in the area.

## **1. Substance of the case and the Danish FSA's assessments**

Danske Bank has historically not lived up to its obligations in the AML area. This was the conclusion of the Danish FSA's inspection of the area in respect of the bank's Danish activities in 2012. The inspection now made of the role of the bank's management and governance in relation to the AML case at the

Estonian branch has uncovered more serious problems. The problems identified relate in particular to the Estonian branch.

The majority of Danske Bank customers with relations to the Moldova case (the Russian Laundromat Case), which surfaced in the media in March 2017, became customers of the Estonian branch in the years 2011-2013. In the period up until June 2012, the bank's current CEO was the person on the Executive Board responsible for the branch. Subsequently, the head of Business Banking as a new member of the Executive Board took over the responsibility.

The branch had high earnings on Russian and other non-Baltic customers (non-resident customers), whose total volume of payments through the branch was very considerable. For example, 35% of the profit in the branch in 2012 was generated by Russian customers, who made up 8% of the customer base. Up until June 2013, employees at the bank considered having the bank initiate similar businesses with non-resident customers in the branch in Lithuania, but the Executive Board rejected these plans. In July 2013, following a dialogue with the bank, one of the Estonian branch's two correspondent banks for USD payments terminated its cooperation with the branch due to concerns about the branch's non-resident customers.

From the end of 2012 to November 2013, Danske Bank did not have a person responsible for AML activities as required by the Danish Anti-Money Laundering Act. The Danish FSA was not notified of this until February 2018 and then as a result of the Danish FSA's supplementary questions. The Board of Directors and the Executive Board have stated that in practice, the head of Group Compliance & AML, who reported to the bank's CFO, was the person responsible for AML activities.

The bank had and has organised its management using three so-called lines of defence. The first line of defence is the business itself, which must ensure correct, legal and expedient operations. The second line of defence is a risk management function that is to identify and mitigate risks and a compliance function that is to check compliance with rules. Finally, the third line of defence is the internal audit department, which monitors whether the first and second lines of defence identify the problems. Management receives reporting from the three lines of defence on an ongoing basis.

The Board of Directors and the Executive Board have stated that when assessing the Board of Directors' and the Executive Board's work and the volume of written material that the members of the two boards receive, it should be taken into consideration that the branch in Estonia accounts for only a small part of the total business and total risks. They have argued that because of this, management must to a large degree rely on the defence systems in



place to function. When information about the business and the effectiveness of defence systems of a worrying nature comes to light, management attention must, however, increase.

At the end of 2013, the branch's assets made up about 0.5% of the group's total assets, while profit before impairments made up about 2.0% of group profit before impairments for the year 2013.

In respect of the Estonian branch, there were deficiencies in all three lines of defence. The first line of defence at the branch did not focus on efficiently combating money laundering despite the significant number of high-risk, non-resident customers. This was not identified by the first line of defence at Business Banking in Copenhagen, which received a number of reports stating that the branch complied with the rules. The second-line integration of the Baltic units into the Group's risk management, including monitoring and reporting, was weak. AML at the branches in the Baltic countries was not mentioned as a compliance risk in the bank's management reporting. The third line internal audit formed part of Group Internal Audit (GIA). The integration of the branch's internal audit department with GIA was also inadequate.

Several documents show how management in Copenhagen did not integrate the Estonian branch in the bank's risk management and control systems, but instead allowed the branch to operate with significantly different risk exposure and to a large extent, the branch itself conducted controls. This appears, for example, from a comment made by the head of Baltic Banking on Audit Letter of 1 April 2014 from GIA. GIA stated that

*"Group Risk Management has confirmed that the exception allowing Estonian Branch to grant FX lines to non-residents solely on cash collateral is not in force since the approval of Group Credit Policy in May 2013."*

The head of Baltic Banking had the following comment:

*"Estonian branch was let to know about new Credit Policy (from May 2013) only on 29 October and with notion that it is not for the circulation/implementation. New draft policies for BB/Baltics have now arrived (31/3/2014) but still wait for formal implementation. Further, the credit staff here has not been informed that the exemption not to have financial statements has been revoked."*

The reason for his comments on the credit policy was that the bank's Executive Board had previously permitted the Estonian branch, on the basis of cash collateral, to establish foreign exchange lines for non-resident customers without having any knowledge about the individual customer's financial situation. Yet it was a condition that the branch made an extended due diligence

investigation of the customer in relation to the customer's companies and ownership structures. This appears from GIA's audit report of 10 March 2014.

In addition, the branch's second and third lines of defence were organised in such a way that in practice, they reported to the branch CEO and thus were not sufficiently independent.

The bank's Board of Directors and Executive Board argue in their reply to the Danish FSA that such a simultaneous breakdown of all three lines of defence is a risk that must be considered to have low probability from a management perspective.

However, because of inadequate independence, the organisation was ineffective. The subsequent increase in resources allocated to the compliance area also shows that the bank increased its AML efforts too late.

In 2007 and 2009, the Estonian FSA conducted AML inspections, but the Board of Directors and the Executive Board have stated that they are not aware of the extent to which the conclusions of these reports have reached management in Copenhagen.

The termination by one of the branch's two correspondent banks of its cooperation with the Estonian branch in July 2013 due to concerns over the non-resident portfolio led to a review of the activities at the branch. The review was performed by the Estonian/Baltic management and involved employees from the head office in Copenhagen. The review led to Danske Bank's Executive Board and the employees involved expecting a decision to reduce the non-resident portfolio, however, the Executive Board did not make any decisions about changes to the activities prior to the receipt of a whistleblower report in December 2013.

The correspondent bank was replaced by another bank, which already acted as correspondent bank for other parts of the Danske Bank Group.

In December 2013, senior employees at the bank received a whistleblower report about AML issues in relation to a customer in the Estonian branch's non-resident portfolio, that is, Russian and other non-Baltic customers.

The whistleblower, who held a key position at the branch, underlined that he felt he had no option but to approach senior group employees directly because the credibility of the branch could be questioned:

*"It is not appropriate to raise these issues within the branch due to their serious nature, that it is unclear at what level in the branch there was knowledge*

*of the incident and because of a general problem regarding confidentiality in the branch.”*

Specifically, the case involved a company incorporated in the UK as a limited liability partnership company (LLP). The whistleblower stated that during the summer of 2012, he became aware that the customer was providing false information about balance sheet items etc. to the UK Companies House, the UK equivalent of the Danish Business Authority. At the close of the annual financial statements at the end of May 2012, the customer had stated that the company was a “dormant” company. In fact, the company had deposits of USD 965,418 with the branch at the end of May 2012 and had an extensive transaction history.

The whistleblower stated that he had disclosed this information to the account manager and to the compliance officer at International Banking, who both worked at the branch, and who would arrange for the matter to be rectified. The company had to submit an adjusted report. The branch head of International Banking was on holiday, but the whistleblower briefed him on his return.

In his report, the whistleblower stated that he recently discovered that the adjusted report was clearly erroneous too since the adjusted accounting figures showed cash holdings of about USD 25,000 and not the amount of USD 965,418 deposited in the account at the end of May 2012. Among other things, it was this information that led the whistleblower to submit his whistleblower report.

The whistleblower himself emphasised the following problems:

- *“The bank knowingly continued to deal with a company that had committed a crime (probably there is some tax fraud here too)*
- *An employee of the bank co-operated with the company to fix the ‘error’*
- *The bank continued dealing with the company even after it had committed another crime by submitting amended false accounts*
- *The bank in the first place managed to open an account for a dormant company - quite an achievement.”*

He summed it up as follows:

- *“The bank may itself have committed a criminal offence*
- *The bank can be seen as having aided a company that turned out to be doing suspicious transactions (helping to launder money?)*
- *The bank has likely breached numerous regulatory requirements*
- *The bank has behaved unethically*
- *There has been a near total process failure.”*

Despite knowledge of the customer's incorrect financial reporting, the branch maintained the customer relationship for more than one year. According to the whistleblower, it was not until September 2013 that the branch's AML unit decided that the customer relationship had to be terminated and reported to the local authorities because of the potential risk of money laundering, which it was.

The whistleblower wrote as follows in this respect:

*"I asked the Deputy Head of International Banking, [omitted], what the reason for the closure was. He said that it was due to:*

- *suspicious payments just under compliance control limits*
- *the bank not knowing properly who the beneficial owners were - apparently it was discovered that they included the [omitted]*
- *the beneficial owners having been involved with several Russian banks that had been closed down in recent years.*

*(I doubt it will be formally documented as such though)."*

Subsequently in January 2014, the whistleblower made accusations in relation to three other customers of the branch, and he later submitted extensive descriptions of significant issues at the branch, including issues relating to the branch management and business model.

After the whistleblower report, the Danske Bank Group's internal audit department (GIA) conducted several AML audits at the branch in the first six months of 2014, and these audits confirmed significant AML deficiencies as pointed out by the whistleblower. In the audit letter of 7 February 2014, GIA thus had these conclusions, among others:

- Some customers had companies that existed for less than two years in order to be able to avoid submitting financial statements.
- The corporate structures were complicated with activities in countries of the former Soviet Union and companies in other countries, including tax havens.
- The beneficial owners of companies that were customers of the branch were not known by the bank, or were known but not registered in the relevant systems of the branch.
- Branch management stated that the reason for the lack of identification of the beneficial owners was that the customers could experience problems if Russian authorities requested information.
- The branch cooperated with nine unregulated Russian intermediaries on customers' payments out of Russia. In this connection, as part of

the transactions, the branch bought Russian bonds and entered into foreign exchange transactions with the intermediaries.

In the period after the whistleblower report, there were several indications that members of the management and/or employees of the branch were colluding with non-resident customers in criminal activities or, at least, knew of such activities. The bank did not, however, investigate this, and there were no managers or employees who were dismissed or relocated because of such a suspicion.

In consequence of the whistleblower report and GIA's Audit Letter of 7 February 2014, on the same day, the bank established a work group consisting inter alia of two members of the Executive Board, the head of GIA and the person responsible for compliance and AML. The work group immediately decided to shut down the cooperation with Russian intermediaries and not to accept any new non-resident customer relationships until an independent assessment of the area had been made. However, the customer relationships of the existing non-resident customers continued for some time.

On the basis of GIA's audit of a limited number of customers, the work group decided to launch an investigation by an external third party. [Omitted] therefore reviewed the branch's AML procedures from February through April 2014. The consultancy firm's report identified 14 critical deviations and 9 significant deviations between branch practice and applicable rules/best practice.

The head of Business Banking, who was responsible for the Estonian branch on the Executive Board, informed the Executive Board and Board of Directors of the observations made by GIA and the consultancy firm. The slides he had prepared for the Board of Directors meetings significantly toned down the AML issues, but the Board of Directors and the Executive Board have stated that it should be taken into account that the slides were neither shared nor used. According to minutes from meetings of the Board of Directors and the Board of Directors' Audit Committee as well as the Executive Board, there were no comments of significance to his presentation nor to the more critical assessments of AML in the Baltic countries in the audit report and reporting from Group Compliance & AML. However, at a meeting, a member of the Board of Directors emphasised the need for close monitoring in regions such as the Baltic countries and Russia and that the bank should adopt a positive approach towards whistleblowers. Members of the Board of Directors and the Executive Board have also stated that there were comments of significance not mentioned in the minutes.

In May 2014, the bank was going to engage an external company to examine and conclude on the whistleblower's accusations of considerable problems at

the branch. However, three Executive Board members involved assessed that an internal examination would be sufficient, and it was to a large degree carried out by the person responsible for AML activities who was also head of Group Compliance & AML.

According to the material received by the Danish FSA, the investigation was of a general nature. There was thus significant information from the whistleblower that the person responsible for AML activities or others failed to follow up on or did not sufficiently follow up on, and as of today, the Board of Directors and the Executive Board do not have an overview of how the report was handled. The Danish FSA finds, among other things, that it is worthy of criticism that the bank did not follow up on all of the whistleblower's statements about the customers of the Russian intermediaries.

On the basis of the material received, it is not possible to assess whether the whistleblower himself was involved in illegal or other unwanted activity at the branch to any wider extent, and whether, for this or other reason, he wanted to pass on incorrect information. It quickly turned out, however, that he was right in respect of some of his serious accusations. There is also nothing in the material to show that the bank suspected at the time that he wanted to provide incorrect information. Consequently, the head of Business Banking, as the Executive Board member responsible for the branch, as member of the work group and as one of the contact persons of the whistleblower, should have ensured that follow-up was better and that a better overview was acquired.

It was the branch itself that followed-up on GIA's and the consultancy firm's comments with a review of the knowledge at the branch about the non-resident customers and their activities. It should have been a more extensive investigation, and it should not have been carried out by the branch itself.

At the request of the bank's CEO, the person responsible for AML activities in May 2014 prepared a plan to give the AML area a lift at the Baltic units. The plan was presented to the Executive Board by the head of Business Banking and the bank's CFO, who was also the person on the Executive Board responsible for compliance and AML activities. The plan and the branch's own review did not solve the significant problems at the branch.

In March 2014, GIA had given a series of recommendations that were to be applied by the branch in the review of the non-resident portfolio. The consultancy firm had given similar recommendations in April 2014. At a new audit in June 2014, when the review of the customers was ongoing at the branch, GIA, however, came across a number of customers who, despite having been reviewed and reassessed by the branch according to GIA's recommendations, should not have been accepted as continuing customers of the branch.

According to the bank's Board of Directors and Executive Board, the branch's review, completed towards the end of 2014, led to the termination of 853 customer relationships.

In a GIA draft audit report of 10 March 2014, GIA recommended an investigation into earlier transactions made by the customers of the branch. That recommendation was not included in the final version of the audit report. The bank did not initiate an investigation into the transactions until September 2017, and did not until November 2017 initiate an investigation into the course of events and into whether managers or staff had sufficiently lived up to their responsibilities. In December 2017, the bank hired a law firm to handle and supervise the investigations. The work of investigating the non-resident customers and transactions is carried out by the bank's Compliance Incident Management Team and the head of the team, who took up the position with the bank on 1 January 2018.

In March and June-July 2014, the Estonian FSA conducted AML inspections at the branch and was very critical in its reporting. From the translation made by the bank of the Estonian FSA's preliminary report, it appears, among other things, that the Estonian FSA in its hearing of the bank in September 2014 concluded that the branch

- systematically accepted customers sharing many characteristics which caused suspicion of money laundering
- showed inadequacies in relation to identification of the origin of the customers' funds and accepted that it could not live up to its obligation to obtain this information
- contrary to the rules had made customers terminate their business relationships without notifying the Estonian Financial Intelligence Unit (FIU), a body equivalent to the Danish Public Prosecutor for Serious Economic and International Crime (SØIK)
- focused more on its earnings than on its obligations pursuant to AML rules, even though the branch operated in an extremely high-risk customer segment concerning AML risks
- did not comply with its own AML guidelines and wrongfully assessed that this was in compliance with legislation

Against this background, on 25 September 2014, a senior employee sent an e-mail to other senior employees at Group Legal and Group Compliance & AML:

*"The executive summary of the Estonian FSA letter is brutal to say the least and is close to the worst I have ever read within the AML/CTF area (and I have read some harsh letters). Besides being harsh, the letter also has a slight sarcastic tone, which is not a good sign (this may be the translation).*

*I know we have a meeting on Friday, but I would like to check with you already now if business plan to notify/inform [omitted] and [omitted]. I beleive this should be done asap and preferably by business them selves. If not I of course will inform them.*

*[Omitted]and I will discuss next steps from an AML perspective (further controls/remediation) and the need to send someone down there to support, however if just half of the executive summary is correct, then this is much more about shutting all non-domestic business down than it is about KYC procedures. I know this is in progress, but we should move much faster than 100 customer groups per month.”*

The Estonian FSA's draft report was discussed at an Executive Board meeting on 7 October 2014. Among the participants were the bank's CEO, CRO and CFO, the head of Business Banking, the head of Group Legal and the new person responsible for AML activities and head of Group Compliance & AML. The minutes of that meeting include the following paragraph:

*“The Bank has recently received a drafted report from the Estonian FSA where they point out significant challenges regarding non-resident customers. According to [omitted], there was no cause for panic as the findings have been addressed in the ongoing process improvement. [Omitted] will travel to Estonia and assist the Estonian organisation.”*

As with GIA's and the consultancy firm's observations, the Estonian FSA's critical conclusions were thus still toned down in the minuted discussions of the Executive Board and in written internal reporting to the Board of Directors.

In the bank's annual AML report for the period from October 2013 to September 2014, Group Compliance & AML underlined the AML challenges faced by the bank, for example in Estonia. The report was submitted to the Board of Directors' Audit Committee on 24 October 2014 and to the Board of Directors on 28 October 2014. The report stated the following about the AML issues in Estonia:

*“Internal Audit has issued audit reports in 2014 related to the Baltic countries requiring immediate efforts to improve the quality of especially the processes for non-resident customers. In cooperation with local management Group AML will initiate efforts to ensure that improvements and alignment to Group standards will be obtained. This work has started in Estonia in late August 2014. Furthermore Danske Bank, Estonia has most recently received a drafted report from the Estonian FSA, where they point out significant challenges regarding non-resident customers.”*



*“In the beginning of 2014 Internal Audit issued critical AML reports in the Baltic countries, especially related to Estonia and Lithuania. These reports revealed that there are still major issues to be solved outside the scope of the AML/KYC project. The audit recommendations will be handled on an ongoing basis along with the findings from a Gap analysis performed by [omitted] in Estonia in April 2014 on non-resident customers. Furthermore, an alignment of the Group solutions outside the Nordic countries and UK is now being prepared as a separate task along with a comprehensive Gap analysis of the existing procedures compared to the “Best-in-Class” requirements. Group AML has performed the first review in Estonia and drawn up an agreed plan together with local management of relevant improvements and alignment needed. The next step will be to perform a Gap-analysis in Lithuania and Latvia.”*

*“The Estonian FSA has completed an inspection on the topic “Analysis of the activities of the FIU contact person”. A drafted report was received in September 2014 and an extract has now been translated into English. The drafted report is very critical and confirms the findings reported by Internal Audit and [omitted] regarding non-resident customers. The inspection is based on the facts as per 31 December 2013 and therefore do not take into account the work performed in 2014.”*

The Baltic strategy was discussed in general terms twice by the Board of Directors in 2014. The bank's earnings in Estonia were high due to very high earnings on the non-resident portfolio with very low capital expenditure. The low capital expenditure was due to the fact that the credit risk associated with the non-resident portfolio was very low, among other things because a large part of the business volume was made up of payments and the fact that customers provided collateral in the form of deposits.

The profit before impairment charges from the non-resident portfolio in Estonia in 2013 made up DKK 325 million, equivalent to 99% of the profit before impairment charges in Estonia and 77% of the total profit before impairment charges in the Baltic units. The non-resident portfolio provided a return on allocated capital (ROAC) of 402% on the customer segment and a total ROAC for the branch of 60%. For the branches in Lithuania and Latvia, in 2013, the ROAC was 16% and 7%, respectively.

In the material used for the presentation by the Executive Board to the Board of Directors of the strategy, it was proposed to scale down this part of the business as a result of the money laundering risk associated with the segment, and a reduction of the non-resident portfolio was begun. The reduction in earnings as a result of this was expected to be significant.

At the strategy seminar in June 2014, the bank's CEO indicated to the Board of Directors that a speedy close-down of the Baltic activities would reduce the value in case it was to be sold without indicating that this was not a relevant consideration in relation to the non-resident portfolio. ("Further, [omitted] found it unwise to speed up an exit strategy as this might significantly impact any sales price.") Also, it was not drawn to the Board of Director's attention that it was important, in view of the major issues regarding AML handling, to close down the non-resident portfolio quickly and report suspicious transactions to the relevant authorities.

The minutes of meetings of the Board of Directors and the Board of Directors' Audit Committee show that the board members were interested in the branch's earnings, while the minutes have not recorded any comments on the significant AML challenges. Thus, in all of 2014, no comments of significance from members of the Board of Directors and of the Audit Committee on AML at the Estonian branch are recorded in the minutes of their meetings, neither when information about AML issues at the branch was presented in long-form audit reports, in reports from Group Compliance & AML, or in presentations from the Executive Board. As mentioned above, however, at a meeting, a member of the Board of Directors emphasised the need for close monitoring in regions such as the Baltic countries and Russia and that the bank should adopt a positive approach towards whistleblowers. Members of the Board of Directors and the Executive Board have also stated that there were comments of significance not mentioned in the minutes.

After having initially attempted to improve AML measures at the Baltic units, including the branch's review of customers in 2014, the Executive Board decided to close down the non-resident portfolio, potentially by selling all or some of it. The intention was for the Board of Directors to make a decision, but in connection with the Board of Directors' other decisions in October 2014 regarding the strategy for the Baltic units, the decision regarding the non-resident portfolio was deferred until January 2015 at the latest, that is, one and a half years after the termination by one of the branch's correspondent banks of its business relations with the branch and more than a year after whistleblower report.

In January 2015, the Board of Directors did not make a decision, but noted the Executive Board's expected close down of the part of the non-resident portfolio that related to customers who did not have personal or business-related links to the Baltic countries. Another year passed before, in January 2016, the close down was completed despite being accelerated in the third quarter of 2015 as a result of pressure from the Estonian FSA and another correspondent bank's termination of its cooperation with the branch due to concerns over the branch's non-resident customers.

It took more than one and a half years from the whistleblower report until the branch management was replaced after pressure from the Estonian FSA. According to information received by the Danish FSA, the choice of the new branch CEO was made without the Board of Directors or the Executive Board taking into consideration his previous activities in relation to the non-resident portfolio and despite the fact that he had worked together with the other members of the former branch management. This should be viewed in light of the fact that it was standard procedure at the bank that decisions regarding branch CEOs were made without involving the Board of Directors or the full Executive Board.

According to the material received by the Danish FSA, the bank's CRO was aware that the bank could be under an obligation to inform authorities in Estonia, Denmark and the UK. But the person responsible for AML activities did not consider it necessary to provide such information.

The bank did not provide information to the Danish FSA until January 2015, as the bank expected that the Danish FSA would be informed of the Estonian FSA's critical assessments.

At least four members of the bank's Executive Board, the head of Business Banking and the bank's CRO, CFO and CEO each had received information saying that there were problems in Estonia, including that it was not only a question of deficient processes, but that there were also suspicious customers. A review at the branch of the knowledge about the customers and their activities was launched, but the branch's own follow-up proved inadequate. Thus, the bank failed to initiate an adequate investigation into the extent of suspicious transactions and customer relationships due to the inadequate handling of AML at the branch in order to contain the damage and notify the authorities, which was also not done in connection with the consultancy firm's investigation in February-April 2014.

It does not appear from the material received by the Danish FSA that any further considerations were made as to whether the bank might be under an obligation to investigate the extent of suspicious transactions or customer relationships and notify the authorities. There was, however, as previously mentioned, a recommendation for an investigation in a draft audit report from GIA, but the recommendation was not included in the final version of the audit report of March 2014.

The lack of considerations also applies to the person responsible for AML activities, who was also head of Group Compliance & AML, to the head of Group Legal and to the person responsible for these areas at Executive Board level. Thus, they had no documented considerations of how the bank could

best contribute to mitigating the consequences of its involvement in the potential criminal activities of customers.

In April 2017, the bank hired [omitted] to investigate why the bank's controls had failed. However, the investigation did not cover the extent of suspicious transactions and customer relations. It is the Danish FSA's assessment that there is a discrepancy between the mandate issued to the company and the company's reporting to the bank after the investigation. The mandate thus required a detailed analysis of what went wrong in terms of AML at the branch in Estonia, however, the report became forward- looking and generalised.

As mentioned, it was not until September 2017 that the bank initiated an investigation into the extent of suspicious transactions and customer relationships due to the insufficient handling of AML at the branch, and in December 2017, the bank retained an external law firm to handle and supervise the investigation, that is, not until four years after the whistleblower report and after external pressure on the bank.

In May 2015, one of the branch's two correspondent banks informed the bank that it no longer wanted to assist in transactions with British companies controlled by the branch's Russian customers.

The other of the two correspondent banks terminated its cooperation with the branch in September 2015 due to concerns over the branch's non-resident customers. In that connection, a senior employee from the correspondent bank in question assessed that out of ten non-resident customers from the Estonian branch, the correspondent bank would be comfortable only with servicing one given the customers' characteristics. The employee also warned Danske Bank against Moldovan customers and customers transferring money to Moldova. The Danish FSA has not received material showing that Danske Bank investigated those of its customers that had relations to Moldova on the basis of this. The bank has stated that it was not until spring 2017, following the root cause analysis made by [omitted] for the bank, that the bank became aware that customers and transactions from the branch's non-resident portfolio were included in a published report on the Russian Laundromat of August 2014.

At the hearing on the Panama Papers in the Danish Parliament's Fiscal Affairs Committee in April 2016, the bank's preliminary investigations had uncovered only seven customers with companies registered by the Panamanian law firm Mossack Fonseca, and that all seven customers had come from other banks subsequent to the customers' contact with the law firm. The bank later had to state that the Estonian branch had had more than ten times as many customers with companies established by Mossack Fonseca.

GIA's and the consultancy firm's examinations in January to April 2014 showed significant AML problems, but the bank did not inform the Danish FSA of the problems. This should have been viewed in light of the fact that in 2012 and 2013, the Estonian FSA contacted the Danish FSA about possible AML issues at the branch, and that senior employees of Group Legal and Group Compliance & AML therefore sent detailed descriptions of the branch's AML measures to the Danish FSA. According to these descriptions, which the Danish FSA passed on to the Estonian FSA, the branch had adequate AML procedures. In early 2014, it should have been clear to some Executive Board members and other senior employees that the business procedures were not followed and that the bank's detailed information from 2012 and 2013 to the Danish FSA and the Estonian FSA therefore was misleading. It must also have been clear to them that this was an area of significance to the supervisory authorities.

Group Compliance & AML, the person responsible for AML activities, Group Legal and the bank's CFO, who was the person on the Executive Board responsible for the area, did not themselves initiate adequate activities in relation to AML in Estonia, neither before nor after the whistleblower report in December 2013. They only monitored investigations made by GIA, the consultancy firm and the branch's own review of the portfolio.

Among other things, they did not consider, as they should have, looking into how the bank could best mitigate the consequences that its involvement in customers' potential criminal activities could have had, including by examining the need for further reporting of suspicious transactions to the relevant authorities.

Neither did they question the first line of defence's failure to investigate or handle managers and employees involved in the case.

The Chief Audit Executive failed to ensure that the Executive Board provided adequate written reporting on AML at the branch to the Board of Directors and the Board of Directors' Audit Committee, nor did he make the Board of Directors and the Audit Committee aware of the insufficiencies of the reporting.

Thus, potential problems were not adequately reported to the bank's Board of Directors and also were not reported to the Danish FSA.

During 2017, the bank has several times provided information or material about the case to the Danish FSA. As a result of inadequate information being provided to the Danish FSA, the Danish FSA has found it necessary to enquire more than once regarding the same issues in order to receive an adequate reply and to enquire about the bank's knowledge of further cases. This

applies, for example, to the statement of 16 October 2017, when the Danish FSA wrote to the Board of Directors and the Executive Board but received a reply signed by two senior employees. In a few cases, the bank has failed to provide relevant information for which the Danish FSA has asked.

The Danish FSA's review of the case has shown that the Board of Directors', the Executive Board's and the bank's other decision-making processes have not been sufficiently documented through comprehensive written decision-making memos, minutes of discussions and minutes of decisions. Furthermore, assessments of compliance risks have not been sufficiently included in or been given adequate importance in the decision-making processes.

The absence of sufficiently documented decision-making processes has contributed to the bank's Board of Directors and Executive Board not being able to answer questions from the Danish FSA on a number of issues but have referred to the need for further internal investigations. By virtue of the normal discharge of management's responsibilities and tasks, the Board of Directors or the Executive Board ought to have had the information necessary or be able to obtain such quickly. This applies in particular in a case that has attracted considerable external attention since early 2017, and in respect of which the bank has thus had plenty of time to gain an overview of key elements.

The bank's reporting procedures, decision-making processes and corporate culture have failed to ensure that the problems with the non-resident portfolio were sufficiently identified and handled in a reassuring manner. This applies to both the period up until the close down in early 2016 as well as the period since the beginning of 2017.

The bank's management has not ensured sufficient focus on the compliance area and transparency of the issues, nor has it ensured a timely and reassuring handling of potential issues of complying with legislation.

Management's priorities and means of conduct have damaged the credibility and reputation of the bank. Considering the bank's systemic significance and international presence, the reputation of the Danish sector of financial institutions may be damaged as well.

The Danish FSA's review gives rise to eight orders and eight reprimands as stated in section 2 below.

The Danish FSA finds it particularly worthy of criticism

- that there were such significant deficiencies in all three lines of defence at the Estonian branch that customers had the opportunity to use the branch for criminal activities involving vast amounts;

- that it was not until September 2017 that the bank initiated an investigation into the extent of suspicious transactions and customer relationships as a result of the insufficient handling of AML at the branch, that is, more than four years after the termination by one of the branch's correspondent banks of its correspondent bank relations and almost four years after the whistleblower report;
- that with the exception of the termination of the cooperation with Russian intermediaries, the bank deferred the decision to close down the part of the non-resident portfolio that related to customers who did not have personal or business-related links to the Baltic countries until January 2015, and that the close down was not completed until January 2016;
- that the bank's governance in the form of internal reporting, decision-making processes and corporate culture failed to ensure that the problems of the non-resident portfolio were sufficiently identified and handled in a satisfactory way, including by reporting suspicion of criminal activities to relevant authorities. This applies to both the period up until the close down in early 2016 as well as the period since the beginning of 2017;
- that the bank did not inform the Danish FSA of the identified AML issues, even though in early 2014, it should have been clear to some Executive Board members and other senior employees that the information previously provided by the bank to the Danish FSA and the Estonian FSA in 2012 and 2013 was misleading and that it should have been clear to them that the supervisory authorities focused on the area;
- that the bank's information to the Danish FSA since the beginning of 2017 has been inadequate.

Consequently, the case has uncovered serious weaknesses in the bank's governance in a number of areas. On this basis, the Danish FSA finds that the bank is exposed to significantly higher compliance and reputational risks than previously assessed.

In collaboration with the other supervisory authorities involved in supervising the banking group, the Danish FSA will assess the size of a Pillar II increase in solvency need by taking into account the compliance and reputational risks. It is a first estimate on the part of the Danish FSA that as a minimum, a Pillar II add-on should amount to DKK 5 billion, equivalent to approx. 0.7% of the REA (risk exposure amount) at the end of 2017.

## 2. Orders and reprimands

The Danish FSA's assessments of Danske Bank's management and governance in relation to the AML case at the Estonian branch give rise to the orders and reprimands listed below. The rules referred to in the orders and the reprimands are listed at the end of this section.

### Orders:

The Danish FSA issues the following orders to the bank:

1. With reference to section 71(1) of the Danish Financial Business Act and section 2 of the Executive Order on Management and Control of Banks etc., the Danish FSA orders the Board of Directors and the Executive Board to strengthen the Executive Board's governance with regard to competencies in the compliance area and at the same time ensure that on the Executive Board, the area responsibilities for compliance are sufficiently independent of business and profitability interests.
2. With reference to section 124(1)-(2) of the Danish Financial Business Act, the Danish FSA orders the Board of Directors and the Executive Board to reassess the bank's and the banking group's solvency need in order to ensure an adequate internal capital coverage of compliance and reputational risks as a result of weaknesses in the bank's governance.
3. With reference to section 71(1) of the Danish Financial Business Act and section 17(1) of the Danish Executive Order on Management and Control of Banks etc., the Danish FSA orders the Board of Directors and the Executive Board to ensure that when there is suspicion of the bank's managers or employees colluding with customers in criminal activities or knowing of customers' criminal activities, the bank conducts adequate investigations and takes the suspicion into consideration on an ongoing basis when allocating tasks to these managers or employees.
4. With reference to section 71(1) of the Danish Financial Business Act and sections 3(vi) and 8(3) of the Danish Executive Order on Management and Control of Banks etc., the Danish FSA orders the Board of Directors and the Executive Board to strengthen the bank's governance in order to ensure accurate and timely reporting of potentially problematic cases to the Board of Directors and the Executive Board.
5. With reference to section 71(1) of the Danish Financial Business Act and sections 2 and 14(1) of the Danish Executive Order on Management and Control of Banks etc., the Danish FSA orders the Board of Directors and the Executive Board to strengthen the bank's govern-



ance in order to ensure that the basis for decisions as well as discussions at meetings and decisions made are sufficiently documented and that sufficient attention is given to the bank's compliance with applicable legislation.

6. With reference to section 71(1) of the Danish Financial Business Act and section 2 of the Danish Executive Order on Management and Control of Banks etc., the Danish FSA orders the Board of Directors and the Executive Board to assess management and control at the Estonian branch.
7. With reference to section 347(1) of the Danish Financial Business Act, the Danish FSA orders the Board of Directors and the Executive Board to ensure that the bank provides adequate information to the Danish FSA.
8. With reference to sections 71(1) and 347(1) of the Danish Financial Business Act, the Danish FSA orders the Board of Directors and the Executive Board to strengthen their governance in order to ensure sufficient involvement in written replies to enquiries from the Danish FSA to the Board of Directors or the Executive Board.

By 30 June 2018, the board of directors and the executive board must submit a written report to the FSA stating how the bank has ensured compliance with the orders.

Any relevant documentation must be enclosed.

When GIA has reviewed whether the orders have been observed, GIA must inform the Danish FSA of this and provide relevant documentation.

### **Reprimands:**

The Danish FSA issues the following reprimands to the bank.

- a. With reference to section 71(1) of the Danish Financial Business Act and section 8 of the Danish Executive Order on Management and Control of Banks etc., the Danish FSA issues a reprimand in respect of the bank's Executive Board not performing its responsibilities to a sufficient extent when it
  - failed to ensure sufficient focus on AML for high-risk customers at the branch in Estonia and monitoring of the branch at Business Banking in Copenhagen
  - failed to ensure integration of compliance and AML of the Baltic units into the Group functions and to ensure sufficient quality
  - failed to ensure adequate follow-up on the allegations made by the whistleblower and to ensure investigation into suspicions of

- the bank's employees colluding with customers in criminal activities or knowing of customers' criminal activities and relocation of employees under suspicion
- failed to ensure that the Danish FSA was informed of the matter until January 2015
  - failed to adequately notify the Board of Directors of the severity of the case and ensure a prompt close down of the part of the non-resident portfolio that related to customers who did not have personal or business-related links to the Baltic countries.
- b. With reference to section 71(1) of the Danish Financial Business Act and section 3 of the Danish Executive Order on Management and Control of Banks etc., the Danish FSA issues a reprimand in respect of the Board of Directors not performing its responsibility to a sufficient extent when it
- failed, at meetings of the Board of Directors and of the Board of Directors' Audit Committee, to discuss the bank's legislative compliance at the branch in Estonia on the basis of reporting from GIA and Group Compliance & AML or to ensure that such discussions were recorded in the minutes
  - failed to ensure a sufficiently prompt close down of the part of the non-resident portfolio that related to customers who did not have personal or business-related links to the Baltic countries on the basis of reporting received by the Board of Directors from GIA and Group Compliance & AML, and in view of the lack of a decision from the Executive Board (see reprimand a))
- c. With reference to section 24 (1) of the Danish Executive Order on Auditing Financial Undertakings etc. as well as Financial Groups, the Danish FSA issues a reprimand in respect of the Group Internal Audit not ensuring the necessary integration and quality of internal audit in the Baltic units prior to the whistleblower report and for not making the Executive Board ensure that the Board of Directors and the Board of Directors' Audit Committee received adequate reporting of AML in the branch after the whistleblower report, and for not drawing the Board of Directors' and the Audit Committee's attention to the inadequacies.
- d. With reference to section 25(2) of the then applicable Danish Anti-Money Laundering Act, section 17(1) and (2) of the Danish Executive Order on Management and Control of Financial Companies, and section 71(1) of the Danish Financial Business Act, the Danish FSA issues a reprimand in respect of Group Compliance & AML and Group Legal not sufficiently performing their responsibility in connection with AML at the Estonian branch in the period prior to the whistleblower report and in relation to mitigating the consequences of the inadequate efforts in connection with AML.

- e. With reference to section 25(2) of the then current Danish Anti-Money Laundering Act, the Danish FSA issues a reprimand in respect of the bank failing to appoint a person responsible for AML activities from the end of 2012 until 7 November 2013, and for only informing the Danish FSA about this on 7 February 2018 after the Danish FSA had asked the Board of Directors and the Executive Board.
- f. With reference to section 71(1) of the Danish Financial Business Act and section 18(1) of the Danish Executive Order on Auditing Financial Undertakings etc. as well as Financial Groups, the Danish FSA issues a reprimand concerning the inadequacies in all three lines of defence at the Estonian branch up until the whistleblower report in December 2013.
- g. With reference to section 71(1) of the Danish Financial Business Act and section 2 of the Danish Executive Order on Management and Control of Banks etc., the Danish FSA issues a reprimand in respect of the bank not replacing the management in Estonia until more than one and a half years after the whistleblower report.
- h. With reference to section 71(1) of the Danish Financial Business Act and section 2 of the Danish Executive Order on Management and Control of Banks etc., the Danish FSA issues a reprimand in respect of the Board of Directors and the Executive Board not ensuring adequate and timely investigations into conditions at the branch to mitigate the consequences of inadequate AML measures and form a general overview of what had happened. Not until four and a half years after one of the correspondent banks' termination of its correspondent bank relations, four years after the whistleblower report, two and a half years after another correspondent bank's termination of its correspondent bank relations and after external pressure did the bank launch an investigation into the extent of suspicious transactions and customer relations resulting from the inadequate handling of AML measures at the branch.

The Board of Directors and the Executive Board must no later than 30 June 2018 provide the Danish FSA with a written response detailing what the reprimands have resulted in.

### **Legal basis**

The orders and the reprimands refer to the following rules in the Danish Financial Business Act, the Danish Executive Order on Management and Control of Banks etc. (the Danish Executive Order on Management), the Danish Executive Order on Auditing Financial Undertakings etc. as well as Financial Groups, and the Danish Act on Measures to Prevent Money Laundering and Financing of Terrorism (the Danish Anti-Money Laundering Act) applicable until June 2017.

## **The Danish Financial Business Act:**

### Section 71(1):

*“A financial undertaking, a financial holding company and an insurance holding company shall have effective forms of corporate management, including*

- 1) a clear organisational structure with a well-defined, transparent and consistent division of responsibilities,*
  - 2) good administrative and accounting practices,*
  - 3) written business procedures for all significant areas of activity,*
  - 4) effective procedures to identify, manage, monitor and report the risks that the undertaking is or can be exposed to,*
  - 5) the resources necessary for proper carrying out of its activities, and appropriate use of these,*
  - 6) procedures with a view to separating functions in connection with management and prevention of conflicts of interest,*
  - 7) full internal control procedures,*
  - 8) adequate IT control and security measures*
- ...”*

### Section 124(1)-(2):

*“(1) The board of directors and the board of management of a bank or a mortgage credit institution shall ensure that the institution has adequate own funds and has internal procedures for risk measurement and risk management for regular assessments and maintenance of own funds of a size, type and distribution adequate to cover the risks of the institution. These procedures shall be subject to regular internal review to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of the activities of the institution concerned.*

*(2) The board of directors and the executive board of a bank or a mortgage-credit institution must, on the basis of the assessment pursuant to sub-section (1), calculate the individual solvency need of the bank or mortgage-credit institution. The solvency need shall be calculated as the adequate own funds as a percentage of the total risk exposure. ...”*

### Section 347(1):

*“The financial undertakings, financial holding companies, insurance holding companies, mixed- activity holding companies, suppliers and sub-suppliers shall provide the Danish FSA with the information necessary for the Danish FSA's performance of duties. ...”*

## **The Danish Executive Order on Management and Control of Banks etc. (the Danish Executive Order on Management):**

## Section 2:

*“(1) The board of directors and the board of management, respectively, of the undertakings comprised by section 1(1) shall take measures which are sufficient to ensure that the undertaking is adequately operated. The board of directors and the board of management, respectively, shall further consider what measures are adequate for compliance with the provisions. The adequacy of measures will depend on the business model of the undertaking, including ...*

*(3) The board of directors and the board of management, respectively, of the undertakings comprised by section 1(1)(i)(ii) and (iv) which, pursuant to section 308 or 310 of the Danish Financial Business Act, have been designated as systemically important financial institutions (SIFIs) or global systemically important financial institutions (G-SIFIs) shall in their assessment under (1) take into consideration the maintaining of a stable financial sector when assessing the risk management area ...”*

## Section 3:

*“As part of the overall and strategic management of the undertaking, the board of directors shall*

- 1) make decisions regarding the business model of the undertaking, including objectives for the conditions mentioned under section 2(1), nos. 1-5,*
- 2) on the basis of the business model, make decisions regarding the policies of the undertaking, cf. section 4,*
- 3) regularly, though at least once a year, make an assessment of the individual and overall risks taken by the undertaking, cf. section 5, including determine whether these risks are acceptable,*
- 4) assess and make decisions regarding budgets, capital, liquidity, significant transactions, particular risks and overall insurance conditions,*
- 5) assess whether the board of management performs its duties in an adequate manner and in accordance with the risk profile defined, the policies adopted and the guidelines issued to the board of management,*
- 6) make decisions regarding the frequency and scope of reports by the board of management and information provided for the board of directors to ensure that the board of directors has thorough knowledge about the undertaking and its risks, and that the reports are otherwise satisfactory for the work of the board of directors,*
- 7) regularly, and at least once a year, make decisions regarding the individual solvency need of the undertaking, cf. sections 124(2) and 125(4) and section 126a(1) of the Danish Financial Business Act,*
- 8) organise its work such that the management of the undertaking is adequate, cf. annex 6,*
- 9) assess whether the undertaking has an adequate publication and communication process, and*

10) *approve the report which the board of management is obliged to prepare with a calculation and assessment of the liquidity position and liquidity risks of the undertaking, cf. section 8(9)."*

Section 8:

*"(1)The board of management shall be responsible for the day-to-day management of the undertaking in accordance with provisions in legislation, including the Danish Act on Public and Private Limited Companies (the Danish Companies Act) and the Danish Financial Business Act, the policies adopted by the board of directors, cf. section 4, the guidelines issued by the board of directors, cf. sections 6 and 7, and any other oral or written decisions and instructions from the board of directors.*

*(2) The board of management shall ensure that the policies and guidelines adopted by the board of directors are implemented in the day-to-day operations of the undertaking.*

*(3) The board of management shall, upon request from the board of directors, be obliged to disclose information to the board of directors, as well as information assessed by the board of management to be of significance to the work of the board of directors.*

*(4) The board of management shall be obliged to disclose information to the chief risk officer and the person responsible for compliance assessed by the board of management to be of significance to their work.*

*(5) The board of management shall have day-to-day managerial responsibility for ensuring that the undertaking only makes transactions for which the board of management and employees, where appropriate, are able to assess the risks and consequences.*

*(6) The board of management shall approve the procedures of the undertaking, cf. section 13(1), or appoint one or more persons or organisational entities with the necessary specialist knowledge to do so.*

*(7) The board of management shall ensure that instructions are laid down for the initiatives to be implemented in the event of serious operational problems, IT breakdown, other operational problems, as well as the resignation of key employees.*

*(8) The board of management shall approve the guidelines of the undertaking for development and approval of new services and products that may impose significant risks on the undertaking, counterparties or clients, including changes to existing products by which the risk profile of the product is changed significantly.*

*..."*

Section 14(1):

*"The board of management shall ensure that the documentation required for the activities of the undertaking is made available ..."*

Section 17(1)-(2):

*“(1) The undertaking shall have methods and procedures that are suitable to identify and reduce the risk of non-compliance with current legislation applying to the undertaking, market standards or internal regulations (compliance risks).*

*(2) The undertaking shall have an independent compliance function which is to check and assess whether methods and procedures pursuant to subsection (1), and whether the measures taken to address any deficiencies, are effective.”*

**The Danish Executive Order on Auditing Financial Undertakings etc. as well as Financial Groups:**

Section 18(1):

*“The internal audit function shall function independently of the day-to-day-management.”*

Section 24(1):

*“In undertakings and groups with an internal audit function, all auditing shall be carried out in accordance with generally accepted auditing practices and in accordance with an audit agreement between the external auditors and the chief internal auditor. ...”*

**The Danish Act on Measures to Prevent Money Laundering and Financing of Terrorism (the Danish Anti-Money Laundering Act) applicable until June 2017:**

Section 25(2):

*“Undertakings and persons covered by section 1(1) nos. 1-12 shall appoint a person at management level to ensure that the undertaking or person complies with the obligations under this Act, the regulations issued pursuant hereto, the Regulation of the European Parliament and of the Council on the information on the payer accompanying transfers of funds, and regulations containing rules on financial sanctions against countries, persons, groups, legal entities, or bodies.”*

**3. The Danish FSA's review of material and replies from the bank**

The Moldovan case came into the media spotlight in March 2017. Thus, at its request, the Danish FSA, in April 2017, received from the bank a copy of a substantial volume of material regarding AML at the bank's Estonian branch in the period from 2011 to 2015. The material had been selected by the bank on the basis of an assessment of what was relevant to shed light on the case. It concerns the Board of Directors, the Board of Directors' Audit Committee,

the Executive Board, audit reports, compliance reports and interaction with the Danish FSA and the Estonian FSA.

As a result of the media coverage of the Azerbaijani case in September 2017, the Danish FSA assessed that an actual investigation into the bank's Estonian branch was required. Therefore, on 25 September, the Danish FSA asked the bank's Board of Directors and Executive Board for a written statement about this case and more generally about AML handling at the branch.

The Danish FSA received a statement from the bank on 16 October 2017.

On 8 December 2017, the Danish FSA sent a list to the bank's CEO with requests for additional material and received the material in the days from 12 to 14 December.

On 21 December 2017, the Danish FSA sent a memorandum entitled "Preliminary assessments of the involvement of Danske Bank's management in the AML case at the bank's Estonian branch" to Danske Bank. In addition to a description of the case and the Danish FSA's preliminary assessments, the memorandum contained 32 questions to the Board of Directors and the Executive Board and three questions to the Chief Audit Executive. The Chief Audit Executive replied on 6 February 2018, and the Board of Directors and the Executive Board replied on 7 February 2018. The reply from the Board of Directors and the Executive Board included more than 200 pages of annexes.

It appeared from the reply from the Board of Directors and the Executive Board that they had sought, to the widest extent possible, to reply to all questions by the deadline. It also appeared, however, that the bank's investigations of what had happened in the AML area in Estonia were in the initial stages and that the replies to specific questions therefore necessarily were incomplete. In several instances, they expected the investigations launched by the bank to clarify matters. It also appeared that it would be both hasty and inappropriate – and potentially misleading for the Danish FSA – at the time to express views on individual persons.

On 12 March 2018, the Danish FSA sent a draft of this decision to the Board of Directors, the Executive Board and the Chief Audit Executive. The Danish FSA received a reply with a number of general comments on 26 March 2018.

The reply from the Board of Directors and the Executive Board also included more than 600 pages of annexes, and the Board of Directors and the Executive Board wrote the following about the annexes:



*“The Project [omitted] Investigation and the Project [omitted] Investigation described in our Initial Reply are progressing according to plan, and with this letter we share additional information uncovered or verified since our Initial Reply. Given that the Danish FSA is likely to act prior to the completion of the investigations, we are including a number of documents and e-mails with this letter. At the same time, we wish to stress that both the Project [omitted] Investigation and the Project [omitted] Investigation are not yet complete and consequently that the material shared is also not complete. We expect the Project [omitted] Investigation to be completed within two months, and we note the reservation in the beginning of the Draft Decision that “[t]he bank’s ongoing investigations may provide new information of significance to the Danish FSA’s assessments and supervisory reactions”.”*

Danske Bank has chosen to let the law firm handling the bank’s investigations represent the Board of Directors in the case in relation to the Danish FSA.

The material received does not include e-mails or the like involving members of the Board of Directors. On 28 April 2018, the Board of Directors and the Executive Board stated the following:

*“Project [omitted] has access to the e-mail accounts of the current employees of the bank, including the bank’s CEO. The members of the Board of Directors do not have e-mail accounts at the bank, but they have been asked to share relevant material in their possession. The members of the Board of Directors can communicate with members of the Executive Board, but only with the knowledge of the Chairman of the Board of Directors and the CEO. Generally, such a dialogue would be unusual, and, for this reason, the bank’s governance model already includes an assumption against the “e-mails and the like” that the Danish FSA seems to request.”*

The bank showed relevant parts of the Danish FSA’s draft of 12 March 2018 to a number of former employees of the bank. Subsequently, the former members of the Executive Board (the head of Business Banking and the bank’s CRO and CFO) also sent their comments to the Danish FSA. In connection with the comments, the bank’s legal representatives who handle the bank’s investigations sent 265 pages of e-mails and annexes.

On 18 and 26 April 2018, the Danish FSA sent new drafts of this decision to the Board of Directors and the Executive Board and to the Chief Audit Executive.

On 22 April 2018, the Board of Directors and the Executive Board forwarded comments on selected parts of the draft.

Subsequently, on 24 April 2018, they sent comments on specific wording in the draft and more than 300 pages in the form of annexes.

Finally, on 25 April 2018, they sent comments on the announcement of the decision, and on 28 April and 1 May 2018, they sent additional comments on specific wording.

The process has thus been rather long, with the majority of the specific comments from the Board of Directors and the Executive Board not being made until the period from 22 April 2018. The Danish FSA has based its decision on the very extensive material received from the bank, including proposed decisions, minutes of meetings, audit and compliance reports, e-mails, replies to questions from the FSA and comments on the FSA's draft decision.

#### **4. Complaints procedure**

In accordance with section 372(1) of the Danish Financial Business Act, decisions made by the Danish FSA may be brought before the Danish Company Appeals Board by e-mail to [ean@naevneneshus.dk](mailto:ean@naevneneshus.dk) or by letter to Toldboden 2, DK-8800 Viborg, no later than four weeks after the receipt of such decisions. The Company Appeals Board charges a fee for considering complaints.

Yours faithfully  
Jesper Berg



# **DANISH FSA - STUDY ON AML/CFT SUPERVISION AND ENFORCEMENT**

**28 December 2018**

# Contents

Executive Summary	4
1 Introduction, Background and Scope	7
1.1 Background to the study	7
1.2 Scope of the study	7
1.3 General approach to the study	8
2 National AML/CFT supervisory landscape	10
2.1 National AML/CFT supervisory regimes	10
2.2 National AML/CFT cooperation and coordination	11
3 Regulatory operating model	14
3.1 Organisational structure	14
3.2 Competencies	15
3.3 Resourcing models	16
4 Regulatory approaches and tools	20
4.1 Risk-based approaches to supervision	20
4.2 Identification and assessment of ML/TF risks	23
4.3 Collection, development and use of financial intelligence	26
4.4 Approach to enforcement	27
4.5 Education in supervisory authorities	30

## **DISCLAIMER**

This report has been prepared by PA Consulting Services Limited for Danish FSA and is confidential to Danish FSA. Danish FSA may disclose this report, in whole or in part, to third parties in accordance with its statutory powers. PA Consulting Services Limited has no duty of care and accepts no responsibility or liability to any third party (including, but not limited to Danish FSA) for the contents of this report or our work in its preparation, and no party should rely upon its contents.

# Executive Summary

This document contains PA Consulting's study into Anti Money Laundering (AML) and Countering the Financing of Terrorism (CFT) supervision and enforcement, prepared for the Danish FSA. It is designed to provide a clear view of trends, divergences, and best practice in AML/CFT supervision and enforcement across Europe and beyond.

The study consisted of a wide range of information gathering and analysis mechanisms, including formal interviews and data requests with some regulators, informal discussions with others, and a broad suite of desk-based research on information in the public domain.

During the study, we identified several key trends, including:

- Most of the in-scope supervisors actively moving to increasingly sophisticated risk-based approaches to AML/CFT supervision.
- All in-scope regulators were both expanding and up-skilling their AML/CFT supervision and enforcement teams, with the majority prioritizing technology capabilities in new hires.
- Enforcement was an area of considerable divergence between the reviewed regulators, especially in terms of the range of enforcement mechanisms available and the ability of supervisors to directly enact enforcement measures.
- Even where supervisors had clear sole responsibility for AML/CFT supervision and enforcement, there was a clear trend towards coordinating bodies being appointed to better support AML/CFT prevention activities in a jurisdiction, such as the UK's introduction of the National Economic Crime Centre (NECC) and Spain's increased role of the Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias (SEPBLAC).
- Greater usage of intelligence (including in data provided by firms themselves) to inform both supervision and enforcement was noted at a number of the regulators considered.

Across the population of supervisors reviewed, there were both common trends and notable divergences – particularly where regulators were undertaking new or innovative approaches to supervision or enforcement; these have been called out throughout this document as items of interest for the Danish FSA to consider.

Whilst a gap analysis was not in scope of this exercise, there are several potential areas of inspiration for the Danish FSA to investigate further after this work:

- The approaches to AML/CFT supervision chosen in Denmark are broadly in line with comparable peers and require substantial further improvement to become best in class in Europe.
- The staffing of the Danish FSA in this area is (after a large increase), broadly comparable with many other European jurisdictions, when normalized for bank assets supervised. However, these staffing levels are still some way below jurisdictions such as the UK; for Denmark to become best in class, additional resources with specific technical expertise will likely be required, particularly as other jurisdictions will continue to expand their teams.
- The Danish set-up in relation to coordinating the Money Laundering Forum (and the Financial Crime prevention ecosystem more broadly) should be formalized further and strengthened to be aligned with best practice.
- The approach to risk-based supervision in Denmark could be strengthened. The gathering and analysis of more data could be an important component – one which is being increasingly used by peers.
- To bring Denmark at par with peers from an enforcement perspective it will be required to leverage a wider range of potential enforcement powers, to enable more proportionate and effective interactions with regulated institutions who require sanctioning.

# Section 1

## INTRODUCTION, BACKGROUND AND SCOPE



# 1 Introduction, Background and Scope

## 1.1 Background to the study

In 2017, the Financial Action Task Force (FATF) issued severe criticism of the anti-money laundering and countering the financial of terrorism (AML/CFT) supervisory authority in Denmark. The criticisms concerned the scope, resource allocations, sanctions, and planning of the anti-money laundering supervision across the geography.

The Danish FSA, Finanstilsynet, has stated a strategic ambition of strengthening and continuously improving the Danish AML/CFT supervision and it is the ambition for the Danish FSA to become best in class in Europe when it comes to AML supervision. In this context, the Danish FSA has appointed PA Consulting to carry out an analysis of certain elements of AML/CFT supervision and enforcement across several specific jurisdictions to support them in this ongoing development.

## 1.2 Scope of the study

The scope of the study was designed to cover the following areas of AML/CFT supervision:

- The National AML/CFT Supervisory landscape, including the differing models of supervision and the cooperation and coordination between bodies in the jurisdiction.
- Regulatory operating models, including differing organisational structures, competencies of staff, and resourcing models.
- Regulatory approaches and tools, including:
  - Risk based approaches to supervision
  - The identification of ML/TF risks
  - The collection, development and usage of intelligence
  - Approaches to enforcement
  - Approaches to education

The study considered the AML/CFT supervisory functions of the following jurisdictions: Denmark, Sweden, Norway, Finland, UK, Germany, Spain, Belgium, and the Netherlands, at the request of the Danish FSA. Other jurisdictions, including the U.S., have been included partially where observations have been relevant to the study.

The observations articulated in this study are a result of interviews and document reviews across the in-scope jurisdictions; detailed testing of these findings has not been undertaken and the study should not be considered a comprehensive view of AML/CFT supervision or enforcement in the in-scope jurisdictions.

### 1.3 General approach to the study

The study was undertaken during December 2018. It takes the form of an independent and descriptive view on AML/CFT supervisory and enforcement functions in each of the in-scope jurisdictions, informed by interviews, questionnaires and a review of documentation in the public domain.

This time-boxed exercise was designed to provide a high-level view of the differing approaches undertaken by a number of European regulators; it is not a detailed comparison or analysis of these approaches.

We have identified several areas of 'good practice' during this study; these represent approaches that are either particularly innovative or were considered effective by a respondent in the study; these are designed to provide interesting areas for consideration for the Danish FSA.

# Section 2

## NATIONAL AML/CFT SUPERVISORY LANDSCAPE

## 2 National AML/CFT supervisory landscape

This section provides an overview of the different AML/CFT supervisory regimes across the in-scope jurisdictions, as well as the extent of national AML/CFT cooperation and coordination within these jurisdictions.

### 2.1 National AML/CFT supervisory regimes

In seven of the in-scope jurisdictions, AML/CFT supervision falls under the responsibility of various supervisory bodies depending on the sector; there are often separate supervisors for financial institutions, designated non-financial business and professions (DNFBPs), legal and accountancy firms and gambling service providers, respectively. For example, in the UK, the Financial Conduct Authority (FCA) supervises financial institutions, Her Majesty's Revenue and Customs (HMRC) supervises DNFBPs; there are 22 approved professional body supervisors responsible for the legal and accountancy sectors, and the Gambling Commission supervises casinos.

#### **Good practice: UK FCA – OPBAS**

The UK Government created an office for professional body anti-money laundering supervision (OPBAS) to oversee professional body supervisors (PBSs) for AML. This recognised that having several organisations supervising the same sectors and issuing guidance can create inconsistencies which criminals may try to exploit.

OPBAS, housed within the FCA, supports a robust and consistently high standard of AML supervision across the legal and accountancy sectors. It also promotes better collaboration through information and intelligence sharing between professional body supervisors, statutory AML supervisors and law enforcement agencies, such as the National Crime Agency.

In some jurisdictions, such as in other Nordic countries, the central bank participates in maintaining the reliability and efficiency of payment and overall financial systems and is only very indirectly concerned with AML/CFT.

In other jurisdictions, the supervision of financial institutions is structured according to the 'Twin Peaks' model, with a central bank – that focuses on promoting the soundness of financial institutions – and a conduct regulator, that focuses on the conduct of business objective of enhancing orderly and fair market practices. This is the model adopted by Belgium, the Netherlands and the UK, amongst others. Unlike the UK, in Belgium and the Netherlands, the AML/CFT supervision is performed by both the central bank and conduct regulator depending on the type of strong entity. Coordination between these regulators is especially important in AML/CFT matters in cases where the spheres of responsibility are shared. For example, in Belgium, where investment companies are concerned, the Financial Services and Markets Authority (FSMA) supervises investment management and investment advisory companies, while the National Bank of Belgium (BNB) supervises brokerage firms. It is also of importance that the supervisory expectations of both authorities are defined consistently for being practicable in the cases where a same financial group includes entities that respectively fall under the supervisory competences of the one and the other of these authorities. Cooperation between the BNB and the FSMA is governed by a Protocol, which allows

them to exchange information so that they can co-ordinate their supervision policies, including in AML/CFT matters, and ensure that they are implementing consistent supervision measures and procedures.

Spain has a “dual-track” supervisory regime, with a single supervisor (SEPBLAC) responsible for AML/CFT supervision in all financial and DNFBP sectors, in cooperation with sector-dedicated prudential supervisors. In the banking sector, the Bank of Spain shares responsibility with SEPBLAC for AML/CFT inspections. In the securities and insurance sectors, SEPBLAC carries out thematic AML/CFT inspections and directs the National Securities Exchange Commission (CNMV) and the Directorate-General for Insurance and Pension Funds (DGSFP) to conduct financial institution-specific inspections. In the DNFBP sectors, there is a range of other supervisors, professional bodies, self-regulatory bodies (SRBs), and central prevention bodies. Despite the obvious risk of inconsistency in supervision and the greater need for systematic cooperation between the supervisory bodies, Spain is considered by the FATF to have a strong system of supervision.

It is evident that across the regulators interviewed there are significant variations in the AML/CFT supervisory regimes, with no clear view that one model is more effective than the other.

## 2.2 National AML/CFT cooperation and coordination

This section outlines the level of and mechanisms for AML/CFT cooperation and coordination between the supervisory authorities, as well as providing examples of good practice.

In all in-scope jurisdictions, there are established coordination mechanisms between supervisory authorities, the FIU and law enforcement agencies (LEAs) at both a policy and operational level. This happens formally through working groups and multiagency task forces, and informally through constructive personal relationships between individuals from relevant agencies and private sector entities.

Cooperation amongst authorities in some jurisdictions largely exists through informal mechanisms. For example, the dissemination of cases on an ad-hoc basis, the exchange of general information about ML trends, or informal meetings on a bilateral basis. Such mechanisms do not necessarily mean that coordination is ineffective, but weaknesses in coordination can lead to inadequate sharing of risk information and agencies pursuing their own priorities rather than because of national AML/CFT risk. Similarly, there can be a lack of clarity around how LEAs and supervisors should coordinate and handle AML/CFT compliance failures (e.g. through supervisory sanctions or criminal enforcement action).

For this reason, most jurisdictions are taking steps to formalise and strengthen coordination mechanisms, for example, by developing Memoranda of Understandings (MoUs) with both domestic and foreign authorities and international bodies and establishing groups that bring together public and private sector representatives. These groups often meet on a periodic basis to coordinate AML/CFT activities and exchange information and statistics, clarify the allocation of tasks between authorities, and identify emerging risk areas. These groups are sometimes underpinned by sub-groups focused on key risk areas identified in the national risk assessments. In Denmark, the Money Laundering Forum, which was formerly established by law in 2017, consists of representatives from the supervisory authorities, LEAs and the FIU, and the forthcoming Money Laundering Forum Plus will also include representatives from the private sector.

In general, FIUs, LEAs, the private sector and supervisory authorities are looking to establish new collaboration mechanisms that are underpinned by more widespread sharing of data and deeper analysis of that data with more sophisticated technology. As a global financial centre exposed to high risks from the laundering of foreign predicates, organised crime proceeds and overseas corruption, the UK is a large provider and receiver of international co-operation. The FCA itself participates in a range of regional networks and groups including the EU Shared Intelligence System and Financial Information Network (FIN-NET), the Basel Committee's AML Expert Group, and the AML Committee of the Joint European Supervisory Authorities. The FCA alone has over 40 MoUs with 130 overseas authorities and international bodies. The UK also has several groups that bring together public and private sector representatives, with the Joint Money Laundering Intelligence Taskforce considered to be a strength of the UK system.

### **Good practice: UK AML/CFT cooperation & coordination**

JMLIT helps agencies (and the private sector) gain access to financial intelligence from other selected entities, enables inter-agency co-operation, and enhances education on AML/CFT. Since its inception, JMLIT has supported and developed over 500 law enforcement investigations which has directly contributed to over 130 arrests and the seizure or restraint of over £11m. Through this collaboration, JMLIT private sector members have identified over 5,000 suspect accounts linked to money laundering activity and commenced over 3,500 of their own internal investigations.

The UK has also taken another big step forward by launching the National Economic Crime Centre (NECC). Partners from law enforcement, criminal justice, HM Revenue & Customs (HMRC), Serious Fraud Office (SFO) and regulators will come together, co-ordinated by the NCA, in the joint effort needed to combat crime. Ultimately, the ambition is to draw on and pool different partners' data more extensively to understand the financial crime threat and plan the response.

# Section 3

## REGULATORY OPERATING MODEL

## 3 Regulatory operating model

This section describes the operating models within the supervisory and enforcement divisions across the jurisdictions in scope; it provides a clear view of the operating models, competencies and resourcing approaches used by the various regulators included in this study.

### 3.1 Organisational structure

In this section we outline the organisational structures used by the regulators considered in this study, as well as the responsibilities owned by those organisations.

#### **Organisational Model**

We found considerable variety in the organisational models used by AML/CFT supervisory functions. These can, broadly speaking, be divided into centralised and decentralised models. Only in Norway have they chosen a fully decentralised model where the dedicated AML/CFT resources are distributed across 7 operational areas.

The dominating organisational model by far is having a single team with overall responsibility for AML/CFT supervision, with clear specialisation of roles within the team, as is the structure at the Danish FSA. As the exception, the UK has a clear specialisation of roles within the AML/CFT dedicated resources and, in addition, a separate team solely focused on enforcement; this is partially driven by being a larger jurisdiction from a Financial Services perspective.

Common for all jurisdictions is that supervisory activity on AML/CFT is, to some extent, integrated with the broader supervision of a firm. This is done both by having AML/CFT competencies and/or roles built-in to broader supervisory activities and by the AML/CFT dedicated resources supplying information, guidance and resources to those teams undertaking broader inspections.

With the UK regulator being significantly larger, and the regulators in Spain and Belgium being highly influenced by their more complex supervisory landscape, the Nordics form a more homogenous group among the jurisdictions in-scope and are, as such, more suited for comparison with the Danish FSA.

#### **Responsibilities:**

The documented responsibilities of the dedicated AML/CFT supervisory teams are very similar across the jurisdictions and generally cover the following activities:

- Licencing, fit and proper testing for the entities under AML/CFT supervision
- Risk assessments and risk classifications of entity and entity types under supervision
- Preparing binding orders, guidance and information
- Conducting on-site and off-site inspections



- Conducting ongoing supervision
- Participating in law and policy making
- International cooperation

All the regulators considered in this study also identify and are involved in enforcement actions at some level. However, this can vary enormously depending on legislative and organisational differences. For example, the UK has established a separate enforcement unit within the FCA's Financial Crime team not only for AML/CFT related enforcement but across the Financial Crime spectrum. Having a separate enforcement unit gives both clearer objectives and accountability, and further possibility to develop more specialised profiles and competencies. On the other hand, the separation could increase risk of information loss and need for re-work during handover.

As with all other supervisory bodies in Denmark, the Danish FSA does not have the power to issue fines, and instead refers the relevant cases to the relevant police authority under the MOJ. The Danish FSA can still issue warnings, impose injunctions and, in severe cases, revoke licenses. In some jurisdictions, the dedicated AML/CFT resource carries out the full range of enforcement activities, while other countries have placed some or all the enforcement activities with a separate enforcement team or a separate authority.

It should be noted that the UK specialisation of profiles and competencies, and separation of supervision and enforcement in two separate teams may not be universally appropriate; this approach requires a pool of resources dedicated to AML/CFT far above the present levels of the other jurisdictions.

## 3.2 Competencies

This section outlines the key competencies and backgrounds commonly drawn upon by the regulators within the scope of this study, across both the specific AML/CFT teams and more generic supervisory teams.

### Competencies

In general, the AML/CFT competencies can be divided into competencies within the dedicated AML/CFT resources and competencies within the broader supervisory organisation that the AM//CFT relies on.

All jurisdictions emphasise competencies within supervision, inspection and analysis as core to the dedicated AML/CFT resource and have people with experience from the public sector within the AML/CFT dedicated resources.

While some AML/CFT teams rely primarily on people with backgrounds from supervisory bodies or other areas within the public-sector, most jurisdictions have people with a mix of backgrounds from regulators, law firms, consulting, and the Financial Services sector. Notably, the greater size of the UK regulator's team means that they also have a relatively higher level of specialised competencies when compared to other jurisdictions.

In general, the jurisdictions seek people with experience in similar roles at a mid- to senior level when recruiting new staff. Only one jurisdiction has chosen the strategy to prioritise recruitment of university graduates, providing all competency development themselves.

While some jurisdictions can recruit people with experience from other AML supervisory bodies, all countries rely highly on their own development of the competencies need to support their activities as the many of the activities are specific to the AML/CFT supervisory authority, especially where more seniority is needed. Therefore, the ability to provide efficient internal training and to keep staff turnover at low rates will have a high impact on the competency levels.

**Good practice: We observed a trend to hire individuals with significant technological expertise**

We have observed a broader trend across the jurisdictions covered by this study to hire individuals with significant technological expertise, reflecting both the more advanced and technology-driven nature of AML/CFT, and well as the increasing complexity of firms' compliance activities, particularly amongst larger institutions.

## Integration

Common for all jurisdictions is that supervisory activity on AML/CFT is, to some extent, integrated with the broader supervision of a firm. This is done both by having AML/CFT competencies built-in to broader supervisory activities and by the AML/CFT dedicated resources supplying information, guidance and resources to those teams undertaking broader inspections. All jurisdictions emphasised that this integration, combining broader sector supervisory insights with more specific AML/CFT supervisory insight, is essential to efficient supervision.

Only Norway has chosen to fully integrate the AML/CFT supervisory function fully with the prudential supervisory function. The AML/CFT dedicated resource works closely together with the prudential supervisory function on preparing, executing and following up on inspections, and across all the jurisdictions there is an expectation that the prudential supervisors have some view of AML/CFT risk.

## 3.3 Resourcing models

In this section we outline the differences in resourcing between the various regulators considered, including in terms of number of staff.

While all jurisdictions can provide an overview of resources dedicated to AML/CFT in terms of Full Time Equivalents (FTEs), comparing the numbers is complicated by several factors, such as:

- Where AML/CFT supervisory functions are decentralised and/or carried out as part time responsibilities, the numbers are based on estimates - making it hard to compare with more fixed team structures
- Work division between dedicated AML/CFT resources and contributing resources is based on inconsistent definitions of activities, which gives an uncertainty about which resources should, and should not, be included in the comparison of the number of dedicated AML/CFT resources
- There are vast differences on number, type and composition of entities under supervision

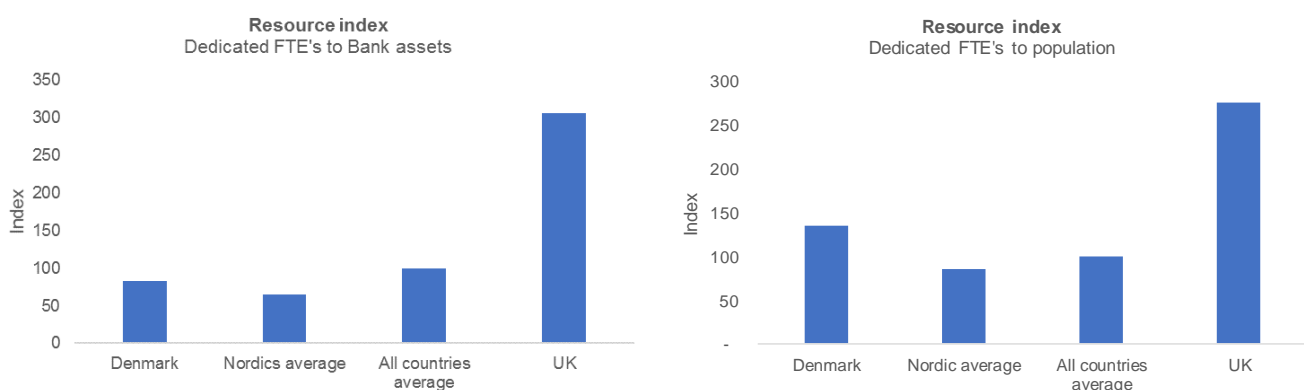
Bearing these uncertainties in mind, there are three distinct groups in terms of number of FTEs dedicated to AML/CFT supervision:

- Small, being 5-10 FTEs
- Medium at 10-30 FTEs
- Large, with above 50 FTEs

However, as mentioned above, the landscape of entities (and the size of the overall sector) that the dedicated AML/CFT resources are responsible for supervising, and thereby the potential workload, varies greatly from country to country. While numbers on entities under supervision are available, they do not reflect the complexity of the types of entities under supervision regarding e.g. product portfolio, customer portfolio and international engagements.

In the absence of a more accurate measurement, the sum of banks assets can be used as a simplistic indicator of the AML/CFT supervisory workload, at least when comparing countries that are broadly homogenous in terms of financial activities, such as the four Nordic countries Denmark, Sweden, Norway, and Finland.

Below is an overview of the indexed AML dedicated resources against the total bank assets of the countries and against the population size, with index 100 being the average of the study population. We have used these comparative metrics at the request of the Danish FSA. While none of the indices reflect all relevant aspects, they do give an indication of the relative levels of resources.



It is worth taking into consideration that:

- Denmark has increased the size of their team recently
- Finland has stated that they plan to increase number of dedicated resources significantly during 2019
- For all countries, whatever size or complexity of entities under supervision, there is a similar basic workload of the supervisory function that needs to be covered. This will, in smaller countries, cost more relative to the size of population than in the larger countries.

# Section 4

## REGULATORY APPROACHES AND TOOLS

## 4 Regulatory approaches and tools

This section provides an overview of the different regulatory approaches and tools that have been adopted by AML/CFT regulators, with a focus on risk-based supervision, risk assessment, intelligence, enforcement and education.

### 4.1 Risk-based approaches to supervision

This section provides an overview of how AML/CFT regulators conduct supervision on a risk-sensitive basis, including different approaches to proactive, firm-specific supervision and how they adjust the intensity and scope of inspections, as well as examples of thematic, multi-firm and reactive supervisory activities.

#### **Proactive firm-specific supervision**

Most of the regulators interviewed have identified a small population of firms that, based on factors such as size, market presence and customer footprint, are subject to more frequent and intrusive supervision. Most regulators proactively supervise these firms using a continuous assessment approach and, in some cases, allocate these firms a dedicated supervision team or named individual supervisor. A few regulators undertake periodic risk evaluations or inspections of firms in a cycle ranging from one to four years, depending on the scale of the firm's activities and their own assessment of risk. These inspections aim to provide a view of a firm's ML/TF risk profile – drawing on any findings from previous inspections, as well as any sector risk analysis and thematic work – and enable a regulator to develop a work programme for the firm's next inspection cycle to mitigate these risks. This may include regular meetings between the regulator's supervisors and the firm's Board or senior management, regular reviews of the firm's management information, as well as additional inspections and the usual monitoring of regulatory returns. Most of the regulators considered in this study have developed annual inspection plans rather than having a cyclical inspection cycle, which sets out the sectors and firms and, in some cases, themes to be inspected over the next year.

Most regulators adjust the nature and/or scope of their supervision at checkpoints during the inspection cycle and on an ad-hoc basis when the risk profile changes. For example, some regulators adjust their focus to the management of risks associated with specific products, or on specific aspects of the AML/CFT processes (e.g. customer due diligence). Similarly, albeit less frequently, some adjust the nature of their supervision by changing the ratio between off-site and on-site supervision.

Some regulators have recently completed a series of short, systematic inspections to gather more information about the firms under their supervision and to refine their approach to supervision. These regulators have also conducted or plan to conduct follow-up inspections to assess how the individual firms' financial crime controls have changed, what improvements they have made and how they are implementing them.

## Good practice: UK FCA – Three-tiered supervision model

The FCA's AML/CFT supervision was somewhat more sophisticated than many other jurisdictions, and is divided into three tiers:

- **Systematic Anti-Money Laundering Programme (SAMLPL):** The SAMLPL, launched in 2012, is a programme of regular, thorough scrutiny of 14 major retail and investment banks operating in the UK. It also includes those overseas operations which have higher risk business models or are strategically important.
- **Proactive Anti-Money Laundering Programme (PAMLPL):** The PAMLPL focuses on an additional 156 firms from high risk sectors which are smaller than those under the SAMLPL. Since 2014, the FCA has undertaken a programme of regular AML inspections of other firms that present high inherent risk of money laundering. The population of these firms continues to be dynamic, with firms moving in and out of the programme depending on risk. The FCA use the NRA together with other information, including the financial crime data returns, to assess the risk. The FCA then use the findings from its visits to provide feedback to firms on the effectiveness of their systems and controls and to carry out trend and sector analysis.
- **Financial Crime Risk Assurance Programme:** This is the newest element in the FCA's proactive AML supervision. The FCA undertakes AML and sanctions visits to, or desk-based reviews of, 100 firms each year from sectors that present a lower inherent money laundering risk. The programme provides assurance that the FCA's assessment of risks in the sector is correct.

The FCA continues to expand its supervisory focus to ensure appropriate intensity of supervision for all the different categories of its supervisory population from low risk to high risk.

## Intensity and scope of inspections

As mentioned above, the regulators interviewed all proactively conduct inspections covering all or specific supervised obligations. They also conduct ad-hoc inspections in response to an incident, information received from another domestic or foreign authority or even media reports. These inspections are often in-depth assessments examining risks that have been identified, as well as the root causes, and testing how firms manage and mitigate those risks at every level of the business. Activities often involve desk-based analysis, on-site testing, walk-through discussions and staff interviews at all levels, as well as interviews with senior management. If a new risk is identified during on-site or off-site supervision, the regulators may amend the scope of the inspection to better reflect the ML/TF risks to which the firm is exposed.

In general, regulators use a combination of off-site and on-site supervision, with a focus on a firm's governance, management information, policies and procedures, risk assessments, staff training and suspicious activity reporting. All regulators recognised that an inspection based only on an assessment of policies and procedures, rather than on their implementation, is unlikely to be sufficient in higher risk situations. Most regulators are therefore expanding their inspections to also assess the functioning and effectiveness of firms' financial crime systems, for example, the calibration of transaction monitoring frameworks and the integration of these systems with the broader AML/CFT controls that firms employ. Similarly, regulators are enhancing their approach so that

they can consistently determine, according to risk, the extent of customer file reviews and sample testing of transactions and suspicious transactions reports.

#### **Good practice: Norwegian FSA – Supervisory manuals**

The Norwegian FSA has developed a series of supervisory manuals for different sectors to guide information collection, risk assessment and prioritisation of supervision, including event driven. These include a description of factors relevant to that consideration, including effectiveness of controls while information to be collected from the obliged entity as part of the assessment is also included, including questions to be considered such as the entity's risk assessment, and internal procedures.

#### **Thematic and multi-firm activities**

Although it is understandable that regulators focus on the larger firms, it is recognised that more firms should be subject to some form of supervision and there are several firms undertaking higher-risk activities that fall outside the inspections cycles and plans. Most regulators are looking to expand their supervisory coverage to ensure appropriate intensity of supervision for all categories of firms from low risk to high risk.

A few regulators supervise firms as members of a cluster or portfolio that share common characteristics and carry out supervisory activities at the collective level of the portfolio, rather than at the level of each individual firm. These firms are proactively supervised through a combination of multi-firm information requests and off-site inspections, programmes of communication and education activity aligned with key risks, as well as regular baseline monitoring of regulatory returns.

#### **Good practice: UK FCA – Outbound call campaign**

Since early 2017, the FCA's Contact Centre has been asking smaller firms a series of questions to test their understanding of their responsibilities on anti-money laundering and on countering the financing of terrorism. They are using these discussions to identify where targeted communications may be needed to help firms understand their AML/CFT risks and obligations.

Risk-based supervision is increasingly becoming the norm, with thematic reviews being used to ensure regulators aren't exclusively focused on 'big-name' institutions. These range from large and detailed studies to smaller sample-based work. Thematic reviews are used, albeit infrequently, to examine emerging risks and other issues that are common to multiple firms or sectors. These are identified through analysis of each sector and sub-sector and other ongoing proactive supervision work. Where a significant risk is identified, thematic work is carried out with a variety of firms to assess the issues and respond appropriately. The scope and intensity of thematic work is designed to be proportionate to the nature of the risk and may include assessment of a combination of firms with different risk profiles to ensure appropriate coverage. The results of thematic work are often published and used to



highlight both good practices as well as areas of concern. In this way, the regulator can address issues and drive improvements across the industry rather than concentrating on individual firms.

#### **Good practice: SEPBLAC – Multi-firm work**

SEPBLAC's inspection activities, in all sectors, are focused on thematic or topical issues identified by its risk analysis. Rather than conduct comprehensive inspections covering all AML/CFT obligations, SEPBLAC identifies several thematic issues for a sector and prepares a focused inspection programme based on examination of specific indicators on those themes. The programme is then used as the basis for a series of short, focused thematic inspections of selected firms in the relevant sector. This supervisory model enables SEPBLAC to verify compliance of a broader range of firms with specific AML/CFT obligations - in contrast with the comprehensive inspection approach of other supervisors, which focuses on a small population of the largest firms.

Similarly, thematic reviews and multi-firm work form a significant part of the FCA's approach to supervision. The FCA uses a thematic review to assess a current or emerging risk regarding a concerning trend across a variety of firms in a sector or market. By focusing on emerging risks, the FCA can undertake detailed work in supervising firms with higher risk profiles. The thematic teams deliver the reviews through extensive desk-based review of information and site visits. The teams also work closely with industry practitioners and trade/professional bodies, where appropriate.

## **4.2 Identification and assessment of ML/TF risks**

This section provides an overview of the methods and tools AML/CFT regulators use to identify and assess ML/TF risks, including the definition of sectoral and portfolio ML/TF risk profiles and the application of risk matrices to firms under supervision, as well as the different approaches to monitoring and updating risk assessments.

### **Sector and portfolio risk analyses**

The regulators interviewed all use the supranational risk assessment and national risk assessments to inform their understanding of the risk factors that are relevant for each sector and sub-sector. They also use the FATF mutual evaluations, information from industry bodies and other competent authorities (such as emerging risks and typologies), and information obtained from firms in a sector or sub-sector.

As mentioned above, some regulators further divide each sector or sub-sector into a series of 'clusters' or 'portfolios', with each portfolio comprising firms with similar business models or that share similar characteristics and consider them as a single 'subject of assessment'. As part of this, regulators look to understand how each sub-sector is organised, and the ML/TF risks associated with shared features such as the type of products and services offered, the delivery channels used, the type of customers they service and their geographic areas or activity. These portfolios are therefore not static and adapt as business models and characteristics change. One of the regulators uses a combination of business model analyses, firm regulatory histories and insights from this supervisory work to develop these portfolio analyses. Regulators then identify the key ML/TF risks in each portfolio

and carry out supervisory activities at the collective level of the portfolio itself to mitigate risks, as well as identifying individual outlier firms which may warrant direct supervisory engagement.

### **Firm-specific risk analyses**

The regulators interviewed all determine the frequency and scope of on-site and off-site activities based on a firm's risk profile, although firm-specific risk analyses are at various stages of development. Most regulators are in the process of strengthening their risk matrices to develop a more accurate picture of risks at the firm-specific level and inform their supervisory programmes. A few regulators have assigned a ML/TF risk profile to all firms under their supervision. Other regulators have conducted risk assessments for the largest firms or firms within sectors with higher inherent ML/TF risks.

These profiles are often the result of the combination of (1) an assessment of the ML/TF risks to which the obligated entity is exposed, given the characteristics of its business sector, the geographical areas in which it performs its activities, and its distribution channels; and (2) an assessment of its management of these risks, including an assessment of the measures that it has taken to identify and mitigate these risks and an assessment of its level of compliance with the applicable legal and regulatory obligations. These profiles determine the supervisory priorities and intensity for both the individual institutions and the sector. The method used by some regulators to assess the ML/TF risks of individual firms focuses on firm size or turnover, rather than an understanding of the risks inherent in the firm's activities or customer base. However, the regulators interviewed recognise that the size or systemic importance of a firm may not, by itself, be indicative of the extent to which it is exposed to ML/TF risk; small firms that are not systemically important can nevertheless pose a high ML/TF risk. Similarly, it may not be appropriate to draw conclusions, for AML/CFT supervisory purposes, from the prudential or conduct risk profile, be it high or low. Other regulators have developed more sophisticated risk matrices, obtaining and using information on the firm's ownership and corporate structure, the reputation and integrity of its senior managers, the quality of internal governance arrangements and the prevailing 'corporate culture', as well as products and services, delivery channels, types of customers, and geographical exposure.

#### **Good practice: SEPBLAC – Approach to ML / TF risk analyses**

SEPBLAC takes a highly sophisticated risk-based approach to AML/CFT supervision across different sectors and within each sector. SEPBLAC has developed a detailed risk analysis methodology for each sector of obliged entities, drawing on a wide range of information (including strategic analysis by SEPBLAC 's FIU function). The results of this analysis feed into its ongoing risk assessment process, as well as the supervisory approach, which reflects the distribution of risks between different sectors, within each sector, and across thematic activities. SEPBLAC inspections are then organised according to this risk model, rather than a periodic cycle. It also shares the results of its risk assessments with other supervisory authorities, which helps them adjust their focus and collaboratively develop supervision plans to address identified risks and issues.

## Monitoring and updating risk analyses

The regulators interviewed generally carry out periodic reviews of their risk assessments to ensure that they remain up-to-date and relevant, but also when significant events occur that may affect the entity's level of ML/TF risks or its management of these risks. For higher-risk firms or those facing frequent changes in their activities and operating in a fast-changing environment, reviews take place more frequently.

Ad-hoc reviews of the risk assessments and, where necessary, the supervisory strategy or plan also take place following significant changes affecting the portfolio's or firm's risk profile. This may include major external events, emerging ML/TF risks, findings from off-site or on-site inspections. The regulators also consider whether changes affecting one firm might affect other firms within the portfolio/sub-sector.

Regulators work to a growing extent on a data-driven basis and some regulators are exploring ways to make better use of new technologies and to use increasingly more granular data. This approach is intended not only to identify risk more quickly and effectively, but also to make more preliminary selections using new tools and technologies, and to set better priorities in supervisory work. This will enable regulators to further strengthen their risk-based supervision and to allocate their supervisory capacity to those areas with the highest risks.

### Good practice: The central bank of the Netherlands – Data-driven supervision

The DNB is studying and prototyping the range of applications for new technologies and data sources, with a view to incorporating them into their supervisory methodology. For example, the DNB has started exploring the possibilities of natural language processing to analyse pension funds' reports and the application of algorithms to money service businesses' transactions to detect transaction patterns that could indicate money laundering or terrorist financing. This new data-driven approach has led to supervisory action, with one MSB licence being revoked and 20 agents being closed, as well as to various criminal prosecutions.

Similarly, advanced data analytics will provide a critical addition to the SARs regime. For example, the Italian FIU analyses aggregate data on cash transactions and financial flows that financial institutions are required to submit monthly. Using quantitative methods, the FIU has been able to detect anomalies at the country- or province-level. These anomalies may point to potential cases of trade-based money laundering, or – when compared with data on suspicious activity reports – cases of under-reporting. The findings inform not only the FIU's work but provide critical input to law enforcement and the financial sector in their efforts to tackle financial crime.

### 4.3 Collection, development and use of financial intelligence

This section provides an overview of how AML/CFT supervisory bodies use financial intelligence to inform their risk-based supervision, including methods and tools to systematically collect intelligence, as well as examples of how that intelligence is analysed, developed and used to anticipate and understand ML/TF risks.

#### Collection of intelligence

The regulators interviewed all built their understanding of ML/TF through a variety of sources, such as the European Commission's supranational risk assessment, the national risk assessments, and engagement with policy and law enforcement officials. They also consider their own supervisory activities, as well as the actions of other national and foreign supervisory authorities, including information gathered as part of the authorisation, licensing or passporting process, off-site and on-site visits, and enforcement action.

The regulators in this study continue to ensure they have access to appropriate sources of information and take steps to improve these. Specifically, several authorities have implemented or recently introduced periodic questionnaires or supervisory returns to obtain specific, systematic information about ML/TF risks. In short, these data returns are used to identify risks across and within different sectors and collect information about each institution's exposure to ML/TF risks and the effectiveness of the risk-mitigation measures applied. This information is then used as part of regulators' risk assessment processes and forms the basis of the risk classification of regulated firms. This includes how regulators select firms for proactive inspection and for thematic and multi-firm work. This also helps regulators to focus their visits on firms with higher inherent ML/TF risks, based on factors such as the jurisdictions where they operate and those with a higher risk customer base. In some jurisdictions, these data returns encompass all firms that are subject to AML/CFT supervision. In others, it is currently requested of firms with higher inherent ML/TF risks, with a view to extending the application of the data return to a broader range of firms or even the entire AML/CFT supervisory population in the future. Some regulators are also considering varying the frequency of returns depending on the risks identified.

#### **Good practice: UK Financial Conduct Authority – Financial crime data returns**

The FCA introduced their annual financial crime data return at the end of 2016. Firms subject to the money laundering regulations 2017, including all deposit takers but excluding all other firms with revenue of less than £5m, must complete the return. The data collected through this exercise includes information and statistics on firms' customer and geographic exposure, data on Suspicious Activity Reports (SARs) and information on firms' AML / CFT control frameworks. The integration of this data has provided a greater sophistication and a more quantitative approach to the FCA's assessment of risk at the individual firm level. The data also provides the FCA with an aggregated view of some key metrics in over 2,000 of its largest firms; these include firms' data on the percentage of internal suspicions that are reported to the NCA, as well as data on the jurisdictions where they operate and those with a higher risk customer base.

## Development and use of intelligence

The regulators interviewed all use available financial intelligence and analysis to identify risks and support investigations of ML/TF. This often includes ML/TF typologies identified by the FIU, as well as qualitative and quantitative information on SARs. In some jurisdictions, supervisory authorities and law enforcement agencies have access to the national FIU's database, enabling them to apply their own resources to analyse the financial intelligence from SARs, in line with their own operational needs. In others, the regulators receive limited risk information from other authorities on prospective risks due to insufficient structures for information sharing between authorities. This can weaken the regulator's ability to anticipate and understand new and emerging risks.

Some regulators actively manage their intelligence requirements in line with their strategic objectives, setting out what information they will always require from firms under their supervision, what information they will require for different portfolios of comparable firms, and what information will trigger a more extensive information request. This enables regulators to determine the extent to which existing data is being exploited and transformed into intelligence to improve its risk understanding and drive its regulatory activities. Similarly, these regulators can then systematically identify gaps in their strategic and tactical intelligence and take appropriate action to improve the collection of data or quality of intelligence and, where relevant information is held by other competent authorities either at home or abroad, ensure that gateways are available to make possible the exchange of that information.

## 4.4 Approach to enforcement

This section provides an overview of the powers and tools regulators use to enforce AML/CFT compliance, as well as the different approaches to transitioning from supervision to enforcement. For the purposes of this study, we consider enforcement to be the action or sanction imposed on an entity or individual to comply with AML/CFT requirements following the outcome of supervisory activities. Many of the enforcement activities outlined below overlap with supervisory activity and are often treated as such by regulators.

### Types and severity of enforcement

The regulators interviewed all have a broad range of enforcement powers, remedial actions and sanctions, which are applied against both firms and individuals following AML/CFT compliance failures. The types of powers and tools include (but are not limited to):

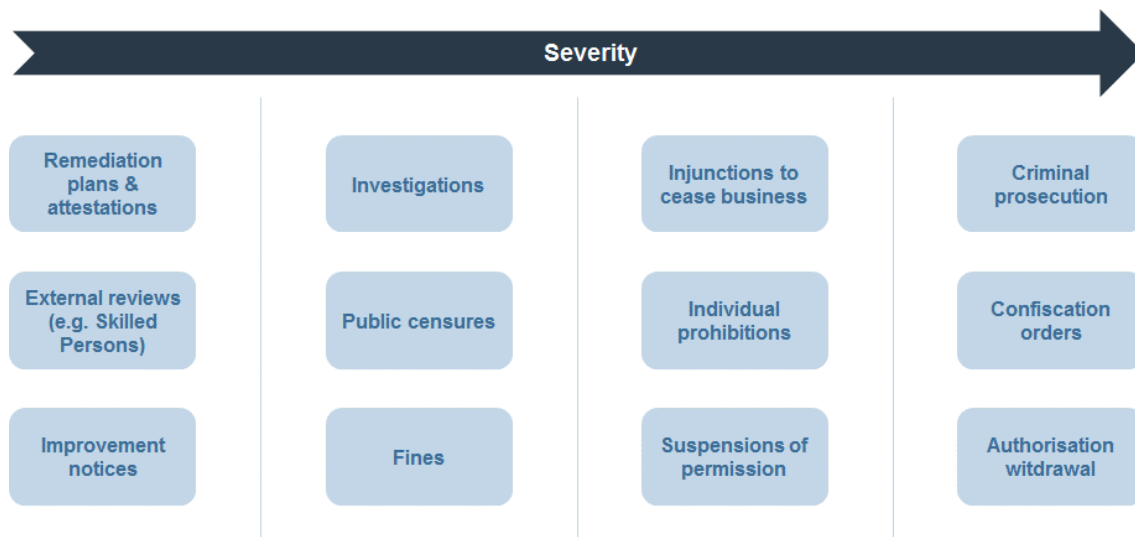
- Attestations, i.e. attestations by senior management that required improvements have been completed
- Investigations, i.e. investigations into both firms and individuals of suspected breaches
- Public censures, i.e. censuring firms and individuals through public statements
- Fines, i.e. imposing financial penalties on a firm or individual
- Individual prohibitions, i.e. prohibiting an individual from performing functions in relation to regulated activities, such as directors or members of the board, where breaches raise questions as to their fitness and propriety
- Injunctions, i.e. restricting or suspending a firm or individual from undertaking specific regulated activities
- Suspensions of permission, i.e. revoking or suspending a firm's licence (either voluntarily or through the use of powers), or withdrawing a firm's authorisation
- Criminal prosecution, i.e. prosecuting firms and individuals who commit financial crime

- Freezing assets, i.e. applying to court to freeze assets or confiscate the proceeds of crime

### Good practice: UK – Unexplained wealth orders

The Criminal Finances Act 2017 built upon the UK's existing legal framework and extended the ability to obtain civil recovery orders to HMRC and the FCA and introduced unexplained wealth orders. These orders can be used to investigate funds from individuals reasonably suspected of involvement or connection with serious crime and require an individual to explain the origin of their assets. Failure to provide a full response could lead to or assist a civil recovery action or criminal conviction.

The below model demonstrates the perceived scale of severity of enforcement powers and tools:



While the types of enforcement powers and tools available to regulators are well documented, there is a lack of available, up-to-date statistics on enforcement activity for the majority of jurisdictions in the study, making it difficult to undertake a direct comparison of enforcement activity levels. When deciding whether to pursue enforcement action and when determining the appropriate remedy or sanction to impose, the regulators interviewed consider a number of factors, including the number, duration and impact of breaches, as well as any relevant aggravating or mitigating factors. In general, most regulators use less severe powers and tools to enforce AML/CFT compliance, such as attestations and improvement notices or orders, with some regulators taking more of an educational approach to enforcing remedial actions to address identified deficiencies. The use of financial incentives, i.e. financial penalties and fines, varies considerably across jurisdictions. One exception is the UK FCA, which publishes its enforcement decisions and detailed statistics on sanctions issued each year: a total of £69,9 million in fines and 269 final notices were issued in 2017/2018. It is clear that the FCA places an emphasis on targeted enforcement across the full range of its powers, including financial penalties and fines, recognising its role as a key driver of behaviours. Similarly, the US is also recognised for applying dissuasive and effective sanctions for violations of AML/CFT and sanctions obligations. For example, BNP Paribas was fined USD 8.9 bn. for violating US sanctions against blacklisted countries in 2014. This may be due in part to the fact that both the UK and US are

global financial centres exposed to higher risks from the laundering of foreign predicates, organised crime proceeds and overseas corruption. Most regulators also highlighted that an important aspect of the enforcement process is the public notice of enforcement decisions. This has a deterrent effect on both the individual firm and the wider supervised sector, as well as signalling to firms the regulator's expectations in terms of compliance.

The range of powers and tools available to the Danish FSA to enforce compliance are comparatively narrow. The Danish FSA can issue orders to rectify violations and use other administrative reactions, namely "reprimands" and "risk information", to draw firms' attention to elements that present significant and immediate risks. However, these are not enforceable, other than through referral to police for investigation and prosecution. Administrative fines may only be imposed in situations where a firm has not submitted documents requested by the supervisor. As such there is a significant focus on referral to police for investigation and prosecution for breach of AML/CFT requirements. The police may then choose whether to initiate a criminal investigation, at the end of which the Prosecutor has discretion whether to open judicial proceedings, which could lead to a fine or imprisonment. This is largely because the investigation and prosecution of serious economic and international crimes falls under the responsibility of the State Prosecutor for Serious Economic and International Crime (SØIK). In other jurisdictions such as the UK, the government has introduced new investigative powers and tools to enhance the ability of the regulators to investigate and prosecute ML and TF, albeit in collaboration with other authorities.

### **Transition from supervision to enforcement**

Rule breaches, big and small, do happen and can be a result of mistakes rather than malicious intent. The regulators interviewed all have powers and tools to address specific risks and issues identified in firms, with a range of powers transitioning from supervision to enforcement considered to be the most effective.

Where serious failings in a firm's AML/CFT programme have been identified, most regulators enhance the level of supervisory oversight, requiring an action plan for the firm to address root causes (including cultural failings), supervisory monitoring – overseen by the regulator's senior management – of the firm's action plan and progress, and formal commitments from the Board or, at a minimum, requiring the Board to identify the senior individual(s) responsible. Most regulators use attestations to ensure that firms – and senior managers within them – are clearly accountable for taking the actions required on specific issues, without ongoing regulatory involvement. This includes instances where regulators want a firm to take specific action within a timescale, to self-certify or to verify that a specific issue or risk has been resolved or mitigated.



### **Good practice: UK Financial Conduct Authority – External, independent reviews**

The UK FCA has the power to obtain a view from a third party (a 'Skilled Person') about aspects of a regulated firm's activities if there are concerns or further analysis is needed. The FCA can appoint, or require firms to appoint, a Skilled Person to carry out a review and provide a report to the FCA. To enable the FCA to contract directly with the Skilled Person firm, they developed a Skilled Person Panel. The panel is divided into 14 subject categories known as 'Lots', one of which is Financial Crime. The FCA commissioned 8 Skilled Person Reports under Lot E – Financial Crime in 2018/19.

Similarly, in the US, there has been a notable increase in the use of independent corporate monitors in connection with the resolution of corporate criminal and regulatory investigations. Monitors typically help to create and supervise the implementation of compliance and remediation programmes to address the perceived deficiencies that gave rise to the wrongdoing. Institutions such as BNP Paribas and Commerzbank have been ordered to install independent monitors in recent years for AML and sanctions violations. In these cases, monitors were installed to help financial institutions implement stronger AML systems and controls. They are usually enabled in combination with a deferred or non-prosecution agreement with a mandate to assess, oversee and examine a financial institution's progress against the agreement, and to ensure compliance with laws and regulations.

## **4.5 Education in supervisory authorities**

This section outlines the common education tools and compares regulatory involvement in education, specifically concentrating on improvements made to guidance and training, highlighting any areas of best practice. It is observed that supervisors in general are making improvements and developing new methods and tools to educate and engage with regulated entities.

There are differences in how the countries balance resources between preventive measure as education and control activities, such as inspections. Two countries (the Netherlands and Finland) have particularly strong preventive activities while most of the countries have more resources allocated to the control activities rather than to preventative measures.

### **Types of education utilised**

There are several different types of education used across supervisors. One of the more common education tools used in AML/CFT compliance is guidance and wider information materials. The majority of countries interviewed mentioned guidance as a key education tool, such as that issued in the UK by the Joint Money Laundering Steering Group (JMLSG) in recent years. This behaviour has also become increasingly prevalent in the Nordics.

There are also information tools wider than guidance, such as published AML/CFT articles. The Finnish FSA publishes a KYC newsletter which provides information on preventing money laundering for its supervised entities, as well as updated news on EU sanctions, FATF public statements and any other issues. Furthermore, the Finnish FSA website provides guidance and information on AML/CFT compliance issues. Guidance combined with



published informative sites provides an effective platform to raise awareness of AML / CFT. In addition to guidance and public information, the Finnish FSA provides its supervised entities with AML / CFT training, which encourages knowledge sharing in the industry as well as acts as a preventative education measure. On a similar level, the Swedish FSA published short training clips on YouTube and its website to encourage engagement, showing initiative to drive awareness and prevention of ML/TF.

Industry events are another common educational tool cited by regulators, as these events can reach a wide targeted audience in a short space of time. Norway, for example, utilises the annual AML/CFT conference as an opportunity for education, which reaches around 600 individuals from relevant organisations. This event is co-hosted by Finance Norway, the FIU and the FSA and is organised as a two-day conference relating to ML/TF related trends, threats and risks, which is seen to be an effective educational tool and helps to promote AML/CFT compliance across the jurisdiction.

### **Good Practice: the Netherlands' approach to education**

The Netherlands has taken a unique approach to AML/CFT education, encouraging entities to step up and take responsibility. An example of good practice is its initiative “naming and faming” entities who are performing well in this area and publishing their own supervisory frameworks and development models. The Dutch Authority for the Financial Markets (AFM) also hold educational seminars, round tables and publish the measures imposed. This demonstrates an active and encouraging approach to education.

To conclude, several types of educational tools are available and being utilised by supervisors. More common tools include industry events, which are perceived to be effective in reaching a wide but relevant audience, as well as more formal informative tools such as guidance, which can be used as a handbook to further increase alignment and ultimately enhance AML/CFT supervision.

**Copenhagen Office**

Portland Towers  
Göteborg Plads 1  
2150 Nordhavn  
Denmark  
+45 39 25 50 00

**paconsulting.com**

This report has been prepared by PA Consulting Group on the basis of information supplied by the client, third parties (if appropriate) and that which is available in the public domain. No representation or warranty is given as to the achievability or reasonableness of future projections or the assumptions underlying them, targets, valuations, opinions, prospects or returns, if any, which have not been independently verified. Except where otherwise indicated, the report speaks as at the date indicated within the report.

**All rights reserved**

© PA Knowledge Limited 2018

This report is confidential to the organisation named herein and may not be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical or otherwise, without the prior written permission of PA Consulting Group. In the event that you receive this document in error, you should return it to PA Consulting Group, Portland Towers, Göteborg Plads 1, 2150 Nordhavn, Denmark. PA Consulting Group accepts no liability whatsoever should an unauthorised recipient of this report act on its contents.