



# DENMARK

## FINANCIAL SECTOR ASSESSMENT PROGRAM

### TECHNICAL NOTE—NEXT STEPS FOR CROSS-BORDER AML/CFT SUPERVISION

August 2020

This Technical Note on Next Steps for Cross-Border AML/CFT Supervision for the Denmark FSAP was prepared by a staff team of the International Monetary Fund as background documentation for the periodic consultation with the member country. It is based on the information available at the time it was completed in July 2020.

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July 15, 2020

# TECHNICAL NOTE

## NEXT STEPS FOR CROSS-BORDER AML/CFT SUPERVISION

Prepared By  
**Legal Department**

This Technical Note was prepared by IMF staff in the context of the Financial Sector Assessment Program in Denmark. It contains technical analysis and detailed information underpinning the FSAP's findings and recommendations. Further information on the FSAP can be found at

<http://www.imf.org/external/np/fsap/fssa.aspx>

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## Glossary

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
CDD	Customer Due Diligence
DFSA	Danish Financial Supervisory Authority
EEA	European Economic Area
EU	European Union
FI	Financial Institution
FIU	Financial Intelligence Unit
FSAP	Financial Sector Assessment Program
JMLIT	Joint Money Laundering Intelligence Task Force (United Kingdom)
IT	Information Technology
ML/TF	Money Laundering and Terrorist Financing
MLF	Money Laundering Forum
MLS	Money Laundering Secretariat
MOU	Memorandum of Understanding
NRA	National Risk Assessment
PEP	Politically Exposed Person
RCAs	Relatives and Close Associates (of Politically Exposed Persons)
SAR	Suspicious Activity Report
SPSEIC	State Prosecutor for Serious Economic and International Crime
STR	Suspicious Transaction Report
TFR	Terrorist Financing Report
TN	Technical Note

## OVERVIEW AND CONTEXT<sup>1</sup>

**COVID-19 Pandemic:** *The Financial Sector Assessment Program (FSAP) work was conducted prior to the COVID-19 pandemic, so this Technical Note (TN) does not assess the impact of the crisis or the recent crisis-related policy measures. Nonetheless, given the FSAP's focus on vulnerabilities and policy frameworks, the findings and recommendations of the TN remain pertinent.*

### 1. The Danish authorities' efforts to strengthen cross-border anti-money laundering and combating the financing of terrorism (AML/CFT) supervision continue to gather momentum.

Since the Fund's publication of a Selected Issues Paper on this subject in June 2019<sup>2</sup>, the Danish authorities have made significant progress, including by conducting or participating in three multinational on-site inspections of banks; developing a new institutional risk assessment model; issuing an AML/CFT on-site inspection manual; and, via Act No. 1563 (2019), amending several pieces of legislation so as to bolster the monitoring and enforcement powers of the Danish Financial Supervisory Authority (DFSA), establish additional reporting requirements for the private sector, and stiffen the penalties for violations of AML/CFT obligations.

### 2. Reform has proceeded apace, in the context of retrenchment in the banking sector.

Following revelations of the possible laundering of over \$200 billion via its branch in Estonia, Danske Bank, Denmark's largest financial institution (FI), has significantly reduced its presence abroad. It closed its branches in Estonia and Russia over the course of 2019 and is now in the process of selling most of its activities in Lithuania and Latvia. Also in 2019 – but in response to the United Kingdom's decision to leave the European Union (EU) – Jyske Bank, Denmark's fourth largest FI, sold its subsidiary in Gibraltar.

### 3. Increased awareness of money laundering and terrorist financing (ML/TF) risks has prompted a surge of suspicious transaction reporting by Danish FIs.

The Danske Bank case, along with other, recent ML cases in the Nordic-Baltic region, appears to have raised awareness of ML/TF risks among Danish FIs and so generated a significant increase in the filing of suspicious transaction reports (STRs) with the Money Laundering Secretariat (MLS), Denmark's financial intelligence unit (FIU). The MLS received a record 13,771 reports<sup>3</sup> in the third quarter of 2019, followed by a record 15,741 reports the following quarter. In the fourth quarter of 2019 alone, the MLS disseminated 3,648 unique reports to receiving entities, which include the State Prosecutor for Serious Economic and International Crime (SPSEIC), various police districts, and the Tax Agency.

<sup>1</sup> The author is Jay Purcell, Financial Sector Expert (Legal Department, IMF). The note was prepared the context of the Denmark 2020 FSAP led by Selim Elekdag. It contains technical analysis and detailed information underpinning the FSAP's findings and recommendations on AML/CFT-related issues. The note has benefited from the feedback and suggestions of the Danish authorities.

<sup>2</sup> International Monetary Fund, 2019. "Reinforcing Denmark's AML/CFT Cross-Border Banking Supervision: Keys to Maintaining Momentum." Available on-line at: <https://www.imf.org/en/Publications/CR/Issues/2019/06/24/Denmark-Selected-Issues-47026>.

<sup>3</sup> Including STRs, Suspicious Activity Reports (SARs), and Terrorist Financing Reports (TFRs).

**4. Increased awareness has also generated the political will necessary to augment the resources allocated to AML/CFT institutions.** Despite a change of government following the June 2019 elections, a large majority of the parties in parliament, including the ruling party, remain firmly supportive of strengthening Denmark’s AML/CFT regime. This national consensus, as reflected in a series of published political agreements, has: (i) underwritten deeper international and domestic cooperation to combat ML/TF; (ii) accelerated the adoption of the risk-based approach to AML/CFT supervision; and (iii) enabled expedited changes to Danish law so as to increase the resources and powers available to key institutions, among them the DFSA and the MLS.

**5. This note takes stock of the authorities’ recent progress in strengthening the AML/CFT supervision of banks, identifies next steps, and provides three follow-on recommendations.**

Those recommendations – essentially, priority next steps – are: (i) for the Government to consider next-stage options for the integration/consolidation of AML/CFT supervision at the sub-regional or EU levels and pursue the selected option(s); (ii) for the DFSA to implement its new institutional risk assessment model; and (iii) for the DFSA to intensify (i.e., significantly lengthen and deepen) its AML/CFT on-site inspections of higher-risk FIs. There is reason to believe that these recommendations could all be implemented over the near-term.<sup>4</sup> The annual AML/CFT stocktaking exercise of the parties to the March 2019 political agreement would provide an ideal forum to discuss the conduct of AML/CFT supervision on a consolidated basis at the sub-regional or EU levels. The DFSA’s workplan for 2020 includes both the testing of its institutional risk assessment model and the continued refinement of its AML/CFT on-site inspection program.

## INTERNATIONAL AND DOMESTIC COOPERATION

**6. International and domestic cooperation are critical to identifying and mitigating cross-border ML/TF risks in the banking sector.** As Danish banks continue to operate abroad and to serve significant numbers of non-resident customers, the nature and quality of the DFSA’s cooperation with its foreign counterparts will be a key driver of its effectiveness, both in identifying potential cross-border risks and in addressing any future ML cases that should arise. In carrying out those core functions, the DFSA will increasingly benefit from close cooperation with relevant domestic actors, including through bilateral channels, the interagency Money Laundering Forum (MLF), and public-private partnerships.

### A. Further Formalizing International Cooperation

#### Analysis of Recent Progress

**7. During the second half of 2019, the DFSA led or participated in three multinational on-site inspections and conducted its own inspection of a Danish bank’s operations abroad.** In September 2019, Finnish, Latvian, Norwegian, and Swedish inspectors took part in a DFSA-led two-day AML/CFT on-site inspection of Danske Bank, while Finnish inspectors took part in a similar

<sup>4</sup> I.e., within one year.

inspection of Nordea Danmark. That same month, a representative of the DFSA took part in an AML/CFT on-site inspection of Danske Bank in Norway. Then, in November 2019, the DFSA conducted an AML/CFT on-site inspection of Danske Bank’s processing center in Lithuania, marking the first time it had operated on its own outside the national territory. All of these inspections were conducted within the framework of the relevant supervisory colleges and their associated memoranda of understanding (MOUs), thereby demonstrating the potential of those colleges to further transparency, information-sharing, and concrete cooperation in the Nordic-Baltic region.

**8. The recently drafted MOU for the Nordic-Baltic AML/CFT Working Group (NBWG) will boost—and indeed, effectively “require”—cooperation.** In November 2019, the DFSA and its counterparts in the NBWG, which is sometimes referred to as the Nordic-Baltic Stability Group’s Permanent Working Group on AML/CFT Supervision, elaborated an MOU that will, when formally concluded, oblige (vs. merely enable) its members to cooperate and to share information to the greatest extent possible. As such, this MOU will effectively address any weaknesses or ambiguities in the bilateral MOUs previously concluded between individual members of the Working Group, which includes both members and non-members of the EU.

**9. These initiatives have meaningfully advanced cooperation in the Nordic-Baltic Region but have thus far stopped short of formal AML/CFT supervisory integration/consolidation.**

The supervisory colleges for individual FIs have enabled the *ad hoc* participation of national authorities in one another’s AML/CFT on-site inspections and the NBWG has fostered closer communication, not least via regular, region-wide meetings. However, these initiatives are at one end of a spectrum that (also) includes: (i) the consolidation of off-site AML/CFT supervision at the Nordic-Baltic or EU levels; (ii) the formal integration/consolidation of AML/CFT supervision at the Nordic-Baltic level; or (iii) the formal integration/consolidation of AML/CFT supervision at the EU level, whether among a vanguard group of member states (per the “Enhanced Cooperation” procedure) or among all the member states.<sup>5</sup>

**10. The DFSA is currently negotiating a set of bilateral MOUs with a key non-EU, non-European Economic Area (EEA) counterpart; it should proactively pursue others.** Under Danish Law, the DFSA must conclude specific agreements before sharing information with non-EU, non-EEA supervisory authorities. The NBWG MOU noted above is a good example. Another is the set of (two) bilateral MOUs – for the banking and investment banking sectors – that the DFSA is currently negotiating with an important foreign counterpart. Going forward, the DFSA should proactively pursue other bilateral MOUs, prioritizing those non-EU, non-EEA jurisdictions in which Danish banks operate<sup>6</sup> or are planning to operate – or whose own banks currently operate in Denmark.

<sup>5</sup> Note that fully implementing any of these options would almost certainly require amendments to Danish law.

<sup>6</sup> E.g., Australia, Brazil, India, Russia, Singapore, and Switzerland.

## Proposed Next Steps

**11. The Danish authorities should take the following next steps to further strengthen and routinize international cooperation on AML/CFT banking supervision:**

- **The Government should consider next-stage options for the integration/consolidation of AML/CFT supervision at the sub-regional or EU levels<sup>7</sup> and pursue the selected option(s).** The corresponding discussions could take place within the context of the annual stocktaking exercise of the parties to the March 2019 political agreement (see paragraph 12, below).
- **The DFSA should continue to pursue bilateral MOUs with foreign counterparts outside the EU and EEA.** In so doing, it should prioritize those jurisdictions in which Danish banks operate or are planning to operate – or whose own banks currently operate in Denmark.
- **Over time, the DFSA should reexamine and seek to strengthen its existing MOUs with key non-EU, non-EEA counterparts.** Its goal should be to determine whether long-ago concluded MOUs provide adequate foundations for, and presumptions of, cooperation (vs. merely the possibility of cooperation), including with respect to the exchange of information – and that, in a sufficiently wide variety of possible cases.

## B. Deepening Domestic Cooperation

### Analysis of Recent Progress

**12. The parties to the March 2019 Political Agreement on Strengthening Efforts against Financial Crime held their first annual stocktaking exercise in October 2019.** The March 2019 political agreement was supported by a large majority of the parties in parliament, including the new ruling party, which convened the first of what are to be annual stocktaking exercises in October 2019. The objective of those exercises is two-fold: to follow-up on the implementation of past AML/CFT political agreements and to determine whether and when further such agreements might be necessary.

**13. To foster domestic cooperation at an operational level, the MLF’s MOU was updated and a subordinate “Operational Forum” was established.** The MLF is Denmark’s key interagency mechanism for domestic AML/CFT cooperation. In October 2019, the MOU that governs its activities was updated and adopted by all of its members. In parallel, an Operational Forum was stood up within the MLF umbrella to enable closer coordination on individual cases. The authorities that comprise the Operational Forum meet monthly, on a confidential basis.

**14. The MLS has been increasingly proactive in providing other domestic authorities with relevant information and/or access to its secure database.** During the second half of 2019, the MLS proactively provided a “warning” to the DFSA concerning an evolving ML risk with regard to

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<sup>7</sup> As detailed in paragraph 9, above.



which it is currently conducting a full analysis. Separately, but over roughly the same timeframe, the MLS database was partially integrated into the police's analysis platform (Polintel), such that the police can determine whether ("yes or no") the MLS database contains information relevant to an ongoing investigation – and, if so, formally request the information itself via that same platform. This means, for example, that the SPSEIC can now conduct a limited, initial query of the MLS database as part of an investigation into potentially problematic transactions referred to it by the DFSA.

**15. The MLS has not yet provided the DFSA with information on individual FIs whose institutional risk tolerances or profiles appear to have changed.** In addition to providing the DFSA with warnings and/or analyses regarding the broader ML/TF risks, trends, and methods affecting the Danish financial sector, the MLS should, where relevant and appropriate, provide information on individual FIs that have filed reports indicating that their institutional risk tolerances or profiles may have changed. For example, if the MLS were to receive STRs indicating that a given bank is conducting increasing numbers of transactions in a high-risk jurisdiction, it could indicate as much to the DFSA, which could then consider checking in with that bank – or else adding it to the DFSA's on-site inspection schedule.

**16. Per the EU's 5<sup>th</sup> AML Directive, the authorities are developing a system to enable the MLS to determine whether (and if so, which) FIs hold accounts for specific customers.** The future information technology (IT) system, which is due to be rolled out in September 2020, will only accept queries from the MLS. Those queries will then be forwarded to FIs, via a secure server. FIs holding relevant accounts will be required to respond with several particulars, including the names of the account holder and beneficial owner, the account number, the date on which the account was opened and, where applicable, the date on which it was closed. Upon receiving one or more "hits" (i.e., positive responses), the relevant authorities will know to which FIs they should transmit any future formal request for additional information, e.g., excerpts from a customer's transaction record.

**17. In December 2019, Finance Denmark released 25 recommendations aimed at furthering AML/CFT cooperation between the public and private sectors.**<sup>8</sup> Finance Denmark is the Danish banking industry association and an avid proponent of public-private partnerships. The recommendations generated by its AML Task Force are wide-ranging, and include those selected for presentation in Box 1, below.

### Proposed Next Steps

**18. The Danish authorities should take the following next steps to deepen domestic cooperation on AML/CFT banking supervision:**

- **Where relevant and appropriate, the MLS should share with the DFSA its analysis of STRs that may indicate a shift in individual banks' institutional risk tolerances or profiles.** As noted above, the MLS' analysis could be filed by the DFSA for future reference, prompt the DFSA

<sup>8</sup> Available on-line at: <https://www.epaper.dk/finansdanmark/anti-money-laundering-and-counter-terrorist-financing-in-the-danish-financial-sector/>.

to check-in with the subject bank, or lead the DFSA to add the subject bank to its on-site inspection schedule.

- **The MLS should consider modifying its reporting regime to request that reporting entities identify any predicate offense(s) potentially linked to a suspicious or unusual transaction.** This modest reform would have the potential to enhance the MLS' ability to identify emerging risks, trends, and methods of interest to several other authorities, including the DFSA, and to prioritize STRs for (manual) analysis.
- **The MLF should review the recommendations of Finance Denmark's AML Task Force that would imply action by the authorities and work to advance agreed initiatives.** As the implementation of some of the Task Force's recommendations would require changes to Danish law (see, for example, Recommendations 2 and 4, as detailed in Box 1, below), the active support of the Government would be critical to getting those particular initiatives off the ground.

#### Box 1. Select Recommendations from Finance Denmark's AML Task Force

- Recommendation 1: Develop a register of bank account and safety deposit box holders, as well as a shared, industry-wide list of politically exposed persons (PEPs) and their relatives and close associates (RCAs).
- Recommendation 2: Identify the (technological and legal) requirements for establishing an industry-wide customer due diligence (CDD) "utility" to capture names, birthdates, addresses, and other identifiers as well as information on those customers whose accounts have been closed or else marked for special scrutiny owing to their suspected involvement in illicit financial activities.
- Recommendation 4: Establish a Joint AML/CFT Intelligence Unit<sup>1</sup> as between banks, the MLS, the police, the intelligence services, and the Tax Agency, to exchange confidential information on "big fish"/"major cases".
- Recommendation 21: Conduct annual MLS "evaluations" of the quality of financial sector STRs with a view to minimizing unnecessary reporting.

<sup>1</sup> This would be modeled on the United Kingdom's Joint Money Laundering Intelligence Task Force (JMLIT), which was established in 2016.

Source: Finance Denmark.

## IMPLEMENTING THE RISK-BASED APPROACH

**19. Fully implementing the risk-based approach to AML/CFT supervision will maximize both the efficiency and the effectiveness of the DFSA.** Despite the substantial new resources allocated by the Danish government (see paragraph 30, below) neither the DFSA nor any other

AML/CFT supervisor can conduct full-scope on-site inspections of every FI, every year. The risk-based approach accommodates this reality by varying the timing, frequency, scope, and intensity of inspections based on assessed ML/TF risks at the national, sectoral, and institutional levels.

## A. Assessing ML/TF Risks

### Analysis of Recent Progress

**20. In January 2020, the MLS published an English-language translation of the summary and methodology of Denmark’s 2018 ML National Risk Assessment (NRA).** At the same time, the MLS provided an English-language translation of the full NRA to all reporting entities, some of which are owned by foreign firms whose corporate managers and compliance officers may not speak or read Danish. This should not be understood as a backward-looking exercise; in addition to providing the private sector with a valuable resource, the MLS is already preparing to conduct a next-round NRA, which will incorporate the feedback it continues to receive on the 2018 text.

**21. The DFSA has issued a Danish-language translation of the EU’s 2019 supranational ML/TF risk assessment.** Given the importance of identifying and mitigating cross-border risks to safeguarding financial integrity in Denmark, the translation and publication of the *EU Assessment of the Risk of Money Laundering and Terrorist Financing Affecting the Internal Market and Relating to Cross-Border Activities*<sup>9</sup> is a positive development.

### Proposed Next Step

**22. The DFSA should actively solicit supervised entities’ feedback on the accuracy and value of Denmark’s 2018 ML NRA and the EU’s 2019 supranational ML/TF risk assessment.** Assessing ML/TF risks is an ongoing challenge that requires close consultation between the public and private sectors. As the DFSA conducts AML/CFT inspections over the course of 2020, it should note key differences between the national and supranational risk assessments described above and the institutional-level risk assessments prepared by individual FIs – and gauge the private sector’s perceptions of the accuracy and value of both the Danish and EU products. The reactions collected by the DFSA should be fed into the process of elaborating the next round of assessments.

## B. Conducting Risk-Based AML/CFT Supervision

**23. Effective cooperation between AML/CFT and prudential banking supervisors is essential to advancing their common interests – and the common good.** Although the AML/CFT and prudential supervision of banks are governed by different laws and regulations, much of the information obtained via these two processes is mutually relevant, and indeed, essential to ensuring the health, stability, and integrity of the sector. For example, information regarding the quality of

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<sup>9</sup> Available on-line at:

[https://ec.europa.eu/info/sites/info/files/supranational\\_risk\\_assessment\\_of\\_the\\_money\\_laundering\\_and\\_terrorist\\_financing\\_risks\\_affecting\\_the\\_union.pdf](https://ec.europa.eu/info/sites/info/files/supranational_risk_assessment_of_the_money_laundering_and_terrorist_financing_risks_affecting_the_union.pdf).

banks' governance, risk management, compliance, internal controls, and operational resilience is of equal importance to both supervisory processes and so should be freely shared (and, where appropriate, jointly acted upon). Relative to many of its counterparts around the world, the DFSA, which is responsible for both fields of supervision, has an institutional advantage in its resultant potential to obtain greater insights and share pertinent information internally.

### **Analysis of Recent Progress**

**24. The DFSA has developed a new ML/TF institutional risk assessment model (or “scoreboard”), which includes cross-border risks as a core component.** In cooperation with international consultants, the DFSA has developed a new, data-driven scoreboard that will calculate institutional-level risks as a function of 27 sets of inputs provided on a quarterly basis by every supervised entity. The model will account for both inherent and residual risk, building in robust cross-border elements generated from a combination of FI-supplied data on foreign customers and transactions and DFSA-developed geographic risk categories. During the development process, the DFSA consulted with five foreign (EU and non-EU) counterparts via study visits, teleconferences, and e-mail exchanges. Their goals were to benefit from other supervisors' experiences in implementing similarly extensive models and to collect a robust set of international good practices.

**25. The DFSA will soon begin testing the model, aiming for its full deployment in 2021.** The DFSA has already begun a series of private sector consultations on the specific data to be collected from supervised entities and the format (reporting template) in which it is to be provided via the existing FIONA Online internet platform. Those consultations should also enable the DFSA to elaborate comprehensive instructions, interpretive notes, and guidelines. The DFSA will then test the model using the data and feedback provided by five volunteer banks recently identified by Finance Denmark.

**26. During the second half of 2019, the DFSA made a number of last-minute, risk-related adjustments to its on-site inspection schedule.** At the beginning of last year, the DFSA redesigned its inspection schedule to include both intentionally blank and only tentatively filled slots so as to enable it to respond as nimbly as possible to unforeseeable developments. The DFSA proceeded to fill the blank slots with appropriate FIs and made several last-minute changes to the schedule for one particular sub-sector, based on late-breaking information indicating that some of the entities tentatively selected for inspection presented lower risks than initially believed. These changes are evidence of the DFSA's flexibility and risk-sensitivity – two keys to the successful implementation of the risk-based approach.

**27. Over the course of the last (2019) inspection cycle, the DFSA conducted an off-site inspection of 15 banks' institutional risk assessments, as well as a series of thematic on-sites.** Leveraging both off-site (i.e., desk-based) and on-site tools – and focusing on transaction monitoring as a critical “theme” – the DFSA was able to cover a broader swathe of the financial sector than it would have by conducting only traditional, full-scope inspections. These reforms are evidence of the DFSA's increasing efficiency.

## Proposed Next Step

**28. The DFSA should fully deploy its new institutional risk assessment model by the beginning of 2021.** To do so, the DFSA will need to: (i) complete its consultations with the private sector; (ii) make a first round of necessary adjustments; (iii) complete the drafting of the data reporting template; (iv) test/validate the model using the data provided by a vanguard group of supervised entities; (v) make a second round of necessary adjustments; and (vi) issue comprehensive instructions, interpretive notes, and guidelines.

## RESOURCES, PROCEDURES, AND POWERS

**29. Adequate resources, procedures, and powers are prerequisites for effective AML/CFT supervision.** These ensure that supervisors can do in practice what is prescribed, in theory, by their training, experience, and understanding of the applicable international good practices.

### A. Resources

#### Analysis of Recent Progress

**30. The DFSA received a(nother) substantial budget increase in 2019, thereby enabling a permanent expansion of the AML Division.** In 2019, the DFSA budget was increased by DKK 63 million so as to enable the expansion of its AML Division and the completion of a special project requested by the government. The funds necessary to sustain the expansion of the AML Division have already been provided for 2020 and are slated to be provided through and beyond 2022.

**31. Over the second half of the year, the AML Division recruited and hired 5.5 new staff members, such that the DFSA now has 20 full-time equivalents<sup>10</sup> working on AML/CFT.** That top-line number breaks down as follows: 14-15 full-time inspectors (dealing with inspections and other supervisory tasks), 3-4 staff working on international affairs, and 2 staff working on AML/CFT legislation. The new hires are now being put through the AML Division's standard training program, which consists, as feasible, of external courses, internal seminars, and on-the-job learning (via participation in on-site inspections conducted in conjunction with more experienced staff, qualified consultants, or other divisions of the DFSA).

**32. A budget increase also enabled the permanent expansion of the MLS.** Over the last nine months, the staff of the MLS has grown by approximately 6 percent or 1.5 full-time employees. Not including the Head of the Unit, the MLS had a staff of 26 full-time employees at the end of June 2019; as of March 2020, it had a staff of 27.5 full-time employees.

<sup>10</sup> I.e., 19 full-time and 2 part-time employees.

## Proposed Next Step

**33. The DFSA should develop a formal staff retention plan.** Given the strong demand for compliance staff in the well-paying Danish financial sector, retaining the talented individuals the AML Division has worked so hard to identify, recruit, hire, and train should be a top priority. Staff retention produces increasing benefits over time, as new inspectors become more experienced and more efficient, requiring fewer hours of management oversight. The DFSA should therefore catalogue the full range of its staff retention tools and craft a strategy to employ those tools in a thoughtful, consistent, and enduring manner.

## B. Procedures

### Analysis of Recent Progress

**34. The DFSA has formulated and issued a comprehensive AML/CFT inspection manual.** Prepared in cooperation with international consultants over the course of 2019 and distributed to inspectors earlier this year, the new manual explains core concepts, describes standard procedures, highlights key questions for discussion with supervised entities, and provides relevant references to Danish law and regulation.

**35. The AML Division's expanded resources allowed it to conduct twelve full-scope on-site inspections and one set of (five) thematic on-site inspections from June-December 2019.** In total, the AML Division conducted 37 AML/CFT inspections (or sets of inspections) in 2019; it aims to conduct approximately 45 in 2020, including 15 in the banking sector. Of note is that this figure may not translate to the inspection of 15 individual banks, as it is likely to include multiple, including thematic, on-site inspections of those 2-3 banks assessed to present the highest ML/TF risks.

**36. However, the DFSA continues to spend only one-to-two days on the premises of inspected FIs, conducting interviews only with senior managers and compliance officers.** As such, the DFSA's full-scope on-site inspections do not include the testing of critical (e.g., customer, transaction, and/or sanctions screening) systems<sup>11</sup>, discussions with line staff, or visits to individual bank branches.<sup>12</sup> This last point is particularly salient, given that the recent Danske Bank case involved transactions conducted through a small branch in Estonia operating with seemingly insufficient oversight from the corporate headquarters in Copenhagen.

**37. There are substantial benefits to be gained from conducting fewer, but more intense, on-site inspections of higher-risk FIs.** The intensification (i.e., the lengthening and deepening) of the DFSA's AML/CFT on-site inspections of higher-risk FIs would reveal the true extent and quality of

<sup>11</sup> Instead, the DFSA requires certain aspects of those systems to be demonstrated while on the premises of an inspected entity.

<sup>12</sup> The DFSA indicates that a 2012-2014 experiment with branch visits and line staff interviews produced mixed results, as bank tellers and other junior employees were eager to defer to their managers and hesitant to engage with the inspection team without those managers present.

adherence to critical corporate policies and procedures, underscore the importance of cultures of compliance, and incentivize the entire banking sector to implement group-wide training programs.

### Proposed Next Step

**38. As a matter of priority, the DFSA should intensify (i.e., significantly lengthen and deepen) its AML/CFT on-site inspections of higher-risk FIs.** The intensification of national and multinational on-site inspections of higher-risk FIs is critical, as it would allow the AML Division to test key systems and procedures, obtain and analyze additional samples of customer files and transactions (whenever necessary or desirable), verify that front-line employees are adequately sensitized and trained, and determine the extent to which corporate policies and procedures are consistently applied at local branches. Moreover, vigilance could well improve sector-wide owing to the demonstration effect produced by even a limited number of more intense on-sites.

## C. Powers

### Analysis of Recent Progress

**39. The Danish legal framework was amended to expand the monitoring and enforcement powers of the DFSA, stiffen penalties for violations, and create new reporting requirements.** Act No. 1563 (2019) enacted the sweeping amendments to Danish law that were promised as part of a March 2019 political agreement concluded by a large majority of the parties in parliament. Additional details on the content of the Act are provided in Box 2, below.

#### Box 2. Select Reforms from Act No. 1563 (2019)

- Enables the DFSA to issue administrative fine (i.e., “fixed-penalty”) notices to FIs in response to violations of AML/CFT-related obligations.
- Enables the DFSA to place one or more monitors within an FI for up to six months.
- Enables the DFSA to ban FIs’ acceptance of new customers, including, where applicable, at foreign branches, until specific breaches of AML/CFT-related obligations are rectified.
- Requires FIs to submit “information that is of critical importance” to supervision by the DFSA “at [their] own initiative and as soon as possible.”
- Requires FIs to rectify with the DFSA any previously submitted information that they subsequently determine to be incorrect or misleading.
- Increases the maximum prison term for: (i) “particularly gross or extensive intentional violations” of the AML Act and; (ii) persons connected to FIs who “submit incorrect or misleading information” to public authorities.

Source: Act No. 1563 (2019).

**40. The DFSA now has the power to levy administrative fine (i.e., “fixed-penalty”) notices in response to the violation of FIs’ AML/CFT related obligations.** In practical terms, this power will enable the DFSA to resolve violations of AML/CFT-related obligations without having to refer the relevant FIs to the SPSEIC for investigation and possible prosecution, to the extent that the affected FI agrees to plead guilty to the alleged offense and pay the prescribed amount.<sup>13</sup> Any FI that should refuse to plead guilty or else dispute the amount to be paid would remain subject to law enforcement action.

### Proposed Next Step

**41. The DFSA should fully integrate its new monitoring and enforcement powers into its existing business procedures.** The DFSA’s well-established business procedures help to ensure that it exercises its mandate with a high degree of consistency and predictability. The DFSA should therefore fully integrate its new powers into those procedures in preparation for their use.

## RECOMMENDATIONS AND CONCLUSIONS

**42. To complete the most critical next steps identified above, staff recommends that:**

- The Government consider next-stage options for the integration/consolidation of AML/CFT supervision at the sub-regional or EU levels and pursue the selected option(s);
- The DFSA test, adjust, and fully deploy its new institutional risk assessment model by the beginning of 2021; and
- The DFSA intensify (i.e., significantly lengthen and deepen) its AML/CFT on-site inspections of higher-risk FIs as a matter of priority.

**43. Reinforced international and domestic cooperation, expanded powers, new resources, and the adoption of the risk-based approach have poised the DFSA for continued progress.** Moreover, despite a change in government following the June 2019 elections, the necessary political will is firmly in place to support and strengthen Denmark’s AML/CFT supervisory regime.

**44. Further reform remains necessary, but the path forward is clear.** Ever closer international cooperation, the full deployment of the risk-based approach, and intensified AML/CFT on-site inspections of higher-risk FIs are the vital and achievable next steps that will enable the DFSA to maintain and build on the impressive momentum it has gathered since June 2019.

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<sup>13</sup> By law, the FI’s acceptance of guilt and of the concomitant fine has the same effect as a judicial ruling/conviction.