

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

Sent digitally to Danske Bank A/S by secure email to
FT_breve@danskebank.dk

cc:

Dorthe Tolborg, Chief Audit Executive
Erik Holst Jørgensen, State-Authorised Public Accountant
Jens Ringbæk, State-Authorised Public Accountant

19 February 2021
Ref. ASE/CAPA
File no. 6254-0114

Order to let experts follow Danske Bank A/S

Decision

The Danish Financial Supervisory Authority (the Danish FSA) orders Danske Bank A/S (Danske Bank or the bank) to let one or more experts follow the bank for a period of six months with a view to checking whether the implementation of Danske Bank's Financial Crime Plan of 25 May 2020 (the Financial Crime Plan or the plan) takes place as set out in the plan, including checking that the plan is implemented at the bank's foreign units and that the measures taken by the bank to meet the various objectives set out in the plan can be assumed to be sufficient to meet the objectives of the plan. The order is issued pursuant to section 347c of the Danish Financial Business Act.

The costs of the expert(s) are payable by the bank (see section 347c(4) of the Danish Financial Business Act).

The decision has been made after submission of the matter to the Danish FSA's Governing Board (see section 345(12)(v) of the Danish Financial Business Act).

Summary

Background

In 2017, Danske Bank launched a comprehensive remediation process in the AML area as a result of the case concerning its branch in Estonia. The process has been revised on several occasions since then and is still ongoing. The process coincided partly with the bank's follow-up on the reactions from the Danish FSA's AML inspection report from 2016.

On the basis of reports from the bank in October/November 2018, the Danish FSA stated in a letter to the bank dated 5 December 2018 that the process was significantly delayed in several material respects, including with regard to the bank's obtaining and updating customer due diligence data and to the bank's transaction monitoring.

The bank acknowledged that, up until the end of 2018, the remediation process had suffered from material shortcomings. Consequently, the responsibility for the process was transferred from the bank's chief operating officer (COO) to the then newly appointed chief compliance officer (CCO). Furthermore, the bank allocated significant internal and external resources for the remediation. The bank also launched a process for restructuring and expanding the Danske Bank Group's compliance organisation, which included employment of more staff at management level with international experience to ensure that the bank could prepare and deliver a remediation programme that would live up to international practice. In addition, the bank retained the services of an independent consulting

firm to validate the extent and progress of the bank's remediation process on an ongoing basis. The bank continued the process over 2019.

As from November 2019, the Danish FSA, as agreed with the bank, started receiving monthly updates on the remediation process in the AML area and requested a plan for the process that could also form the basis for its supervision. In the first quarter of 2020, the Danish FSA received an overall plan for the remediation process, describing the planned process for the compliance function. However, this plan did not yet constitute a sufficiently detailed plan that described the implementation of the remediation process across the bank, including its lines of defence, and which would ensure full compliance with the requirements of the Danish Act on Measures to Prevent Money Laundering and Financing of Terrorism (the Danish AML Act) and improve the bank's efforts in the area.

In the second quarter of 2020, following a dialogue with the Danish FSA, the bank therefore prepared such detailed plan, known as the Financial Crime Plan, and submitted it to the Danish FSA on 25 May 2020 (see below).

The remediation process is still ongoing, and the Danish FSA receives monthly reports on it.

AML inspections in 2019

Among other things, the Danish FSA conducted two themed AML inspections at Danske Bank in 2019. In the first quarter, the inspection addressed customer due diligence measures, and transaction monitoring was addressed in the third quarter.

After having been submitted to the bank for consultation, the joint inspection report on the two inspections was forwarded to the bank on 20 November 2020. The report contains four orders and one reprimand, primarily regarding customer data and transaction monitoring. The bank is in the process of following up on the orders and stated in December that it believed to be in compliance with one of the orders.

In 2019, the Norwegian FSA conducted an AML inspection at Danske Bank's Norwegian branch, resulting in a number of critical assessments and orders in 2020. Danske Bank is currently making daily penalty payments (as from 15 September 2020) for failure to comply with two of those orders, with regard one regarding ongoing due diligence and with regard one regarding customer due diligence measures for politically exposed persons. In more general terms, the Norwegian FSA also criticised in its report of July 2020 the fact that there was no overall governance of the branch's AML work and that the division of responsibility in the AML area between the head office and the branch was not clear. According to the bank, it has remedied a number of the issues pointed out by the Norwegian FSA and is in the process of completing its follow-up on the individual orders.

Towards the end of 2019, the German regulator (BaFin) conducted an inspection of Danske Bank's German branch. In April 2020, the German regulator informed the branch in its report that it had identified several serious shortcomings in the bank's AML measures, including with regard to customer due diligence data and reporting of suspicious transactions, and criticised the fact that these shortcomings had not been remedied even though an inspection conducted in 2017 had resulted in a negative report. According to the bank, it is in the process of completing its follow-up on the reactions and currently finds that it has complied with the vast majority of the reactions.

Financial Crime Plan

As mentioned above, the Danish FSA established in early 2020 that Danske Bank did not yet have an overall detailed plan for the remediation process that covered all its units and subsidiaries, including branches and subsidiaries outside Denmark, and which described both planning and implementation in detail with relevant timelines and milestones.

The Danish FSA had discussed such a plan with the bank on an ongoing basis and requested in its letter dated 6 April 2020 that the bank prepare such plan. The bank submitted its Financial Crime Plan to the

Danish FSA on 25 May 2020. The plan contains detailed timelines and milestones for the individual elements of the plan and forms the basis for the bank's work on the remediation process. With the plan, the bank has taken a number of steps towards improving the remediation process with regular updates to the Danish FSA. The bank has retained the services of independent consulting firm [omitted] to perform quality assurance in connection with the process.

The bank's Financial Crime Plan is comprehensive and extremely resource-intensive in terms of its timetable. According to the information provided by the bank, the plan covers all areas of the bank's efforts to combat money laundering and the financing of terrorism, and it is being implemented at a time when the bank has carried out large-scale organisational changes that entail, among other things, the replacement of a number of members of management and the employment of a large number of employees in the AML area. The plan is divided into 17 work streams with sub-tasks with different milestones and completion dates. A substantial number of the tasks were scheduled for completion in 2020, and many are scheduled for completion in 2021, and a few for completion in 2023.

Apart from ensuring compliance with legislative requirements in Denmark and in other jurisdictions where Danske Bank operates, the Financial Crime Plan aims to introduce systems and controls that follow international practice in the fight against crime in the financial area.

The Danish FSA is of the opinion that the bank has made significant progress in the remediation process, including in respect of the implementation of the Financial Crime Plan. The bank has been transparent towards the Danish FSA in connection with the process, including providing regular updates corresponding to the bank's management reporting in the area. On the basis of the bank's regular reporting, the Danish FSA, in October 2020, also established, however, that the bank had already fallen behind the objectives set out in the plan with regard to a substantial part of the plan's work streams. Furthermore, a report prepared by [omitted] for the bank and forwarded by the bank to the Danish FSA showed that many of the customer data files that had been updated as part of the remediation process were incomplete. This was based on a random sample taken by [omitted].

AML inspections in 2020

With regard to the bank's transaction monitoring, a comprehensive inspection conducted by external consulting firm [omitted] on behalf of the Danish FSA and launched in August 2020 has just been completed. The Danish FSA followed the inspection and its progress regularly by participating in regular steering group meetings and through frequent written and oral reporting by [omitted].

The inspection focused on transaction monitoring and thus only part of the areas covered by the Financial Crime Plan. However, the report prepared by [omitted] includes the following overall conclusion:

“It is clear that the Bank is undergoing an extensive remediation programme, set out in its GFCP. The GFCP aims to re-establish the Bank's financial crime framework. TM [transaction monitoring], the key focus of our Report, plays a central role in the GFCP. We found the GFCP to be extensive and to incorporate all necessary components of the Bank's arrangements to manage financial crime risks.

Throughout the conduct of our review, we observed that many of the weaknesses we identified were already known to the Bank and actions to remediate those risks had already been documented in the GFCP.

Since the start of the remediation programme, the Bank has made significant enhancements to its financial control framework, which has been effective in improving the overall framework for TM. Notably, we observed that the Bank's governance structure appears to be appropriately designed and implemented. The Bank also demonstrated appropriate data governance arrangements. We noted that the Bank's policies and procedures are adequately designed to capture customer information critical to enable effective TM.”

But the report also states the following:

“We did note, however, persistent weaknesses in a number of areas where the Bank is not able to demonstrate the effective nature of the TM framework and its ability to identify unusual or potentially suspicious customer transactions and behaviours. These areas include, for example, customer risk assessment and the Bank’s approach to assessing country risk. We also noted that the Bank is yet to define its financial crime risk appetite on a sufficiently granular level to allow it to demonstrate that the TM framework is designed to adequately mitigate the transactional risks to levels acceptable and manageable by the Bank.”

Even though the Danish FSA’s report for Danske Bank based on [omitted]’s reporting is not yet available and the inspection focused primarily on transaction monitoring, the Danish FSA finds that the latter conclusions confirm that the bank still has to implement material elements of the plan in order to ensure compliance with anti-money laundering legislation at all times. This has also been recognised by the bank.

Furthermore, the Danish FSA observed that the inspection conducted by [omitted] was impacted by the fact that [omitted] had difficulty in obtaining material sufficiently quickly from the bank in relation to documents and information from the bank’s foreign branches, including reports to the local authorities about suspicious transactions, for which reason the Danish FSA had to intervene.

The delays have caused concern for the Danish FSA, especially because the information and the documents, in the opinion of the Danish FSA, ought to be readily available at the bank and thus to the supervisory authority.

Legal basis

The Danish FSA may order a financial undertaking, a financial holding company or an insurance holding company to let one or more experts follow the undertaking or company for a period of up to six months with a view to carrying out the Danish FSA’s activities when the Danish FSA finds that material circumstances give rise to this. This follows from section 347c(1) of the Danish Financial Business Act, cf. Consolidated Act No. 1447 of 11 September 2020.

As a bank, Danske Bank is a financial undertaking (see section 5(1)(i)(a) of the Danish Financial Business Act). The bank is therefore covered by section 347c of the Danish Financial Business Act.

As stipulated in the provision, the Danish FSA may appoint an expert when the Danish FSA finds that “material circumstances” give rise to such appointment.

According to the legislative history of the provision,¹ the order should be used in situations where a need exists to follow the undertaking or company closely and from within and where the existing options for supervisory reaction, such as a reprimand or an order, are not sufficient or appropriate in terms of ensuring that the undertaking or company complies with financial legislation, the Danish AML Act, etc.

One example is where the Danish FSA has issued an order in respect of inadequate measures to prevent financial crime and at the same time assesses that a need exists to check the undertaking’s or company’s compliance with the order.

However, an expert may also be relevant in a situation where the Danish FSA has issued an order for compliance with other parts of financial legislation. But it is not a condition for applying the provision that the Danish FSA has in advance issued an order, a reprimand or other supervisory reaction.

¹ Folketingstidende (the Official Report of Danish Parliamentary Proceedings) 2019-20, L 58.

The legislative history also refers to the specific situation where, following an AML inspection, a number of orders have been issued by the Danish FSA to a bank for non-fulfilment of the obligations set out in the Danish AML Act, such as inadequate customer due diligence measures. If, during the follow-up phase, the Danish FSA notes that the bank has failed to comply with the orders or does not comply with them in due time and the Danish FSA doubts whether the bank can or will comply with the orders, it is possible for the Danish FSA to rely on the provision and appoint an expert.

According to the legislative history, the possibility of appointing an expert may also be used as part of the Danish FSA's other supervisory activities. For instance, the reason could be to gain a better overview of the information from financial undertakings at an earlier point in time in order to identify potential risks of violation of the rules. The expert(s) may also assess the quality of systems and controls. In addition, the expert(s) may verify information submitted by the undertaking or company to the Danish FSA.

According to the legislative history, the Danish FSA may, pursuant to the provision, appoint an expert if the Danish FSA, following a specific assessment, is of the opinion that material circumstances exist that give rise to following the undertaking in question with a view to carrying out the Danish FSA's activities. In other words, the Danish FSA has a discretionary right to appoint an expert in this situation.

The legislative history of the bill also says that the appointment will normally be for a duration of six to eight weeks. However, the expert(s) may be appointed for a maximum period of six months. This may be relevant, for example, if the Danish FSA has reason to believe that the criticisable circumstances of the undertaking in question are particularly comprehensive or complex. The appointment may also be caused by the size of the undertaking in question, including its organisational size and relative size in the market in which it operates.

When determining the duration of the period, the Danish FSA must apply the principle of proportionality, duly considering the risk of violation of rules and the established circumstances warranting the order. The expert(s) may be re-appointed and it is assumed that, prior to each re-appointment, an independent assessment is made to determine whether the criteria for appointment continue to be met.

The Danish FSA's assessment

On the basis of an overall assessment, the Danish FSA is of the opinion that material circumstances exist that give rise to the appointment of one or more experts to follow Danske Bank in the AML area.

As mentioned above, Danske Bank has been undertaking a comprehensive and extremely resource-intensive remediation process in the AML area since 2017. Until the beginning of 2019, the process was not expediently organised and thus was ineffective. This process was revised and, in 2020, described in detail in the Financial Crime Plan.

The case concerning the Estonian branch has had a very negative impact on the bank's reputation, and a successful completion of the remediation process must be considered to be of key importance to the bank. Serious damage to the bank's reputation might ultimately have noticeable negative effects on the bank's possibilities of conducting business and thus on the bank's earnings and solvency. Furthermore, severe violation of the AML rules in Denmark or abroad may result in the prosecution of the bank, potentially resulting in considerable pecuniary sanctions against the bank.

As mentioned above, the Danish FSA is of the opinion that the bank has made significant progress in the remediation process since 2019 and that the bank has shown transparency on an ongoing basis and has kept the Danish FSA informed of the process. However, in connection with the ongoing supervision of Danske Bank in the AML area, the Danish FSA, as stated in the summary above, did observe a number of circumstances that, on the basis of the Danish FSA's overall assessment, call for following

the bank even more closely at present to assure the Danish FSA that the bank's progress in the remediation process is maintained and that the Financial Crime Plan is thus implemented as planned.

In its assessment, the Danish FSA has put emphasis on the following:

- the remediation process in the AML area is very complex and comprehensive and still very resource-intensive for the bank
- the bank is at a critical stage in the implementation of a number of key elements in its Financial Crime Plan at the same time
- the remediation process is of key importance to the bank and failure to complete the process may have serious financial consequences for the bank
- failure to comply with current AML rules by a bank of Danske Bank's size may have serious negative consequences for society
- the delays and difficulties that have occurred during the remediation process, including the delays in relation to the objectives of the Financial Crime Plan, which were seen already relatively shortly after the plan had been prepared, show that there is a risk that the process may still pose a challenge to the bank's organisation and resources
- [omitted]'s reporting of considerable quality problems with the updated customer material supports this assessment
- the reports from the inspections conducted by the Norwegian and German authorities, respectively, reaffirm the Danish FSA's assessment that it is necessary to oversee the implementation of the Financial Crime Plan as regards the bank's management and controls in the AML area in relation to the bank's foreign units
- on the basis of the inspection of the bank's transaction monitoring, [omitted] points to the existence of weaknesses in a number of areas in the transaction monitoring and to the fact that the bank has yet to define its risk appetite in sufficient detail to ensure that the risks associated with transactions are kept at a level that is acceptable to the bank.

This being the case – and especially considering that the bank has reached a critical point in its Financial Crime Plan where it is essential that the bank continues to effectively remedy the legacy issues in the AML area – it is the Danish FSA's assessment that a need exists to more closely follow and assess the bank's progress in implementing the Financial Crime Plan.

This involves all elements of the implementation of the Financial Crime Plan, including an assessment of

- whether the bank, in its ongoing operations and at the appropriate levels, considers whether the measures of the Financial Crime Plan are still useful and adequate in terms of ensuring that the bank meets the objectives of the plan and complies with requirements set out in the Danish AML Act and other relevant legislation, and
- whether the bank, at the appropriate levels, sufficiently quickly takes the necessary steps if the objectives and/or the measures to meet the objectives prove insufficient.

The Danish FSA is of the opinion that it is necessary to oversee the bank's internal decision-making and control processes and not in the form of subsequent controls, but as part of the observation of day-to-day operations. In view of the pace of the remediation process and its inherent complexity, it is necessary for the Danish FSA to exercise day-to-day supervision of the bank.

The Danish FSA cannot ensure this by applying conventional supervisory tools that consist mainly in obtaining documentation from the bank and reviewing it together with the bank without any actual observation of the bank's internal processes.

Against this background, the Danish FSA is of the opinion that it is necessary to appoint one or more experts for the bank for the purposes of observing and drawing conclusions about the issues mentioned.

In this connection, the expert(s) must identify potential risks that the remediation process will not be completed without further delay and ensure that the plan is fully implemented at the bank's foreign units within the same time frame as for the Danish units.

The task also involves assessing whether the progress of the plan is documented to the extent required. In this context, the Danish FSA notes that the bank, as mentioned above, has retained the services of the consulting firm of [omitted], and it is assumed that the expert(s) can base their oversight on, among other things, [omitted]'s observations. Where relevant, the expert(s) may also base the work on reports from the bank and the bank's external consultants.

Considering the size and complexity of the bank as well as the scope and time horizon of the Financial Crime Plan, extending into 2023, it is the Danish FSA's assessment that the appointment of the expert(s) must be for a period of six months, which, as already mentioned, is the maximum period that can be used. The Danish FSA may re-appoint the expert(s). Such re-appointment depends on whether the conditions for appointing an expert/experts continue to be met at that time. If this is the case, the Danish FSA will then have to make a decision in this respect.

Consultation

This decision was submitted to the bank for consultation on 22 December 2020. The bank submitted its consultation response on 25 January 2021. The bank was thus also in a position to object to the order under section 5(3) of the Danish Act on Due Process of Law.

The bank also made a presentation to the Danish FSA's Governing Board at the board's extraordinary meeting on 12 February 2021. For the purposes of the presentation, the bank submitted additional comments in a letter dated 11 February 2021.

In its response, and at the presentation and in the letter just mentioned, the bank made a number of comments that, to some extent, led to changes to the order.

Detailed information about the process

Once one or more experts have been selected, the bank will be consulted prior to the final appointment of the expert(s) by the Danish FSA.

The expert(s) will follow the bank for a period of six months from [date] to [date]. The Danish FSA will notify the bank as soon as possible of the date when the expert(s) will start their work at the address agreed with the bank. If the bank so requests, the details of this arrangement may be agreed at a prior meeting.

At commencement of the period, an initial meeting will be held with the participation of the bank, the expert(s) and the Danish FSA.

In this connection, the bank and the Danish FSA will agree how the bank's reporting to the Danish FSA is to be made during the course of the expert(s)'s performance of the task.

The bank is under an obligation to provide the expert(s) with such information and access to meetings as are required for the expert(s) to oversee the day-to-day operations of the bank, including Board of Directors meetings, Executive Leadership Team meetings and annual general meetings as well as meetings of the bank's organisational and geographical units for the purposes of obtaining information and making observations. This follows from section 347c(2) of the Danish Financial Business Act.

The party responsible for entrusting the expert(s) with this task is the Danish FSA, and the expert(s) will work in pursuance of the rules of the Danish Financial Business Act, the Danish AML Act, and the Danish Public Administration Act. This means that the expert(s) must have access to information to the same extent as the Danish FSA, including with limitations such as those following from the ban on self-incrimination stated in the Danish Act on Due Process of Law in Connection with the Use of Coercive

Measures and Disclosure Obligations by Administrative Authorities (the Danish Act on Due Process of Law) and the European Convention on Human Rights. This also means that the expert(s) will be bound by the same duty of confidentiality as the Danish FSA's employees and that the expert(s) must comply with the requirements of the Danish Public Administration Act in respect of their impartiality.

The expert(s) must

1. on an ongoing basis and without undue delay receive all reporting on the progress of the plan and follow-up on deviations from it as well as the bank's intended measures as communicated to the individual levels of management
2. be able to request detailed information and documentation on their own initiative
3. be able to participate in meetings at the relevant management levels and organisational units that discuss the progress of and follow-up on the Financial Crime Plan and/or make decisions in respect of changes to the plan
4. have access to the documentation available on the Financial Crime Plan and
5. be allowed to interview relevant senior and non-senior employees about the contents and progress of the plan (this also applies to employees of the bank's foreign units, it being presupposed that the Danish FSA will make agreements with the authorities in the relevant countries that such visits will take place)

The expert(s) may individually agree on the procedure for the task to be performed at the bank.

The expert(s) may not issue orders or any other reactions to the bank under public administration laws.

The expert(s) may not advise the bank, but may enter into discussions with the bank about documentation of the progress of the plan and the validity and quality of internal reporting and the bank's reporting to the Danish FSA.

Danske Bank may expect that the expert(s) will be physically present at the bank several days a week for some periods of time. The bank must make adequate office facilities available to the expert(s) as necessary. The details will be further agreed with the Danish FSA. However, the Danish FSA follows the COVID-19 situation closely, which means that the performance of the task may be adjusted to the recommendations on infection containment. In such a situation, the Danish FSA will contact the bank to reach a more detailed agreement on how to perform the task and the presence of the expert(s).

The Danish FSA points out that Danske Bank is entitled to representation in accordance with section 8 of the Danish Public Administration Act while the expert(s) follows(s) Danske Bank.

In connection with following the implementation of the plan, the expert(s) must report to the Danish FSA on an ongoing basis on the progress of the plan and on matters of material importance in general.

When the expert(s) has/have completed the period of appointment at the bank, the Danish FSA will hold a final meeting with the bank and the expert(s) about the course of the period of appointment and the key observations made by the expert(s) during the process. The expert(s) will then draw up a final report containing the conclusions of the expert(s) and the underlying observations, including documentation.

Complaints procedure

Danske Bank may bring the Danish FSA's decision before the Danish Company Appeals Board no later than four weeks after receipt of the decision. This follows from section 372(1) of the Danish Financial Business Act. The complaint must be forwarded by email to ean@naevneneshus.dk or by letter to the Danish Company Appeals Board, Toldboden 2, DK-8800 Viborg (tel. +45 72 40 56 00).

The Company Appeals Board charges a fee for considering complaints. For additional information about complaint fees and any suspensive effect, see the website of the Danish Company Appeals Board

(<https://naevneneshus.dk/start-din-klage/er-hvervsankenaevnet/>) and Danish Executive Order No. 1135 of 13 October 2017 on the Danish Company Appeals Board.

Publication

An order issued under section 347c to appoint experts is not to be published. This is because the authority of the Danish FSA's Governing Board to decide on the order is provided in section 345(12)(v) of the Danish Financial Business Act, which is not referred to in section 354(a) of the Danish Financial Business Act, which allows for the publication of some of the Governing Board's decisions.

Section 347c is also not referred to in section 354e of the Danish Financial Business Act, which also includes rules on publication. It is not possible to publish the order under Danish Executive Order No. 1567 of 23 December 2014 on the Duty of Financial Undertakings etc. to Publish the Danish FSA's Assessment of the Undertaking etc. (the Danish Executive Order on Publication) as amended.

The Danish FSA finds that the matter is not covered by section 354(12)(iv) of the Danish Financial Business Act.