

FATF



Anti-money laundering and counter-terrorist financing measures

Denmark

Mutual Evaluation Report

August 2017





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Executive Summary

1. This report provides a summary of the anti-money laundering and combating the financing of terrorism (AML/CFT) measures in place in the Kingdom of Denmark as at the date of the on-site visit (2-18 November 2016). It analyses the level of compliance with the FATF 40 Recommendations, the level of effectiveness of Denmark's AML/CFT system, and provides recommendations on how the system could be strengthened.

Key Findings

- Overall, Denmark has a moderate level of understanding of its money laundering and terrorist financing (ML/TF) risks; with TF risks being better understood by authorities. Denmark's assessment of ML risk is comprised of a number of sectoral risk assessments, which underpin the ML national risk assessment (NRA). The TF NRA was separately prepared. The NRAs were not conducted in a coordinated, whole-of-government manner, and suffered from several methodological deficiencies in terms of inputs, design and scope. Denmark does not maintain comprehensive statistics on matters relevant to effectiveness and efficiency of their AML systems, and this negatively impacted the ML NRA. Overall, while some risk-based actions have been taken in response to the NRAs, it is limited and variable and does not adequately correspond to the risks identified.
- Denmark does not have national AML/CFT strategies or policies. The objectives and activities of individual competent authorities are determined by their own priorities and are not coordinated. Coordination and cooperation tends to occur informally and on an ad hoc basis.
- The effective functioning of the Money Laundering Secretariat (MLS), Denmark's financial intelligence unit (FIU), is hampered by its lack of human resources and operational autonomy.
- Denmark has a handling of stolen goods offence that extends to all criminal proceeds thus encapsulating the laundering of all predicate offences. Based on Danish legal tradition, the offence does not cover self-laundering. In practice, the police focus on prosecuting the predicate offence and information provided suggests that serious ML is not actively pursued. As the ML offence also includes traditional handling of stolen goods, it is not possible to obtain separate data on ML. The criminal penalty of 1.5 years of maximum imprisonment for ordinary ML is not fully proportionate or dissuasive, and though aggravated ML carries a higher penalty of six years, the average of penalties imposed in practice were low and in many cases resulted in suspended imprisonment.

- Denmark has a robust legal framework for investigating and prosecuting TF. Every counter-terrorism investigation includes an investigation into potential TF. Between 2011 and 2016, Denmark indicted 16 persons with TF offences, resulting in seven convictions. This appears to be in line with the TF risks of Denmark. The maximum penalty for TF is ten years' imprisonment. However, in practice, more lenient sanctions are applied, which limits the dissuasiveness of the relatively high sanctions.
- Denmark has a legal system to apply targeted financial sanctions (TFS) [both TF and proliferation financing (PF)]. Implementation of TFS related to UNSCR 1267, 1988, and 1373 (and their successor resolutions) has technical and practical deficiencies due to delays at the European Union (EU) level on the transposition of designated entities into sanctions lists and the absence of any specific measures to freeze the assets of EU internals. Understanding and implementation of TFS by reporting entities is varied and limited, particularly outside the banking sector. With a few exceptions, TFS knowledge and compliance by designated non-financial businesses and profession (DNFBPs) is poor. There is some, but insufficient, compliance with obligations by reporting entities. There is limited monitoring of TFS compliance by supervisory authorities.
- Overall, there is an inadequate understanding of risk and weak implementation of AML/CFT measures in almost all segments of the financial sector. With the exception of casinos, DNFBPs' understanding of risk and implementation is also generally poor. The legal framework of preventive measures also includes a number of gaps which negatively impact the effectiveness of the system.
- With the exception of the casino sector, a risk-based approach to AML/CFT supervision is limited, and where it exists is in the early stages of implementation. Further, the frequency, scope and intensity of supervision are inadequate. There are also serious concerns related to the severe lack of resources available for AML/CFT supervision in Denmark. The range of supervisory powers to enforce compliance and sanction breaches are insufficient, with referrals to police for investigation and prosecution being the principal used to ensure compliance by financial institutions (FIs). The sanctions that have been applied are not proportionate and dissuasive.
- Denmark's extensive system of registers, for both natural (CPR) and legal persons (CVR) provides a solid foundation for obtaining ownership and other information. Beneficial ownership information is relatively easily traced through the Central Business register (CVR) in less complicated structures and where no foreign ownership or control is involved. In these cases (complex and foreign ownership), competent authorities have to obtain beneficial ownership information from FIs/DNFBPs (where the legal person is a customer). However, implementation of AML/CFT measures, including with respect to beneficial ownership, is generally weak. New legislation enacted in 2016, and coming into force in May 2017, will require all legal persons to obtain and hold beneficial ownership information and make it publicly available through the CVR, and this will significantly strengthen the ability of authorities to obtain beneficial ownership information in a timely way.
- Denmark has a sound legal framework for all forms of international cooperation. Where there is an absence of a legal framework to provide legal assistance, authorities apply Danish legislation by analogy.

Risks and General Situation

2. The Kingdom of Denmark consists of Denmark, Greenland and the Faroe Islands. The total annual ML potential in Denmark is estimated by authorities to be approximately EUR 2.8 billion, comprising of proceeds from drugs, human trafficking, car theft, robberies, arms trade, smuggling of tobacco and liquor, tax and excise duty fraud, and other economic crime. Of these crimes, Denmark considers tax and excise duty crime to be one of the most profitable crime areas. Specifically, Denmark estimates that fiscal and value-added tax (VAT) fraud generate the largest proceeds of crime in Denmark. Tax authorities estimate that the Treasury suffers a loss of about EUR 0.4 billion a year from tax fraud alone.

3. Denmark's ML NRA identifies the following areas as high risk in Denmark: currency exchangers; legal business structures; money remittance providers; and cash smuggling. Medium risks include: banks, gambling sector; purchasing of real-estate; high-value goods; trust company service providers (TCSPs); electronic payment services; and, lawyers and accountants. Low risk areas include only life assurance and pensions funds.

4. In 2015, a terrorist attack occurred in Copenhagen, resulting in three deaths (including the perpetrator) and five injured. Terrorism is recognised as a significant threat to Denmark, particularly from networks, groups and individuals who adhere to a militant Islamist ideology. Terrorist financing in Denmark is primarily conducted to support terrorist groups and networks abroad, including groups in conflict zones. At the time of the onsite an estimated 143 Danish citizens and residents had voluntarily left Denmark to fight in Syria and Iraq.

Overall Level of Effectiveness and Technical Compliance

Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)

5. Overall, Denmark has a moderate level of understanding of its ML/TF risks; with TF risks being better understood by authorities. Denmark's assessment of ML risk is comprised of a number of sectoral risk assessments, which underpin the 2015 ML NRA. The 2016 TF NRA was separately prepared. Both NRAs were not conducted in a coordinated, whole-of-government manner, and suffered from several methodological deficiencies in terms of inputs and scope. The ML NRA, in particular, did not include input from the private sector and is regarded by the private sector as having limited relevance and utility. Denmark does not maintain comprehensive statistics on matters relevant to effectiveness and efficiency of its AML systems, and this negatively impacted the ML NRA. It is a positive development that Denmark intends to develop a new ML NRA in 2017, including developing a new methodology.

6. Denmark does not have a national AML/CFT strategy, and did not demonstrate that it had national AML/CFT policies. Similarly, the objectives and activities of individual competent authorities are determined by their own priorities and are not coordinated. Coordination and cooperation tends to occur informally and on an ad hoc basis. Nevertheless, there is a level of national cooperation and coordination, though it largely exists on an informal basis, this equally applies to PF coordination. Denmark is taking steps to formalise this coordination.

7. Overall, while some risk-based actions have been taken in response to the ML NRA, it is limited and variable and do not adequately correspond to the risks identified. While the Danish Security and Intelligence Service (PET) has a general understanding of TF risks, these risks are not adequately integrated into Denmark's policies relating to preventive measures (e.g. supervisory priorities related to CDD of beneficial ownership and PEPs). The Financial Supervisory Agency (FSA) and the Danish Business Authority (DBA) have not prioritised CFT policies and activities in response to the risks identified by the PET; however, the TF NRA was relatively new at the time of the onsite.
8. Neither the ML NRA nor the TF NRA provides an adequate basis to justify the exemptions contained in the MLA, or the application of enhanced or simplified measures.

Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)

9. The MLS is a law-enforcement FIU. It receives a significant and increasing number of STRs/SARs/TFRs from FIs and to a lesser extent from DNFBPs, and cross-border declarations. The MLS has direct access to a number of databases. The MLS may, spontaneously or upon request, disseminate financial intelligence to police districts to support their investigations. Danish police districts rely upon this information in their investigations; however their focus tends to be on predicate offences.
10. At the time of the onsite, the MLS conducted limited analysis on the financial intelligence it received by accessing external databases prior to dissemination, and conducted nearly no strategic analysis on emerging trends to support the operational needs of competent authorities. The MLS prioritises its analysis and disseminations based on ongoing investigations of predicate offences and known targets, rather than identifying and pursuing new ML/TF cases. In limited instances, the MLS identifies and pursues new ML cases.
11. As regards TF, the MLS transmits TFRs directly to Denmark's domestic intelligence agency within 24 hours, with limited analysis included. The MLS also refers STRs and SARs to PET, when there is a suspicion of terrorism. To date, the products disseminated to PET from the MLS related to known targets and did not generate new investigations.
12. There is a significant concern regarding the diminishing human resources of the MLS and the impact this has on the quality of the analysis conducted, and the added-value of the MLS in developing and disclosing reports to LEAs. There are also some concerns regarding the operational autonomy of the MLS.
13. Denmark criminalises ML through a handling of stolen goods offence that extends to all criminal proceeds thus covering all predicate offences. This offence can be prosecuted as ordinary or aggravated based on a number of factors, such as the amount laundered exceeding DKK 500 000, complexity or professionalism. Based on Danish legal tradition, the offence does not cover self-laundering.
14. The authorities were unable to provide statistics that differentiate between investigations/prosecutions/convictions related to ML and traditional handling of stolen goods offences, such as receiving stolen bicycles. Case examples demonstrated that ML is pursued in some

cases, including against legal persons, but related to a limited range of predicate offences, few foreign predicate cases, and most did not include complex ML cases (most cases involved simple cases of receipt of money assumed to be criminal proceeds). The assessment team considers that there is a disproportionate focus on the investigation of predicate offences, with a particular focus on financial tax crimes (sub-contractor fraud and tax offences), at the expense of ML investigations.

15. The criminal penalty of 1.5 years of maximum imprisonment for ordinary ML is not fully proportionate or dissuasive. While the Criminal Code (CC) includes a higher penalty of six years for aggravated ML, the penalties imposed in practice on average have been low and in many cases resulted in suspended imprisonment.

16. Denmark has a sound legal framework for freezing, seizing and confiscation measures, with extended confiscation powers allowing the authorities to place a burden on the defendant to prove the legitimate origin of assets. In practice, Denmark is taking some actions to recover the proceeds of crime. The Asset Recovery Office (ARO) is central to that effort and the available data and the other qualitative information provided indicates that they have had some significant successes, particularly in the last two years. A significant number of confiscation orders are being made, on average about 1 100 per year, with a total amount of about EUR 16 million per year being ordered confiscated. However, recoveries are modest (20% of confiscated amount), and the use of tax powers to recover criminal proceeds has not yet achieved significant results. Overall, it appears that while there are a range of powers and mechanisms being used, the results achieved are only moderately effective.

Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9- 11; R.5-8)

17. Denmark has a robust legal framework for investigating and prosecuting TF and has a substantial level of effectiveness. Every counter-terrorism investigation includes an investigation into potential TF. Between 2011 and 2016, Denmark indicted 16 persons with TF offences, resulting in seven convictions. This appears to be in line with the TF risks of Denmark, taking into account the evidentiary challenges that exist in TF cases (i.e. intelligence into evidence), as well as PET's use of disruption. The maximum penalty for TF is ten years' imprisonment. However, in practice, Denmark applies more lenient sanctions, which limits the dissuasiveness of the relatively high sanctions contained in the CC.

18. Denmark has a legal system in place to apply TFS (both TF and PF). Implementation of TFS related to UNSCR 1267/1988, and 1373 (and their successor resolutions) has technical and practical deficiencies in large part due to delays at the EU level on the transposition of designated entities into sanctions lists and the absence of any specific measures to freeze the assets of EU internals. With reference to both UNSCRs 1267 (and successor resolutions) and 1373, no funds of persons designated by the UN or by the EU have been identified and frozen. With regard to PF, funds have previously been frozen in relation to Iran, but no assets were frozen at the time of the onsite.

19. Greenland and the Faroe Islands have limited statutory regimes in place for TFS relating to TF and no compliance monitoring takes place. In addition, Greenland and the Faroe Islands do not have regimes in place for TFS on PF. No review of NPO legislation or risk mitigation has been undertaken

in Greenland and the Faroe Islands and a systematic review of effectiveness could not be undertaken for this report.

20. Understanding and implementation of TFS by reporting entities is varied and limited, particularly outside the banking sector. With a few exceptions, TFS knowledge and compliance by DNFBPs is poor. There is some, but insufficient, compliance with obligations by reporting entities. There is limited monitoring of TFS compliance by supervisory authorities. Understanding by reporting entities of TFS related to PF is less than that for TF.

21. The DBA is the authority responsible for receiving reports on freezing actions also proactively issues an electronic notice (referred to as a newsletter) advising subscribers of changes to the EU lists. It also reiterates the obligations to prevent any assets being made available to designated persons and entities, freeze assets of designated persons immediately and, in the case of frozen assets, report immediately to the DBA.

22. Coverage of NPOs most at risk of raising and moving funds or being misused by terrorists is not complete and preventive measures to manage risk undertaken by Denmark (and permitted by legislation) are very limited. No outreach to NPOs or donor communities by the authorities has been carried out during the period under review by the evaluation team. The last outreach NPOs was the publication in 2010.

23. For those supervisory authorities which monitor TFS compliance, the members of staff engaged in AML/CFT onsite supervision are also responsible for TFS compliance, and the lack of resources for the authorities referred to in IO.3 also apply in relation to TFS (both TF and PF).

Preventive Measures (Chapter 5 - IO4; R.9-23)

24. There is generally an inadequate understanding of risk, and weak implementation of AML/CFT measures, in almost all segments of the financial sector. With the exception of casinos, DNFBPs' understanding of risk and level of implementation is also generally poor.

25. Generally, risk assessments conducted by FIs are not comprehensive and do not cover all activities, products, and services. As a result, the application of adequate AML/CFT preventive measures is insufficient and further impacted by the deficiencies in Denmark's legal framework (e.g. domestic PEPs, wire transfers, and beneficial owners).

26. Levels of STR reporting are inconsistent across the financial and DNFBP sectors. There is also a lack of appropriate mitigating measures, including enhanced due diligence (EDD) measures in higher risk cases, and internal controls

Supervision (Chapter 6 - IO3; R.26-28, R. 34-.35)

27. The supervision of FIs' compliance with regulatory requirements (including AML/CFT) falls under the responsibility of various supervisors depending on the entity and whether it is located in

Denmark, Greenland, or the Faroe Islands. Limited information was made available regarding AML/CFT supervision in Greenland and the Faroe Islands.

28. Denmark's legal framework provides for a robust licensing and registration system. However, in practice, there are significant concerns about the approach to supervision and monitoring. The range of supervisory powers to enforce compliance is insufficient, resulting in an over reliance on referrals to police for investigation and prosecution to ensure compliance.

29. With the exception of the casino sector, supervision is not conducted on a risk basis. Further, the frequency, scope and intensity of AML/CFT supervision are inadequate. There are also serious concerns related to the severe lack of resources available for AML/CFT supervision in Denmark.

Transparency of Legal Persons and Arrangements (Chapter 7 - IO5; R. 24-25)

30. Denmark permits the creation of a range of legal persons including companies, proprietorships, and associations with both limited and unlimited legal liability. Businesses in Denmark are obliged to electronically register basic information (including shareholdings and associated voting rights) to the DBA, which is then made publically available in the Central Business register (CVR) in a searchable format. Non-commercial foundations are required to register basic information, such as name and address in the CVR if they have obligations concerning tax or VAT. Both competent authorities, as well as the public can access the statutes and annual reports for non-commercial foundations through the DCA. Beneficial ownership information is relatively easily traced through the CVR in less complicated structures and where no foreign ownership or control is involved.

31. Beneficial ownership information in relation to fully Danish-owned legal persons can largely be ascertained through the legal shareholding information in the CVR. Legal arrangements that may have a connection with Denmark (e.g. through a trustee resident in Denmark), no information is publicly available. This information is required to be ascertained and kept by FIs/DNFBPs. However, there was little evidence to demonstrate that verification of the beneficial ownership and examination of the chain of ownership to the ultimate beneficial owner occurs in a thorough and consistent manner by reporting entities. LEAs stated that they can sometimes access such information through reporting entities where it has been collected, on the basis of a court order. Legislation requiring registration of beneficial ownership was adopted by the Danish Parliament and enacted on 16 March 2016, although at the time of the onsite it was not yet in force. The legislation will require all legal persons to obtain and hold beneficial ownership information and make it publicly available through the CVR.

32. In 2014, Denmark introduced a further requirement to publically register owners that own more than 5% of the capital of many different types of companies (public limited, partnership, private limited, entrepreneurial and SE companies). Where ownership drops below 5% there is also an obligation on the company to register this information, and where no one owns more than 5% of a company's capital, this must also be registered. Moreover, in 2015, Denmark abolished bearer shares and established an obligation for holders of bearer shares below 5% to register those shares.

33. Reporting entities are generally aware of their obligation to identify the beneficial owner and some are aware of ways in which complex legal structures can be used to obfuscate ownership and disguise the proceeds of crime. DNFBPs, however, did not share this understanding.

34. The DBA has the power to impose default fines for failures to comply with the requirements to report various types of information, such as the information on legal ownership. However, this does not appear to be a priority in practice. Breaches can be reported to the police, which could lead to criminal proceedings in serious cases, which may subsequently result in fines. There are no statistics available in relation to such referrals. Overall, actions to apply effective, proportionate and dissuasive sanctions against persons not providing either basic or beneficial ownership information appear to be very limited.

International Cooperation (Chapter 8 - IO2; R. 36-40)

35. In general, Denmark has a sound legal framework for all forms of international cooperation. Where there is an absence of a legal framework to provide legal assistance, authorities apply Danish legislation by analogy. As of June 2016, the central authority for MLA and extradition is the DPP. The majority of Denmark's cooperation, however, occurs bilaterally and is not channelled through the central authority. As a result, Denmark was unable to provide a comprehensive account of the cooperation requested or provided.

36. Generally, Denmark has close cooperation with Nordic and EU countries, and to a lesser degree with third countries. However, the assessment team received positive feedback on cooperation from partner jurisdictions, including from non-EU/Nordic countries.

37. The MLS and PET engage effectively with their foreign counterparts; however, the number of outgoing requests sent by the MLS has declined since 2013 as a result of resource shortages. In regard to supervision, the FSA's inability to conduct inquiries on behalf of foreign counterparts limits its ability to cooperate.

Priority Actions

- In the context of the current initiative to develop a new ML NRA and updating its TF NRA, Denmark should revise its risk assessment methodology, including adding additional sources of risk information to be assessed, for findings to be corroborated, involvement of the private sector, and to consider the specific of the entire Kingdom. Authorities should better communicate information on ML/TF risks to FIs/DNFBPs.
- Denmark should develop and implement national AML/CFT policies based on the findings of ML/TF risk assessments, and provide a clear strategy to address the risks identified. To this effect, Denmark should strengthen its domestic cooperation for combatting ML, TF and PF, including by appointing a lead authority to coordinate TFS and to mitigate any TF risks in the NPO sector.
- FIs/DNFBPs should take further action to prepare internal risk assessments, including by taking into consideration any risks identified by Danish authorities.

- Denmark should collect and maintain a broader set of statistics on ML/TF. These mechanisms could also be used to assess overall AML/CFT effectiveness.
- Competent authorities, particularly the MLS and the FSA, should be granted with adequate resources to conduct their AML/CFT functions.
- Denmark, Greenland, and the Faroe Islands should create a ML offence separate from the traditional handling of stolen goods offences, and criminalise self-laundering. Denmark should prioritise the investigation and prosecution of ML, and apply fully dissuasive and proportionate sanctions.
- Denmark should monitor the penalties applied to TF convictions and consider whether they are sufficiently proportionate and dissuasive.
- Supervisors should increase efforts to ensure that AML/CFT requirements are effectively implemented, that there is an increased awareness and understanding of AML/CFT issues, and issue more detailed and practical guidelines.
- Denmark should review the dissuasiveness of sanctions for non-compliance with AML/CFT obligations and the range of enforcement powers available to improve compliance, and make legislative and other changes to improve the compliance of supervised entities. Specifically, supervisors should be given an adequate range of powers that can be used to enforce their orders.
- Denmark should amend its legislative framework to address the technical deficiencies noted in the TC Annex, such as in relation to PEPs, beneficial owners, and higher-risk scenarios.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings (High, Substantial, Moderate, Low)

IO.1 - Risk, policy and coordination	IO.2 - International cooperation	IO.3 - Supervision	IO.4 - Preventive measures	IO.5 - Legal persons and arrangements	IO.6 - Financial intelligence
Moderate	Substantial	Low	Low	Moderate	Moderate
IO.7 - ML investigation & prosecution	IO.8 - Confiscation	IO.9 - TF investigation & prosecution	IO.10 - TF preventive measures & financial sanctions	IO.11 - PF financial sanctions	
Moderate	Moderate	Substantial	Moderate	Substantial	

Technical Compliance Ratings (C - compliant, LC – largely compliant, PC – partially compliant, NC – non compliant)

R.1 - assessing risk & applying risk-based approach	R.2 - national cooperation and coordination	R.3 - money laundering offence	R.4 - confiscation & provisional measures	R.5 - terrorist financing offence	R.6 - targeted financial sanctions – terrorism & terrorist financing
PC	PC	LC	LC	C	PC
R.7 - targeted financial sanctions - proliferation	R.8 - non-profit organisations	R.9 - financial institution secrecy laws	R.10 - Customer due diligence	R.11 - Record keeping	R.12 - Politically exposed persons
PC	PC	LC	PC	LC	PC
R.13 - Correspondent banking	R.14 - Money or value transfer services	R.15 - New technologies	R.16 - Wire transfers	R.17 - Reliance on third parties	R.18 - Internal controls and foreign branches and subsidiaries
PC	LC	PC	PC	PC	PC
R.19 - Higher-risk countries	R.20 - Reporting of suspicious transactions	R.21 - Tipping-off and confidentiality	R.22 - DNFBPs: Customer due diligence	R.23 - DNFBPs: Other measures	R.24 - Transparency & BO of legal persons
LC	C	C	PC	LC	PC
R.25 - Transparency & BO of legal arrangements	R.26 - Regulation and supervision of financial institutions	R.27 - Powers of supervision	R.28 - Regulation and supervision of DNFBPs	R.29 - Financial intelligence units	R.30 - Responsibilities of law enforcement and investigative authorities
PC	PC	LC	LC	LC	C
R.31 - Powers of law enforcement and investigative authorities	R.32 - Cash couriers	R.33 - Statistics	R.34 - Guidance and feedback	R.35 - Sanctions	R.36 - International instruments
LC	LC	PC	PC	PC	LC
R.37 - Mutual legal assistance	R.38 - Mutual legal assistance: freezing and confiscation	R.39 - Extradition	R.40 - Other forms of international cooperation		
LC	LC	LC	LC		

MUTUAL EVALUATION REPORT

Preface

This report summarises the AML/CFT measures in place in the Kingdom of Denmark at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system, and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the evaluation team during its on-site visit to the country from 2 to 18 November 2016.

The evaluation was conducted by an assessment team consisting of:

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The assessment process was managed by Mr. John CARLSON, Senior Policy Analyst and assessment lead; Ms. Masha RECHOVA and Ms. Kristen ALMA, Policy Analysts, all FATF Secretariat. The report was reviewed by Ms. Veronika METS, MONEYVAL Secretariat, Mr. Stewart MCGLYNN, Hong Kong, China, and Mr. Jonas KARLSSON, Sweden.

Denmark last underwent a FATF Mutual Evaluation in 2006, conducted according to the 2004 FATF Methodology. The 2006 evaluation, three follow-up reports (in 2008, 2009, and 2010), and one biennial update (2012) have been published and are available at www.fatf-gafi.org/.

The 2006 MER concluded that the country was compliant with 8 Recommendations; largely compliant with 16; partially compliant with 17; and non-compliant with 8. Denmark was rated compliant or largely compliant with 11 of the 16 Core and Key Recommendations.

Denmark entered regular follow-up following its 2006 Mutual Evaluation, and exited this process in October 2010, on the basis that all Core and most of the Key Recommendations were at a level essentially equivalent to compliant or largely compliant.

CHAPTER 1. ML/TF RISKS AND CONTEXT

38. The Kingdom of Denmark consists of Denmark, Greenland and the Faroe Islands. Geographically, Denmark is situated in northern Europe and borders on the Baltic and North seas, Sweden, and Germany. Its capital is Copenhagen, which is situated on Zealand. Denmark has a land area of approximately 43 000 square kilometres and a population of about 5.7 million, of whom about 1.2 million live in the Copenhagen metropolitan area. Greenland, which for the most part is covered by the polar ice cap, is approximately 2.175 million square kilometres and has a population of approximately 56 000 inhabitants. The Faroe Islands consist of 18 islands with a total area of about 1 400 square kilometres, and a population of approximately 50 000 inhabitants. Greenland and the Faroe Islands are self-governing parts of the Kingdom of Denmark.

39. The Kingdom of Denmark was first organized as a unified state in the tenth century and became a constitutional monarchy in 1849. Denmark is a parliamentary democracy, with 179 members of Parliament (four of which are from Greenland and the Faroe Islands) who are elected for a maximum term of four years and are eligible for re-election. Denmark has a multi-party structure, where several parties can be represented in Parliament simultaneously. Danish governments are often minority administrations, aided by one or more supporting parties. Since 1909, no single party has held the majority in Parliament.

40. Denmark is a civil law country. The government has the exclusive responsibility to enact legislation. A growing proportion of legislation in Denmark is enacted by, or in response to, EU decisions. The government presents bills to the Parliament with “Explanatory Notes”, which are recognised as a source of legal interpretation and widely used by Danish courts. These Notes also serve as information to the Members of Parliament for the reading of the Bill before Parliament and its committees. The Notes must explain and elaborate on the subject matter of a Bill and provide an adequate basis on which to assess the reasons for the Bill and its expected effects. Further, after a Bill has been adopted, the Notes will have significant implications for the application of the Act in practice, in regard to its interpretation by public administration, courts, the Ombudsman, and others. In some cases, these Notes can contain more detailed specifications related to certain provisions of the Bill, with the aim being to give directions in as much detail as possible concerning particular issues.

41. Denmark has an independent judiciary. Judges are appointed by the Queen upon the recommendation of the Minister of Justice. The Constitution guarantees judges independence from the government and Parliament. Ordinary courts may determine whether a law is in accordance with the Constitution, to which all other laws are subordinate, and the matter may be heard in the last instance by the Supreme Court.

42. Since 1973, Denmark has been a member of the EU and part of the Schengen Area; neither Greenland nor the Faroe Islands are EU members. EU AML/CFT Regulations directly apply in Denmark, and EU AML/CFT directives are transposed through Danish domestic law.

43. All persons who are born in, take up residency in, or are considered taxable by Denmark, are issued a Central Person Registration number, which is used for identification purposes. Information (such as name, domestic and/or overseas addresses, date of birth, citizenship, family members) on registered persons can be accessed by LEAs. Ownership information on Denmark's companies is accessible to the public on its CVR. Legal ownership information is published for all shareholders above a 5% ownership threshold. Denmark has recently passed legislative amendments concerning beneficial ownership, requiring legal persons to register beneficial owners; and these amendments enter into force on 23 May 2017.

44. The Faroe Islands and Greenland are parts of the Danish Realm; however, due to their special status, extensive self-governance arrangements are in place, the most recent of which came into force in 2005 (Faroe Islands) and 2009 (Greenland). These arrangements transfer political competence and responsibility from the Danish political authorities to the Faroese and the Greenlandic authorities. In respect of the Unity of the Realm and special provisions in the Danish Constitution, responsibility for the following fields cannot be transferred: the Constitution; nationality; the Supreme Court; foreign, defence and international crime.

ML/TF Risks and Scoping of Higher-Risk Issues

Overview of ML Risks

45. Similar to other Scandinavian countries, Denmark has a very high use of electronic means of payment, particularly mobile payments such as MobilePay. Denmark is perceived as a relatively transparent and safe country, ranking at the top of the 2014 Corruption Perception Index¹ and the 2015 Rule of Law Index.² Corruption, however, does occur and Denmark has been called upon to enhance enforcement of its foreign bribery laws and extend those laws to Greenland and the Faroe Islands.³ The total annual ML potential in Denmark is estimated by the authorities to be approximately EUR 2.8 billion, comprising of proceeds from drugs, human trafficking, car theft, robberies, arms trade, smuggling of tobacco and liquor, tax and excise duty fraud, and other economic crime.⁴ Of these crimes, Denmark considers tax and excise duty crime to be one of the most profitable crime areas. Specifically, Denmark estimates that fiscal and VAT fraud generate the largest proceeds of crime in Denmark. Tax authorities estimate that the Treasury suffers a loss of about EUR 0.4 billion a year from tax fraud alone. In the last few years, Denmark has seen an increase in the number of Outlaw Motorcycle Gangs (OMCGs), particularly new foreign gangs setting up operations in Denmark. OMCGs are often actors in major cases involving fiscal and VAT fraud, and fund their activity by taking part in chain fraud in the service and construction sectors. OMCGs and other criminal groups use money-remitters and currency exchange offices in order to launder their

¹ 2014 Corruption Perceptions Index, <https://www.transparency.org/cpi2014/results>

² Rule of Law around the World, The World Justice Project, <https://worldjusticeproject.org>

³ Denmark's implementation of the Convention on Combating Bribery of Foreign Public Officials, OECD Working Group on Bribery (2013), www.oecd.org/daf/anti-bribery/AntiBriberyAnnRep2012.pdf

⁴ On 18 November 2016 the interbank rate was DKK 1 = EUR 0.134. This exchange rate is used throughout the report where relevant.

profits. Limited information is available on the risks associated with foreign proceeds being laundered through Denmark.

Overview of TF Risks

46. In 2015, a terrorist attack occurred in Copenhagen, resulting in three deaths (including the perpetrator) and five injured. Terrorism is recognised as a significant threat to Denmark, particularly from networks, groups and individuals who adhere to a militant Islamist ideology. Terrorist financing in Denmark is primarily conducted to support terrorist groups and networks abroad, including groups in conflict zones. The total amount collected and sent to support these groups is unknown. Danish authorities have undertaken criminal investigations and prosecutions into NPOs and persons who have allegedly collected or disseminated funds to terrorist organisations. Also, at the time of the onsite an estimated 143 Danish citizens and residents voluntarily left Denmark to fight in Syria and Iraq. Following the terrorist attacks in Copenhagen in 2015, PET received additional resources to acquire analytical tools to counter terrorism and its financing. While Denmark has taken steps to implement national counter-radicalisation and extremism programmes, these initiatives do not contain specific measures to deter and prevent terrorist financing or the provision of other forms of support.

Country's risk assessment & Scoping of Higher Risk Issues

47. In 2013-15, Denmark's FIU, the MLS, prepared "the ML NRA – 2015" in cooperation with the MLF, including the FSA, the Danish Customs and Tax Administration (SKAT), DBA, the Danish Bar and Law Society (BLS), and the Gambling Authority (DGA). A non-restricted version of the ML NRA is accessible to the public and serves as guidance to companies that are subject to the Act on Measures to Prevent Money Laundering and Financing of Terrorism (MLA) and relevant supervisory authorities.

48. The ML NRA rates the following areas as high risk in Denmark: currency exchangers; legal business structures; money remittance providers; and cash smuggling. Medium risks include: banks, gambling sector; purchasing of real-estate; high-value goods; TCSPs; electronic payment services; and, lawyers and accountants. Low risk areas include only life assurance and pensions funds.

49. The TF NRA was conducted by PET in 2016, and completed in October 2016. The TF NRA is unclassified and was distributed to Danish authorities and to a limited private sector audience. The TF NRA states that the terrorism threat to Denmark is high, and is primarily attributed to militant Islamism. In regard to TF, the following methods were identified for the acquisition of financial support: property crime; public benefits fraud; loan fraud; VAT carousel fraud; NPO fraud; and social media donations. Money generated in Denmark is believed to be used to finance the travel of foreign terrorist fighters (FTFs) leaving Denmark to fight in conflict zones abroad, including Syria and Iraq, or to support terrorist groups outside the sphere of militant Islamism. The following methods were identified to transfer such funds: cash couriers; shipping equipment; withdrawals from cash machines; and formal/informal remittance systems.

Scoping of higher risk status

50. In deciding what issues to prioritise, the assessment team reviewed material provided by Denmark on technical compliance and effectiveness, as well as supporting documentation, including reports relating to ML/TF risk, and open source information. The following issues present areas of higher ML/TF risks (including threats and vulnerabilities), and were of concern or particular interest to the assessment team based on material provided before the on-site visit:

- ***Understanding of Risk:*** Following its ML NRA, Denmark took efforts to reallocate its resources to offset identified risks, particularly the risks emanating from money remitters and currency exchangers. The assessors explored whether Denmark's understanding of risk was not solely built upon universal risk indicators, but also captured the unique risk and threat profile of Denmark. It also included a consideration of areas identified as low/medium risk, such as life assurance companies and the real-estate sector. The assessment team also examined the level of ML/TF risk in Greenland and the Faroe Islands, particularly in light of identified gaps in their legislative and regulatory frameworks.
- ***Prevention and deterrence:*** The assessors considered this issue across all sectors in relation to CDD (including by small reporting entities), ongoing monitoring of financial transactions by reporting entities and competent authorities, beneficial ownership, and the extent to which FIs and DNFBPs are effectively complying with their AML/CFT obligations. Assessors also examined how competent authorities and reporting entities are mitigating ML/TF risks, including in the real-estate sector. An additional area of focus was the dissuasiveness of sanctions imposed on FIs found in contravention of their requirements, as well as those imposed on natural and legal persons convicted of ML and TF.
- ***Use of financial intelligence:*** The MLS disseminated over 2000 cases to police and the prosecution services and provided financial intelligence to relevant authorities. The assessment team focused on how well this financial intelligence was used to support ML/TF investigations.
- ***Terrorist Financing:*** The main terrorist financing risks faced by Denmark relate to FTFs, including those who have returned to Denmark. The assessors focused on how Danish authorities manage the terrorist financing risks posed by FTFs, including risks associated with using bank accounts for hawala operations, and how these are integrated in its broader CT strategies.
- ***Currency exchangers:*** The supervision of exchange offices was an area of focus for the assessment team due to the high risk associated with this sector, as proven by the number of ML investigations involving this sector.
- ***Money remittance providers:*** Given the ease of use of remittance providers for both ML and TF and their attractiveness to criminals, the effectiveness of preventive measures and the supervision of this sector was an area of focus for the assessment team.

Materiality

51. Denmark is a modern market economy, with gross domestic product (GDP) of approximately EUR 277.75 billion in 2015. Denmark's main exports are: industrial production, including oil and gas (78%) and agricultural products (22%). Denmark is known for its high standard of living, extensive social welfare measures, and low income inequality. All financial services that comprise FATF's definition of FIs are provided in Denmark (including Greenland and the Faroe Islands), as well as all DNFBPs except for notaries.

52. The economies of the Faroe Islands and Greenland are small in comparison to the Danish economy. In 2014, the GDP of Greenland was EUR 2.30 billion and the GDP of the Faroe Islands was EUR 2.46 billion. These economies largely depend on their fisheries sectors. Structural Elements

Structural Elements

53. The key structural elements for effective AML/CFT control appear to be present in Denmark, Greenland, and the Faroe Islands. Political and institutional stability, accountability, transparency and rule of law are all present. Responsibility for developing and implementing AML/CFT policy in Denmark is shared between relevant authorities whose statutes and roles are well-defined.

Background and other Contextual Factors

AML/CFT strategy

54. The Kingdom of Denmark does not have a national AML/CFT strategy, and did not demonstrate that it had national AML/CFT policies. Similarly, the objectives and activities of individual competent authorities are determined by their own priorities and are not coordinated. Nevertheless, there is a level of national cooperation and coordination, though it largely exists on an informal basis, this equally applies to PF coordination.

Legal & institutional framework

55. The following are the main ministries and authorities responsible for formulating and implementing the government's AML/CFT and proliferation financing policies:

Interdepartmental Coordinating Bodies

- **The Money Laundering Forum (MLF):** The MLF was established in 2006, and formalised in 2013 through an MOU. It meets 3-4 times per year and its membership includes: FSA, DBA, BLS, the MLS, SØIK, MoJ, MFA, MoT, DGA and SKAT. The objective of the MLF is to prevent ML and implement UN resolutions and EU regulations related to targeted financial sanctions.
- **The Money Laundering Steering Group:** This Group was established in 1993 as an operational body to discuss ML trends, risks, and to exchange operational information

between LEAs and the MLS. The Group is represented by members of the National Commissioner of Police, the National Investigation Centre, PET, the MLS, and the State Prosecutor for Serious Economic and International Crime (SØIK).

Criminal justice and operational agencies

- **The Money Laundering Secretariat (MLS):** In 1993, the MLS, Denmark's FIU, was established as a unit within SØIK. The MLS receives, analyses, and disseminates STRs and other financial intelligence linked with ML/TF. It is the central authority for the receipt of STRs/SARs/TFRs for the entire Realm of Denmark.
- **The State Prosecutor for Serious Economic and International Crime (SØIK):** SØIK is part of the Public Prosecution Service and is responsible for the investigation and prosecution of serious economic and international crimes in Denmark and, more specifically, organised economic crime that is particularly extensive in scale. It covers the entire Realm of Denmark.
- **The Danish Security Intelligence Service (PET):** PET is a unit within the Office of the National Commissioner of Police and is responsible for identifying, preventing and countering threats to freedom, democracy and safety in the Danish society. This applies to threats in Denmark as well as threats directed at Danish nationals and Danish interests abroad. PET is responsible for the investigation of terrorism and TF. It is also the authority that drafted the 2016 TF NRA. PET covers the entire Realm.
- **Customs and Tax (SKAT):** SKAT is responsible for the monitoring of cross-border transactions and reporting suspicious transactions to the MLS. Officers have no law enforcement powers and provide all information relevant to any particular case to the police or the FIU for investigation. SKAT has responsibility in Greenland and the Faroe Islands.
- **Police Districts:** The police force maintains law and order within the Realm of Denmark. There are 14 police districts (including Greenland and the Faroe Islands) that investigate criminal matters, including matters that arise through STRs that are referred to police districts by the MLS or SØIK. Police authorities also assist PET in the investigation of TF cases.

Financial/DNFBBPs sector supervision

- **The Financial Supervisory Authority (FSA):** The FSA falls under the responsibility of Ministry of Industry, Business and Financial Affairs. The main responsibilities of the FSA are prudential and AML/CFT supervision and regulation. The FSA is responsible for the supervision of FIs other than currency exchange officers, including all money remitters. They also participate in international AML/CFT cooperation, both on EU level and in the FATF.

- **The Danish Business Authority (DBA):** The DBA is responsible for the registration and supervision of undertakings and persons, including branches and agents of foreign undertakings, which commercially carry out currency exchange activities, state-authorized and registered public accountants, real-estate agents, and company service providers (CSPs). The DBA also administers the freezing provisions and certain other provisions on items in the EU Regulations (TF and PF).
- **The Danish Bar and Law Society (BLS):** The BLS is the supervisor for lawyers in Denmark. Corporate lawyers and lawyers working in organizations are not subject to the MLA, GMLA and FMLA, and are therefore not supervised in relation to ML/TF by the BLS.
- **The Danish Gambling Authority (DGA):** The DGA supervises land-based and online casinos for compliance with the Gambling Act and the relevant Executive Orders.

Policy Ministries

- **Ministry of Industry, Business and Financial Affairs (MIBFA):** MIBFA develops policy for the financial sector and addresses matters important to the business environment within Denmark. Its responsibility for the preparation of legislation extends to such matters as ML, accounting and book-keeping, auditors, and companies.
- **Ministry of Foreign Affairs (MFA):** The MFA is responsible for the foreign policy aspects of TF and PF, including the implementation of targeted financial sanctions.
- **Ministry of Justice (MoJ):** The MoJ is responsible for general law enforcement and prosecution matters and its responsibility for the preparation of legislation includes the CC, the Administration of Justice Act, the Foundation Act, and the Fundraising Act.
- **The Ministry of Taxation (MoT):** The MoT is responsible for preparation of legislation in relation to the gambling sector.

Financial sector and DNFBPs

Table 1. Overview of the Number and Size of FIs/DNFBPs in Denmark

Type of obliged entity	Licensed/registered (number of)
FIs	
Banking institutions and branches of foreign undertakings	96
Mortgage credit institutions	7
Investment firms	38
Investment management companies	13
Insurance companies and branches of foreign undertakings, pension funds	66
Savings undertakings	2
Providers of payment services, electronic money issuers and branches of foreign undertakings	98 (this is including all restricted licenses to issue e-money)

1

Type of obliged entity	Licensed/registered (number of)
Insurance brokers	162
MVTS	26
Agents of foreign undertakings	625
Currency exchange	67
DNFBPs	
Lawyers	6 201
Accountants	5 600
Real-estate agents	3 295
Undertakings / persons that otherwise commercially provide the same services as real estate agents, accountants and lawyers (Inc. tax advisors, external accountants).	7 000
CSPs ¹	480+
Online casinos	28
Land-based casinos	6
Ship-based casinos	1

1. Denmark advised that these are company service providers engaged in forming companies, providing administration or a domicile or other address, and related services. No information was provided concerning service providers for trusts or other legal arrangements.

Financial Sector

56. Denmark's financial sector is characterised by a few large international groups and many small institutions. Total system assets are over 650% of GDP, with the banking sector accounting for two-thirds of this amount.⁵ The large groups account for the majority of total lending, and the sector is among the largest and most concentrated in Europe, measured as a ratio of GDP. Bank lending to households is at 130% of GDP. Denmark's banking system has important linkages with Nordic neighbours, with Danske Bank being a large regional player.⁶ The three largest banks in Denmark are: Danske; Sweden-based Nordea Bank; and Jyske.

DNFBP Sector

57. As noted above, the businesses and professions that comprise FATF's definition of DNFBPs exist in Denmark; however, there are a few minor exceptions. Specifically, dealers in precious metals and stones are not supervised for AML/CFT compliance as Danish law contains a provision prohibiting this sector from receiving cash transactions of EUR 6 700 equivalent, or more. Further, notaries in Denmark do not carry out any of the activities referenced in the FATF Methodology.

⁵ International Monetary Fund (June 2016). 2016 Article IV Consultation, www.imf.org/external/pubs/ft/scr/2016/cr16184.pdf.

⁶ Ibid.

Preventive measures

58. The primary piece of AML/CFT legislation governing FIs in Denmark is the Money Laundering Act (MLA). Similar legislation has been enacted in Greenland and the Faroe Islands, referred to as the Greenland Money Laundering Act (GMLA), and the Faroe Islands Money Laundering Act (FMLA). As some of FIs in Greenland and the Faroe Islands fall under the self-governing arrangements, separate self-governance legislation has been enacted and is referred to as the GMLAS and FMLAS.

59. As noted previously, Denmark, Greenland and the Faroe Islands have exempted dealers in precious metals and stones from AML/CFT supervision. In Denmark, this sector is prohibited from receiving cash transactions of EUR 6 700 equivalent, or more. In Greenland and the Faroe Islands, the threshold is EUR 13 400.

60. Further, the MLA and GMLA contain exemptions for FIs and DNFBPs from customer identification and verification requirements in certain situations (mostly threshold-based) when the products are: life-assurance and pension products; and electronic money. The FMLA contains exemptions for FIs and DNFBPs from customer identification and verification requirements in certain situations only when the product is electronic money. These exemptions are part of Denmark's implementation of 3AMLD. As noted in IO.1, the exemptions are not risk-based.

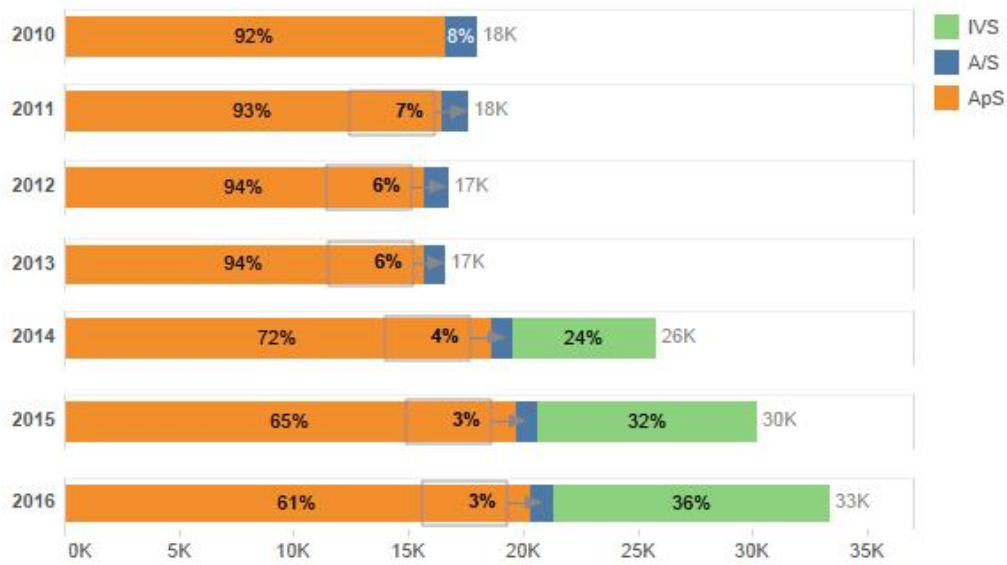
Legal persons and arrangements

61. Denmark permits the creation of a range of legal persons including companies, proprietorships, and associations with both limited and unlimited legal liability. Businesses in Denmark are obliged to register basic information to the DBA, which is then made publically available in the CVR. Non-commercial foundations are required to register basic information such as name and address in the CVR if they have obligations concerning tax or VAT. The information is registered online in the CVR (<https://datacvr.virk.dk/data/>). The data entered in the CVR is available in Danish and English. Both competent authorities, as well as the public can access the statutes and annual reports for non-commercial foundations through the DCA.

62. The main business structures used in Denmark are limited companies, partnerships and foundations. Holding companies, which are a feature of the Danish corporate sector, are subject to all of the same requirements in terms of registration, submission of tax returns and keeping shareholder registers which apply to other Danish limited companies.



Table 2. Limited liability companies formed per year, 2010-2016



63. Danish legislation does not provide for the concept of a trust, and no trusts can be established in Denmark. A foreign trust can operate in Denmark and register in the CVR as ‘another foreign company’. If a trust is registered as ‘other foreign company’, a registration certificate will be submitted to the trust, showing the registered information (such as name, address, industry code, owner information, etc.), and the company is encouraged to ensure the information is correct. Information about the trust will be publicly available online via the CVR. Recent tax legislation, however, does take account of foreign trusts for tax purposes, and lays down rules as to how these are to be treated vis-a-vis parties to the trust. There are no restrictions on a Danish resident acting as trustee, protector, administrator of a trust formed under foreign law, or being a settlor or beneficiary under such a trust. Indeed, if a trustee or administrator of a foreign trust (or similar legal arrangement) is domiciled or resident in Denmark, or the trust carries on business activities from a permanent establishment in Denmark, then the trustee must hold identity information on other trustees and administrators and settlors/founders as well as identity information on beneficiaries and possible beneficiaries receiving distributions from the trust: TCA s.3A(4). Trustees are obliged to provide information to reporting entities in accordance with the rules on CDD procedures in the MLA. Also legal entities or persons acting as professional trustees are obliged to perform the obligations laid down by the MLA. This means that they can be sanctioned in accordance with MLA for not complying with the rules.

Table 3. Legal Persons and Arrangements in Denmark

Company form	2011	2012	2013	2014	2015	16 th of November 2016
Public limited company (A/S)	41 110	40 109	39 010	38 198	37 620	35 671
Limited partnership company (P/S)	352	404	519	651	801	891
Private limited company (ApS)	189 153	192 876	196 741	204 718	214 168	213 234
Entrepreneurial company (IVS)	-	-	-	6 047	15 205	22 312
Company with limited liability/association with limited liability (SMBA/FMBA)	2 445	2 253	2 067	1 768	1 522	1 173
Co-operative with limited liability (A.M.B.A.)	665	649	635	621	605	565
Limited partnership (K/S)	3 586	3 608	3 613	3 567	3 584	3 540
Partnership (I/S)	24 053	23 864	23 554	22 736	22 281	21 639
Commercial foundations	1 347	1 351	1 350	1 359	1 354	1 364
Non-Commercial foundations	8 711	8 553	8 315	8 184	8 119	8 018
Employee Investment Company (MS)	-	-	-	1	1	1
European Economic Interest Grouping – EEIG (EØFG)	10	10	10	10	10	11
European Society (SE)	6	5	3	3	2	1
European Cooperative Society (SCE)	0	0	0	0	0	0
Shipping Company	150	145	131	133	130	123
Association	37 069	37 353	37 080	37 026	36 843	36 781
Voluntary association	37 200	44 737	52 557	60 609	67 365	73 386
Co-operative society	1 009	1 058	1 091	1 112	1 145	1 153
Other foreign undertakings (number of trusts included)	4 557 (0)	4 688 (0)	4 904 (1)	5 069 (1)	5 089 (3)	5 116 (2)
Established place of business of EEIG	2	2	2	2	2	2
Other form of business	3 979	3 930	3 878	3 855	3 855	3 865
Governmental entities (Government administrative unit, county authority, Municipality and Independent State Owned Business) and Parish Church Councils	2 606	2 557	2 435	2 435	2 463	2 242
Total	358 010	368 152	377 895	398 104	422 164	431 088

Supervisory arrangements

64. The supervision of FIs' compliance with regulatory requirements (including AML/CFT) falls under the responsibility of various supervisors depending on the entity and whether it is located in Denmark, Greenland, or the Faroe Islands.

65. Table 4 indicates the relevant supervisor for each reporting entity. It should be noted that at the time of the onsite, Denmark was taking steps to transfer the supervision of currency exchangers from the DBA to the FSA.

Table 4. Responsibility for supervision in the Kingdom of Denmark

Reporting entity	Denmark	Greenland	Faroe Islands
<ul style="list-style-type: none"> - Banks - Investment firms - Investment management companies - Savings undertakings - Foreign undertakings' branches - Issuers of electronic money 	FSA		
<ul style="list-style-type: none"> - Mortgage credit institutions - Life assurance companies - Insurance brokers - Providers of payment services 	FSA		Insurance Supervisory Authority
<ul style="list-style-type: none"> - Currency Exchangers - Real-estate agents - Providers for services and undertakings 	DBA	The Tax Agency	Skraseting Foroya
Casinos (online and land-based)	DGA		
Lawyers	BLS		
Accountants	DBA		Skraseting Foroya

66. Legal persons and arrangements, companies, partnerships, and foundations are required to register with the DBA. The information is mainly registered according to company laws and tax laws and is published in the CVR. The information required to be registered is outlined below:

- *Companies:* Members of the board of management, board of directors and supervisory board and any auditors of the company with share capital are required to be registered.
- *Partnerships:* Information about the undertaking's name, address, the municipality of its registered office, objects and financial year shall also be entered in the register. The person authorised to sign for the undertaking shall also be registered.
- *Foundations:* Members of the board of directors and board of management and the auditor shall be registered.

- *Non-commercial Foundations:* These entities are only required to register in the CVR if they have obligations concerning tax or VAT. However, according to the Foundation Act, all non-commercial foundations and certain associations must submit their deed of foundation to the DCA and SKAT (for associations only to SKAT) within three months of establishment. The deed must contain certain basic information, including the name of the foundation or association and the location of registered office.

International Cooperation

67. Denmark has close cooperation with Nordic and EU countries, and to a lesser degree with third countries. In general, Denmark's system for international cooperation allows it to request and exchange information in the absence of formal cooperation agreements.

68. As of June 2016, the central authority for MLA and extradition is the DPP, which assumed this responsibility from the MoJ. The majority of Denmark's cooperation, however, occurs bilaterally and is not channelled through the central authority. As a result, Denmark is unable to provide a comprehensive view of the degree of cooperation requested or provided.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key Findings

Denmark achieved a moderate level of effectiveness for IO.1.

1. Denmark completed its first ML NRA in 2015, primarily based on separate risk assessments conducted by the MLS. The methodology employed in the NRA was limited in its input and scope, there were weaknesses in the risk matrix model and analysis, and the findings have limited relevance and utility for the private sector. Due to the above factors and a lack of quantitative information about profit-driven criminality in Denmark, occurrence of ML and the underlying predicate offences, and the types and quantity of international requests for information and legal assistance on ML, the results of the NRA do not appear to provide a holistic assessment of the ML risks present in the Kingdom of Denmark.
2. Denmark completed its first TF NRA in 2016. TF risks are better identified and understood than ML, but the understanding is confined primarily to PET. There are concerns regarding a lack of a methodological approach and input from other government departments and agencies. Further, the TF NRA does not prioritise the identified risks, nor proposes a mitigation strategy. The understanding of TF risk expressed by PET during the onsite discussions was much more comprehensive than that expressed in the TF NRA. Denmark made both NRAs available to FIs and DNFBPs. FIs and DNFBPs are not currently taking satisfactory risk-based mitigation measures.
3. Cooperation amongst authorities largely exists through informal mechanisms, on a bilateral basis. There is a lack of national AML/CFT policies. Objectives and activities for combating ML at the agency level are not clearly based on identified risks and are not supported by prioritised actions by key stakeholders. In some areas identified as high-risk in the ML NRA, such as currency exchangers, relevant authorities have taken a proactive approach in terms of investigation and prosecution. While this is a positive development, major improvements are needed to address other high-risk areas and to appropriately allocate resources based on identified risks.

Recommended Actions

1. In the context of the current initiative to develop a new ML NRA and updating its TF NRA, Denmark should revise its risk assessment methodology, including adding additional sources of risk information to be assessed, for findings to be corroborated, involvement of the private sector, and to consider the specific of the entire Kingdom. Authorities should better communicate information on ML/TF risks to FIs/DNFBPs.
2. Denmark should develop and implement national AML/CFT policies based on the findings of ML/TF risk assessments, and provide a clear strategy to address the risks identified. To this effect, Denmark should strengthen its domestic cooperation for combatting ML, TF and PF, including by appointing a lead authority to coordinate TFS and to mitigate any TF risks in the NPO sector.

Denmark should periodically review its AML/CFT policies and structures to identify areas of further improvement.

3. Denmark should introduce mechanisms to collect a broader set of statistics on ML/TF that will enable it to assess overall AML/CFT effectiveness.

4. Denmark should enhance efforts to ensure that the private sector, particularly DNFBPs, is aware of ML/TF risks. Denmark should provide regular and consistent guidance on risk and the conduct risk assessments at the enterprise level. FIs and DNFBPs' risk assessments should be incorporated into future ML/TF NRAs.

69. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The recommendations relevant for the assessment of effectiveness under this section are R1-2.

Immediate Outcome 1 (Risk, Policy and Coordination)

Understanding of ML/TF risks

ML NRA

70. The process for developing Denmark's first ML NRA began in 2013 and was completed in 2015. The ML NRA was prepared by the MLS in cooperation with the FSA, DBA, SKAT, BLS and DGA, and approved by the MLF. The ML NRA relied heavily on a number of sectoral risk assessments, which cover: (a) the financial sector – banks, life assurance and pensions, electronic payment services, money remitters and currency exchanges; (b) DNFBPs – gambling, lawyers, accountants and TCSPs; and (c) other – purchasing real estate, high value goods, legal persons/arrangements and cash smuggling. These sectoral assessments were based on national information/intelligence (i.e. STRs) combined with international threat assessments (e.g. 2011 Europol's EU Organised Crime Threat Assessment and 2011 OSAC's Crime and Safety Report), FATF/FSRB typology reports.

71. The objective of the ML NRA was to identify and assess various sectors, products and delivery channels vulnerable to ML, to provide a basis for future policy-making, resource allocation, and prioritisation of ML activities. The restricted version of the NRA was distributed in June 2015 to supervisory bodies (FSA, DBA, DGA, and BLS), criminal justice and LEAs (SKAT, PET, state prosecutors and police districts), and relevant ministries (MoT, MFA, MoJ, MIBFA). The unclassified version was published online and emailed to FIs supervised by the FSA.

72. Overall, the ML NRA process was not conducted in a coordinated, whole-of-government manner. Outside of the MLS, there was little understanding by authorities as to how the risk ratings were reached, and how the methodology was developed. Although the ML NRA was approved by the MLF, which includes membership from relevant agencies, it was based mostly on contributions from the MLS and the FSA, with limited reference to investigations. As a result, the assessment did not include supervisory information from the DNFBP sector, or from the private sector. Thus, risks associated with the misuse of most of DNFBP sectors (with the exception of casinos) were not given proper consideration.

73. Further, the methodology employed in the NRA was limited in its input and scope. Specifically, inputs to the NRA were restricted to MLS data on STRs, some interviews with SKAT, SØIK/MLS, and the financial supervisors, and external reports on universal risk indicators. As noted in R.33, Denmark does not maintain comprehensive statistics on matters relevant to effectiveness and efficiency of their AML/CFT systems. Due to a lack of quantitative information about profit-driven criminality in Denmark, occurrence of ML and the underlying predicate offences, and the types and quantity of international requests for information and legal assistance on ML, the results of the NRA may not provide an accurate account of the ML risks present in the country. As a result, Denmark's understanding of its ML may be a result of projection bias, with conclusions derived from a limited set of subjective judgements.

74. During the onsite visit, authorities demonstrated limited understanding of Denmark's ML risks and the extent ML occurs in the country. This could be attributed to a lack of relevant statistics given the articulation of the ML offence, which covers the handling of all stolen goods as compared to traditional ML (see IO.7).

75. There are also substantial concerns about the risk-matrix tool used in the NRA to substantiate the risk-ratings. Denmark used a risk-matrix model based on the FATF's NRA Guidance paper. The assessment of each of the risk areas is based on six sub-criteria relating to the threat (extent and development), the vulnerability (ease of use and counter-measures) and consequences (economic loss and impact on society) (see **Table 5**). All six sub-criteria were weighted equally (one point) and the overall rating is the sum of all sub-criteria. Following this approach, the NRA rates the MVTs sector as high risk based on the result of four 'high' and two 'medium' sub-ratings, and gives electronic payment services a medium rating because there are two highs, two lows and two mediums. Yet, when faced with two 'unknowns' and one 'high' for TCSPs, the final rating remains at medium. This is due to 'unknowns' rated half a point, instead of receiving a higher weighing due to the lack of information on possible risks and threats. This could be an indication of factors being considered in isolation from each other, and not the ML risks present in Denmark.

76. Moreover, there are other noticeable weaknesses in the methodology. For example, economic loss to Denmark was a factor, and the methodological approach was that if the proceeds of crime remain in Denmark then the ML risk is lower. Further, there are internal inconsistencies such as legal business structures representing a high threat, yet the DNFBPs that create them (lawyers, accountants, TCSPs) are treated as either a low or unknown threat. In practice, the DBA considers DNFBPs as high risk; however this is not reflected in the NRA.

Table 5. Denmark's assessment of ML risk areas

	Threat		Vulnerability		Consequence		Overall rating
	Extent	Development	Ease of use	Counter-measures	Economic loss	Impact on society	
Currency exchangers	High	High	High	High	High	Medium	High
Legal business structures (e.g. companies, trusts)	High	High	Medium	High	High	High	High
Money remittance providers	High	High	High	Medium	High	Medium	High
Cash smuggling	High	High	High	Medium	High	Medium	High
Banks	High	Medium	Medium	Medium	High	Medium	Medium
Gambling	Medium	Medium	High	High	Low	Medium	Medium
Real estate	Medium	High	Medium	Medium	Medium	Medium	Medium
High-value goods	High	Medium	Medium	Medium	Medium	Medium	Medium
TCSPs	Unknown	Unknown	Medium	High	Medium	Medium	Medium
Electronic payment services	Low	High	Medium	High	Low	Medium	Medium
Lawyers and accountants	Low	Unknown	Medium	Medium	Medium	High	Medium
Life assurance and pension funds	Low	Medium	Low	Low	Low	Low	Low

77. The NRA is regarded by the private sector as having limited relevance and utility. In part, this is because the NRA contains very little information that would assist them in their understanding of risk. For example, for banks, which are assessed as medium risk, the main ML methods were identified as: using accounts to place criminal proceeds, disguise criminal proceeds, and move criminal proceeds abroad. These generic ML methods provide authorities or institutions with limited information to allocate resources, inform supervisory activities, develop guidance, or improve suspicious reporting.

78. Limited analysis of the specific ML risks in Greenland and the Faroe Islands was completed by Denmark; however, each territory has a small population, limited number of FI and DNFBPs, and is remotely located. While STR information from these jurisdictions was part of the total set of information used to develop the NRA, the specific risk profile of these jurisdictions was not developed.

79. During the onsite visit, Denmark noted that it intends to develop a new ML NRA in 2017, rather than updating its initial version due to concerns related to the original methodology

employed and to include input from the private sector. This is a positive development in Denmark's efforts to appropriately identify and mitigate its ML risks.

TF NRA

80. As noted in IO.9, Denmark demonstrates a general understanding of its TF risks; however, this understanding is confined primarily to PET, and is not well understood by other competent authorities. PET's understanding of TF risk is not clearly reflected in the TF NRA. Instead, the TF NRA is written in general terms and does not identify areas that are low, medium or high risk, or whether TF is considered high risk in Denmark. The TF NRA is more similar to a threat assessment on current TF trends in Denmark as it does not assess existing vulnerabilities, nor apply a methodology to identify low, medium, or high risk sectors or methods. The understanding of TF risk expressed by PET during the onsite discussions was much more comprehensive than that expressed in the TF NRA.

81. The TF NRA was carried out by the PET in 2016, and finalised in October 2016. As described under R.1, there are similar shortcomings in the TF NRA process and methodology as identified in the ML NRA. In particular, the development of the TF NRA was not coordinated across government and no methodology was applied.

82. PET has access to a wide range of information that served as a basis for the TF NRA. According to PET, inputs to the TF NRA included information in police databases, TFRs from the MLS, cross-border currency reports from SKAT, and all-source intelligence accessible by PET. PET indicated that many of the information and case studies could not be reflected in the TF NRA for security reasons (to not compromise ongoing TF investigations). Given the sensitivity of the TF NRA, it was not made available online, but distributed to a limited audience (relevant ML/TF authorities and trusted industry partners). The TF NRA could have benefited from input from other authorities, such as ISOBRO and the Fundraising Board, which have defined views on the gaps in the NPO framework and the associated TF risks present.

83. The TF NRA contains recommendations, such as the need to increase focus on social benefits fraud and misuse of grants under the State Education Fund in relation to the financing of FTF departures to conflict zones, and to enhance the focus on fundraising activities and cash transfers. However, it is unclear whether these recommendations could be used as a basis for setting national CFT policies and for prioritising risk mitigation measures as the authorities responsible for these activities were not involved in the drafting of this assessment and its conclusions.

84. PET has conducted outreach on TF to reporting entities through annual meetings with large banks and a few remitters. Further, as noted in IO.9, PET has exchanged information with the private sector to seek to disrupt potential TF activity where it could not secure a conviction. However, these exchanges were random and not pursued in a strategic or coordinated manner. These efforts, albeit limited, have enhanced the understanding of some private sector entities of the TF risks present in Denmark. In general, it was demonstrated during the onsite that some FIs and most DNFBPs have a limited understanding of their TF risks.

85. In regard to the NPO sector, which was assessed in the TF NRA as having been used for TF purposes, the sector as a whole has a poor understanding of its TF risks. As noted in IO.10, NPOs met by the evaluation team did not have controls in place to address TF risk except for monitoring TFS lists.

86. Similar to the ML NRA, Denmark did not analyse the TF risks in Greenland and the Faroe Islands.

Policies and activities by competent authorities to address identified ML/TF risks (core issues 1.2 and 1.4 have been merged)

87. Denmark does not have overarching national policies or strategies to combat ML/TF. Instead, AML/CFT legislative changes and the development of priorities are largely reactive and externally driven. For example, Denmark indicated that there was a decision to enhance the focus of economic crimes in recent years, in particular cross-border cooperation to counter tax evasion. This focus was not the result of the NRA or any AML risk assessment, but due to the assessment by the National Police Commissioners Office that serious tax and VAT-fraud is one of the most profitable areas of crime in Denmark. The lack of national AML/CFT policies also applies to Greenland and the Faroe Islands.

88. While some agencies indicated that they use the findings of the ML/TF NRAs in their day-to-day work, the aforementioned weaknesses impact their utility in respect to developing national AML policies. To date, the findings of the NRAs have not led to the development of legislative amendments or the systematic reallocation of resources.

AML activities by competent authorities and SRBs

89. While there are serious concerns with the quality and ultimate utility of the ML NRA, some positive actions have taken place in response to its conclusions. For example, since the completion of the ML NRA, supervisory authorities have taken a more proactive approach to ensure AML/CFT compliance by reporting entities identified as high risk.

90. Following an internal review, the FSA established in 2014 a dedicated unit on AML/CFT issues (such as supervision, guidance, and private sector outreach). This unit is responsible for prioritising AML/CFT activity at the FSA. However as noted in IO.3, this unit is significantly under resourced to conduct its functions, which include but are not limited to, onsite/offsite AML/CFT supervision, development of guidance, informing legislative amendments and regulations on AML/CFT matters, Ministerial support, and international engagement on ML and TF. Given the number of staff allocated to this unit, it is not possible to achieve all the responsibilities identified.

91. In 2016, the DBA enhanced its focus on CSPs as a result of the high risk identified in the ML NRA. However, at the onsite visit it was not demonstrated that this had any significant outcomes in relation to CSPs' understanding of the risks relating to use of legal entities.

92. Other non-supervisory authorities have also started to take proactive approaches based on the ML NRA. For instance, as a result of it being identified as a higher risk area in the ML NRA, the

MLS prioritised STRs related to risk areas such as currency exchange offices and money remittance providers. Overall, while some risk-based actions have been taken, it is limited and variable and do not adequately correspond to the risks identified.

CFT activities by competent authorities and SRB

93. As noted in IO.9, in response to the 2015 terrorist attack in Copenhagen, a number of measures were introduced to enhance the capacity and the capability of PET and LEAs concerning TF investigations. However, the authorities have no specific policy or strategy dedicated to counter TF threats and trends.

94. While PET has a general understanding of TF risks, these risks are not adequately integrated into Denmark's policies relating to preventive measures (e.g. supervisory priorities related to CDD of beneficial ownership and PEPs). The FSA, as the primary AML/CFT supervisor, has not prioritised CFT policies and activities in response to the risks identified by the PET, nor has the DBA. This being said, the TF NRA was relatively new at the time of the onsite which may contribute to its findings having not yet been incorporated into the development of CFT policies.

95. No outreach to NPOs or donor communities by the authorities has been carried out during the period under review by the evaluation team. The last outreach to NPOs was the publication in 2010 of a leaflet "Your contribution can be abused" by PET and ISOBRO. It is a positive development that PET intends to update this document in 2017.

96. In its NRA, PET also identified social benefit fraud as a means to finance terrorist activities, including the travel of FTFs. As a result of this identified risk, at the time of the onsite, Denmark was taking efforts to introduce a legislative amendment to restrict social benefit payments to known FTFs currently in theatre.

Exemptions, enhanced and simplified measures

97. Neither the ML NRA nor the TF NRA provides an adequate basis to justify the exemptions from requirements contained in the MLA, or for the application of enhanced or simplified measures. This is the case for areas that the ML NRA identifies as posing the greatest risk of ML abuse (e.g. currency exchanges, MVTs) and areas of less prominent ML risks (e.g. life-assurance and pension funds, legal and accounting professionals). The AML/CFT legal framework provides for some exemptions (see c.1.6 of the TC Annex). The regulatory framework also requires reporting entities to perform their own risk assessments, and to apply enhanced measures based on their findings.

98. However, exemptions, enhanced and simplified measures are largely driven by a combination of parameters such as regulatory burden imposed on regulated entities, or the need to comply with EU regulation (i.e. e-money), rather than a proven low risk of ML and TF (see R.1).

National coordination and cooperation

99. There is no coordinated or structured approach to the management of ML/TF risk in Denmark (or Greenland or the Faroe Islands). Instead, cooperation largely exists through informal

mechanisms, on a bilateral basis. It is a positive development that a number of MoUs were under development at the time of the onsite in order to formalise this cooperation.

2

100. As noted in Chapter 1, the MLF was established in 2006, and formalised in 2013 through a MoU. It meets 3-4 times per year and its membership includes: FSA, DBA, BLS, the MLS, SØIK, MoJ, MFA, MoT, DGA and SKAT. The MLF is used to discuss general ML issues, ongoing work, and future tasks at the operational level (i.e. information exchange about cases). On 17 November 2016, a new MOU was adopted. As stated by Denmark, its objectives are coordination and exchange of information with regard to strengthening efforts by the authorities and implementation of national and international obligations, exchange of relevant statistics between authorities, clarification of the allocation of tasks between authorities, tasks in relation to AML/CFT evaluations of Denmark carried out by international organisations, assessment of the effectiveness of the measures initiated, and ongoing assessment of the effectiveness of authorities' tools in order to recommend possible further initiatives for the area.

101. The ML Steering Group also discusses ML trends, risks, and used to exchange operational information between LEAs and the MLS. The Group is represented by members of the National Commissioner of Police, the National Investigation Centre, PET, the MLS, and SØIK.

102. As noted above, the MLF was used to discuss and approve the final version of the ML NRA. However, the MLF and Steering Group do not contribute to the development and implementation of ML policies and activities in a coordinated or systematic manner. This is due to the informal nature of these groups and the fact that each authority is autonomous and not bound by the decisions of these groups.

103. The FSA and the DBA cooperate on policy and legal initiatives related to Denmark's AML/CFT regime. The FSA and the DBA primarily cooperate informally in various areas relating to AML/CFT monitoring and supervision, particularly in the area of currency exchanges as the supervisory responsibility will soon be transferred from the DBA to the FSA, but other supervisory actions are not coordinated. Further, while the MLS organises regular meetings with the supervisory authorities and SKAT on risks and trends, this is done on an ad hoc basis and the cooperation is not formalised.

104. In regard to TF, there is some level of bilateral cooperation between different agencies, but the majority of the knowledge and responsibility lies with PET. Indeed, the responsibility for the investigation of TF is led by PET, with assistance from the district police units. This duplication in mandate led to the DPP and the head of PET issuing memorandums to clarify PET's mandate to investigate TF, since there were cases where the same investigation was carried out by different police units simultaneously. At an operational level, considerable informal and ad hoc cooperation is taking place, particularly through the Steering Group.

105. Further as noted in IO.6, the cooperation between the MLS and PET has improved since the 2015 terrorist attack in Copenhagen. For instance, PET has exchanged managers with the necessary security clearance levels to the MLS; submitted requests for information to the MLS on known targets; and provided information on trends related to TF aimed at improving the quality of the analysis of the MLS.

106. In general, however, the level of national coordination in place at the time of the onsite was insufficient to achieve an effective CFT system. There is a significant lack of cooperation between PET, ISOBRO, and the Fundraising Board, which has led to a lack of CFT coordination between these authorities in the area of NPOs and their potential abuse for TF. Further, there is limited cooperation and coordination on TF between PET/MLS, and the relevant financial supervisors, including on TFS.

107. With regard to PF, as noted in IO.11, there is liaison between members of the Danish EU Sanctions Committee Ministries on the introduction of new sanctions legislation in the period before EU legislation imposing new sanctions requirements (as opposed to changes to the lists of designated persons) is made. Relationships appear to be good (particularly between PET and the MLS) and information exchange takes place. However, “whole-of-government” cooperation and information exchange could be improved as it does not appear to cover the development and implementation of policies and activities to combat PF. Some steps are being taken to deal with the perceived gaps and to enhance bilateral flows of information.

Private sector’s awareness of risks

ML NRA

108. Denmark has taken limited measures to ensure that FIs and DNFBPs are aware of the ML risks facing their sectors. For example, the FSA, DBA and DGA disseminated the ML NRA to their respective reporting entities. The authorities also leveraged conferences and other sectoral meetings (e.g. meetings of the banking associations, real estate agents) to present the findings of the ML NRA. However, with the exception of these few presentations, the authorities have not actively engaged with the private sector on the findings of the ML NRA.

109. The private sector meetings held during the onsite visit revealed that while the degree of awareness of ML and TF risks varied from institution to institution, most appeared to be aware of the findings of the ML NRA. Most private sector entities, however, have not demonstrated how they use these findings to inform compliance with their AML/CFT obligations. Some entities indicated that the findings did not provide any new information, and in some cases were not useful at all. FIs and DNFBPs unanimously stated that they need more engagement, guidance, and outreach activities from competent authorities.

TF NRA

110. The TF NRA was distributed to a limited number of institutions, including the Bankers’ Association which further distributed it to its members. The TF NRA was completed shortly before the onsite visit, thus outreach on its findings were in the preliminary stages. Apart from several banks who received it, some FIs and most DNFBPs were unaware of the TF NRA.

Overall conclusions on Immediate Outcome 1

111. Denmark has a moderate level of effectiveness for IO.1.



CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

Use of financial intelligence (Immediate Outcome 6)

Denmark achieved a moderate level of effectiveness for IO.6.

1. The effective functioning of the MLS is hampered by its lack of human resources. The MLS also lacks some operational autonomy as it does not have an independent budget and may not independently hire new employees or improve its IT infrastructure without approval from SØIK.
2. The MLS has broad access to financial intelligence and other information to support its activities. The MLS's software provides a basic analytical function, but cannot link to other available databases to assist in operational analysis.
3. Competent authorities confirmed that the intelligence received from the MLS is useful for investigations, primarily for predicate offences (mostly tax violations). The number of STRs has significantly increased in recent years, though the number of spontaneous disseminations and requests for intelligence has declined. The MLS does not provide adequate feedback to reporting entities.
4. The MLS conducts limited analysis on the TFRs it receives (i.e. cross-checking against databases) and immediately forwards them to PET for further review and analysis. PET places considerable emphasis on the use of financial intelligence for its terrorism and TF investigations.

ML investigation and prosecution (Immediate Outcome 7)

Denmark achieved a moderate level of effectiveness for IO.7.

1. Denmark has a handling of stolen goods offence that extends to all criminal proceeds thus encapsulating the laundering of predicate offences. However, based on Danish legal tradition, the offence does not cover self-laundering. There is a focus on prosecuting the predicate offence and limited information to suggest that serious ML is actively pursued.
2. The authorities were unable to provide statistics that differentiate between investigations/prosecutions/convictions related to ML and traditional handling of stolen goods offences, such as receiving stolen bicycles, nor to indicate the situation regarding self-laundering since this is considered to be part of the predicate offence. The case examples showed that ML is pursued in some cases, including against legal persons, but related to a limited range of predicate offences, few foreign predicate cases, and most did not include complex ML cases (most cases involved simple cases of receipt of money assumed to be criminal proceeds). LEAs pursue the predicate offence as a priority rather than ML.

3. The criminal penalty of 1.5 years of maximum imprisonment for ordinary ML is not fully proportionate or dissuasive. While the CC includes a higher penalty of six years for aggravated ML, the penalties imposed in practice on average have been low and in many cases resulted in suspended imprisonment.

Confiscation (Immediate Outcome 8)

Denmark achieved a moderate level of effectiveness for IO.8.

1. Denmark has a sound legal framework for freezing, seizing and confiscation measures, with extended confiscation powers allowing the authorities to place a burden on the defendant to prove the legitimate origin of assets.
2. Denmark is taking some actions to recover the proceeds of crime. The ARO is central to that effort and the available data and the other qualitative information provided indicates that they have had some significant successes, particularly in the last two years, and are taking effective action. It also appears that a significant number of confiscation orders are being made, on average about 1 100, in a total amount of about EUR 16 million per year. However recoveries are modest (20% of confiscated amount), and use of tax powers to recover criminal proceeds has not yet achieved significant results either. Overall it appears that while there are a range of powers and mechanisms that are being used, the results achieved are only moderately effective. It is also not clear how widely and effectively powers are being used, whether for all types of crime, and how the results are consistent with Denmark's risk profile. The lack of more qualitative information on confiscation is an obstacle.
3. Denmark has a sound legal framework in place for the declaration and identification of cross border movements of funds. Although there is evidence that the system is implemented in practice and has produced some results, it appears that there is room for improvement.

Recommended Actions

Immediate Outcome 6

1. The MLS should be granted with adequate autonomy and resources to conduct comprehensive analysis of STRs/SARs/TFRs and other financial intelligence, including cross-border declarations.
2. The MLS should enhance its strategic analysis function.
3. Denmark should prioritise the use of financial intelligence for pursuing ML investigations and tracing of assets.
4. Denmark should improve the exchange of information between the MLS and the financial supervisors. The regulators are recommended to make use of financial intelligence to assist in their supervisory activities.

Immediate Outcome 7

1. The Kingdom of Denmark should create an ML offence separate from the handling of stolen goods offence and should also criminalise self-laundering, recognising that countries with

similar legal systems have progressively moved towards providing for self-laundering as a separate offence.

2. Denmark should prioritise the investigation and prosecution of all types of ML in accordance with the country's risks, including serious ML, stand-alone ML and ML involving legal persons, and the laundering of proceeds from foreign predicate offences.
3. The Kingdom of Denmark should increase the legal sanctions for ordinary ML so as to ensure the dissuasiveness and proportionality of its sanction regime, and should take steps to ensure that fully dissuasive and proportionate sanctions are applied in practice.
4. Denmark should ensure that LEAs have adequate resources for ML investigations, including special investigative techniques.
5. Denmark should gather and maintain a broader set of ML statistics, including where possible for underlying predicate offences, to inform the ongoing development of the ML NRA and to better allocate resources.

Immediate Outcome 8

1. Denmark should review its system to determine why the results achieved are only moderately effective, including considering how and why results are being achieved and the resources that are applied towards this objective.
2. Denmark should develop a national strategy or policy on confiscation.
3. Denmark should further enhance training for the police and prosecution service on confiscation.

112. The relevant Immediate Outcomes considered and assessed in this chapter are IO6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R4 & R29-32.

Immediate Outcome 6 (Financial intelligence ML/TF)

Use of financial intelligence and other information

113. The main sources of financial intelligence in Denmark, Greenland, and the Faroe Islands are STRs/SARs/TFRs (hereinafter referred to as STRs) sent to the MLS (Denmark's FIU) from FIs and to a lesser extent from DNFBPs, and cross-border declarations sent from SKAT. The MLS also has direct access to police databases, the Register of Criminal Records, and a large number of public databases, including the CVR. The MLS has indirect access to supervisory information.

114. The MLS and LEAs may request and obtain additional financial information held by the private sector through a court order. An order may be obtained if the investigation concerns an offence which is subject to public prosecution and there is reason to presume that an object of which the person/entity has in its disposal may serve as evidence. In practice, court orders may be

obtained electronically within 24 hours, and in urgent cases, the information can be obtained without a court order and presented before a judge afterwards by request. Further, court orders have not been denied in practice and can be obtained merely on the suspicion of ML or TF and do not require further evidentiary support. Denmark advised that orders are routinely obtained solely on the basis that an STR has been made, and it appears that in practice no distinction is drawn between the FIU's function to gather intelligence and (as since it is part of LEA) to investigate crime.

115. In 2014, the MLS introduced goAML, subsequently obliging all reporting entities to submit STRs electronically through the goAML system. This has led to a significant increase in reporting, and a decrease in incomplete STRs due to the inclusion of mandatory fields. However, the MLS does not integrate goAML with its other databases; as a result there is no automatic analytical function in the system. Instead, analysis is completed manually by importing and exporting data through the fragmented systems.

116. The MLS performs some analysis by accessing external databases, after which it makes disseminations to LEAs or other competent authorities. The MLS prioritises its analysis and disseminations based on ongoing investigations of predicate offences and known targets, rather than identifying and pursuing new ML/TF cases. In limited instances, the MLS also identifies and pursues new ML cases.

117. There is a significant concern regarding the diminishing human resources of the MLS and the impact this has on the quality of the analysis conducted by, and the added-value of, the MLS in developing and disclosing reports to LEAs. **Table 6** illustrates the resources of the MLS.⁷ The analysts of the MLS are shared with SØIK, but fall under the management of the MLS. These analysts may be pulled from their FIU responsibilities to work on priorities of SØIK. There are also concerns that the MLS does not have control over its internal day-to-day budgetary decisions, and therefore requires senior approval to hire new staff or to further develop its IT infrastructure.

Table 6. Human resources of the MLS

Staff of MLS	2013	2014	2015	2016
Investigators	9	12	10	9
Administrative staff	4	4	3	3
Analysts	3	3	2	3
Total	16	19	15	16

118. The MLS may, spontaneously or upon request, provide financial intelligence to police districts to support their investigations. Danish police districts indicated that they rely upon this information in their investigations to develop evidence and trace criminal proceeds; however, as noted in IO.7, the police districts prioritise investigations of predicate offences instead of identifying and pursuing ML cases.

⁷ In 2017, the total MLS human resources are 14 (7 investigators, 4 administrative staff, and 3 analysts).

119. In regard to TF, in 2001, PET established a financial intelligence team dedicated to collecting, analysing, and documenting financial intelligence. The team has access to a broad spectrum of information from other Danish authorities, but does not including the MLS database. Similar to other LEAs, PET may obtain financial information from the private sector on the basis of court orders. PET receives TFRs directly from the MLS within 24 hours after being reported, and uses them to supplement ongoing investigations. Financial intelligence received by PET from the MLS is also used to enhance the knowledge of the terrorism and TF risk environment in Denmark.

120. Prior to 1 June 2016, three employees of SKAT were embedded in the office of the MLS. The primary task of these employees was to triage cases for referral to SKAT. However, at the time of the onsite visit, these three employees have been recalled to SKAT and this active collaboration has been suspended due to the possible legal implications of this arrangement. In 2014 to 2015, while this collaboration was underway, the embedded SKAT employees referred 894 cases to SKAT, and 380 were closed by SKAT in relation to tax violations. At the same time, the MLS disseminated 285 cases to SKAT, relating solely to sub-contractor fraud and fictitious invoicing. At the time of the onsite, SKAT can only receive and process financial intelligence received directly from MLS related to fictitious invoicing and sub-contractor fraud.

STRs received and requested by competent authorities

121. The MLS receives a large number of STRs from reporting entities and cross-border reports from SKAT. In practice, Danish authorities indicated that the date of actual reporting could be delayed from one week to several months from the event that gives rise to the initial suspicion. This delay means that the FIU may sometimes not obtain STRs promptly. Further, given the concerns identified in IO.3 regarding a lack of supervision in relation to assessing and ensuring the quality of STRs submitted, as well as limited feedback to reporting entities from the MLS due to resource constraints, the quality of reports submitted cannot always be guaranteed.

122. From 2012 to November 2016, the MLS received a total of 46 794 STRs (see Table 22). Generally, the entities which submitted the most reports were identified as higher risk in the ML NRA. However, the numbers of reports submitted by some higher-risk sectors, such as real-estate agents, are relatively few in comparison to their risk profile. Also, the number of STRs by institution does not appear consistent with market share or risk. Moreover, a large number of reporting entities, as well as entire sectors, have not submitted any reports to the MLS in the past five years.

123. Denmark does not maintain statistics related to the underlying criminality of the STRs submitted. However, according to the MLS, the majority of STRs submitted relate to tax crimes, crimes related to duties and subsidies, fraud schemes and fraud on social benefits.

124. As indicated in Table 23 there was a 115% increase in the number of STRs submitted to the MLS between 2014 and 2015. This increase can be attributed to the introduction of the electronic reporting system, an increased focus in compliance activities by certain individual FIs, and potential over reporting by one online casino in response to outreach by the DGA on STR reporting. However, while the number of STRs received has significantly increased since 2014, the human resources of

the MLS have declined from 19 to 16, and this negatively impacts the ability of the MLS to perform operational and strategic analysis.

125. The MLS may disseminate financial intelligence to LEAs either spontaneously or upon their request. From 2012 to November 2016, the MLS received a total of 883 requests from LEAs (see **Table 7**). Due to the resource constraints of LEAs, the number of requests for financial intelligence has steadily declined since 2014. The requests from SØIK declined by more than 50% since 2014. The MLS stated that it responded to every request received from LEAs.

Table 7. Number of requests sent to the MLS from LEAs

Requesting entity	2012	2013	2014	2015	2016 ¹
Police district – NEC (investigative support)	9	16	21	10	4
Police district – SØIK	5	34	64	36	29
Police district – North Jutland	2	2	5	10	4
Police district – East Jutland	4	8	5	10	3
Police district – Central and West Jutland	10	18	17	14	6
Police district – South East Jutland	5	5	11	10	1
Police district – South Jutland	6	17	3	11	4
Police district – Funen	4	5	17	14	5
Police district – South Zealand and Lolland-Falster	1	4	13	10	5
Police district – Central and West Zealand	1	15	20	17	24
Police district – North Zealand	6	10	6	12	9
Police district – Western Copenhagen	4	5	11	13	19
Police district – Copenhagen	44	51	24	49	36
Police district – Bornholm		1			
Police district – Greenland	6	1			1
Police district – Faroe Islands	1				
Total	108	192	217	216	150

Table Note:

1. Data from 2016 is from 1 January 2016 to 1 November 2016

126. The MLS also receives cross-border reports from SKAT in a consolidated excel format once a week. From 2012 to November 2016, the MLS received a total of 11 600 reports from SKAT (see Table 8). The MLS integrates cross-border information into the goAML system for analysis and investigations, which has led to some dissemination to LEAs.

Table 8. Cross-border reports sent to the MLS from SKAT

SKAT reports	2012	2013	2014	2015	2016 ¹
Professional courier service providers				3 439	2 750
Declarations	526	721	1 317	921	354
Transit-bank cash service					855
Contravention of the Regulation or the Customs Act (false declarations, etc.)	103	100	59	53	32
Currency exchange offices moving currency physically using their own staff				47	135
Sending or receipt of cheques/bills of exchange				40	48
Other					100
Total	629	821	1 376	4 500	4 274

Table Note

1. Data from 2016 is from 1 January 2016 to 1 November 2016

Operational needs supported by FIU analysis and dissemination

127. Due to the aforementioned limitations in its analytical capabilities, the MLS has until now conducted limited analysis using the databases available, and conducts nearly no strategic analysis on emerging trends to support the operational needs of competent authorities.⁸ The MLS shares analysts with SØIK to undertake this core function.

128. As noted previously, the MLS uses goAML to receive reports and subsequently screens these reports manually. As a result of the increase in reports received, the MLS had a backlog of 550 STRs that were not fully analysed as of 1 November 2016.⁹

129. After conducting its analysis, the MLS disseminates cases to LEAs. From 2012 to November 2016, 4,412 cases were disseminated to competent authorities, the majority (1 748 cases) sent to SKAT (see Table 8). From 2013 to 2016, the percentage of cases disseminated by the MLS to LEAs relative to STRs received has declined significantly due to the decrease in resources of the MLS. Cases disseminated include a brief analysis conducted by the MLS, which may include diagrams and spreadsheets with a list of transactions. According to authorities, the list of transactions is not user-

⁸ Since the onsite visit, there is a new structure within the MLS where the core analysts participate in the Danish National Police's target acquisition, the National Strategic Analysis, and are preparing the ML NRA 2017 in addition to the new ML quarterly analysis on trends and risks.

⁹ In response to this influx, the MLS introduced automated screening beginning in 2017, however this was after the onsite visit. The backlog was addressed as of 1 February 2017. The electronic screening process is now in effect and no backlog exists at the time of writing. Further, both the PET and the MLS are intending to enhance their IT systems to facilitate greater analysis.

friendly; however, the MLS intends to correct this deficiency through the inclusion of supplemental information to elaborate the raw data provided.¹⁰

Table 9. **Number of cases disseminated by the MLS**

Recipient	2012	2013	2014	2015	2016 ¹	Total
SKAT (tax authority)	288	340	301	599	220	1 748
Police district – NEC (investigative support)	79	168	95	15	3	360
Police district – RPCH (National Commissioner)	1	1		1	1	4
Police district – SØIK (serious economic crime)	25	29	32	59	44	189
Police district – North Jutland	24	32	30	18	15	119
Police district – East Jutland	20	28	37	23	23	131
Police district – Central and West Jutland	18	26	26	19	19	108
Police district – South East Jutland	17	34	16	24	20	111
Police district – South Jutland	17	31	26	38	8	120
Police district – Funen	6	24	20	11	12	73
Police district – South Zealand and Lolland Falster	21	30	16	23	8	98
Police district – Central and West Zealand	13	27	25	21	17	103
Police district – North Zealand	13	34	45	47	27	166
Police district – Western Copenhagen	27	36	48	48	43	202
Police district – Copenhagen	90	99	87	80	56	412
Police district – Bornholm			1			1
Police district – Greenland	8	6	2	10	2	28
Police district – Faroe Islands	1	4			2	7
FSA	5	1	1			7
Other authorities	15	27	14	1	2	59
Total cases disseminated	688	977	822	1 037	522	4 046
Feedback	211	464	599	402	214	1 890
Feedback/Total cases disseminated (%)	30.67	47.49	72.87	38.77	41.00	46.71

Table Note

1. Data from 2016 is from 1 January 2016 to 1 November 2016

¹⁰ After receiving input from the liaison offices in the police districts the MLS intend to improve the dissemination form.

130. According to the MLS, financial intelligence disseminated to competent authorities generally leads to successful investigations for predicate offences. Denmark provided multiple case studies illustrating the use of its intelligence in the development of police investigations. These case studies demonstrate that MLS information is used extensively to develop cases for prosecution; however, these cases primarily relate to predicate offences. One case study was provided relating to ML concerning a currency exchanger (see Case Study 1), where the case relied, *inter alia*, on STRs filed by several banks. It appears that many of the cases rely on the STR information rather than any accompanying comprehensive analysis completed by the MLS.

131. According to Table 9, the MLS prioritises the identification and analysis of cases involving tax violations as compared to other offences. It appears that the majority of the MLS's efforts result in SKAT making tax adjustments and increasing tax revenue, without any criminal justice outcome.

132. Also noted in Table 9, the MLS received feedback on 47% of the cases disseminated to competent authorities over the past five years. The MLS manually reviewed approximately 500 registered feedback forms received from the police districts (up to 18 November 2016) related to the quality and use of recent disseminations (see Table 10). However, based on case studies presented, it appears that this information is relied upon to supplement ongoing investigations and is not relied upon to the same degree to generate new criminal investigations for predicate offences, nor is it being used to any extent to pursue standalone ML cases (see IO.7).

Table 10. **Feedback from the police on the use of disseminations from the MLS**

Outcome	Number of disseminations
Decisions:	
Sentenced in court	62
Fines	20
Acquittals	1
Other decisions	2
Part of ongoing investigation	155
Passed on to other competent authorities	68
Closed	175
Total	483

133. The MLS disseminates 4% of cases to SØIK, which has a mandate to investigate and prosecute serious economic crime. The majority of the information passed on to SØIK relates to a sub-contractor fraud project established in 2013, and is sent to a specialised unit. From 2013 to 2015, 1 837 STRs related to sub-contractor fraud were transmitted to SØIK. This further underscores the finding that the information reported to the MLS is not used primarily to investigate complex ML cases.

134. In regard to TF, the MLS transmits TFRs directly to PET within 24 hours, with limited analysis included. The MLS also refers STRs and SARs to PET, where there is a suspicion of terrorism. To date, the products disseminated to PET from the MLS related to known targets and did not generate new investigations. As indicated in Table 11, on average, PET received approximately 110 reports and cases from the MLS from 2012 to 2015. However, there has been a significant increase in reports and cases sent to PET in 2016, as a consequence of strengthened cooperation between the two agencies.

Table 11. TFRs sent to PET from the MLS

	2012	2013	2014	2015	2016 ¹
TFRs received by the MLS	116	86	56	73	127
TFRs/STRs disseminated from MLS to PET	38	98	62	54	205
Cases disseminated from MLS to PET	31	65	59	43	168

Table note: Data from 2016 is from 1 January 2016 to 1 November 2016

Cooperation and exchange of information/financial intelligence

135. The MLS primarily cooperates with domestic competent authorities by spontaneously disseminating cases, or providing financial intelligence in response to requests. In addition, the MLS cooperates through the annual meetings of the Money Laundering Steering Group, comprised of representatives from the National Police, police districts, PET and the MLS. The Steering Group shares information about ML trends and discusses specific cases. These meetings also provide an opportunity for the MLS to receive general feedback on its products.

136. The MLS has close cooperation with SKAT. Following the suspension of the aforementioned secondment arrangement, SKAT and the MLS continue to cooperate and exchange financial intelligence to identify tax violations.

137. Historically, the cooperation between the MLS and PET was strained due to cultural differences between the two agencies. However, due to the 2015 terrorist attack in Copenhagen and the escalation of the terrorist threat level in Denmark, PET has taken active steps to improve its cooperation with LEAs, including the MLS. Specifically, PET has exchanged managers with the necessary security clearance levels to the MLS to receive classified information; has submitted requests for information to the MLS on known targets; and provided information on trends related to terrorist financing aimed at improving the quality of the analysis of the MLS. It should be noted that at the time of the onsite, PET and the MLS signed a cooperation agreement on 18 November 2016, thus formalising this cooperation.

138. The coordination between financial supervisors and the MLS is primarily based on informal meetings and relates to the exchange of general information about ML trends or risk. The MLS does not provide information to the supervisors to assist or tailor their inspections or supervisory programs. As noted in IO.1, the MLS cooperates with the various financial supervisors through meetings of the MLF, which meets approximately 3-4 times a year on an ad hoc basis. To date, these meetings have focused on the impacts of legislative and regulatory amendments, and the development and approval of the ML NRA.

*Overall conclusions on Immediate Outcome 6***139. Denmark has a moderate level of effectiveness for IO.6.*****Immediate Outcome 7 (ML investigation and prosecution)****ML identification and investigation*

140. In Denmark, the crime of ML is covered under a handling of stolen goods offence (CC s.290) that extends to all criminal proceeds, thus encapsulating the laundering of all predicate offences. However, there are technical limitations to the offence (see TC annex), such as not covering self-laundering. In addition, it is necessary as part of a completed offence to prove that the property is the proceeds of a specific predicate offence. In practice, many convictions under s.290 are therefore obtained as a case of “putative attempt”, where the prosecution is not required to prove the predicate offence or that the property was even the proceeds of crime, but is required to prove that the defendant believed the proceeds were from criminal origins. While this legal concept significantly reduces the burden on the prosecution, the reliance on a putative offence for ML cases may hinder effectiveness as the penalty for an attempt may be reduced if there is uncertainty in establishing intent. The same issues apply in Greenland and the Faroe Islands, with the same challenges in assessing effectiveness.

141. Given that s.290 CC also encompasses all handling of stolen goods offences, it is not possible to differentiate between investigations/prosecutions/convictions related to ML, and those relating to traditional handling of stolen goods offences, such as receiving stolen bicycles. Given the present case management system, the Danish authorities were unable to provide statistics that could make this differentiation (see below for the data made available). In addition, as self-laundering is not a separate ML offence, and any self-laundering component of a predicate offence is dealt with as part of the predicate, no data are available. Approximately, 40 case examples were provided to the assessment team, and provide some indication as to the nature and extent of ML prosecutions, convictions and sentencing in practice, as summarised below:

- Most cases did not involve complex ML or serious criminal activity, but were rather simple cases of receipt of assets assumed to be criminal proceeds.
- Most cases involved natural persons but some legal persons were also prosecuted/convicted.
- Predicate offences were largely related to tax fraud/VAT, drug trafficking or theft/burglary (i.e. traditional handling).
- There were few cases of foreign predicates. Those that were provided involved the simple transfer of money into an account and subsequent retransfer elsewhere with an assumption that the money was criminal proceeds.
- Most cases involved aggravated ML, which was based on several indicators: mostly whether the amount exceeded DKK 500 000, but in a couple of cases the relevant factor was complexity/professionalism.

- Quite a number of cases were for putative attempt, where it is not necessary to prove a predicate offence.
- In about 45% of the 40 cases (both aggravated and ordinary ML) a sentence of imprisonment was imposed (ranging from six months to six years) and in 55% the penalty was a suspended sentence.

142. Cases involving ML are investigated by district police and prosecuted by the district prosecution service. Each police district has a permanent interdisciplinary team for the visitation of cases involving economic crime, and priorities are set in each police district. SØIK is responsible for the investigation and prosecution of complex economic and international crimes, and may provide expertise to district police, if needed. SØIK and police districts receive reports of alleged crimes, which they screen to determine where the case should be handled. To determine if the case should be dealt with by SØIK seven parameters are used to screen: loss; structure of companies and persons; importance to society; listed companies; international character; cross-district crime; and, cases involving complex legal challenges. In instances where a case ranks high on these factors, it is pursued by SØIK.

143. In January 2016 only one police district (out of 14) identified ML as one of the district's priorities. Indeed, the view expressed by the police districts responsible for investigating economic crime generally was that given current resource constraints, the priority is to pursue the investigation and prosecution of predicate offences.

144. The assessment team considers that there is a disproportionate focus on the investigation of predicate offences, with a particular focus on financial tax crimes (sub-contractor fraud and tax offences), at the expense of ML investigations. According to Danish authorities, ML investigations are generally initiated by STRs sent to the MLS, which often relate to underlying predicate offences rather than ML. Further, as noted in IO.6, the MLS lacks sufficient analytical capacity and resources to identify complex ML cases, and to refer such cases to the police. This may also impact the ability of LEAs to adequately identify and investigate ML. While investigations have also been initiated based on information received from SKAT or complaints filed to the police, these referrals focused primarily on tax offences.

145. During the period 2011-2015 the police districts opened 13 903 handling of stolen goods (s.290) investigations (see Table 12. Statistics on s.290 are unavailable for the police districts in Greenland and the Faroe Islands).

Table 12. Investigations opened related to s. 290

Police district	2011	2012	2013	2014	2015 ¹	Total
North Jutland Police	195	142	192	221	104	854
East Jutland Police	242	301	232	738	174	1 687
Central and West Jutland Police	170	156	167	173	111	777
South East Jutland Police	290	269	420	685	166	1 830
South Jutland Police	376	307	225	324	158	1 390
Funen Police	229	342	501	197	187	1 456
South Zealand and Lolland-Falster Police	187	117	232	213	92	841
Central and West Zealand Police	105	118	103	199	58	583
North Zealand Police	154	151	537	250	108	1 200
Western Copenhagen Police	119	135	96	156	79	585
Copenhagen Police	338	285	1308	433	260	2 624
Bornholm Police	21	4	25	16	10	76
Total	2 426	2 327	4 038	3 605	1 507	13 903

Table note 1. The table shows the number of cases opened in each year (charges laid) where the case has also been concluded. Thus, for 2015 the number is less as fewer cases from 2015 have been concluded.

146. Danish authorities also provided the following statistics for concluded investigations of s.290:

Table 13. Concluded investigations of s. 290

Handling stolen goods s.290 CC	2011	2012	2013	2014	2015
Number of reported offences	1 985	2 014	2 604	3 244	1 346
Number of charges 1	1 943	1 917	2 504	3 107	1 276
Number of decisions ²	1 630	1 675	1 461	1 409	1 137
<i>Guilty decisions</i>	<i>1 145</i>	<i>1 200</i>	<i>1 045</i>	<i>947</i>	<i>760</i>
- <i>Imprisonment (not suspended)</i>	<i>286</i>	<i>336</i>	<i>289</i>	<i>256</i>	<i>202</i>
- <i>Imprisonment (suspended)</i>	<i>275</i>	<i>273</i>	<i>226</i>	<i>201</i>	<i>176</i>

Table notes:

1. A criminal offence might not be reported and charged the same year.
2. One decision may include several charges.

147. There are significant difficulties in analysing or forming conclusions based on the statistical information available. First, it is impossible to determine the percentage of the cases enumerated above which refer to traditional handling of stolen goods cases (e.g. receiving stolen bicycles), and

those related to serious ML cases, as relevant under the FATF Standards. Second, the data related to the number of cases opened and concluded is not easily correlated since Table 12 (cases opened) shows the number of charges, while Table 13 (cases concluded) shows the number of persons charged (one person may have multiple charges). Third, Danish authorities do not maintain statistics on the number of prosecutions and convictions for aggravated ML, making it difficult to assess the degree to which serious and organised ML investigations and prosecutions are pursued. Taking into account the police priorities, which focus on the predicate offence, the lack of data that is meaningful in a ML context, the information available from the qualitative case studies provided and on sentencing, it appears that while ML is being pursued to some extent, the number of cases of serious and organised ML being identified and investigated is limited.

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

148. The shortcomings identified under IO.1 impact the extent to which ML activity is being investigated and prosecuted consistently with Denmark's threat and risk profile, and national AML/CFT policies. As noted in Chapter 2, there are no national efforts in place to coordinate the detection, investigation and prosecution of ML offences, nor are there national AML/CFT policies. There are also concerns about the process and some of the conclusions that have been drawn regarding the NRA (see IO.1). As a result, investigative resources are not allocated based on identified high risk areas. Given the resource constraints of the police due to a reallocation to the border and other high risk targets for terrorism, and the information provided onsite, it appears that the pursuit of ML cases is not a priority.

149. The NRA identifies currency exchange offices, legal business structures, and money remittance providers as representing the highest risk sectors for ML. As a result of the NRA, the MLS has prioritised currency exchange cases for dissemination to SØIK and the police. The SØIK prosecutors that are attached to the MLS have also focussed their investigative and prosecutorial attention on currency exchange offices, which has led to an increase in cases being investigated and prosecuted concerning these types of businesses, including for ML (see case study below).

Case Study 1. Prosecution of Currency Exchange Office

On 26 January 2016, a currency exchange office, its director and a senior employee were convicted of handling stolen assets and attempted handling in relation to a total amount of DKK 184 million in connection with exchange transactions carried out at the exchange office. A calculation presented in court showed that the perpetrators had disguised the exchange office's use of 500 euro notes. The exchange office used far more 500 euro notes than possible according to the exchange office's recorded transaction lists. Video surveillance of the store front and its CCTV system showed that large transactions were carried out at the office, without being registered in the transaction lists. Concerning a minor part of the indictment (approximately DKK 3 million), the proceeds were proved to originate from narcotics crime. As for the part of the indictment concerning attempt, during the trial proceedings the prosecution did not produce any evidence as to the predicate offences involved.

The Court passed sentence for ML and the director and a senior employee were both sentenced to six years of imprisonment. The company was sentenced to a fine of DKK 92 million. In addition, the director and the company were disqualified from operating a currency exchange office. For its judgement the Court relied inter alia on STRs received from several banks. The three defendants have appealed the judgement. The High Court of Eastern Denmark passed sentence in the case on 26 January 2017. The two men and the company were convicted of ML and attempted ML in relation to a total amount of DKK 223.5 million. The two men were both sentenced to six years of imprisonment and the company was fined DKK 111 million. In addition, the director and the company were disqualified from operating a currency exchange office.

150. The majority of currency exchange offices in Denmark also provide money remittance services, and there are in addition many stand-alone money remitters. While money remittance providers were identified as high risk in the NRA, the focus for investigation and prosecutions appears to concentrate exclusively on currency exchanges rather than the remittance activities. Indeed, at the time of the onsite there were no ML investigations or prosecutions for money remittance providers.

151. In regard to legal persons, Danish authorities informed the assessment team that following the NRA, SØIK and the MLS initiated a joint project focussing on the use of foreign straw persons in the establishment of legal persons. This project led to investigations into a large number of persons acting as straw persons, resulting in prosecutions and convictions. Some cases are still under investigation, or awaiting trial. That considered, legal persons do not appear to be regularly investigated and prosecuted for ML offences despite their identification as high risk for ML. The same applies with regard to cash smuggling.

152. In relation to predicate offences, the NRA concluded that Danish authorities indicate that income tax, VAT and excise duty crime, including subcontractor fraud and VAT carousel fraud, are the most significant proceeds generating crimes, followed by economic crimes such as forgery and fraud, and drug trafficking. Regarding tax offences, the MLS refers a significant number of STRs to the tax authorities, which have made significant recoveries of taxes, using their civil tax powers. However, there is very little evidence demonstrating that there are investigations/prosecutions/convictions for ML of the proceeds of tax crimes. The view presented by Danish authorities is that there are few ML cases arising from tax fraud, and that tax offenders spend the proceeds or transfer them abroad, so there is no ML risk. It is noticeable that sending proceeds abroad is not considered as an ML risk, and in fact the inability to prosecute, for example due to the lack of criminalisation of self-laundering, is a more likely explanation. Additionally, this may be consistent with or reflective of the relatively small number of prosecutions that are brought for serious tax crimes. The situation is similar for ML related to the other offence categories noted above. Given the problems noted in IO.1 regarding the assessment of ML risks in the NRA, combined with the focus on predicate offences and mechanisms other than ML prosecutions, it does not appear that law enforcement efforts to investigate and prosecute ML are in line with the overall ML threats and risks in Denmark.

Types of ML cases pursued

153. As stated previously, Denmark is unable to pursue offences of self-laundering as it is a legal tradition that a person cannot be charged twice for a crime involving the same property (see R.3 in TC Annex). In these cases, the person is only charged with the predicate offence, and the ML conduct could be taken to account as an aggravating circumstance in sentencing. However, if the ML conduct occurred after the prosecution of the sentencing of the predicate offence, or if the predicate is statute barred (limitation period of five years after the offence), the prosecution of the ML offence is not possible.

154. As noted above, it is not possible to ascertain the number and types of ML cases being prosecuted from the available data, but the case studies provided give an indication of the nature and forms of ML being prosecuted. The case studies demonstrate that there is some effort to prosecute ML, although many of the cases identified were not sophisticated or complex, often involving persons allowing their account to be used to receive funds, which were then retransferred or withdrawn as cash. There are few cases of laundering foreign predicates or of serious and organised ML.

155. Some special investigative techniques available under Danish law (undercover operations and intercepting communications) are only available for offences punishable with imprisonment for six years or more. As a result, these techniques can only be employed for aggravated ML offences, as it carries a maximum punishment of six years imprisonment whereas ordinary ML carries 1.5 years. This may restrict authorities' ability to investigate and ultimately prosecute cases.

Effectiveness, proportionality and dissuasiveness of sanctions

156. In Denmark and the Faroe Islands, the criminal penalty for ordinary ML is a maximum imprisonment of 1.5 years. As noted above, if the proceeds are handled in a particularly aggravating manner, the maximum penalty is a maximum imprisonment of six years. A fine can also be imposed as a supplementary punishment to other forms of penalty when the defendant made or intended to make a financial gain for himself or others. It should be noted that the level of sanctions is also linked to the statute of limitations, with ordinary ML offences being limited to five years after the offence took place.

157. In practice, the penalties imposed for ordinary ML offences have been very low, and in many cases include suspended imprisonment (i.e. community service) for various reasons such as age, health, and length of trial. The penalties for aggravated ML are more severe, although the higher end of the range has only been imposed twice. While Denmark was able to provide figures on the sentences in relation to s.290 CC convictions, it was unable to separate these sentences from the penalties imposed in relation to predicate or other offences. Thus, a person who was convicted of s.290 and other offences in the same case will receive a single sentence that reflects punishment for the criminality involved in all the crimes for which the person was convicted.

158. While the self-laundering conduct is in theory addressed from a criminal perspective in the predicate offence context, there is no additional penalty for the conduct other than the consideration given to the ML conduct (the self-launderers' hiding and use of the proceeds) as a factor in increasing

the sentence for the predicate offence (as an aggravating circumstances). However, the team did not receive any case examples in which this was clearly shown.

159. Table 14 below illustrates the sentences imposed of one year or more on persons convicted of s.290 CC. While these figures represent sentences where s.290 was the primary offence, it is unknown how many of these sentences include a sentence for other offences. By comparing Tables 13 and 14, it is evident that for all persons convicted of a s.290 CC offence, about 2% receive a sentence of imprisonment (as opposed to a suspended sentence) that is one year or more, and of this number, the large majority receive 1-2 years. While the length of imprisonment and number of cases pursued is not the only indicator of an effective ML system, it is an important factor that in determining how effective ML criminalisation is in practise and whether it serves as a deterrent.

Table 14. **Sentences of one year or more for s.290 (where s.290 is the primary offence)**

Imprisonment term	2011	2012	2013	2014	2015
1-2 years	6	20	16	10	7
2-3 years	1	5	1	5	5
3-5 years	0	0	2	4	0
5-6 years	0	0	0	0	2

160. In several of the cases referenced above, the legal person involved in the s.290 case was also sanctioned. These cases primarily involved currency exchange offices. The fines imposed ranged from approximately EUR 14.9 million to EUR 750 000, and included revocation of licenses to operate as a currency exchange offices and as a business. These legal persons were given a fine roughly equivalent to 50% of the amount laundered.

161. Danish police and LEAs indicated that there are few repeat offenders, which may suggest that sanctions do have some deterrent effect. Based on the information available, the assessment team is of the view that the sanctions applied in practice are not fully effective or dissuasive, and there is a concern that the low sentencing does not provide a fully effective deterrent.

Extent to which other criminal justice measures are applied where a conviction is not possible

162. Denmark relies on pursuing predicate offences over ML charges, however where this occurs it is a criminal justice policy choice of prosecutors and police, as opposed to a requirement where there are justifiable reasons for not pursuing a ML prosecution. It is not clear that Denmark applies any other criminal justice measures in such cases. While SKAT has pursued taxation remedies by issuing tax adjustments based on information received from the MLS, which have resulted in approximately DKK 786 million being recovered over the last four years, these do not represent other criminal justice measures, and there is no information to suggest that a ML charge was investigated.

Overall Conclusions on Immediate Outcome 7

163. **Denmark has a moderate level of effectiveness for IO.7.**

Immediate Outcome 8 (Confiscation)*Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective*

3

164. Denmark generally has a good legal framework for the seizing and confiscation of criminal proceeds or property of equivalent value, and seizure and confiscation appears to be used reasonably regularly as an important part of criminal investigations and prosecutions. Confiscation of instrumentalities is also possible if certain conditions are met. Action can also be taken in relation to proceeds held by third parties who knew that the property was derived from a criminal act, or who were grossly negligent, where the property was a gift. The provisions in the CCGR and CCFI are almost identical.

165. The Danish authorities indicated that within both the police and the prosecution authorities there is a level of awareness regarding seizure and confiscation. Seizure orders are normally made pursuant to a court order, but in cases where there is a need to act urgently, the police can seize property directly and without notification. The creation of the Asset Recovery Office (ARO) in 2007 (see below), in line with EU Council Decision 2007/845/JHA, also provided an important step forward.

166. Despite factors such as the existence of the ARO and the capacity to use a range of legal powers, there is limited information showing how broadly confiscation is being used throughout the country in practice. Nor is there any written policy objective that requires or encourages the police/prosecutors to pursue seizure and confiscation. Competent authorities are aware that an increased focus on confiscation is needed.

167. The police work collaboratively with SKAT, with a view to identifying cases where the owners of property are unable to prove that they have acquired it legally, and have not paid any taxes that may be due. This results in tax recovery action. In the period 2010-13, SKAT raised claims for payment of taxes in the amount of about DKK 190 million from persons connected to street gangs and outlaw motorcycle gangs. SKAT indicated that they were able to recover a significant proportion of the taxes owed.

Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad

168. The authorities indicated that it is normal practice for LEAs to seek a court order early in a criminal investigation to identify a person's assets. They are also able to cooperate with SKAT to obtain information regarding any bank accounts that a person holds, since banks are required to provide a statement of all accounts held by a taxpayer at the end of each year.

169. A special asset recovery unit, ARO, was created in 2007 and falls within SØIK. Within ARO there are 1-2 prosecutors and 4-5 police officers. Its purpose is to assist the police districts and SØIK on asset tracing and seizure, but it leaves the confiscation and realisation of the criminal proceeds to the police district and prosecutor handling the criminal case. If accounts are outside Denmark, the ARO will use its connections with the European Asset Recovery Office Platform and the CARIN network to seek information and assistance.

170. There are limited statistics available in relation to the number of cases and value of property where action has been taken to seize and subsequently confiscate and realise criminal proceeds and instrumentalities. The ARO provided data for the value of property that had been seized in cases where it was assisting or otherwise working with the police districts (see Table 15). It is noticeable that the value of the property seized has steadily increased, and that more than EUR 250 million was seized in 2015, and nearly EUR 90 million in 2016, due to a particularly large tax evasion/fraud case involving incorrect repayments of tax dividends, that is still under investigation. This one case accounts for approximately 90% of the asset values in both years and several persons/companies are under suspicion for the crime. There are currently no indictments, and all property was located in other countries and seized/frozen pursuant to international cooperation. There is no information on the nature of the underlying offences where seizure action was taken, but the results in 2015 and 2016 are significant.

Table 15. Value of property seized by ARO (domestic and foreign cases)

	2011	2012	2013	2014	2015	2016
Domestic cases (no.)	51	53	61	86	43	56
Value (DKK), millions	28.73	27.40	65.85	97.92	1 891.11	672.93
Value (EUR), millions	3.85	3.67	8.82	13.12	253.41	90.51
Average value per case (DKK)	0.56	0.52	1.08	1.14	43.98	12.02
Foreign cases (no.)	14	11	25	26	25	26
Value (DKK), millions	12.00	1.20	0.51	8.75	7.79	2.00
Value (EUR), millions	1.61	0.16	0.07	1.17	1.04	0.27
Average value per case (DKK), millions	0.86	0.11	0.02	0.34	0.31	0.08

Table 16. Value of property seized by ARO (assets in Denmark and in other countries, millions)

	2011	2012	2013	2014	2015	2016
Denmark (DKK)	39.83	17.40	65.99	99.09	123.50	25.98
in EUR	5.35	2.34	8.86	13.30	16.58	3.49
Other countries (DKK)	0.90	11.20	0.38	7.57	1 775.40	648.95
in EUR	0.12	1.50	0.05	1.02	238.31	87.11
Total (DKK)	40.73	28.60	66.36	106.67	1 898.90	674.93
in EUR	5.47	3.84	8.91	14.32	254.89	90.59

171. The data shows a steady increase in both the number and value of domestic asset seizure cases involving the ARO, with much larger values seized in 2015 and 2016 due to the one major case. Even without that case, the amounts seized in 2015 and 2016 would amount to approximately EUR 25 and 9 million respectively. By contrast there was a smaller number of cases where Denmark seized property based on a foreign request, and the average value of the assets seized in those cases was significantly less – approximately DKK 280 000 (average value per case over the 6 years), although the annual average varies widely. Although limited case studies were provided, it is clear from the data and from information provided by the ARO that the ARO is taking effective action to seize criminal assets both within Denmark and abroad, both for domestic and foreign cases.

172. Denmark also provided statistics on the number of cases and the amounts involved, for cases where confiscation orders were made for criminal proceeds that were not physical property or cash (primarily bank or financial accounts). Confiscation statistics are kept by the police districts, and the most recent data is for the period 2011-15 (see Table 17). This shows that there are approximately 1 000 to 1 200 cases a year involving an average annual amount of DKK 128 million (about EUR 17 million), although the annual value of property confiscated varies considerably. The amounts shown reflect both the confiscation orders made by the court and also orders made by prosecutors, which the defendant consents to. The average amount confiscated per case is not large, approximately DKK 100 000 (EUR 13 400), and it is not possible to determine any specific trend in terms of effectiveness, since the number of cases remains fairly constant and the amounts involved vary up and down from year to year.

Table 17. **Confiscation Orders Concerning Criminal Proceeds other than Physical property or Cash**

2011			2012		2013		2014		2015	
District	No. cases	Amt DKK (millions)	No. cases	Amt DKK (millions)	No. cases	Amt DKK (millions)	No. cases	Amt DKK (millions)	No. cases	Amt DKK (millions)
<i>North Jutland</i>	50	1.6	48	0.9	58	0.68	60	2.7	39	2.5
<i>East Jutland</i>	66	5.7	58	3.3	60	1.7	43	4	44	2.2
<i>Central and West Jutland</i>	102	3.3	92	13.7	163	11.6	87	3.7	64	1.6
<i>South East Jutland</i>	51	12.7	49	7.6	35	1.7	28	1	75	9.9
<i>South Jutland</i>	61	8	46	0.78	50	3.3	52	3	46	1.8
<i>Funen</i>	60	8.1	56	1.4	50	2.9	45	1.1	56	2.4

2011			2012		2013		2014		2015	
District	No. cases	Amt DKK (millions)	No. cases	Amt DKK (millions)	No. cases	Amt DKK (millions)	No. cases	Amt DKK (millions)	No. cases	Amt DKK (millions)
<i>South Zealand and Lolland-Falster</i>	20	0.26	25	0.47	25	5.3	48	3.7	63	25.6
<i>Central and West Zealand</i>	30	1.3	42	7.8	45	2.5	41	8.2	27	0.93
<i>North Zealand</i>	53	100.5	26	1.3	15	19.9	23	1.3	32	0.9
<i>Western Copenhagen</i>	26	0.45	28	0,95	17	2.5	30	0.82	67	4.2
<i>Copenhagen</i>	503	113	486	40.5	636	98.2	509	9.3	487	24.3
<i>Bornholm</i>	5	0.13	10	1.96	10	1.3	6	10.6	3	0.01
<i>Greenland</i>	84	8.1	80	4.9	64	1.9	66	5.6	110	5
<i>Faroe Islands</i>	12	1.1	16	0.53	9	0.8	4	0.18	21	1.9
Total DKK	1123	264.24	1062	85.14	1237	154.28	1042	55.20	1134	83.24

173. In addition, data was provided by the police districts showing the realised value of real property, cars, cash, etc. that were either proceeds or instrumentalities and which were confiscated between 2011-2015 (this is separate from the amounts noted above). This data showed a steady increase in the total realised value of such property, from less than DKK 1 million in 2011 to more than DKK 8 million in 2015, although the values realised in this way is far less than the amount confiscated in Table 17 above; however, these amounts still seem low given that real property in Denmark is expensive in major cities.

Table 18. Realised Value of Real Property Confiscated (DKK million)

	2011	2012	2013	2014	2015
Total	0.92	3.98	4.47	7.7	8.7

174. Denmark provided examples of cases where action was taken to seize and confiscate criminal proceeds, and one of these is set out in the text box below. In these cases it appears that only a

limited proportion of the proceeds of crime were eventually confiscated and realised, and it is not possible to tell from these examples how effective confiscation action is in the Danish criminal justice system.

3

Case Study 2. ARO identification of assets abroad

A person was convicted of a number of economic crime offences in 2009, and part of the sentence was to pay a DKK multi-million confiscation order and to pay the costs of the case. The ARO worked to trace the relevant assets and by means of international letters of request, the ARO detected property located in other European countries. It also became aware that the convicted person had filed an application for debt relief, reporting that he had assets of only DKK 30 000 and debts in excess of DKK 81 million (equivalent to the confiscation claims and costs), and with international cooperation was able to seize real property, bank accounts, artworks, a car, jewellery etc., with a value exceeding DKK 15 million. Formally, the assets in question were owned by two Liechtenstein foundations and in subsidiaries. In 2015, the Court sentenced the person in question to three years and six months of imprisonment for serious fraud against creditors in connection with his application for debt relief, and all the discovered assets were confiscated. In March 2016, the judgement was upheld on appeal.

175. As regards restitution of the proceeds of crime to victims, the approach that is generally applied in Denmark is that the victim brings civil proceedings to recover their loss from criminals. If a victim requests, the prosecution is obliged to include such claims in the criminal proceedings, but the court can decide that deciding on the civil claims may hamper the criminal case, or that the facts of the case are complex, and thus the matter should be pursued separately in a civil proceeding. Where the case is carried through in the criminal court, and if the confiscation and the damages arise out of the same crime, then confiscated assets may be used to provide the victim with restitution. However, there is no data available on how much this has been, and thus it is not possible to determine how much proceeds have been recovered from criminals by way of restitution.

Recovery of criminal proceeds using tax powers

176. Tax crimes are considered to be the predicate offence in Denmark that generate the most proceeds. Confiscation of the proceeds of tax crime will often be dealt by SKAT, using administrative tax procedures. More serious cases will result in criminal prosecution and use of either confiscation provisions or tax recovery mechanisms. Tax procedures are also used to confiscate other proceeds if there is insufficient evidence to pursue criminal confiscation, but it is possible to prove to a lower standard of proof that income or other taxable earnings or assets have not been correctly reported and taxed. These cases are handled as special projects, and after the proposed initial tax adjustment, there is a period allowed for appeal, and then final decision with further possible appeal.

177. The police work collaboratively with SKAT in this regard, with a view to identifying cases where the owners of property are unable to prove that they have acquired it legally, and have not paid any taxes that may be due. In the 2013-15 period, tax adjustments were raised averaging a total

of DKK 2.4 million per year related to economic and organised crime, and an average of DKK 7 million for other types of crimes including drug trafficking, weapons trafficking etc. It is not known what amount was actually recovered based on the tax adjustments that were made. Although it is good that tax powers are being used to recover criminal proceeds in appropriate cases, the amounts involved appear to be relatively small at present.

Enforcement of orders and criminal proceeds recovered

178. When a confiscation order has been made, information on the order is sent to the recovery office in the police districts. If the police are already in possession of assets, then recovery can begin immediately (subject to any appeal), and if not, then the police try to recover assets to meet the order for a period of up to six months. If amounts remain unpaid after six months the claim will be referred to SKAT for them to continue the recovery process. Before sending the claims to SKAT the police will correct or withdraw claims if necessary, e.g. because the perpetrator has died between the conviction and the recovery action, why there in some instances will be differences between the number of total confiscation and the number of recovered amounts plus amounts which SKAT has been requested to recover.

Table 19. **Amount recovered through the Enforcement (in DKK million)**

	2011	2012	2013	2014	2015	2016	Average
No. confiscation orders (see above)	1 123	1 062	1 237	1 042	1 134		1 120
Confiscation order amounts (see above)	264.2	86.1	154.4	55.2	83.4		112
No. police recovery cases	824	752	857	729	770	656	764
Amount police recover	47.4	28.7	19.6	19.5	21	18.3	22
No. cases referred to SKAT for recovery	222	229	264	233	231	247	238
Amount involved	151.7	39.7	121.6	31.3	46.5	68.9	77
Amount SKAT recover					1.2	2.5	2

179. Based on the information set out above, it appears that recovery rates are relatively modest, with about 20% of the amount ordered to be confiscated being actually recovered and paid into the Danish revenue.

180. Overall, it is clear that Denmark is taking some actions to recover the proceeds of crime. The ARO is central to tracing and seizing property, and the available data indicates that the ARO has had some significant successes, particularly in the last two years. It also appears that a significant number of confiscation orders are being made, on average about 1 100, in a total amount of about EUR 17 million. However recoveries are modest, and use of tax powers to recover criminal proceeds has not yet achieved significant results either. In addition to the data, a few case examples were provided and some extra information was received from the authorities on the ancillary issues of

restitution and use of tax recovery mechanisms. Based on the information available, it appears that while there are a range of powers and mechanisms that are being used, the results achieved are only moderately effective, and Denmark should review its system to determine why that is the case.

3

Confiscation of falsely or undeclared cross-border transaction of currency/BNI

181. The NRA assesses that there is a high risk in Denmark that cash smuggling is used to launder criminal proceeds, that it is extensive and increasing, the risks of detection are moderate, and there is a low risk of criminal prosecution. This is linked to the high risks associated with currency exchange businesses.

182. The legal position for cross-border movements of currency or bearer negotiable instruments (BNI) is that Denmark applies the EU declaration system for cash/BNI of EUR 10 000 or more entering or leaving Denmark from/to countries outside the EU. There is also a similar declaration requirement under the Customs Act that applies to all cross-border cash/BNI movements for a value of DKK 75 000 or more from/to any other country (whether EU or not). These requirements apply not only to physical transportation by travellers, but also for mail and cargo. The controls for travellers are carried out by SKAT, and customs officers have the power to seize funds for the purpose of further investigation. In cases of non-declaration or false declarations, or where there is a suspicion that the funds are the result of, or will be used for, a violation of CC or any other criminal legislation.

183. Set out below is Table 20 showing the number and value of declarations made in 2015 and 2016 (to 30 September), both for individual travellers and mail. The data is also broken down between travel to/from Denmark and whether the cash/BNI is going from/to another EU country or a third country. There is also data on false and non-declarations and the consequential fine that was imposed. In addition, Table 20 shows the declarations for October 2016, showing the most prevalent types of currency brought into and out of Denmark.

Table 20. Number and value of cross-border declarations

	2016			2015		
	Number	Amount (DKK million)	Average	Number	Amount (DKK million)	Average
Mail						
<i>From Denmark</i>						
EU countries	80	275.74	3 446 781	120	663.145	5 526 209
Countries outside the EU	61	833.93	13 671	97	1 062.45	10 953 142
Total	141	1 109.68		217	1 725.60	
<i>To Denmark</i>						
EU countries	337	4 410.06	13 086	399	4 606.08	11 544 050
Countries outside the EU	527	7 113.38	13 497	712	9 528.35	13 382 513
Total	864	11 523.43		1111	14 134.43	

	2016			2015		
	Number	Amount (DKK million)	Average	Number	Amount (DKK million)	Average
Travellers						
From Denmark						
EU countries	1977	3 815.36	1 929 876	2 031	2 851.19	1 403 837
Countries outside the EU	137	121.70	888 348	226	326.71	1 445 599
Total	2114	3 937.07		2 257	3 177.90	
To Denmark						
EU countries	979	1 528.12	1 560 903	1 216	1 240.83	1 020 419
Countries outside the EU	66	64.83	982 322	91	19.02	209 010
Total	1045	1 592.96		1307	1 259.85	
Violations						
From Denmark						
EU countries	4	0.51	128 088	5	1.08	216 764
Countries outside the EU	15	1.85	123 106	29	4.03	138 829
Total	19	2.36		34	5.11	
To Denmark						
EU countries	7	0.86	122 350	13	2.24	171 955
Countries outside the EU	3	0.33	111 582	5	0.51	101 733
Total	10	1.19		18	2.74	
Fines collected						
Total	29	0.35	11 982	52	1.22	23 376

Table 21. Currencies declared for the month October 2016 (in millions, with EUR equivalent)

Currency	To Denmark		From Denmark	
	From EU	From non-EU	To EU	To non-EU
DKK	325.3 (43.7)	107.2 (14.4)	97 (13)	136.4 (18.3)
CHF		56 (52.2)		
USD	0.6	0.07		0.2
EUR	18.8	0.07	0.27	0.05
GBP	13.3 (15.5)		0.15 (.17)	
SEK	0.1 (0.01)		126 (12.8)	
ISK	0.5		677.2 (5.6)	

184. It is not easy to draw any conclusions from the data. In Table 20 there are far more declarations relating to travellers from/to other EU countries than from countries outside the EU, and the number of declarations and the amount declared and exported is more than twice the number/amount imported, but the reasons for this are not clear. Nor are there clear reasons why the number and value of the violations is more for travel into Denmark from non-EU countries, than out of Denmark to EU countries. The average amount for these violations seems to be between EUR 4-10 000. The amount of fines is approximately equal to the 25% referred to above. In cases where there is suspicion of ML/TF, then the procedure will be to call in the police, seize, and confiscate the funds in accordance with the AJA and the CC. However, as SKAT does not compile statistics for this, there is no information on how many cases result in seizure and confiscation by the police, nor the amount confiscated.

185. As regards Table 21, the amount and direction flows for different currencies seems variable, although in both tables the data may be strongly influenced by the cash that is carried by professional companies that move it on behalf of FIs and other large companies. In any event, there is compliance to some degree with the declaration obligation, and enforcement and fines for violations of that obligation.

Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities

186. Although action to seize and confiscate criminal proceeds is being taken in a range of cases, it is not possible to determine whether the confiscation results are consistent with ML/TF risks. Further, there are no clear AML/CFT policies and priorities, and much more needs to be done to identify and understand ML/TF risks (see IO.1). On this basis, it cannot be concluded that the confiscation results are consistent with the risks, policies and priorities of Denmark.

Overall Conclusions on Immediate Outcome

187. **Denmark has a moderate level of effectiveness for IO.8.**

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

Terrorism financing investigation and prosecution – TF offence (Immediate Outcome 9)

Denmark achieved a substantial level of effectiveness for IO.9.

1. Denmark has a robust legal framework for combatting TF. Denmark also has a general understanding of its TF risks; however this understanding is largely confined to PET.
2. Every counter-terrorism investigation includes an investigation into potential TF. Between 2011 and 2016, Denmark indicted 16 persons with TF offences, resulting in seven convictions. This appears to be in line with the TF risks of Denmark, taking into account the evidentiary challenges that exist in TF cases (i.e. intelligence into evidence), as well as PET's use of disruption.
3. Denmark is taking considerable efforts regarding CT and CFT intelligence gathering, investigation, as well as for other preventive and disruptive measures.
4. The maximum penalty for TF is ten years' imprisonment. However, in practice, Denmark applies more lenient sanctions, thereby reversing the dissuasiveness of the relatively high sanctions contained in the CC.

TF related targeted financial sanctions and NPOs (Immediate Outcome 10) and Proliferation financing (Immediate Outcome 11)

Denmark has achieved a moderate level of effectiveness for IO.10, and a substantial level for IO.11.

1. Denmark has a general understanding of TF risk, including TF NPO risk. It has a limited approach to addressing risk by measures consistent with Denmark's risk profile.
2. While there are policy and operational responses to TF risk in relation to TFS and NPOs, these responses are not coordinated. Relationships between the authorities appear to be good and steps are being taken to improve cooperation and information exchange.
3. There are shortfalls in staff resources in the relevant authorities for IO.10 and IO.11. Risk based approaches have not been adopted by these authorities with the limited exception of the DBA global trade and security team.
4. Denmark has a legal system in place to apply TFS but implementation has technical and practical deficiencies in large part due to delays at the EU level on the transposition of designated entities into sanctions lists and the absence of any specific measures to freeze the assets of EU internals.

5. There is strong outreach by PET on TF. The DBA global trade and security team is held in high regard by the other authorities and makes strong efforts to provide information to reporting entities.
6. Denmark has a legal system in place to apply TFS regarding PF through coverage by EU regulations. No effectiveness issues have arisen in relation to UNSCR 1737 as a result of this. The delay due to EU transposition of a designation in 2016 for UNSCR 1718 and action by Denmark was limited. Assets and funds relating to UNSCR 1737 have been identified and frozen by reporting entities.
7. Understanding and implementation of TFS by reporting entities is varied and limited, particularly outside the banking sector. With a few exceptions, TFS knowledge and compliance by DNFBPs is poor. There are concerns about the effect of CDD on TFS compliance. There is some, but insufficient, compliance with obligations by reporting entities. There is limited monitoring of TFS compliance by supervisory authorities.
8. Coverage of NPOs most at risk of raising and moving funds or being misused by terrorists is not complete and preventive measures to manage risk undertaken by Denmark (and permitted by legislation) are very limited.
9. There is a penalties regime for NPOs and the Fundraising Board is proactive in seeking sanctions. Overall, the regime is partially effective.
10. The regime for asset deprivation is proactive in relation to FTFs and other TF activity.
11. Greenland has a limited statutory regime in place for TFS relating to TF and no compliance monitoring takes place. The Faroe Islands has no statutory framework. In addition, Greenland and the Faroe Islands do not have regimes in place for TFS on PF. No review of NPO legislation or risk mitigation has been undertaken in Greenland and the Faroe Islands and a systematic review of effectiveness could not be undertaken for this report.

Recommended Actions

Immediate Outcome 9

1. Denmark should monitor the penalties applied to TF convictions and consider whether they are sufficiently proportionate and dissuasive.

Immediate Outcome 10 and Immediate Outcome 11

1. Denmark should appoint a lead authority to coordinate TFS measures and compliance with them proactively and effectively.
2. Resources should be increased for the relevant authorities so as to facilitate an effective risk based approach and improve information sharing between the authorities so there is a “whole of government” approach. In order to release resources, the activities of the Danish Fundraising Board should be rebalanced so as to be in line with its statutory

functions on NPOs.

3. Using its increased resources the DBA global trade and security team should undertake increased outreach and information sharing and its role on TFS should be extended to cover Greenland and the Faroe Islands.
4. In line with IO.4, Denmark should ensure that mitigating actions in relation to beneficial ownership and front men are effective.
5. Denmark should appoint a lead authority to coordinate a structured approach to TF risk management in relation to NPOs proactively and effectively. As part of this new framework:
 - there should be a coordinated and comprehensive review of the adequacy of legislation relating to NPOs.
 - there should be a coordinated and comprehensive review of the NPO sector to identify the features and types of NPO that are particularly at risk of being misused for TF or other forms of terrorist support.
 - a coordinated risk based approach to policy and to the operational management of risk in the NPO sector, including to conducting outreach to and awareness raising for NPOs and the donor community. This should include a focus on the end use of NPO funds as well as other areas of concern.
6. The Danish authorities should include representatives from the NPO sector in their reviews to inform the updating of the TF NRA.
7. The frameworks for penalties for NPOs and TFS should be revisited so that they can be demonstrably proportionate, dissuasive and effective.
8. Greenland and the Faroe Islands should develop an action plan to address the technical deficiencies in their TFS and NPO frameworks, and establish mechanisms to work with each other and with Denmark to ensure coordinated and effective implementation of the frameworks in the Realm.

188. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9-11. The recommendations relevant for the assessment of effectiveness under this section are R.5-8.

Immediate Outcome 9 (TF investigation and prosecution)

Prosecution/conviction of types of TF activity consistent with the country's risk-profile

189. As noted in the TC Annex, Denmark has a robust legal framework for combating TF, which is largely in line with international standards. PET is responsible for leading the investigation of terrorism and TF offences with the assistance of relevant police districts, including in Greenland and the Faroe Islands. Denmark demonstrates a general understanding of its TF risks; however, this

understanding appears to be confined primarily to PET, and is not well understood by other competent authorities.

190. In 2015, a terrorist attack occurred in Copenhagen, resulting in three deaths (including the perpetrator) and five injured. According to the TF NRA, the terrorist threat to Denmark is significant. The highest TF risk concerns communities within Denmark providing funds to groups in conflict zones abroad, particularly to Islamist terrorist organisations operating in Iraq, Syria, and Somalia. An additional risk relates to the relatively high number of FTFs who have left Denmark to fight in conflict zones. At the time of the onsite, 143 FTFs left Denmark to fight abroad. Due to the reduction in the size of the conflict zone and the risk of travelling to these areas, the number of new FTFs departing Denmark is declining. Terrorist activities, including attacks and FTF travel, tend to be self-financed, relying on personal income, social benefits, personal loans, and petty theft.

191. Denmark was unable to provide the total number of TF investigations carried out or currently underway as its statistics do not make a distinction between terrorism and TF, and the number of terrorism investigations is classified. According to Denmark, most TF investigations do not result in criminal prosecutions due to a lack of sufficient evidence for the Public Prosecutor's Office to formally initiate criminal charges for TF offences. Nevertheless, as noted in Table 22 below, between 2011 and 2016, Denmark prosecuted 16 counts of TF offences, resulting in seven convictions. This appears to be in line with the TF risks of Denmark, taking into account the evidentiary challenges that exist in TF cases (i.e. intelligence into evidence), as well as PET's use of disruption.

Table 22. **Number of counts investigated and brought to court with TF in Denmark**

	2011	2012	2013	2014	2015	2016 ¹	Total
Charges	2	10	4	3	1		20
Withdrawn charges	5	3	2			3	13
Indictment	3		12		1		16
Convictions	5					2	7
Acquittals				2		8	10

Table Note

1. Data from 2016 is from 1 January 2016 to 1 November 2016

192. In addition to the above statistics, Denmark provided a number of case studies detailing the effective prosecution and conviction of TF. One of the most recent cases demonstrates PET's ability to identify and investigate TF, convert intelligence into evidence, thereby allowing it to be used by prosecutors to pursue TF convictions (see Case Study 3). In this case, 10 individuals were charged with TF, and two individuals were convicted of TF upon appeal.

Case Study 3. TF Conviction related to PKK Financing

On October 22, 2014, ten Danish citizens of Kurdish origin were found not guilty of financing terrorism. The men, aged 29-73 years, were accused of collecting approximately USD \$23 million for the Kurdistan Workers' Party (PKK), which is designated as a terrorist organisation in Denmark. The defendants allegedly channelled money to the PKK through the Kurdish-language broadcast station, Roj TV. The defendants were acquitted on the grounds that prosecutors could not prove that the defendants knew that the money raised for the television station went to the PKK. The prosecutor appealed the court ruling and in June 2016, the Eastern High Court of Appeals reversed the lower court decision and overturned the acquittal of two individuals (but upheld the acquittal of 8 persons), and convicted both persons of TF.

This case included a large amount of evidence gathered over several years, including extensive material from wire-tapping and bugging, detailed bank statements, and company accounts.

TF identification and investigation

193. Following the 2015 terrorist attack in Copenhagen as well as the heightened risk of terrorism in Europe over the last few years, Denmark has significantly enhanced its focus and resources on the identification, investigation, prosecution, and disruption of terrorists and their financiers. Specifically, from 2015 to 2018, PET has and will continue to receive additional resources, including analytical tools and additional staff, resulting in a resource increase of 25% since 2015. This process is expected to significantly increase the operational and analytical capacity of PET to identify and investigate terrorism and TF.

194. As noted in IO.6, since 2001, PET has a dedicated financial intelligence team responsible for collecting, analysing, and documenting financial intelligence. This team considers the financial aspect of each terrorism investigation. For example, the financial element of all 143 FTFs leaving Denmark was examined and assessed by PET, with an aim to pursue TF prosecutions upon return to Denmark and to identify and disrupt known sources of financing. These efforts led to a targeted program to restrict social benefit payments to known FTFs currently in theatre. PET also states that it uses financial intelligence in all cases largely due to the relative ease in obtaining a court order to obtain financial information from the private sector as the threshold is lower than required for orders granting the use of special investigative techniques (i.e. wire-tapping). This information is subsequently used to build the investigation, and pursue additional court orders for other investigative measures.

195. PET also receives information from the MLS to assist in the identification and investigation of TF cases. As noted in IO.6, PET receives approximately 110 reports (TFRs, SARs, and STRs) and cases per year from the MLS. However, this information largely relates to cases already under investigation by PET, primarily relating to identified FTFs. PET also receives additional information from SKAT regarding information contained in tax records, such as personal bank account information, income, and assets. This information is used to further develop investigations for either prosecutorial referral or disruption. In cases where PET determines that an investigation should be

launched, it refers the case to the regional prosecutor, while continuing to hold primary responsibility for the investigation. When charges have been laid, the continued investigation is carried out by the relevant police district in cooperation with PET.

196. An additional case study provided by Denmark demonstrates the active investigation of TF as part of a broader investigation of a returned FTF. The accused was convicted of three terrorism-related charges, including TF. This case demonstrates that Denmark considers and pursues the financial element in its terrorism cases, utilising an array of investigative techniques, such as wire-tapping, and the close cooperation between PET and police districts in terrorism cases.

Case Study 4. FTF Charged with TF

In June 2016, a dual Danish-Turkish citizen was found guilty of being recruited by, travelling to join, and financing ISIL. In regard to the TF element of this case, the individual was found guilty of obtaining a personal loan of approximately DKK 20 000 and providing it to ISIL upon arrival to Syria in 2013. The individual was convicted on three separate terrorism charges (including one TF offence), and was sentenced to seven years' imprisonment.

TF investigation integrated with -and supportive of- national strategies

197. While a number of measures have been taken to enhance the capacity and the capability of PET and LEAs concerning TF investigations, the authorities have no specific policy or national strategy dedicated to countering TF threats and trends. The Danish government introduced a counter-terrorism action plan, which included additional resources allocated to PET. This plan includes 12 initiatives, including countering radicalisation in prisons, strengthening the efforts of Danish National Police and PET's counter-terrorism tools, and introducing commission to evaluate Denmark's counter-terrorism activities. While TF is not explicitly referenced in this action plan, PET's TF investigations are supportive of these initiatives insofar as all investigations of terrorism include a financial investigation component. This initiative was cancelled following the terrorist attack in 2015. An evaluation of the efforts of the Danish authorities before, during and after the attacks in Copenhagen led to a range of new counter-terrorism initiatives to be implemented. The Government has earmarked DKK 970 million over four years to carry through the initiatives. In October 2016, the Danish Government also published a new national action plan (the National Action Plan on Preventing and Combating Extremism and Radicalisation) to prevent and counter radicalisation and extremism. The action plan includes an initiative to prevent foreign fighters from financing their stays in conflict zones with social benefits.

198. PET systematically obtains access to financial intelligence and other information required for TF investigations, and cooperation exists between the relevant authorities involved in the prevention and detection of TF, specifically between PET, police districts, the MLS, and SKAT. However, due to the absence of a national strategy or a coordinating mechanism, not all authorities are functioning in a coordinated manner to mitigate the TF risks. For example, TF risks are not reflected in the activities of the financial supervisors or regulators in their inspections and outreach

activities to the private sector, and the activities of the regulator for the non-profit sector do not appear to consider the TF risks identified by PET in the TF NRA.

Effectiveness, proportionality and dissuasiveness of sanctions

199. In the seven TF convictions noted in Table 22, the sentences varied from seven years' (unsuspended) imprisonment to six months' suspended imprisonment. The conviction obtained in Case Study 4 resulted in seven years' imprisonment; however, this relatively high sentence was the result of cumulative sentencing, and takes into account the two substantive terrorist offences of travelling to fight for ISIL, as well as the TF offence. The three charges have varying maximum penalties. The conviction obtained in Case Study 3 resulted in the conviction of two offenders. One person was sentenced to four years' imprisonment; however, three years and nine months of the sentence were suspended. The second person was sentenced to five years' imprisonment, but the sentence was suspended in its entirety. These two individuals received suspended sentences due to a violation of Article 6(1) of the European Court of Human Rights, as the case was unreasonably prolonged (the violations were committed up to seven years prior to the conviction).

200. As noted in the TC Annex, the maximum penalty for TF is ten years' imprisonment. However, in practice, the courts have applied much more lenient sanctions, with penalties that in practice do not approach the 10 year maximum penalty. This approach is consistent with the views held by Danish authorities and Danish society that severe punishment is not necessarily dissuasive, and that rehabilitation of offenders is more effective. As a result, Denmark is actively taking steps to counter radicalisation and integrate offenders back into the community. Additionally, Danish authorities stated that the sanctioning in the cases that have been pursued so far is a result of the special circumstances of those cases. That considered, the assessment team is of the view that the sanctions for TF applied in practice are not proportionate or dissuasive as the penalties are much lower than allowed for in the CC, and a number of cases resulted in suspended imprisonment.

Alternative measures used where TF conviction is not possible (e.g. disruption)

201. PET has taken alternative measures to prevent and disrupt TF activities where it was not practicable to secure a TF conviction. Specifically, in cases where a TF conviction is not possible and the person was committing tax violations, PET refers the case to SKAT for administrative action, which may also alert the target of the investigation, with the aim of further disrupting the TF activities. In cases where an individual is benefitting from Denmark's social welfare system and is a known FTF engaging in activities abroad, PET may refer the case to the Danish Agency for Labour Market and Recruitment to terminate such benefits. PET also employs a de-radicalisation program to identify targets and assist them in their reintegration into Danish society. Further, Denmark states that it may also exchange information with the private sector to seek to disrupt potential TF activity (when it is practically possible due to security reasons). However, these exchanges are random and not pursued in a strategic or coordinated manner.

202. Denmark also has measures in place to revoke the Danish citizenship of dual nationals. In March 2015, Denmark introduced an amendment to the Act on Citizenship, enabling the court to deprive a criminal offender of his Danish citizenship following a conviction of one or more violations

contained in Part 12 or 13 of the CC (including TF), unless the person becomes stateless. At the time of the onsite, one individual had his Danish citizenship revoked due to engaging in terrorist activities. This action was pursued against the individuals referred to in Case Study 3 and Case Study 4, but in the latter case the expulsion was denied by the court (this case was under appeal at the time of the onsite).¹¹ In Case Study 3, the case for expulsion of the convicted person was suspended. Further, Denmark may seize or deny passports of those suspected of travelling to take part in armed conflicts or otherwise embarking on travels that may involve or increase a danger to the national security or other states' security. At the time of the onsite, Denmark seized or denied 13 passports.

Overall conclusions on Immediate Outcome 9

203. Denmark has a substantial level of effectiveness for IO.9.

Immediate Outcome 10 (TF preventive measures and financial sanctions)

Implementation of targeted financial sanctions for TF without delay

204. The implementation of targeted financial sanctions (TFS) in Denmark, established by the framework of EU Council Decisions and Regulations, is partially effective due in large part to the deficiencies within the technical framework in transposing UN designations into the EU's legal framework. There are also some technical deficiencies which hamper effectiveness of compliance with TFS on TF (see R.6). Coordination of policy and operational activities such as monitoring of mitigating measures are important in seeking to ensure effectiveness and compliance with UNSCRs on TF. In Denmark, there is liaison by MFA with other Ministries in the period before and after EU legislation imposing new sanctions requirements. This liaison is undertaken through Denmark's EU Sanctions Committee, which comprises the MFA, the MoJ, the MIBFA, the DBA, the FSA, SKAT, SØIK, the National Police, the Ministry of Science and Information Technology and the Ministry of Transport. The MFA seeks the view of committee members on the introduction of legislation by the EU. The coordination mechanism does not, however, include consideration as to whether or not the Danish authorities as a whole can implement TFS effectively or whether the measures in place are effective. Bilateral relationships exist between some authorities and exchanges of information on individual cases have taken place.

205. The DBA team on global trade and security, which is responsible for receiving reports on freezing actions and the issue of any export control licences, is highly regarded. Relationships appear to be good (particularly between PET and the MLS) and information exchange takes place. However, "whole-of-government" cooperation and information exchange could be improved. Some steps are being taken to deal with the perceived gaps and enhance bilateral flows of information. TFS pursuant to UNSCR 1267 and subsequent resolutions are not implemented without delay (i.e. within a matter of hours of a designation by the UN). Following publication in the EU Official Journal of an amendment (i.e. a change, addition, or deletion to the list), the DBA issues an electronic notice

¹¹ The High Court revoked the Danish citizenship of the individual for engaging in terrorist activities and he was expelled for life.

(referred to as a newsletter) advising subscribers of the publication. It also reiterates the obligations to prevent any assets being made available to designated persons and entities, freeze assets of designated persons immediately and, in the case of frozen assets, report immediately to the DBA. The newsletter is a separate and positive notification at national level and contains a link to the EU's database of designations.

206. The DBA aims to issue the newsletter at latest on the business day following publication in the Official Journal. The newsletter is placed on the DBA's website on the same day that the newsletter is published. Of the amendments made during 2016, the newsletter was issued on the same day or within two business days of publication in the Official Journal in almost all cases. There were two longer gaps before the newsletter was published. This, together with the number of occasions when the newsletter is published two business days after the Official Journal, suggests a periodic shortage of staff resources.

207. The same approach is adopted by the DBA with regard to the EU's designations to meet UNSCR 1373. With reference to the EU designations in 2016 reviewed by the evaluation team, the newsletter was published on the same day as publication in the Official Journal except in one case (a deletion).

208. There is no mechanism for ascertaining to what extent reporting entities subscribe to the newsletter. The Danish authorities stated that most, possibly all, banks subscribe to the newsletter and banks met by the evaluation team did so. However, a significant number of other reporting entities did not subscribe to the newsletter or were not aware of it.

209. The delay between the UN making a designation and transposition by the EU is a serious impediment to Denmark's effectiveness in preventing terrorists from moving funds. Although it is the responsibility of reporting entities to comply with the EU's regulations and the DBA provides separate notifications at national level by newsletter (which are published on its website on the day of issue), the delayed publication of a newsletter as described above and the uncertainty of the incomplete level of subscription by reporting entities (and whether entities are routinely monitoring the website) reduces the effectiveness of the system in Denmark. Mechanisms such as a notification of a designation by the UN so as to allow the possibility of a STR before EU transposition have not been adopted although the Danish authorities intend to issue guidance in 2017.

210. Guidance and other information are made available to reporting entities by the DBA by five mechanisms. The DBA is proactive and makes strong efforts to provide information.

211. First, the DBA issued guidelines on freezing, which are available on its website. The guidelines make it clear that all funds and other economic resources of listed persons and entities in relation to UNSCRS and EU sanctions on TF must be frozen and that no funds and other economic resources should be made available. The guidance does not cover beneficial owners or other controllers of customers (albeit the EU legislation makes this clear). The guidelines note that MIBFA has the authority to hear appeals in relation to cases where the DBA has refused to allow a reporting entity to lift freezing and transfer funds to a designated person. All other appeals would be brought before the national courts in Denmark or the EU Court and it would seem more appropriate for appeals in connection with freezing also to be held through this mechanism. Second, the DBA makes information available on its website. Third, it issues newsletters. Fourth, the DBA established a

hotline for queries. Fifth, it undertakes outreach via presentations and meetings with individual firms.

212. PET is also proactive in conducting outreach to reporting entities. This outreach, which includes annual meetings with the larger banks and a few remitters, does not cover TFS explicitly but raises awareness of TF issues generally.

4

213. Of the 13 onsite inspections undertaken by the FSA since the beginning of 2015, eleven (including three banks) included a review of TFS compliance. It is positive that such reviews are undertaken but there is no methodology to guide the discussion and no record of how compliance was assessed. No referrals for breaches of TFS compliance have been referred to the Police by the FSA. The DBA also reviews TFS compliance. There is no methodology to guide the discussion with reporting entities and no record of how compliance was assessed (and no statistic of whether compliance is assessed in every case). The DBA advised that it takes a “guidance based” approach and no sanctions have been imposed concerning breaches of TFS compliance. The BLS has also advised that it reviews compliance with TFS in relation to TF and, as with the other supervisors, there is no record of how compliance is assessed and no sanctions for any breaches have been sought. The DGA does not monitor such compliance. For those supervisory authorities which monitor TFS compliance, the members of staff engaged in AML/CFT onsite supervision are also responsible for TFS compliance, and the resource deficits for the authorities referred to in IO.3 also apply in relation to TFS. None of the staff of the supervisory authorities had received training in TFS. The evaluation team considers that the frequency and intensity of monitoring of TFS compliance are not sufficient.

214. The general understanding of FIs has improved during the last two years. The evaluation team found that banks, particularly the larger banks, had the best understanding of their freezing obligations, generally using private sector data providers to check their databases of customers against lists of designated persons. All banks in Denmark appear to use such data feeds. The banks met by the evaluation team appear to screen daily and cover beneficial owners and other controllers. The number of onsite inspections undertaken by the FSA meant that it could not provide an authoritative view on entities’ understanding and level of TFS compliance except that larger banks have better understanding and compliance, and levels of compliance for non-bank entities are expected to be in line with AML/CFT compliance generally (see IO.4).

215. FIs other than banks are aware of the lists of designated persons and entities and it appeared that actions which would be taken where there is a match would mean that funds would not be transferred. There was poor understanding in the remittance sector in particular. Non-bank FIs usually screen weekly or monthly (or before payout). Intra group or external outsourcing hampers awareness and understanding of TFS. With a few exceptions such as the online casino sector, the evaluation team found that TFS knowledge and compliance by DNFBPs is poor. This also reflects the views of the DBA for entities it supervises and, particularly, the BLS in relation to lawyers. A few reporting entities noted that the profile of their customer base mitigated any risk of a match with a designated person.

216. IO.4 and IO.5 note that FIs undertake CDD but that there are concerns with regard to the depth of verification of beneficial owners of legal persons and with regard to front men. There are

also concerns about CDD by DNFBPs. The ability of reporting entities to comply with TFS and identify assets/funds held by designated persons/entities within ownership structures is dependent, amongst other factors, on the quality of CDD obtained and the quality of data entered into their systems.

217. Denmark does not have a clearly defined channel or procedure for directly receiving foreign requests pursuant to UNSCR 1373. No such request has been made to date. In addition, the freezing obligations of UNSCR 1373 do not apply to EU internals (even though the entry into force of the Treaty of Lisbon (2009), article 75 of the Treaty on the Functioning of the European Union, provides a legal basis to introduce a mechanism to do so and the EU has not put forward a proposal for a regulation).

218. With reference to both UNSCRs 1267 (and successor resolutions) and 1373, no funds of persons designated by the UN or by the EU have been identified and frozen.

219. Greenland and the Faroe Islands have not adopted the EU framework (see R.6). Separate TFS legislation has been enacted in Greenland and the Faroe Islands. There are significant deficiencies in these legislative frameworks that hamper effectiveness in relation to freezing. However, Danish authorities advise that there has not been any intelligence suggesting any TF in Greenland or the Faroe Islands and the TFS risks appear to be much lower than in Denmark.

220. The evaluation team met representatives of a bank from the Faroe Islands but no FIs from Greenland. No systematic review of effectiveness can be undertaken by the team in relation to Greenland (and no information on effectiveness has been provided by the Greenland authorities). The Faroese bank is included within the discussion above on understanding by reporting entities. There is no monitoring of TFS compliance by reporting entities in Greenland and the Faroe Islands. Greenland and Faroese entities are able to subscribe to the DBA newsletter and access the DBA's website for information on designations and the Danish authorities have advised that the language of the DBA guidelines can also be used by Greenland and the Faroese entities. No specific guidance has been produced for Greenland and the Faroe Islands and there is no mechanism to advise entities of designations except to the extent that such entities are proactive in subscribing to the DBA newsletter and/or reviewing the DBA's website. The MLS is responsible for receiving reports on freezing actions in Greenland and the Faroe Islands. The resource deficit specified in IO.6 is also applicable to the role of the MLS in connection with TFS. In addition, MLS staff have received no training on TFS.

Targeted approach, outreach and oversight of at-risk non-profit organisations

221. As legal arrangements cannot be formed in Denmark, all Danish NPOs are structured as legal persons, namely as non-commercial foundations and associations.

222. The number of NPOs in Denmark is not known to the authorities. The Fundraising Board, which registers public collections, was notified of 446 public collections in 2016 for the period prior to the visit by the evaluation team. In addition, NPOs which have received approval from SKAT as eligible to accept tax-deductible donations have provided specified information to the Board can make a notification annually (87 have done so to date in 2016). ISOBRO, the association with the

largest membership of NPOs, considered that its membership of some 400 NPOs covers the vast majority of turnover of the estimated 1,100 NPOs in Denmark; some 40 of its members are estimated as being active outside Denmark although it is not clear whether this refers to operational activity or the use of funds and assets collected or both.

223. The Danish authorities have not undertaken review of the NPO sector and have not identified which subset of organisations fall within the FATF definition of NPO. The 2014 Fundraising Act is a continuation of the previous legislation with the aim of addressing the need for ample opportunity for fundraising while also ensuring adequate control with fundraisers by the authorities.

224. The TF NRA states that NPOs have been used for TF purposes. The NRA does not have a specific conclusion that TF is high risk or that NPOs generally or NPOs with defined characteristics are high risk for TF but it appears to be implicit that NPOs are considered in the NRA to be high risk. The NRA identifies, in part, features and types of NPOs likely to be at risk of TF abuse.

225. As indicated in IOs 1 and 9, overall Denmark demonstrates a general understanding of its TF risks. However, this general understanding is confined primarily to PET. TF risk, including NPO risk, is not well understood by the other competent authorities. This overall understanding appears to be relatively less strong in relation to NPOs; all relevant sources of information and views on NPOs have not been analysed by the authorities jointly. The evaluation team noted that the understanding expressed by PET during the discussions in Denmark was more comprehensive than that expressed in the NRA and also more comprehensive than had been advised to the other Danish authorities. ISOBRO has defined views on gaps in the framework and these, together with views expressed by the Fundraising Board, NPOs and banks, are to some extent additional or different to those expressed by PET.

226. Denmark's assessment and understanding of the TF risk profile of NPOs and its response to the risk, including policy and operational actions, is not coordinated or structured. In part PET has filled this gap by including NPOs to some extent in its TF NRA and its proactivity in relation to both the prevention and repressive aspects of countering TF. As with other aspects of TF, the NRA does not cover NPOs comprehensively and it cannot be used by itself as a solid basis for setting comprehensive national CFT policies and prioritised risk mitigation actions in connection with NPOs.

227. PET considers that only a small minority of NPOs (estimated at 20 to 30 in all), including entities that seek to mimic NPOs, present a high TF risk. These comprise a very small part of total NPO revenue. Entities which mimic NPOs appear to comprise the greater part of the TF risk. In addition, some registered and non-registered NPOs have come to PET's attention. The minority of NPOs appear to pay funds outside Denmark with payments being made using cash, wire transfers and mobile telephone apps. NPOs have also been used as both money and value transfer businesses. Understanding the pattern and use of payments outside Denmark presents particular issues but, nevertheless, PET is aware of the main geographic areas where payments by NPOs have been made and has information on the value of payments from, for example, TFRs. PET is usually aware of intelligence on each of the high risk NPOs from more than one source with, for example, TFR information being verified by information from other sources.

228. An estimated 18% of the 73 TFRs in 2015 and 13% of the 127 TFRs in 2016¹² were made as a result of suspicion that NPOs were being used for TF. The reports typically involved fundraising or transfers of funds to high risk areas. PET has liaised with the MLS to seek to ensure TFRs are provided to it and to understand the methods of TF used by NPOs and entities which mimic them. The TFRs have also allowed PET to provide information to the larger banks so as to improve their understanding of TF risk and responses to it. The Fundraising Board has also benefitted from this flow of intelligence. TFRs in relation to NPOs have not led to investigations or prosecutions by the Danish authorities.

229. ISOBRO is aware of fake websites and advised that thousands of donations are made each month, the use of which is unclear. It considers that the Fundraising Act needs revision in several areas, including extension of the existing requirements on public fundraising to cover non-public fund raising and that there should be a searchable database of collections which have been advised to the Fundraising Board. While a complete list of collections that have been notified to the Fundraising Board is accessible on the Board's website, this is not considered by ISOBRO to be easily searchable.

230. No outreach to NPOs or donor communities by the authorities has been carried out during the period under review by the evaluation team. The last outreach NPOs was the publication in 2010 of a leaflet "Your contribution can be abused" by PET and ISOBRO. It is available on PET's website. In the two years after 2010, the leaflet was also circulated to other authorities and various ethnic communities; no active circulation of the leaflet beyond this has taken place. The leaflet is very general and over simplistic; PET intends to update the document in 2017.

231. PET has provided outreach to two NPOs directly although the years when this took place, why these NPOs were selected and its content have not been advised to the evaluation team. In part to address the risk posed by NPOs, outreach undertaken by PET to reporting entities during the period under review has included the larger banks and some money exchange businesses. However, it is not clear how frequently these entities have been the subject of outreach in the period under review by the team and how much of that outreach was in relation to TF risk in relation to NPOs. There has also been no program of working with NPOs.

232. CDD by reporting entities can provide valuable risk mitigation in relation to NPOs. IO.4 notes that FIs undertake CDD but that there are concerns with regard to the depth of verification of beneficial owners of legal persons. These concerns apply equally to NPOs. Specific information is not available about to what extent beneficial ownership information is available in practice across NPOs as a whole but, as stated in IO.5, across all legal persons, beneficial ownership can be relatively easily traced except where ownership is more complex or where foreign ownership or control is involved. It appears to be uncommon for ownership structures of NPOs to be complex (with the exceptions mostly being linked to foreign ownership). NPOs met by the evaluation team stated that banks require information from them so as to understand and verify their ownership and control structures.

¹² Data for 2016 in this IO is from 1 January 2016 to 18 November 2016.

233. Banks met by the evaluation team treat the risks of charities seriously. Individual charities and other NPOs were considered as presenting risks ranging from low to high with high risk entities being subject to enhanced approaches. Nevertheless, the approaches to NPOs are subject to the wider concerns on the quality of AML/CFT expressed in IO.4. The team also has a concern about the ability of banks and other reporting entities to undertake robust countermeasures in the absence of comprehensive risk information from the authorities. PET's experience is that some of the larger banks are good at detecting transactions related to individuals who undertake unauthorised fundraising.

234. NPOs met by the evaluation team did not have controls in place specifically to address TF risk except for monitoring sanctions lists. Nevertheless, controls are in place to combat fraud and corruption, including governance standards, the establishment of compliance departments, audit processes, seeking to ensure that funds are spent appropriately on the NPO's objectives, and seeking to ensure that NPO partners in foreign countries are of good quality; and these controls are applicable to addressing TF risk. In addition, the NPOs had received funding from the Danish Government and the terms of this funding include that controls must be in place. The evaluation team was not provided with further information on the standard controls required by the Government, how many and what types of NPO are subject to these controls and whether and how compliance with them is monitored. In addition, there appeared to be some reliance on United States rather than EU sanctions lists and sanctions monitoring appeared to be carried out on a "risk" basis rather than systematically. Care also needs to be taken that sanctions monitoring is undertaken in liaison with compliance teams.

235. It was suggested to the team that virtually all of the NPOs active outside Denmark have received Government funding and, therefore, would be subject to the controls required in the funding agreement required by the Government. However, evidence for this has not been provided.

236. The Fundraising Board was established under the Fundraising Act to supervise that public fundraising campaigns are carried out in accordance with the Act and to maintain a list of campaigns notified to it. It registers collections and not NPOs. Notifications need not be made if they fall within the exemptions in the Act or where SKAT has approved a NPO as eligible to accept donations which are tax deductible and provided the Board with specified information. Denmark does not have a framework for NPO regulation or registration. Coverage of the NPO sector and its activities is incomplete. Thus, the Fundraising Board has been provided with a role and powers in regard to fundraising and not the NPO sector more generally. It is not in a position to comment with authority on the adequacy of internal controls within NPOs or on the use of associated NPOs either in Denmark or abroad. The Board is also aware that some fundraising campaigns have not provided notification. In these instances, the Board takes mitigating action.

237. Notifications of campaigns are made by submission of a completed form to the Board. Validation undertaken includes checking whether the information is complete, in accordance with legislation and whether for example there is a doubt that an NPO exists. Further information is requested in some 10% to 20% of cases but it is not clear how many of these cases are to do with obtaining incomplete information on the form as opposed to a check on the NPO itself. It is also not clear what powers the Board could use to go beyond its statutory role of checking forms for

completion. Checks by the Board have included reviews of NPO websites and requiring copies of statutes to be provided to it. It appeared to the evaluation team that the checks are not comprehensive and that PET's knowledge that some NPOs which have registered collections have been used for TF indicates a lack of effectiveness in the notification framework.

238. With regard to ongoing information, where less than DKK 50 000 or less is raised, basic accounts must be provided to the Board by means of a completed standard form. On one occasion the Board asked for further information as the NPO had advised that there were no costs associated with the fundraising when there clearly had been costs. Where funds raised are greater than DKK 50 000 accounts must be audited by an accountant who has been registered or authorised by the Government. Basic checks are undertaken on the level of expenses and whether funds have been used in a way which is consistent with the purpose of the NPO; where funds raised are greater than DKK 50 000 the check extends to whether the auditor is Government registered/approved and that the auditor has verified that documentation is in place to support the NPO's expenses. The Board advises NPOs which have made notifications when accounts should be provided and have created diary alerts to seek to ensure that it is aware when they have not been provided.

239. Under the Executive Order on Fundraising Etc. funds raised by NPOs subject to the Order must be kept in a bank account (and therefore subject to AML/CFT obligations) or invested in bonds unless the Fundraising Board gives permission otherwise. This is a positive control measure and the Board advised that it checks that it is met by NPOs providing notifications. However, no specific evidence to demonstrate this has been provided or whether the check also covers NPOs which do not provide notifications but which have sought SKAT approval for donations to be tax deductible and provide accounts to the Board.

240. The Board advised that dealing with accounts is a lower priority than handling notifications. It has recently recruited another member of staff in order to deal with a significant back log of some 500 financial statements, some of which have been inherited from the Police (previously responsible for notifications) in 2014. It is expected that this backlog will be removed during 2017. The Board also intends to enhance its IT systems in 2017 to streamline processes for accounts. The Fundraising Board has seven staff. However, only two of these staff are completely devoted to work in relation to NPOs (handling financial statements), and the others work on NPOs part-time. There is a significant staff resource shortfall at the Board. None of the staff has attended any training in connection with TF or NPOs.

241. As with fines for reporting entities, no minimum or maximum levels of fine for NPOs are specified in legislation. The Fundraising Board has made thirteen referrals to the Police for fines to be imposed on NPOs and was able to provide statistics to the evaluation team; the reasons for referral include failure to notify fundraising; failure to provide accounts; and suspicion of illegality, including TF. This latter case of potential TF was investigated by the Police. Four financial penalties and a warning have been applied covering NPOs and individuals. Three of the referrals are still being considered (including two from February/March 2016). In addition, one of the thirteen referrals was a case in which the Board advised the Police of potential criminality in connection with a fundraising platform. These referrals to the Police demonstrate proactivity by the Board. The Police do not advise the Fundraising Board of progress on the referrals which have been made; the Board seeks

information from the Police. In addition, aspects of four cases were not taken forward due to “legal expiration” (i.e. the two year period permitted by chapter 11 of the CC for sanctioning offences where the maximum sentence is a prison sentence of one year), suggesting that there are deficiencies in the overall system. The Fundraising Board has also advised that it will generally not refer a breach to the Police if this two year period is close to expiry. The standard fine appears to be DKK 3 000 although, a fine of DKK 10 000 has been imposed and, in a case for failure to provide accounts, there was an additional fine of DKK 1 000 for each additional month the accounts were not to be provided. This fine was mistakenly imposed as the accounts had in fact been provided but not linked by the fundraiser in question to its original notification; there was a significant delay when no fine was paid until the link between the accounts received and the notification was made. The use of fines alone, together with the level of fines imposed in practice, is not proportionate or dissuasive although the Board has published information about fines issued in 2015 in its annual report for that year.

242. More generally, the concern in IO.3 about the uncertainty and timeliness of enforcement of sanctions by the Police as opposed to, for example, civil or administrative means also applies in relation to the sanctions framework for NPOs. Separately, the partial effectiveness of Police involvement in the fining regime, together with comments made to the evaluation team in Denmark, indicate that the Police are not able to devote sufficient resources to investigate NPOs for potential criminality and to administer the framework for decisions on penalties.

243. There is no programme by the FSA, DBA or BLS to verify the effectiveness of countermeasures by reporting entities with regard to NPOs either to understand their risks or in carrying out mitigating measures. Also, records are not maintained on the extent NPO customer files are sampled. In at least one recent onsite inspection, the FSA checked a NPO customer file of a bank. The DBA advised that it has not come across any NPO customers. In addition, the issues raised in IO.3 (e.g. limited resources allocated to AML/CFT, risk-based supervision at an early stage of development or not undertaken, no evidence of detailed supervision relating to CFT, shortfalls in the frequency and intensity of supervision) apply also to the adequacy of monitoring of CFT standards by reporting entities which have NPOs as customers. Section 4 of the Fundraising Act refers to approval by SKAT of the eligibility of NPOs to accept tax deductible charitable donations. SKAT has not advised what information is required from NPOs seeking this status and whether there are any controls in place in relation to the receipt of any information. The evaluation team was advised that SKAT has a shortfall in staff resources able to deal with its responsibilities in connection with NPOs. Information on the use of any sanctions available to SKAT was not provided to the evaluation team.

244. Two of the umbrella associations for NPOs have been active in setting standards for their membership. For example, ISOBRO has published ethical guidelines for fundraising and an auditing checklist while the ACT Alliance has issued an anti-fraud and anti-corruption policy. These are basic and, although there is no oversight of compliance with the provisions, they nevertheless demonstrate the proactivity and values of the two organisations.

245. Relationships between the authorities in connection with NPOs appear to be good. PET has provided briefings to several authorities and there are examples of proactivity by a few of the authorities in liaising with PET such as cooperation by the Fundraising Board on an NPO’s potential

involvement with TF. The MLS and the PET have strong cooperation. The Fundraising Board has met with the Ministry of Immigration and Integration about foreign donations and has also met with the FSA and PET in connection with money value transfer services. However, overall, widespread information exchange appears to be limited. PET's investigations do not distinguish between NPOs which might be used for TF and other vehicles or arrangements for potential TF activity although, in relation to NPOs, it has noted particular challenges in tracing funds beyond Denmark's borders.

246. With regard to Greenland and the Faroe Islands, there has been no review of NPO legislation. The evaluation team was advised that this is because of the size of the population and the number of NPOs. The Danish authorities have also not undertaken a review of the NPO sector, identified which subset of organisations fall within the FATF definition of NPO, and identified those most at risk. The evaluation team did not meet representatives of the authorities with roles in relation to NPOs in these jurisdictions and, therefore, a detailed analysis of effectiveness cannot be undertaken. No outreach to NPOs or the donor community has been undertaken. To a lesser extent than in Denmark, the Order on Public Collections in Greenland contains elements on controls relevant to transparency, integrity and public confidence; notifications on public collections in Greenland are made to the Police. There are no legislative provisions in place in the Faroe Islands. The authorities in Denmark have not received any intelligence or other information on the suspected or actual use of NPOs for TF in Greenland and the Faroe Islands.

Deprivation of TF assets and instrumentalities

247. TFS under UNSCR 1267 and successor resolutions are not implemented without delay (as defined by FATF) due to the time taken to transpose UN designations into the EU legal framework, and there is no legal basis for imposing targeted financial sanctions in relation to EU internals in order fully to implement UNSCR 1373. There are also deficiencies in the legal framework for implementing targeted financial sanctions in Greenland and the Faroe Islands. These deficiencies are a serious impediment to Denmark's ability to deprive terrorists of their assets.

248. To some extent this impediment is mitigated by the criminal justice powers of investigation, asset tracing, seizure and confiscation specified under R.4, which extend to Denmark's terrorism and TF offences. As explained under R.5, these offences are wide in scope so the relevant powers would be available in virtually all situations involving activity relating to terrorism or TF. On that basis, Denmark has in place the measures necessary to deprive terrorists, terrorist organisations or terrorist financiers of assets and instrumentalities effectively in most cases. However, the potential loopholes in the criminal justice framework identified under R.4 apply.

249. PET considers the possibility of seizures in all cases involving TF. Seizures have been made in all cases where the Police have charged individuals with TF violations of the CC. In the case from 2011 where five convictions were made, there was also confiscation of DKK 24 982, and in the two cases from 2016, there was also confiscation of DKK 150 000 and DKK 20 000. In addition, in another case, a sum of some DKK 850 000 was seized from a traveller; this money was released after the authorities had ensured that it could not be provided to ISIL.

250. Denmark has taken steps to deprive persons of TF assets and instrumentalities in relation to the cases specified in IO.9. In all cases regarding TF and terrorism, seizure is considered where possible. For example, in the PKK case, seizures totalling DKK 282 715 were made during the proceedings. However, most of the money was returned due to acquittals of eight of the ten people accused. In another case, a FTF was convicted of TF and DKK 20 000 was seized.

4

Consistency of measures with overall TF risk profile

251. Denmark has taken limited steps in implementing TFS; taking a targeted approach to overseeing higher risk NPOs; and has taken some actions to deprive terrorists, terrorist organisations and terrorist financiers of assets and instrumentalities with Denmark's risk profile.

252. There is no coordinated or structured approach to the management of TF risk Denmark (or Greenland or the Faroe Islands). This is recognised by the Danish authorities.

253. Overall, a risk-based approach in line with Denmark's risk profile has not been adopted in connection with TFS compliance. However, the DBA's proactivity on outreach and the positive cooperation and information exchange between PET and the MLS are exceptions to this. There are significant gaps relating to the transposition of designation of UN designations and also of EU internals. In addition, the authorities have not considered seeking potential designation of Danish FTFs.

254. Turning to NPOs, the language of the 2014 Fundraising Act does not arise from TF considerations. Nevertheless, some and possibly a significant proportion of the NPO population most at risk of abuse for TF are covered by the legislative framework and the Fundraising Board's activities.

255. Banks have greater focus on NPOs which are active internationally and there is therefore some consistency with the views on risk expressed by PET and in the NRA. While the NRA recommends that there should be a focus on the use of NPO funds in conflict zones, this recommendation has not yet resulted in the adoption of specific mitigating measures as the NRA was issued immediately before the evaluation team visited Denmark.

256. Neither the Fundraising Board nor any other authority engaged in preventive measures has adopted a risk based approach to address the risk posed by NPOs or other forms of TF risk. However, as noted in IO.6, TF is investigated actively and PET has examined and assessed the financial element of FTFs with the aim of prosecuting them on return to Denmark. This aspect of the framework is consistent with Denmark's TF risk profile.

257. IO.10 covers CFT measures beyond TFS and NPOs and the strong outreach efforts made by the PET on TF generally is in line with elements of TF risk in Denmark. PET advised that it has undertaken outreach to some 25 000 employees of reporting entities.

258. The regime for asset deprivation is proactive in relation to FTFs and in line with TF risk in Denmark arising from FTFs. In non-FTF cases, seizure is also considered and appears to be in line with risk.

259. There are gaps in the framework for Greenland and the Faroe Islands, which mean that CFT measures cannot be wholly consistent with risk.

Overall conclusions on Immediate Outcome 10

260. **Denmark has a moderate level of effectiveness for IO.10.**

Immediate Outcome 11 (PF financial sanctions)

Implementation of targeted financial sanctions related to proliferation financing without delay

261. Denmark has not conducted a risk assessment of its exposure to proliferation financing (nor is such an assessment required by the FATF Standards). However, it is not a major international finance and trade centre and it does not appear to have significant, relevant cross-border financial and trade flows. This is supported by the Danish authorities and by import and export statistics maintained by “Danmarks Statistik” (Statistics of Denmark). The statistics indicate that exports to Iran had a value of DKK 563 515 065 in 2014 rising to DKK 742 502 170 in 2016 for the period to the end of September (presumably arising at least in part from the revisions to the Iran sanctions regime in January 2016) while imports from Iran totalled DKK 73 644 941 in 2014 and were DKK 63 068 903 for the first three quarters of 2016. Financial and trade flows with the Democratic People’s Republic of Korea (DPRK) appear to be non-existent or negligible.

262. Funds have been frozen in relation to Iran although, following the repeal of some sanctions against Iran in 2016, no assets were frozen at the time of onsite visit to Denmark. No assets have been frozen to date in relation to the DPRK.

263. The implementation of TFS for PF in Denmark is based on the EU’s legal framework set out in Regulation 329/2007 (for UNSCR 1718 concerning the DPRK) and 267/2012 (for UNSCR 1737 concerning Iran) (see R.7). These measures apply freezing measures to a broad range of funds and property. In addition, the EU applies sanctions to a significant number of entities that are not designated by the UN as they are designated associates of, or otherwise associated with, other persons designated by the UN and EU.

264. For DPRK, the UN has added individuals and entities to its list of designations five times in the period from 2012 to the time of the onsite visit to Denmark. Twelve of the entities (out of 26) and one individual (out of 23) had already been listed in the EU framework. On four other occasions the designations by the UN (on 22 January 2013, 7 March 2013, 28 July 2014 and 2 March 2016) took approximately four weeks, six weeks, ten weeks and two days respectively. The DBA issued newsletters (see below) after these delays, generally within a few days. In the most recent of these cases, the newsletter was issued the business day after publication in the Official Journal. While acknowledging that EU designations are automatically effective in Denmark, sanctions are not implemented without delay, although the sanctioning system is mitigated to some extent by the other designations made by the EU referred to above.

265. With regard to Iran, the technical problems in the EU for the transposition of UN sanctions and any delays which might have occurred in Denmark have not in practice led to any delays in

implementation. Since Regulation 267/2012 was issued in March 2012, there were only two occasions where the UN added designations to its list (two entities and one individual in April 2012 and two entities in December 2012), and subsequently incorporated in Annex IX of Regulation 267/2012.

4

266. IO.1 and IO.10 provide information on coordination in relation to TFS, which also apply in relation to PF. There is no coordination beyond liaison between members of the Danish EU Sanctions Committee on the introduction of new sanctions legislation and no consideration has been given to whether or not the Danish authorities as a whole can implement TFS on PF effectively or whether the measures in place are effective. Bilateral relationships have been established between some authorities and some general queries on the Iranian sanctions regime have been made by the authorities to the DBA team on global trade and security. This team is highly regarded by the authorities. Relationships appear to be good but some steps are being taken to seek to ensure more comprehensive bilateral flows of information.

267. No level of implementation is possible with regard to Greenland and the Faroe Islands as they have no legal framework in place to address PF.

Identification of assets and funds held by designated persons/entities and prohibitions

268. In general, the same points made in IO.10 in relation to the identification of assets/funds and prohibitions apply in relation to TFS on PF. Differences are highlighted below.

269. Banks have identified and frozen funds held by designated persons/entities in relation to Iran. Frozen funds mainly related to bank customers which were designated rather than, for example, beneficial owners of legal persons. All frozen funds were in the form of cash in bank accounts. There is a requirement to report frozen funds to the DBA and the DBA maintains a list of frozen funds (which currently includes no frozen funds in light of delistings), the identity of banks which have frozen the funds, the name of the designated person/entity and the date of the freezing. Interest payments to frozen accounts were also notified to the DBA. No assets or funds have been identified in relation to the DPRK.

270. The absence of applicable criminal justice measures or any requirement to report suspicion of PF in the Danish framework, for example, to help address the delay in the EU's transposition of the UN designations means that there would be insurmountable challenges in freezing the assets or funds of designated persons/entities during the transposition period. There appears to have been no need to seek to overcome these challenges in the absence of a match with a designated person/entity and no issue of effectiveness has arisen.

271. IO.4 notes that FIs undertake CDD but there are concerns with regard to the depth of verification of beneficial owners of legal persons and front men. Gaps in verification have the potential to hamper effectiveness of identifications of assets/funds held by designated persons and entities within ownership structures. No such lack of effectiveness has been found.

272. As discussed in IO.10, the DBA's global trade and security team is proactive and makes strong efforts to provide guidance and other information to reporting entities to help reporting entities identify assets and funds held by designated persons and entities and does so by five mechanisms:

guidelines on freezing; information on the website; the issue of newsletters; a hotline for queries and presentations; and, meetings with individual firms. The team does not have an articulated risk based approach but it has devoted more time to the Iran sanctions framework than to the DPRK framework – this is in line with PF risk in light of the level of changes to the two sanctions regimes and Denmark’s business relationships with each country.

273. The gaps identified in IO.10 with these information sharing mechanisms also apply to PF (for example, incomplete coverage of reporting entities and no guidance on beneficial ownership in the newsletter). In addition, the guidance on freezing focuses almost completely on TF – there is a paragraph which refers to sanctions against third countries, which lists several examples. The examples include North Korea but not Iran - the DBA revised the guidance in January 2016 after the revisions to the sanctions imposed on Iran. The evaluation team considers that the absence of guidance on TFS in relation to PF militates against fully effective compliance with the UNSCRs on PF.

FIs and DNFBPs’ understanding of and compliance with obligations

274. Understanding by reporting entities of TFS related to PF is less than that for TF. This is further demonstrated by the procedures manuals for reporting entities provided to the team. This appears to have made no difference to the level of screening activities undertaken by reporting entities but the full implications of this lack of understanding on effectiveness are not clear.

275. As indicated in IO.10, the DBA’s global trade and security team considers that general understanding by FIs of TFS obligations has improved during the last two years. This conclusion also applies to TFS relating to PF. Notwithstanding, the DBA also considers that some reporting entities continue to find understanding of some aspects of the regime difficult.

276. The evaluation team found that banks (particularly the larger banks) mostly had the best understanding of their freezing obligations. Banks met by the evaluation team use private sector data feeds to check their databases of customers against lists of designated persons. All banks in Denmark appear to use such data feeds. The banks met by the evaluation team appear to do screening daily and to cover beneficial owners and other controllers within the screening process. The number of onsite inspections undertaken by the FSA meant that it could not provide an authoritative view on entities’ understanding and level of TFS compliance except that larger banks have better understanding and compliance, and that levels of compliance for non-bank entities are expected to be in line with AML/CFT compliance generally (see IO.4).

277. The evaluation team found that FIs other than banks are aware of the lists of designated persons and entities and it appeared that actions which would be taken where there is a match would mean that funds would not be transferred. There was poor understanding in the remittance sector in particular. Non-bank FIs usually screen weekly or monthly (or before payout). In addition, intra group or external outsourcing hampers awareness and understanding of TFS. With a few exceptions such as the online casino sector, the evaluation team found that TFS knowledge and compliance by DNFBPs is poor. This also reflects the views of the DBA for entities it supervises and, particularly, the BLS in relation to lawyers. A few reporting entities noted that the profile of their customer base mitigated any risk of a match with a designated person.

Competent authorities ensuring and monitoring compliance

4 278. The system for monitoring compliance with TFS related to PF is similar to that described in IO.10. As with TF, the outreach activities of the DBA global trade and security team helped to improve compliance with TFS related to PF. Most inspections undertaken or concluded by the FSA since the beginning of 2015 included a review of TFS compliance. However, there is no methodology to guide the discussion and no record of how compliance was assessed. No referrals for breaches of TFS compliance have been referred to the Police by the FSA. The DBA also reviews TFS compliance. There is no procedure, questionnaire or checklist to guide the discussion with reporting entities and no record of how compliance was assessed (and no statistic of whether compliance is assessed in every case). The DBA advised that it takes a “guidance based” approach and no sanctions have been imposed concerning breaches of TFS compliance. With regard to both the FSA and the DBA, it appeared that TFS on PF are less prominent as a focus than TF and that this might have an effect on the degree of monitoring. The BLS and the DGA do not monitor compliance for TFS related to PF.

279. For those supervisory authorities which monitor TFS compliance, the members of staff engaged in AML/CFT onsite supervision are also responsible for TFS compliance, and the resource deficits for the authorities referred to in IO.3 also apply in relation to TFS. None of the staff of the supervisory authorities receive training in TFS. The evaluation team considers that the frequency and intensity of monitoring of TFS compliance are not sufficient.

Overall conclusions on Immediate Outcome 11

280. **Denmark has a substantial level of effectiveness for IO.11.**

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

Denmark achieved a low level of effectiveness for IO.4.

Financial Sector

1. Overall, there is an inadequate understanding of risk and weak implementation of AML/CFT measures in almost all segments of the financial sector, including the main banks. This is especially the case in relation to currency exchangers and MVTs providers.
2. Generally, risk assessments conducted by FIs are not comprehensive and do not cover all activities, products and services, which results in inadequate implementation of AML/CFT preventive measures.
3. There are a significant number of deficiencies in Denmark's legal framework (e.g. a range of CDD weaknesses, lack of coverage of domestic PEPs, and gaps regarding wire transfers and beneficial owners), which negatively impact the effectiveness of the overall regime.
4. There is a lack of adequate mitigating measures applied in practice by FIs, including EDD measures in higher risk cases and internal controls. This is evident from the significant proportion of inspections which found violations.
5. Senior management appear to give a low priority to AML/CFT issues.¹³ As a result, AML/CFT is not embedded in the corporate culture of Danish FIs and there is a lack of or insufficient AML/CFT awareness and expertise, often as a result of inadequate training or lack of supervisory guidance focusing on risks, trends and typologies.
6. The level of STR reporting varies across the financial sector, and the quality of the reports needs improvement.

DNFBPs

1. With the exception of casinos, DNFBPs' understanding of risk is generally poor. DNFBPs do not consider their activities as risky and view the possibility of complicit professionals as the only risk, particularly where cash is not involved.
2. DNFBPs rely on the ML NRA conclusion of low sectoral risk and do not assess their risk at a business level even where they are dealing with higher risk activities such as establishment

¹³ These findings are supported by an FSA report issued in April 2017 relating to the Panama papers. That report reached conclusions, such as "bank managements have not had enough focus on what is required of them to ensure compliance with money laundering regulations"; "money laundering issues have not been sufficiently rooted in management practice, and consequently have not been given appropriate priority in day to day operations"; and "FSA therefore asserts that banks should have considerably more focus on the obligations in the MLA."

of complex business structures and real estate transactions.

3. Most DNFBPs seem to rely on initial CDD to mitigate risk. They refuse business when CDD cannot be completed or a suspicion arises at onboarding.
4. Enhanced CDD measures are not being applied in higher risk cases. This is due to the level of information collected at on-boarding and also the lack of systems to implement ongoing monitoring requirements, which may indicate changes to risk profiles and as a consequence, the need to apply enhanced CDD. Only a limited number of DNFBPs seem to understand their obligations relating to PEPs or TFS.
5. Levels of STR reporting are low and inconsistent across the DNFBP's sector which reflects sectoral views of risk.

Recommended Actions

1. FIs and DNFBPs should ensure that they conduct regular internal risk assessments which take into consideration the nature and size of their individual activities, types of customers, products, and services. These internal risk assessments should be complemented with information received from relevant authorities on ML/TF risks. FIs with foreign branches and agents should strengthen their efforts to better mitigate identified ML risks.
2. Lawyers, accountants, real estate agents and CSPs should ensure that measures are in place which are appropriate to their ML/TF risk and should implement monitoring and enhanced due diligence measures and put in place tailored training programmes.
3. FIs should ensure that the full set of AML/CFT requirements is being effectively implemented, and put in place tailored monitoring tools and systems, as well as training programmes.
4. FIs and DNFBPs and their industry associations should participate in regular consultation, coordination and dialogue with regulators so that there is a better understanding of ML/TF risks on both sides, and their AML/CFT obligations. FIs and DNFBPs should give attention to new vulnerabilities and emerging risks that may appear notably in relation to new and more sophisticated technologies, services and products (e.g. remote banking activities and business relationships, etc.).
5. All sectors should take steps to understand TF risks, with a specific focus on the implementation of TFS and the identification of TF trends.
6. Denmark should amend its legislative framework to address the technical deficiencies noted in the TC Annex and FIs/DNFBPs should rapidly implement these measures, in particular with regard to the definition of PEPs, the definition and verification of the identity of beneficial owners, and higher-risk scenarios

281. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The recommendations relevant for the assessment of effectiveness under this section are R9-23.

Immediate Outcome 4 (Preventive Measures)

Understanding of ML/TF risks and AML/CTF obligations

(i) FIs

282. The understanding of ML/TF risk by the main FIs is poor, and remains at a general level and does not correspond to the characteristics of their portfolio and business profile. Assessors noted a weak implementation of AML/CFT measures in almost all segments of the financial sector. While the FSA and DBA have issued general guidelines to assist FIs in understanding their AML/CFT obligations (e.g. FSA's 2013 AML/CFT Guidelines), they did not issue detailed and practical guidelines, which could be a contributing factor to the low level of understanding. The 2014 National Threat Assessment conducted by the FSA, which brought together a number of international threat assessments and typology reports, included only a few risk factors in general terms (e.g. complicated constructions, correspondent banking, remote customers). As noted under R.34, there is a lack of tailored and practical guidance provided to FIs, for instance on how best to conduct risk assessments in order to identify the threats and vulnerabilities of each business model (types of customers, products services, etc.). Only a short list of risk factors is included in the 2013 FSA Guidelines. Those Guidelines do not take for instance into account the varying needs of institutions with unique activities, operations, products, services, network of distribution, projects, and practices.

283. As noted under IO.1, the FSA participated in the preparation of the ML NRA, which sets out general ML vulnerabilities for some financial sector entities, but not all (i.e. investment firms or mortgage-credit institutions). Investment firms were assessed in a separate risk assessment by the FSA in 2014. The findings of the NRA were not developed in consultation with the private sector and are regarded by the private sector as having limited relevance and utility (see IO.1). The general nature of the findings of the ML NRA, combined with the lack of detailed guidance, severely reduce FIs' capacity to understand ML risks, allocate resources, inform supervisory activities, and improve suspicious reporting.

284. Most FIs perceive cash, currency exchangers and tax/fraud evasion as the largest ML risks in Denmark, including largest FIs which focus on risks posed by new payment methods. While this is consistent with the findings in the ML NRA, only one of the interviewed FIs was able to articulate ML patterns/schemes and reference criteria to detect them within the context of their own business.

285. Larger banks have a slightly better understanding of their ML risks. However, it appears that the financial sector in general focuses on the same limited risk areas. For example, transactions in certain geographical (border) areas, large cash transactions, and remittances/money transfers are consistently considered the highest risk. Yet, this understanding of ML risk did not appear to be the result of a developed understanding of interaction between possible flows of illicit funds into and out of Denmark, or the analysis of threat/risk profile of their customers. Banks with a purely domestic focus demonstrated a less sophisticated understanding of ML risks and even less so of TF risks. Based on the results from supervisory controls and onsite discussions, there is a weak understanding of AML/CFT obligations.

286. As noted in IO.1, Denmark has not analysed the specific ML risks in Greenland and the Faroe Islands. However, factors such as the small population of each territory, the limited number of FIs and DNFBPs, and the remote nature of the jurisdictions contribute to reduced risks. The limited understanding of the risks present in Greenland and the Faroe Islands is shared by FIs and DNFBPs.

(ii) *DNFBPs*

287. Amongst DNFBPs other than casinos, the understanding of risk is generally poor, with the view across all sectors being that if cash is not involved there is little or no risk. Professionals do not consider their activities as risky and view the possibility of complicit professionals as the main risk, particularly where cash is not involved. Apart from possibly risk-rating individual customers, most DNFBPs do not carry out ML/TF risk assessments.

288. The lack of insufficient AML/CFT awareness and expertise, often as a result of inadequate training, is reflected in the low level of STR reporting (see IO.6) and in the statistics about orders given by the DBA after inspections. In all DNFBP sectors other than casinos and lawyers, the majority of orders issued relate to CDD (s.12 MLA) and internal rules and training, including risks assessments and risk management (s.25 MLA), which reflects a lack of proper internal controls in these sectors (see IO.3).

289. In relation to lawyers inspected in 2016, about 22% did not comply with s.25 MLA, which is an improvement compared to previous years. During onsite interviews, there was generally a limited understanding by law firms, accountants, CSPs and real estate agents of their ML/TF risks. As mentioned above, there is an assumption across the DNFBP sector (other than casinos) that when no cash is involved in a business activity, there is little or no ML/TF risk.

290. DNFBPs other than casinos rely on the sectoral risk-ratings included in the ML NRA and do not assess their own risks at a business level or the individual risk of particular customers, even when dealing with high risk activities, such as the establishment of complex business structures and real estate transactions. Equally, it does not appear that their AML/CFT obligations are well understood.

291. This is not the case in relation to casinos. Both online and land-based casinos generally have an understanding of ML/TF risks and AML/CFT compliance. They also carry out risk assessments of their businesses and customers, although this is not required by law. This understanding has improved in the last two years following increased awareness-raising by the DGA. This is evidenced by the growth in STR reporting in the casino sector, including over-reporting in 2015 directly resulting from DGA's awareness-raising work (see Table 23).

Application of risk mitigating measures

292. The Danish legal framework has not yet been amended to take account of the 2012 FATF Recommendations.¹⁴ As a result, while preventive measures apply to all FIs and DNFBPs required by the FATF Recommendations, there are significant gaps in their scope and in technical compliance

¹⁴ Denmark indicated that the new AML Act should enter into force on 26 June, 2017.

with the FATF Recommendations. Few, if any, FIs/DNFBPs implement measures beyond those required by Danish legislation.

293. Legislation is drafted in high level general language with further explanation and more detailed information being provided in Explanatory Notes. However, it is often the case that the Explanatory Notes also do not provide sufficient detail or are not clear. These Notes are used by the courts to interpret the requirements of the law and there is some case law on the meaning of the MLA where provisions are unclear (at least in the English language version). For instance, Denmark produced case law showing that the interaction of s.12 and 14 is such that the CDD requirements in s.12 apply to occasional customers except in the circumstances set out in s.14. However, in other areas of doubt, it remains unclear, e.g. the question of whether the MLA applies to legal arrangements other than trusts. The 2013 FSA Guidelines also do not always assist either. As a result, assessors were not always able to be satisfied about the requirements of the MLA.

294. In addition, the weak understanding of risk across both FIs and DNFBPs other than casinos has a cross-cutting effect. Where entities cannot show an understanding and a proper assessment of their specific risks, it is difficult to conclude that they are applying risk mitigation measures appropriate to their risk.

FIs

295. Banks identified some measures to mitigate their risks, including the application of CDD measures and manual monitoring of basic transactions. However, overall, a number of key measures are not in place. Even in larger institutions, assessors noted a lack of IT systems for monitoring and the absence of a constructive dialogue with supervisors. Not all FIs have training programmes in place for their staff. When they do, these are often shaped as a one-off module inserted in a more general one-day training course. In most FIs, there are no internal or external controls of the conducted risk assessments. FI's classification of customers rarely results in any mitigating measures commensurate with the identified risks. As a result of the very limited understanding of ML/TF risks outside the banking sector, there is a clear lack of appropriate measures to mitigate those risks, reliance being on minimal compliance with the requirements of the MLA. In many cases of smaller entities, such as currency exchange and remitters, there are few measures applied beyond basic CDD.

DNFBPs other than casinos

296. DNFBPs do not have a clear understanding of their ML/TF risks. Consequently, they have a simplistic view regarding risk mitigation. They do not apply a risk-based approach, instead relying on basic CDD to mitigate any potential risks. Except where there are specific requirements set out in the MLA, DNFBPs do not apply EDD measures. Real estate agents met during the onsite, for instance, stated that they relied on banks to conduct AML/CFT measures. Proof of identity requirements as set out in the MLA are complied with, but not on a risk basis. As a result of only basic requirements being applied at the time of on-boarding and the lack of systems for ongoing monitoring which would indicate changes in risk profile, it is unclear whether enhanced CDD measures are applied at all.

297. Few DNFBPs seemed to understand their obligations relating to PEPs and TFS. In the absence of IT tools or automated systems, DNFBPs have difficulties effectively monitoring transactions on these aspects. In relation to PEPs, DNFBPs do not consider domestic PEPs as higher risk noting that there are no legal requirements (see c.12.2). This is illustrative of the sectors adherence to the CDD requirements of the MLA, without conducting a risk assessment on individual customers.

298. As a result of the onsite visit, the assessment team believes that these weaknesses are as relevant to the larger entities, as they are to smaller entities.

299. This lack of mitigating measures is reflected in the figures in DBA's Annual Report for 2015, which show that where an onsite inspection occurred (124 out of a total of 150 reviews in 2015), orders were issued in about 90% of cases.

Casinos

300. Casinos apply mitigating measures in line with the relevant legislation on a risk basis. This appeared to be the case for both land-based and online casinos. Internal policies and procedures are in place, which address the need to apply measures on the basis of risk. Casinos have in place systems for monitoring customer behaviour at land-based casinos and online. Online casinos, particularly those with a presence in other jurisdictions, and probably because of their online environment, have a somewhat more sophisticated understanding of how they could address risk through the use of technology. All land-based casinos had taken measures above and beyond the gambling legislation requirements by not issuing receipts so as to avoid on-sale to persons wishing to disguise proceeds of crime.

Application of enhanced or specific CDD and record keeping requirements

FIs

301. Apart from large banking institutions, which seem to apply a risk-based approach to implementing CDD requirements, most FIs implement a rules-based approach to compliance with CDD requirements, including those for beneficial owners. The general understanding of CDD and record keeping requirements by some sectors (e.g. currency exchange, providers of payment services), and RBA by smaller reporting entities is often insufficient and simplistic. As mentioned above, cash is considered to be high risk by all sectors. As a result, the presence of cash seems to be the most important, if not the only, indicator with regard to the application of enhanced CDD, without due consideration given to any other risk factors or to the particular circumstances surrounding the business relationship/customer/transaction. Similarly, preventive measures for currency exchangers do not appear to be informed by information on customer relationships or targeted to mitigate ML/TF risks. Instead, the entire sector is considered as high risk.

302. The CPR and CVR are the main tools used by most FIs to identify and verify the identity of their customers. Registration in the CPR is compulsory for all Danish citizens, residents and others who pay tax in Denmark, while basic information on all legal entities is publicly available online in the CVR, including shareholdings and associated voting rights. The CVR for the moment does not include non-Danish companies or beneficial ownership information, and does not cover legal

arrangements. The requirement to register beneficial ownership information set out in Act 262 of March 2016 will be in force from 23 May, 2017, though legal entities will have until 1 October 2017 to enter the information. Many FIs accept such information without seeking to verify the validity and comprehensiveness of information, which is why banks remain under the obligation to seek risk-based verification of such information as well as proof of the identity of the beneficial owners.

303. Because of the lack of guidance from supervisors (see R.34), most of the interviewed FIs indicated they were requesting additional documents to verify identity only when required by law (i.e. PEPs, higher risk countries), and did not therefore have systems in place to identify other areas where enhanced CDD would be appropriate. FIs accept all types of official documents, in order to achieve appropriate CDD (i.e. the use of official documents that do not include updated information on the customer, such as out of date driving licences or equivalent foreign official information). The strengths of Danish national registers may have contributed to some extent to an over-reliance by FIs when performing identification and verification of identity, resulting in a failure to identify situations where enhanced CDD would be appropriate (e.g. BO identification information for legal persons is not systematically collected and kept in customer files).

304. Danish institutions, in particular banks and insurance companies, do not tend to rely on third parties for the CDD process.

305. Within the MVTS and currency exchangers sectors, the quality of AML/CFT measures being applied, including the obtaining of beneficial ownership information remains a strong implementation challenge. This is largely due to the limited knowledge of AML/CFT requirements reflected in their procedures. The results of supervisory work by the FSA and the DBA, based on issued orders, confirm that the overall level of compliance for CDD is weak, especially in these segments of the financial sector.

306. No particular issues were noted in relation to keeping records of transactions and information obtained through due diligence measures.

DNFBPs other than casinos

307. During the onsite, the assessment team saw little evidence of continued monitoring of customers to ascertain whether specific/enhanced CDD is necessary. As noted above, DNFBPs rely heavily on initial CDD measures as their means of risk mitigation. CDD is generally applied at on-boarding and in most cases does not include more than the basic requirements of the MLA (see c.10.30). In addition, there is little to no follow up in the course of the customer relationship. DNFBPs stated that they refuse business when CDD cannot be completed or a suspicion arises at on-boarding. In such cases, however, they are unlikely to make a suspicious transaction report.

308. Lawyers with corporate clients do undertake beneficial ownership enquiries and acknowledge the difficulties inherent in doing so if tracing leads to a legal person in a country where access to information about ownership is not possible.

309. The DBA's monitoring of DNFBPs does not indicate any problems with record-keeping. Violations of s.23 do not figure largely in the orders given, other than in relation to entities covered by MLA, s.1(1)(17).

Casinos

310. Casinos have measures in place to comply with the legal requirements for CDD (see R.22), including to perform CDD on the basis of a risk analysis. In practice, land-based casinos have systems in place to identify customers upon arrival, and have refused entry if identification is not possible. Similarly, online casinos also comply with the specific provisions relating to the identification of customers.

5

Application of EDD measures

311. There are a number of technical limitations regarding EDD requirements, and a lack of guidance, which clearly impact the implementation of EDD measures. In addition the assessment team's conclusions about understanding of risk amongst FIs and DNFBPs other than casinos has a cross cutting effect. It is difficult to conclude that appropriate EDD measures are applied, if risk is not well understood and, therefore, high risk customers and products are not properly identified.

*(i) FIs**(a) PEPs*

312. Interviews with FIs provided consistent responses with regard to implementation of the requirements related to foreign PEPs, correspondent banking and wire transfers.

313. While it was noted that FIs undertake CDD measures and apply identification and verification requirements (i.e. request relevant documents for identification purposes), there are concerns with regard to the identification and depth of verification of beneficial owners of legal persons and arrangements with complex structures (see Rec. 10).

314. FIs do not currently have processes in place to identify domestic PEPs, which was explained by the fact that the MLA does not currently regulate domestic PEPs. FIs indicated they would have problems complying with requirements relating to domestic PEPs, because their databases do not contain information on domestic PEPs. None of the FIs interviewed considered the risks associated with domestic PEPs. Corruption on a domestic level is very rare in Denmark, and domestic PEPs are therefore a lower risk than in some other countries. The implementation of measures to detect foreign PEPs also poses some difficulties. Appropriate risk management systems are not in place in a significant number of FIs to determine whether the customer (or a beneficial owner) is PEP. This adds to the technical deficiencies in c12.1 on the definition of foreign PEP not extending to beneficial owners. Further, some of the expected proactive steps to manage PEP-related risks, which may include screening systems or tools for some FIs, are not widely or effectively implemented. Apart from the largest banking institutions and insurance companies, most FIs rely on manual monitoring of PEP lists. Checks for PEPs in the customer databases are not regularly conducted, which could result in most transactions being executed prior to implementation of enhanced CDD measures (i.e. approval of the customer relationship).

315. FIs indicated that if CDD is unable to be completed, business would be refused.

(b) Correspondent banking, wire transfers

316. For correspondent banking, EDD is implemented on a risk-based approach, with increased attention when the correspondent is located in a country with strategic deficiencies according to the FATF, or when the correspondent is located in an offshore centre or in certain countries where supervision is deemed less mature. However, the approach taken by institutions appeared variable. Although tax fraud/evasion is considered a major offence in Denmark, increased attention is not given to tax havens. The assessment team also noted that the classification of countries often did not fully address all the risks. There are deficiencies in the EU legal framework, in particular in EU regulation n°1781/2006, which applies in Denmark as it does not require the details of beneficiaries to be included in transfers (as noted in R.16 in relation to wire transfers).¹⁵

(c) TFS

317. The general understanding of TFS on TF by FIs has improved during the last two years albeit the DBA's global trade and security team has found that some reporting entities find aspects of the various rules relating to compliance with obligations difficult to understand. The evaluation team found that banks (particularly the larger banks) had the best understanding of their freezing obligations. Banks met by the evaluation team use private sector data feeds to check their databases of customers against lists of designated persons. All banks in Denmark appear to use such data feeds. The banks met by the evaluation team appear to do screening daily and cover beneficial owners and other controllers. The number of onsite inspections undertaken by the FSA meant that it could not provide an authoritative view on entities' understanding and level of TFS compliance except that larger banks have better understanding and compliance and that levels of compliance for non-bank entities it regulates are expected to be in line with AML/CFT compliance generally. The evaluation team found that FIs other than banks are aware of the lists of designated persons and entities and it appeared that actions which would be taken where there is a match would mean that funds would not be transferred. There was poor understanding in the remittance sector in particular. Non-bank FIs usually screen weekly or monthly (or before pay-out). In addition, intra group or external outsourcing hampers awareness and understanding of TFS.

(d) New technologies

318. Although Denmark's financial system is technologically advanced, there are no explicit obligations over risks presented by new technologies. The largest banks and casinos indicated that significant scrutiny is given to new technologies, but it did not appear that the scrutiny was done in the context of mitigating ML/TF risks. Only one FI interviewed identified pre-paid cards and some internet payment systems as higher-risk technology. Most of the risk assessments provided to assessors were rather basic, and did not cover risks relating to new technologies such as mobile payment. It is thus unclear whether the banking or other sectors are aware of these ML/TF risks, despite Denmark moving towards a cashless society and being among the first countries to use new information technologies (e.g. instant payments). The lack of supervisors' guidance (with the

¹⁵ The new EU regulation n°2015/847 on information accompanying transfer of funds will apply in Denmark as of its entry into force on 26 June, 2017.

exception of FSA's with a major bank in relation to Mobile Pay) and awareness-raising actions on new technologies was also noted.

(e) Higher risk countries

319. FIs are generally aware of the FATF lists of higher-risk countries. Only larger banking institutions use multiple data sources to assess jurisdiction risks, in relation to the location of their branches, unlike smaller entities with less sophisticated measures. The FATF lists of high risk jurisdictions represent the primary basis for risk assessments. The outcomes of these risk assessments are used to guide FIs' business. However, there is no periodic risk reassessment for some countries on the list of equivalent third countries.

320. While some FIs have drafted procedures to apply EDD or countermeasures to business relationships and transactions with natural and legal persons from countries for which this is called for by the FATF (or independently of any call by the FATF to do so), it is unclear whether such measures are implemented in practice. Most FIs interviewed do not have measures and operational procedures/guidelines in place to monitor all transactions. For high risk countries, other than Iran and DPRK, it does not appear that enhanced measures are generally taken.

(ii) DNFBPs

321. Application of EDD measures is inconsistent across the DNFBP sectors. EDD is applied at on-boarding where a higher risk customer is involved. Given the lack of ongoing monitoring of customers, assessors question whether DNFBPs, other than casinos, take any action to address higher risk situations other than at on-boarding.

DNFBPs other than casinos

322. There are few, if any, breaches of MLA/GMLA/FMLA s.19 (EDD in higher risk situations) subject to orders by the DBA. However, as noted in R.10, s.19 is drafted so that it applies only to further proof of identity measures at the time of on-boarding. However, MLA s.12(5) requires ongoing monitoring of the customer relationship and updating of documents, data and other information held about the customer and s.12(6) requires new proof of identity if there is doubt.

323. As noted above, the majority of orders given by DBA relate to CDD breaches. Examples of cases provided by the DBA confirm that there is little to no formal ongoing monitoring of customers by DNFBPs, and therefore no EDD once a relationship has commenced. This is particularly apparent with lawyers and accountants who would be expected to have a significant number of ongoing relationships. There is no evidence that there is any due diligence taking place after proof of identity at on-boarding.

(a) PEPs

324. Foreign PEP screening is inconsistent across DNFBPs. Lawyers and CSPs screen for PEPs but real estate agents that assessors met at the onsite do not. Similarly to FIs, some DNFBPs, particularly amongst lawyers and accountants, stated that they are using commercial search engines publicly available to identify and screen PEPs, although it is not clear that this is universally applied. Even

where there is screening procedures in place for dealing with foreign PEPs, they go no further than required to by the MLA, and it is unclear that screening occurs at any time other than on-boarding.

325. The current legal framework only imposes obligations for foreign PEPs. Only one DNFBP representative acknowledged having systems in place to check for domestic PEPs as customers. There are otherwise no procedures in place across the DNFBP sector to screen for domestic PEPs. Authorities indicated that the requirements for the screening of domestic PEPs will be part of the new AML/CFT law to be adopted in 2017.

(b) Higher risk countries & new technologies

326. DNFBPs' understanding of ML/TF risk was not well-developed, as discussed above, and examples of internal documentation even from some of the more sophisticated entities did not demonstrate that they apply specific measures in relation to higher risk countries or in relation to new technologies or means of doing business.

(c) TFS

327. With a few exceptions such as the online casino sector, the evaluation team found that TFS knowledge and compliance by DNFBPs is poor. This also reflects the views of the DBA for entities it supervises and, particularly, the BLS in relation to lawyers. A few reporting entities noted that the profile of their customer base mitigated any risk of a match with a designated person.

Casinos

328. Representatives of the casino sectors are aware of PEPs and their inherent risks, and they screen for foreign PEPs. Casinos apply some enhanced or specific measures in areas of greater risk. CDD requirements for land-based casinos mean that customers are in fact screened at every visit, including for whether they are foreign PEPs or are from higher risk countries. However, the gambling legislation has no requirements relating to domestic PEPs and no measures above those required are applied. Online casinos have ongoing screening for PEPs and other high risk situations. Domestic PEPs are not specifically screened for by either online or land based casinos. Processes are in place as part of casino internal controls for assessing risk in relation to the introduction of new games or technologies.

Reporting obligations and tipping off

(i) FIs

329. As a result of their lack of understanding of ML/TF risks, it is unclear to what extent FIs are able to make judgements about the types of transactions that should be reported. As noted in Table 23, there has been an increase in the number of STRs filed for some sectors, especially the banks, which in general is a welcome development. However, the quality of STRs is questionable (e.g. reporting is not proportionate to the identified risks and there is a steady decline in the proportion of STRs disseminated in some FIs segments). This may also be the result of a lack of feedback from the MLS to reporting entities. Most medium to large reporting entities provide some information and contextual elements within the submitted STR. The MLS also indicated that STRs sometimes do not provide sufficient details on the reason for suspicion, and the underlying analysis. The team also

noted that one of the largest FIs in Denmark only accounts for 15% of STRs received by MLS, which is not commensurate with its market share, and that a large proportion of STRs are filed by a very small number of FIs.

Table 23. STRs submitted by sector

Reporting entity	2012	2013	2014	2015	2016*
FIs					
Banks	2 804	3 433	4 973	9 124	10 055
Money remittance providers	1 253	1 199	1 293	1 331	1 011
Currency exchange offices	389	326	529	535	646
Mortgage credit institutions	10	9	89	98	102
Leasing and finance companies	15	57	56	33	68
Payment service providers and issuers of electronic money	1		40	37	32
Life assurance or pension companies	1			1	6
Investment companies				1	
DNFBPs					
Gambling providers	4	121	243	4 435	2 282
Real-estate agents	1				1
Legal Professionals	12	7	4	7	9
Accountants	7	6	6	6	7
Company service providers	1				1
Tax Consultants or external book-keepers	1	1			4
Other					
Public authorities	9	4	16	8	9
Other	3	3	6	3	10
Total	4 511	5 166	7 255	15 619	14 243

Table Note :

1. Data from 2016 is from 1 January 2016 to 1 November 2016

330. The engagement of different segments (and sometimes inside the same segment) of the financial sector in relation to reporting of STRs is variable. In addition, many FIs, particularly currency exchangers, started filing STRs only very recently and gradually. FIs generally have a very limited understanding of their ML/TF risks and focus on risks associated to the volume of transactions, although large banking institutions have a better understanding of their risks. As a result, nearly 60% of all STRs were sent by only six entities (four banks, one MVTS, one casino) of the financial and non-financial sector in Denmark.

331. In their 2015 Risk Assessment of small and medium size banks, authorities also attributed the low level of detection of suspicious transactions to lack of training and experience.

332. FIs representatives highlighted the need for more information and more timely feedback from the MLS and LEAs to improve their transaction monitoring systems for detecting ML/TF. Reporting entities specifically noted challenges in detecting TF due to the absence of specific information and risk indicators.

333. FIs are aware of prohibitions against tipping off and have included the provisions in their internal policies, controls and training. Although, there are no requirements relating to the implementation of group wide programmes against ML/TF, some larger FIs have put in place a central compliance direction in charge of all notifications.

(ii) DNFBPs

334. Levels of STR reporting are low and inconsistent across and within the DNFBP sectors (see Table 23). Amongst DNFBPs, only gambling entities have consistent reporting of STRs. Most of these are, however, lodged by two casinos and figures also reveal a significant spike in reporting in 2015. Authorities advised that this was due to over-reporting in 2015. For all other DNFBPs, only 10-15 reports are filed annually and potentially risky sectors such as CSPs and real estate have filed only two reports in five years. Given the level of understanding of risk amongst other DNFBPs, it is likely that reporting is limited to cash transactions. Lawyers submit STRs both via BLS and directly. Of those STRs submitted via BLS, approximately half are passed on to the MLS. Decisions not to disseminate STRs are usually related to legal professional privilege. No TFRs have ever been submitted by the DNFBP sector. With regards to casinos, this could be explained by the fact that TF NRA does not consider gambling to be a vehicle for TF.

335. Generally entities under DBA supervision do not have practical measures in place to prevent tipping off, although in larger entities with more structure there will be procedures for handling suspicious transactions and activities. Casinos do have measures in place. BLS stated that in the legal profession such measures are considered on a case by case basis.

336. The limited amount of guidance and/or typologies, red flags or indicators issued by the supervisory authorities, and the lack of interaction with the relevant supervisor, could contribute to the low level of STRs reporting in several sectors. The limited feedback from the MLS and LEAs could also contribute to the difficulties some reporting entities have in adequately recognising suspicious transactions.

*Internal controls and legal/regulatory requirements impending implementation**(i) FIs*

337. Large banks are aware of the requirements to have AML/CFT programmes to ensure compliance with their obligations under the MLA. Reporting entities that are headquartered outside Denmark and subject to AML/CFT regulation and supervision elsewhere reported having benefitted from guidance and requirements imposed by their home or other host jurisdictions, often Nordic countries. They also indicated adapting best practices and applying them to their Danish operations.

338. As a result of the lack of inputs from supervisors, the implementation of internal controls and procedures is not in line with FATF standards. For example, it was noted that in most cases, AML/CFT automated monitoring systems and organisational tools were not audited by internal or external auditors. As noted above, many institutions have been sanctioned for lack of, or inadequate, internal controls.

339. Outside the banking sector, the team had concerns with regard to the control of money remitters operating under the EU passporting arrangements, particularly the internal controls maintained by the agents and the oversight exercised by some of the parent companies. The FSA, however, shared a positive example of orders issued against an agent for two large EU-based payment institutions to terminate its agent relationship. The FSA was informed shortly afterwards that this same agent had resumed operating in Denmark for another third payment institution. The FSA again ordered the payment institution to terminate the activities of that agent. Following this second order, the agent ceased to operate in Denmark.

(ii) DNFBPs

340. While DNFBPs other than casinos reported having internal controls, they mainly relate to initial CDD measures. International entities may have better internal controls based on global requirements, but this was not demonstrated by documents provided by the private sector to the assessment team. This reflects a simplistic understanding of ML/TF risk and results in a lack of ongoing monitoring and failure to identify and report suspicious transactions. Figures relating to orders given in relation to MLA s.25 are noted above. This is a significant area of non-compliance in the sector.

341. Most casinos that are part of a larger group generally have good internal controls and procedures in place. This area has been a focus of the DGA in 2016, with a thematic review of internal controls amongst the seven land-based casinos.

Overall conclusions on Immediate Outcome 4

342. Denmark has a low level of effectiveness for IO.4.

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

Denmark achieved a low level of effectiveness for IO.3.

Legal Framework

1. The legal framework broadly provides robust licensing and registration requirements. However, there are significant concerns about the approach to supervision and monitoring, which is very limited. The range of supervisory powers and of tools for supervisors to enforce compliance is narrow. There is thus a significant focus on referral to police for investigation and prosecution action as the way to ensure compliance.
2. While DBA and DGA have started applying a RBA to their supervision, and some progress is being made, it is still at the very early stages of implementation. However, the FSA still needs to implement an adequate RBA to supervision.

FIs

1. The FSA uses a combination of off-site and onsite supervision. The frequency, scope and intensity of AML/CFT supervision are inadequate. The scope and depth of desk reviews and on-site inspection missions are inconsistent with the risks. This reflects a lack of a consistent methodology, as well as the severe lack of resources available for AML/CFT supervision. The latter is exacerbated by the high turnover of staff in the FSA and the lack of formal training. The lack of appropriate IT systems or tools to analyse, transmit and store information further exacerbates the challenge for supervisors.
2. While some feedback on compliance with AML/CFT requirements has been provided, most supervised entities complained about the lack of feedback, including on trends and typologies, and the lack of engagement with supervisory authorities.
3. Although Denmark has identified the MVTs sector as high risk in the NRA, there is little supervision of the extensive network of agents notified to the FSA under the EU Payment Services Directive which make up a large portion of the sector. In addition, despite the licensing system, enforcement activities to address the risk posed by unauthorized remitters are inadequate.

DNFBPs

1. The DGA works in ways which maximise the resources it is able to apply to compliance. Onsite inspectors cover all aspects of compliance including AML/CFT compliance, with a specialist AML/CFT team focusing on thematic compliance across the land based casinos and on online casino compliance. Innovative ways of working with data and systems are used in relation to online casinos. In particular, they identify unlicensed operators and

have successfully had 14 sites blocked.

2. In relation to the rest of the DNFBP sector, there are systems in place for monitoring of compliance and there is some supervision, although it does not adequately address the sectors. Resources are inadequate given the large number of supervised entities.
3. BLS supervision of lawyers does not appear generally to take account of risk, with a random selection of 200 lawyers in 10% of law firms for onsite. This results in inconsistent coverage and a lack of focus on where risks lie in the industry.

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Recommended Actions

1. Denmark should increase supervisory resources at the FSA and DBA to enable appropriate onsite and offsite supervisory actions commensurate with the risk and size of Denmark's financial sector, while also ensuring appropriate systems and tools are put in place, to allow for more effective risk-based AML/CFT supervision. In particular, consideration needs to be given to appropriate IT systems and tools to analyse, transmit and store information relating to supervision. It should also consider whether greater integration of AML/CFT supervision with other supervision responsibilities within competent authorities would allow more effective application of skilled operational resources (on understanding of ML/TF risks).
2. Supervisory Authorities should deepen their understanding of ML/TF risks and risk mitigation measures, ensure that their risk-rating matrix incorporates relevant ML/TF risks identified through own risk assessments and other sources of risk information and supervise implementation of AML/CFT obligations using a truly effective risk-based approach.
3. Denmark's financial and DNFBP supervisors should increase their efforts to promote a better understanding among supervised entities of ML/TF risks and their expectations regarding the implementation of the risk-based approach to managing ML/TF risks within the financial and non-financial sectors, and also ensure that updated risk information is reflected in their internal risk assessments. This can also be achieved through the provision of better guidance and other information relating to both ML/TF risk and requirements set out in the MLA, and through closer engagement with covered entities and their industry associations.
4. Supervisors should ensure that FIs/DNFBPs apply adequate measures in relation to PEP screening and issue guidelines on how to structure on-going monitoring of customers. Supervisors should promote the acquisition or development of appropriate automated systems for transaction monitoring and alert generation.
5. Ahead of proposed legislative changes to licence currency exchange providers, Denmark needs to identify currently unregistered entities operating in this sector. Denmark should also provide for registration of undertakings and persons that otherwise commercially provide the same services as lawyers, state authorized public accountants, registered

public accountants, and real estate agents, such as tax advisors and external accountants.

6. All supervisory authorities should ensure there is effective cooperation in place at the domestic and international levels—including with supervisors of MVTs providers who operate in Denmark under an EU passport—to ensure that ML/TF risks associated with such entities are managed effectively. Denmark should amend its laws to enable the FSA to put measures in place in line with the 2nd Directive on Payment Services to strengthen the supervisory framework on agents used by foreign MVTs providers notified under the EU passporting regime.¹⁶
7. Danish supervisors need to enhance domestic cooperation with LEAs and SKAT in order to identify unregistered currency exchange operators to ensure their registration.
8. Denmark should review the dissuasiveness of its sanctions regime to improve effective compliance, and make legislative and other changes to strengthen supervisory and enforcement powers to allow supervisors to more effectively ensure compliance by supervised entities. More emphasis needs to be placed on following-up orders and developing means to sanction violations in addition to publication of orders. Supervisors ought to be able to enforce their orders without having to resort to criminal prosecution. Denmark should ensure that supervisors have a full range of enforcement tools available to sanction non-compliance, including by civil or administrative means.

343. The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The recommendations relevant for the assessment of effectiveness under this section are R.26-28 & R.34 & 35.

Immediate Outcome 3 (Supervision)

344. The FSA, DBA, DGA and BLS are the four AML/CFT supervisors in Denmark (see Table 35 in the TC Annex). The FSA and BLS have a function in Greenland and the Faroe Islands, as well as the Insurance Supervisory Authority and the Tax Agency. The DBA has a function in Greenland. Currency exchange, MVTs, accountants and CSPs operating in the Faroe Islands are supervised by Skraseting Foroya.

345. Little information was made available to the assessment team about AML/CFT supervision in Greenland and the Faroe Islands. The assessors' impression was therefore that such supervision is minimal in these parts of the Kingdom of Denmark. An exception to this is the case of online casinos operating in either Greenland or the Faroe Islands as these are subject to Danish supervision.

346. As noted in Table 24 resources allocated to AML/CFT are limited, particularly in the case of the FSA. Between 2012 and 2016 only three FSA staff worked full time on AML/CFT. Although the sector is not particularly large, they are responsible for AML/CFT supervision of large and complex institutions including 96 banks (only a few of which are large international institutions),

¹⁶ Denmark indicated that the Bill has been presented to Parliament on 15 March, 2017.

38 investment firms, 98 providers of payment services, electronic money issuers and branches of foreign undertakings and 26 MVTs. DBA now has seven staff dedicated to AML/CFT supervision of currency exchange providers (67), accountants (5600), real estate agents (3295), undertakings covered by MLA s1(1)(17) (7000) and CSPs (480). By contrast the DGA has 18 staff responsible for supervision of 28 online casinos, six land based casinos and one ship based casino. The BLS has five staff dedicated to supervision of 6201 lawyers. Both the DGA and the BLS integrate AML/CFT supervision with more general supervision of their sectors. Tables 25 and 26 set out the numbers of onsite inspections that the FSA and DBA achieved each year from 2012 to 2016 with the available staff, demonstrating the inadequacy of staffing numbers.

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Table 24. Number of AML/CFT supervisory staff per supervisory authority

	2012	2013	2014	2015	2016
FSA*	3,5	3,5	4	4	4
DBA (staff involved in supervision and inspection)	3	3	3	7	7
DGA	29	24	23	18	18
BLS**	n/a	n/a	n/a	n/a	n/a
Insurance Supervisory Authority	No data available				
Customs Tax Authority	No staff members dedicated to AML matters				
Skaseting Foroya	No data available				

* only 3 FSA staff (out of 4) worked full time on AML/CFT between 2014-2016

** A total of 5 staff (3 lawyers, 2 support) is dedicated to supervision, including AML/CFT.

347. Supervision for CFT is integrated with AML supervision, and while both elements are subject to the general inspection process, none of the competent authorities have carried out supervision that has focussed solely on CFT issues, such as targeted financial sanctions, through examination or guidance on the systems which entities, in particular banks, implement to assist meeting these requirements'.

348. As noted in IO.1, the FSA and DBA mostly cooperate on an informal basis. Cooperation takes place on policy and legal initiatives related to Denmark's AML/CFT regime, for example the supervision of currency exchangers. However, there is limited engagement between supervisors in Denmark in other areas, such as sharing of information on ML/TF risk. There is limited interaction between supervisors and LEAs responsible for criminal justice actions in the case of non-compliance. It is unclear to what extent cooperation exists with supervisors in Greenland and the Faroe Islands. All Danish supervisors are members of the MLF, the national mechanism for coordination and cooperation (see IO.1), but supervision remains siloed and divided, with individual agencies focussed on their sector.

349. In addition to their role as supervisors, the FSA is responsible for the development and drafting of relevant legislation, while DGA plays an integrated advisory capacity when the MoT is preparing gambling AML legislation. The FSA also has a lead role in relation to international participation on AML/CFT matters such as the FATF. Legislation is currently being prepared to implement the 4AMLD, and these demands further impact the already limited supervisory resources, meaning that a risk based approach to supervision is even more important and necessary.

Licensing, registration and controls preventing criminals and associates from entering the market

350. The Danish legal framework provides for robust licensing and registration requirements. Institutional arrangements for supervision are in place in Denmark, Greenland and the Faroe Islands to prevent criminals and their associates from obtaining licenses or having a significant role in FIs and DNFBPs. Undertakings and persons, including branches and agents of foreign undertakings listed in Annex 1 to the MLA (leasing, factoring, finance/consumer credit), as well as currency exchange offices, must comply with registration requirements (see R.26). Criminal records checks cover board members and beneficial owners. There is no fitness test relating to professional competence or experience. Failure to comply with registration requirements will be reported to the police by the FSA.

351. Since 2012, the scope of the fit and proper assessment includes members of executive management. The FSA Guidelines lay down legal requirements for fit and proper assessments in relation to members of a board of directors (BoD) and board of management (BoM) (see Table 25). There is also an increased focus on the competencies of members of the BoD, with mandatory requirements to attend basic AML/CFT training. Authorities indicated that the new regulations will establish more stringent requirements regarding corporate governance.¹⁷

Table 25. Fit and proper assessments of board members

	2012	2013	2014	2015	2016
Members assessed not fit	2	2	1	1	1
Members assessed not proper	18	7	2	3	5

352. Statistics provided reveal that for most types of FIs, no or very few licenses were refused, but that this was not the case for payment services providers (FSA received 52 applications between 2012-2016; 50% of these applications were refused). The FSA and DBA also provided some case examples where applications were refused for FIs other than PSPs, due to failings regarding fitness and propriety. In addition there were cases where FIs have been ordered to remove staff members for propriety failings.

¹⁷ Under the new regulations, the fit and proper assessment will also cover key managerial positions such as CRO and CIO.

Case Study 5. **Fit & Proper assessment of the CEO, 15th September 2015**

An undertaking X committed multiple violations of financial regulations between 2010-15 (i.e. CEO's lack of proper management, including in the AML area; and the non-compliance with MLA requirements). The FSA concluded that the CEO failed to perform his managerial duties adequately over a long period and as a result ordered the removal of the CEO.

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Case Study 6. **Forced registration of financial leasing services providers**

In 2014, the FSA discovered that several providers of financial leasing services were operating without registering with the FSA. The FSA cooperated with the SKAT in order to identify these unregistered undertakings. Undertakings were given three months to register. This action resulted in approximately 110 new undertakings (90% of which were financial leasing providers) being registered from July 2015.

353. As a result of the NRA, a decision has been made to transfer the supervision of currency exchangers from the DBA to the FSA, and to significantly strengthen regulatory controls, including applying new licensing provisions similar to those applying to MVTs under the PSEM Act. Assessors were told during the onsite, and the NRA also states, that there are unregistered entities operating in this sector in Denmark. Applying more robust licensing and other requirements might therefore significantly reduce ML/TF risks that currently exist in the sector.

354. The legal measures to prevent criminals and their associates from owning or controlling DNFBPs are generally sound (see R.28). Lawyers and state-registered accountants are subject to fitness and propriety tests as well as criminal background checks. The licensing and registration processes for real estate agents and CSPs also includes a review of their background against criminal records.

355. Denmark's CVR contains information on all Danish companies. In 2015, a technical solution was implemented to integrate registration in the ML Register for CSPs and currency exchange offices with the CVR registration. The CVR is also able to be monitored for types of undertaking which may fall under the MLA.

356. However, there are no fitness and propriety requirements or registration requirements for the approximately 7 000 undertakings and persons covered by MLA s1(1)(17) that otherwise commercially provide the same or similar services as lawyers, state authorized public accountants, registered public accountants, and real estate agents, such as tax advisors and external accountants.

357. Land based and online casinos are licensed and subject to fitness and propriety requirements, including criminal records checks for management and employees. Licences can be refused and revoked if the applicant has been convicted of a criminal offence that gives reason to believe that there is a clear risk of abuse of the access to work with gambling. In relation to online casinos, there

is monitoring and action can be taken through the courts to block unlicensed websites offering gambling in Denmark. At the time of the onsite, 14 sites had been successfully blocked.

358. While there is no evidence to suggest significant criminal involvement in either FIs or DNFBPs, it would be beneficial if there was greater engagement between competent authorities regarding licensing and registration of entities.

Supervisors' understanding and identification of ML/TF risks

359. Supervisory authorities in Denmark generally have a high-level identification, understanding and assessment of the ML/TF risks in their respective sectors. As explained in IO.1, this understanding is mostly based on the NRAs, rather than a detailed understanding of the specific threats and vulnerabilities of the Danish financial sector. The understanding of the RBA is also weakened by a poor understanding of ML risks at the domestic level. As a result, the application of the RBA by supervisory authorities is mainly based on sectoral threat and vulnerability assessments. For example, Denmark is not a cash-based economy, and yet much importance is placed on cash as an indicator of risk and on the currency exchange sector, while others areas such as where the criminal proceeds are already in the system (e.g. tax fraud) receive limited attention (e.g. money remitters).

360. In 2012, the FSA developed a risk rating matrix which combines an assessment of inherent ML/TF risks associated to an FI's business model and the assessment of the quality of AML/CFT systems and controls in place (mainly based on available information and interviews with managers). The scoring resulting from this combination allocates a ranking to each FI ranging from 1(lower risk) to 32 (higher risk). While this risk matrix appears to demonstrate a detailed understanding of sectoral and specific risk factors of each FI, it does not reflect the actual ML risks FIs are exposed to. This is substantiated by the documentation provided to assessors, where it did not appear that FSA's inspections included any actual review of the scoring generated by the risk matrix (which could be done for instance when reviewing the FI's AML/CFT systems and controls in place). This risk matrix is equally not designed to be a dynamic tool, as it does not easily allow for a review on a regular and continuous basis, for example upon changes in management of an FI but also as a follow-up to an on-site inspection (i.e. identified AML breaches not taken into account to re-adjust the scoring). In fact, assessors were told that the scoring, as calculated in 2012 for each FI, had not been updated since.¹⁸

361. The FSA also produced a number of sectoral risk assessments, which cover investment firms, small and middle sized banks, life-assurance companies and multi-employer occupational pension funds. These sectoral assessments do not identify the risks within the sectors, do not cover all sectors, are not kept up-to-date, and are limited in scope (e.g. the small and middle sized banks assessment is essentially an offsite compliance survey). The NRA findings feed only to some extent into the supervisory authorities' ongoing risk assessment process within each sector, and do not appear to be considered when determining the frequency of supervision. The limited resources for

¹⁸ The FSA however indicated that it has now put the risk assessments into its electronic system ('SVIP'), and is planning on keeping the information updated.

ML/TF activities, especially within the FSA, negatively impact their capacities to implement a proper RBA.

362. The DBA demonstrated some understanding of ML/TF risks. It produced an internal ML strategy and action plan based on a risk assessment and prioritisation using the ML NRA, information from SKAT, the police and other specialist areas of the DBA, and from the IT systems at the DBA, as well as experience from previous on-site inspections. As a result, in 2016 the DBA focused supervision on currency exchange and CSPs. The risk assessment which is annexed to the internal ML Strategy also includes a list of risk factors for considering the risk of individual entities.

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363. In practice, however, it appears that DBA's understanding of risk is not sophisticated and exists only at a general level, resulting in focus on whole sectors without differentiating risk within the sector. Their own risk assessment and priorities document states the following in relation to real estate agents for instance: "Real estate agents are not described in the NRA, and the Authority only has limited experience about this area from its own on-site inspections. First impressions are that this area is only to a limited extent at risk of abuse in connection with ML. Therefore, efforts for 2016 will first be through dialogue with the relevant sector organisations. Furthermore, on-site inspections in this area will only be conducted on the basis of serious tips about specific undertakings." This does not demonstrate an understanding of the risks within the sector, although it is welcome that there is recognition of the lack of understanding and an intention to do something about it.

364. The BLS demonstrated little understanding of risk in the legal sector, particularly as that sector intersects with the real estate and company formation sectors, stating that they believe lawyers to be a low ML/TF risk. Although there is something which the General Council of the BLS refers to as a risk assessment, the assessment is basically a statement of belief, with no underlying methodology. The assumption of low risk is said to be based on their supervision of the industry and their own observations of the industry, including lawyers' awareness of ML/TF and their obligations. The BLS's belief that lawyers understand their risks was not observed to be justified in practice. For example, their focus on the risks associated with cash, which are not relevant to lawyers.

365. The DGA demonstrates a better understanding of risks within its sector and focuses attention on areas of concern across the sector. For instance, in 2016 it completed a thematic review of internal controls in all of the seven land based casinos. DGA's guidance also displays a certain understanding of risk of the casino sector. DGA uses systems and data to understand risk in both online and land based casinos. Decisions about intensity of supervision are informed by quarterly reports required from casinos about number of STRs and employee training, products offered, scales of operation, information from other parts of the DGA and the licence holder's general approach to legislation. Inspections may also occur as a result of information received from players.

Risk-based supervision of compliance with AML/CTF requirements

FSA

366. Supervisors are required to apply risk-based supervision, but in practice, such an approach is at an early stage of development. The FSA has a department responsible for AML/CFT regulation and

supervision in relation to a wide range of FIs. As noted in Table 24, this team has only three full-time staff. FSA's ability to conduct effective supervision is strongly hindered by the very limited human and other resources allocated to this function. There has been a high turnover of staff across the FSA in recent years, which also has an impact on its ability to effectively carry out its functions. In addition, the tools available to supervisors are rather simple, and do not allow for an adequate assessment of institutions' risk profile, quality of risk management processes, governance, compliance and financial condition nor for the conduct of on-site and off-site supervision which targets ML/TF risks. The FSA thus relies on IT tools/systems, and software implemented by audited entities to conduct its own analysis. The same weaknesses are observed in other supervisory authorities, especially those located in Greenland and in the Faroe Islands, some of which (e.g. Tax Agency) have no specific resources dedicated to AML/CFT matters.

367. The FSA has not yet developed an adequate risk analysis tool to assess the inherent risk of FIs. The current assessment of risks does not take into account each FI's unique business model, products and services, or delivery methods. It also does not consider individual FIs' compliance with their AML/CFT obligations, any mitigation measures put in place, or any other relevant supervisory information. Furthermore, as described above, the last assessment of individual FIs risk rating took place in 2012, and has not been reviewed since. This means that the current level of risk posed by individual FIs is not used to determine the scope, frequency and intensity of supervision.

368. Denmark did not provide the FSA's procedures for AML/CFT inspections. The procedures for planning other inspections were provided. Those procedures focus clearly on those institutions deemed to be at highest risk of violating regulations, i.e. compliance risk. This reinforced the assessors' strong impression that, to the degree that risk is taken into account at all, the focus of the FSA is on compliance risk, rather than ML/TF risk when selecting FIs for inspection.

369. In comparison to the number of institutions in each sector, the low number of onsite inspections is a concern. In the money remittance sector for instance, which is rated high risk in the NRA, there were very few onsite inspections (i.e. five inspections between 2012-2016) (see Table 26). Similarly, only 13 inspections were conducted in the banking sector (see IO.10 about the lack of methodology to guide the discussion with reporting entities). This means that the large majority of financial institutions did not have an inspection for at least the last four years, and in many cases it appears that there has never been an inspection.¹⁹ The limited resources of the FSA also negatively impact on the duration and the depth of onsite inspections. In 2016, the inspection of Denmark's largest bank involved only two FSA staff, for a period of three days dedicated mostly to interviews. Further, as noted in Table 26 no AML/CFT offsite inspections have been completed since 2014, and assessors received no information about the nature and scope of these off-site inspections. The FSA did not conduct any thematic reviews of activities or products exposed to higher ML/TF risks, or other types of supervision actions that would assist in ensuring higher levels of compliance.

¹⁹ This relates to AML/CFT inspections. There were inspections for prudential inspections by other sections of the FSA.

Table 26. Inspections by the FSA (2012-16)

	2012	2013	2014	2015	2016
Number of FSA on-site and off-site inspections					
Nb. of on-site inspections*	8	15	2	10	3
Nb. of off-site inspections (self-assessment)**	45	19	39	0	0
Type and No. of licensed/registered institutions in sector	Total number of on-site inspections				
Banks	5	3	0	3	2
Investment management companies	0	0	0	0	0
Mortgage-credit institutions	1	1	0	0	0
Investment firms	0	2	0	3	0
Life-assurance companies & multi-employer occupational pension funds	0	0	0	2	0
Savings undertakings	0	0	0	0	0
Providers of payment services & issuers of electronic money	0	3	1	0	1
MVTS	0	2	1	2	0
Insurance brokers	0	0	0	0	0
Branches and agents of foreign undertakings	2	2	0	0	0
Investment associations	0	0	0	0	0
Others MLA § 1, no. 12	0	2	0	0	0

* Mainly interviews and requests for information

** When performing an offsite inspection, FSA requests information from the institution (e.g. a self-assessment scheme that the institution has to fill out). FSA will then carry out its own assessment of the information provided.

370. In practice, while information that prudential supervisors hold is taken into account, the low number of on-site and off-site inspections seems to have an impact on the risk ratings given to an undertaking and the subsequent decision to inspect it. Similarly, the more an entity reports STRs, the more it will be considered to be exposed to ML/TF risks. Less consideration is given to its business model, customer classification, customer acceptance policy, geographical exposures and delivery channels, or the FI's own risk assessment of products and services. As mentioned above, the FSA's risk matrix has not been reviewed since 2012.

371. Interviews with FIs indicated that FSA's on-site supervision was mostly interview-based (i.e. discussions on received documentation and sampling of files/transactions). The mere review of requested sample files appears in this regard insufficient, as little attention is given for instance to reviewing the efficiency of information systems and tools in place within the FI for their transactions screening and monitoring (including the quality of the FI's transaction monitoring alerts). FIs also indicated that the scope of the controls conducted by the FSA does not cover for example the analysis IT systems/tools parameters to detect unusual transactions or PEPs. Further, there is no analysis of whether the FI has an adequate methodology to identify, classify and mitigate ML/TF risks.

372. Assessors were not provided with any methodology used by the FSA to determine the sampling of customers' files or transactions. The sampling of files for inspection is done randomly within a category of customer (unless it is a small FI in which case the FSA would ask for all customer files). However, this does not necessarily meet the requirements for a risk-based approach, as the FSA holds little and outdated risk information at various levels, namely at the sectoral and institutional level, on the products and customer type, and at individual customer level. There is no consideration of whether these samples cover an FI's riskiest financial products or businesses. While FSA indicate selecting the samples within the riskier areas, FI's individual risk scoring was not been updated since 2012 as explained above.

373. The assessment team is also of the view that the FSA metrics on the adequacy of AML/CFT controls put in place by reporting entities are often based on statements and internal risk assessments by FIs themselves. It appears that insufficient work is done by the FSA to independently verify these elements. While the FSA indicated a reliance on internal audit reports and on risks identified during prudential inspections, these reports and inspections do not have an AML/CFT focus. The overall result is that there is a weak underlying approach to identification of risks, very limited resources, and consequently ineffective supervision of compliance with AML/CFT requirements.

DBA

374. The DBA suffers from similar resource issues, with resources being insufficient to supervise the AML/CFT compliance of more than 12 000 undertakings. Although the DBA has doubled its staff in the last two years (from 3 to 7), which has led to an increase in the number of inspections carried out (see Table 27), resourcing is still insufficient for so many undertakings. The DBA's focus in 2015 and 2016 has been almost entirely on currency exchange offices and CSPs, and it expects to have done an on-site inspection of every currency exchange office in Denmark by the end of 2016.

Table 27. **Inspections by the DBA (2012-16)**

	2012	2013	2014	2015	2016
Total No. of inspections by DBA	41	28	13	150	89
on-site inspections	30	25	9	126	78
off-sites inspections	11	3	4	24	11
Type and No. of licensed/registered institutions in sector	Total number of inspections				
Providers of Services/CSPs (400+)	11	12	3	39	32
Exchange offices (67)	19	13	6	53	39
State authorised public accountants (5 600)	1	1	1	23	6
Real estate agents (3 295)			1	4	2
Tax advisors/external accountants (7 000)	6	2	1	24	4
other	4		1	7	6

375. Although at this level the DBA applies a RBA to selection of sectors for focus, it does not use risk to supervise within sectors, or to ensure there is some focus on sectors which the NRAs rate as less prominent areas of risk. Notably, the ML NRA does not deal with real estate agents, though it does include real estate transactions in its prominent areas of risk. The DBA has taken the view that criminals who use real estate for ML/TF purposes do not go to professional real estate agents and therefore places little focus on real estate agents either for inspections or awareness-raising, despite the conclusion in the ML NRA that laundering through purchase of real estate, in Denmark or abroad, is relatively widely used. In addition, very little supervision takes place of those entities which fall within MLA s1(1)(17). Even for areas such as CSPs, which are prioritised, the number of entities is large and only a small percentage has been subject to supervision.

376. The DBA's Supervision Plan 2016 focuses on cross-cutting supervision. It also notes that as part of this the relevant supervisory areas are working on implementing a higher degree of data driven supervision and on the identification of risk factors for use in selecting entities for inspection. The supervisory and team managers of the relevant supervision and control areas are responsible for ongoing coordination between supervisory areas and implementation of specific cross-cutting supervisory efforts. However, it is notable that after a spike in the number of inspections in 2015, numbers have dropped off again in 2016. The assessment team considers that these efforts should be increased and that benefits could be realised by using multi-disciplinary supervision teams, permitting more focus on entities within other DNFBP sectors than is currently possible.

377. It is important to emphasise that the DBA is showing some progress in implementing a RBA to supervision, as demonstrated by the DBA's 2016 Supervision Plan. DBA is in the development phase of a truly RBA, but is limited by the level of resources devoted to AML/CFT supervision.

BLS

378. BLS supervision of lawyers does not take account of risk, with a random selection of about 200 lawyers covering around 10% of law firms for onsite inspections each year. This results in inconsistent coverage and a lack of focus on where risks lie in the industry. This is despite the fact that a law firm which has been found to have deficiencies will be placed back in the pool for random selection (if not, they would have only been placed back in the pool for four years after an inspection). This system can result in law firms not having an onsite inspection for 5 years or more given the random basis of the selection process.

379. The inspections are integrated with more general compliance inspections for lawyers. The BLS stated that inspections typically take around two hours and any necessary orders will usually be given on the spot, though may also be given after completion of the onsite. Several lawyers within a firm will be randomly selected to provide files for inspection, with no warning beforehand of what those files might be. There are no statistics about remedial orders given by the BLS to lawyers and little information about what those orders might cover, although figures provided by the BLS suggest that they mainly relate to s.12 and s.25 of the MLA.

DGA

380. The DGA works in ways which maximise the resources it is able to apply to compliance. Onsite inspectors cover all aspects of compliance for land based casinos, including AML/CFT compliance, with a specialist AML/CFT team focusing on thematic compliance across the land based casinos and on online casino compliance. Land based casinos are supervised on a day to day basis which means that a DGA inspector may be present on site during operating hours.

381. Innovative ways of working with data and systems are used, with data being received from online casinos into a central monitoring system. Land-based casinos provide data on gambling transaction on electronic gaming machines. As well as using the data automatically generated by the DGA's control systems to supervise licence holders, it has been used to conduct a risk and materiality assessment to inform the focus areas for in-depth inspections. The DGA's AML Strategy differentiates within the sector on the basis of risk and sets out parameters to be used for selection of entities. Thematic inspections are conducted across both online and land based sectors based on observed areas of ML/TF and/or compliance risk. For instance, as well as the thematic review of internal controls mentioned above, a project was conducted in 2013 on suspicious transaction reporting, resulting in increased reporting from casinos, and another was commenced in 2016 focusing on obligations to monitor, examine and report players' suspicious transactions or activities and involving 15 online casino licence holders.

Remedial actions and effective, proportionate, and dissuasive sanctions

382. There are significant concerns about the approach to supervision and remedial action. The range of powers and tools for supervisors to enforce compliance is narrow. While orders can be made under the MLA to rectify violations, these are not enforceable, other than through referral to police for investigation and prosecution. There is thus a significant focus on referral to police for investigation and prosecution for breach of MLA requirements.

383. Supervisors take an educational approach to promoting and enforcing remedial actions to address deficiencies identified through off-site desk reviews, discussions and on-site inspection missions. However, most obliged FIs are unaware of the rare supervisory actions and sanctions and do nothing to inform themselves about the actions being taken and the results. This focus on remedial measures through engagement and discussions with the supervised sectors, followed by criminal sanctions only in cases of persistent failures or inattention to remedial actions, is ineffective.

384. Authorities indicated that the publication of conclusions of desk reviews or on-site inspection missions is considered by supervisors to be as dissuasive a penalty as a fine or financial sanction. The assessment team noted that Denmark considers that, culturally, reputational damage caused by such publication is a significant deterrent. This is, however, not borne out by the evidence. In fact, there are currently ongoing police investigations of Denmark's two largest banks, one of which previously received an order from the FSA. No material has been provided that supports the contention that reputational damage has been a significant deterrent.

385. The MLA provides for publication of all inspection reports and orders made by the supervisory authorities where a matter is seen as significant or has been referred for police investigation. A similar provision applies where the FSA has referred a matter for police investigation. There are, however, exceptions in the MLA where publication will cause disproportionate damage to the undertaking. The FSA indicated this exception has not been relied on. For the FSA, in a few cases relating to a lack of fitness and propriety of an individual, orders were published in an anonymous version while for the DBA, of 133 orders in 2015 and 40 in 2016, respectively 36 orders and 32 were published in an anonymous version.

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386. As noted previously, FSA/DBA's on-site inspections last on average of one to three days, regardless of the size and the type of the FI. This does not appear to be sufficient time for in depth evaluation of the adequacy and effectiveness of the controls implemented by the larger institutions in meeting AML/CFT obligations and risk mitigation. Similarly, it does not allow for analysis of the actions that a FI has taken to detect unusual or suspicious activity or transactions, to identify a PEP, or to review related IT systems (including systems that are generating alerts).

387. Few administrative actions are available to supervisors to force FIs to put in place remedial action and comply with AML/CFT requirements. The FSA has the power to issue orders under s.34(7) of the MLA (see R.35). The same provision also allows the FSA to use other administrative reactions, namely "reprimands" and "risk information" to draw FIs' attention to elements that present significant and immediate risks.

388. Onsite inspections focus exclusively on the main obligations laid down by law and the formal compliance with these obligations (e.g. the existence of written procedures, customer identification, and the appointment of an AML/CFT compliance officer). Most of the MLA violations identified during FSA's and DBA's onsite inspection missions relate to attention to complex/unusually large transactions (s.6), STR reporting (s.7), customer identification (s.12) and internal controls (s.25). The STR reporting requirements (including of all relevant supporting documents and information), the identification of beneficial owners and detection of PEPs, the relations with higher risk countries and asset freezing mechanisms do not seem to be examined systematically during inspection missions. Similarly, inspection teams do not systematically look at the quality of reports submitted, and do not consider whether there are unreported transactions which should have been reported, though they do examine files held on potentially suspicious transactions where the institution felt that the suspicion had been disproved. Assessors also noted that supervisors do not systematically examine the configuration of IT systems and tools used for monitoring, as well as PEPs detection and the matching with international sanctions lists of designated persons.

389. DBA also issues written orders under MLA s.32(5) as a result of on-site inspections. In the past it seems that follow-up inspections have not been routine and entities were not complying with these orders within required timeframes. This has changed somewhat in the last two years with the increase in the DBA's resources, although from what assessors were told at the onsite follow up is still limited (two cases in 2016, one in 2015 and none in 2014). Denmark stated that as first inspections can often result in a police report, follow up will be suspended in order to allow the police to investigate. And in some cases, particularly in higher risk sectors such as currency exchange, the business will close down either voluntarily or involuntarily (e.g. bankruptcy), and

follow up is not possible. In addition, no document (spreadsheets, statistics) was provided on a follow-up of the implementation of remedial measures put in place after each on-site mission by supervisors. If a business continues to operate despite a referral to the police, it would be preferable to have some follow up and further assistance with attempts to comply. This would support the work of the supervisor in its broader role, as well as helping to enforce compliance.

390. The trend in the number of orders applied to currency exchangers shows that there is no improvement in compliance in this sector. Indeed, almost 80% of audited entities receive one or more orders every year.

391. While s.37(5) of the MLA provides for criminal sanctions for breaches of orders issued by the DBA pursuant to s.32(5) and for those issued by the FSA pursuant to s.34(7), it is not clear how often this provision is used despite the fact that it would be easier to prove a case for breach of an order under this provision than to prove the underlying breach of the MLA. Administrative fines (which are called *default fines* in Denmark) may only be imposed in situations where a FI has not submitted documents requested by the supervisor. Both the FSA and DBA stated that no such fines have ever been issued.

392. As evidenced by a number of cases, the only reliable means available to ensure entities are brought into compliance is to refer the case to the police. This is used as a threat in the case of continuing non-compliance with issued orders. The police may then choose whether or not to initiate a criminal investigation, at the end of which the Prosecutor has discretion whether or not to open judicial proceedings, which could lead to a fine or imprisonment. It is possible for an entity or individual to settle a case before it proceeds to a hearing by accepting a fine. This does not amount to an administrative penalty and comes at the end of the investigation process when it is clear there is a case to be answered. In relation to the DBA, out of 321 on and off-site inspections conducted between 2012 to November 2016, 290 resulted in orders being issued, of which 52 were later reported to the police for investigation (see Table 28 for the number of reports to the police by DNFPBs sector and Table 29 for an overview of the number of inspections conducted by the FSA and DBA, which led to orders being issued, cases being prosecuted and sanctions being applied).

Table 28. Number of reports to the police by DBA

DBA	2012	2013	2014	2015	2016
Currency exchange offices	2	4	3	9	4*
CSPs	3	9	4	5	1
Accountants	2	1	0	0	1
Unknown**	0	1	3	0	0
TOTAL	7	15	10	14	6

* DBA reported 6 SARs to MLS following onsite inspections and 4 were reported to the police

** Unknown relates to entities that are not under the DBA supervision. It could include entities which have violated the ban on cash transactions (which is the reason why they have been reported to the police).

Table 29. Number of inspections, orders issued, reports to police, prosecution/conviction and sanctions applied for FSA and DBA

	2012	2013	2014	2015	2016	Total
FSA						
Total Inspections	53	34	41	10	3	141
Number of on-site inspections	8	15	2	10	3	38
Number of off-site inspections	45	19	39	0	0	103
Number of orders issued *	52	59	14	34	27	186
Number of cases reported to the police	0	3	2	1	2	8
Number of prosecution / conviction **	2	3	5	2	3	15
MLA sanctions imposed (Money-lenders, PSPs, Banks, Financial Leasing)	2	3	5	2	3	15
DBA						
Total Inspections	41	28	13	150	89	321
Number of on-site inspections	30	25	9	126	78	268
Number of off-site inspections	11	3	4	24	11	53
Number of orders issued	37	26	13	133	81	290
Number of cases reported to the police	7	15	10	14	6	52
Number of prosecution / conviction	1	3	9	9	6	28
MLA sanctions imposed (CSPs, Currency exchangers, Auditors)	1	3	9	9	6	28

* An inspection can result in multiple orders being made, which explains why the number of orders issued is sometimes higher than the number of inspections conducted.

** All prosecuted cases resulted in a conviction, and sanctions were applied for all convictions. See breakdown of sanctions applied in **Table 30**

393. There are no maximum or minimum fines in Denmark. Fines actually imposed by the courts have been as high as EUR 804 300 but can also be much smaller (see Table 30). As shown below, the number of sanctions imposed remains very low and in most cases the amounts are not proportionate and dissuasive.

Table 30. MLA sanctions imposed on legal and natural persons, settled by judgment or a fixed-penalty notice

In Euros	2012	2013	2014	2015	2016
Currency Exchanger- <i>Number of sanctions</i> <i>Amount</i>	1 236 000 €		4 8 000€ 800€ 530€ 940€ 13 400€	7 27 000€ 2 700€ 270 000€ 27 000€ 105 000€ 134 000€ 13 400€	1 134 000 €
Money lending provider <i>Number of sanctions</i> <i>Amount</i>		1 335 100			
Payment services provider <i>Number of sanctions</i> <i>Amount</i>				2 5 300€ 530€	2 26 800 € 540 €
Banking institutions <i>Number of sanctions</i> <i>Amount</i>	2 87 000€ 804 300€	2 6 700€ 737 300€			1 6 700 €
Financial leasing <i>Number of sanctions</i> <i>Amount</i>			5 54 000€ 77 700€ 93 800€ 21 400€ 101 500€		
Service provider <i>Number of sanctions</i> <i>Amount</i>		3 8 000 € 13.400 € 2.700 €	4 26 800 € 2.700 € 6.700 € 16.800 €	2 4 000 € 1.300 €	3 6 670 € 670 € 1.300 €
Auditor <i>Number of sanctions</i> <i>Amount</i>			1 5.400 €		2 134 000 € 13.400 €

394. While police do prioritise cases, it can take time to bring them to court caused by delays in getting material from the entities being investigated. This is mitigated by the ability of the entity being investigated to settle the matter by accepting liability and accepting the fine. Where no criminal offence can be proved, there will be no police report.

395. Lawyers can be disbarred in addition to criminal sanctions for breach of the MLA. However, there has been no disbarment relating to non-compliance with the MLA. The BLS does not appear likely to make a police report except in cases where an unqualified person is using the term “advokat”.

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396. The DGA has fewer statutory powers. The Consolidated Gambling Act and the Executive Orders provide for the DGA to supervise and monitor compliance but give no formal powers other than a power to inspect and to order disclosure of information. This appears to be standard practice in Danish supervisory legislation. The DGA does issue informal enforcement notices which include a notice that non-compliance will result in referral to the police. Since 2012, only two cases have been referred to the police.

397. Another sanction available to supervisors is the order for the removal of members, directors or the board of management from their position, where breaches raise questions as to fitness and propriety requirements. Registered undertakings (incl. currency exchange providers and entities which are registered to provide the services listed in MLA Annex 1) can be deregistered indirectly for non-compliance with their AML/CFT obligations in Denmark, Greenland and the Faroe Islands only if there is a criminal conviction [s34(4) MLA]. PSPs and e-money providers can have their license revoked based on AML/CFT non-compliance [s.90(1) no.5].

Impact of supervisory actions on compliance

398. On a positive note, the number of STRs has grown considerably over recent years, with a noted increase in the banking and gambling sectors in 2015, though it is unclear whether the quality of STRs has also improved (see IO.6).

399. The FSA and the DBA are of the view that the competence of compliance officers has also improved. The trend reflects the fact that more controls and on-site inspection missions were conducted. This trend also underscores very strong differences among sectors and sub-sectors. Banks contributed for up to 60% of all STRs received in 2015 and an even a larger share of the total number of transactions comprised. About half of all STRs were sent by the four main banking institutions in Denmark and a large part of the remainder came from one casino.

400. The increasing number of reports from currency exchangers demonstrates greater awareness of their obligations, and reflects the special focus of the supervisory authorities on these activities. However, trends for other reporting entities, including CSPs and MVTs, and the trend in the number of orders contradict any general improvement in compliance with AML/CFT regulations.

401. The Danish supervisory authorities stated at the onsite that the system operates on the basis of trust. However, until recently, very little action was taken to follow up supervisory orders which have the result that at least some reporting entities feel no pressure to comply, or to comply within a reasonable time. Supervisors spoke about a culture where the threat of reputational harm is

sufficient to ensure entities become compliant and the FSA actually referred to bank failures to comply as a “breach of trust”. However, this view was not borne out in practice. The very fact that a major bank continued until 2016 to be non-compliant with orders made in 2012 reflects an environment where effective remedial action has not been taken and entities do not feel the need to comply. This is in addition to the FSA’s findings of poor compliance in its report on the Panama papers, and another investigation into the laundering of several billion DKK from Russian organised crime through foreign branches of two major Danish banks over several years (see case study below). Taken together this suggests that the limited compliance action has not led to an improvement in financial institution compliance. While the banking sector represents 60% of Danish financial sector assets, supervisors did not demonstrate strong and timely supervisory activity in this sector. This is reflected by low numbers of off-site and on-site reviews of FIs, orders and the associated application of sanctions for non-compliance. None of the supervisors demonstrated a positive impact from their actions as regards AML/CFT, even if they showed an increase in key findings or serious breaches (orders) which were parallel to the increase in on-site inspection missions conducted (see the above tables).

Case Study 7: Danish bank involved in major ML case

In March 2017, there was significant press coverage of an alleged major ML case (the “Russian Laundromat” case) involving in total more than EUR 18 billion and multiple shell companies between 2011 and 2014. The publicly available information suggests that approximately EUR 1.1 billion was passed through a branch of a major Danish bank in another EU country (3rd largest amount in terms of banks involved).

Chronology of events:

1. At the beginning of 2012, the foreign financial regulator contacted the Danish FSA about high risk non-resident company customers in the foreign branch of a Danish bank. The FSA followed up with the bank, which confirmed the information received, and also continued the dialogue with the foreign regulator. Based on this the FSA was reassured that the branch had effective measures to address its ML/TF risks.
2. In June 2012, the FSA concluded an on-site inspection of the bank. The FSA published a statement which revealed a number of failings, including deficiencies in customer identification, particularly high risk customers, transaction monitoring, non-compliance with EU Regulations, and internal controls.
3. In November 2012, after a follow up inspection, the FSA stated it was satisfied with the follow-up measures taken by the bank, and that all orders had been complied with and the risks mitigated.
4. In February 2015 the FSA was informed by the foreign regulator of significant AML breaches identified in the bank’s foreign branch (e.g. CDD deficiencies, lack of identification of significant ML risks, insufficient risk mitigation measures). That same month the FSA conducted an on-site inspection of the bank in Denmark, which showed

significant failing in terms of non-compliance with the Danish MLA, including failing to comply with one of the orders from 2012 regarding surveillance of correspondent banking relationships.

5. As a result, the FSA issued a number of orders to comply in 2015, and referred the bank to the police in 2016 for non-compliance with the MLA in regards to the requirements on correspondent banking relationships. The inspection report based on the 2015 inspection also mentioned that the Danish management board had not identified the AML/CTF risks of the foreign branch in a timely manner thereby failing to implement sufficient mitigating measures.

At the end of the FATF onsite visit, there still had been no prosecution or sanction as a result of the referral to the police. Danish authorities informed that the case was still under investigation.²⁰

402. Moreover, feedback from the private sector indicates that supervisory actions have had a very weak impact on the level of compliance in the financial sector. As noted above, while there are powers to publish orders against non-compliant FIs and DNFBPs, this does not always occur, nor do reporting entities take action to make themselves aware of such publication. Some FIs complained of the lack of interactions with the supervisors (few meetings, absence of feedback, guidance, or useful ML trends/typologies). Some, including the main banking institutions, requested more engagement with the FSA to better implement adequate measures to mitigate risks and to improve the methodology used to assess their AML/CFT controls and systems.

403. Authorities in Greenland and the Faroe Islands have not conducted any AML/CFT desk reviews or on-site inspection missions and are, therefore, unable to show any impact on compliance.

Promoting a clear understanding of AML/CTF obligations and ML/TF risks

404. Actions of supervisors to create awareness and provide guidance and feedback are very limited. More needs to be done as reflected in IO.4. Some channels are used to interact with the regulated sectors including press, annual conference, meetings organized by other divisions of the FSA/DBA with compliance officers to discuss and sort out regulatory issues, including AML/CFT matters. These bilateral meetings with main institutions are infrequent and not sufficient to improve the understanding of AML/CFT requirements among all entities of the different sub-sectors of the financial sector or DNFBPs.

405. The general lack of interaction of supervisors with the private sector, which was confirmed during the interviews, and the absence of involvement of the private sector in the development of the NRA contribute to the low level of awareness of ML/TF risks among most reporting entities. Only the main banking institutions, due to their international activities, seem to have a somewhat more

²⁰ This is still the position as at the date of the issue of this MER.

advanced and deeper knowledge of the great complexity of risks. This is similar in the case of online casinos due to the high volume of data that is processed on a daily basis.

406. Neither supervisory authorities (with the exception of DGA which holds biannual committee meeting), nor national professional representative associations have appeared to hold regular meetings with the obliged entities or members. Supervisors indicated that they rely on the occasional invitation to events organized by industry associations and the financial sector to promote AML/CFT issues.

407. Apart from the feedback received at the end of each on-site inspection (i.e. on the deficiencies and suggestions for improvement), none of the supervisory authorities have put information processes in place to assist obliged entities in the strengthening of their AML/CFT system.

408. Supervisory authorities do consider that providing periodic feedback on good and poor practices, thematic studies on ML/TF trends and patterns could assist FIs to improve their understanding of the ML/TF risks they may be exposed to, but that they lack the experienced resources and the understanding of ML/TF risk to do so. As a result there is not enough guidance on AML/CFT risks and related obligations. An example could be given with the currency exchange sector, which in spite of being considered to be the most exposed to ML/TF risks, is not subject to specific guidelines or typologies which could help both the currency exchange sector and other FIs and DNFBPs to better detect and report suspicious activity. It is apparent from discussions with the private sector that many obliged entities are calling for further, or any, guidance specific to their business and the ML/TF risks they may face (e.g. guidance on how to conduct risk assessments of their products and services, and customer risk-profile development). This would be particularly useful to those sectors which demonstrated very little or no understanding of risk such as the real estate sector. This sector while itself seen as low risk by Denmark, deals with real estate transactions which were described within the NRA's more prominent areas of risk.

409. The FSA, DGA and BLS do provide guidance to the sectors they cover. DBA relies on the FSA guidance as their supervised entities are also covered by the MLA. There are also guidelines on how to apply for licences. However, this guidance has a number of weaknesses (as described under R.34), is not updated on a regular basis and is not sufficiently detailed or sector specific.

410. The DGA's guidance is considered useful by casinos. Casinos seem to have a good understanding both of risk and of the legal requirements. The DGA over the last two years has undertaken a number of thematic supervision exercises, which are very useful in promoting understanding of obligations and of ML/TF risk. The DGA also runs Contact Committees for industry, at which issues such as AML/CFT are discussed, with the AML rules being a permanent agenda item at the Committee for online casinos since 2013. The land based casino Contact Committee commenced in 2015. There have also been separate meetings and workshops on AML/CFT.

411. BLS provides specific guidance to lawyers and has produced an AML/CFT guide. AML/CFT thematic is included in training for lawyers. While the mandatory continuing education scheme often includes AML/CFT training, it is at the discretion of the individual lawyer to decide what training is relevant. Lawyers are reminded during onsite inspections to have regular training of staff on AML/CFT matters. Guidance is also provided on request by email or phone, in particular in respect

of whether a matter is suspicious and should be reported. Despite this, at the onsite, the legal profession showed a limited awareness of the risks and required measures.

412. Overall, it appeared to the assessors that there was minimal and informal contact only between the FSA, the DBA and their supervised entities, apart from at inspections. This is also the case with the industry associations, most of whom claimed that awareness-raising on such issues was not part of their mandate. There are, however, some examples of industry associations providing information to their members, such as the information provided by the Bankers' Association to members about the risks that MVTS might be disguised as NPOs. The FSA also mentioned having extensive informal contact with one of the largest bank in Denmark in relation to a well-known payment application (MobilePay) as well as informal meeting with the associations.

413. Pursuant to the MLA, the FSA and DBA also have the power to issue Executive Orders, as do supervisors in Greenland and the Faroe Islands. Five Executive Orders have on PEPs and exemptions.

Overall conclusions on Immediate Outcome 3

414. **Denmark has a low level of effectiveness for IO.**

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

Denmark achieved a moderate level of effectiveness for IO.5.

1. Denmark has an extensive system of registers of both personal and legal ownership information, which assists in preventing misuse and tracing beneficial ownership of Danish companies. The systems are innovative, available to the public, and utilised to understand vulnerabilities. Access to adequate and accurate basic and legal ownership information on most types of legal persons through the CVR is easy and fast.
2. Beneficial ownership is relatively easily traced through the CVR where no foreign ownership or control is involved. However, where beneficial ownership is more complex or involves foreign persons, legal or otherwise, then it is significantly more difficult. Reliance is placed on reporting entities collection of beneficial ownership information and the issues arising in IO.3 and 4 are relevant. Alternatively, mutual legal assistance channels must be used, with consequential delays.
3. Competent authorities broadly understand the ML/TF risks and vulnerabilities of legal business structures and have placed significant focus on supervision of undertakings and of CSPs. However, this is not reflected in an adequate understanding within reporting entities of these risks and vulnerabilities.
4. Actions to apply effective, proportionate and dissuasive sanctions against persons that are in breach of requirements to provide basic or beneficial ownership or other information have been very limited.

Recommended Actions

1. Denmark should implement its plan to review the new register after the deadline of October 2017, with a view to determining if there has been effective implementation, and whether the sanctions for failure to register are sufficient, including considering the possibility of a power to wind up an undertaking for non-registration of beneficial owners.
2. Include all undertakings in the requirements to register in the CVR.
3. Supervisors should apply dissuasive and proportionate sanctions for breach of requirements to provide information on basic and beneficial ownership.
4. Competent authorities should conduct outreach, in particular to CSPs, lawyers and accountants, to foster greater awareness of the risks and vulnerabilities of legal business structures and of obligations to ensure beneficial ownership is understood.
5. Conduct an assessment of the risks of misuse of legal arrangements in Denmark and use the assessment to inform the application of appropriate mitigating measures.

415. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The recommendations relevant for the assessment of effectiveness under this section are R.24 & 25.

Immediate Outcome 5 (Legal Persons and Arrangements)

Public availability of information on the creation and types of legal persons and arrangements

416. There are approximately 450 000 legal persons of various types currently registered in Denmark, with around 42 000 new registrations each year (see **Table 3**). There do not appear to be any types of legal arrangements that can be created under Danish law, nor is there any general legal recognition of foreign legal arrangements. Information on legal arrangements, such as trusts having a presence in Denmark through resident trustees, would be required to be kept by FIs or DNFBPs that have collected the information (including beneficial ownership information) as required by the MLA. Under the Tax Control Act, where trustees have tax liabilities in Denmark, they are subject to requirements to keep identity information on settlors and beneficiaries, but only two trusts have been recorded in this system. No information is available on how much information on trusts is held by FIs or DNFBPs.

417. Information on legal persons (generally referred to in Danish legislation as “undertakings”) and the corresponding legislation can be found online through the websites of the DBA (www.erhvervsstyrelsen.dk), SKAT (www.skat.dk) and the DCA (www.civilstyrelsen.dk). The DBA has a separate website (www.danishbusinessauthority.dk/business-denmark) where information can be found in several languages, including English and German.

418. The DBA has online guides regarding the different types of undertaking that can be created in Denmark, including the required basic ownership information, as well as information on the creation and registration procedures. Similar information can be found regarding non-commercial foundations on the website of the DCA. SKAT’s website contains information about corporate forms and obligations in relation to taxes and duties.

419. Basic information, including shareholdings and associated voting rights, on legal persons is publicly and freely available online in the CVR (<https://datacvr.virk.dk/data/>). Persons that hold direct legal shareholding of 5% or more are obliged to disclose this on the public registry, and if no one holds 5% or more then this fact must be disclosed as well. For certain types of legal persons (A/S, ApS, IVS, P/S and SE) legal ownership/shareholding information is also publicly available in the CVR. Non-commercial foundations and certain associations only have to register if they have tax liabilities. They must, however, provide their statutes to SKAT within three months of creation, even if they are not required to register. All public fundraisings must be notified to the Fundraising Board.

420. Beneficial ownership information in relation to fully Danish-owned legal persons can usually be ascertained by tracing through the legal shareholding information held in the CVR. Other forms of beneficial ownership information are not available in the CVR. In relation to legal arrangements that may have a connection with Denmark (e.g. through a trustee resident in Denmark), no information is publicly available. It is however noteworthy that legislation requiring registration of beneficial ownership was adopted by the Danish Parliament and enacted on 16 March 2016, although at the time of the onsite the legislation was not in force. The legislation will require all legal persons to

obtain and hold beneficial ownership information and make it publicly available through the CVR. The legislation will enter into force and effect on 23 May 2017, and legal persons will have until 1 October 2017 to register the required beneficial ownership information. The DBA intends to review the results of that process shortly thereafter.

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

421. Denmark conducted a specific risk assessment of legal business structures in 2015, which concluded that the ML/TF risks of undertakings are high. This finding was based on a precipitous increase in criminal judgments against undertakings in recent years and certain types of fraud involving legal persons, the ease of establishment and use of legal persons, their attractiveness to disguise the real persons involved and the source of the funds, and difficulties in detection. This sectoral assessment was incorporated into the ML NRA. However, this sectoral assessment contradicts the findings of the sectoral risk assessment related to CSPs, the entities that frequently create these business structures. The TCSPs assessment concluded that the risks for TCSPs were only medium, even though the number of TCSPs operating in Denmark has more than doubled in recent years. A similar conclusion on risk was reached regarding lawyers and accountants. These conclusions do not seem fully consistent. Moreover, the TF NRA also drew attention to the increased use of chain schemes, company front men, and VAT fraud by militant Islamists. As a result of the ML NRA's conclusions, the DBA in 2016 had a focus on CSPs. However, at the onsite visit it was not demonstrated that this had had any significant outcomes in relation to CSPs' understanding of the risks relating to use of legal entities. Nor did accountants or lawyers overall demonstrate an understanding of the risks or vulnerabilities involved in the use of legal persons and arrangements.

422. Danish authorities are aware of the investigatory challenges that exist when legal entities are used for ML/TF purposes. However, while the number of STRs featuring legal entities as transmitters or recipients is high, there has been no analysis of their actual misuse in connection with investigations or prosecution of ML/TF. SKAT is also aware of the misuse of legal entities in relation to VAT/carousel fraud but cannot quantify the scale of the abuse. As a result, the Danish competent authorities do not know the precise extent of the problem occurring in Denmark.

Mitigating measures to prevent the misuse of legal persons and arrangements

423. Over the last few years, Denmark focussed on the regulation of companies and businesses, and the strengthening of supervisory activities. The registration system was modernised and provides opportunities to prevent misuse of the system and to track indications of breaches of the law through effective data handling. DBA staff are focussed on identifying behaviour that could be indicative of misuse and this information is utilised in its general supervision. In the last few years, the DBA has significantly improved its IT systems so that these systems now not only provide considerable information, but also are part of the systems to check and prevent misuse automatically.

424. Denmark implements a number of measures and controls to mitigate risks. Controls exist regarding the information that is inputted, with Danish natural and legal persons that are creating or managing legal persons required to use a special form of ID (NemID), issued by a government agency. NemID is a common secure login to the Internet that is used for a variety of purposes, such as online banking, finding out information from the public authorities, or engaging with businesses. Owners and management of legal persons have to provide various identifying information including name, CPR or passport number, gender, date and place of birth and address. It is also necessary for persons incorporating companies to have confirmation from a lawyer, accountant or bank that the required capital has been paid.

7 425. Additional transparency requirements were introduced in 2014 (publicly available since June 2015) with the requirement to register owners that own more than 5% of the capital of many different types of companies (public limited, partnership, private limited, entrepreneurial and SE companies). An owner is required to notify the company of the acquisition of more than 5% within 14 days, and the company is then required to register this information as soon as possible. Where ownership drops below 5% there is also an obligation on the company to register this information, and where no one owns more than 5% of a company's capital, this must also be registered. In November 2015, the DBA followed up and sent reminder letters to some 42 500 companies. At the date of the onsite visit, ownership details for about 20 500 companies were outstanding (7.6% of companies obliged to report). For new companies now being formed, it is a mandatory requirement to provide relevant shareholding details when forming the company. Another step to increase transparency was the abolition of bearer shares in 2015, and an obligation for holders of bearer shares less than 5% to register those shares (holders of more than 5% must be registered as above).

426. The IT system is freely accessible and searchable, and can make linkages between persons, companies, addresses, etc. It contains information on ownership, management, and financial statements. The system automatically checks information that is filed (which must be done electronically), and will cross-check this information with various government registers, the CPR/CVR numbers and other details such as address and dates. This automated checking is then followed-up with more detailed manual checks in suspicious cases. The system is also designed to use large datasets and with machine learning to better identify potential risks.

427. As noted above, CDD requirements apply to FIs and DNFBPs, and Denmark states that this includes legal persons and arrangements. However, as noted in the TC Annex, there is a lack of clarity in the drafting of the relevant definitions, albeit this is clarified in the Explanatory Notes. Reporting entities are aware of their obligation to identify beneficial ownership and a few are aware of ways in which complex legal structures can be used to obfuscate ownership and disguise proceeds of crime. Others, however, despite being in the business of advising on or creating such structures, or dealing with them as clients, did not display an understanding of the vulnerabilities. The FSA's Guidelines on the MLA have a section on corporate customers which refers to risk assessments but gives little guidance on vulnerabilities, and trusts are only referred to in passing, other legal arrangements not at all. In practice, CDD is often applied in a formulaic manner and there was little evidence to show that verification of the beneficial ownership and examination of the chain of ownership to the ultimate beneficial owner occurs in a thorough and consistent manner.

428. CDD by reporting entities can provide valuable risk mitigation in relation to legal arrangements that are NPOs. As noted above and in IO.4, FIs undertake CDD but there are concerns with regard to the depth of verification of beneficial owners of legal persons. These concerns apply equally to NPOs. Specific information is not available concerning the extent to which beneficial ownership information is available in practice across NPOs as a whole, but as stated previously, across all legal persons, beneficial ownership can be relatively easily traced except where ownership is more complex or where foreign ownership or control is involved.²¹ However it should be noted that NPOs are only obliged to register in the CVR if they have tax or VAT obligations, and based on information currently available it is not possible to ascertain whether beneficial owners are Danish or foreign. NPOs met by the evaluation team stated that banks require information from them so as to understand and verify their ownership and control structures.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

429. Denmark has an extensive system of registers of both personal and legal ownership information, which assists in preventing misuse and tracing beneficial ownership of Danish companies. The systems are innovative, available to the public, and can be utilised to understand vulnerabilities. Access to adequate and accurate basic and legal ownership information on legal persons is simple and fast.

430. The situation is different in relation to foundations. Foundations in Denmark, both commercial and non-commercial, are similar to many other jurisdictions, being established in their founding documents for certain purposes, and they do not have owners in the same sense as companies do. Some of the attributes of foundations are thus more similar to trusts and other types of legal arrangements. Commercial foundations must register and provide details such as the foundation's name, address, statutes, objects, the board and management. Any special rights or privileges of the founder(s) must be stated in the statutes of the foundation which are publicly available. For non-commercial foundations, there is no requirement to register, except for tax or VAT purposes. However, they must provide statutes/articles of association to the DCA, including information about the promoters/founders and any rights or privileges they hold, as well as information about the board of directors and senior management. For commercial foundations, all information can be accessed through the CVR, which is accessible to competent authorities as well as by the general public. The information must be kept up-to-date, and information about current and former members of management is available. For non-commercial foundations which have registered for tax or VAT purposes, basic information such as name and address can be found in the CVR. Competent authorities and the general public can access the statutes and annual reports of non-commercial foundations through the DCA.

431. Beneficial ownership information is relatively easily traced through the CVR where no foreign ownership or control is involved. However, where beneficial ownership is more complex or involves foreign persons, legal or otherwise, then it is significantly more difficult. LEAs (including PET) stated

²¹ When Act 262/2016 is in force and effect and fully implemented, it will be easier to find the beneficial owner.

that they can sometimes access such information through reporting entities where it has been collected, usually on the basis of a court order, assuming they can link the company to a reporting entity. Court orders can be sought on short notice, and in urgent situations information can be obtained without a court order, provided that a court order is obtained as soon as possible. PET can also seek beneficial ownership information about NPOs from the Fundraising Board, as well as relevant reporting entities. However, there are no statistics about requests either in relation to PET's requests regarding NPOs, court orders or less formal requests to reporting entities by either PET or MLS. Nor was information available to assessors about the utility or reliability of such information. The reliability of the customer information is questionable, however, noting the concerns expressed in relation to IO.4 about the identification and depth of verification of beneficial owners of legal persons and arrangements with complex structures or foreign ownership. The MLA Guidelines (Chapter 10.4.4.3, para 113 & 118) set out how to confirm foreign company identity documents with a relevant foreign authority or person, but give little assistance to reporting entities in relation to tracing the ultimate beneficial owners of foreign entities. Concerns about supervision of CDD requirements are also relevant.

432. Where a reporting entity cannot be found or reporting entities have not been able to ascertain who the beneficial owner is, then more time consuming processes unfolds, including making requests of foreign counterparts. As stated in the last DBA annual report "the public register of owners only provides information about the immediate owners of a company, while the beneficial owners can still hide behind a chain of interlinked companies". However, as noted above, Denmark has passed legislation that will establish a register of beneficial owners for Danish undertakings, and which enters into force on 23 May 2017. This will have a significant impact in terms of increasing timely access to beneficial ownership information for legal persons, and Denmark should ensure that it covers all types of Danish undertakings.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

433. There are no forms of legal arrangement that can be established under Danish law, as foundations are considered as a form of legal person. Denmark advised that information on trusts might be obtained from the CVR, or from SKAT if trusts had registered for tax purposes under the Tax Control Act. However, CVR data indicates that in 2016 only two trusts were registered (out of more than 400 000 entities), and that these two were based on chance references in SKAT data.

434. The MLA and its Explanatory Notes do, however, require (albeit unclearly) that FIs and DNFBPS that have legal arrangements such as trusts as customers, must carry out the required CDD on the trustee and beneficiaries, though not the settlor. Thus, in relation to trusts and other legal arrangements where the trustee (or equivalent) is resident in Denmark, and making transactions regarding the trust, the competent authorities are essentially reliant on collection of both basic and beneficial ownership information from reporting entities or from foreign counterparts. Moreover, there is a very limited, and sometimes incorrect, understanding of the legal characteristics and operation of trusts, and other types of legal arrangements do not seem to have been considered at all. This also makes less likely that adequate, accurate and up to date information will be held on

beneficial owners by FIs or DNFBPs. The usual investigative tools are available to law enforcement to ascertain relevant information and where it has been collected it can be retrieved from FIs and DNFBPs with a court order. Overall though there does not appear to be timely access to information on trusts or other legal arrangements.

Effectiveness, proportionality and dissuasiveness of sanctions

435. As noted above, there is no specific information or statistics about the compliance of FIs/DNFBPs with the requirements to collect information about customers who are legal persons or arrangements, or about the numbers of court orders seeking such information or whether FIs/DNFBPs comply. In relation to the obligation to collect information, the penalties in the MLA apply. As noted in Chapter 5, criminal fines and imprisonment apply to breaches of the MLA, but while the sanctions are proportionate, they are not dissuasive as they are rarely applied and there is no other means of enforcing obligations.

436. The registration systems monitor for misuse and proper provision of relevant information and action is taken by the DBA where false or incorrect information is detected. The system has safeguards to prevent registration where required information is not provided or verified through uploading of documents. The DBA also conducts manual follow up activities. The DBA has the power to impose default fines for failures to comply with the requirements to report various types of information, such as the information on legal ownership. When sending reminder letters to those 20 000 companies that had not provided this information, these companies were advised that they would be fined DKK 5 000 per week if they continued to fail to comply. However, it was considered that enforcing such fines would be too resource intensive, and thus no fines have been issued against companies that still failed to comply. The DBA sought to address this issue by sending further letters.²² New legal powers to wind-up companies that did not comply came into force on 1 January 2017 (after the onsite), and the DBA will use the winding-up procedures if the other voluntary measures are not successful.

437. Breaches can be reported to the police, which could lead to criminal proceedings where there are more serious breaches, which may subsequently result in fines. However, there are no statistics available in relation to such reports. Overall, actions to apply effective, proportionate and dissuasive sanctions against persons that should be providing either basic or beneficial ownership information appear to be very limited.

438. Denmark has assessed the risks of ML relating to legal business structures as high. As a result, the DBA has placed some supervisory priority on CSPs in 2016. Understanding at this level has, however, not been translated into a broader understanding by reporting entities or a reliable approach to identification and verification of beneficial owners. Denmark has an extensive system of public registers of both personal and legal ownership information. Access to adequate and accurate basic and legal ownership information on legal persons is simple and fast. Access to beneficial ownership information is, however, more problematic. While beneficial ownership is relatively

²² Subsequent to the onsite, and in addition to the letters, the DBA has also sent reminders to register to those companies, and posted information on its website.

easily traced through the CVR where no foreign ownership or control is involved, more complex processes are required in other cases. Because of the reliance on reporting entities, the issues relating to CDD preventive measures and supervision noted in relation to IO.3 and IO.4 apply to IO.5. Denmark has recently had a focus on the regulation of companies and businesses, and the strengthening of supervisory activities, but dissuasive action is not taken when breaches are identified because of difficulties in enforcing default fines. The requirement to register beneficial owners will enter into force on 23 May 2017, with legal persons required to pre-register the necessary information by 1 October 2017. However, the effectiveness of this register will be reduced if breaches are not dealt with dissuasively.

7

Overall conclusions on Immediate Outcome 5

439. **Denmark has a moderate level of effectiveness for IO.5.**

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

Denmark achieved a substantial level of effectiveness for IO.2.

1. In general, Denmark has a sound legal framework for all forms of international cooperation. Where there is an absence of a legal framework to provide legal assistance, authorities apply Danish legislation by analogy.
2. The system in place for mutual legal assistance and extradition between Nordic and EU countries appears to ensure that both MLA and extradition can be provided in a timely manner. However, given that requests by Nordic and EU states are sent directly to the executing authority, and not funnelled through the central authority, it is difficult to assess the degree to which Denmark responds to these requests. However, the assessment team received positive feedback on cooperation from partner jurisdictions, including from non-EU/Nordic countries.
3. The MLS and PET engage effectively with their foreign counterparts; however, the number of outgoing requests sent by the MLS has declined since 2013 as a result of the resource shortages identified under IO.6.
4. While the FSA appears to have strong cooperation with its EU and Nordic counterparts, it has limited cooperation with third countries as it may only exchange information on the basis of an international cooperation agreement. Further, the FSA is unable to conduct inquiries on behalf of foreign counterparts, which limits its ability to cooperate. The FSA can, however, perform an inspection after notification from foreign counterparts, and where agreements to exchange information exist, it can exchange the outcome of the inspection.

Recommended Actions

1. Denmark should enhance the resources of the MLS to improve its capability to exchange financial information and provide feedback to its foreign counterparts.
2. Denmark should take the necessary measures to permit the FSA to conduct inquiries on behalf of its foreign counterparts, in relation to AML/CFT matters.
3. Denmark should consolidate its MLA statistics, to include incoming and outgoing requests to EU and Nordic countries. In this area, Denmark should also take efforts to record the underlying criminality and the time taken to respond to the request.

440. The relevant Immediate Outcome considered and assessed in this chapter is IO2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40

Immediate Outcome 2 (International Cooperation)

Providing constructive and timely MLA and extradition

441. As noted in the TC Annex, Denmark has a sound legal framework for all forms of international cooperation. Where there is an absence of a legal framework to provide legal assistance (and there is a noticeable absence of such frameworks for many types of cooperation), authorities apply Danish legislation by analogy. This implies that Danish authorities can comply with requests for mutual legal assistance in the absence of a bilateral or multilateral agreement. This also means that Danish authorities can comply with a request for assistance if the investigative measure(s) included in the request could be carried out in a similar domestic case, even without reciprocity. This provides Danish authorities with considerable scope to provide assistance.

442. The competence in mutual legal assistance (MLA) cases was delegated from the MoJ to the DPP on 1 March 2016 and the competence in extradition cases was delegated from MoJ to the DPP on 1 June 2016. At the time of the onsite, the DPP was drafting revised guidelines on MLA and extradition, which includes information on how requests are handled and prioritised by police districts and SØIK. These guidelines will supplement the guidelines issued by the former central authority, the MoJ. The central authority and processes outlined below for extradition and MLA are the same in Greenland and the Faroe Islands as in Denmark.

Extradition

443. Extradition requests from Nordic countries are sent directly to the relevant police district. Denmark's central authority is not notified of these requests, resulting in a lack of information or statistics on the number of requests received/outgoing or the underlying charges for Nordic extradition requests. All other requests for extradition are sent to the DPP.

444. According to Denmark, the majority of extradition cases are the result of a European arrest warrant, and the majority of requests for extradition originate from eastern European countries. As noted in Table 31, in the last five years, Denmark received 304 European arrest warrants and extradited 203 individuals. Not all arrest warrants lead to a decision on extradition or rejection, as a request could be withdrawn or the individual could not be located, for example.

Table 31. **European arrest warrants and related extradition**

Year	Arrest warrants received	Extraditions	Danish citizens	Rejections
2012	60	35	4	4
2013	59	28	3	7
2014	66	59	4	7
2015	79	61	8	6
2016	40	20	4	1
Total	304	203	23	25

445. Of the 304 arrest warrants received, only 10 requests related to ML charges, and one related to TF. The ML-related requests were for ten individuals (including five Danish citizens), and all nine were extradited to the requesting countries for criminal prosecution. One of the requests was withdrawn by the requesting state. The arrest warrant related to TF charges was also withdrawn by the requesting state. Denmark does not maintain specific statistics on the types of predicate offences underlying these ML requests. These requests were processed in the MoJ within approximately one month (from receipt of the arrest warrant until surrender).

446. As regards extradition to countries outside the EU and Nordic countries, from 2012 to 2016, Denmark has received a total of 53 extradition requests; however, none of these requests related to ML or TF charges.

447. While ML and TF are extraditable offences, Denmark only extradites its own nationals to countries outside the EU in more severe cases (see c.39.2). However, legislation allows for the transfer of proceedings, permitting Danish nationals to be prosecuted in Denmark for conduct that occurred in the country where the offence occurred. Statistics are unavailable regarding the total number of Danish nationals that have been prosecuted in Denmark for offences committed abroad.

Mutual Legal Assistance

448. Regarding MLA, requests sent within the Schengen system or requests on the basis of the European Convention of 29 May 2000 on Mutual Assistance in Criminal Matters may be sent directly to the relevant judicial authority (i.e. police-to-police). Similar to extradition, Denmark therefore does not maintain statistics on the total number of MLA requests received by the police districts or SØIK. Requests from non-EU/Schengen countries are sent to the central authority; however, if the request is urgent, the requesting state may send the request through diplomatic channels, Europol, or directly to the relevant authorities.

449. From 2013-2016, the MoJ and DPP received 688 incoming MLA requests from non-EU/Schengen countries. Seven of these cases related to ML, and two related to TF (see Table 32). No information is available regarding the underlying predicate offences of the ML requests. According to Denmark, the majority of MLA requests originate from Turkey, Switzerland, and the United States.

Table 32. **Incoming/Outgoing non-EU/Schengen MLA requests**

	2013	2014	2015	2016
MLA incoming requests	160	182	183	163
<i>Incoming ML/TF requests</i>	6	1	1	1
MLA outgoing requests	56	53	74	77
<i>Outgoing ML/TF requests</i>	0	0	0	0

450. Denmark was unable to provide statistics regarding the timeliness of responses to MLA requests but states that as a general principle, MLA requests are considered high priority and responses are provided as soon as possible. The feedback received from other FATF countries indicates that it has taken Denmark 2.5 months to one year to respond to requests, but partner countries did not have any problems with either the timeliness or the quality of the assistance provided. Given that cases can often involve multiple requests, it does not seem that these periods are unusual. Moreover, a positive feature of Denmark's MLA system is that a request for MLA is rarely refused since no formal agreement with the requesting country is required.

451. Denmark's ARO also provides assistance with the tracing and seizure of assets related to ML and other investigations. The ARO receives approximately 20 requests per year from its foreign counterparts. Based on the case studies provided, the ARO actively obtains orders for restraint or seizes criminal assets at the request of foreign counterparts.

452. While it is difficult to assess the effectiveness of Denmark's extradition and MLA systems in the absence of comprehensive statistics, the systems appear to be functioning well. This finding is supported by the feedback received from 20 FATF members. Further, interviews with authorities demonstrated that LEAs regularly respond to MLA requests and these requests are prioritised.

453. Nevertheless, Denmark is limited in its ability to provide certain types of assistance, such as the use of some special investigative techniques available under Danish law (undercover operations and intercepting communications), since these are only available for offences punishable with imprisonment for six years or more. These techniques can only be employed for aggravated ML offences, as it carries a maximum punishment of six years' imprisonment whereas ordinary ML carries only 1.5 years. Thus, if a foreign request does not establish the required aggravated factors, these techniques could not be employed and the request would be denied.

Seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements

454. As stated previously, MLA requests to Nordic/EU countries are sent directly to relevant authorities. Consequently, Denmark's outgoing requests are not registered by the central authority, resulting in a lack of statistics on the number of MLA requests sent to Nordic/EU countries by Danish authorities.

455. In regard to non-EU/Schengen countries, as noted in Table 32 between 2013 and 2016, Denmark sent 260 MLA requests; however, Denmark was unable to indicate how many of these requests related to ML, TF, or associated predicate offences.

456. While it appears that Denmark prioritises and responds to MLA and extradition requests, the assessment team did not receive qualitative or quantitative information indicating that Denmark actively seeks foreign legal assistance to pursue domestic cases with transnational elements.

Seeking and receiving other forms of international cooperation for AML/CTF purposes

457. Danish authorities use other forms of international cooperation to exchange financial intelligence and other information with foreign counterparts for AML/CFT purposes. In particular, the cases studies provided as well as the discussions held onsite indicate the use of missions abroad to obtain information, and joint investigation/supervisory activities in various areas. In general, the majority of Denmark's competent authorities are well engaged in international cooperation with their foreign counterparts for AML/CFT purposes, particularly with their Nordic counterparts.

MLS

458. Most international exchanges of financial intelligence regarding ML and associated predicate offences are carried out by the MLS. As a result, the MLS acts as a focal point for nearly all outgoing requests for financial intelligence for ML, including requests emanating from Denmark's police districts and SØIK (including requests emanating from or destined to Greenland and the Faroe Islands). Conversely, PET acts as the focal point for all outgoing requests related to TF.

459. The MLS is a member of the Egmont Group and participates in FIU.net's Ma3tch system as well as various types of focal points, such as SUSTRANS and Dolphin. As noted in the TC Annex, the MLS does not require an MOU to exchange information with its foreign counterparts; however, at the time of the onsite, it had entered into MOUs with 22 foreign FIUs.

460. Outgoing international inquiries by the MLS are primarily made via the Egmont Secure Web, FIU.net, and bilaterally. In some cases, the MLS uses other platforms such as Europol for information gathering. Given the resource constraints of the MLS as discussed in IO.6, the number of requests to foreign counterparts has decreased since 2013 (see **Table 34**). These requests were made to more than 50 jurisdictions, with the largest number (per jurisdiction) being to the UK (35), Sweden (33) and Germany (25), and more than 85% of the total were made to European countries.

Table 33. **MLS requests to foreign counterparts**

Platform	2012	2013	2014	2015	2016
Bilateral	0	2	0	0	0
Egmont Secure Web	54	46	50	15	8
Europol	0	0	1	0	1
FIU.net	0	56	34	23	25
Not stated	0	0	0	0	8
Total	54	104	85	38	42

461. Similarly, the MLS receives foreign requests through various platforms, with the majority of requests received through the Egmont Secure Web platform. Table 34 provides a breakdown of the number of foreign requests received by the MLS. According to the MLS, it has responded to nearly all of the incoming requests set out below. At the time of the onsite, only 37 requests were still being processed. Due to the limitations in its goAML software, the MLS was unable to provide statistics on the average time taken to respond to requests; however, the MLS states that on average it takes a few weeks. Requests were received from more than 90 jurisdictions, with nearly 85% of the requests received originating from Europe, primarily from Germany (78), Netherlands (59), Sweden, Luxembourg, and Russia (53). In general, positive feedback was received from the Denmark's foreign counterparts regarding the nature and level of cooperation provided by the MLS.

Table 34. **Foreign Requests to the MLS**

Platform	2012	2013	2014	2015	2016
Bilateral	7	8	5	1	1
Egmont Secure Web	68	72	58	76	40
Eurojust	2				5
Europol	38	37	27	50	48
FIU.net	14	52	53	55	39
Interpol	43	57	38	54	27
Ma3tch		12	4		
Other	3	1		2	23
Total	175	239	185	238	183

462. By comparing tables 34 and 35, it is evident that Denmark receives significantly more requests than it sends.

463. The MLS may also provide information spontaneously to their foreign counterparts. However, Denmark is unable to provide statistics as they cannot be separated from other types of requests.

464. In general, the MLS provides very little feedback to its international counterparts regarding the usefulness of the information provided and whether the information received augmented domestic cases. Indeed, during interviews, the MLS stated that due to resource constraints, the provision of feedback, both domestically and internationally, is considered a low priority.

PET

465. As the lead investigator for TF, PET regularly cooperates bilaterally and multilaterally with police and security authorities in a number of countries. PET also participates in multilateral arrangements, including the Counter Terrorism Group of the EU Member States, to discuss terrorism-related issues.

466. PET also proactively shares information through Europol and the Schengen Information System, including information related to foreign terrorist fighters.

FSA

467. Similar to the MLS, the FSA has strong cooperation with its EU and Nordic counterparts. The FSA may only exchange information on the basis of an international cooperation agreement, of which some exist allowing the FSA to cooperate with non-EU countries, such as the U.S. and Australia. The FSA is unable to conduct inquiries on behalf of foreign counterparts, thereby limiting its ability to cooperate. The FSA can, however, perform an inspection after notification from foreign counterparts, and where agreements to exchange information exist, it can exchange the outcome of the inspection.

468. The FSA actively cooperates with its EU counterparts as part of the EU Supervisory College. The College regularly meets to discuss all supervisory issues, including AML/CFT.

469. Foreign requests received by the FSA are centralised in an internal database. Internal procedures states that the FSA must respond to all requests within 60 days, but response times are typically much faster than this requirement. According to the FSA, few foreign requests relate to AML/CFT, instead the requests relate to prudential supervisory matters. The FSA states that the majority of foreign requests received originate from Sweden, Norway, and the United Kingdom.

DBA

470. The DBA has no legal basis to exchange information with its foreign counterparts nor has it ever received a request for foreign cooperation.

International exchange of basic and beneficial ownership information of legal persons and arrangements

471. Basic information and legal ownership information about legal persons operating in Denmark is available online at any time through the CVR. This is accessible to any person, including foreign authorities in Danish or English. Denmark is in the process of updating these systems to comply with EU Directive 2012/17/EC for the interconnection of business registers. No such information is

available about legal arrangements, although it should be noted that no form of legal arrangement can be created under Danish law – all “undertakings” created under Danish law are legal persons.

472. Beneficial ownership information is not consistently collected by companies in Denmark. Although the Companies Act and other legislation applying to undertakings has been amended to require them to collect and register beneficial ownership information, the amendments will come into effect in June 2017 and will have a short registration deadline. Once these are in effect, the MLS will be able to collect such information and provide it to foreign FIUs upon request. Whether the beneficial ownership information will be publicly available in the register depends on on-going EU negotiations regarding the AMLD4.

473. Denmark states that it cannot identify any cases where other countries have requested either basic or beneficial ownership information from its competent authorities, the issues noted in IO.5 about the availability of beneficial ownership information would limit Denmark’s ability to respond in a timely and appropriate manner.

8

Overall conclusions on Immediate Outcome 2

474. **Denmark has a substantial level of effectiveness for IO.2.**

TECHNICAL COMPLIANCE ANNEX

This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations of the Kingdom of Denmark. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2006. This report is available from the FATF website.

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

In its 3rd MER, there was no requirement for a NRA or other risk-related requirements as set out in R.1.

Criterion 1.1- Denmark identified and assessed its ML risks by issuing its first ML NRA in 2015, following a two-year ML risk assessment exercise. The NRA does not include a specific analysis of ML risks in Greenland and the Faroe Islands, although some of the underlying data may relate to Greenland and the Faroe Islands. Greenland and the Faroe Islands have relatively small populations (less than 60 000 inhabitants), a limited number of FIs and DNFBPs (mostly regulated from Denmark), and are geographically remote. There is no evidence that the risks are the same for these territories as in Denmark, although it may be (based on the factors noted above) that some risks are lower.

The NRA was led by the MLS in cooperation with the FSA and the MLF, with participation of a limited group of stakeholders (primarily supervisors). The NRA refers to the ML risks associated with different FIs or DNFBPs, or some activities, subject to the MLA and GA. Risks were assessed as high, medium or low. The assessment also identified methods not yet employed in Denmark but which are known internationally and, which give rise to potential risk. The NRA, however, does not provide a comprehensive account of the country's ML risks as it excludes information and analysis of the risks associated with transnational crime and has a limited analysis of domestic proceeds generating crime.

In addition to the NRA, the FSA conducted sector-specific risk assessments for investment firms (2014), small and middle sized banks (2015), life-assurance companies and multi-employer occupational pension funds (2015). These sectoral risk assessments provide further detail and provide lists of high-risk factors and indicators relevant to the sector; however, they are limited in scope (see IO.3).

PET completed its TF NRA in October 2016, based on all source intelligence accessible by PET. It excludes potentially valuable sources of information from other stakeholders, such as the Fundraising Board, ISOBRO, and other government agencies (see IO.1). It is unclear what, if any, methodology was applied and does not categorise the risks identified. The TF NRA indicates it covers Greenland and Faroe Islands however, no analysis of the risks in those territories was included.

Criterion 1.2 - Denmark indicated that the MLF is the designated authority to coordinate actions to assess risks, although the 2009 MLF's MOU (updated on 17 November 2016), does not mention this as part of its objectives or responsibilities. Nevertheless, the MLF was the vehicle within which the ML NRA was discussed, negotiated and agreed to by authorities. The objective and membership of the MLF is outlined in Chapter 1 of this report. The PET carried out the TF NRA, but it is not clear that there was a coordination of actions to assess TF risks.

Criterion 1.3 - Denmark intends to develop a new ML NRA in 2017, to include involvement of the private sector, and to reconsider its methodology. PET also intends to review the TF NRA in 2017.

Criterion 1.4 - The non-confidential version of the ML NRA was published on the police service intranet *Polnet* (restricted to police services), and SØIK and the FSA's website (both publically accessible). The restricted version was distributed by secure e-mail to all government ministries and agencies involved in its development, including police districts. The results were also communicated to FIs and DNFBPs by supervisory authorities and the MLS. The TF NRA was distributed to a limited number of institutions, including the Bankers' Association which further distributed it to its members. The TF NRA was completed shortly before the onsite visit, thus outreach on its findings were in the preliminary stages.

Criterion 1.5 - There is no national coordinated RBA in place since the completion of the NRAs (see R.26 and 28). This is due to the absence of an established national strategy or mechanism in response to the NRAs. The allocation of resources is also not based on the results of the NRA findings. Supervisory authorities are at a very early stage in applying a risk-based approach (RBA). The RBA is applied to varying degrees and is mostly based on authorities' individual understanding of risk.

Criterion 1.6 - Denmark and Greenland allow specific exemptions from the CDD and ongoing monitoring obligations of the MLA for a list of entities and activities, including public authorities, FIs within the EEA or other equivalent jurisdictions, companies traded on recognised exchanges, some life insurance and pensions activity, and electronic money. These exemptions are based on the 3AMLD and not based on proven low risk but are applied on a limited basis. The Faroe Islands allows exemptions in certain situations only when the product is electronic money [as defined by s.6(21) of the PSEM]. The risks associated with electronic money were assessed in the NRA, as part of the risk assessment of electronic payment services, that were rated as moderate risk.

With regard to life insurance and pension products, Denmark identified the risk as low due to Danish tax legislation, which makes insurance benefits and premature termination of a pension scheme taxable. The methodology and assessment does not consider whether the risks were low (justifying a complete exemption) or lower (justifying simplified CDD measures). Moreover, policy holders do not need to be identified or subject to CDD (unless they are also a beneficiary), thus making it difficult to determine the level of risk. The risks for the two sectors have been considered as one, which makes it difficult to separately identify the risks for life insurance (although authorities stated that the use of life insurance is limited).

S.2 of the Executive Order no. 712 of 1 July 2008 (Exemptions from the MLA), which does not cover FIs and DNFBPs in Greenland and the Faroe Islands, sets out exemptions from CDD requirements, which can be applied to previously identified customers. For example, CDD is not required if the following conditions have been met: the product is based on a written contract on paper or another durable medium [s.2(1)1]); the related transaction is carried out through an account of the customer with a foreign credit institution covered by the 3AMLD [s.2(1)2b)]; the buyer of the product/related transaction are not anonymous [s.2(1)3)]; the product/transaction do not exceed EUR 13 000 [s.2(1)4)], and the benefits of the product/related transactions are not realised for the benefit of third parties [s.2(1)5)]. While applied on a limited basis, these exemptions are not based on a proven low risk.

An additional exemption in s.21(2) of the MLA/GMLA/FMLA determines that the requirements concerning proof of identity do not apply when the beneficial owner has funds in a pooled account of a lawyer, if the lawyer is subject to regulations. This exemption is also not based on a proven low risk of ML/TF. Similar exemptions in relation to wire transfers (see R.16) are also not based on a proven risk.

Criterion 1.7 - FIs and DNFBPs covered by the MLA/GMLA/FMLA are required, on the basis of a risk assessment, to carry out additional measures regarding proof of identity in higher-risk situations, which at a minimum is defined to mean: situations when the customer is not physically present; cross-border corresponding banking; and foreign PEPs. Online and land-based casinos are also required to take enhanced measures regarding high risk situations. The guidelines contain examples of risk factors and every licence holder must implement EDD when their individual risk assessment requires. There is no requirement for FIs and DNFBPs to ensure that the NRA is incorporated into their internal risk assessments.

Criterion 1.8 - Denmark, Greenland and the Faroe Islands do not expressly provide for the application of simplified or reduced CDD measures, but relevant Explanatory Notes state that “more lenient requirements for customer knowledge” could be permitted on the basis of a risk assessment. The provisions do not clearly limit any reduced measures commensurate with the risk. The Explanatory Notes to the MLA make it clear that the application of s.12(7) MLA may not lead to total non-compliance with CDD obligations. There is also a CDD requirement whenever there is suspicion of ML/TF. The regulation of land-based and online casinos does not allow for simplified CDD.

Criterion 1.9 - Denmark’s supervision and monitoring of FIs and DNFBPs includes supervisory obligations in relation to ML/TF risk assessment and mitigation (s.25 MLA/GMLA/FMLA). There are however many limitations in the risk-based supervision of FIs and DNFBPs (see R.26 and R.28). With the exception of casinos, relevant supervisors have not ensured that FIs and DNFBPs have implemented a RBA as required by R.1.

Criterion 1.10 - FIs and DNFBPs covered by the MLA/GMLA/FMLA are required to develop adequate written internal rules about internal control, risk assessment, risk management, management controls and communication in order to prevent ML/TF (s.25). These more general requirements are expanded in the FSA’s Guidelines on MLA (which apply to Greenland and the Faroe Islands), to cover how risk management takes place, the basis for risk analysis approval by management, and policies

being documented and subject to periodic review. However the Guidelines are not 'enforceable means'. Similar requirements exist for casinos in the executive order on land-based casinos (s.53), and on online casinos (s.34), and the DGA's guideline on preventive measures (also not "enforceable means"). The net result is that the only legal requirement is in the MLA and is general in nature, and thus only partly covers the elements of the criterion.

Criterion 1.11 - FIs and DNFBPs are required to develop internal rules for risk assessment and risk management (s.25 MLA/GMLA/FMLA). The (non-enforceable) Guidelines also states that the control measures should be described, documented, and performed at an appropriate frequency. The FI/DNFBP should ensure adequate management reporting, including periodical reports as well as ad hoc reports when necessary. Similar measures exist for casinos (see above). The situation is similar to c.1.10. FIs and DNFBPs are required to take enhanced measures in case of higher risks though there are limitations (see c.1.7).

Criterion 1.12 - FIs and DNFBPs may decide to carry out CDD procedures on the basis of a risk assessment, depending on the risk related to the individual customer or business relation, the product or the transaction itself [s.12(7) MLA/GMLA/FMLA]. The undertaking or person should be able to prove to the relevant supervisory authority that the extent of their CDD is adequate in relation to the ML/TF risk. However, there are no requirements consistent with c.1.9-1.11. Online and land-based casinos perform CDD on every customer, but if there is a doubt regarding the customer's identity, or if there is a ML/TF suspicion, the casino must require further documentation of identity, which will be determined by a risk assessment [Executive order on online casinos, s.2(4) and (6); Executive order on land-based casinos, s.3(2) and (3)]. CDD must always be carried out if the undertaking or person suspects that a transaction or consultancy assignment is associated with ML/TF (s.11 MLA/FMLA/GMLA).

Weighting and Conclusion

Denmark has not adequately identified and assessed its ML risks, and there are questions about the methodologies relied upon in both the ML and TF NRAs. The absence of an established national strategy or mechanism to implement the results of the NRAs is also a concern. Certain exemptions, the allocation of resources, and mitigation measures are not applied on the basis of ML/TF risk, and there are other weaknesses relating to risk assessment and mitigation.

Recommendation 1 is rated Partially Compliant.

Recommendation 2 - National Cooperation and Coordination

Denmark was rated LC with the old R.31 as the MLS and supervisors were in ad hoc rather than regular contact.

Criterion 2.1 - Denmark does not have national AML/CFT policies that are informed by the risks identified in the ML or TF NRAs. Denmark relies on an informal approach whereby relevant competent authorities, working either bilaterally or through the MLF, take action on specific issues. There is no overarching policy approach based on identified risks.

Criterion 2.2 - There is no formally designated authority or coordination mechanism responsible for national AML/CFT policies. In order to facilitate cooperation between the competent authorities, the MLF was established in January 2006. All relevant competent authorities participate in the MLF, with the exception of the PET. A MOU was adopted in 2009 (and updated in November 2016) which describes the objectives, tasks and procedures of the MLF, and describes the authorities' areas of responsibility. The objectives of the MLF are coordination and exchange of information; clarifying the division of responsibilities between authorities; preparing for evaluations; and, assessing effectiveness. However the MLF does not develop, coordinate, or update national AML/CFT policies. Further, the MLF does not cover the activities of relevant authorities in Greenland and Faroe Islands (except to the extent that the competent authorities are Danish).

Criterion 2.3 - The Danish AML/CFT regime is supported by several inter-agency working groups. The cooperation and coordination between agencies occurs primarily at operational and informal levels, though there is some coordination regarding the development and implementation of AML/CFT policies.

The MLF brings together the various authorities responsible for performing measures to prevent ML, including the implementation of targeted financial sanctions. The ML Steering Group—consisting of representatives from the National Commissioner of Police, the National Investigation Centre, the PET and SØIK—considers questions of general interest relating to the MLS's activity and interaction with the police districts, the supervisory authorities and private sector. The discussions involve issues such as new trends and risks, potential new designations, and exchange of ideas for the improvement of AML activities.

In addition, the MLS organizes regular meetings with the supervisory authorities and the SKAT, to present briefings concerning risks and trends, and align expectations relating to the work performed or to discuss specific investigations. However, this is done on an ad hoc basis and the cooperation is not formalised.

As regards TF, the MLS cooperates with PET, the MFA and DBA (responsible for administering the EU regulations on the freezing of terrorist funds) through informal cooperation mechanisms.

Criterion 2.4 - Denmark has informal inter-agency arrangements that cooperate on non-proliferation related matters. PET cooperates with other competent authorities, primarily DBA, if breaches of the relevant sanctions are identified. Moreover, information from PET's non-proliferation outreach activities is shared on a regular basis with relevant authorities, including through the Advisory Group on Non-Proliferation issues. However, there is no responsible authority or mechanism in place to coordinate PF-related policy and activities.

Weighting and Conclusion

Denmark does not have national AML/CFT policies that are informed by the risks identified in their NRAs. In addition, there is no formal coordination mechanism for AML/CFT matters.

Recommendation 2 is rated Partially Compliant.

Recommendation 3 - Money laundering offence

Denmark was rated LC with the old R.1 as the ML provisions in Faroe Islands and Greenland were not fully consistent with international standards, and effectiveness concerns stemming from a limited number of prosecutions under its aggravated ML provision. Since its last MER, Denmark has amended the AJA and CC.

Criterion 3.1 - ML in Denmark is criminalised in s.290 CC through a criminal proceeds receiving offence, which can be considered as either ordinary or aggravated. The offence in s.290(1) CC states that “any person who wrongfully accepts or obtains for himself or others a share of the proceeds obtained from criminal acts, and any person who dishonestly, after an offence, assists another person in securing the proceeds of a criminal offence by hiding, retaining, transporting or providing assistance for the disposal of the proceeds or in any similar manner, is sentenced to a fine or imprisonment for a term not exceeding one year and six months for handling stolen goods.” Under s.290(2) CC “the sentence may increase to imprisonment for six years if stolen goods have been handled in a particularly aggravating manner, especially because of the commercial or professional nature of the offence, or due to the scope of the gain made or intended, or when several offences have been committed.” Denmark indicated that as a general rule, if the amount involved is DKK 500 000 (EUR 67 000) or more, the case could be considered as aggravated, though there are other factors such the complexity of the crime which could also result in it being considered aggravated. S.80-81 CC also sets out aggravating circumstances that are considered as part of sentencing for all crimes. Factors particularly relevant to ML include prior convictions and whether the act was organised in nature.

Denmark’s offence broadly covers part of the conduct set forth in the Vienna and Palermo Conventions. The first type of ML offence deals with situations where the defendant “accepts or obtains” proceeds, which captures the acquisition and possession. This reflects the traditional offence of receiving stolen goods. The second type of ML offence, where a person “assists another person in securing the proceeds of a criminal offence by hiding, retaining, transporting or providing assistance for the disposal of the proceeds or in any similar manner”, broadly captures concealing, disposing, or disguising proceeds. The Explanatory Notes to the relevant amending Bill (2001) also state “Assistance as described in the second element of the provision may...for instance consist in collecting, storing, hiding, transporting, dispatching, transferring, converting, disposing of, pledging or investing the proceeds, though this is not an exhaustive list of possible types of assistance”. Accordingly, it is considered that the offence also covers the “use” of proceeds. However, Denmark’s offence does not capture self-laundering. Similar provisions exist in the CCs of Greenland and the Faroe Islands (s.111 CCGR and s.290 CCFI). However, in Greenland there is no aggravated offence of ML.

In addition to the criminal proceeds receiving offence in s.290 of the CC, Denmark has an offence for laundering involving gross negligence, though this is restricted to a limited set of predicates, namely fraud and property offences in s.276-289 (s.303 CC). This offence is used where it is not possible to prove intentional ML under s.290. Thus, if the perpetrator should have known (but did not know) that the property obtained was the proceeds of a criminal offence, charges will be brought under s.303. A similar provision exists in the Faroe Islands, but not in Greenland.

Criterion 3.2 - S.290 applies to “the proceeds obtained from criminal acts”,²³ and thus is an all crimes offence. The situation is similar in the Faroe Islands and Greenland. This means that the full range of offences in the 21 categories of designated predicate offences is covered. Although there is no specific organised crime offence, Denmark prosecutes such types of offences using ancillary offences such as complicity and attempt, which includes the capacity to prosecute persons that agree to commit a crime but do not carry out the crime (similar to conspiracy).

Criterion 3.3 - No threshold is applied.

Criterion 3.4 - The term “proceeds” in the money receiving offence covers all types of property, regardless of the value, that directly or indirectly represents the proceeds of crime, including any interest or income earned. The same scope of “proceeds” applies to Greenland and the Faroe Islands.

Criterion 3.5 - The inclusion of the term “after an offence” in Denmark’s ML offence appears to render the application of Denmark’s ML offence contingent on the establishment of the predicate offence. However, Denmark explained that a completed ML offence requires sufficient evidence that the property is the proceeds of a specific type of predicate offence in order to secure an ML conviction; but that it is not necessary to obtain a conviction for the identified predicate offence, nor is it necessary to prove the precise details of the predicate offence.

In practice, it was indicated that convictions under s.290 are often obtained as a case of “putative attempt”, where the prosecution is not required to prove the underlying predicate offence or that the property was even the proceeds of crime, and is only required to prove that the defendant believed the laundered property was criminal proceeds, and was guilty of attempting to launder that property. This legal concept significantly reduces the burden on the prosecution.

Criterion 3.6 - S.290 does not explicitly address the laundering within Denmark of the proceeds of a foreign predicate. There are jurisdictional provisions that provide that criminal acts committed within Denmark by a person located outside Denmark, or by a Danish national or resident anywhere are subject to Danish criminal jurisdiction (s.6-7 CC). The Explanatory Notes to s.284 CC (predecessor provision to s.290) also indicate that proceeds include the notion of proceeds of criminal offences committed in other jurisdictions. Denmark also provided cases where persons were convicted of receiving proceeds of foreign offences. There is also no legal requirement for dual criminality i.e. that the foreign conduct would have been an offence in Denmark if the predicate offence had occurred in Denmark.

Criterion 3.7 - Danish authorities state that self-laundering is not covered because of a fundamental principle in the Danish legal system that persons cannot be convicted of two different crimes concerning the same assets. Accordingly, s.290 CC does not apply to persons who are convicted of committing the predicate offence for ML. Denmark noted that this legal tradition extends back to 1841, when it was decided that a person who steals property cannot also be found guilty of receiving the same stolen goods. This tradition is supported by decisions of higher courts, and academic articles, on handling stolen goods, and Denmark stated that the fundamental principle is directed at not criminalizing twice what is considered as a single course of criminal conduct - the unlawful

²³ Denmark was able to illustrate that the definition of “proceeds” does not exclude the concept of “savings” (e.g. where the benefit obtained from the offence is gained by not paying for something where legally obliged to do so).

taking of property and then the sale or initial placement of the proceeds. However, the assessment team is of the view that ML and receiving stolen goods are not the same type of offence, and that laundering the proceeds of a wide range of predicates, which can often occur multiple times, and be distant in time and location from the predicate offence, is quite different from a criminal selling goods that he has stolen or putting stolen cash into his bank account. It is also noted that many other countries (including those with the same legal basis and traditions, including court cases) have been able to amend their laws to include an offence of self-laundering. Denmark was unable to provide evidence that this is a fundamental principle of domestic law.

Criterion 3.8 - Danish law provides that violations of the CC must be committed intentionally to be punishable unless otherwise provided (s.19 CC). Denmark provided case law establishing that the intentional element of Denmark's ML offence may be inferred from objective factual circumstances.

Criterion 3.9 - In Denmark and the Faroe Islands, the criminal penalty for ordinary ML is a fine or a maximum imprisonment of 1.5 years. As noted in c.3.1, if the proceeds are handled in a particularly aggravating manner (due to commercial/professional nature of offence, the gain made or intended typically exceeds DKK 500 000 (EUR 67 000), or there are several offences), then under s.290(2) CC the maximum imprisonment is increased to six years²⁴. The penalty under s.303 CC is imprisonment for one year (Denmark) or six months (Faroe Islands).

The sanctions for ordinary ML that can be applied to natural persons are in line with other offences against property in Part 28 CC (e.g. the maximum sentence for ordinary theft, embezzlement, fraud, breach of trust, blackmail, and tax and custom violations is 1.5 years or a fine). However, sanctions for some other types of financially motivated crime have more serious penalties e.g. bribery (s.144 CC) six years, or counterfeiting (s.166 CC) 12 years. As regards financially motivated crimes that involves violence then the penalties are generally more severe, as are drug offences e.g. ordinary drug trafficking (s.191 CC) is 10 years, aggravated is 16 years.

In Denmark and the Faroe Islands, a fine can also be imposed as a supplementary punishment to other forms of penalty when the defendant made or intended to make a financial gain for himself or others [s.50(2) CC]. In the case of non-supplementary fines, the fine is set as "day fine units". The number of day fine units is determined in view of the nature of the offence and must be at least one and not more than 60 fine units. The amount of the individual day fine unit corresponds to the relevant person's average daily earnings, with the minimum amount of a day fine unit being DKK 2. Where there has been considerable economic gain from an offence, the court may impose a fine other than a day fine [s.51(2) CC].

In Greenland, the criminal penalty for ML is a fine or a maximum imprisonment of 10 years in an open institution [s.147(1) CCGR]. Open institutions in Greenland are detention centres where offenders are imprisoned overnight, but are free to work or do other things during the day. There is no reference to aggravated factors in the ML offence in Greenland or supplementary fines.

Overall, for ordinary ML, the applicable maximum penalty is proportionate or similar to some types of non-violent financial crime, but not to others. The maximum penalty for ordinary ML is lower than in other countries, including neighbouring countries with similar legal traditions and other civil law

²⁴ In April 2017 the Minister for Justice announced a plan to increase the penalties for ML.

countries. As a result, the assessors are of the view that the level of sanctions available for natural persons for ordinary ML is likely not dissuasive, particularly for transnational organised criminal groups.

Criterion 3.10 - In Denmark, companies and other incorporated bodies (legal persons) may incur criminal liability for violations of the CC in accordance with the principles for such a liability (s.25–27 CC). Part 5 of the CC states that a fine (with no monetary limitation) may be imposed on a legal person where provided for in law, which is the case for ML.

The offence must be committed in the course of the legal persons' activities, and caused by one or more natural persons connected to the legal person, or by the legal person itself (s.27 CC). However, prosecution does not have to prove which natural person within the legal person committed the offence, although it is not clear in these circumstances how the *mens rea* element for the offence is established and proven. This liability is not limited to employees and could include board members. The same provisions exist in CCs of the Faroe Islands and Greenland.

Criterion 3.11 - Denmark covers most ancillary offences that are applicable in the case of all crimes punishable by four months imprisonment or more, which includes ML. Part 4 of Denmark's CC provides for a punishment of attempt and complicity, which renders "inciting or assisting" punishable as attempts, so long as the offence is not completed [s.21(1) CC]. As noted above, the concept of "putative attempt" also covers situations when there is insufficient evidence that the property was proceeds of crime, but it can be shown that the defendant believed it was. The penalty for an attempt is the same as for the primary offence, but may be reduced if there is little strength or persistence in the criminal intention. The CC also establishes ancillary offences of incitement, aiding, and abetting of a completed offence, with a penalty equivalent to the primary offence [s.23(1) CC]. The CC does not include ancillary offences relating to association with or conspiracy to commit an offence, Denmark stated that other ancillary offences would cover preparatory actions of this nature even where the contemplated offence is not ultimately carried out.

The Faroe Islands and Greenland's CC have similar ancillary offences, which include a definition of attempts as "acts that are aimed to assist or cause the accomplishment of an offence that is not completed" (s.12 CCGR). Incitement, advice and action are also included as ancillary offences, with similar penalties as the primary offence.

Weighting and Conclusion

While the legal framework of Denmark, Greenland, and the Faroe Islands broadly covers the requirements of R.3, there are some minor shortcomings. Self-laundering is not a criminal offence in Denmark. The sanctions in place for ordinary ML are not fully proportionate or dissuasive

Recommendation 3 is rated Largely Compliant.

Recommendation 4 - Confiscation and provisional measures

Denmark was rated LC for old R.3 (para 236-274), and the confiscation regime was considered to be quite comprehensive. There were changes to the relevant legislation in 2013. The legal provisions concerning confiscation and provisional measures are set out in the PC s.75-77a and AJA s.801-807f.

Criterion 4.1 – Denmark has a range of powers to deprive criminals of their proceeds. Proceeds of a criminal act, or a corresponding amount, may be confiscated in full or in part, although this does not extend to profits or other benefits derived directly or indirectly from the proceeds (s.75 CC). However, such profits or benefits are subject to forfeiture in cases of ML under aggravating circumstances (s.76a CC). Confiscation of instrumentalities used or intended for use in the commission of a criminal act, or items produced through or involved in such an act (or property of corresponding value), may also be confiscated, but only if this is necessary to prevent further offences or is otherwise specially justified [s.75(2) CC]. This is a limitation, although there is also a power to forfeit items that are likely to be used for future criminal acts (s.77a CC). Confiscation action can also be taken against proceeds held by third parties who knew that the property was derived from a criminal act, or who were grossly negligent, or the property was a gift. Moreover if a third party dies then there is no liability to forfeit instrumentalities. These powers are equally applicable where the offence is terrorism or TF. The provisions in the CCG and CCFI are almost identical.

Criterion 4.2 – The provisions on tracing, search, seizure and restraint are to be found in chapters 73 and 74 of the AJA for Denmark, Chapters 72 and 73 of the Faroese AJA and Articles 409 to 420 in the Greenland AJA. The powers and rules are similar in all three jurisdictions. Police and prosecution authorities have investigative powers for ML/TF and predicate offences, so as to identify and trace assets. This includes the power to search persons and premises, order production of documents from FIs and other persons, and conduct surveillance (see also R.30-31). The law provides for two types of provisional measures — seizure and restraint. Part 74 (s.801-807f) sets out rules on seizure of property from suspects and third parties. Property owned by, or at the disposal of, the suspect may be seized when there are reasonable grounds to suspect they have committed an offence and reasonable grounds to believe the property should be confiscated or is needed to cover costs or a compensation order. Similar rights exist to seize property held by third parties. It is also possible to seize the entire suspect's property if he absconds.

Seizure and production orders are normally made pursuant to a court order, but in cases where there is a need to act urgently, the police can seize property directly and without notification (though not in cases where the suspect absconds). This also applies for production orders, though the recipient of the order must have the opportunity to make a statement. The legal consequences of seizure differ according to the nature of the property: (a) property at disposal of suspect or third party – no transactions can be made on the property and no debt enforced against it; (b) property owned by the suspect – the property is attached (charged) and is applied after conviction and confiscation to meet claims for compensation, costs, confiscation and fines; and (c) property in cases of absconding – the suspect has no right to deal with the property, though debts pre-existing the seizure could be enforced against the seized property, which is a potential loophole.

There is an additional power in s.807f which allows property held by FIs or DNFBP under the MLA (e.g. monies in a bank account), to be restrained if there are grounds to assume that the property is associated with ML or TF, and restraint is needed to secure confiscation. This appears to apply to property held for the suspect or any third party, and does not require a court order. The person affected must normally be notified within 24 hours and can challenge the order, and an order can only last for one week.

The aforementioned powers appear adequate to prevent or void any actions that would prejudice the ability of the authorities to recover property subject to confiscation.

Criterion 4.3 – As noted above, criminal proceeds, though not instrumentalities, held by third parties can be confiscated. However, if a third party was bona fide and paid money or other assets of an equivalent value to the property that was proceeds, then confiscation is not permitted. This is the case in all three jurisdictions.

Criterion 4.4 – There are no specific mechanisms for managing and, when necessary, disposing of property seized or confiscated. In terms of process, objects that have been seized, including any that are subsequently confiscated, are handled in accordance with instructions from the Commissioner of the Danish National Police. There are no specific mechanisms to manage property that requires active management, although general law enforcement powers are usually sufficient. The police noted that they have difficulties in such cases. This is the case in all three jurisdictions.

One useful additional power is the power to forfeit any property of a person convicted of a serious criminal offence (at least six years penalty or a narcotics offence) where the criminal act could generate substantial proceeds. This power can also be used in relation to the property of a spouse or cohabitant (unless the property was acquired more than five years before or the person was not a spouse/cohabitant at the time of acquisition), as well as property of legal persons that the offender owns or controls (s.76a PC). In such cases, the offender or other person can avoid forfeiture by showing (on the balance of probabilities) that the property was legally obtained.

Weighting and Conclusion

Denmark has a sound legal framework for confiscation and provisional measures, but has some small limitations regarding instrumentalities and a lack of measures in place to actively manage seized or confiscated property.

Recommendation 4 is rated Largely Compliant

Recommendation 5 - Terrorist financing offence

Denmark was rated PC with old SR. II (para 215-235). The criminalisation of the TF by Greenland and the Faroe Islands was inadequate. Denmark's TF offence was last amended in June 2006, and TF offences have since been established in Greenland and the Faroe Islands.

Criterion 5.1 - Denmark, Greenland, and the Faroe Islands criminalise TF broadly in line with the TF Convention [s.114(b) CC, s.30 CCGR; s.114(b) CCFI]. This offence covers any direct or indirect granting of financial support, organising or raising of funds, or making funds, other property, or financial or other similar services available to a person, a group or an association committing or intending to commit any terrorist act. The definition of "terrorist acts" covers all acts which constitute an offence as defined in the Conventions and protocols listed in the Annex to the TF Convention. Attempting to commit a TF offence required under article 2(4) TF Convention, is addressed by the ancillary provisions that apply to all criminal offences (s.21 CC – see c.5.8 below). Finally, the conduct set forth in s.2(5) TF Convention is captured in s.114e CC, which criminalises

facilitation activities of a person, a group or association committing or intending to commit TF. This section also appears to be broad enough to cover TF activity and is a potential alternative to s.114b.

Criterion 5.2 - The TF offence extends to any person who wilfully provides, grants, organises or raises or makes funding available, whether directly or indirectly, to a person, a group or an association committing or intending to commit any terrorist act. This offence does not expressly address that the funds could be used “in full or in part” for a terrorist act or by a terror organisation or individual; however, the Explanatory notes to s.114a, make it clear that it is a punishable act to provide funds or financial services to a terrorist whether for legal or illegal activities. According to Danish authorities, if the provider has knowledge of a link between their support and a specifically planned act of terrorism, the action would be considered as complicity to terrorism (s.114, s.23 CC), instead of TF. In instances where the TF is not linked to a specific act of terrorism, the action(s) is considered to be TF. In the context of R.3, Denmark provided documents indicating that actions that occurred prior to or after a substantive offence would be subsumed within that offence. This appeared to raise the possibility that a person that financed a terrorist act or organisation and then committed terrorist offences could not also be prosecuted for TF. Denmark, however, clarified this issue by providing a case in which a person who went to fight for ISIL was also convicted of TF and for committing subsequent terrorist acts, thus establishing that TF need not be subsumed by the terrorism offence.

Criterion 5.2bis - Although not explicitly contained in Denmark’s CC, the TF offence can apply to financing the travel of individuals to foreign states for the purpose of preparing, planning, or participating in terrorist acts [s.114(b)(iii)]. Related offences also criminalise recruitment (s.114c), providing or receiving training (s.114d), and other forms of facilitation (s.114e). These offences appear to include most of the activities set out in UNSCR 2178.

Criterion 5.3 - Denmark, Greenland, and the Faroe Island’s TF offence apply to “financial support”, “funds”, “money and other assets”, “financial assets or financial or other similar services”. This broad definition captures any funds, whether from a legitimate or illegitimate source.

Criterion 5.4 - The TF offence requires that funds/financial services/property were provided to a person, a group, or an association committing or intending to commit any terrorist act, regardless of the purpose for which the funds are eventually used. Further, the TF offence is not linked to a specific terrorist act(s).

Criterion 5.5 - Danish law provides that violations of the CC must be committed intentionally to be punishable unless otherwise provided (s.19 CC). Case law establishes that the intentional element of Denmark’s TF offence may be inferred from objective factual circumstances.

Criterion 5.6 - The penalties for TF in Denmark, Greenland, and the Faroe Islands are proportionate and dissuasive, as it is punishable by a term of imprisonment not exceeding ten years. Any person who recruits another person to commit or facilitate the offence of TF can face up to six years of imprisonment [s.114(c)(2) CC].

Criterion 5.7 - Fines may be imposed upon a legal person for violation of the CC, when provided for in the law (CC and CCFI s.25 & 306, and CCGR s.17-19), and under s.306 this applies to all CC offences. Denmark explained that if a specific law does not provide criminal liability for legal

persons, the legal person cannot be held criminally responsible for a violation of sections in the specific law. Legal persons may be held criminally liable, where the offence was committed in the course of its activities, and caused by one or more natural persons connected to the legal person, or by the legal person itself (s.27 CC). However, it is not necessary that the responsible natural person within the company is also charged with a criminal offence.

There is no limitation on the size of a fine imposed. When determining the size of a fine, the court will give consideration to a number of factors, including the nature of the offence and the perpetrators' ability to pay. This does not preclude parallel civil or administrative liability. In addition, persons convicted of a punishable offence may be debarred from or deprived of the right to continue carrying on a business that requires a public authorization, if given the nature of the offence, there is a risk of abuse of the position or occupation [s.78(2), 79(1) CC]. S.79(2) permits authorities to limit a person's rights as a manager or board member of a limited liability company (or certain other companies), or a foundation.

Criterion 5.8 - Denmark, the Faroe Islands, and Greenland have appropriate ancillary offences that are applicable in the case of all crimes, including TF [CC and CCFI s. 21(1), 23(1); CCGR s. 12, 13]. This includes attempt (for all offences punishable by four months or more), aiding or abetting another person to commit the offence, or contributing/participating/organizing in its perpetration in any other way. The penalty for an attempt is the same as for the offence, but may be reduced if there is little strength or persistence in the criminal intention. There is no specific ancillary offence of contributing to the commission of a TF offence by being part of a group of persons acting with a common intent; however, Denmark stated that other ancillary offences would cover preparatory actions of this nature even where the contemplated offence is not ultimately carried out.

Criterion 5.9 - TF offences are predicate offences for ML in Denmark, Greenland, and the Faroe Islands.

Criterion 5.10 - TF offences apply, regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located, or the terrorist act(s) occurred/will occur.

Weighting and Conclusion

All criteria are met.

Recommendation 5 is rated Compliant.

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

Denmark was rated PC with former SR.III as the authorities were unable to freeze non-terrorism related assets and improvements were needed to the implement the sanctions requirements. Deficiencies existed in the legal frameworks for Greenland and the Faroe Islands.

Criterion 6.1 - (a) The MFA is the competent authority for proposing designations to the 1267/1989 UN Committee and the 1988 UN Committee. No proposals have been made to date.

(b) to (e) The MFA has a coordinating role in relation to proposals for designation which would involve obtaining input from other authorities, primarily the DDIS and PET. It is likely that Denmark would apply an evidentiary standard compatible with those in the AJA and the EU Common Position 931/2001, which are compatible with an evidentiary standard of “reasonable grounds”, but there are no procedures or other formal mechanisms in place establishing a domestic process for identifying targets and the criteria to be applied under that process, or for procedures to be followed when making a designation proposal to the UN. However, the absence of a formal procedure or other mechanism does not prevent the MFA from obtaining input from the other authorities and would not appear to prevent it from successfully coordinating a designation proposal to the UN. There are legal provisions to permit information sharing in respect of possible designation targets and in practice, information has been shared through membership of the Centre for Terror Analysis. Although Denmark has not put forward a listing proposal to date, the possibility of doing so has been discussed and considered on several occasions. Denmark was part of a group of countries that worked together in 2010 to secure the listing of a particular terrorist organisation.

Greenland and the Faroe Islands: **(a)** The MFA is also the competent authority for proposing designations on behalf of Greenland and Faroe Islands.

(b)-(e) The process outlined above applies equally to Greenland and Faroe Islands, which are treated as part of Denmark for the purposes of the DDIS although the application of PET powers and responsibilities to Greenland and the Faroe Islands was not confirmed by the authorities.

Criterion 6.2 - As an EU Member State, Denmark implements UNSCR 1373 via the EU framework under Council Common Position (CP) 2001/931/CFSP and EC Regulation 2580/2001. The Council of the EU is the competent authority for making designations, per EU Council Regulation 2580/2001 and Council Common Position 931/2001/CFSP. This is done by the CP 931 Working Party of the Council of the EU, which applies designation criteria consistent with the designation criteria in UNSCR 1373. The position for designation at domestic level is as described under 6.1. There are no EU or domestic formal mechanisms in place for freezing requests to third countries, but EU designations are directly effective in all EU member states and must include sufficient identifying information to exclude those with similar names. At a domestic level, the Danish authorities have confirmed that this would be done within the context of a criminal investigation where all necessary powers and processes are in place.

Greenland and the Faroe Islands: The domestic position for requests for third countries is the same as for Denmark. No information has been provided about the application of the mechanisms and processes for the other aspects of c.6.2.

Criterion 6.3 – (a) At the EU level, all Member States are required to provide each other with the widest possible range of police and judicial assistance in these matters, inform each other of any measures taken, and cooperate and supply information to the relevant UN Sanctions Committee. Denmark has the necessary powers to obtain and share information to identify possible designation targets.

(b) According to EC Regulation 1286/2009 preamble para.5, designations take place without prior notice to the person/entity identified. For asset freezing, the Court of Justice of the EU makes an exception to the general rule that notice must be given before the decision is taken in order not to

compromise the effect of the first freezing order. The listed individual or entity has the right to appeal against the listing decision in Court, and seek to have the listing annulled. The Danish authorities are able to operate ex-parte against possible designation targets.

Greenland and the Faroe Islands: The position is the same as in Denmark.

Criterion 6.4 - In the EU framework, implementation of TFS pursuant to UNSCRs 1267/1989 and 1988 does not occur “without delay.” Because of the time taken to consult between European Commission departments and translate the designation into all official EU languages, there is often a delay between when the designation and freezing decision is issued by the UN and when it is transposed into EU law under Regulation 881/2002. As regards Resolution 1988, similar issues arise when the Council transposes the decision under Regulation 753/2011. In 2015, these delays in transposition of new designees from the 1267/1989 (Al Qaida) Committee were 4 days (for one designee), 7 days (for six designees), 7 days (for one designee) 8 days (for 5 designees), 9 days (5 designees), 10 days, (9 designees), 11 days (10 designees), 12 days (1 designee) and 4 days (one designee). In 2016 up to 28 September, the delays were: 4 days (12 designees), 4 days (one designee), 6 days (5 designees), and 6 days (2 designees). The two designations in 2015 (there were no additions in 2016 up to 3 August) by the 1988 (Taliban) Committee took 127 days (over 4 months), and 15 days. A new designation is considered urgent and will therefore be processed faster, while other changes (e.g. de-listing) are considered less urgent and can thus be transposed less quickly.

The Danish authorities have advised that they would rely on court-based powers under the criminal justice framework to give effect to UN designations if necessary. However, this is untested so it is unclear whether the various statutory criteria to which they are subject would be treated as met by the courts by the fact of listing alone, or whether evidence of a link to actual or expected criminality would be required. Even if these powers are applicable in this context, the use of them would be dependent on first receiving intelligence from an STR or foreign request in order to identify the relevant assets. Denmark is investigating the issue of guidance, which would facilitate the rapid use of the criminal justice system to freeze assets on the basis of voluntary notifications from Danish banks.

For resolution 1373, TFS are implemented without delay because once the decision to freeze is taken as Council Regulation 2580/2001 is immediately applicable to all EU Member States.

Greenland and the Faroe Islands: The EU framework does not apply and dedicated sanctions legislation has been introduced to address this. UNSCR 1267 is implemented in Greenland by s. 2 of Royal Decree No. 1003 of 16 August 2010 and Act no. 3 of 19 May 2010 on specific restrictive measures against persons and entities associated with Osama Bin Laden, the Al-Qaida Network and the Taleban, and in the Faroe Islands by s.2 of Royal Decree No. 1148 of 24 September 2010 for Faroe Islands. This legislation imposes an immediate freeze on funds and financial assets or economic resources belonging to persons and entities on the relevant lists of names adopted by the UN Security Council under UNSCRs 1267, 1333 and 1390. Therefore, there is no delay in the freezing of funds in relation to UNSCR 1989. However, this legislation does not fully implement UNSCR 1267. It only applies to obliged entities under the MLA and, in addition, it does not apply to successor resolutions to UNSCR 1267 other than 1333 and 1390, so it does not implement listings made under

the UNSCR 1988 sanctions regime. The Danish authorities have advised that measures under the criminal justice frameworks in Greenland and the Faroe Islands would be relied upon to meet gaps in the dedicated sanctions legislation but this is subject to the same difficulties as in Denmark.

UNSCR 1373 is implemented in Greenland by s.2 of Royal Decree No. 1004 of 16 August on certain restrictive measures to combat terrorism and Act No.4 of 19 May 2010 on specific measures to combat terrorism, and in the Faroe Islands by s.2 of Royal Decree No. 1149 of 24 September 2010 for the Faroe Islands. This legislation imposes an immediate freeze on funds and financial assets or economic resources belonging to persons and entities on the relevant lists of names which shall apply for Denmark's implementation of sanctions under UNSCR 1373. Therefore, there is no delay in the freezing of funds under this legislation. However, this legislation only applies to obliged entities and, in addition, there is a lack of clarity about which lists of names are relevant for Denmark's implementation of UNSCR 1373. Although the websites of the MFA and DBA include references to EU internals, this information is not legally enforceable.

Criterion 6.5 - The DBA is the competent authority to administer the freezing provisions in the EU Regulations.

(a) For UNSCRs 1267/1989 and 1988, there is an obligation to freeze all funds, financial assets, or economic resources of designated persons/entities under transposing EU Regulations on the day of publication in the EU's Official Journal. However, the delay in transposing UN designations into EU Regulations described above may mean that, in practice, prior notice is given to the designated person/entity.

For UNSCR 1373, the obligation under EU Regulation 2580/2001 to freeze all funds/assets of designated persons/entities applies to all EU Member States without delay and without prior notice to those designated persons/entities. However, these measures do not extend to individuals or entities listed under Council Common Position 931/2001/CFSP that are EU internals (i.e. persons who have their roots, main activities, and objectives within the EU) although they are subject to increased police and judicial cooperation among Member States: CP 2001/931/CFSP footnote 1 of Annex 1). This leaves a gap in the implementation of UNSCR 1373 which the criminal justice framework does not fill for the reasons explained under c.6.4.

(b) For UNSCRs 1267/1989 and 1988, the freezing obligation extends to all funds/other assets that belong to, are owned, held or controlled by a designated person/entity. The obligation to freeze the funds or assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities is met by the requirement to freeze funds or assets "controlled by" a designated entity, which extends to persons acting on their behalf in relation to those funds: EU Council Regulation 881/2002 article 2(1) and EU Council Regulation 753/2011 article 3.

For UNSCR 1373, the freezing obligation in EU regulation 2580/2001 art.1 (a) and art.2 (1)(a) does not cover a sufficiently broad range of assets, although subsequent regulations cover a wider range and largely address the gap.

(c) Under EU Regulations 881/2002 (article 2(2)), 1286/2009 (article 1(2)), 753/2011 (article 4) and 2580/2001(article 2) 754/2011 (article 1), EU nationals and persons within the EU are

prohibited from making funds and other assets available to designated persons and entities. Violation of targeted financial sanctions is prohibited under s.110c CC.

(d) All EU regulations are published in the Official Journal of the EU, and the EU maintains a consolidated list of designated individuals. Danish entities that subscribe to the EU's RSS feed are informed of all changes to EU measures. The DBA has issued publicly available detailed guidelines on freezing which are published on the DBA's website and which were last updated in January 2016. The DBA also issues a newsletter which gives information about changes to listings shortly after they are made by the EU, mostly on the same day, and stresses the asset freezing and reporting obligations applicable under the EU framework. The newsletter also provides information about how to make reports to the authorities. It is available to all interested parties, who may subscribe to it via the DBA website. There are currently more than 1,200 subscribers, which include most FIs.

(e) Natural and legal persons (including FIs/DNFBPs) are required to provide immediately any information about accounts and amounts frozen under EU legislation per articles 5.1 of EU Regulation 881/2002, 4 of EU Regulation 2580/2001, and 8 of EU Regulation 753/2011. Under these regulations reports should be made to the DBA but, according to the DBA guidelines, reports should be made directly to the State Prosecutor pursuant to an agreement between the DBA and the State Prosecutor.

(f) Articles 6 of EC Regulation 881/2002 and 7 of EC Regulation 753/2001 protect the rights of bona fide third parties but there is no corresponding provision in Regulation 2580/2001. It is a general principle that third parties cannot be held responsible for acting in good faith to uphold legislation.

Greenland and the Faroe Islands: The competent authority under the specific sanctions legislation for Greenland and the Faroe Islands is SØIK.

(a) The asset freeze under UNSCR 1267/1989 is implemented without delay or prior notice but the obligation only applies to obliged entities and UNSCR 1988 is not implemented at all. In relation to UNSCR 1373 the asset freeze under UNSCR 1267/1989 is implemented without delay or prior notice, but the obligation only applies to obliged entities and there is doubt as to whether the asset freeze covers listed EU internals. The use of the criminal justice framework to fill these gaps is subject to the same difficulties as in Denmark (see c.6.4).

(b) Under the legislation implementing UNSCRs 1267/1989 and 1373, the freezing obligation applies to funds and financial assets or economic resources belonging to listed persons/entities. There is no requirement for a link to terrorism and although the term "belonging to" is not defined it might be possible to interpret this as including jointly held. However, it is not wide enough to include assets legally owned by persons/entities acting on behalf of, or at the direction of, designated persons/entities.

(c) The Greenland and Faroe Islands sanctions legislation only applies to obliged entities. In addition, the prohibitions only cover funds, financial assets and economic resources that belong to the listed person/entity in question. There is no general prohibition on making available funds, financial assets and economic resources from other sources such as those belonging to persons/entities acting on behalf of, or at the direction of, designated persons/entities or from other third parties as there is under the EU framework.

(d) The position about guidance is the same as in Denmark. There is no specific information or guidance provided about designations and obligations under Greenland and Faroe Islands sanctions legislation.

(e) The Greenland and Faroe Islands sanctions legislation requires obliged entities to notify the Public Prosecutor for Serious Economic Crime immediately if a transaction or an enquiry has or has had links to designated persons/entities. The legislation does not require obliged entities to report frozen assets that are already held by an FI/DNFBP at the time when their owner becomes designated.

(f) The general domestic principle noted above about third party rights applies here.

Criterion 6.6 – (a) The MFA is the competent authority for submitting de-listing requests to the UN and has a coordinating role that would involve obtaining input from other authorities. EU procedures for de-listing are publicly known and are also set out in the guidelines issued by the DBA. The guidelines also include a link to the UN Focal Point and provide the contact details for the MFA.

(b) For 1373 designations, the EU has de-listing procedures under Regulation 2580/2001 that are publicly known and are also referred to in the DBA guidelines. De-listing is immediately effective and may occur ad hoc or after mandatory 6-monthly reviews.

(c) At the EU level, a listed individual or entity can write to the Council to have the designation reviewed or can challenge the relevant Council Regulation, a Commission Implementing Regulation, or a Council Implementing Regulation in Court, per Treaty on the Functioning of the European Union (TFEU), article 263 (4)). Article 275 also allows legal challenges of a relevant CFSP Decision.

(d) & (e) For 1267/1989 and 1988, designated persons/entities are informed of the listing, its reasons and legal consequences, their rights of due process and the availability of de-listing procedures including the UN Office of the Ombudsperson (UNSCR 1267/1989 designations) or the UN Focal Point mechanism (UNSCR 1988 designations). These may take place in parallel with procedures at EU level for de-listing, unfreezing, and allowing a review of the designation by the European Commission or the Council. These procedures are referred to in the DBA guidelines.

(f) According to EU Regulations 881/2002 and 2580/2001, upon verification that the person/entity involved is not designated, the funds/assets must be unfrozen.

(g) De-listing and unfreezing decisions taken in accordance with EU Regulations are published by the EU and information is also provided by the DBA's electronic newsletter and guidelines as described under criterion 6.5.

Greenland and the Faroe Islands: **(a) to (g)** The position is the same as for Denmark.

Criterion 6.7 – At the EU level, there are mechanisms for authorizing access to frozen funds or other assets which have been determined to be necessary for basic expenses, the payment of certain types of expenses, or for extraordinary expenses, per articles 2a of EU Regulation 881/2002, EU Regulation 753/2011, and 5–6 of EU Regulation 2580/2001. These are supplemented by procedures set out in the DBA guidelines.

Greenland and the Faroe Islands: There is a provision in the sanctions legislation for SØIK to authorise access to funds and financial assets or economic resources.

Weighting and Conclusion

Denmark meets c6.3, 6.6 and 6.7, mostly meets c.6.2 and partly meets c. 6.1, 6.4 and 6.5. The inability to freeze without delay the assets of persons/entities designated by the UN and the absence of any specific measures to freeze the assets of listed EU internals constitute significant deficiencies in meeting c. 6.4 and 6.5, which are fundamental components of R6. There are also significant deficiencies in the absence of formal mechanisms to designate or seek designation of individuals not listed by the UN (c.6.1) and in the sanctions legislation for Greenland and the Faroe Islands which is binding on obliged entities only, does not permit the freezing of assets belonging to third parties acting on behalf of or at the direction of designated persons/entities and does not implement UNSCR 1988.

Recommendation 6 is rated Partially Compliant.

Recommendation 7 – Targeted financial sanctions related to proliferation

Denmark has not previously been assessed against this Recommendation as it was added in 2012. Denmark implements R.7 via the EU framework. Greenland and the Faroe Islands do not have any measures in place to comply with R.7.

Criterion 7.1 - UNSCR 1718 on the Democratic People’s Republic of Korea (DPRK) is transposed into the EU legal framework through Council Regulation 329/2007, Council Decision (CD) 2013/183/CFSP, and CD 2010/413. UNSCR 1737 on Iran is transposed into the EU legal framework through Council Regulation 267/2012. As explained under c.6.4, the transposition of designations under UNSCRs does not take place without delay. With regard to materiality and context for PF, as indicated in IO11, TFS on PF in connection with Iran have not in practice suffered from technical problems arising from the length of the transposition. With reference to DPRK, there have been gaps in transposition for the five occasions when the UN has added individuals and entities to its list of designations although these gaps have been mitigated as the delays were often very short and 13 out of the 49 additional persons and entities had already been listed in the EU framework.

The authorities have suggested that the criminal justice framework could remedy these gaps but this is unlikely as foreign proliferation activity would not come within Denmark’s criminal jurisdiction in the absence of a nexus with Denmark.

Criterion 7.2 – The Danish authorities have designated the DBA as the competent authority to administer the freezing provisions in the EU Regulations.

(a) The EU regulations require all natural and legal persons within or associated with the EU to freeze the funds/other assets of designated persons/entities. This obligation is triggered as soon as the regulation is approved and the designation published in the Official Journal of the European Union (OJEU). However, delays in transposing the UN designations into EU law and the possible difficulties in relying on the criminal justice framework in the interim mean that freezing may not happen without delay for entities which are not already designated by the EU, and raises the question of whether the freezing action, in practice, takes place without prior notice to the designated person/entity.

(b) The freezing obligation under the EU framework extends to all types of funds.

(c) Under articles 6(4) of EU Regulation 329/2007 and 23(3) of EU Regulation 267/2012, EU nationals and persons within the EU are prohibited from making funds and other assets available to designated persons and entities unless otherwise authorised or notified in compliance with the relevant UNSCRs.

(d) All EU regulations are published in the Official Journal of the European Union, and the EU maintains a consolidated list of designated individuals. Danish entities that subscribe to the EU's RSS feed are also informed of all changes. As explained under c.6.5, information provided by the EU is supplemented by the DBA's electronic newsletter and guidelines, which include information on proliferation.

(e) Natural and legal persons (including FIs/DNFBPs) are required to provide immediately any information about accounts and amounts frozen under EU legislation under articles 10.1 of EU Regulation 329/2007 and 40.1.a of EU Regulation 267/2012.

(f) Article 42 of EC Regulation 267/2012 and Article 11 of EC Regulation 329/2007 protect the rights of third parties acting in good faith when undertaking freezing actions.

Criterion 7.3 – Articles 47 of EC Regulation 267/2012 and 14 of EC Regulation 329/2007 require EU Member States to take all measures necessary to ensure that the EU regulations are implemented, and have effective, proportionate and dissuasive sanctions available for failing to comply with these requirements. The MLA contains measures for monitoring and ensuring compliance. S.25 (1) requires obliged entities to have internal rules on complying with financial sanctions. Under s.34 (1) the FSA is required to ensure that these rules are complied with and if they are not, under s.35 (7) it may order remedial action to be taken. The DBA has similar powers at s. 32(1) and 32(5). Failure to comply with a remedial order from the FSA or the DBA is punishable by a fine. As noted in R.26 and 35, there are concerns about the supervisory activities of the FSA and DBA and the proportionality and dissuasiveness of supervisory fines.

Criterion 7.4 – The EU Regulations contain procedures for submitting delisting requests to the UN Security Council for designated persons/entities that, in the view of the EU, no longer meet the criteria for designation. The Council of the EU communicates its designation decisions and the grounds for listing, to designated persons/entities who have the right to comment on them and to request a review of the decision. Such a request can be made, irrespective of whether a de-listing request is made at the UN level (for example, through the Focal Point mechanism). Where the UN de-lists a person/entity, the EU amends the relevant EU Regulations accordingly, per EU Council Regulation 329/2007 article 13.1(d) and (e), Reg.267/2012 article 46, and CP 2006/795/CFSP article 6. Under Regulation 329/2007 articles 7 and 8, and Council Regulation 267/2012 articles 24, 26, and 27, there are provisions for authorizing access to funds or other assets, where the competent authorities of Member States have determined that the exemption conditions set out in resolutions 1718 and 1737 are met, and in accordance with the procedures set out in those resolutions. The DBA guidelines referred to under R6 contain information on the EU provisions on delisting and access to frozen funds, which are supplemented by procedures set out in the DBA. The DBA guidelines also refer to specific de-listing and unfreezing decisions. In addition, any person holding assets belonging

to a newly de-listed person where this has previously been reported to the DBA is notified directly of the de-listing and required to release the assets.

Criterion 7.5 - Under article 29 of EU Regulation 267/2012 and article 9 of EU Regulation 329/2007, interest or other earnings on frozen accounts or payments due under contracts, agreements or obligations are permitted, as long as they are subject to the freezing action. Under article 8 of EU Regulation 329/2007 and article 24-28 of EU Regulation 267/2012, payments due under a contract entered into prior to the date of listing are permitted provided that prior notification is made to the UNSCR 1737 Committee, and determination that the payment is not related to any of the prohibitions under UNSCR 1718.

Weighting and Conclusion

Denmark mostly meets c.7.3, 7.4 and 7.5 and partially meets c.7.1 and 7.2. The inability to freeze the assets of designated persons without delay is a significant deficiency (albeit partly mitigated in practice by the nature of the EU framework). C.7.1 and 7.2 are fundamental components of R.7. In addition, Greenland and the Faroe Islands do not meet any of the criteria under R.7

Recommendation 7 is rated Partially Compliant.

Recommendation 8 – Non-profit organisations

Denmark was rated as LC with old SRVIII although the onsite occurred after the adoption of the Interpretive Note but before it was translated into the Methodology. Danish authorities were recommended to undertake a formal review of the legal, regulatory, registration and taxation systems to meet the new standard as elaborated in the Interpretive Note; increase outreach; and work with the NPO sector to develop and refine best practices.

Criterion 8.1 – The term “NPO” is not a legally defined term in Danish law. Legislation does not distinguish between NPOs and other fund raising bodies or between funds collected for a charitable cause or for some other form of non-profit activity; the Danish Fundraising Act applies to “any kind of encouragement to make a donation for a predetermined purpose”. NPOs can be established as non-commercial foundations or as associations, both of which are legal persons. The same position applies in Greenland. The position in the Faroe Islands was not advised to the evaluation team.

(a) The Danish authorities have not identified which sub-sect of organisations fall within the FATF definition of NPO. The TF NRA was completed by PET immediately before the onsite and partly identifies features and types of NPO which are likely to be at risk of TF abuse.

(b) Some information on NPOs is included in the TF NRA. However, this was not a coordinated process, not all relevant authorities have knowledge of the nature of the threats, and not all relevant sources were taken into account (see IO.1). During the onsite visit, PET provided further information on TF risks posed in relation to NPOs in Denmark, Greenland and the Faroe.

(c) The Danish authorities referred to an ongoing review of the adequacy of relevant laws and regulations, and the consequential introduction of the Fundraising Act in 2014 (and the Executive Order on fundraising, and the establishment of an independent Fundraising Board). The legislation is based on the findings of a committee tasked with examining the existing legislation on fundraising

and assessing the need for new legislation. Authorities advised that the overall policy for the new legislation was that it should be a continuation of the previous legislation and address the need for fundraising while also ensuring adequate control by the authorities. The new Act does not address terrorist organisations posing as legitimate entities. More generally, the legislation does not arise from an assessment of adequacy of measures in relation to abuse of NPOs for TF and it forms an incomplete basis for taking actions to address risks. No review of adequacy of measures has been undertaken in relation to Greenland and the Faroe Islands. The Danish authorities have advised that the absence of a review (including laws and regulations) arises from size of the population in Greenland and the number of NPOs.

(d) PET held a TF awareness raising meeting in early 2014 with the Fundraising Board in order to present the 2014 National Threat Assessment and to highlight and discuss TF issues. However, the audience was limited to the Fundraising Board and the National Threat Assessment is very limited in its consideration of NPOs. The TF NRA, which contains further information, is not comprehensive. The process to date can be considered to comprise a partial periodic reassessment of the NPO sector by reviewing new information on the sector's potential vulnerabilities in that the NRA updates a vulnerability assessment which had been undertaken. No assessment or reassessment of NPO sectors has taken place in relation to Greenland and Faroe Islands.

Criterion 8.2 - (a) The Fundraising Act, the 2014 Executive Order on fundraising (the Fundraising Order) and the Act on public collections (APC) contain elements which promote transparency, integrity and public confidence. S.8 of the Fundraising Act and s.19 of the Fundraising Order state that fundraising campaigns must be undertaken in accordance with good fundraising practice. However, the sanctions provisions in s.16 of the Act and s.20 of the Order do not apply in respect of breaches of s.8 of the Act and s.19 of the Order and, therefore, the articles on good fundraising practice are not enforceable. The ethical guidelines on good fundraising practice have been issued by the Fundraising Board and can be found on the homepage of the Fundraising Board (in Danish). The guidelines were inspired by the ethical guidelines issued by ISOBRO. The preamble to the guidelines states that they are applicable irrespective of whether or not a fundraising campaign has been notified to the Fundraising Board (i.e. they do not apply to entities exempt from the Act under s.2 but they do apply to entities approved by the Minister of Taxation as eligible to accept tax-deductible charitable donations under s.4 of the Act which provide information to the Board separate to notifications). There are no written policies or procedures on promoting transparency, integrity and public confidence.

Greenland: The Executive order on public collections in Greenland (the Greenland Order) contains some elements which promote transparency, integrity and public confidence. There are no written policies or procedures on promoting transparency, integrity and public confidence. *Faroe Islands:* There are no provisions in place.

(b) In 2010 the Danish authorities published a leaflet "Your contribution can be abused" by the PET and the Danish association of NPOs which undertake fund raising (ISOBRO). This leaflet is available on PET's website. It is very general and overly simplistic. The PET website states that it paid a number of visits to companies in 2008 and 2009 to enhance focus on suspicious money transfers. Although there is no formal written process for outreach or education there has been a process in

practice whereby PET has also met with the larger banks and included discussion on NPO abuse and risks in those meetings. In addition, the document on TF vulnerabilities, which includes some reference to NPOs, was provided to some banks immediately prior to the onsite visit to Denmark by the evaluation team. There has been no outreach to or education of the donor community beyond the PET leaflet described above – PET intends to update the leaflet and make it more comprehensive. No outreach to or education of the NPO sectors or donor communities in Denmark, Greenland and the Faroe Islands has been carried out during period under review by the evaluation team.

(c) There is no formal policy or process in Denmark, Greenland or the Faroe islands for working with NPOs to develop and refine best practices to address TF risk and vulnerabilities.

(d) S.7 of the Executive Order on fundraising etc. requires funds raised to be deposited in a bank account. The funds may also be invested in bonds. These requirements apply only to NPOs which have notified fundraising campaigns to the Fundraising Board or which have been approved by the Minister for Taxation as eligible to accept tax deductible donations. There are no provisions which apply to transactions in foreign countries. *Greenland:* The Greenland Order requires funds to be deposited in a bank account. The funds may also be invested in bonds. *Faroe Islands:* There are no provisions encouraging or requiring NPOs to conduct transactions via regulated financial channels

Criterion 8.3 – Although the legislation regarding fundraising applies to all NPOs carrying out fundraising (subject to exemptions), it is unclear to what extent the requirements, including those below cover NPOs which account for the greatest risk of TF abuse.

Licensing/registration

Denmark: NPOs are not registered or licensed by the Fundraising Board. NPOs established as non-commercial foundations must provide their statutes to the Department of Civil Affairs. The statute must contain, amongst other matters, the name and any secondary name of the foundation; the founders; the objectives; and the number of their directors. In addition, NPOs may voluntarily choose to register for a CVR-number and provide the information specified at s.11(1) of the Consolidating Act on the Central Business Register (including type of business – interpreted as type of NPO in the context of NPOs); date of establishment; name, address, position and Central Civil Register or CVR number of fully liable partners; and number of employees). (It is the treatment of non-commercial foundations and associations as legal persons under Danish law which means that s.11(1) is applicable.) *Greenland and the Faroe Islands:* there are no provisions in place.

Maintenance of available information

Denmark: Under s.3 of the Fundraising Act notifications made to the Fundraising Board before fundraising campaigns are launched must state the purpose of the fundraising campaign. Under s.4 notifications are not required for organisations approved by the Minister for Taxation as eligible to accept tax-deductible charitable donations provided that the organisation has submitted information to the Fundraising Board, inter alia, on the purposes for which the funds will be raised. It is implicit that the information is recorded by the NPO at the time information is disclosed to the Fundraising Board. *Greenland:* S.2 of the Greenland Order provides that notifications to the police made under s.1 of the CAPC must include the purpose for which collected funds will be used. It is implicit that this

information will be held at least at the time of the provision of information to the police. *Faroe Islands*: there are no provisions in place.

S.3.2 of the non-enforceable guidelines on fundraising good practice states that there must be openness about the management of the fundraising organisation. In addition, s.13.2 provides that information as to whether board members work voluntarily or are paid by the fundraising organisation must be publicly available. *Greenland and Faroe Islands*: there are no provisions in place.

Financial statements and accounting standards

Denmark: Under s.3(2) of the Fundraising Act financial statements on fund raising campaigns must be provided to the Fundraising Board. Thus, under s.4(3) of the Act organisations approved by the Minister for Taxation as eligible to accept tax-deductible charitable donations that have submitted specified information to the Fundraising Board only have to submit annual financial statements. Under s.8(1) of the Fund Raising Order, proper accounts must be kept of all income and expenses relating to a fund raising campaign. In addition, under s.8(2) organisations eligible to accept tax-deductible charitable donations are required to prepare financial statements; separate accounts must be prepared for house-to-house and/or street collections. Also, s.22(1) of the Foundations Act requires foundations to present financial statements prepared in accordance with generally accepted accounting principles (although no sanction appears to be applicable to failure to do this). The level of detail for financial statements is not specified by Denmark beyond the foregoing.

Under s. 8(6) of the Fundraising Order, where the amount raised exceeds DKK 50 000 the financial statements must be audited by a state authorised or registered public accountant.

Under s. 9 of the Fundraising Order, financial statements must be submitted to the Fundraising Board within six months of the end of the fund raising campaign or, for those in receipt of an approval under s.4 of the Fundraising Act, annually. These statements are published on the Board's website.

S.19.1 of the non-enforceable guidelines on good practice issued by the Fundraising Board states that the financial statements of fund raising organisations must be clear, transparent, specified and understandable to anyone.

Greenland: Under s.5 of the Greenland Order, proper accounts of all income and expenses must be kept. The accounts must specify both the administrative expenses and the use of profits. The accounts must be audited by an accountant, who can be approved for this task by the police. However, this section applies only in relation to public collections and it requires only accounts to be kept rather than the issue of annual financial statements as required by the criterion. *Faroe Islands*: there are no provisions in place.

Beneficiaries and associated NPOs

Denmark: There are no specific provisions on confirming the identity, credentials and good standing of beneficiaries and associate NPOs. *Greenland and Faroe Islands*: There are no provisions in place.

Record keeping

S.10 of the Bookkeeping Act requires various types of entity in Denmark to keep accounting material for five years from the end of the accounting period that the material concerns. These entities include commercial undertakings, undertakings which are fully or partially liable to pay tax in Denmark and undertakings which submit financial information as a prerequisite to receiving direct subsidies from Denmark or the European Union. The Danish authorities consider that a large number of NPOs fall within at least one of these criteria, and are therefore subject to the record keeping requirements, as any NPO with one or member of staff is liable to taxation by SKAT and it appears that some NPOs receive grants from the Danish Government. It has also been suggested to the evaluation team that a few NPOs might be considered to be commercial undertakings for purposes of the Bookkeeping Act for example by operating a charity shop but it is not clear how an NPO can be non-commercial for the purposes of the Foundation legislation and a commercial undertaking for the purposes of the Bookkeeping Act. *Greenland*: S.10 of the Bookkeeping Act applies in Greenland. *Faroe Islands*: there are no provisions in place.

Criterion 8.4 - (a) S.10 of the Fundraising Act specifies that the Fundraising Board supervises that fundraising campaigns are carried out in accordance with the Act, that funds raised are in accordance with the purpose stated in the notification and that the purpose is legal. Under the s.10(4), the Fundraising Board may also, on its own initiative, take up any matter for consideration. S.11 of the Act and s.5 of the Fundraising Order also provide for the Fundraising Board to address complaints on fundraising activity by, for example, obtaining written statements from the collector or organisation affected. The Danish authorities take the view that the legislation on fundraising ensures compliance and preventive measures are very limited; the Fundraising Board does not have specific procedures or policies in relation to the enforcement of compliance, and measures are not risk based. *Greenland and Faroe Islands*: there are no provisions in place.

(b) S.10 of the Fundraising Act allows the Fundraising Board to publish criticism although this power is linked only to complaints. S.16 enables the Court to impose fines on fundraising bodies for violations of the Act, unless a more severe punishment is stipulated elsewhere in law; the Act does not specify a maximum level of fine that may be imposed. The fining powers in the Act do not apply to breaches of s.8 on fundraising campaigns being in accordance with good fund raising practice. S.6 of the CAPC provides that violations of that Act are subject to a fine; the Code does not specify a maximum level of fine that may be imposed. S.20 of the Fundraising Order provides ability for the requirements of the Order to be sanctioned by fines unless a more severe penalty is stipulated in the legislation (although, notwithstanding the sanctions that exist in the primary legislation, some elements of detail in the Fundraising Order appear not to be covered by sanctions). The framework covers natural persons as well as legal persons committing breaches of the provisions mentioned in s.16(1-2) of the Act and 20(1) of the Order. S.16(2) of the Fundraising Act and s.20(2) of the Fundraising Order provide that legal persons may incur criminal liability under part V of the CC. This limited palette of sanctions and the absence of sanctions for some elements of detail in the legislation for fundraising bodies means that the framework is partially effective, proportionate and dissuasive.

Greenland: S.6 of the CAPC also applies in Greenland. In addition, s.8 of the Greenland Order provides that violations of Order are punishable by a fine. The framework covers natural persons who violate

s.8 of the Greenland Order, but not legal persons. The power to impose fines rests with the police. The legislation does not specify the maximum level of fine that may be imposed although the Danish authorities advise that in practice the level of fines is low due to the limited amount of funding raised in Greenland. The standard fine for not presenting accounts is DKK 1 000 although this amount can be adjusted depending on the circumstances of the case. The limited palette and coverage of sanctions does not appear to the evaluation team to be proportionate and dissuasive. *Faroe Islands*: there are no provisions in place.

Criterion 8.5 – (a) There is no authority with responsibility for coordination although in part PET has filled this gap. The Danish authorities have advised that PET possesses internal guidelines on processes to be followed on the processing of data and the disclosure of information and that these are classified – they have not been provided by the evaluation team and therefore the team cannot form a view on to what extent they might assist compliance with this criterion. There is no formal policy, procedure or process for effective cooperation and information sharing to the extent possible and, as stated in criterion 8.1 there are different levels of knowledge on risk between the authorities.

The Fundraising Board has some explicit powers to require information to be provided to it under s.12 of the Fundraising Act. However, it has no statutory powers of investigation on behalf of another authority or to share information. Under s.37 of the Foundation Act, the Department of Civil Affairs has power to demand from a foundation’s board of directors or others the information it deems necessary to perform its duties under the Act. It appears to have no powers to voluntarily share information.

S.28 of the Public Administration Act (PAA) provides for disclosures of information by public administrative authorities where it must be presumed that the information will be of considerable significance to the activities of the authority or to a decision to be made by the authority. As discussed in R.6 it is not certain that the test of “considerable significance” would always ensure effective information sharing. S.8 of the Act on Processing Personal Data states that data on an individual can be disclosed where it is necessary for the performance of an authority or required for a decision to be made by that authority, or where disclosure is necessary for the performance of tasks for an official authority. In addition, s.10 of PETA allows disclosure of information to the DDIS. There do not appear to be any additional mechanisms in place to facilitate information sharing on a proactive basis.

(b) PET has the relevant investigative expertise and capabilities to examine those NPOs suspected of being exploited by, or actively supporting, terrorist activity or terrorist organisations.

(c) Under s.1(1)(1) of the PETA, PET is responsible of the investigation of terrorism offences, including TF. Under s.3 and 4 of the PETA, PET can request, gather and collect all relevant information with potential relevance to its activities while, under s.5, PET can launch enquiries into physical and legal entities to perform its functions. S.6 of the PETA provides that the use of investigational and coercive measures by PET is governed by the provisions of the AJA. The AJA provides for provisional measures (such as search, seizure etc.) that are available for PET, including when investigating suspicion of TF committed by a NPO (see R.31). Information can be obtained from NPOs although that information might itself be limited.

(d) FIs/DNFBPs are required to report STRs and other information, including information relevant to TF to the MLS (see R.20). In urgent cases, reporting entities may report directly to the local police. Information provided to the MLS is disseminated to the relevant police unit (SØIK, PET, police districts) to take preventive or investigative action.

Greenland and Faroe Islands: no information has been provided.

Criterion 8.6 – PET is the contact point for all international requests for assistance. The Danish authorities are aware of PET’s responsibilities in relation to TF, including the activities of NPOs although there is no document designating PET’s role as the contact point. It is not clear to the evaluation team how any foreign authority would necessarily be aware of its role and who to contact within the PET but the evaluation team has been advised that, if a Danish authority is contacted by a foreign counterpart, the counterpart will be referred to PET or the query forwarded to PET. There are no procedures or internal guidelines on responding to international requests for information in line with the criterion, although PET does have guidelines on the processing of data and the disclosure of information. These are classified and have not been seen by the evaluation team. The evaluation team is not clear as to the contact arrangements in relation to Greenland and the Faroe Islands.

Weighting and Conclusion

Denmark largely meets one criterion and partly meets five criteria in R.8. There are some positive elements but there is no indication that a risk based approach is being taken. Significant deficiencies exist: a review of legislation and measures from the perspective of TF has not been undertaken, there has been no identification of the relevant organisations falling within the FATF’s definition of NPO and a partial rather than comprehensive identification has been made of NPOs at risk of TF abuse (c.8.1); there are no policies or procedures for outreach and educational programmes to NPOs and the donor community or for working with NPOs (c.8.2); steps for supervision are limited and not risk based (c.8.3 and 8.4); and there is no coordination policy or procedure, or policies or procedures to ensure effective information sharing (including promptness of information sharing), together with a legislative provision which provides an element of uncertainty for effectiveness of information exchange always to be certain. Greenland has very limited compliance with R.8. No information has been provided in relation to the Faroe Islands.

Recommendation 8 is rated Partially Compliant.

Recommendation 9 – Financial institution secrecy laws

Denmark was rated C with old R.4.

Criterion 9.1 – The Danish legal framework subjects FIs to a duty of confidentiality, while also providing numerous gateways for the disclosure of confidential information for the purpose of AML/CFT compliance.

Confidentiality requirements provide that confidential information obtained by any employee, board member, auditor or agent of an FI in the course of business cannot be disclosed or used without due cause (s.117-123 FBA; Royal Decrees on Financial Business applicable in Greenland and in the Faroe

Islands). Danish authorities indicated that 'due cause' includes compliance with AML/CFT requirements.

Similar provisions allowing for the sharing of information for the purposes of compliance with AML/CFT requirements are contained in other parts of the MLA/GMLAS/FMLAS, including:

- a) *Access by competent authorities*: supervisory authorities are empowered to receive any information necessary for exercise of their supervisory powers without a court order. This includes gathering information during inspections [DBA: s.32(3-4); FSA: s.34(5-6) MLA; Skaseting Foroya: s.16(4); and Insurance supervisory authority: s.8(6) FMLAS; and Tax and customs authorities: s.27(6) GMLAS];
- b) *Sharing of information between competent authorities*: the communication of confidential information is allowed in certain circumstances, such as the disclosure to public authorities (e.g. prosecution, police) provided that it is in connection with the investigation and prosecution of possible criminal, ML or TF offences. Disclosure is permitted to report STRs to the MLS does not constitute a breach of the duty of confidentiality (s.26 MLA/FMLA/GMLA). The FSA is also empowered in certain circumstances to share information with other competent authorities domestically and internationally [MLA s.34a(3)]. Since there are no similar provisions in the FMLA/FMLAS/GMLA/GMLAS, these provisions are not applicable to the Insurance supervisory authority, the Skaseting Foroya or the tax and customs authority in Greenland and the Faroe Islands;
- c) *Sharing of information about an STR between FIs*: this is explicitly permitted provided that certain conditions are met (s.27(6)-(7) MLA/FMLA/GMLA).

Weighting and Conclusion

The deficiencies relate to Greenland and the Faroe Islands not having the necessary provisions in place.

Recommendation 9 is rated Largely Compliant.

Recommendation 10 – Customer due diligence

Denmark was rated PC with old R.5. Since its last MER, Denmark has introduced new CDD measures, including the obligation to identify beneficial owners, to obtain information on the purpose and intended nature of the business relationship, to keep customer data up-to-date and to monitor the business relationship/transactions, and to apply enhanced/reduced due diligence. Denmark also enacted laws to give effect to the new MLA in both Greenland and the Faroe Islands.

Criterion 10.1 – Even though there is no explicit prohibition on anonymous accounts or accounts in fictitious names, the MLA/GMLA/FMLA requires proof of identity when establishing a business relationship, including opening an account (s.12). S.13 prohibits establishing a relationship or carrying out transactions if identity is not proved in accordance with s.12.

When CDD is required

Criterion 10.2 – The MLA distinguishes between regular customer (business) relationships and occasional customers, which consist of two scenarios: (a) customers with isolated transactions; and (b) "Isolated consultancy assignments" which do not involve transactions. Under the MLA in such

cases no business relationship is considered to have been established between the customer and the financial institution or DNFBP. Denmark stated that a classic example would be a person seeking advice on an occasional basis from a lawyer or a financial institution. This distinction is not used in the GMLA and FMLA. FIs are required to apply CDD measures when:

- (a) establishing regular customer relationships [s.12];
- (b) & (c) carrying out occasional transactions, including wire transfers, above a EUR 1 000 threshold [DKK 100 000 for FMLA/GMLA (approx. EUR 13 000)], including multiple linked transactions [s.14(1)], although there is an exclusion from identifying beneficial owners on the basis of a risk assessment for transactions under EUR 13 000, including for wire transfers, and s.14(2) completely exempts occasional customers in isolated consultancy assignments.

It should be noted that the CDD obligation for occasional customers (both scenarios) in s.14 MLA is not directly stated. S.14 provides: “For assistance to occasional customers with isolated transactions, compliance with the requirements of s.12, 15 and 19 may be omitted, if the transaction does not exceed an amount corresponding to EUR 1 000”. However the Explanatory Notes for s.14 and case law make it clear that proof of identity must be obtained for occasional transactions.

By contrast, s.14 of both the GMLA and FMLA clearly apply s.12(1-4) and s.13 proof of identity measures to occasional customers above a threshold of DKK 100 000 (EUR 13 000). This threshold also applies to wire transfers.

- (d) there is a suspicion of ML/TF, regardless of any exemptions [s.11; 20(2)]; and
- (e) there is a doubt as to whether previously obtained data concerning the customer is correct and adequate [s.12(6)]. S.20 of the MLA/FMLA/GMLA provides for some exceptions, but these are subject to s.11 and s.20(2). S.21 sets out other exceptions after a risk assessment. While these exemptions were based on the 3AMLD, Denmark’s NRA does conclude that some of these are lower risk.

Required CDD measures for customers

Criterion 10.3 – Coverage of FIs by the MLA/FMLA/GMLA is comprehensive. S.12 and 14 of those Acts require identification and verification of identity of all customers, including both natural and legal persons. No form of legal arrangement can be created in Denmark, but the Explanatory Notes to s.3 MLA make it clear that s.12 applies to trusts (though not other types of legal arrangements) established elsewhere. Identification data includes name, addresses and CPR/CVR number or similar information/documents, which must be verified using reliable independent sources. Proof of identity may be carried out on the basis of a risk assessment but must still be adequate in relation to the risk of ML/TF [s.12(7)]. The Explanatory Notes to the MLA make it clear that the application of s.12(7) may not lead to total non-compliance with s.12(1) to (5).

One exception to the normal CDD requirements is that for life insurance and pensions, the legislation requires that the “customer” is considered to be the beneficiary of the policy rather than the policy-holder (c.10.12). This means that CDD is not carried out on the policy-holder, which is a deficiency.

While s.12 MLA contains no explicit reference to verification against reliable, independent source documents, data or information, the Explanatory Notes to s.12 refer to Article 7 of 3AMLD which requires such verification. While not enforceable means, the FSA Guidelines at 10.4.3 and 10.4.4 make it clear that identity must be verified using reliable independent documentation.

Criterion 10.4 – MLA, FMLA and GMLA, s.15 sets out the requirement to determine whether someone is acting on behalf of another person or undertaking, to ensure that that person or undertaking is authorised to act, and to clarify the identity of that person or undertaking on the basis of a risk assessment. However, “clarification” need not include verification of the identity of that person unless the risk assessment requires it (FSA Guidelines, s.10.4.5, para 162). There are also exemptions from the identification obligation where the party acting on behalf of another is a lawyer or one of a number of different types of FIs. Moreover, the FSA Guidelines also state that it is only necessary to investigate further if the circumstances give rise to suspicion of ML/TF, and also exclude commission relationships under the Commission Act.

Criterion 10.5 – S.12(3) sets out a requirement for the ownership and control structure of an undertaking to be clarified and for beneficial owners to provide proof of identity. As regards natural persons who are acting on behalf of or are controlled by another person, this appears to be covered by s.15 MLA, though when s.15 is read with the Explanatory Notes, the FSA Guidelines and the explanation provided by authorities, the nature of the legal obligation is not completely clear. Beneficial owners are generally defined under s.3(4) as the “natural persons who ultimately own or control the customer or the natural person on whose behalf a transaction or activity is being conducted”. This general definition is then further elaborated by adding five situations, where a person is to be regarded as a beneficial owner. This definition is broad, inclusive and consistent with the FATF definition. The requirements are the same as those for physical customers. However, s.14(1) MLA provides an exception to the obligation to clarify ownership/control and beneficial ownership for occasional transactions under EUR 15 000 on the basis of a risk assessment, including wire transfers. There is an exception in relation to companies whose equities are traded on a regulated market (EU/EEA or equivalent third country), though it is not clear that this covers equivalent levels of transparency in line with footnote 33 of the FATF Methodology.

Criterion 10.6 – FIs are required to obtain information concerning the purpose and intended nature of the customer relationship when applying CDD measures [s.12(4) MLA/FMLA/GMLA]. The FSA Guidelines (point 10.4.6) set out more details, including on the need to use the information as part of assessment of risk and in ongoing monitoring.

Criterion 10.7 - (a) FIs are required by s.12(5) of the MLA/FMLA/GMLA to monitor the business relationship on an ongoing basis, including to ensure that the transactions conducted are consistent with the institution’s knowledge of the customer, the customer’s business and risk profile, and where necessary, the source of funds.

(b) Documents, data or information held on the customer are to be kept up to date [s.12(5)]. This may be done on the basis of a risk assessment [s.12(7)] provided that the FI is able to prove to supervisors that the extent of the investigation is adequate based on ML/TF risk. It is clear that the application of s.12(7) may not lead to total non-compliance with s.12(1)-(5).

Specific CDD measures required for legal persons and legal arrangements

Criterion 10.8 – FIs are required to clarify the ownership and control structure of an “undertaking”, which includes legal persons and other similar legal arrangements [s.12(3) MLA, FMLA and GMLA]. The Explanatory Notes to the MLA, s.3 clarify that the definition of undertaking includes trusts, but does not reference other types of legal arrangements. Although there is no express requirement to understand the nature of the customer’s business, there is a requirement to obtain information concerning the purpose and intended nature of the customer relationship and for ongoing

monitoring on the basis of FIs' understanding of a customer's business and risk profile [s.12(4),(5) MLA].

Criterion 10.9 – (a) If the customer is an undertaking, proof of identity shall include name, address, CVR number or similar documentation if the undertaking does not have a CVR number [s.12(3) MLA/GMLA/FMLA]. Having a CVR number provides proof of existence and access to information about name and legal form for legal persons. It is not clear that this type of information is required for legal arrangements.

(b) The Explanatory Notes to the MLA make it clear that the requirement to obtain information about an undertaking's ownership and control structure means that information is to be collected on the customer's legal form, the owners, management and rules on powers that bind.

(c) There is a requirement to collect the address of a customer which is an undertaking and the Central Business Register includes the address of an entity. This address refers to the registered main address, which could be either the address of the registered office or the address of the principal place of business.

Criterion 10.10 – As referenced in criterion 10.5, s.12(3) of the MLA/GMLA/FMLA requires identification and verification of beneficial owners of an undertaking, which includes legal persons.

(a) Beneficial owners are defined under s.3(1)(4) as the “*natural persons who ultimately own or control the customer or the natural person on whose behalf a transaction or activity is being conducted*”. S.3(1)(4)(a) covers “Persons who ultimately own or control a company through direct or indirect ownership or control more than 25% of the ownership interests or the voting rights of a company”, which is in line with the FATF Methodology, footnote 35.

(b) Under s.3(1)(4)(b) MLA persons who otherwise exercise control over the management of a company are included as beneficial owners and must be identified, whether or not there are persons falling within s.3(4)(1)(a). S.3(1)(4)(b) MLA also covers direct/indirect ownership and control of more than 25% as noted above. This could be read broadly to also extend to exercising control by other means over shareholders, though it is not entirely clear. In the event of doubts about the veracity or adequacy of previously obtained customer identification data, new proof of identity is required [s.12(6)].

(c) The MLA/GMLA/FMLA contain no specific requirements to verify the identity of the natural person who holds the position of senior managing official in cases where no natural person is identified as beneficial owner in accordance with criteria 10.10(a) or (b).

Criterion 10.11 – The definition of beneficial owners in s.3(1)(4)(c)-(e) MLA/GMLA/FMLA refers to a “*foundation or other similar legal arrangement*”. This does not clearly cover trusts or other legal arrangements as Danish foundations are legal persons. However, the Explanatory Notes to s.3 MLA make it clear that beneficial ownership identification provisions are to apply to trusts. The definitions in s.3(1)(4)(c)-(e) mean that in effect trustees and beneficiaries (though not all), and protectors where they have some control over the trust, are covered. The settlor is not covered, unless the trust was worded in a way that it operates in the settlor's “*main interest*”, which is usually not permitted in many trust law countries. Legal arrangements other than trusts are not covered.

Criterion 10.12 - According to the Explanatory Notes to the MLA, for insurance contracts and pensions the beneficiary is to be considered as the customer and the insurer must conduct CDD on the beneficiaries of life insurance and investment linked insurance contracts, rather than on the policy-holder. This is to occur at the time of payout or when vested rights are exercised. There is no specific requirement to obtain the name of a specifically named beneficiary at the time of establishment of the relationship, or to gather adequate information in the case of a class of beneficiaries.

Criterion 10.13 - There are no specific provisions requiring the inclusion of the beneficiary of a life insurance policy as a relevant risk factor in deciding whether to apply enhanced CDD. Nor is there any requirement for enhanced CDD to include reasonable measures to identify and verify the beneficial owners of a beneficiary which is a legal person or arrangement, other than general requirements on due diligence for higher risk customers, which have certain weaknesses (c.10.17).

Criterion 10.14 - The general obligation is that verification procedures shall be applied at the time of the establishment of a customer relationship and no later than carrying out any transaction [s.13(1) MLA]. S.13(2) permits some delay when it is necessary in order not to interrupt the normal conduct of business and on the basis of a risk assessment, provided it is done as soon as practicable. However, there is no requirement for the risks to be effectively managed.

Criterion 10.15 - S.13(1) of the MLA/GMLA/FMLA provides for the verification procedure to be delayed based on a risk assessment, provided it is necessary not to interrupt the normal conduct of business. The procedure must, however, be completed as soon as practicable after initial contact with the customer. There is no requirement to implement specific risk management procedures for circumstances under which the customer may utilise the business relationship prior to verification, though s.25(1) does set out a general requirement to have risk management procedures.

Criterion 10.16 - Where customer identification and other information such as from monitoring does not exist for customer relationships established before entry into force of the MLA, CDD should be carried out at a suitable time and on the basis of a risk assessment [s.12(8) MLA/GMLA/FMLA]. Materiality is not mentioned as a consideration, and there is no clear provision for taking into account whether or when CDD has previously been undertaken and the adequacy of the data obtained.

Criterion 10.17 - S.19 of the MLA/GMLA/FMLA provides for enhanced identity verification in higher risk situations, but not other types of EDD (e.g. enhanced supervision of the relationship or approvals from management). At a minimum enhanced identity verification is required under s.19 in three situations: (1) when the customers are not physically present; (2) for cross-border correspondent banking relationships with non-EU FIs; and (3) when the customer is a foreign PEP. S.6 of the MLA also requires special attention to be paid to complex and unusually large transactions. The FSA Guidelines provide some additional examples of enhanced requirements where risk is high.

Criterion 10.18 - S.12(7) MLA/GMLA/FMLA does not expressly provide for the application of simplified or reduced CDD measures, but the Explanatory Notes note that “more lenient requirements for customer knowledge” could be permitted on the basis of a risk assessment. The

provisions do not clearly limit any reduced measures commensurate with the risk. The Explanatory Notes to the MLA make it clear that the application of s.12(7) may not lead to total non-compliance with CDD obligations in s.12(1) to (5). S.11 requires proof of identity whenever there is suspicion of ML/TF. It is implicit that simplified due diligence is not permitted if there is such a suspicion or a higher risk.

S.20 also allows some exemptions from CDD, such as for life assurance and pension contracts with low premiums (in line with INR.10), where they are related to a contract of employment with no buy back clause, or premiums are debited to a bank account, and electronic money where thresholds are fairly low. The Explanatory Notes to s.20 state that the assumption in these exemptions is that there is low risk, and this is supported by a risk assessment on life assurance and multi-employer pension schemes done in December 2013 (this assessment though has deficiencies (see c.1.6). However, there does not appear to be a specific risk assessment in relation to the types of electronic money which are exempted, rather, the EU Directive is relied on.

Failure to satisfactory complete CDD

Criterion 10.19 – S.13(2) MLA/GMLA/FMLA provides that if customer identification cannot be carried out in accordance with s.12(1)-(4), then FIs shall not establish a customer relationship or carry out the transaction and must consider whether a SAR should be filed. (Refer to c10.2 in relation to the occasional customer).

CDD and tipping-off

Criterion 10.20 – S.27(1) MLA/GMLA/FMLA establishes an obligation on FIs to keep secret the fact that a notification to the MLS was carried out (or considered), or that a possible ML/TF investigation was or will be instigated. However, there is no provision permitting FIs not to continue with CDD if there is a risk of tipping off, nor is there any specific SAR reporting obligation in these circumstances and there is nothing in the MLA that would permit this.

Weighting and Conclusion

There are a significant number of shortcomings identified under R.10: for example, CDD exemptions do not appear based on proven low risk; an exemption from performing full CDD in relation to occasional wire transfers under EUR 13 000; inadequate tipping-off requirement (i.e. there is no provision permitting FIs not to continue with CDD if there is a risk of tipping off); no CDD requirements for policy holders of life insurance and investment linked insurance contracts; and, a lack of clarity with regards to the identification and beneficial ownership requirements across legal persons and legal arrangements.

Recommendation 10 is rated Partially Compliant

Recommendation 11 – Record-keeping

Denmark was rated C with old R.10.

Criterion 11.1 – S.23(2) MLA/FMLA/GMLA require documents and records concerning transactions to be stored so that they can be located together for at least five years after the performance of the transactions. This includes records of investigations of transactions under s.6 MLA. There are also requirements under the Bookkeeping Act to keep records of transactions.

Criterion 11.2 – FIs are required to store ‘identity and control information’ for no less than five years after the customer relationship has ceased [s.23(1)MLA/FMLA/GMLA]. The term ‘control information’ is defined in s.3(1)(8) as “information on the proof of identity provided to verify identity information”. S.6(2) requires the results of investigations of customer transactions to be recorded and kept. It is not clear that account files and business correspondence are required to be kept, since s.23(1) and (2) refer to identity and control information, and to transactions. Chapter 16 of the FSA Guidelines sets out the information which should be recorded both in relation to transactions, CDD, and investigations.

Criterion 11.3 – There are obligations concerning the keeping of transaction records in the Bookkeeping Act which would ensure that transactions can be reconstructed. Chapter 16 of the FSA Guidelines (16.1, para 3) states that “so that they can be located together” in s.23(2) MLA is to facilitate a rapid investigation.

Criterion 11.4 - The Bookkeeping Act provides for public authorities to have access to transaction records and s.12(1) of that Act provides that accounting material shall be stored in a manner that means it can be made available without difficulty to public authorities in Denmark, where such authorities are entitled under other legislation to request access to the accounting material. There is no similar legal requirement that CDD information be swiftly or easily available to competent authorities. However, Chapter 16 of the FSA Guidelines describes the requirement in s.23 MLA to locate information together as an ability to respond quickly to requests for information about named persons.

Weighting and Conclusion

There are a minor scope issues (c.11.2), and the prompt and easy availability of recorded CDD information to all competent authorities.

Recommendation 11 is rated Largely Compliant

Recommendation 12 – Politically exposed persons

Denmark was rated NC with old R.6 as it had no AML/CFT measures in force concerning politically exposed persons (PEPs). Amendments to the MLA were introduced in January 2007, which established requirements for identifying foreign PEPs. The definition and requirements for PEPs are mirrored in the GMLA/GMLAS and FMLA for Greenland and the Faroe Islands, respectively. Nevertheless the Tax and Customs Authority has not laid down more detailed regulations on the meaning of PEPs in the GMLAS.

Criterion 12.1- PEPs are defined as “persons who are, or have been, entrusted with a prominent public function, members of the immediate family of such persons, or persons who are known to be their close business partners” [s.4(6) MLA]. Executive Order n°712 of 1 July 2008 on Exemptions from the MLA further clarifies this definition by including a list of prominent public functions, and definitions of “immediate family members” and “close business partners”. In addition to the undertakings referenced in s.12 MLA related to customer identification requirements, s.19(4) MLA requires FIs to:

- have adequate procedures to determine whether the customer is a “politically exposed person” who is a resident of another country;
- have senior daily management approval for establishing business relationships with such customers;
- take reasonable measures to gather information about the sources of income and funds that are involved in the business relationship or transaction; and
- continuously monitor the business relationship.

The requirements do not cover foreign PEPs that are beneficial owners. In addition, the EDD requirements only apply to foreign PEPs who have held a prominent public function during the previous year (s.6 Executive Order on Exemptions from the MLA). The prescribed timeframe of one year is not in line with a RBA, and is not sufficient to meet the definition of a PEP in the FATF Glossary, which includes individuals “who are or have been” in the prescribed roles. Pursuant to s.19(5) MLA, the continuation of customer relationships with foreign PEPs, established prior to 1 January 2007, shall be approved by senior management.

Criterion 12.2 - There are no provisions within the MLA/FMLA/GMLA that deal with domestic PEPs or persons entrusted with a prominent function in an international organisation. The requirements only apply to PEPs residing outside the Kingdom of Denmark as noted above.

Criterion 12.3 - The definition of PEPs in the MLA includes “immediate family members” or “close business partners”, but the deficiencies in c.12.1 & 2 above extend into c.12.3.

Criterion 12.4 - Denmark does not have any measures in place requiring CDD when the beneficiaries and/or the beneficial owner of the beneficiary of a life insurance contract is a PEP.

Weighting and Conclusion

While Denmark has measures in place for foreign PEPs, these do not cover foreign PEPs who are beneficial owners, there are no laws covering domestic PEPs or international organisation PEPs. Other technical deficiencies exist regarding the timeframe of consideration as a PEP within the past 12 months, and absence of measures for PEPs that are beneficial owners.

Recommendation 12 is rated Partially Compliant.

Recommendation 13 – Correspondent banking

Denmark was rated NC with old R.7 due to the lack of applicable legislative or other enforceable obligations addressing the risks of cross-border correspondent banking. On 1 January 2007, requirements were introduced in the MLA to conduct CDD in relation to cross-border correspondent banking relationships. The relevant provisions in the MLA are mirrored in the GMLA and FMLA.

Criterion 13.1 - The requirements introduced in s.19(3) MLA reflect the requirements for correspondent banking contained in R.13. However, the scope of application is limited to respondent institutions (banks, mortgage-credit institutions, payment institutions and E-money institutions) located outside of EEA member states (and “third party equivalents”), and does not cover credit institutions within the EEA.

Criterion 13.2 - In relation to “payable-through accounts”, FIs must ascertain that the respondent credit institutions have verified the identity of, and will perform on-going monitoring on, customers having direct access to accounts at the credit institution, and upon request is able to provide relevant due diligence information to the credit institution [s.19(3)4 MLA]. Although the requirements reflect those of R.13, their scope of application is limited to respondent institutions located outside the EEA.

Criterion 13.3 - Banks, mortgage-credit institutions, payment institutions and E-money institutions are prohibited from entering into, or from continuing correspondent banking relationships with, shell banks. These institutions must also take reasonable measures to not engage or have correspondent banking relationships with a credit institution that is known to permit shell banks to use its accounts (s.19(6) MLA).

Weighting and Conclusion

Measures described under c.13.1-2 do not apply to credit institutions within the EEA. This is a concern given the large majority of the corresponding banking relationships within the EEA.

Recommendation 13 is rated Partially Compliant.

Recommendation 14 – Money or value transfer services

Denmark was rated LC with old SR.VI, with minor deficiencies related to effectiveness.

Criterion 14.1 - Persons that provide MVTS services are required to be licensed in Denmark. Banks that provide MVTS are licensed under the FSA. Other providers of “payment services”, which includes “money remittance”, are required to be licenced (s.2 and s.37 PSEM Act). A restricted licence exists for undertakings with payment transactions totalling less than EUR 3 million or equivalent per month. Where monthly turnover exceeds EUR 3 million, a restricted licence holder must apply for a full license or cease providing these services [s.37(s) PSEM Act]. Although a restricted licence has less onerous requirements than a full licence, fit and proper requirements and AML/CFT obligations apply. It is not necessary for a foreign bank to obtain a license before carrying out activities in Denmark if they already have a license in their home member state.

In the Faroe Islands, MVTs are required to be registered with Skraseting Foroya, which is the supervising authority (s.15 FMLAS). MVTs providers in Greenland must be registered with the FSA [s.34(2) GMLA].

Criterion 14.2 - Since 2009, responsibility for monitoring MVTs providers in Denmark rests with the FSA, which has set up a whistle-blowing scheme for all violations, including operating without registration or a licence. Carrying out transfers of money/value/other assets without registering or obtaining a licence from the FSA is subject to a fine or imprisonment of up to four months (s.107 PSEM Act). The amount of the fine is not fixed in law and will be determined by the court.

Responsibility for supervising MVTs providers in the Faroe Islands rests with the Skraseting Foroya. The penalty for breach of the licencing requirement is a fine, or in the case of particularly gross or extensive intentional violations, up to six months imprisonment (s.20 FMLAS) and the supervisor has the power to impose daily fines for some breaches.

MVTs providers in Greenland must be registered with the FSA and sanctions are available in the form of fines. Similar to Denmark, the amount of the fine is not fixed by the law and will be determined by the court.

In terms of the level of sanctions applied in practice, Denmark provided one case where the FSA reported an MVTs provider to SØIK obtaining a license with the FSA following the transfer of responsibility of this sector from the DBA. This entity operated for nearly five years without registration and did not have proper AML/CFT controls in place. The assessment team had concerns that this provider was inspected in 2009 and received a reprimand for violations for AML/CFT controls, but no further action or follow-up was taken until 2015. At the time of the onsite, the case was still under investigation by SØIK. There have been no other penalties imposed on unregistered and unlicensed MVTs providers to date. This case and the delay in pursuing charges demonstrates that Denmark has not assigned any priority to the identification of unlicensed or unregistered MVTs providers, thus the sanctions are not dissuasive, effective or proportionate.

Criterion 14.3 - The MLA applies to payment services, which includes MVTs [s.1(1)(7) MLA]. All of the requirements of the MLA including CDD, reporting, and internal controls apply to MVTs providers and their agents. The FSA is responsible for supervising compliance [s.34(1) MLA]. In the Faroe Islands, MVTs are covered by the FMLAS and supervision is conducted by Skraseting Foroya.

The FSA does not monitor MVTs providers located in other EEA countries that offer services in Denmark (without a physical presence) for AML/CFT compliance according to the EU legislation based on equivalence. Under the EU Payment Services Directive, the monitoring of AML/CFT compliance is the responsibility of the home Member State in close cooperation with the host Member State. EU supervisors have to cooperate and exchange information with regard to noncompliance issues relating to prudential supervision or market conduct supervision, based on EU laws and regulations. However, in the area of AML/CFT supervision there is no specific guidance or technical standard from the EU, and inadequate supervision.

Criterion 14.4 - National agents of Danish MVTs providers who carry out MVTs shall be notified to the FSA. When notified, the FSA decides based upon the information provided, whether or not the

agent should be registered (s.24 PSEM Act). Restricted licence holders may not operate through agents. In the Faroe Islands and Greenland, the term “agent” does not exist in the legislative framework. If an “agent” wants to offer MVTS in Greenland or the Faroe Islands the agent himself must be registered as a provider of MVTS and would have the full responsibility for the operation.

All agents providing MVTS are required to be registered with the FSA, including those of PSPs licenced in other EEA countries that do not need a licence in Denmark. As Greenland and the Faroe Islands are not members of the EU/EEA it is not possible for EU licensed payment services institutions to operate through agents in these jurisdictions.

Criterion 14.5 - Payment institutions have full responsibility for agent compliance (s.25 PSEM Act). If the payment institution intends to provide payment services through one or more agents, the Danish FSA shall be notified of this in advance and provide the FSA with a description of how the agent will comply with obligations in relation to the MLA (s.23).

Weighting and Conclusion

There are licensing requirements for MVTS and the FSA has responsibility for monitoring compliance. However, Denmark has taken little action to identify unlicensed or unregistered MVTS providers, and the sanctions are not dissuasive, effective or proportionate.

Recommendation 14 is rated Largely Compliant.

Recommendation 15 – New technologies

Denmark was rated NC with old R.8 due to a lack of applicable legislative or other enforceable obligations addressing the risks of new technological developments. Since then, s.25(1-6) of the MLA stipulates that FIs shall prepare adequate written internal rules on risk assessment, risk management and management controls.

Criterion 15.1 - Denmark’s NRA examined the ML/TF vulnerabilities of economic sectors and financial products, including new delivery mechanisms and technologies in very general terms. It was noted in the NRA that “developments in, and use of, technological resources provide a basis for new forms of economic crime and further development of existing crime”. Each obliged entity under the MLA is required to conduct a risk assessment based on its own business model, and include relevant factors such as customer types, products, supply systems, business and transaction scope and geographical risks for AML/CFT purposes. Further, the obliged entities must develop a written risk management policy for approval by the management, which is then subjected to periodical review (s.25 MLA/FMLA/GMLA; Chapter 8 of FSA Guidance). This general obligation does not ensure that risk assessments are regularly evaluated to capture the specific risks of new technologies (e.g. electronic cash, stored value, payroll cards, electronic banking, telephone and online services in the banking and securities sectors, etc.), nor is there any obligation relating to new or developing technologies for both new or pre-existing products. There is no clear obligation to put in place mitigating measures.

Criterion 15.2 - The FSA guidance (chapter 8) states that FIs should assess/reassess risks if there are changes to new technologies or other developments. However, no explicit requirements exist in law or regulation that FIs undertake risk assessments prior to the launch or use of such products, practices and technologies and to take appropriate measures to manage and mitigate the risks identified.

Weighting and Conclusion

Denmark has no explicit requirements in law or regulation to address the risks associated with new technologies.

Recommendation 15 is rated Partially Compliant.

Recommendation 16 – Wire transfers

Denmark was rated PC with old SR.VII as the wire transfer requirements in place were narrower than required by the FATF Standards.

Criterion 16.1 - FIs are required to ensure that all cross-border wire transfers of EUR 1 000 or more are accompanied by the required and accurate originator information. However, there is no requirement to ensure that such transfers are also accompanied by the required beneficiary information (EU Regulation 1781/2006 art.4 & 5; and s.16 MLA). Denmark has introduced a minor exception for wire transfers to organisations with charitable objectives when the amount transferred does not exceed EUR 150 and the transfer is carried out within or between Denmark, the Faroe Islands and Greenland, and the organization is subject to reporting requirements and supervised by a public authority [s.16(3) MLA].

The Faroe Islands and Greenland have passed laws reflecting the EU Regulation, though with differing thresholds (but all meeting the EUR 1 000 limit).

Criterion 16.2 - The requirements regarding batch files are consistent with the FATF requirements regarding originator information. However, there is no requirement to include beneficiary information in the batch file (EU Regulation 1781/2006 art.7.2). This is also the case in the Faroe Islands and Greenland.

Criterion 16.3 - Transfers below EUR 1 000 are required to be accompanied by the originator information. However, there is no requirement to include the necessary beneficiary information (EU Regulation 1781/2006 art.5).

Criterion 16.4 - EU Regulation 1781/2006 art.5(4) does not require verification under EUR 1 000 for occasional transactions, but this is without derogation to the requirement in the 3AMLD for full verification where there is suspicion of ML/TF. Accordingly, as referenced in c.10.2, s.11 MLA requires customer identification when there are suspicions of ML/TF, irrespective of any other exemptions.

Criterion 16.5 & 16.6 - Transfers within the EU and EEA are considered to be domestic transfers for the purposes of R.16, and are treated as such within Regulation 1781/2006. Domestic transfers may

be accompanied only by the account number (or unique identifier) of the originator. The originator's PSP must be able to provide complete information on the originator, if requested by the payee, within three working days, which is consistent with the second part of c.16.5 & c.16.6. There is also a general obligation to provide information to competent authorities [EU Regulation 1781/2006 art.6; s.32(3) and 34(5) MLA]. Similar provisions have been enacted in the Faroe Islands and Greenland.

Criterion 16.7 - The ordering FI is required to retain complete information on the originator for five years; however no such requirement exists for beneficiary information (EU Regulation 1781/2006 art.5). This has been included in law in Denmark, the Faroe Islands and Greenland (s.23 MLA).

Criterion 16.8 - EU Regulation 1781/2006 has appropriate procedures with respect to originator information, but not beneficiary information.

Criterion 16.9 - Intermediary FIs are required to ensure that all originator information received and accompanying a wire transfer is kept with the transfer. There are no requirements to do the same for beneficiary information (EU Regulation 1781/2006 art.12). Similar provisions have been enacted in the Faroe Islands and Greenland.

Criterion 16.10 - Where the intermediary FI uses a payment system with technical limitations, it must make all information on the originator available to the beneficiary financial institution upon request, within three working days, and must keep records of all information received for five years. However, there is no requirement for beneficiary information (EU Regulation 1781/2006 art.13).

Criterion 16.11 - Intermediary FIs are not required to take reasonable measures to identify cross-border wire transfers that lack originator information or required beneficiary information.

Criterion 16.12 - There are no provisions relating to the role of the intermediary institution in responding to situations where the originator or beneficiary information is missing.

Criterion 16.13 - Transfers below EUR 1 000 are required to be accompanied by the originator information. However, there is no requirement to include the necessary beneficiary information (EU Regulation 1781/2006 art.8).

Criterion 16.14 - There is no requirement for the beneficiary institution to verify the identity of the beneficiary under EU Regulation 1781/2006. Nevertheless, FIs in Denmark are required to conduct verification on regular customers (including natural and legal persons), as well as obtain proof of identity of beneficial owners (s.12 MLA). Regarding occasional customers with transactions exceeding EUR 1 000, FIs must conduct the same CDD measures as outlined for regular customers. However, based on a risk assessment, beneficial ownership information does not need to be obtained if the occasional transaction is less than EUR 15 000 (s.14 MLA). Thus, information on beneficial ownership can be omitted based on a risk assessment for transactions exceeding EUR 1 000 but under EUR 15 000. Similar provisions exist for the Faroe Islands and Greenland; however, the threshold for conducting CDD for occasional customers is approximately EUR 13 500.

Criterion 16.15 - When there is incomplete payer information, the payee's PSP is required to either reject the transfer, or ask for the complete payer information. The payee's PSP is required to consider the missing or incomplete payer information as a factor in assessing whether the transfer of funds, or any related transaction, is suspicious, and whether it must be reported to the relevant

authorities. There are no requirements relating to cases where the required beneficiary information is missing or incomplete (EU Regulation 1781/2006 art.9 and 10). Denmark was rated PC with old SR.VII as the wire transfer requirements in place were narrower than required by the FATF Standards.

Criterion 16.16 - The requirements apply to all PSPs, which are defined as any natural or legal person whose business includes the provision of transfer of funds services (EU Regulation 1781/2006 art.2). As indicated in criterion 14.3, the MLA applies to payment services which includes MVTs [s.1(1)(7) MLA]. All the requirements of the MLA including CDD, reporting and internal controls apply to MVTs.

Criterion 16.17 - The EU Regulation does not contain any specific requirement relating to measures to be taken when the payment service provider acts both as the originating entity and beneficiary of the transfer. PSPs (as obliged entities) are required to inspect transactions and file an STR where ML/TF is suspected (s.7 MLA). However, when a PSP controls both the ordering and beneficiary side of a wire transfers, there is no explicit obligation to take into account information from both sides in order to determine whether a STR has to be filed, and to file the STR in any country affected by the suspicious wire transfer.

Criterion 16.18 - FIs are covered by the relevant EU regulations when processing wire transfers and the FSA has responsibility for ensuring compliance. However, the deficiencies identified in relation to c.6.4 and 6.5 are also relevant here.

Weighting and Conclusion

The EU Regulations leave significant gaps in the wire transfer requirements as there is an absence of requirements relating to beneficial ownership information. Other serious problems include the lack of requirements on intermediary FIs.

Recommendation 16 is rated Partially Compliant.

Recommendation 17 – Reliance on third parties

Denmark was rated NC with former R.9 in the absence of most of the requirements necessary to mitigate the risk posed by reliance on third parties. Since then, progress was made through the entry into force of the 2007 MLA.

Criterion 17.1 - S.17(1) of the MLA allows all reporting entities to rely on undertakings listed in s.1(1) no. 1-8, 13 and 15 of the MLA to perform some of the aspects of the CDD process (verification of identity of customers and beneficial owners, and gathering of information on the purpose and scope of the customer relationship). In addition, a third party can be relied upon to carry out CDD and other functions relating to high risk customers including PEPs. Reliance on a third party is possible not only in Denmark but in other EU countries according the principle of equivalence, and to countries with which the EU has entered into an agreement for the financial area, or third countries subject to similar AML/CFT requirements. The MLA stipulates that reliance does not absolve reporting entities from their obligations under the law [s.17(4) MLA].

The reporting entity is required to satisfy itself that the third party has implemented measures to prevent ML/TF as required by the MLA [s.17(2)], and is required to obtain adequate information about the third party to verify that it has adequate AML/CFT measures in place. However, there is no requirement placed upon FIs to ensure that third parties make CDD information available to them without delay, and that relevant copies of CDD information are immediately forwarded upon request. Instead, the requirement rests upon the third party to make the information immediately available to the relying entity, and upon request, to forward all relevant verifying information and documentation [s.17(3)]. This may pose hurdles for the supervisor to ensure its equivalence, make controls and collect documentation due to the limits of the Danish jurisdiction.

While these measures are partly in line with R.17 there are some deficiencies: (a) reporting entities are allowed to rely on third parties to conduct EDD and the CDD measures needed for PEPs, which is not in line with R.17; (b) although there are obligations placed upon the third parties (which may not be enforceable if they are located outside Denmark), reporting entities are not required to satisfy themselves that CDD documentation will be made available without delay, and (c) there is no obligation for reporting entities to satisfy itself that third parties are regulated and supervised for AML/CFT requirements in line with R.10 and 11 (cf. that the third party itself has the necessary measures).

Criterion 17.2 – For EU countries, there is a presumption that EU member states have AML/CFT requirements equivalent to the 3AMLD. Where third-party reliance is permitted with countries outside the EU, and the country has entered into an agreement with the EU for the financial area [s.17(1) and (5)], a similar presumption exists. In other cases, the reporting entity must assess whether the third-party country is subject to requirements corresponding to the requirements of the 3AMLD and whether compliance with these requirements is being supervised.

The FSA publishes on its website the Statement of Equivalence (i.e. the EU list of countries which are considered to have implemented regulations that correspond to those in the Directive). However the regulations do not take into account the need for the relying entities to still implement risk-based procedures and develop country-specific risks when dealing with customers based in an equivalent jurisdiction. Generally there is little or no regard to the levels of country risk for the purposes of determining whether reporting entities can rely on third parties.

Criterion 17.3 – The MLA does not draw a distinction between reliance upon third parties from within a financial group and other third parties. All third party reliance is based upon the same conditions, as set out above.

Weighting and Conclusion

Reporting entities are allowed to rely on third parties to conduct EDD and the CDD measures needed for PEPs. Moreover, FIs are not required to satisfy themselves that the third party has measures in place for CDD and record keeping and can provide documentation without delay. Relying entities are not required to operate on risk-based procedures and develop country-specific risks for their customers based in an equivalent jurisdiction.

Recommendation 17 is rated Partially Compliant.

Recommendation 18 – Internal controls and foreign branches and subsidiaries

Denmark was rated LC with the R.15 and R.22. The standard has not changed in this area. Some deficiencies identified included the lack of an obligation to establish screening procedures when hiring employees. There were also concerns about the independence of internal controls.

Criterion 18.1 – FIs are required to develop adequate AML/CFT written internal rules, covering issues such as customer identification, due diligence, record-keeping, internal controls, risk assessment, and risk management [s.25(1) MLA]. The FSA Guidelines require FIs to have adequate written internal rules., [Section 8.2]. The FSA also refers to the Executive Order on Management and Control of Banks in relation to AML/CFT supervision, however this order does not cover all FIs. Moreover, there is no requirement that these rules have regard to ML/TF risks and the size of the business, as encouraged in the Guidelines.

(a) FIs are required to appoint a person at the managerial level to ensure compliance with the MLA [s.25(2) MLA/GMLA/FMLA]. FIs are required to grant access to the compliance officer or other appropriate staff to customer records and any relevant information [s.25(3)]. More generally, the roles and responsibilities of the board of directors and senior management are defined in the Executive Order on Management and Control of Banks.

(b) There is no direct legal requirement related to screening procedures to ensure high standards when hiring employees. Denmark indicated that s.2(1) of the 2016 Executive Order on management and control of banks and some other FIs covers this in that it requires that the board of management to take steps to ensure that the financial undertaking is operating in an adequate manner. However this does not apply to all FIs, the wording is very open, with no reference to screening when hiring employees, and there is nothing in the FSA guidance that offers any support on this point.

(c) The MLA states that training and instructional programmes should be covered in the required written internal rules and all reporting entities take suitable steps to ensure that their staff are aware of the obligations in the MLA [s.25(1) & (4)].

(d) There is no explicit legal requirement in the MLA to have an independent audit function in place. There are broader legal requirements in S.20(2) of the Executive Order on Management and Control of Banks, which more generally states that controls should be carried out by an entity other than the board of management, and s.17(3) of the Executive Order on Auditing Financial Undertakings, which puts a requirement on FIs employing 125 staff or more to have an internal audit function. However, these Executive Orders only cover some FIs.

Criterion 18.2 – None of the essential elements are required in the MLA/FMLA/GMLA. Financial groups are not required to implement group-wide programmes against ML/TF.

Criterion 18.3 – FIs are required to ensure that their foreign branches and subsidiaries located in non-EU countries (and where there is no agreement for the financial area) have CDD and record-keeping measures in place as required in the 3AMLD [s.24(1) MLA/FMLA/GMLA]. If the legislation of the third country does not permit the proper implementation of AML/CFT measures consistent with these requirements, the relevant supervisory authority has to be informed and the undertaking must

apply other appropriate measures to counter the ML/TF threat [s.24(2) MLA/FMLA/GMLA]. These requirements appear limited in that they do not apply to EU countries that are presumed to have adequate AML/CFT measures and to be under the supervision of equivalent supervisory authorities, nor to any countries where there is an agreement for the financial area, and they appear to be limited to CDD and some record keeping requirements, and not the full set of AML/CFT measures.

Weighting and Conclusion

The MLA does not require FIs to have screening procedures in place when hiring employees or to implement an independent audit function. Financial groups are not required to implement group-wide programmes against ML/TF.

Recommendation 18 is rated Partially Compliant.

Recommendation 19 – Higher-risk countries

Denmark was rated PC with old R.21 as there was requirement to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF recommendations. Since its last MER, Denmark has introduced measures requiring reporting entities to investigate, as far as possible, the purpose of high-risk transactions and maintain records for five years.

Criterion 19.1 - Reporting entities are required to pay special attention and investigate customers' activities that may be associated with ML or TF (s.6 MLA). This requirement applies to complex or unusually large transactions, all unusual patterns of transactions, as well as transactions connected to jurisdictions identified as high risk for ML/TF by the FATF. In situations that present a higher ML/TF risk, reporting entities are required to apply enhanced customer identification measures [s.19(1) MLA]. However, as noted in c.10.17 these measures are more limited than the full set of enhanced CDD measures. The same requirements exist in Greenland and the Faroe Islands.

The MIBFA also publishes an executive order informing reporting entities of the ML/TF risks associated with jurisdictions identified by the FATF in its Public Statement. A new executive order is issued after the FATF amends its Public Statement (FSA Guidelines: chapter 14.2).

Criterion 19.2 - The FSA, when acting on the recommendations of the FATF, or on common positions or Regulations adopted by the EU, may lay down more specific regulations for high risk jurisdictions, including requiring reporting entities to systematically report to the MLS even when no suspicion has arisen (s.10 MLA/GMLA/FMLA), though it has not passed such regulations to date. The FSA does not currently have legislation in place to independently introduce and apply countermeasures other than when called upon to do so by the FATF or EU.

Criterion 19.3 - As noted in c.19.1, the MIBFA publishes an executive order requiring obliged entities to pay special attention to transactions related to jurisdictions identified by the FATF in its Public Statement. On its website, the FSA also publishes links to the FATF's *Compliance Document*. The FSA does not take any action to alert FIs to other countries which may have important AML/CFT weaknesses.

Weighting and Conclusion

The MIBFA publishes an executive order informing reporting entities of the jurisdictions identified by the FATF in its Public Statement, and EDD measure are required. Deficiencies related to EDD in R.10 impact compliance.

Recommendation 19 is rated Largely Compliant.

Recommendation 20 – Reporting of suspicious transaction

Denmark was rated PC with old R.13 and largely compliant with old SR.IV. The main deficiencies related to a low level of reporting and legislative weaknesses for reporting in Greenland and the Faroe Islands.

Criterion 20.1 - There is a legal requirement for reporting entities to immediately report to the MLS (Denmark's FIU) suspicious transactions, if the suspicions cannot be disproved on the basis of an investigation, and if the suspicions concern ML or TF of proceeds from other violations of the law punishable by more than one year [s.7(1) MLA]. Similar provisions for reporting exist in Greenland and the Faroe Islands [s.7(1) GMLA / FMLA] to report to the MLS.

Criterion 20.2 - There is a reporting requirement in cases where a customer's transaction or enquiry gives rise to suspicion (s.7 MLA). The explanatory notes relating to s.7 of the MLA further state that the reporting requirement applies to attempted transactions. Further, the requirement to report attempted transactions is established indirectly through the MLA's definition of money-laundering, which includes "attempting or participating in such actions". S.7 does not provide for any threshold, therefore reporting is required regardless of the amount.

Weighting and Conclusion

Recommendation 20 is rated Compliant.

Recommendation 21 – Tipping-off and confidentiality

In its 3rd MER, Denmark was rated compliant with old R.14 (para 798).

Criterion 21.1 - Reporting entities covered by the MLA, including their employees and management, are protected from both criminal and civil liability for disclosing in good faith, information in relation to the reporting requirement to the MLS, and the suspension of transactions (s.26 MLA). Similar provisions exist in Greenland and the Faroe Islands (s. 26 MLA).

Criterion 21.2 - Reporting entities covered by the MLA—including their employees, management, auditors, and any other persons—are prohibited from tipping-off any information relating to the fact that internal investigations have been, or will be, conducted into ML, TF or other predicate offences with an imprisonment term greater than one year. The prohibition also extends to tipping-off re an STR or related information sent to the MLS [s.27(1) MLA]. Nevertheless, information that an STR has been made or that investigations is underway, or may be conducted, is permitted with the supervisory authorities, as well as with prudentially regulated FIs in the same group,

lawyers/accountants in the same firm/network, and other reporting entities in certain situations (in all cases there must be adequate AML/CFT requirements if the entity is located outside the EU).

Weighting and Conclusion

Recommendation 21 is rated Compliant.

Recommendation 22 – DNFBPs: Customer due diligence

Denmark was rated NC with the requirements of former R.12. Among the deficiencies identified, Denmark had no general requirement for DNFBPs to determine whether the customer was acting on behalf of another person or to verify the identity of the beneficial owner. DNFBPs in Greenland and the Faroe Islands were not covered by AML/CFT laws or regulations. Denmark has made substantial progress in improving compliance with former R.12 through amendments to the MLA and their entry into force in Denmark, Greenland and the Faroe Islands.

Criterion 22.1 – The Gambling Act provides the Minister with the power to make rules about preventive measures for ML/TF [s.41(3) GA; s.19(2) Greenland GA]. Land based casinos are not permitted in Greenland. In the Faroe Islands, only Spf Itrottarvedding (a company partly owned by the Faroese Government) has a licence to provide gambling services. The company can enter into agreements with Danish or other Nordic country gaming companies to provide gaming in the Faroe Islands but they must meet the same conditions as in Denmark or the other Nordic country they operate in (s.4 Faroe Islands GA).

ML/TF preventive measures for casinos are set out in Executive Orders made in July 2016 (land based casinos in Denmark) and January 2012 (online casinos in Denmark and Greenland). There is no threshold for identification of customers. Customers are identified every time they enter a land based casino and new online customers can only have a limited temporary account which is closed if they cannot be properly identified within a month, with no payout of winnings. A digital signature is then used to login to the online casino account. While land-based casinos can only have natural persons as customers, online casinos can have both natural and legal persons. As such, online casinos are required to ensure registered players are only acting on their own behalf. Information collected is to include a person's personal identification number or other similar information if the person does not have one and is to be confirmed by means of necessary documentation, generally the CPR. However, there are deficiencies in relation to relevant criteria in R.10, in particular as regards online casinos, which may have corporate customers. Many requirements are more fully described only in non-enforceable guidelines.

Denmark has broad coverage of other DNFBPs. S.1 of the MLA/GMLA/FMLA applies the Acts to approved real estate agents, lawyers, notaries and other independent legal professionals, accountants and TCSPs.

Dealers in precious metals and stones are not covered by the Acts but, like all other businesses not covered, may not receive cash payments of DKK 50 000 (approximately EUR 6 700) or more (irrespective of whether payment is effected in one instance or as several payments that seem to be mutually connected).

CDD requirements under the MLA/GMLA/FMLA apply as they do to FIs, with the same deficiencies noted in relation to R.10. There are some special provisions which protect legal privilege (see R.23). However, pursuant to the Code of Conduct for the Danish Bar and Law Society (3.1.1.4), lawyers are required to refuse work if they have grounds to suspect that the client's purpose is to misuse them for the purposes of punishable acts or omissions, including money-laundering. The same applies if handling the case would entail a breach of the Code of Conduct (c.f. s.126 AJA).

Criterion 22.2 - S.11(4) of Executive Order on Land-based Casinos requires CDD information to be kept for 5 years after a customer's last visit to the casino, video footage to be kept for 3 months and transaction information for 5 years after the transaction. Similarly, s.5 of the Executive Order on online casino sets out provisions for online casinos. Other record keeping requirements are covered by sub-sector specific statutes and guidelines (such as the DGA Guidelines).

In relation to other DNFBPs the position is the same as for FIs under R.11.

Criterion 22.3 - Both land based and online casinos must have procedures in place to ascertain whether a customer is a foreign PEP, take reasonable measures to obtain information on source of funds and be continuously aware of customer relations, but a threshold of EUR 2 000 applies in land based casinos before senior management approval to continue play is required. There are no requirements relating to domestic and international organization PEPs.

The deficiencies in relation to R.12 apply to DNFBPs other than casinos.

Criterion 22.4 - The Executive orders on Land-based Casinos (s.53) and on online casino (s.34) provide for risk assessments in order to mitigate and prevent ML and TF. The DGA Guidelines refer to product risk in relation to assessing risk but are not enforceable means. It is clear that casinos do assess the risks of new products and technologies before they are introduced. However, there are no requirements as set out in c.15.2.

The deficiencies identified in relation to R.15 apply to DNFBPs other than casinos.

Criterion 22.5 - There is no provision for third party reliance in relation to casinos. S19 of the MLA applies to DNFBPs to allow 3rd party reliance. The deficiencies in R.17 are also applicable to DNFBPs (with the exception of casinos).

Weighting and Conclusion

The deficiencies identified in R.10-12, 15 and 17 apply for DNFBPs.

Recommendation 22 is rated Partially Compliant.

Recommendation 23 – DNFBPs: Other measures

Denmark was rated PC with the requirements of former R.16, due to a low level of reporting by DNFBPs, the lack of TF reporting for casinos, and no coverage for Greenland and the Faroe Islands. The 2013 Methodology added tax crimes as a predicate offence for ML which impacts the reporting obligation.

Criterion 23.1 - DNFBPs other than casinos: Information about the scope of DNFBPs covered by Danish AML/CFT laws is dealt with in relation to R.22. Covered DNFBPs (other than casinos) are subject to the same STR requirements as FIs.

Lawyers may report to the BLS which will, after assessing whether it is subject to reporting obligations, forward the report to the MLS [s.7(2) MLA]. The BLS participates in the MLF but it does not appear that there is cooperation with the MLS as required by footnote 49 of the FATF Methodology. S.8 provides an exemption for lawyers where legal professional privilege applies. Similar exemptions apply to other DNFBPs who assist lawyers in such circumstances. These exemptions do not apply if the assistance is provided with a view to ML or TF, or if the undertaking or person knows that the client is seeking assistance for this purpose. The Explanatory Notes to the MLA also make it clear that lawyers need not report a suspicion where they reject an enquiry from someone who does not have client status.

With regard to casinos: S.8 of the Executive Order on Land-based Casinos and s.29 of the Executive Order on online casinos require awareness of activities that are connected to ML/TF. This includes complicated and unusually large transactions, unusual patterns of transactions and cases where the FATF has identified a country as representing a high risk for ML/TF. Results of investigations are to be noted and stored. Both Executive Orders require an investigation where ML/TF is suspected and reporting to the FIU, without delay, if it cannot be disproved (respectively s.9 and s.30). There is no threshold for reporting, and the requirement equally applies to transactions that have not yet been carried out. The DGA is also required to notify the MLS if it becomes aware of suspicions [respectively s.9(3) and s.31]. Transactions are to be suspended until reported unless it cannot be avoided, or if doing so is deemed detrimental to the investigation; in this case the report is to be issued immediately after the transaction.

Criterion 23.2 - Covered DNFBPs other than casinos are subject to the same requirements as FIs, and consequently have similar deficiencies [s.25(1) MLA]. In addition, s.24 does not apply to DNFBPs, so c.18.3 is not met here.

With regards to casinos: S.53 of the Executive Order on Land-based Casinos and s.34 of the Executive Order on online casinos require written internal rules on adequate monitoring and communication procedures, including CDD, awareness, investigation and record keeping, risk assessments, risk management, communication and control in order to mitigate and prevent ML/TF. However, there is no requirement for a compliance officer and no specific requirements to include compliance management arrangements. In relation to land based casinos, the provisions of Part 6 of the Gambling Act mean that a casino must screen its employees to ensure that they will carry out their work in an acceptable manner and do not have convictions for offences that give reason to believe there is a risk of abuse of their position. Further, there is only a general accounting audit requirement. The DGA Guidance however refers to carrying out independent external or internal controls of procedures. There is no provision in relation to group wide programs nor foreign branches and subsidiaries.

DGA Guidelines (Chapter 3, 11 and 12) provide additional information but are not enforceable means and do not fill in the gaps noted above.

Criterion 23.3 - DNFBPs other than casinos: As s.6 of the MLA applies to DNFBPs other than casinos, they are required to comply with the requirements of R.19 related to higher risk countries. Deficiencies identified in R.19 apply here as well. With regards to casinos, s.8 of the Executive Order on Land-based Casinos and s.29 of the Executive Order on online casinos require awareness of high risk jurisdiction identified by the FATF, as well as an obligation to investigate. The DGA Guidelines refer to FATF list countries (see in particular s.6.1.3). The Guidelines also refer to the Executive order no. 1347 of 3 December 2010.

Criterion 23.4 - DNFBPs other than casinos: MLA s.26 applies to DNFBPs other than casinos. s.27(3) of the MLA protects lawyers, auditors, external accountants and tax advisors when discouraging clients from carrying out illegal activities. Lawyers and accountants may also disclose information to another lawyer or accountant in the same legal entity or network [s. 27(5) MLA]. That network may stretch beyond Danish borders. *With regard to casinos:* the requirement is met [s.51 (protection) and s.52 (tipping-off) Executive Order on Land-based Casinos; s.32 (protection) and 33 (tipping-off) Executive Order on online casinos].

Weighting and Conclusion

While not identified as a low risk category for ML/TF in the ML NRA, lawyers are expressly excluded from having to report attempted transactions by persons that are not yet their client. There are also deficiencies in relation to R.18 and R.19.

Recommendation 23 is rated Largely Compliant.

Recommendation 24 – Transparency and beneficial ownership of legal persons

Denmark was rated PC with old R.33 as information about beneficial owner was not available, information on the beneficial owner of bearer shares was limited to the shareholders holding shares above a designated threshold, and the relevant legislation was not fully applicable in Greenland and Faroe Islands.

Criterion 24.1 - Denmark permits the creation of a range of legal persons including companies, proprietorships, and associations with both limited and unlimited legal liability. The relevant pieces of legislation set out the types of entities and registration requirements. Information about the types of legal persons and how to create them is available on the DBA's website in English and Danish. However, non-commercial foundations and associations are not required to register unless they have tax and excise duty obligations.

The DBA provides basic information about the types of legal persons that can be created and about procedures to register a Danish company in Denmark, a foreign company in Denmark and the creation of a company that provides temporary services in Denmark (<https://danishbusinessauthority.dk/business-registration>). The registration forms do not request information relating to the beneficial owners of the company being registered.²⁵ Non-commercial

²⁵ Act 262 of 2016 will enter into force on 23 May 2017, and will make it mandatory for all legal persons to obtain and hold beneficial ownership information, and to make this available through the CVR. Legal persons will have until 1 October 2017 to provide this information. Denmark anticipates that similar requirements will be introduced for Greenland and the Faroe Islands. This change is relevant to a number of criteria in R.24.

foundations are required to provide their statutes to the DCA and to SKAT. The Department has information on its website in Danish.

All businesses are registered in the CVR. The data entered in the CVR is available to the authorities and the public, including online.

Criterion 24.2 - Denmark's NRA includes an assessment of the risk posed by legal business structures and includes an independent risk assessment identifying legal business structures as one of Denmark's three high risk areas for ML, including an analysis of the types of legal structures that could be more risky. The NRA does not include an analysis of these risks in Greenland and the Faroe Islands.

Criterion 24.3 - Businesses in Denmark must be registered pursuant to various acts depending on the nature of the entity. However, non-commercial foundations are not required to register unless they have tax and excise duty obligations. Basic information on all businesses is publicly available in the CVR, which is administered by the DBA.

The main business structures used in Denmark are limited companies, partnerships and foundations (see **Table 3**). Holding companies, which are a feature of the Danish corporate sector, are subject to all of the same requirements in terms of registration, submission of tax returns and keeping shareholder registers which apply to other Danish limited companies

- Companies: A company's central management body is responsible for ensuring that information is registered, or that an application for registration is filed with the DBA [s.9(2) PPLCA]. Members of the board of management, board of directors and supervisory board and any auditors of the company are required to be registered in the IT system at the DBA.
- Partnerships: The DBA also maintains the register for partnerships. Information about the undertaking's name, address, the municipality of its registered office, objects and financial year shall also be entered in the register [s.11(1) CUA]. The person authorised to sign for the undertaking shall also be registered.
- Foundations: the DBA is also required to keep a register of commercial foundations covered by and registered (see CVR) pursuant to CFA. The board of directors is required to ensure that the information is registered with the DBA. Members of the board of directors and board of management and the auditor shall be registered.
- *Non-commercial Foundations*: These entities are only required to register in the CVR if they have obligations concerning tax or VAT. However, all non-commercial foundations and associations subject to the FA must submit their deed of foundation to the DCA and/or SKAT within 3 months of its establishment. The deed must contain certain basic information, *inter alia*, the name of the foundation or association and the location of the foundation's or association's registered office [s.6(1)-(2); s.48(1)-(2) FA].
- *Non-profit organisations (NPOs)*: There is no legislation directly concerning NPOs, which are primarily incorporated as non-profit making associations or foundations. These entities follow the rules concerning associations or foundations, which means that they have to register if they have tax or VAT obligations.

Greenland and the Faroe Islands

The requirements in the FA apply to Greenland but not to the Faroe Islands. The Faroese tax authorities register non-commercial foundations but the legal provisions to do so were not provided. While the PPLCA, CCUA, CFA apply in Greenland, recent amendments to these Acts have not entered into force in Greenland, but Danish authorities advised that this is expected on 1 January 2018. Danish authorities further state that the PPLCA, CCUA and CFA do not apply in the Faroe Islands but similar laws have been enacted and basic information is required to be published on the Faroe Island register; however, it is unknown whether or not the same basic information is required to be registered as in Denmark.

Criterion 24.4 - As noted above the information required by c.24.3 is included in the CVR, and businesses are required to keep it up to date. In relation to shareholder/member registers, the position is as follows:

- **Companies:** the PPCLA includes a requirement for limited companies to maintain a register of their owners [s.50(1) PPLCA] which must be available for inspection by public authorities. The PPCLA also requires that location of the register must be specified if it is not kept at the company's registered office, and can be located either in Denmark or in any other the EU/EEA country. Company registers must include information on shareholders and members. In the case of a limited company that has issued bearer shares, the register must contain information on the corresponding serial numbers; however, the link between the serial number of the owner is only known by the owner.
- **Significant shareholdings** – shareholders that hold 5% or more of a company (shares and/or voting rights) must notify the company, and also when the shareholding passes certain thresholds: 5%, 10%, 15% etc. [s.55(1) PPLCA]. When the company receives the notification from the shareholder, the company is obliged to register the information with the DBA's IT system (<https://indberet.virk.dk/>) (s.58 PPLCA). The information is accessible by anyone, and is available online at the DBA website.²⁶ The register contains both present and historic shareholder information. The rules concerning registration of legal ownership do not apply to either Greenland or the Faroe Islands.
- **Partnerships:** Partnership companies must keep a list of all owners, participants and members. No later than two weeks after the commencement of ownership, these individuals must notify the company of their identity in writing. This information is not on a public registry; however, SKAT may obtain the information for tax assessment purposes (s.6 TCA). This requirement does not extend to Greenland or the Faroe Islands.
- **Foundations (commercial and non-commercial):** are legal persons without an actual owner. Accordingly, there are no shareholders in foundations and therefore no obligation to have information on shareholders. The board of directors is required to ensure that the information

²⁶ It should be noted that it was possible under the previous IT system for companies to be incorporated even if the information on legal ownership was not filed with the DBA. However as of 1 January 2017 it is no longer possible to start up a company without registering the legal owners in the CVR. Legal ownership information is available at <https://datacvr.virk.dk/data/>. The same amendments provided the DBA with a new legal power in PPLCA to wind-up companies that continue to fail to comply with the requirement to report information on legal ownership.

is registered with the DBA. Members of the board of directors and board of management and the auditor shall be registered. Registration also requires the Articles of association and other documentation pertaining to the establishment of the fund. The Articles of association shall include information on founders.

Criterion 24.5 - Relevant legislation requires basic information relating to companies, partnerships and commercial foundations to be kept up to date and changes to be registered within 2 weeks in the CVR. Non-commercial foundations are not currently required to register but are required to provide statutes to the DCA, along with a list of directors. Any changes to the latter must be notified within four weeks.

Criterion 24.6 - Denmark currently relies on a combination of existing mechanisms to obtain beneficial ownership information, including through basic information registered with the DBA, disclosure requirements for listed companies relating to direct and indirect shareholdings, and the CDD requirements on FIs and DNFBPs (see R.10, 22) which include collection of beneficial ownership information. Denmark states that 90% of the companies registered are owned directly by 1 or 2 natural persons or by another legal person that is owned by 1 or 2 natural persons. This may in some cases allow beneficial ownership to be determined in a timely manner, but as in many countries, there are difficulties and delays in obtaining the information when foreign legal persons or arrangements are part of the ownership/control chain.

Criterion 24.7 - The current provisions require identification by FIs and DNFBPs of beneficial owners of legal persons [s.12(3) MLA] and that information about the customer be updated on an ongoing basis [s.12(5) MLA]. Such provisions also apply in Greenland but not the Faroe Islands. However, this does not amount to a requirement that beneficial ownership be as up to date as possible.

Criterion 24.8 - Various provisions place responsibility on legal persons' management bodies to register and keep basic information up to date. However, there are no requirements specifically identified by Denmark to ensure that companies cooperate with competent authorities to the fullest extent possible in determining their beneficial owner(s). The following provisions assist:

- s.18 of the PPLCA requires the names and addresses of founders, as well as the names, positions and addresses of the members of management to be available at all times on the CVR. S.50(3) of the PPLCA requires the articles of association to include the name and address of the person charged with keeping the register of owners if that is a third party (as opposed to it being held at the registered office). However that person can be either a natural or legal person and can be resident anywhere in the EU/EEA, although there is a requirement to state that person's address in the company records.
- s.11(2) of the FA requires details of board of directors to be provided to the foundation authority; its statutes must include the address of the registered office. At least half the board members must be domiciled in Denmark unless the foundation authority grants an exemption.

DNFBPs are required to hold information on the beneficial owners of their customer, and to give information to relevant competent authorities, but legal persons are not required to use a DNFBP.

Criterion 24.9 - The DBA keeps all information in electronic form indefinitely. Automatic updates are performed by the DBA of details of the information in their system (e.g. changes of address, for all natural and legal persons associated with registered entities). These updates of personal information end 10 years after the person in question ceases to be active in a business registered in the CVR. FIs and DNFBPs are required to keep any information collected by them under the MLA for five years. However, there are no provisions relating to legal persons or persons involved in their dissolution being required to keep information for at least 5 years after dissolution in line with this criterion.

Criterion 24.10 - The CVR is publicly available, and may be used by competent authorities, including LEAs. However, beneficial ownership information is not currently required to be recorded in the CVR, although in cases where all ownership elements are located in Denmark, it would generally be possible to trace such ownership through legal shareholding records. General investigative powers available to the police, such as production orders, or search and seizure powers, are used to obtain basic and beneficial ownership information, if it is available, though there is not always timely access e.g. when there are foreign ownership elements. If a legal person has a business relationship with a Danish financial institution or DNFBP then it may also be possible to obtain beneficial ownership information.

Criterion 24.11 - As a result of an amendment to PPLCA, which took effect on 1 July 2015, it is no longer possible for any company to issue new bearer shares or bearer share warrants in Denmark. Existing bearer shares are still valid in Denmark but the rules have been strengthened so that a holder of a bearer share has to register in the CVR in order to be able to exercise the rights conferred by the share(s) [s.49(2) PPLCA]. Further, the register of owners of a limited company that has issued bearer shares is required to contain information on the serial numbers of the shares issued. (s.54 PPLCA). Any shareholder with shareholding (registered and bearer shares) of 5% or more must notify the company (s.55 PPLCA) and their details (CPR, CVR or other identity information is placed on the POR (see c.24.4 above). Holders of bearer shares with less than 5% equity must also be registered [s.57(a) PPLCA], though this information is available only to competent authorities carrying out supervision or inspection. Failure to register possession and transfer of bearer shares can result in fines [s.367(1) PPLCA]. There is currently no date set for the complete phase out of bearer shares.

Criterion 24.12 - There are provisions that expressly allow a nominee to hold shares on behalf of a shareholder in a public limited company. These provisions do not apply to private limited companies (s.53 PPLCA). Danish authorities state that it is not legally possible to have a nominee director in Denmark since the registered management must be the effective management, and did not provide any legal provisions to that effect. However, there are no general legal provisions prohibiting the use of nominees. For public companies, the nominee can only dispose of shares with the agreement of the actual owner. In order to exercise the administrative rights – including the right to vote – the actual owner of the shares is required to register in the company's register of shareholders or in other ways have documented that the shares are acquired or that the nominee has been given a specific power of attorney [s.80(2) PPLCA]. The actual owner must identify himself as the principal behind the power of attorney. Commercial providers of nominee services are required to be registered [s.1(18); 31(1) MLA]. Apart from the measures set out above there are no other measures

that prevent the misuse of nominee shareholder. There are no explicit requirements regarding nominee director arrangements.

Criterion 24.13 - As noted above, there are a number of requirements under R.24 that are not yet legal requirements in Denmark. However, any person who fails to comply with the duty to: register in the CVR; submit applications for registration to the DBA; submit valuation reports or notices are liable to a fine [s.366(1) PPLCA; s.22 CCUA; s.131 CFA; s.43 FA]. The level of fines for breaches of the requirements is unclear as there are no Court decisions as yet. The PPLCA, CCUA and CFA also provide for daily or weekly fines imposed by the DBA, which can be ongoing until a breach is fixed. However, these provisions are not used by the DBA as it is not cost effective to do so. The DBA can apply to the courts to wind-up companies and foundations if they do not have the required management or do not submit annual accounts or other similar required information (s.225 PPLCA; s.21 CCUA; s.115 CFA) but not for failings to provide shareholder information (at the time of the onsite). It is not clear that there are proportionate and dissuasive sanctions.

In serious cases, s.296 CC could also apply and persons convicted could be subject to a fine or imprisonment for a term not exceeding 1.5 years for disclosing incorrect or misleading information on the affairs of legal persons, and for grossly failing to keep records or to observe the duty of disclosure of ownership interests of legal persons.

Criterion 24.14 - Basic information on legal persons is publicly available online in the CVR but not beneficial ownership information. Foreign competent authorities have direct access to basic information and information on shareholders held in the CVR. LEAs may provide and receive information related to criminal offences according to the normal approach on international mutual legal assistance. While competent authorities can use their investigative powers to obtain beneficial ownership information on behalf of foreign counterparts (see R.40), such information may not be available rapidly because of the existing difficulties in relation to access to beneficial ownership information where a relevant reporting entity cannot be identified.

Criterion 24.15 - There is no formalised process for monitoring the quality of assistance received from other countries. Denmark states that such cases would be monitored on a case-by-case basis.

Weighting and Conclusion

Denmark has taken significant steps to enhance the transparency of legal persons and arrangements, in particular through its CVR database, which holds a significant amount of basic information relating to legal shareholdings and the management of companies and other legal persons. Action has also been taken on bearer shares, and Denmark has done a risk assessment, which identifies legal persons and business structures as a high risk area. However, while significant information on beneficial ownership of Danish legal persons is available to authorities in a timely manner when purely Danish ownership is involved, this is not the case when the entities have elements of foreign ownership or control. This will be rectified when new legislation comes into effect on 23 May 2017.

Recommendation 24 is rated Partially Compliant.

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

In its 3rd MER, these requirements were considered to be not applicable, as Denmark did not recognise the concept of common law trusts or any similar legal arrangement. The FATF Recommendations have since been revised such that some elements of R.25 apply to all countries. Danish law does not provide for the creation of trusts or any similar legal arrangement. Denmark is not a party to the Hague Convention on the Law Applicable to Trusts and on their Recognition and does not recognise for most legal purposes the concept of a trust formed under foreign law (foreign trust). Therefore, for most legal purposes a trustee of a foreign trust cannot hold or acquire legally enforceable obligations or rights in Denmark.

However, recent tax legislation does take account of foreign trusts for tax purposes, and lays down rules as to how these are to be treated vis-a-vis parties to the trust. There are no restrictions on a Danish resident acting as trustee, protector, administrator of a trust formed under foreign law, or being a settlor or beneficiary under such a trust. Indeed, if a trustee or administrator of a foreign trust (or similar legal arrangement) is domiciled or resident in Denmark, or the trust carries on business activities from a permanent establishment in Denmark, then the trustee must hold identity information on other trustees and administrators and settlors/founders as well as identity information on beneficiaries and possible beneficiaries receiving distributions from the trust [s.3(a)(4) TCA]. Trusts can be, but are not required to be, registered as another foreign company in the CVR, in which case certain basic information is sought. If registration is required to meet tax or customs duty obligations then a copy of the trust deed and information about the address, settlors, trustees, and beneficiaries is requested by SKAT. TCSPs are regulated under the MLA. No information is available regarding the legal position in Greenland and the Faroe Islands, although they do not provide for the creation of or recognise trusts or other legal arrangements.

Criterion 25.1 - Sub-criteria (a) and (b) are not applicable as Denmark does not recognise trusts or other types of legal arrangements, and there is no law in Denmark that would “govern” such trusts etc. Regarding (c), professional trustees such as trust service providers or lawyers are within the scope of the MLA, and are therefore required to conduct CDD on their customers and the customers’ beneficial owner, and to maintain the information for at least five years (see R.10, 11, 22). In addition there are the requirements under the TCA as set out above. SKAT may obtain this information for tax purposes (s.6 TCA). However, there are no obligations to keep records related to the agents and service providers to the trust.

Criterion 25.2 - The CDD information collected by professional trustees and others under the MLA is required to be up-to-date (see R.10, 22). This, however, does not apply to the information that is not required to be collected as part of CDD, such as on regulated agents and service providers, nor to other types of legal arrangements.

Criterion 25.3 - FIs and DNFBPs are required to determine beneficial ownership of their customers, including with respect to trusts. There is, however, no requirement for trustees themselves (professional or otherwise) to disclose their status, nor for FI/DNFBPs to explicitly request this information from their customers, with sanctions for false answers. Although, the CDD requirements could help ensure that this occurs, this does not translate to an obligation on the trustee to disclose their status as a trustee. Nor is there an equivalent for other types of legal arrangements.

Criterion 25.4 - There are no legal restrictions on trustees providing competent authorities or FIs and DNFBPs with any information relating to trusts.

Criterion 25.5 - Law enforcement and prosecutorial authorities have the necessary powers to enable them to obtain information held by trustees (and persons in an equivalent position in another type of legal arrangement), and other parties such as FIs and DNFBPs, in the course of their investigations through normal investigative procedures, e.g. search and seizure (see R.30, 31). Supervisors also have powers to obtain information on trusts from FIs and DNFBPs (see R.27, R.28).

Criterion 25.6 - Normal provisions for cooperation with competent authorities in other countries apply to requests for beneficial ownership information and no special measures apply. However, as noted above, available information on trusts and other legal arrangements is limited. There is no information available to indicate that foreign competent authority's access to basic information is facilitated, that there is an exchange of domestically available information on trusts, or that investigative powers are used to assist foreign counterparts.

Criterion 25.7 - Professional trustees such as lawyers or TSPs would be liable for failure to comply with AML/CFT requirements (see R.28). In other cases there may be sanctions for making false or misleading statements under tax legislation. However, as noted above, the direct obligations under R.25 for trustees are limited, and thus similarly any offences and sanctions do not clearly relate to compliance with R.25 obligations.

Criterion 25.8 - FIs and professional trustees and other DNFBPs that are covered by the MLA can be sanctioned under the MLA for failing to provide the information requested by supervisors in a timely manner. However there are no specified timeframes in the MLA, and the deficiencies noted in relation to R.35 are relevant. LEAs can also take action against any person that fails to comply with requests made when making legitimate use of its investigative powers. There are no other sanctions.

Weighting and Conclusion

As Danish law does not generally recognise trusts or other legal arrangements, a number of the criteria do not apply. However, there is no obligation in the MLA or elsewhere that requires trustees to disclose their status to FIs or DNFBPs, and the limited information held on trusts also means that some other criteria are only partly met.

Recommendation 25 is rated Partially Compliant.

Recommendation 26 – Regulation and supervision of financial institutions

Denmark was rated PC for former R.23, due in particular to scope issues with regards to FSA's and DBA's (formerly DCCA) inspection policies and procedures, the lack of fit and proper tests for certain entities (e.g. credit card companies, leasing and money remitters), and the difficulty in assessing effectiveness for recently added supervisory responsibilities on the FSA and DBA.

The primary piece of AML/CFT legislation governing FIs in Denmark is the MLA. Similar legislation exists in Greenland and the Faroe Islands (GMLA/FMLA). As some of FIs in Greenland and the Faroe

Islands fall under self-governing arrangements, separate self-governance legislation has been enacted (GMLAS/FMLAS). The supervision of FI compliance (including AML/CFT) falls under the responsibility of various supervisors depending on the entity and whether it is located in Denmark, Greenland, or the Faroe Islands (see Table 35).

Table 35. Reporting entities covered in Section (1)(1-18) of the MLA

Section (1) of the MLA	Denmark	Faroe Islands	Greenland
	Registration and supervision by:		
1. Banks	FSA s. 34(1) MLA	FSA s.34(1) FMLA	FSA s.34(1) GMLA
2. Mortgage-credit institutions	FSA s. 34(1) MLA	Insurance Supervisory Authority (s.18.(1) FMLAS)	FSA s. 34(1) MLA
3. Investment firms	FSA s. 34(1) MLA	FSA s.34(1) FMLA	FSA s. 34(1) GMLA
4. Investment management companies	FSA s. 34(1) MLA	FSA s.34(1) FMLA	FSA s. 34(1) GMLA
5. Life-assurance companies and multi-employer occupational pension funds.	FSA s. 34(1) MLA	Insurance Supervisory Authority (s.18.(1) FMLAS)	FSA s. 34(1) GMLA
6. Savings undertakings	FSA s. 34(1) MLA	FSA s.34(1) FMLA	FSA s. 34(1) GMLA
7. • Issuers of electronic money	FSA s. 34(1) MLA	FSA s.34(1) FMLA	FSA s. 34(1) GMLA
• Money remitters	FSA s. 34(1) MLA	Skráseting Føroya registering [s.15(1) FMLAS], supervising [s.16(1) FMLAS]	FSA s. 34(1) GMLA
• Other Payment services providers	FSA s. 34(1) ML,	None	FSA s. 34(1) GMLA
8. Insurance brokers, when they act in respect of life assurance or other investment related insurance activities.	FSA s. 34(1) MLA	Insurance Supervisory Authority (s.18.(1) FMLAS)	FSA s. 34(1) GMLA
9. Foreign undertakings' branches and agents in Denmark, carrying out activities under nos. 1-8, 10.	FSA s. 34(1) MLA	Insurance Supervisory Authority s. 18 FMLAS**	FSA ***
10. Investment associations and special-purpose associations, collective investment schemes, restricted associations, professional associations and hedge associations.	FSA s. 34(1) MLA	FSA s.34(1) FMLA	FSA s. 34(1) GMLA
11. Undertakings and persons, including branches and agents of foreign undertakings, that commercially carry out activities	DBA (to be moved to FSA) s. 31(1) MLA	Skaseting Foroya (s.16.-(1) FMLAS).	Customs and Tax Authorities Tax Agency s. 27(2)

Section (1) of the MLA	Denmark	Faroe Islands	Greenland
involving <i>currency exchange</i> .	(registration)		
12. Other undertakings and persons, including branches and agents of foreign undertakings, that commercially carry out one or more of the activities mentioned in <i>Annex 1 MLA</i> .	FSA s. 34(1) and (2) MLA	Insurance Supervisory Authority and <i>Skráseting Føroya</i> s. 16+18 FMLAS	FSA and the Tax Agency**
13. <i>Lawyers</i> when they participate by providing assistance in the planning or execution of transactions for their clients in connection to: a) purchase / sale of real estate; b) managing clients' money, securities, other assets; c) opening or managing bank / savings/ securities accounts; d) & e) raising capital for establishment/ operation/ management; or establishing/ operating/ managing undertakings.	BLS s. 34b(1) MLA	BLS s. 34a(1) FMLA	BLS s. 34a(1) GMLA
14) <i>Lawyers</i> when they, on behalf of their client, carry out a financial transaction or a transaction concerning real estate.	BLS s. 34b (1) MLA	BLS s. 34a(1) FMLA	BLS s. 34a(1) GMLA
15) <i>State-authorized public accountants and registered public accountants</i> .	DBA s. 32(1) MLA	<i>Skráseting Føroya</i> s. 16 FMLAS	DBA s. 32(1) GMLA
16) Approved <i>real-estate agents</i> .	DBA s. 32(1) MLA	<i>Skráseting Føroya</i> s. 16 FMLAS	s. 27 GMLAS
17) Undertakings and persons that otherwise commercially provide the same services as the groups of persons mentioned in nos. 13-16, including <i>tax advisors and external accountants</i> .	DBA s. 32(1) MLA	<i>Skráseting Føroya</i> s. 16 FMLAS	s. 27 GMLAS
18) <i>Providers of services for undertakings</i>	DBA s. 31(1) MLA (registration)	<i>Skráseting Føroya</i> s. 16 FMLAS	s. 27 GMLAS

** Supervision regarding branches of foreign undertakings in the Faroe Islands

***There is a difference in the scope of the provisions in the royal decrees (GMLA, FMLA) as opposed to the MLA.

Criterion 26.1 - Please refer to Table 35 for breakdown of legal references and supervisory authorities.

Denmark

The FSA and DBA are the primary supervisory authorities in Denmark. Please refer to Table 35 for legal references. The FSA is the licensing/registration authority and AML/CFT supervising for most

of the FIs as listed under s.1(1) n°1-10 MLA. The DBA is responsible for the registration of currency exchangers.

Faroe Islands

The FSA is the supervisor for most of the FIs listed in s.1 FMLA. The *Skaseting Foroya* is responsible for undertakings and persons that carry out activities involving currency exchange and activities related to MVTs, while the Insurance Supervisory Authority is the registration authority and supervisor of mortgage-credit institutions, life insurance companies, pension funds, insurance brokers, and branches of foreign undertakings in the Faroe Islands, carrying out the above mentioned activities and other undertakings and persons carrying out activities mentioned in the annex 1 of the FMLAS.

Greenland

Other FIs (currency exchange and retailers of financial leasing and lending services) are registered and supervised by the Tax Agency). The Tax Agency also has the duty to report systematically to the MLS concerning transactions with non-cooperative countries (s.9 GMLAS).

Criterion 26.2 - All FIs are subject to licensing/registration requirements by the FSA (FBA, MLA, PSEM, the Act on insurance intermediaries, etc.), by the Tax Agency in Greenland [s.27(2) GMLAS], by the *Skaseting Foroya* and Insurance Supervisory Authority in the Faroe Islands [s.15(1), s.18(2) FMLAS]. The relevant authority is also responsible for granting and withdrawing licenses. Section 19(6) of the MLA prohibits the establishment and continued operation of shell banks.

The DBA is the registration authority of reporting entities covered by s.1.-(1) n°11(currency exchangers) and 18 of the MLA [s.31(1) MLA].

Criterion 26.3 - The FSA can deny granting a license. When a FI is granted a license, or when there is any change, the executive managers and directors are subject to checks to ensure that they meet the fit and proper requirements, which include criminal records checks. The assessment criteria for the members of boards of directors and management boards are specified in s.14(1) no.2, s.64(1-4) of the FBA. Shareholders are covered by s.61a FBA. The FSA can deny the acquisition of shares or qualifying interest beyond the threshold²⁷ by a natural or legal person [s.61(1)(1)-(2); s.62(1) FBA]. The same licensing regime applies for insurance intermediaries (including insurance brokers) and investment associations (s.8 Insurance Intermediaries Act). In relation to fit and proper requirements, savings institutions are not covered by any legislation.

Although currency exchangers and MVTs providers are not regulated in the same way in Denmark, their board members and management board members are also subject to fit and proper tests [currency exchangers: s.31(1) MLA; MVTs: s.7(2)(5) and 18 PSEM Act]. With regards to shareholders, the regime of MVTs providers is similar to the one for banks [s.7(2), no. 5 PSEM act]. The beneficial owners of currency exchangers are subject to a simplified fit and proper test (i.e. criminal records check) [s.31(2) MLA].

²⁷ A qualifying interest is defined as the direct or indirect possession of at least 10 % of the shares or the voting rights or a share that gives the opportunity to exercise significant influence on the management of the FI [s. 5(3) FBA]

Other types of FIs (e.g. credit card companies, leasing and factoring and finance/consumer credit companies – and all listed in Annex 1 to the MLA) are obliged to register with the FSA [s.34(2) MLA/FMLA/GMLA] and must also fulfill the proper requirements.

Risk-based approach to supervision and monitoring

Criterion 26.4 - (a) Core principle institutions:

Denmark: FSA's supervision of entities listed in s.1(1)(1-10) MLA (i.e. banks, investment firms, life-assurance– see Table 35 above) is centered on the Basel, IOSCO and IAIS core principles. In 2014, the IMF conducted a detailed FSAP of Denmark.²⁸ The report noted that Denmark had a high level of compliance with the Basel Core Principles for Effective Banking Supervision, and that the FSA had the appropriate legal authority to carry out supervision effectively within its banking system. Denmark received five compliant ratings and nine largely compliant ratings on 15 Core Principles relevant to AML/CFT. Denmark was rated materially non-compliant for Core Principle 2 (independence, accountability, resourcing and legal protection for supervisors). The FSA has the authority to conduct consolidated supervision of banking groups, including groups where the parent is a holding company in EU/EEA. Outside the EU/EEA, and in the absence of MOU or arrangements with other supervisory authorities for consolidated supervision, exchanges of information may not occur in line with the principles set by the BCBS and IAIS. As regards the Insurance Core Principles, the FSAP assesses that Denmark generally has a good level of compliance with many of the Core Principles, but notes a number of areas of weakness, many of which are similar to the findings in this report, namely the need to increase resources and correspondingly onsite inspections, to enhance the approach to assessing risk, a low level of STR reporting and risks that the sector is not adequately complying with AML/CFT obligations. It should also be noted (see R.40) that there are limitations regarding MOUs/arrangements for consolidated supervision, and regarding the exchange of information. With regards to securities, Denmark also signed the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information in 2006, and on that basis can respond to cases related to market abuse.

Greenland and the Faroe Islands: AML/CFT supervision is applied in Greenland and in the Faroe Islands to banks as they are supervised by the FSA.

(b) Non-core principle FIs

Denmark: Other FIs, as mentioned in s1(1)(12) MLA, are listed in Annex 1 of the MLA, which contains a list of financial services (e.g. lending, financial leasing, trading, etc) subject to supervision by the FSA.

Greenland and the Faroe Islands: Transfers of funds are also covered [s18(1) Acts for the Faroe Islands and for Greenland].

Criterion 26.5 - As the primary supervisory authority for FIs, the FSA has a risk-based framework for AML/CFT supervision, which is determined by risk assessments and risk classifications. This requirement is also stated in law [s.32(2) MLA]. The FSA published an ML/TF Threat Assessment

²⁸ IMF - Detailed Assessment of Observance of the Basel Core Principles for Effective Banking Supervision on Denmark, December 2014.

Report in 2014 and conducted a number of sector-specific risk assessments for investment firms (2014), small and middle sized banks (2015), and recently issued a risk assessment on life assurance companies and multi-employer occupational pension funds.

In 2012, the FSA's developed a risk matrix that determines the classification of the ML/TF risk of supervised entities, which does not capture inherent risks in relation with products, services offered, and distribution channels. This risk model is mainly based on an assessment of the inherent ML/TF risks deriving from the financial institution's business model (scale 1-8) and an assessment of the quality of the financial institution's AML/CFT system and controls (scale 1-4). However the sources of information and database used to establish this risk matrix are not clearly determined and do not include, for example, the analysis its business profile (products and services offered). In addition, this risk model was not achieved for all supervised entities and was not updated since 2012, as the FSA uses the information about the FIs to determine which institutions should be subject to supervisory activity. As a result of the risks identified in the 2015 NRA, both the FSA and DBA have enhanced their focus on identified high risk areas, such as currency exchangers, legal business structures and MVTs in general.

In the absence of a reliable formal risk assessment of each FI, it is difficult to conclude that Denmark has a sound basis to decide on the frequency and intensity of on-site and off-site AML/CFT supervision. ML/TF risks also play a limited role when determining the frequency and intensity of onsite and off-site AML/CFT supervision. Despite the 2012 Risk Matrix, the FSA has very limited written documentation to support institution specific ML/TF risk assessments which could form the basis for a classification of reporting FIs based on ML/TF risks.

The requirements are not met for supervisory authorities in Greenland and Faroe Islands.

Criterion 26.6 - As explained in c.26.5, the FSA did not update its 2012 Risk Matrix and does not regularly review the risks of specific FIs. When the FSA receives specific information about a FI that could affect its ML/TF risk profile, that institution is not evaluated. The FSA has no specific process in place to review the assessment of the ML/TF risk profile of individual reporting FIs either periodically or when a major event occurs. The monitoring of risks of non-compliance is not yet developed. The review does not include any regular follow up of remedial actions implemented.

The monitoring by the FSA of the largest bank with regards to major events or developments in the management and operations does not extend to the group level.

Weighting and Conclusion

Licensing and registration requirements, as well as fit and proper obligations are generally in place regarding the financial sector in Denmark, Greenland and the Faroe Islands. However, in the absence of adequate risk assessments of each FI, it is difficult to conclude that Denmark has a sound risk-based approach to conduct on-site and off-site AML/CFT supervision.

Recommendation 26 is rated Partially Compliant.

Recommendation 27 – Powers of supervisors

In its 3rd MER, Denmark was rated largely compliant on former R.29. The deficiencies related to the limited range of administrative sanctions to enforce compliance and effectiveness (AML/CFT supervision responsibilities given to the FSA and DCCA were too recent)

Criterion 27.1 and 27.2 -*Denmark*

The FSA and the DBA are the competent authorities for regulating and supervising most of Denmark's financial sector entities, including for AML/CFT purposes (see R.26). The FSA has powers to supervise or monitor for compliance with AML/CFT requirements, including the ability to conduct inspections and supervisory visits of FIs, and to subsequently order the undertaking to take timely and necessary measures in case of violations of the MLA provisions (FSA: s.34(1) and 34(7) MLA/FMLA/GMLA; DBA: s.31(1) MLA).

Faroe Islands

Skaseting Føroya and the Insurance Supervisory Authority have the power to obtain information, to inspect and to order undertakings and persons to take the remedial measures within a time limit (s.16 and s.18 FMLAS).

Greenland

The Tax Agency have the power to obtain information, to inspect, and to order undertakings and persons to take the remedial measures within a time limit (s.27 GMLAS).

Criterion 27.3 - The FSA and the DBA can access and request any information, including financial statements, accounting records, printouts of books, other business records, and electronically stored data deemed necessary for supervisory activities [FSA: s.34(5) MLA; DBA: s.31(3)]. The powers to compel production of information are also provided by the MLA. These powers do not require a court order, and cover both FIs and their branches. The same sections are applicable in the Faroe Islands and in Greenland [Insurance Supervisory Authority: s.18(6) FMLAS; Skaseting Foroya: s.16(4)(6) FMLAS; Tax Agency: s.27(6) GMLAS].

Criterion 27.4 - Competent supervisory authorities have limited sanctioning powers. Supervisory authorities can order an institution to take the necessary remedial measures in a timely manner in case of non-compliance with AML obligations [FSA: s.34(7) MLA/GMLA; DBA: s.32(5) MLA; Tax Agency: s.24(7) GMLA; Insurance Supervisory Authority: s.18(7) FMLAS; Skaseting Foroya: s.16(4) FMLAS]. However, if the institution does not comply, the violation must be reported to the police to initiate an investigation. The subsequent prosecution is a matter for the prosecution authorities and the court (see R.35).

The FSA and DBA have the power to impose daily or weekly fines without a court order for failure to provide them with information necessary for their supervisory activities [s.37(4) MLA/GMLA/FMLA] (see R.35). In case of contest by the supervised entity, the violation must be reported for possible investigation by the police.

Sanctions that can be imposed do not include the power to withdraw, restrict or suspend the reporting entities' "license" or "registration" except for electronic money providers, including money remitters, whose licence can be withdrawn but cannot be suspended or restricted (PSEM Act). The FSA and DBA, and other authorities in Greenland and in the Faroe Islands can only deregister undertakings according to s.31(1) and s.34(4) MLA.

Nevertheless, the FSA and DBA have the authority to deregister or not to register a member of the board of directors [s.31(3) and 34(4) MLA] or to order a financial institution to remove a manager (s.64 FBA). Where key members of management (e.g. chief compliance officer) are not members of the board or covered by the fit and proper requirements and therefore cannot be removed, authorities can require the board of directors to take remedial actions which may involve management changes.

Competent supervisory authorities have the same powers in the Faroe Islands [s.15(2)(3) FMLAS] and in Greenland [s.27(3)(4) of the GMLAS].

Weighting and Conclusion

Danish supervisory authorities have adequate powers to supervise, inspect and obtain information. The sanctioning powers of all competent supervisory authorities are very limited. Although this is considered to be a significant shortcoming, the issue of sanctions is primarily dealt with in R.35.

Recommendation 27 is rated Largely Compliant

Recommendation 28 – Regulation and supervision of DNFBPs

Major shortcomings in the Danish supervision of DNFBPs were identified in its 3rd MER and Denmark received a NC rating for former R.24. Since then, Denmark has passed a new gambling regulation (including the Act No 119 of January 2016 on Gambling) and has applied supervision provisions to other DNFBPs. All DNFBPs are covered apart from dealers in precious metals and stones who may not accept cash payments of DKK 50 000 or more.

Criterion 28.1 – (a) Casinos are legally subject to AML/CFT regulation and supervision under the 2016 Act on Gambling and the Act on Payment Services and Electronic Money, but also under the Executive Orders on land-based casinos, online casinos and reporting to SØIK for land-based casinos and online casinos. Greenland and the Faroe Islands have their own gambling legislation. The Danish Gambling Authority is the responsible supervisory authority for Danish casinos (part 9 GA) and for Greenland (Act for Certain Games on Greenland) and in effect for the Faroe Islands, as any casino there must be licensed in Denmark or one of the other Nordic countries.

Both land based and online casinos must be licensed (s.14 and 18 GA). It is not possible to have a land based casino in Greenland. There is provision for online casino licences in Greenland to operators also licensed in Denmark, or very limited licences for residents of Greenland and companies formed in Greenland. In the Faroe Islands only casinos licensed in Denmark or other

Nordic companies can provide gambling services through an agreement with a licensed entity partly owned by the Faroese government.

(b) Denmark: S.26 and 29 of the Gambling Act set conditions for granting a licence to an individual (such as the applicant's financial background, repute with respect to character, integrity and aptitude to carry out gambling activities, and the absence of any prior criminal conviction). These background checks also extend to companies, members of their board of management and the board of directors (s.28) or others who can exert decisive influence (s.29) including shareholders with more than 10% of shares. Companies or persons not resident in the European Union must have an appointed representative in Denmark whose approval may be revoked if they have been convicted of a criminal offence that gives reason to believe that there is a clear risk of abuse of the access to work with gambling, have unpaid outstanding debt to the public sector in excess of DKK 100 000 or are no longer a resident of Denmark or established in Denmark (s.27 and 30). The manager cannot be approved, and approval may be revoked if there are reasons to assume that the casino is not operated in an acceptable manner (s.38). There are similar provisions for employees (s.39) and for the revoking and voiding of licences (s.44 and 45).

Greenland: Danish laws apply to Danish companies operating online casinos. Greenland individuals or companies are subject to similar provisions (s.8 Act no.336). If a Danish licence lapses or is revoked, the Greenland licence lapses as well [s.10(1)]. As in the Gambling Act, breaches of Act no. 336 will result in the revoking of a licence [s.10(2)].

Faroe Islands: As any casino operating in the Faroe Islands must have a licence from either Danish or other Nordic gambling authorities, reliance is placed on the home country requirements.

(c) The DGA supervises casinos for compliance with the Gambling Act and the relevant Executive Orders relating to land-based and online gambling. DGA has powers of inspection without a court order and may order disclosure of information. It has various other powers to set requirements under the Gambling Act and the relevant Executive Orders.

Faroe Islands: S.10 of Act no. 51 provides for supervision of Spf Itrottarvedding. In relation to casinos operating in the Faroe Islands under agreement with Spf Itrottarvedding, reliance is placed on home country supervision.

Criterion 28.2 - The relevant competent authorities for the other categories of DNFBPs are:

- For lawyers: the Danish Bar & Law Society [MLA s.34(b); GMLA s34(a); FMLA s34(a)]
- For DNFBPs other than lawyers [as per s.1 (1) no 11 and 15-18 of the MLA²⁹]: the DBA [MLA/GMLA, s.32]

Greenland real estate agents and CSPs are supervised by the Tax Agency (s.27 GMLAS). Faroe Islands accountants, real estate agents and CSPs are supervised by Skraseting Foroya.

Criterion 28.3 - The relevant Acts provide for supervision of covered DNFBPs. Technically there are systems in place for monitoring of compliance by the relevant competent authorities or SRB. Both onsite and offsite monitoring takes place including onsite inspections.

²⁹ Refer to Table 35 Reporting entities covered in Section (1)(1-18) of the MLA

Criterion 28.4 - (a) S.32 MLA provides powers for the DBA relating to inspection, ability to demand information without a court order and to order rectification of non-compliance in relation to DNFBPs other than casinos. The relevant legislation also provides powers to the BLS in relation to lawyers (s.34b MLA). BLS also conducts onsite inspections.

(b) The designated competent authorities have powers to prevent criminals being involved in DNFBPs through registration or professional qualification requirements: CSPs [s.31(2) MLA]; lawyers (s.121,147 AJA); real estate agents (registered under the Act on Real Property Brokerage and can be deregistered in circumstances set out in s.78(2) CC which applies to any public licence or permit); similar provisions apply to accountants under the Approved Auditors Act.

(c) S.37 of the MLA/GMLA/FMLA provides for penalties for breaches of the MLA and orders made by the DBA under the MLA (see R.35 in relation to deficiencies on sanctions). Lawyers can be disciplined under BLS rules and can be disbarred in serious cases, and accountants can be deregistered, but real estate agents cannot be deregistered for AML non-compliance unless they are convicted of an offence as noted above. While disbarment and deregistration are serious sanctions, in the absence of fines, the range of sanctions is inadequate to allow a proportionate and dissuasive response.

Criterion 28.5 - S.32(2) and 34b(1) of the MLA and GMLA require the supervision of DNFBPs to be carried out on the basis of a risk assessment. The DBA is only at a very early stage in using a risk based approach to decide on frequency and intensity of supervision. However, this approach does not result in appropriate follow up of ML/TF non-compliance. The ML/TF risk profile as set out in the NRA is also taken into account by the DBA. BLS selects firms randomly in a five-year cycle, and ensures afterwards that firms which have had issues are put back into the pool for future selection. This is however not considered to be risk-based. The DGA's supervision of casinos is more risk-based, as set out in their Strategic Compliance Plan. With only seven land-based casinos, DGA does more regular onsite visits than other DNFBPs.

Weighting and Conclusion

As in relation to FIs, there are concerns about the dissuasiveness of sanctions on DNFBPs (see c.27.4 and R.35). With the exception of casinos, supervision is not carried out on the basis of ML/TF risk

Recommendation 28 is rated Largely Compliant.

Recommendation 29 - Financial intelligence units

Denmark was rated LC with the old R.26. The deficiencies related to insufficient analysis of STRs; lack of reporting requirements re the filing of STRs; and the inability to promptly obtain additional information from reporting entities. Since its last mutual evaluation, Denmark's FIU started using goAML software to handle data received. The law now also requires reporting entities to submit STRs to the MLS electronically. Since 2013, the MLS can restrain transactions for up to one week if there is reason to presume that the funds are associated with ML/TF (s.807f AJA).

Criterion 29.1 - In 1993, the MLS was established within SØIK (Circular of 30 June 1993). The MLS has responsibility for acting as a national centre for receipt of STRs and other information relevant to ML and TF (Circular June 1993, s.7 MLA; GA; s.33 Executive Order no. 180 of 22 February 2016). The reporting entities pursuant to the MLA are required to report information related to all offences punishable by imprisonment of more than one year. In urgent cases, reporting entities may report directly to the local police. In these cases, the MLS will be informed about the police district to which the disclosure was sent and the person/company it concerned. Further information will then need to be obtained from the police district.

Criterion 29.2 - The MLS is the central agency for the receipt and analysis of STRs filed by reporting entities (Part 3 MLA; s.9 Executive Order on Land-Based Casinos; s.30 Executive Order on Online Casino). The MLS conducts limited analysis on the TFRs it receives (i.e. cross-checks against its databases). In Denmark, the reporting obligation in the MLA extends to FIs and DNFBPs, except dealers in precious metals and stones (DPMS) (s.1 MLA).³⁰ Lawyers are not obliged to report suspicious transactions when legal professional privilege applies, though this exemption does not apply where the lawyer knows that the client is trying to launder money or finance terrorism. When reporting, lawyers may report suspicious transactions either to MLS directly or through the Danish Bar and Law Society [s.7(2) MLA]. Accountants and real estate agents are exempted from reporting when they are assisting lawyers who fall under the reporting exemption. Finally, SKAT sends all declarations related to incoming/out-going cross-border transportation's of currency and bearer negotiable instruments amounting to EUR 10 000 or more received by the Customs Authority to the MLS making the information directly available to the staff of the MLS.

In Greenland and the Faroe Islands, all reporting entities are required to report STRs to the MLS (s.7 GMLA/FMLA)

Criterion 29.3 - The MLS is able to obtain and use additional information from reporting entities through a court order under the AJA, which can be obtained within 24 hours and with little evidentiary requirements [s.7(5) MLA]. Where an STR is incomplete, the MLS may request the missing information from the reporting entity without a court order.

Danish authorities state that the MLS has the legal power to access a wide variety of sources, such as the Central Crime Register; Central Civil Registry; Central Business Register; Central Register of Motor Vehicles; Shipping Register and the Land Register; police case filing systems and databases; and tax information (upon request). The MLS has indirect access to supervisory and regulatory information.

Criterion 29.4 - The MLS lacks adequate human resources, which impacts its ability to carry out the required operational analysis. The MLS relies heavily on the staff of the SØIK to conduct limited operational analysis of the reports and information received relating to possible ML, TF, and predicate offences. The MLS prioritises ongoing investigations and known targets instead of

³⁰ DPMS and all other businesses which are not subject to the general requirements in the MLA are prohibited from receiving cash in the amount of DKK 50 000 or more (MLA S.2).

identifying new targets. In addition, due the lack of resources, the MLS does not carry strategic analysis.

Criterion 29.5 - The MLS is able, spontaneously or upon request, to disseminate information to special units within the SØIK, police districts, prosecution services, PET, and SKAT. Disclosures by the MLS are subject to Danish laws on the protection of personal data and on confidentiality, according to which public authorities are allowed to exchange sensitive personal data if such exchange is necessary for either the recipient's or the transmitter's legal obligations (the Personal Data Protection Act, the PAA and the CC). All information is transmitted through secure channels, for example the internal systems of the police, and by encrypted connections to PET.

Criterion 29.6 - The MLS has internal rules governing the security and protection of information including procedures for the processing, storing, retransmission and protection of, and access to, the information held by MLS (Regulations for the MLS's Investigative Support and Analysis Database, HEAD; Standard Operating Procedures, SOPs). Access to goAML is solely granted to the MLS staff members who have a need to know in order to effectively perform their duties. Further, disciplinary measures apply to MLS staff if they fail to observe the current procedures and/or the statutory duty of confidentiality that follows from the laws regulating their employment as civil servants. Further, the MLS premises have restricted physical access that requires a passcode only available to MLS employees, and staff members must have the required security clearance.

Criterion 29.7 - Apart from its day-to-day budgetary decisions, including the approval of additional staff, the MLS is somewhat operationally independent and autonomous based on the following sub criteria:

- a) The MLS is located within the existing structure of SØIK. The MLS database is maintained by the IT unit of SØIK. As noted previously, the analytical functions of the MLS are conducted by dedicated SØIK analysts (under the management of the MLS).
- b) The MLS is able to cooperate with other relevant authorities and partners abroad.
- c) As stated under c.29.4, some of the MLS' core responsibilities are carried out entirely by dedicated SØIK staff. In regard to conducting analysis, the MLS pulls three analysts from SØIK to conduct this function when required. The staff of the MLS may also be diverted from their FIU responsibilities at any time to work on issues of priority within SØIK.
- d) The MLS does not have an independent budget; instead, its budget is subsumed in that of SØIK's. Denmark was unable to estimate the budget of the MLS due to its complete integration within SØIK. In order to hire any new employees or replace outgoing staff, the MLS requires approval from SØIK.

Criterion 29.8 - Denmark has been a member of the Egmont Group since 1997.

Weighting and Conclusion

The MLS has broad access to information to conduct its analysis; however, it lacks some operational autonomy and has fundamental staffing shortages.

Recommendation 29 is rated Largely Compliant.

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

Denmark was rated compliant for old R.27.

Criterion 30.1 - Denmark has a comprehensive network of law enforcement and prosecution authorities who have designated responsibility for investigating ML/TF, and associated predicate offences. The AJA is the basic act that sets forth the rules of investigation and prosecution for criminal acts (s.96, 99 and 108 AJA). Cases involving ML are normally investigated and prosecuted by local authorities. In such cases, guidance and assistance, if necessary, may be provided by staff from SØIK, which is part of the Public Prosecution Service. SØIK is responsible for the investigation and prosecution of serious economic and serious international crimes in Denmark and, more specifically, organized economic crime that is particularly extensive in scale.

The investigation of crimes, including terrorism financing, that fall within Parts 12 and 13 CC, are handled by PET, which is a unit within the Office of the National Commissioner of Police [s.1(1)(1) PETA]. The decision of whether to prosecute a case is a matter for the prosecution service of the relevant police district. PET, however, has the authority to make the initial assessment of whether the case provides a basis on which to raise charges and submit this question to the regional State Prosecutor.

Criterion 30.2 - The police and prosecution authorities (including the MLS) are authorised to investigate ML/TF offences during a parallel financial investigation regardless of where the predicate offence(s) occurred.

Criterion 30.3 - The Asset Recovery Office (ARO) which was established in 2007 (in SØIK) (TEU Art. 30, 1, a, b and Art. 34, 2, c and Council Decision 2007/845/JHA of 6 December 2007), is the central unit for the tracking, freezing, seizure and confiscation of criminal proceeds. The ARO is responsible for investigating the money trail in all cases where SØIK or a police district has requested ARO assistance, and to provide assistance to financial investigations by the SØIK or the police districts.

Criterion 30.4 - SKAT is responsible for the monitoring of cross-border transactions over EUR 10 000 and disseminates information about cross-border transactions and violations or non-declarations to the MLS. Officers have no law enforcement powers, but provide all relevant information to the MLS for its use, or to the police for investigation. SKAT is also responsible for reviewing cases upon their dissemination from the MLS. The intelligence is examined with a view to identifying signs of fraud involving VAT, taxes and duties. Information is exchanged with the MLS pursuant to s.28(2) of the PAA.

Criterion 30.5 - There are no specialized anti-corruption bodies in Denmark; corruption is investigated and prosecuted by the police and prosecution services. Corruption is dealt with in SØIK by the International Action Team. Assistance from ARO is available in cases involving corruption, if required.

Weighting and Conclusion

Recommendation 30 is rated Compliant.

Recommendation 31 - Powers of law enforcement and investigative authorities

Denmark was rated compliant for old R.28. The new Recommendation 31 contains much more detailed requirements in the area of law enforcement and investigative powers.

Criterion 31.1 - Competent authorities conducting investigations of ML, associated predicate offences, and TF are able to obtain access to all necessary documents and information for use in their investigations, prosecutions and related actions. This includes:

- *Production orders* – Under the MLA (part 3, s.7(5)), the police may, under the regulations stipulated in the AJA, demand any information necessary for investigation from the undertakings and persons covered by the MLA. Provisions in the AJA permit the police to obtain a court order requiring persons to produce material, including records held by FIs, DNFBPs and other natural or legal persons that may serve as evidence or should be confiscated or serve for compensation (s.804-806 AJA; s.420–422 AJAGR; s.785 AJAFI). If confiscation may be relevant, an order for seizure may be added. The AJA also includes a special provision for ML/TF, which allows for the police to apply for a court order to follow the money trail through several FIs without having to obtain new court orders for each financial institution [s.806(3) AJA; s.422 AJAGR]. The order must indicate the period of time within which the police may demand such information. This period shall be as short as possible and may not exceed four weeks. The period may be extended but by no more than four weeks at a time.

Before the court makes a decision to order a disclosure (production order) under s.804 of the AJA, the person who has the right of disposal of the object must have been given an opportunity to state their case (except in mutual legal assistance cases) [s. 806(7) AJA].

- *Search of persons and premises* – Search of dwellings (including residences and businesses), documents, papers (of which a suspect has possession), can be conducted if there are reasonable grounds to suspect that the person committed an offence that can result in imprisonment, and the search is presumed to be of significant importance to the investigation [s.793 – 794 AJA; s. 409(1) and (3), 410 AJAGR; s.794 – 796 AJAFI]. These powers generally apply to the suspected person and his/her premises, but can be extended to other persons/premises in certain circumstances (upon consent by the non-suspect, or if there is reason to assume that evidence or an object subject to seizure will be discovered) (s.795 AJA; s.412 AJAGR). Where a search is conducted at the premises of a business enterprise, the court or the police may impose a duty of confidentiality on persons who have gained insight into the case [s.795(3) AJA; s.189 AJA]. Also included in the AJA, is the authority to conduct clandestine searches for certain serious offences, including TF (s.799 AJA).
- *Taking witness statements* – The competent authorities have the powers to interview persons, however, they do not have the power to compel witness statements (s.750 AJA/AJAFI; s.346 AJAGR). If a person declines to provide a statement, the prosecutor can call the person for questioning in court (s.174, 178 AJA/AJAFI; s.141,150 AJAGR). In this setting, a

witness must respond unless there is a special exemption from duty to provide a statement (s.169-172 AJA/AJAFI; s.142-145 AJAGR).

- *Seizure and obtaining evidence* – Seizure can take place to secure evidence, to secure the claim of the State for costs, confiscation and fine, to secure claim of the victim for restoration or compensation, and when the defendant has absconded from further prosecution of the case according to s.801-803 AJA (s.417-419 AJAGR). The threshold for seizing objects for evidence is that the individual is suspected on reasonable grounds of an offence that is liable to public prosecution and it is reasonable to believe that the object may serve as evidence. Also, as of 1 July 2013, a new provision [s.807(f)], was inserted into the AJA at the request of the FIU, making it possible to order temporary restraint of funds held by institutions covered by the MLA for up to one week when there is reason to presume that the funds are associated with ML or TF. Finally, according to AJA s.807e it is possible to have clandestine seizure for which additional safeguards apply, including appointment of a defence counsel.

Criterion 31.2 - There is a wide range of investigative techniques available under Danish law; however, these are only available for offences punishable with imprisonment for six years or more. As a result, these special techniques can be employed in the case of aggravated ML and TF offences, but not for ordinary ML.

- *Undercover operations* – Undercover operations may be used in an investigation concerning an offence that is punishable under the law with imprisonment for not less than six years (s.754a – 754d AJA). The possibility for undercover operations is not available for investigations in Greenland. The Justice Commission for Greenland came to the conclusion in 2004 that the trends and patterns in crime committed in Greenland did not warrant the use of such measures. Undercover operations are unavailable to police in the Faroe Islands.
- *Intercepting communications* – Upon a court order, competent authorities conducting investigations of TF offences, aggravated ML offences, and predicate offences exceeding six years imprisonment have the power to intercept communications (Part 71 AJA; Part 70a AJAFI; Part 36 AJAGR). In investigations of TF, and upon a court order, competent authorities may intercept all telephones that a specific person may use in a given period other than the one identified in the court order [s.783(2) AJA]. If the aim of the interception would be thwarted due to the time taken to obtain a court order, the police can begin interception up to 24 hours prior to submitting an order to the court [s.783(4); s.391(3) AJAGR].

Article 20 of the Council Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, was implemented into S.783(5) AJA. Accordingly, it is the responsibility of telecommunication service providers to assist the police in obtaining the necessary access to information (such as interception, retaining letters), and allows the police to order providers to retain electronic data, including traffic data, which is stored at the time of the order, but only for a period of up until 90 days.

- *Accessing computer systems* – Upon an order from the court, police are authorized to copy data that is inaccessible to the public by accessing an information system [s.791(b) of AJA; s.779(p) AJAFI; s.400 AJAGR].

- *Controlled deliveries* – There is no specific legislation on controlled deliveries. On 31 July 2002, the Minister of Justice issued guidelines on cross-border controlled deliveries. As long as police authorities do not interfere in the criminal act (e.g. the transportation or delivery of the criminal proceeds), it is comparable to the surveillance of a perpetrator, which is lawful.

Criterion 31.3 – (a) Police have the authority to obtain a court order obliging Danish banks (through the Danish Bankers Association) to provide information as to whether suspects have accounts or other facilities with their bank [s.804(1) AJA; s.785 AJAFI; s.420 AJAGR]. Denmark states that this court order can be acquired within hours and in urgent cases without a court order [s.804(4)]. Additionally, since FIs, for revenue purposes, must also inform the SKAT about the ownership of all bank accounts at the end of each year, the police can request the information from SKAT, or may request this information from the Danish Banker’s Association, as the information provided to SKAT is updated once a year. However these mechanisms only cover banks and it is not clear that the information provided is up-to-date, and can be provided in a timely manner.

(b) Denmark has measures in place to ensure that the above mentioned information can be obtained without prior notice to the owner (s.748 of the AJA). The relevant provision in the AJA also provides for the exclusion of the suspect from the court hearing, for the barring of a suspect from becoming acquainted with entries in the court records, and for orders to counsel not to inform a suspect of matters occurring at a hearing. Under s.189, 803(1) and 804(2) AJA, non-suspects who have been the subject of productions or seizures, and persons questioned as witnesses may be bound to secrecy by the court or the police if, *inter alia*, it is necessary in addressing a serious offence.

Criterion 31.4 - Law enforcement authorities can ask for information held by the MLS, which is authorized to disseminate information to other police units conducting investigations of ML, associated predicate offences, and TF. Danish authorities state that the MLS may, spontaneously or upon request, disseminate results of its analysis and related information to special units within the SØIK, police districts, the prosecution service and SKAT. Disclosures by the MLS are regulated by the Danish rules on the protection of personal data and on confidentiality, according to which public authorities are allowed to exchange sensitive personal data if such data is necessary for either the recipient’s or the transmitter’s legal obligations (the Personal Data Protection Act, the PAA and the CC).

Weighting and Conclusion

There is a wide range of investigative techniques available under Danish law; however, these special techniques cannot be employed for ordinary ML.

Recommendation 31 is rated Largely Compliant.

Recommendation 32 – Cash Couriers

Denmark was rated partly compliant for SR.IX. The deficiencies identified in SR.IX included a lack of guidance for customs officials, and effectiveness concerns based on the low number of declarations. Since its last MER, Denmark passed amendments to its Customs Act which establish a declaration

system for cash sent through mail or cargo (which is not captured under EC Regulation No. 1889/2005).

Criterion 32.1 - In June 2002, Denmark established a declaration system for both incoming and outgoing cross-border transportation of cash valued at EUR 10 000 or more for persons travelling between other countries and Denmark [s.23(4) CA]. Legal and natural persons sending or receiving cash (including by mail or cargo) with a value corresponding to DKK 75 000 or more are required to notify SKAT no later than the date when the cash enters or leaves the Danish customs territory [s.10a (2) CA]. "Cash" is not defined in the Customs Act, but is included in the preparatory remarks and mirrors the definition of cash in EC Regulation No. 1889/2005. Denmark also applies EC Regulation No. 1889/2005 on controls of currency and BNIs entering or leaving the European community from/to non-EU countries. According to the Customs Act, Greenland and the Faroe Islands are considered as third countries, and not a part of the Danish customs territory.

Criterion 32.2 - Denmark has implemented a written declaration system based on both the Customs Act and EC Regulation 1889, as described above.

Criterion 32.3 - Denmark does not implement a disclosure system.

Criterion 32.4 - SKAT has the authority to ask for and record information about a person and the cash carried, when there is a suspicion of illegal activities in connection with the movements of cash (CA s.23(5)), however there is no explicit provision that allows customs officers to seek further information about false or non-declarations.

Criterion 32.5 - Where persons intentionally or through gross negligence make a false declaration or fail to make a declaration, SKAT has the power to impose an administrative fine. The levels of fines available are not stipulated in the Customs Act. In practice, the fine is equal to 25% of the amount that exceeds EUR 10 000, which is confirmed by a leading case rendered by the Supreme Court of Denmark on 1st April 2011. This administrative penalty is not proportionate or dissuasive.

Criterion 32.6 - Since June 2015 all declarations, are required to be forwarded electronically to the MLS once a week in a consolidated format (Art.5(1), EU Regulation 1889/2005; Art 5.1, 6, and 7 CA).

Criterion 32.7 - Danish authorities state that the SKAT works closely with police, immigration, the MLS, and other domestic authorities pursuant to the Personal Data Protection Act, and the PAA, which permits the exchange of information, if such information is necessary for either the recipient's or the transmitter's legal obligations.

Criterion 32.8 - Where there is a false or non-declaration, or in cases where there is a suspicion that the cash originates, or will be used for, criminal activities in violation of the CC or other legislation, SKAT has the power to hold the funds for up to 72 hours (s.83(2) CA).

Criterion 32.9 - Arts.6 and 7 of EC Regulation No. 1889/2005 provide a framework for the exchange of information with other countries. In the case of illegal activities associated with the declaration system, including ML and TF, the information gathered through the declaration process may be transmitted to competent authorities in other EU member states (Art.6 EC Regulation 1889). Art.7 allows an exchange of information with non-EU member States pursuant to mutual assistance in customs matters agreements. As a member state of the EU, Denmark can also rely on EC Regulation

No.515/97 on mutual assistance in customs matters and the Convention on mutual assistance and cooperation between customs administrations. Therefore, it appears that Denmark is able to exchange information relating to declarations with other EU members states. The MLS share information received from SKAT with other FIUs through Egmont channels, pursuant to the PAA. Information gathered through the declaration process pursuant to the Customs Act may be transmitted pursuant to the Act on Processing of Personal Data.

Criterion 32.10 - The information collected pursuant to the declaration obligations is subject to confidentiality pursuant to the Act on Processing of Personal Data.

Criterion 32.11 - If SKAT suspects that cash carried by a person is the proceeds of crime or related to TF, it will report the case to the police for investigation. If the suspicions are confirmed, the police will also seize the cash for possible confiscation. Persons who are carrying out a physical cross-border transportation of cash or BNI related to ML or TF are subject to ML or TF offences. However, for ML, as analysed in c.3.5, the low level of sanctions for ordinary ML are not proportionate or dissuasive. Powers exist to confiscate criminal proceeds or instrumentalities.

Weighting and Conclusion

Denmark meets most of the criteria for R.32; however, the sanctions available for criteria 32.5 and 32.11 are not proportionate or dissuasive.

Recommendation 32 is rated Largely Compliant.

Recommendation 33 - Statistics

In its 3rd MER, Denmark was rated partially compliant with old R.32, as Denmark did not sufficiently undertake comprehensive or regular reviews of the effectiveness of its AML/CFT program.

Criterion 33.1 -

- (a) The MLS maintains statistics regarding STRs received and disseminated in its database. There are statistics concerning the number of STRs/TFRs, volume and value of transactions, and the dissemination of intelligence reports to LEAs. These statistics cannot be broken down by underlying predicate offences.
- (b) Denmark is unable to provide clear statistics in relation to ML investigations, prosecutions and convictions due to the articulation of its ML offence. Specifically, it is not possible for Denmark to separate ML cases from other cases involving the handling of stolen goods. Statistics are available for the number of prosecutions and convictions for TF, but do not exist for TF investigations. The MLS does not have statistics on the number of disclosures sent to police that have resulted in investigations, prosecutions, and convictions.
- (c) Denmark does not maintain comprehensive statistics on property frozen, seized and confiscated. The Asset Recovery Office maintains some statistics of the number of cases where it has provided assistance and property was seized, but the data on other seizures is not available, nor is reliable and comprehensive data on the value of property confiscated.

- (d) Denmark maintains statistics in relation to the number of requests received and actioned in regard to extradition on the basis of European arrest warrants and to countries outside of the EU and Nordic countries. Denmark was also able to provide a breakdown on other MLA requests within its case management system between 2013 and 2015; however, this information does not capture requests sent within the Schengen system or requests on the basis of the European Convention of 29 May 2000 on Mutual Assistance in Criminal Matters, which may be sent directly to the relevant judicial authorities Denmark. PET does not maintain statistics on international cooperation involving TF. The MLS maintains statistics in relation to requests received and the corresponding response (negative or positive).

Weighting and Conclusion

Denmark maintains comprehensive statistics on STRs received and disseminated, and on TF prosecutions and convictions; however, there is a significant lack of clear statistics related to ML investigations/prosecution/convictions, TF investigations, inter-EU MLA requests, and seizures/confiscations.

Recommendation 33 is rated Partially Compliant.

Recommendation 34 – Guidance and feedback

In its 3rd MER, Denmark was rated non-compliant with the former R.25. The report expressed concerns over the lack of: (i) guidelines established for FIs by the competent authorities; (ii) systematic feedback on the STRs filed with the FIU; (iii) guidance to DNFBPs; and (iv) adequate guidance to assist reporting persons in identifying suspicious transactions. Since then, guidelines on AML/CFT have been issued by the FSA, DGA, DCCA and BLS. The MLS also issued guidelines and publishes feedback on STRs, relevant cases, and trends in its annual report.

Criterion 34.1 -

Supervisor's guidance and outreach to FIs and DNFBPs

- The FSA does not implement a proactive approach and thus holds meetings upon request of FIs on specific AML/CFT measures. In December 2010, the FSA issued *Guidelines on the Measures to Prevent Money Laundering and Financing of Terrorism Act* (updated in April 2013), which is available on its website. These Guidelines aim at clarifying MLA regulations applicable to FIs and DNFBPs, and also to regulations applicable to Faroe Islands and Greenland. These Guidelines do not provide detailed information on AML/CFT trends and risks indicators (e.g. identification of high risk customers or situations), typologies, best practices or case law or detail the additional documentation that must be collected in the case of EDD. These guidelines are not legally enforceable.
- The DBA holds meetings on specific ML/TF risks, upon request from the DNFBPs (accountants, real estate and providers of services for undertakings). The DBA has not issued AML/CFT specific guidelines, except for the 2008 Guidelines on freezing. However, the DBA

provides general AML/CFT information on its website.³¹ DBA provides general guidance, information on indicators of possible ML/TF, as well as specific feedback to the company and its employees after each on-site inspection. The DBA has also prepared training material for auditors and participated in three seminars with state-authorized and registered public accountants in 2016.

- In July 2013, the DGA issued a Guideline for the casino sector. The guideline covers both land-based and online casino products. The DGA holds bi-annual committee meetings with online and land-based casino licence holders.
- The BLS issued an AML/CFT guideline to assist lawyers, which is currently being updated.
- Other competent authorities, including in Greenland and Faroe Islands, have not issued specific AML/CFT guidelines to assist the reporting entities (covered by the self-governed regulation) to comply with their AML/CFT obligations.

Guidance and feedback by the FIU (MLS)

S.35 of the MLA allows the MLS to provide feedback to any entity that submitted a STR/SAR/TFR. Danish authorities indicated that this feedback can be general or specific (e.g. informal contact with staff, review of a reported case). This feedback is not only to inform about the final outcome of the analysis or investigations, but also to give early feedback concerning the type of crime under investigation and whether a charge has been made or if there were deletion of records from the register. General feedback and guidance is provided through the publication of MLS's annual reports, and compliance meetings with FIs which are publically available. These annual reports include also a summary of some of the convictions resulting from reporting. Where possible, the MLS also issues feedback letters directly to reporting entities, and provides user guides on electronic reporting to the MLS. This feedback is provided in general terms and does not provide updates on new and emerging trends and methods related to ML or TF.

Weighting and Conclusion

Most reporting entities rely on the general guidance issued by the FSA in 2013. Competent authorities have not issued specific guidance that would adequately assist reporting entities in complying with their AML/CFT obligations. With the exception of the high-level feedback provided by the MLS, competent authorities in Denmark, Greenland and Faroe Islands are providing very limited feedback to reporting entities.

Recommendation 34 is rated Partially Compliant

Recommendation 35 – Sanctions

Denmark was rated PC with the former R.17. In the absence of any applied sanctions, it was not possible to conclude that the sanctions regime was effective, proportionate and dissuasive. The

³¹ <https://erhvervsstyrelsen.dk/hvidvask-og-finansiering-af-terrorisme>

limited range of administrative sanctions and the inability of authorities to sanction some of the obligations set forth in the MLA, due to the limited powers of the supervisory authorities to impose fines, were also issues of concern.

Criterion 35.1 -

FIs and DNFBPs other than casinos

The FSA and DBA can issue orders for rectification of failures to comply with the MLA/GMLA/FMLA [s.32(5) & 34(7)]. Orders must be made public by the DBA when they are significant or have been referred to police for investigation [s.34c(1)], and by the FSA where a matter is referred to the police [s.34c (2)], or when orders/other administrative sanctions are imposed on the undertaking (s.4 Executive Order on Publication). The name of the undertaking is mentioned, unless it is deemed to be very damaging for the undertaking. Publication of the referral to the police may not occur if it will cause disproportionate damage to the undertaking [s.34c (4)], although in practice this is only used in limited cases. In addition, where there is a judgment or acceptance of a fine following a police investigation, that information is published and the undertaking is obliged to include a link to the judgment on its home page for up to three months. S.34c(4) also applies to this publication.

The MLA establishes the penalties regime for FIs and DNFBPs (other than casinos) breaching or failing to comply with the MLA/FMLA/GMLA [s.37(1)] or with orders by the DBA or FSA [s.37(5)]. S.37(1) applies only to a specific subset of MLA breaches. Other breaches are subject to DBA/FSA orders. If these orders are not complied with, FIs and DNFBPs will be referred to the police for investigation, and thus would be subject to criminal sanctions [s.37(5)]. Breaches of the following provisions are subject to a fine only where FSA or DBA orders are not complied with:

- non-compliance with the obligation to investigate the purpose of the transactions mentioned in s.6(1) MLA and keep records of such investigations s.6(2). But, violation of the obligation “to pay special attention to customers” activities which, by their nature, could be regarded as being particularly associated with ML/TF”, set forth in s.6(1) may be sanctioned;
- failure to comply with the requirements set forth in the case of reliance upon FIs licensed in a non-EU country or country with which the EU has not entered into an agreement for the financial area (s.17.1, which requires that the institution being relied upon be subject to AML/CFT requirements similar to those set forth in 3AMLD, and be subject to effective supervision of such requirements);
- failure to comply with the obligation to take measures to prevent products/transactions that favour anonymity being used for ML/TF purposes (s.19.7);
- failure to obtain sufficient information in the case of exemptions of CDD requirements (particularly when ascertaining that the customer is effectively covered by the exemptions, s.21.3), although, the sanctions provided for failure to comply with the CDD process requirements could be used to cover this situation.

Criminal fines apply to intentional or grossly negligent violations. Simple negligent violations of the MLA are subject to fines only where FIs and DNFBPs fail to publicise or where orders of the DBA or FSA have not been complied with (s.37(1), 1 MLA).

The DBA and FSA can impose daily or weekly fines (referred to as 'default fines') pursuant to MLA s.37(4), where orders to provide information necessary for AML/CFT supervision are not complied with within the given timeline. Aside from the general penalty provisions of the MLA (s.37), there is no sanction mechanism in cases of failure to systematically report to the MLS.

Violations of s.35(2) (e.g. unlawful disclosure of information received from MLS) are subject to a fine unless more severe punishment is incurred under the regulations of the CC. S.37(2) deals with more aggravated violations of certain sections of the MLA (referred to as 'intentional and particularly gross or extensive violations'), which can result in imprisonment of up to six months.

The result is that the DBA and the FSA have a limited range of powers to enforce compliance or their orders. They do not have a power to impose administrative fines for failure to comply with the MLA. The only way to apply financial penalties for such non-compliance is to refer cases to the police for investigation with a view to prosecution. Denmark stated that administrative fines are not available as this is not consistent with basic principles related to the power to impose fines, but did not provide further material to justify this. Following investigation and if the defendant agrees, the prosecution can impose a fixed-penalty notice / fine on the defendant as a sanction for the offence, and the case would then not go to court. However, this is still part of the criminal justice process.

Denmark indicated that there is no legal limit to the maximum size of a fine (for daily/weekly fines or criminal sanctions). Consideration will be given for instance to the nature of the offence or the perpetrators' ability to pay. Considering the number of fines imposed, and the type of breaches that were sanctioned, it is difficult to conclude that these sanctions are proportionate or dissuasive.

In addition to formal sanctions, the DBA and the FSA use recommendations (referred to as "risk information") and reprimands. Additional disciplinary powers applying to DNFBPs, such as disbarment of lawyers, are dealt with under R.28. Licenses and registration may be revoked for MLA breaches, except for real estate agents. With respect to electronic money providers and payment services providers, including MVTs, the FSA can withdraw an undertaking's authorisation or restricted authorization, if the undertaking fails to comply with its obligations. Regarding the removal of voting rights, removal from board of management, please refer to R26.

Casinos

Sanctions for casinos are set out in the Gambling Act. A gambling licence may be revoked for breach of the Act or conviction of a criminal offence which demonstrates risk of abuse of the access to work with gambling activities by a licence holder or their representative [s.44(1)(I)]. Penalties for breaches of the Act in relation to licences are set out in s.59 to 64. Providing gambling services without a licence is subject to a fine or imprisonment for up to six months, or in aggravated circumstances for up to 12 months. While revocation of a licence is also possible, s.61 includes particular provisions relating to breaches by legal persons of AML/CFT measures. The Executive Orders made under various rulemaking provisions in the DGA, on land based and online casinos include sanctions for breach. These are fines, unless the CC imposes a more severe punishment. More

severe breaches of the provisions relating to PEPs and SAR reporting can be subject to imprisonment of up to six months. These provisions also apply to Greenland online casinos. In relation to the Faroe Islands, the home legislation of Danish or other Nordic persons permitted to operate casinos applies.

TFS

TFS penalties are only dealt with in s.110(c)(2) of the CC/CCFI and Section 26 of the CCGR. Breaches for “particularly aggravating circumstances” are punishable by an unlimited fine and imprisonment of up to four years, or two years where the offence was committed through negligence. Breaches that do not take place in particularly aggravating circumstances are punishable by an unlimited fine and imprisonment of up to four months. While the criminal sanctions in the CC appear to be proportionate and dissuasive, the framework for administrative or civil penalties for non-compliance (see the text above on the supervisory framework) is partially proportionate and dissuasive.

In the limited number of cases where the criminal justice framework might be applicable, the penalty for breaching a seizure order under the criminal justice framework is set out at s.294 CC and equivalent provision in the CCGR and is an unlimited fine. There does not seem to be any prison sentence. Therefore, the penalty would appear to be partially proportionate and dissuasive.

NPOs

See criterion 8.4(b).

Criterion 35.2 – Fines can be imposed on both legal and natural persons [s.25-27 CC; s.27 (1) CCFI; s.17-19 CCGR]. There is also a mirroring provision for legal persons in s.37(7) MLA.

According to the DPP’s Guidelines on Criminal Liability for Legal Persons (last revised in April 2015), when a charge is laid against a company, it is communicated to its managing director (or the person in charge of day-to-day management). Authorities indicated that it is implied that the legal person’s criminal liability is the primary one (reference to the explanatory notes to Part 5 CC). In a number of situations however charges may also be raised against the natural person (i.e. if the person acted with intent or gross negligence). The general guideline is that this can be done against the management (i.e. managing director, managing board) or a senior officer (i.e. person with day to day leadership and the authority to instruct the staff). This is not provided in the MLA. Charges against staff are not generally to be raised, unless advised by special circumstances (i.e. if the offence is of a serious nature or if committed intentionally and proactively).

As regards the power to fine in the MLA, s.37(4) provides supervisory authorities with the power to fine (for not providing information requested) the FI or DNFBP, but does not provide powers with respect to directors and senior management.

The MLA provisions apply equally to FIs and DNFBPs. In addition, disciplinary action may be taken against individual lawyers by the BLS Disciplinary Board.

Casinos

Under the Gambling Act, individuals are covered, but s.61 makes it clear that legal persons can also be subject to penalties under the Act including for breaches relating to AML/CFT.

TFS

The criminal penalties for TFS in the CC/CCFI/CCGR referred to above are applicable to directors and senior management and appear to be proportionate and dissuasive except for the limited number of cases where s.294 (s.115 CCGR) for breaching a seizure order might be applicable. The administrative or civil penalties framework for non-compliance is partially proportionate and dissuasive (see the text above in relation to the supervisory framework).

NPOs

See criterion 8.4(b). The penalties available in the legislation for Denmark and Greenland cover directors and senior management. No provisions apply in the Faroe Islands.

Weighting and Conclusion

The range of sanctions for AML/CFT breaches is limited. The supervisory authorities (FSA/DBA) have limited powers to enforce their own orders (i.e. the only fines that can be imposed are daily or weekly fines, primarily when orders have not been complied, for example when FIs/DNFBPs did not provide requested documents). The only way to enforce compliance with orders is to refer the matter to police for investigation, with a view to prosecution. The lack of powers to impose coercive fines is a serious concern relating to dissuasiveness.

Recommendation 35 is rated Partially Compliant.

Recommendation 36 – International instruments

Denmark was rated LC for old R.35 and partly compliant with SR.I. At that time, the Vienna, Palermo, TF Conventions did not extend to the Faroe Islands and Greenland. Since the last evaluation, Denmark has signed the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

Criterion 36.1 - Denmark is a party to the international instruments covered by this Recommendation: Vienna Convention (ratified 29 December 1991), Palermo Convention (ratified 30 September 2003), the TF Convention (ratified on 27 August 2002) and the Merida Convention (ratified 26 December 2006).

Greenland and the Faroe Islands are not parties to any of the conventions.

Criterion 36.2 - Denmark has not fully implemented the relevant articles of the Vienna and Palermo Conventions as it has not criminalised self-laundering, as noted under R.3. TF criminalisation is in line with the TF Convention (see R.5).

Greenland and the Faroe Islands have not fully implemented the relevant articles.

Weighting and Conclusion

Greenland and the Faroe Islands are not parties to any of the conventions, and there are issues with the scope of the ML offence (see R.3).

Recommendation 36 is rated Largely Compliant.

Recommendation 37 - Mutual legal assistance

Denmark was rated LC with old R.36 and SR.V on the grounds that Greenland and the Faroe Islands were unable to provide assistance in some ML and TF matters due to limitations in their criminalisation, or any assistance to states not party to the European Convention on MLA. Since the last evaluation, the DPP has been designated as new central authority for receiving and executing mutual legal assistance in criminal matters.

Criterion 37.1 - Denmark is able to provide a wide range of mutual legal assistance in ML/TF investigations, prosecutions, and related proceedings. Denmark is party to the European Convention on Mutual Assistance in Criminal Matters (and its 1978 and 2001 protocols), and the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union. The European Convention and 1978 Protocol applies to Greenland and the Faroe Islands (the 2001 Protocol only applies to Denmark). Denmark is also party to bilateral mutual legal assistance agreements with the USA (only applies to Denmark) and Hong Kong, China (also applies to Greenland and the Faroe Islands). If the request is from an EU member or Nordic country, Denmark complies with the request in accordance with the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, or Denmark's Agreements between the Nordic Countries. Denmark also applies the principles of the European Convention on Mutual Assistance in Criminal Matters when the request is from a country with which no agreement exists.

Denmark, the Faroe Islands and Greenland do not have specific legislation regarding mutual legal assistance in criminal matters; however, Danish authorities can apply national legislation to assist foreign authorities, regardless of whether it has an MLA agreement with the requesting state or not. Danish authorities can comply with a request if the investigative measure(s) requested could be carried out in a similar national case. Denmark uses the criminal procedures set forth in its AJA to comply with requests. Denmark has established through case law that this is an accepted practice in the Danish legal system even in absence of a specific provision in legislation.

Criterion 37.2 - The MoJ was until 1 March 2016 the central authority to receive requests for MLA and execute them or in some cases transmit them to the competent authorities for execution. Since 1 March 2016, the DPP has been designated as central authority instead of the MoJ. The MoJ has issued guidelines on how to deal with requests for mutual assistance in criminal matters and transfer of proceedings, which are currently under revision by the Director of Public Prosecutions. The MoJ guidelines in force at the time of the onsite do not include information on the prioritisation or timeframes for responding to requests. Further, as noted under IO.2, the majority of Denmark's MLA requests (incoming and outgoing) are not channelled through the central authority. Consequently, it is unclear how requests are registered and monitored for progress by the relevant competent authorities.

The central authority for MLA in Denmark is the same for the Faroe Islands and Greenland.

Criterion 37.3 - Law enforcement authorities can comply with an MLA request if the investigative measure(s) requested could be carried out under domestic legislation. As noted under R.31, there is a wide range of investigative techniques available under AJA; however, certain special investigative techniques are only available for offences punishable with imprisonment for six years or more such as aggravated ML and TF. As a result, these special techniques cannot be employed for ordinary ML, both domestically or in response to international requests. Dual criminality is not required for providing MLA with regard to non-coercive measures.

Criterion 37.4 - There is no rule under Danish law that a mutual legal assistance request must be refused if the offence is considered to involve fiscal matters, or due to secrecy or confidentiality.

Criterion 37.5 - Denmark maintains the confidentiality of mutual legal assistance requests received and the information contained therein. Judicial authorities, courts and LEAs have confidentiality requirements under their internal or national security protocols (s.152 CC).

Criterion 37.6 - Where the measure sought is not a coercive measure, there is no requirement for dual criminality. Furthermore, dual criminality is not required with regard to requests from EU Member States for a number of offences, specified in a “positive list”, including terrorism, ML, trafficking in human being and drug trafficking (s.6 and 13(e) in the Consolidated Act on International Enforcement of Certain Criminal Justice Decisions in the European Union). Dual criminality is also not required with regard to requests from Nordic States for e.g. confiscation (s.1(3) in the Consolidated Act on Cooperation between Finland, Iceland, Norway and Sweden).

Criterion 37.7 - Denmark states that dual criminality is considered on the basis of the underlying conduct rather than on the basis of specific offences. It is sufficient that the underlying conduct corresponds to an offence under Danish law.

Criterion 37.8 - A request from a foreign country is handled in the same way as an investigation being carried out domestically. Accordingly, as outlined in R.31, certain powers and investigative techniques cannot be used in investigating ordinary offences (such as ML) as they are only available to offences that carry a possible sentence of imprisonment for a minimum period of six years.

Weighting and Conclusion

Denmark meets most of the criteria for R.37; however, the deficiencies related to special investigative techniques for ordinary ML, and the lack of a central case management system for all MLA requests may inhibit Denmark’s ability to respond to some MLA requests.

Recommendation 37 is rated Largely Compliant.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

Denmark was rated LC with old R.38 as Greenland and the Faroe Islands were not always able to expeditiously freeze and seize in ML matters.

Criterion 38.1 - There is no specific Danish legislation relating to mutual legal assistance in criminal matters. In all cases where assistance from Denmark (including the Faroe Islands and Greenland) is required, the Danish authorities apply national legislation by analogy. As a result, Denmark can comply with requests for mutual legal assistance in the absence of bilateral or multilateral agreements. This also means that Danish authorities can comply with a request if the investigative measure(s) covered by the request could be carried out in a similar national case. Therefore, requests are executed in accordance with national law concerning criminal procedure and – if applicable – in accordance with relevant international instruments [such as the 1959 Council of Europe Convention on Mutual Legal Assistance and its 1978 and 2001 Protocols (the 1959 Convention) and Agreements between the Nordic countries)].

Requests concerning coercive provisional measures from countries where there are no international agreements are dealt with according to the principles in the 1959 Convention and the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Strasbourg Convention). Thus, a foreign request for seizure can be enforced if the requested measure would have been possible in a similar national investigation. It is not a prerequisite that there is an agreement regarding recognition and enforcement of court decisions between Denmark and the requesting state. If the requesting state is a party to the 1970 Council of Europe Convention on the International Validity of Criminal Judgments (the 1970 Convention), the order will be enforced accordingly.

If none of the conventions are applicable and no bilateral agreement between Denmark and the state concerned has been concluded, the DPP may decide that penalties and other legal consequences that have been imposed in another state can be enforced in Denmark when humanitarian or other particular indications call for enforcement. As a rule, the enforcement will take place in accordance with the procedure and conditions in the 1970 Convention (Part II, s.5).

A request under the Vienna Convention or the Strasbourg Convention will similarly take place in accordance with the principles of the 1970 Convention.

Nordic Countries:

If Denmark receives a request for seizure of the property of an accused for the settlement of fine, confiscation, damages, compensation or costs from another Nordic country, Denmark is required to enforce this request (the Act of 25 May 2011, No. 555, on Cooperation between Finland, Iceland, Norway and Sweden regarding the Carrying out of Sentences). These provisions also apply to Greenland and the Faroe Islands. Seizure in relation to another person than the charged or for the security of any other claims than those mentioned in the Act should follow the provisions mentioned above. Requests concerning confiscation have to be based on a confiscation order from the competent authority (normally a court) in the requesting country.

EU Member States:

The Consolidated Act of 22 February 2013, No. 213, on Enforcement of Certain Criminal Decisions in the European Union applies in Denmark (but not the Faroe Islands or Greenland), if the requesting country is an EU Member State. The Act was passed to comply with the Council Framework Decision 2003/577/JHA of 22 July 2003 on the Execution in the European Union of orders freezing property

or evidence, and the Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

Denmark is able to provide assistance only to the extent that the investigative or legal measures in the requesting state must be fulfilled. This implies that the competent legal authorities in the requesting state must state that the necessary conditions are fulfilled. It should be noted that the limitations set out in R.4 concerning confiscation of instrumentalities used or intended for use in the commission of a criminal act, or items produced through or involved in such an act (or property of corresponding value), apply equally to R.38. Thus such items can only be confiscated where this is necessary to prevent further offences or is otherwise specially justified, although no cases have been identified in which this created an obstacle; this creates a minor technical limitation to the ability to cooperate.

Criterion 38.2 - According to article 23(5) in the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime and on the Financing of Terrorism, a requested party shall cooperate to the widest extent possible under their domestic law with parties requesting the execution of measures equivalent to confiscation, which are not criminal sanctions, insofar as such measures are ordered by a judicial authority of the requesting party, provided that it has been established that the property constitutes proceeds or other property in the meaning of Article 5 of the Convention.

To facilitate ratification of this Convention, s.5(a) of the Act on International Enforcement of Criminal Judgments was amended by Act no. 428 of 1st of May 2013. Thus, the articles of the 2005 Convention are now part of the law in Denmark. Denmark has not yet completely ratified the 2005 Convention.

Although conviction based confiscation can take place under s.4 of the Act on International Enforcement of Criminal Judgments, which is in force in the Faroe Islands, but not Greenland, this does not assist in relation to a civil forfeiture order.

In domestic cases, non-conviction based forfeiture may take place (s.76 and 76a CC), including for the purpose of preventing further criminality (s.77 CCFI; s.170 CCGR.) Enforcement of a confiscation order for criminal proceeds (though not instrumentalities) can take place even when the perpetrator dies, but only if the confiscation order has already been made [s.76(5) CC and CCFI; s.167(5) CCGR]. In addition, in domestic cases, subject to a number of conditions the court also has the possibility of ordering confiscation when a defendant absconds (s.855 AJA). Danish authorities indicated that they did not think that these provisions could be used to enforce civil forfeiture orders in the minimum circumstances set out in c.38.2, and that no cases of foreign civil forfeiture orders being enforced in Denmark had been identified.

Criterion 38.3 - (a) Danish authorities coordinate both seizures and confiscation on a case-by-case basis with the relevant foreign authorities using communication channels, such as CARIN and Europol. In the case of seizures, they consult all appropriate authorities to ensure that related seizures will take place simultaneously. In the case of Danish investigations where a request for seizure is being executed in another jurisdiction, the ARO will assist in tracing the assets and Danish investigators typically participate in the seizure. Likewise, foreign investigators may participate in the execution of a seizure in Denmark if the seizure is taking place at a foreign request. It is not normally necessary to coordinate the confiscation as the assets will be secured by seizure in

advance, but if necessary this can and does occur. Similar informal arrangements are relied upon for coordinating seizure in Greenland and the Faroe Islands.

(b) As noted in c.4.4, there are no specific mechanisms for actively managing and, when necessary, disposing of property frozen, seized or confiscated. Objects that have been seized, including any that are subsequently confiscated, are handled in accordance with instructions from the Commissioner of the Danish National Police. There are no specific mechanisms to manage property that requires active management, although general law enforcement powers are usually sufficient. The police noted that they have had some practical challenges in some cases. This equally applies in Greenland and the Faroe Islands.

Criterion 38.4 - There is no general system that allows for sharing of assets. Denmark's Law on Enforcement of Certain Criminal Decisions in the European Union implements EU Framework Decisions (including the Framework Decision on the application of mutual recognition to confiscation orders) and provides *inter alia* for the sharing with EU member states in some instances. Under s.42 of the Law, which addresses confiscation of money, amounts less than EUR 10 000 fall to the Danish Treasury, but amounts in excess of the EUR 10 000 threshold are shared equally. Under s.43 of the Law which addresses assets other than money, the confiscated assets can be sold and the resulting revenue shared in the same way as with confiscated money, or it can be transferred to the requesting country or, if neither is possible, it reverts to the Danish Treasury.

In cases where Denmark's Law on Enforcement of Certain Criminal Decisions in the European Union does not apply, the proceeds of confiscation shall in accordance with Article 47(1) of the 1970 Council of Europe Convention on the International Validity of Criminal Judgments be paid into public funds. In accordance with this, the proceeds of confiscation as a general rule fall to the Danish Treasury. However, property confiscated that is of special interest may be remitted to the requesting State.

Greenland and the Faroe Islands have no system that allows for sharing of assets. The 1970 Council of Europe Convention on the International Validity of Criminal Judgments applies to the Faroe Islands, but not to Greenland.

Weighting and Conclusion

Minor deficiencies exist related to cooperation regarding instrumentalities, and the legal basis for freezing and confiscating upon foreign requests in the Faroe Islands and Greenland, and the ability to actively manage in all cases certain types of seized property. Limited powers exist to enforce foreign non-conviction based confiscation orders.

Recommendation 38 is rated Largely Compliant.

Recommendation 39 – Extradition

Denmark was rated LC with old R. 39. Denmark was considered to be fully compliant; however, shortcomings existed regarding Greenland and the Faroe Islands due to a lack of adequate conventions, laws and procedures in place for extradition.

Criterion 39.1 - Both ML and TF are extraditable offences under Danish law. Denmark's Extradition of Offenders Consolidation Act permits extradition of Danish and non-Danish nationals to EU member states, non-EU member states (with limitations), and Nordic countries. For countries with whom Denmark has a treaty relationship, the United States and Canada, there is a requirement to extradite (or in some instances to act on the basis of a transfer of proceedings) pursuant to the terms of the treaty. In other instances, the decision to extradite is within the discretion of the Minister of Justice.³² Extradition from Denmark to EU/Nordic countries can also take place on basis of arrest warrants [s.10(a)(k) Extradition Act].

(a)

Non-EU Extradition

A Danish national can be extradited to countries outside of the EU for criminal prosecution on the basis of an extradition treaty if: (1) for the last two years prior to the criminal act the person had their residence in the country to which extradition is requested, and the offence carries a maximum penalty of at least one year; or (2) the criminal act may entail a more severe penalty than imprisonment for four years under Danish law. In both circumstances, a Danish national could be extradited for aggravated ML, or TF. However, only in the first instance could a Danish national be extradited for ordinary ML as the maximum penalty is 1.5 years. Thus, if a Danish national who committed ordinary ML did not have their residence in the country requesting extradition in the last two years, the request would be denied. A foreign national, on the other hand, may be extradited to non EU countries for criminal prosecution, if the act is punishable under Danish law by imprisonment of at least one year. As a result, in these instances, both ordinary and aggravated ML and TF are extraditable offences.

Danish nationals may not be extradited to countries outside the EU and Nordic countries for enforcement of sentences. A foreign national, on the other hand, may be extradited to non-EU countries for enforcement of a judgment if the person was sentenced to four months imprisonment or more in the requesting country, or has been committed to a mental institution for a minimum of four months.

EU Extradition

Within the EU, surrender pursuant to the European arrest warrant in large part replaces a formal extradition. Danish nationals are extraditable in the same way as foreign nationals. A request pursuant to a European arrest warrant must be dealt with within specified timeframes. As a general rule, the decision of the Minister of Justice [now the Director of Public Prosecutions(DPP)] must take place within 10 days of the date when the requested person was arrested in Denmark or gave his consent to extradition [s.18(d)(1) Extradition Act].

³² In April 2016, a bill was passed to amend the Extradition Act. According to the bill, the MoJ can delegate competence to other authorities. As of June 2016, the DPP has been designated as the central authority for the transmission and execution of extradition requests.

Nordic Extradition

Extradition from Denmark to Nordic countries for the purpose of criminal prosecution or execution of a sentence can take place on basis of a Nordic arrest warrant. A Nordic arrest warrant can be issued if the underlying charge is punishable with imprisonment or any other measure involving deprivation of liberty. Extradition for the execution of a sentence can take place if the person in question has been sentenced to imprisonment or any other measure involving deprivation of liberty. Requests for extradition to Nordic countries based on a Nordic arrest warrant are handled solely by the relevant police district.

Extradition to and from Greenland and the Faroe Islands

Extradition from Greenland and the Faroe Islands to Nordic countries can take place on basis of the Act of 3 February 1960, No. 27, on the Extradition of Offenders to Finland, Iceland, Norway and Sweden. Extradition of non-Danish nationals for the purpose of criminal prosecution can take place if the underlying charge sought is punishable in the requesting country with more than a fine. In cases of extradition for the purpose of executing a sentence, the person in question must have been sentenced to imprisonment in the requesting country or have been committed to an institution. Extradition of Danish nationals to Nordic countries can take place under the same conditions as for extradition from Denmark to non-EU Member states.

Extradition from Greenland and the Faroe Islands to other countries can take place on basis of Act of 9 June 1967, No. 249, on the Extradition of Offenders which allows extradition of non-Danish nationals under the same provisions as for extradition from Denmark to non-EU Member States. The Act does not allow extradition from Greenland and the Faroe Islands of Danish nationals.

Furthermore, extradition from Greenland and the Faroe Islands can take place on basis of the 1957 Council of Europe Convention on Extradition. Pursuant to Article 2 of the Convention, extradition from Greenland and the Faroe Islands shall be granted if the underlying offence is punishable by the requested party by deprivation of liberty or under a detention order for a maximum period of at least one year, or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting party, the punishment must have been for a period of at least four months.

Other arrangements do not appear to be in place and the extradition provisions of the Vienna, Palermo and TF conventions, which would provide a basis for extradition for the offenses covered by those conventions, are not available as the conventions have not been extended to these jurisdictions.

(b) Denmark states that once a request for extradition is received in the DPP, it makes a preliminary assessment of the request. Unless the request can be refused without further investigation, the DPP forwards the request to the competent police district for further investigation, which includes an interrogation of the person in question [s.18(b)(1)]. Once the investigation is complete, the police district forwards its findings to the DPP. Based on the request for extradition and the findings of the police, the DPP decides whether or not extradition can be granted [s.18(b)(5)]. The decision of the DPP shall be taken within 10 days (for requests from EU member states) of the date when the requested person was arrested in Denmark or provided consent to extradition. Requests from non-

EU member states can take several weeks. The person subject to a decision to extradition has the right to bring this decision before the courts within three days and surrender cannot take place before the end of these three days. Reviews conducted in simple cases can range from a week to a month, and in more complex cases it may take more time. The extradition must be completed as soon as possible after a final decision. The same procedures are followed in Greenland and the Faroe Islands.

(c) The legal provisions do not place unreasonable or unduly restrictive conditions on the execution of requests.

Criterion 39.2 - Danish nationals may be extradited to EU and Nordic states. As noted under c.39.1, Danish nationals may only be extradited to third countries on the basis of an extradition treaty if: (1) for the last two years prior to the criminal act the person had their residence in the country to which extradition is requested, and the offence carries a maximum penalty of at least one year; or (2) the criminal act may entail a more severe penalty than imprisonment for four years under Danish law. If there is no extradition treaty, extradition of Danish nationals may only take place on the basis of the abovementioned conditions if the extradition is advised by special law enforcement reasons (ex. the severity of the case). However, Danish nationals may not be extradited to third countries for enforcement of sentences. Further, it is not possible for Danish nationals in the Faroe Islands and Greenland to be extradited to countries other than the Nordic countries.

When extradition is refused because the person is a Danish national, the case will (upon request) be forwarded to the Prosecution Authority. If the underlying act is punishable in both the jurisdiction where the offence took place and Denmark, proceedings may take place, including the transmission of information relating to the offence (s.7 CC).

Danish Nationals may also be prosecuted through a transfer of proceedings on the basis of the rules in the European Convention on the Transfer of Proceedings in Criminal Matters, which was implemented in Danish law in 1975 and 1986. Although a transfer would normally only be possible to countries that acceded to the Convention, under s.5 of Denmark's Act on Transfer of Proceedings, the Minister of Justice may decide on the basis of mutuality to apply the act when a country has not acceded to the Convention. The Convention on the Transfers of proceedings applies to the Faroe Islands, but not to Greenland.

Criterion 39.3 - Where dual criminality is required for extradition (i.e. with non-Nordic countries), it is necessary that the conduct underlying the offence has been criminalised in both Denmark and the requesting country. A difference in the classification or denomination of the offence does not affect the dual criminality principle as dual criminality is seen as a question of whether the same facts are criminalised and not as formal duality. Within the EU, dual criminality is required but a considerable exemption to this requirement is provided in the so called "list crimes," included in a list of serious offences punishable by deprivation of liberty of at least three years. In these cases, extradition will take place regardless of the absence of dual criminality and with no consideration to the denomination of the offence, or other assessment of the offence. Examples of serious offences subject to the European Arrest Warrant list are participation in a criminal organisation, laundering of the proceeds of crime, and terrorism.

Criterion 39.4 - Simplified procedures for extradition are in place between Denmark and other EU/Nordic states through the arrest warrant process. This allows the direct transmission of extradition requests between the appropriate ministries and extradition on basis of European arrest warrants. For Nordic states, requests for extradition are forwarded directly between the prosecuting authorities and extradition can be made on the basis of a Nordic arrest warrant. Simplified extradition measures are in place in Greenland and the Faroe Islands with Nordic countries only.

Weighting and Conclusion

Limitations exist for the extradition of Danish nationals, including for ordinary ML, the enforcement of sentences, and their extradition from Greenland and the Faroe Islands.

Recommendation 39 is rated Largely Compliant.

Recommendation 40 – Other forms of international cooperation

Denmark was rated C with old R.40, and PC with old R.32.

Criterion 40.1 - Denmark's authorities give priority to the exchange of information with international counterparts in combating ML, associated predicate offences, and TF. Danish legislation allows for a wide range of information exchanges with foreign authorities, and there are few legal impediments for information to be exchanged both spontaneously and upon request.

Criterion 40.2 -

(a) The FSA, MLS, LEAs, PET, DGA and SKAT all have a legal basis to exchange information with authorities in other countries, either through multilateral or bilateral agreements. Law enforcement authorities in Greenland and on the Faroe Islands have nearly the same legal basis to exchange information as Denmark.

(b) Competent authorities may cooperate directly with their counterparts in other countries in accordance with Danish law. The same applies for Greenland and the Faroe Islands. Law enforcement cooperation is centralised through the National Centre of Investigation (NEC) to coordinate requests emanating from or destined to the police districts; however, this exchange is limited to predicate offences. Requests related to TF are undertaken by PET.

(c) Information pertaining to international cooperation requests is sent and received using encrypted email, as required by Executive Order on Security, which applies to the MLS, FSA, SKAT, PET, and LEAs.

(d) Danish authorities state that international cooperation is provided as fast as possible and foreign requests have a high priority. The FSA manages foreign requests through a case management system called Workzone. According to internal procedure, the FSA has 60 days to expedite a request from a foreign authority. In regard to the MLS, Denmark was unable to provide statistics relating to the average time to provide a response, but indicated that the processing of the request will begin immediately after receipt and will be answered as soon as possible. In cases where SKAT already is in possession of the information, the deadline is one month for VAT inquiries and two months for tax

inquiries. If SKAT is not in possession of the information provided, the deadline is three months for VAT inquiries and six month for tax inquiries.

(e) All information sent and received is registered, safeguarded and kept internally pursuant to the PAA and the Act on Processing of Personal Data.

Criterion 40.3 - Denmark can provide international cooperation on the basis of its domestic legislation and has entered into a number of multilateral and bilateral agreements to exchange information. The FSA is a member of supervisory colleges, including the Nordic supervisory college where the majority of requests to the FSA emanate. However, Denmark has several agreements which can be used for AML/CFT cooperation in place with its non-EU counterparts. A number of bilateral and multilateral agreements are in place for international cooperation with the MLS, LEAs, and PET. The MLS does not require an MOU to exchange information with foreign counterparts; however, at the time of the onsite, it has entered into 22 MOUs at the request of its foreign counterparts. Denmark is party to several conventions allowing and requiring direct exchange of law enforcement information through channels such as Interpol and Europol. There is no international exchange of information on DNFBPs by their supervisors.

Criterion 40.4 - The Danish authorities have indicated that feedback is provided upon request or in particular circumstances. However, in practice, feedback is generally not provided due to resource constraints.

Criterion 40.5 - There are no unreasonable or unduly restrictive conditions on the provision of exchange of information and assistance. The FSA will only refuse requests for assistance to non-EU member states if the confidentiality provisions of the MLA are not met. Exchange of information between LEAs and the MLS are not subject to unduly restrictive conditions.

Criterion 40.6 - The FSA is required to only use confidential information received from foreign countries in the course of its supervisory duties, to impose sanctions, or where appeals are made against the decision of the supervisory authority to a higher administrative authority, or where such a decision is brought before the courts of law according [s.34(a)(7) MLA]. The MLS and LEAs can exchange information with their foreign counterparts, but the exchange of that information may be limited in order to protect the reporting entity or an ongoing criminal investigation. Information received from foreign LEAs or FIUs may be used as evidence in judicial procedures, if the country providing the information permits such use. No information is available on DNFBPs and their supervisors.

Criterion 40.7 - The FSA protects information received from foreign counterparts, and will only pass on information with prior consent, consistent with privacy and data protection requirement and confidentiality rules in the Act on Measures to Prevent Money Laundering and Financing of Terrorism and the Financial Business Act. LEAs as well as other authorities in Denmark have an obligation to maintain confidentiality according to the PAA and the CC and to implement appropriate technical and organisational security measures to protect data according to the Danish Act on Processing of Personal Data.

Criterion 40.8 - There are no provisions in the MLA/GMLA/FMLA, which allow the FSA to conduct inquiries on behalf of foreign counterparts. The FSA is only able to obtain information from FIs as

part of its own investigations into violations of the MLA. However, the FSA can perform an inspection after notification from foreign counterparts, where agreements to exchange information have been made, and exchange the outcome of the inspection. The MLS is able to exchange information freely with its foreign counterparts. LEAs can – in accordance with relevant international instruments such as the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters and its additional protocols – conduct inquiries on behalf of foreign counterparts and exchange the information.

Criterion 40.9 - Information belonging to the MLS may be disseminated to foreign authorities according to s.2.2 of the Regulations for the MLS's Investigative Support and Analysis Database, when "the aim of the disclosure is safeguarding private or public interests that obviously rank prior to the consideration for the interests whose protection is the reason for the secrecy, or in case disclosure is necessary for the performance of the functions of an authority or required for a decision". Further, according to s.27(3)(7) and s.1 of the Act on Processing of Personal Data, information may be disseminated to foreign authorities when it is necessary for the prevention, investigation or prosecution of criminal matters and for the execution or enforcement of any sentence. The FIU may conduct enquiries on behalf of foreign counterparts into its own databases as well as law enforcement and other databases. It may also provide information to other FIUs, both spontaneously and upon request. This equally applies to Greenland and the Faroe Islands, as the MLS is the central authority for FIU international cooperation requests. In practice, the MLS is able to freely exchange information with its foreign counterparts and does not require the execution of a MOU. However, at the time of the onsite, the MLS has entered into 22 MOUs at the request of foreign FIUs, and 12 additional MOUs were under negotiation.

Criterion 40.10 - The FIU provides feedback in accordance with the Egmont criteria for feedback between FIUs. Feedback is generally provided upon request; however, due to resource constraints, little feedback is provided in practice. This applies equally to Greenland and the Faroe Islands.

Criterion 40.11 - (a) The information held in its database (c.40.8) does not cover the scope of the information required to be accessible or obtainable directly or indirectly under R.29, as it does not include additional information from FIs and DNFBBPs.

(b) The MLS applies the principle of reciprocity and can exchange any information available to it with its foreign counterparts, whether directly or indirectly accessible.

Criterion 40.12 - According to the MLA, the FSA can AML/CFT exchange supervisory information both spontaneously and upon request with supervisory authorities in other countries [s.34(9-10)]. As a member of the EU, Denmark takes part in the EU/EEA multilateral system of cooperation and information sharing. The FSA may only exchange AML/CFT information to other non-EU Member States on the basis of an international cooperation agreement. The FSA has several MOUs with non-EU Member States. The FSA may also exchange information freely with its counterparts in the Nordic Supervisory College. There are no provisions in Greenland and the Faroe Islands regarding supervisory cooperation with foreign counterparts. No information is available on DNFBBPs and their supervisors.

Criterion 40.13 - As mentioned in criterion 40.12, the FSA can exchange information pursuant to the MLA and/or bilateral arrangements, including information held by FIs. However, there are no

provisions in Greenland and the Faroe Islands regarding supervisory cooperation with foreign counterparts.

Criterion 40.14 - Within the EU, the FSA can exchange any and all information that a competent authority in another state within the EEA requires for its supervision, which means that regulatory, prudential, and AML/CFT information can be provided. A number of bilateral MOUs on information sharing have also been agreed to with foreign supervisors, including the UK, France, Germany, Ireland, the Netherlands, Estonia, and Lithuania. All of these agreements contain provisions dealing with onsite inspections for branches and subsidiaries of FIs located in third countries. Such agreements also contain provisions for cooperating in cases where there is a suspicion that financial crime is occurring in a supervised financial institution, including ML, TF, and violations of laws on financial markets. As a member of the Nordic supervisory college, the FSA exchanges information with its Nordic counterparts. There are no special provisions in the GMLA or FMLA about cooperation with foreign counterparts. No information is available on DNFBPs and their supervisors.

Criterion 40.15 - There are no provisions in the MLA, GMLA or FMLA, which allow the FSA to conduct inquiries on behalf of foreign counterparts. The FSA is able to obtain information from FIs as part of its own investigations into violations of the MLA. The FSA can perform an inspection after notification from foreign counterparts, and where agreements to exchange information have been made, can exchange the outcome of the inspection. As a member of the supervisory colleges, the FSA may conduct inquiries of its supervised institutions on behalf of its Nordic counterparts.

Criterion 40.16 - Confidential information from EU Member States or countries with which the EU has entered into an agreement for the financial area, or financial supervisory authorities in countries outside the EU with which the EU has not entered into an agreement for the financial area, shall only be divulged, where the authorities submitting said information have granted express permission to do so, and said information shall only be used for the purposes specified by that permission [s. 34(a)(6) MLA]. No provisions exist in the GMLA or FMLA.

Criterion 40.17 - The NEC acts as the single point of contact in Danish police (including Greenland and the Faroe Islands) for foreign requests related to predicate offences. LEAs are permitted to exchange information with foreign counterparts for both intelligence and investigative purposes (s. 5-8 Act on Processing of Personal Data). However, LEAs are only permitted to exchange information with foreign counterparts in third countries if it is necessary for the prevention, investigation or prosecution of criminal matters and for the execution or enforcement of any sentence, or where the transfer is necessary to safeguard public security, the defence of the Realm, or for national security. There are no special restrictions to the exchange of information between law enforcement authorities provided that the exchange is necessary to fight crime and the secrecy and data protection provisions in the receiving country are found to be sufficient. The police districts in Greenland and Faroe Islands are part of the Danish national police. Most international exchanges of financial intelligence regarding ML are carried out by the MLS. As a result, the MLS acts as the focal point for nearly all incoming and outgoing requests for financial intelligence for ML, including requests emanating from Denmark's police districts and SØIK. Conversely, PET acts as the focal point for all outgoing requests related to TF (s. 27(3) of the Act on Processing of Personal Data).

Criterion 40.18 - LEAs, including PET and the MLS, are able to use their domestic powers to conduct enquires and obtain information on behalf of a foreign counterpart based on multilateral or bilateral agreements in place. Denmark has bilateral police cooperation agreements with China, Germany, Russia, and Sweden. In addition, Denmark has multilateral agreements with the other Nordic countries and is party to a number of police cooperation agreements, via the Europol and Schengen agreements. However, as referenced in criterion 31.2, a number of investigative techniques are only available to Danish LEAs for offences punishable with imprisonment for six years or more. As a result, these techniques can be employed in the case of TF offences and aggravated ML, but not for ordinary ML.

Criterion 40.19 - LEAs are able to form joint investigative teams within the EU. LEAs in Greenland and the Faroe Islands are only able to participate in the EU's Joint Investigative Teams upon invitation. Joint investigative teams may be set up between LEAs in EU Member States and third countries provided that a legal basis for the creation of such teams exists (e.g. bilateral agreement, multilateral agreement, or national legislation). All joint investigative teams are coordinated through the NEC.

Criterion 40.20 - Danish authorities are unable to disclose information without knowing the purpose and ultimate recipient of the information being requested. If the request is made, in whole or in part, on behalf of another authority, this should always be mentioned in order to allow for the receiving authority to decide upon restrictions for use of the information.

Subject to the purpose of the request and the identity of the requestor, the MLS may exchange information indirectly with foreign non-counterparts. No information is available on DNFBPs and their supervisors.

Weighting and Conclusion

Denmark fulfils most of the requirements of R.40; however, legal impediments to sharing exist related to the FSA's inability to conduct AML/CFT inquiries on behalf of foreign counterparts. Further, at the time of the onsite, the supervisors of DNFBPs did not engage in any international cooperation.

Recommendation 40 is rated Largely Compliant.

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	PC	<ul style="list-style-type: none"> Denmark has not properly identified and assessed the ML/TF risks that it faces, including the risks in Greenland and the Faroe Islands. The mechanisms to assess risks and provide information on those risks are inadequate. There is no risk based approach to allocating resources or applying mitigating measures. Exemptions exist that are not based on proven low risk. Requirements regarding enhanced CDD for higher risks, and for simplified CDD for lower risks are not adequate. There are a number of limitations in the risk-based supervision of FIs and DNFBPs. The measures that FIs and DNFBPs are required to take to identify, assess and mitigate risk are insufficient.
2. National cooperation and coordination	PC	<ul style="list-style-type: none"> Denmark lacks AML/CFT national policies informed by the NRAs. There is no coordination or other mechanism responsible for AML/CFT policies. The mechanisms for cooperation and coordination, at both policy making and operational levels are inadequate. There is no responsible authority or mechanism to coordinate PF-related policy and activities.
3. Money laundering offence	LC	<ul style="list-style-type: none"> Self-laundering is not a criminal offence in Denmark. The sanctions in place for ordinary ML are not proportionate or dissuasive.
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> Confiscation of instrumentalities used or intended for use in the commission of a criminal act, or items produced through or involved in such an act (or property of corresponding value), may only be confiscated where this is necessary to prevent further offences or is otherwise specially justified. There is a lack of measures in place to actively manage seized or confiscated property.
5. Terrorist financing offence	C	<ul style="list-style-type: none"> All criteria met
6. Targeted financial sanctions related to terrorism & TF	PC	<ul style="list-style-type: none"> There is an absence of formal mechanisms to designate or seek designation of individuals not listed by the UN. The inability to freeze without delay the assets of persons/entities designated by the UN and the absence of any specific measures to freeze the assets of listed EU internals constitute significant deficiencies. There are doubts about whether the criminal justice framework could be relied on to address these deficiencies, and some mechanisms under criterion 6.5 which might support this, e.g. providing obliged entities with information about designations outside the EU framework which would facilitate the making of STRs, are not in place. Implementation of targeted financial sanctions under UNSCR 1267/1989 and 1988 does not occur “without delay”. There are also significant deficiencies in the absence of formal mechanisms to designate or seek designation of individuals not listed by the UN and in the sanctions legislation for Greenland and the Faroe Islands, as it is binding on obliged entities only, does not permit the freezing of assets belonging to third parties acting on

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		behalf of or at the direction of designated persons/entities and does not implement UNSCR 1988.
7. Targeted financial sanctions related to proliferation	PC	<ul style="list-style-type: none"> The inability to freeze the assets of designated persons without delay is a significant deficiency and there are doubts about whether the criminal justice framework could be relied on to address this, particularly in the absence of a connection between Denmark and the underlying proliferation activity as required to bring that activity within Danish criminal jurisdiction. Some supporting mechanisms under criteria 7.2 i.e. reporting obligations and the provision of information about designations are only applicable within the context of the EU framework so would not apply to seizures under the criminal justice framework. Greenland and the Faroe Islands do not meet any of the criteria under R.7.
8. Non-profit organisations	PC	<ul style="list-style-type: none"> There is no indication that a risk based approach applying focussed measures is being taken. A review of legislation and measures from the perspective of TF has not been undertaken, there has been no identification of the relevant organisations falling within the FATF's definition of NPO and a partial rather than comprehensive identification has been made of NPOs at risk of TF abuse. There are no policies or procedures for outreach and educational programmes to NPOs and the donor community or for working with NPOs. Steps for supervision are limited and not risk based. There is no coordination policy or procedure, and there are gaps in cooperation and information sharing (and promptness of information sharing). Greenland has very limited compliance with R.8, and no information has been provided in relation to the Faroe Islands.
9. Financial institution secrecy laws	LC	<ul style="list-style-type: none"> Deficiencies exist concerning the sharing of information between authorities in Greenland and the Faroe Islands.
10. Customer due diligence	PC	<ul style="list-style-type: none"> There are some shortcomings regarding when CDD must be carried out. There is no obligation to conduct CDD on policy holders of insurance contracts unless they are also beneficiaries under the policy. When a person is acting on behalf of someone-else there is no obligation to verify that other person's identity unless a risk assessment requires this. Exemptions concerning public companies in other countries are not limited by requirements for adequate transparency. There is no clear requirement for proof of existence and name/address for legal arrangements. No requirement to identify senior managing officials in appropriate cases. Settlors of trusts are not required to be identified, nor are all beneficiaries, and there are no CDD requirements concerning other types of legal arrangements. There are some weaknesses regarding timing of CDD. CDD exemptions do not appear to be based on proven low risk and the requirements or options regarding higher/lower risk and the required measures are insufficient.

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> An exemption exists from performing full CDD in relation to occasional wire transfers under EUR 13 000 There is an inadequate tipping-off requirement (i.e. there is no provision permitting FIs not to continue with CDD if there is a risk of tipping off) There are no CDD requirements for policy holders of life insurance and investment linked insurance contracts, nor to obtain certain specific information, regarding beneficiaries. There is a lack of clarity with regards to the identification requirements across legal persons and legal arrangements
11. Record keeping	LC	<ul style="list-style-type: none"> It is not clear that account files and business correspondence are required to be kept There is no legal requirement that CDD information be swiftly or easily available to competent authorities
12. Politically exposed persons	PC	<ul style="list-style-type: none"> There are no laws covering domestic PEPs or international organisation PEPs. Other technical deficiencies exist regarding the timeframe of consideration as a PEP being limited to the past 12 months. There is an absence of measures for PEPs that are beneficial owners. There are no measures to check whether beneficiaries of life insurance contracts and beneficial owners are PEPs.
13. Correspondent banking	PC	<ul style="list-style-type: none"> The requirements do not apply to credit institutions within the EEA.
14. Money or value transfer services	LC	<ul style="list-style-type: none"> Denmark has taken little action to identify unlicensed or unregistered MVTs providers. The sanctions are not proportionate and dissuasive (sanctions are not fixed in law).
15. New technologies	PC	<ul style="list-style-type: none"> Denmark has no explicit requirements in law or regulation to address the risks associated with new technologies
16. Wire transfers	PC	<ul style="list-style-type: none"> The EU Regulations leave significant gaps in the wire transfer requirements as there is an absence of requirements relating to beneficial ownership information. There is a lack of requirements on intermediary FIs. If control both sides of transfer, there is no explicit obligation to take into account information from both sides in order to determine whether a STR has to be filed, and to file the STR in any country affected by the suspicious wire transfer
17. Reliance on third parties	PC	<ul style="list-style-type: none"> Reporting entities are allowed to rely on third parties to conduct EDD and CDD for PEPs, contrary to R.17. FIs are not required to satisfy themselves that the third party has measures in place for CDD and record keeping and can provide documentation without delay. FIs are not required to satisfy themselves that third parties are regulated and supervised for AML/CFT requirements. Relying entities are not required to operate on a risk-based approach and develop country-specific risks for their customers based in an equivalent jurisdiction.
18. Internal controls and foreign branches and subsidiaries	PC	<ul style="list-style-type: none"> There is no requirement for the implementation of internal controls, in line with risk and business size. FIs are not required to have screening procedures in place when hiring employees FIs are not required to implement an independent audit function.

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> Financial groups are not required to implement group-wide programmes against ML/TF. Requirements for foreign branches and subsidiaries are limited concerning the countries they apply to and the breadth of AML/CFT measures covered.
19. Higher-risk countries	LC	<ul style="list-style-type: none"> Denmark's supervisory authority has limited means to apply countermeasures other than when called upon to do so by the FATF, or through EU Regulation. Deficiencies related to EDD measures in R.10 impact compliance.
20. Reporting of suspicious transaction	C	<ul style="list-style-type: none"> All criteria met
21. Tipping-off and confidentiality	C	<ul style="list-style-type: none"> All criteria met
22. DNFBPs: Customer due diligence	PC	<ul style="list-style-type: none"> The deficiencies identified in R.10-12, 15 and 17 apply to DNFBPs.
23. DNFBPs: Other measures	LC	<ul style="list-style-type: none"> Lawyers are expressly excluded from having to report attempted transactions by persons that are not yet their client. Deficiencies related to EDD in R.18 and R.19 impact compliance.
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> Only some non-commercial foundations are required to register. Shareholder registers can be kept in any EU/EEA country. No general obligation or mechanism that ensures that beneficial ownership information is obtained and kept up to date for all Danish legal persons. Timely access by competent authorities to BO information is not ensured, in particular when entities have elements of foreign ownership or control. No specific requirements that ensure that companies cooperate with competent authorities to the fullest extent possible in determining their beneficial owners. No provisions requiring legal persons or persons involved in their dissolution being required to keep information for at least five years. Insufficient measures to prevent the misuse of nominee shareholder or director arrangements. Sanctions are not proportionate or dissuasive. No specific measures to ensure rapid international cooperation regarding beneficial ownership. The quality of assistance provided is not monitored. There are several deficiencies specific to Greenland and the Faroe Islands.
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> There are no obligations to keep records related to the agents and service providers to trusts, not to keep them up-to-date. There is no obligation in the MLA or elsewhere that requires trustees to disclose their status to FIs or DNFBPs (although Danish law does not generally recognise trusts or other legal arrangements). The CDD requirements relating to trusts are not clear as to what beneficial ownership and/or other information is collected. There is no information available to indicate that foreign competent authority's access to basic information is facilitated, that there is an exchange of domestically available information on trusts, or that investigative powers are used to assist foreign counterparts. Offences and sanctions do not clearly relate to R.25 obligations.

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> There are no specified timeframes in legislation to provide the information requested by supervisors
26. Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> There are some deficiencies regarding compliance with Core Principles. In the absence of an adequate risk assessment, it is difficult to conclude that Denmark has a sound risk-based approach to conduct on-site and off-site AML/CFT supervision. Risk assessments and profiles of FIs are not reviewed.
27. Powers of supervisors	LC	<ul style="list-style-type: none"> The sanctioning powers of competent supervisory authorities are very limited.
28. Regulation and supervision of DNFBPs	LC	<ul style="list-style-type: none"> There are concerns about the dissuasiveness of sanctions available regarding DNFBPs. With the exception of casinos, supervision is not carried out on the basis of ML/TF risk.
29. Financial intelligence units	LC	<ul style="list-style-type: none"> The MLS lacks adequate autonomy over budgetary decisions. The MLS has fundamental staffing shortages overall, which seriously impact its ability to carry out the required operational analysis. At the organisational level, the MLS has limited operational independence and autonomy, especially concerning staffing.
30. Responsibilities of law enforcement and investigative authorities	C	<ul style="list-style-type: none"> All criteria met
31. Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> There is a wide range of investigative techniques available under Danish law; however not all special techniques cannot be employed for ordinary ML. There are some limitations regarding the ability to obtain up to date account information in a timely manner. Some powers are unavailable in Greenland and the Faroe Islands.
32. Cash couriers	LC	<ul style="list-style-type: none"> The sanctions available for certain breaches are not proportionate or dissuasive.
33. Statistics	PC	<ul style="list-style-type: none"> There is a significant lack of clear statistics related to ML investigations/prosecution/convictions, TF investigations, inter-EU MLA requests, and seizures/confiscations.
34. Guidance and feedback	PC	<ul style="list-style-type: none"> Competent authorities have not issued specific guidance that would adequately assist reporting entities in complying with their AML/CFT obligations. With the exception of the high-level feedback provided by the MLS, competent authorities in Denmark, Greenland and Faroe Islands are providing very limited feedback to reporting entities.
35. Sanctions	PC	<ul style="list-style-type: none"> The range of sanctions available for AML/CFT breaches by FIs or DNFBPs is limited. The supervisory authorities (FSA/DBA) have very limited powers to enforce their own orders. The enforcement of compliance can only be achieved by referring the matter to the police for possible investigation, with a view to possible prosecution. The net result is that the available sanctions are neither proportionate nor dissuasive.
36. International instruments	LC	<ul style="list-style-type: none"> Greenland and the Faroe Islands are not parties to any of the Vienna, Palermo, and TF Conventions

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> Denmark has not fully implemented the relevant articles of the Vienna and Palermo Conventions as it has not criminalised self-laundering
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> There is a lack of the power to use some special investigative techniques for ordinary ML (see R.31) The lack of a central case management system for all MLA requests negatively impacts Denmark’s ability to respond
38. Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> Deficiencies exist related to the legal basis for freezing and confiscating upon foreign requests in the Faroe Islands and Greenland There are minor limitations regarding the power to confiscate instrumentalities (see R.4) Limited powers exist to enforce foreign non-conviction based confiscation orders. The mechanisms for managing and disposing of seized property have some small limitations (see R.4)
39. Extradition	LC	<ul style="list-style-type: none"> Limitations exist for the extradition of Danish nationals, including for ordinary ML, and as regards the enforcement of sentences. Legislation does not allow extradition from Greenland and the Faroe Islands of Danish nationals.
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> Denmark has not entered into the widest range of agreements to cooperate. Feedback is not provided upon request due to resource constraints. Legal impediments to sharing exist related to the FSA’s inability to conduct AML/CFT inquiries on behalf of foreign counterparts and to exchange information. There are no special provisions in the GMLA or FMLA about cooperation with foreign counterparts. There is a lack of confidentiality requirements for financial supervisors in GMLA and FMLA. Some special investigative techniques are unavailable for ordinary ML (see R.31) which impacts LEAs’ ability to share with foreign counterparts The supervisors of DNFbps do not engage in any international cooperation.

Technical compliance

GLOSSARY OF ACRONYMS

3AMLD	Directive 2005/60/EC 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 ML and TF
4AMLD	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 ML or TF, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC
BKA	Bookkeeping Act
AEIC	Act on Employee Investment Companies
AJA	The Administration of Justice Act
AJAFI	Act on the Administration of Justice Act for the Faroe Islands
AJAGR	The Administration of Justice Act for Greenland
BLS	The Bar and Law Society
CBRA	Act on the Central Business Register
CC	The Danish Criminal Code
CCFI	Criminal Code for the Faroe Islands
CCGR	Criminal Code for Greenland
CCUA	Act on Certain Commercial Undertakings
CDD	Customer Due Diligence
CFA	Commercial Foundations Act
CVR	Central Business Register
DBA	The Danish Business Authority
DCA	Department of Civil Affairs
DGA	The Danish Gambling Authority
DPP	Director of Public Prosecutions
FI	Financial institution
FBA	Financial Business Act
FMLA	Royal Decree on Measures to Prevent Money Laundering and Financing of Terrorism in the Faroe Islands (realm regulation)
FMLAS	Act on Measures to Prevent Money Laundering and Financing of Terrorism (self-governance regulation - Faroe Islands)
FSA	The Danish Financial Supervisory Authority

FTFs	Foreign Terrorist Fighters
GA	Gambling Act
GMLA	Royal Decree on Measures to Prevent Money Laundering and Financing of Terrorism on Greenland (realm regulation)
GMLAS	Act on Measures to Prevent Money Laundering and Financing of Terrorism, no. 5 of 19 May 2010 (self-governance regulation - Greenland)
ISOBRO	The Danish Fundraising Association
MIBFA	Ministry of Industry, Business and Financial Affairs
MFA	Ministry of Foreign Affairs
MLA	Act on Measures to Prevent Money Laundering and Financing of Terrorism
MLS	Money Laundering Secretariat (Danish FIU)
MoJ	Ministry of Justice
MoT	Ministry of Taxation
PAA	Public Administration Act
PET	Danish Security and Intelligence Service
PETA	Act on the Security and Intelligence Service
PSPs	Payment Service Providers
PPLCA	Act on Public and Private Limited Companies
SKAT	The Danish Customs and Tax Administration
SØIK	The State Prosecutor for Serious Economic and International Crime
TCA	Tax Control Act



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Anti-money laundering and counter-terrorist financing measures - Denmark

Fourth Round Mutual Evaluation Report

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in Denmark as at the time of the on-site visit on 2-18 November 2016.

The report analyses the level of effectiveness of Denmark's AML/CTF system, the level of compliance with the FATF 40 Recommendations and provides recommendations on how their AML/CFT system could be strengthened.