PAPER

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THE BATTLE AGAINST MONEY LAUNDERING IS DETERMINED BY THE WEAKEST LINK[1]

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SUMMARY *In September Jean-Claude Juncker in his State of the European Union speech launched new tightening's of the EU's main directive on money laundering. If the tightenings are adopted, it will be the sixth time the rules are revised. Nevertheless, the fight against money laundering seems far from being won, which a number of European cases - including the much-discussed case in Danske Bank - emphasize. The Commission thus acknowledges that the current legislation is insufficient.*

In the EU the main responsibility for supervising banks sits with the national authorities and the banks themselves. In some areas, the EU has a coordinating function, but not a proper body with the power to combat money laundering and, for example, terrorism. The EU does not have a common database. This despite the fact that money laundering crime often crosses borders, and that today major banks have branches in several countries.

The Commission's new proposal aims at giving the European Banking Authority (EBA) the key responsibility for combating money laundering in the EU. The EBA must be allowed to investigate suspicions of money laundering and, if necessary,

[1] This paper is an in-house translation done by Louise Pierrel Mikkelsen of the Danish original article: http://thinkeuropa.dk/oekonomi/de-svageste-nationale-led-afgoer-kamp-mod-hvidvask

order national banks to stop money laundering. The proposal is supported, amongst others, by Denmark.

Denmark's situation with regards to the banking union, which aims to strengthen financial stability and supervision of financial institutions, is still unclear. According to Prime Minister Lars Løkke Rasmussen, Danske Bank's money laundering case will be a "very heavy mass on the scale" when the government decides next year on Danish participation in the banking union.

The Danish Government also supports the Commission's proposal to strengthen the fight against money laundering in the EU, while the Mette Frederiksen Social Democracy, in the light of the money laundering scandals and attempts of fraud with dividend tax in the EU, proposes to set up a pan-European investigation unit on money laundering and economic crime.

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MAIN CONCLUSSIONS:

- The EU has implemented several changes to the rules on money laundering to strengthen the fight against international crime and tax evasion.
- The rules are based on international recommendations and have received praise from NGOs because the rules create transparency and place responsibility with banks, lawyers and accountants to report to the authorities.
- However, several cases of money laundering in different EU countries show that the legislation is insufficient, which the Commission acknowledges.
- Combating money laundering is based on controls by financial institutions - especially banks. In case of suspicious transactions and customers, banks must report to the country's financial intelligence units.
- Evaluations of a number of EU countries' anti-money laundering systems, including the Danish system, point to insufficient understanding by banks and their supervision, of the risk of money laundering, and that the resources for combating money laundering are too small.
- At EU level, a number of supervising boards for respectively. banks, insurance companies and pension funds all have coordinating functions where representatives from national supervisors meet and exchange information.
- The recent money laundering cases show that cooperation between authorities at national and cross-border authorities is inadequate. The EU does not have a proper body responsible for combating money laundering.
- The Commission has proposed that the European Banking Authority (EBA) be given overall responsibility for combating money laundering in the EU, including the right to intervene directly with national banks.
- The proposal is in line with the aim of the banking union on a merger of risks and centralization of supervision of the financial sector
- The proposal is in line with the aim of the Banking Union for a merger of risks and centralization of supervision of the financial sector. Denmark has not decided about Danish membership of the Banking Union and is about to depart from the police and prosecutor's cooperation on combatting money laundering and financial fraud due to of the JHA opt-out

On the 2nd of October 2018, Rasmus Jarlov the Danish Minister of Industry, attended a Ministers of Finance meeting in Brussel on increasing EU action against money laundering. Here representatives explained to the European Commission their proposals to tighten EU rules on anti-money laundering.[2] Commission President Jean-Claude Juncker announced the Commission proposal in its annual State of the European Union speech on the 12th of September. The proposal has been made on the basis of a number of spectacular cases on violation of money laundering rules - in Denmark at Danske Bank, in the Netherlands with the ING case and the third largest Latvian bank ABLV.[3]

The Commission considers that these cases are a testimony that EU rules to fight against money laundering has failed in many cases.[4] The responsible justice commissioner, Věra Jourová, criticizes amongst other things: that the Danish Financial Supervisory Authority did not react earlier in the Danske Bank case in light of the scope of the potential laundering.[5] She is also threatening Malta to get the Maltese supervising authority to react on a recommendation by the European Banking Authority.[6] The Commission refers to the fact that the cases in question reduces confidence in the EU financial system and diminishes both the stability of the individual banks and the stability of the entire financial sector. A Latvian bank's violation of the money laundering rules and the US sanction rules imposed, resulted in that the bank was fined and was excluded from loaning money and making transactions in dollars. The bank went bust and had to be closed down.[7]

The concrete cases of violation of money laundering rules in the EU have led members of the European Central Bank (ECB) and the head of the ECB's Financial Supervisory Authority to express frustration that the EU has to rely on US money laundering authorities to deal with money laundering in the EU. The Authority calls for strengthening the fight against money laundering by getting a more

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[2] Funny Money, Financial Times 3rd of October 2018

[3] State of the Union 2018: stronger anti-money laundering supervision for a stable banking and financial sector – Questions and Answers, the Commission 12. September 2018, http://europa.eu/rapid/pressrelease_MEMO-18-5725_en.htm; EU proposes sweeping anti-money laundering powers for watchdog, Financial Times, 12. September 2018; Brussels draws up orders for Malta over dirty money scandal, Financial Times, 3. October 2018.

[4] EU proposes sweeping anti-money laundering powers for watchdog, Financial Times, 12. September 2018.

[5] EU justice chief suspects Finanstilsynet to be "blind" in case of Danske Bank, Altinget 28th September 2018.

[6] Brussels draws up orders for Malta over dirty money scandal, Financial Times, 3. October 2018.

[7] State of the Union 2018: stronger anti-money laundering supervision for a stable banking and financial sector – Questions and Answers, the Commission 12. September 2018, http://europa.eu/rapid/pressrelease_MEMO-18-5725_en.htm; EU proposes sweeping anti-money laundering powers for watchdog, Financial Times, 12. September 2018.

harmonized anti-money laundering system in the EU, ideally a joint money laundering supervision.[8]

Researchers from the respected think tank Bruegel has subsequently prepared a proposal for a central EU anti-money laundering authority. [9]At home in Denmark, the leader of Social Democracy party, Mette Frederiksen, proposed a new common European investigation unit of money laundering and economic crime[10]. Denmark may, however, fall outside of parts of the partnership in the fight against money laundering and other economic crime. The Justice and Home Affairs opt-out means that Denmark goes from participating fully in cooperation between police and prosecutors inter alia the economic area, to falling out of this partnership, unless Denmark can arrive at a parallel agreement on cooperation with the EU. It would in that case be a partnership over which Denmark has no influence.[11]

The Commission's latest proposal (which is the sixth amendment of the Central Money Laundering Directive) comes only two months after the fifth change of the regulatory framework came into force in June this year. On the Commission website money laundering rules are described as otherwise robust, and the changes that have just come into force have also gotten a positive assessment from NGOs, which are usually critical of the authorities handling of money laundering regulations and anti-tax-avoidance. [12] But after the mentioned cases, which indicate that the rules implementation and cooperation between national authorities are inadequate, the Commission has found it necessary to propose yet another series of changes.

Responsibility of national authorities and banks

The EU's money laundering rules follow the international rules agreed between members of FATF - Financial Action Task Force - to fight money laundering.

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[8] A better European Union architecture to fight money laundering, Joshua Kirschenbaum and Nicolas Veron, Bruegel, October 2018, http://bruegel.org/2018/10/a-better-european-union-architecture-to-fightmoney-laundering/.

[9] Ibid

[10] S-chairman after scandals: Financial sector is under increased control, Ritzau Finans, 29 October 2018

[11] The Justice and Home Affairs opt-out collides with Danish security interests, Think Tank Europe, August 2018, http://thinkeuropa.dk/politik/retsforbehold-kolliderer-med-danske-sikkerhedsinteresser, and Denmark on the way out of Cooperation Against Laundering and Drug Crime, Altinget, November 8, 2018.

[12] The commissions homepage on anti-money laundering and counter terrorism financing https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/anti-money-laundering-and-counter-terrorist-financing_en; Towards a fair and more common tax in the EU, paper, Think Tank EUROPA, October 2017, http://thinkeuropa.dk/oekonomi/paa-vej-mod-en-mere-fair-og-faelles-skat-i-eu and https://www.taxjustice.net/2017/06/21/european-commission-targets-tax-avoidance-enablers.

35 countries and the EU are members of the organization, which issues recommendations to countries and assesses their laws and systems for combating money laundering. The focus is on prevention actions to avoid criminal activity, financial instability and tax evasion. The primary responsibility for the execution of the rules are the national financial institutions, especially banks and national financial authorities.[13]

At national level, governments and parliaments must ensure that they have implemented international and EU law, where the key element is the Money Laundering Directive. The main responsibility for supervision of compliance by financial institutions of their obligations in relation to laundering rules is at national level in the National Financial Supervisory Authority, in Denmark, the Danish Financial Supervisory Authority, which prepares and enforces national legislation, and thus has the main responsibility for the supervision of the financial institutions, namely the banks, which must report unusually and / or suspicious behavior from their customers.[14]

Reports with information about suspicious behavior are sent to the financial intelligence units, in international context called (FIU). In Denmark FIU is, or the money laundering secretariat, a part of the Attorney General for Special Economic and Financial Affairs and International Crime (SØIK), whose responsibility it is to also decide whether there should be raised charges against people for money laundering or involvement in money laundering. In Denmark the Danish Financial Supervisory Authority can impose fines on financial institutions and in special cases strip the right to do business if their control and management systems are not sufficient to combat money laundering. [15]

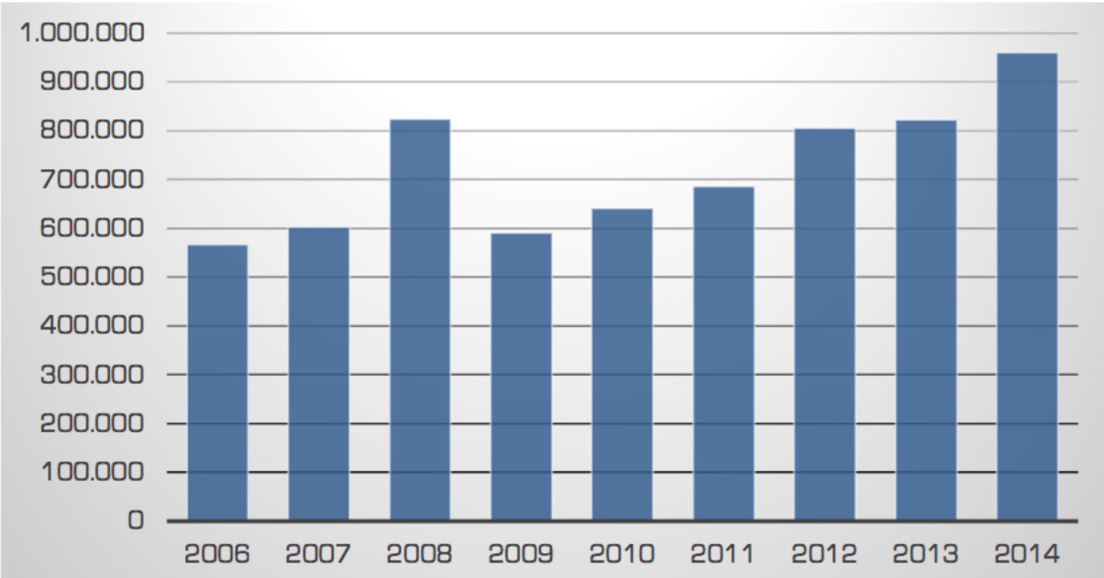
For a bank in the EU, this means that the bank must prepare internal procedures for, how they comply with money laundering rules, they must screen their customers, keep an eye on their transactions and typically report if they suspect the customer is a straw man or a company is empty and also if individual transactions are on more than 15,000 euros or if money transfers are on more than 1,000 euros. In addition, the banks must check lists of third countries which

[13] FATF's website: http://www.fatf-gafi.org; Commission website on combating money laundering and terror financing.
[14] Ibid, the Danish Financial Supervisory Authority https://www.finanstilsynet.dk/Lovgivning/Lovsamling/Andretilsynslove/Hvidvask.
[15] Ibid, the Danish state prosecutions website on money laundering, https://www.anklagemyndigheden.dk/en/wwassenvask.

do not abide to money laundering rules or lists of suspicious or sanctioned persons in order to check if they are involved in transactions through the bank.[16]

According to Europol, financial intelligence units in EU countries received in 2014 almost one million reports of potential money laundering transactions. The number of reports has increased from 2006 to 2014. See Figure 1. 65% of these come from only two countries - the Netherlands and the United Kingdom. The reports are not checked for validity, and only 10% of them are examined further. This share has remained unchanged since 2006.[17]

Figure 1. The number of reports are increasing
Number of reports on money laundering for financial intelligence units in the EU, 2006 -2014



Source: Europol

At EU level, the Commission is responsible for proposing rules and ensuring that they are implemented in national legislation. The rules are adopted by the member states by a qualified majority in the Council of Ministers and the European Parliament by simple majority. The first rules originated in 1993. At EU level, a number of supervisions of banks, insurance companies and pension funds all have coordinating functions for monitoring compliance with money laundering rules, as representatives of the national supervisory authorities have a seat of these EU bodies. This means that there is not an EU body with the primary

[16] See the websites of the European Commission and the Danish FSA.
[17] From Suspicion to Action, Europol 2017.

responsibility for combating money laundering and terrorist financing, and there is also no common database.[18]

The scope is large

By doing a survey, Europol has attempted to assess the extent and evolution of money laundering in the EU by the national financial intelligence units. However, this is difficult to figure out. For the 14 countries, of the 28 national financial intelligence units, responding to the request, it is estimated that an increase in money laundering from about 100 billion Euro in 2013 to around 178 billion Euro in 2014. This corresponds to 0.7 per cent to 1.28 per cent of EU total GDP for 2014. Due to Missing responses from countries like the Netherlands and the UK, accounting for 65 per cent. of the reports, the numbers are extremely uncertain. The Italian authorities thus estimated that money laundering alone in Italy amounted to 84 and 106 billion Euro in 2013 and 2014, ie respectively. 5.25 pct. and 10.25% of Italian GDP in 2013 and 2014. [19]

The United Nations Drugs and Crime Agency (UNODC) estimates that money laundering annually amounts to 2-5 per cent of world GDP. If it is assumed that the EU level is similar to this, money laundering in the EU amounts to between 305-765 Billion euros in 2017.[20] If this figure is compared with the total estimates for the black economy in the EU respectively at 1000-2000 billion per year, it means that money laundering represents about 30-40 per cent of the black economy. Money laundering is thus responsible for a significant proportion of the EU's lost tax revenue estimated at between 553-1000 billion Euro annually. [21]

Money laundering rules under criticisms from multiple sources

The European Commissions proposal for tightening of money laundering efforts in the EU, aim at providing the European Banking Authority (EBA) central responsibility on EU level to verify the implementation of the money laundering control in the EU. EBA shall in this context have powers to investigate suspected money laundering and possibly to give direct instruction to the national banks to stop money laundering if the authorities of the countries concerned do not

[18] Money laundering in Europe, Report of work carried out by Eurostat and DG Home Affairs, 2010 edition, the Commission
[19]From Suspicion to Action, Europol 2017
[20] UNODC's money laundering website, www.unodc.org/unodc/en/money-laundering/globalization.html, as well as own calculations based on the AMECO database from the Commission
[21] Towards a fair and more common tax in the EU, note, Think Tank EUROPA, October 2017, http://thinkeuropa.dk/oekonomi/paa-vej-mod-en-mere-fair-og-faelles-skat-i-eu.

intervene quickly enough.[22] However, the proposal has already been met with resistance from a number of member countries. Finland, the Netherlands, Luxembourg and Sweden do not want the EBA to have the power to give their banks orders on money laundering. They probably believe that their national authorities are able to handle this by themselves. Germany prefers that this kind of power is given to the European Central Bank's supervisory authority.[23]

The Commission is supported by a number of countries, including Denmark and Latvia, both of whom, same as the Netherlands, have banks involved in the recent money laundering scandals. Latvian government leader Maris Kucinskis, in the Financial Times on 30th of September, clearly endorsed the Commission's proposal for centralization of powers in money laundering cases as a means of streamlining control and regaining confidence. The head of government's speech comes after Latvia's third largest bank was forced to close down after intervention by the US authorities, which continue to criticize the role of Latvian banks in money laundering [24].

For a number of years, the International Financial Action Task Force (FATF) has together with the Council of Europe conducted assessments of countries' implementation of recommendations for combating money laundering. A look at a number of reports for Austria, Belgium, Denmark, Ireland, Italy, Latvia, Portugal, Slovenia, Spain and Sweden provide a mixed picture on efficiency and technical implementation of the FATF recommendations for money laundering prevention. The reports often reveal a lack of national coordination of the effort as well as a relatively low understanding in the countries, including in the national financial institutions of the domestic risk of money laundering. This also applies for Denmark.[25]

Former head of Europol, Robert Wainwright, points out that there has not been the same progress in combating financial crime, including money laundering, as the progress in combating general crime and terrorism. He refers also to that

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[22] State of the Union 2018: stronger anti-money laundering supervision for a stable banking and financial sector – Questions and Answers, EU Commission 12th September 2018, http://europa.eu/rapid/press-release_MEMO-18-5725_en.htm; EU proposes sweeping anti-money laundering powers for watchdog, Financial Times, 12th September 2018.
[23] Funny Money, Financial Times 3rd of October 2018.
[24] Latvia's plan to stamp out financial crime, Maris Kucinskis, 30 September 2018.
[25] See FATF's homepage, http://www.fatf-gafi.org/media/fatf/documents/4th-Round-Ratings.pdf, Mutual evaluation of Denmark, FATF 2017 and" Latvia's plan to stamp out financial crime," Maris Kucinskis, 30 September 2018.

banks use 20 billion dollars every year to control money laundering, but authorities only seize one per cent of criminal assets in Europe each year [26].

For the regular financial supervisory authorities (capital requirements, general suitability to conduct financial business, etc.) it is the home country's supervisors who are responsible for that banks and other financial institutions function in accordance with EU rules. If the banks have established subsidiaries with independent management and capital, it is the host country, which have the main responsibility. However, when combating money laundering it is in all situations the host country that has the main responsibility, but home country supervisors have the responsibility to ensure that the parent company or the headquarters controls the departments efforts to combat money laundering. So the supervision of the home country and the host country can only act effectively in cooperation with each other, as evidenced by the Danish Bank sagen.[27]

In connection with the discussions on Danske Bank's whitewashing case and the EU Commission's new proposals for tightening the rules, the EBA leader points to problems between home and host supervising authorities and adds that in the internal market, the power of money laundering control depends on the weakest link.[28]. In Denmark the Danske Bank case has led to government proposals for higher fines and imprisonment for violating the rules on money laundering, and for increased reporting by the financial institutions about suspicious behavior by their customers to the Attorney General for Special Economic and International Crime. The question is then whether the Attorney General and the Danish FSA have sufficient resources to handle an increasing number of cases?[29]

The Commissions proposal for a tightening of the rules, with a certain centralization of powers is also in line with the establishment of a banking union. It aims at strengthening financial stability through a merger of the risks that individual countries that is difficult to handle and the centralization of supervisory powers of the European Central Bank and a number of supervisors at EU level.[30] In the opening debate in the Danish parliament the 4th of October Prime Minister Lars Løkke Rasmussen made it clear that the Danske Bank case may weigh heavily

[26] Europe is losing the fight against dirty money, Robert Wainwright, outgoing Europol boss, Politico 4th February 2018, up-dated 4th of May 2018.
[27] EU Commission's website on money laundering and terror finance and Inside Denmark's € 200bn. "Dirty money" scandal, Financial Times 4th of October 2018
[28] Ibid
[29] See Berlingske Business and Børsen Friday the 5th of October 2018.
[30] See the Commissions homepage on the banking union https://ec.europa.eu/info/business-economy-euro/banking-and-finance/banking-union_da.

when the government decides whether Denmark will join the Banking Union. [31] Both the Liberal Alliance and the Danish People's Party is skeptical of enhanced European banking cooperation. Denmark is expected to decide whether Denmark joins the bank union during the spring of 2019.

[31] " The scandal of money laundering can throw Denmark into the arms of the EU Banking Union", Altinget, October 11, 2018,