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ING Fine and Danske Developments Suggest More Aggressive AML Posture in EU

A series of cases in 2018 signal that European regulators are taking a more forceful approach to anti-money laundering (AML) regulation, at both the EU member state and EU levels. Examples of stronger oversight in the EU include a record fine against ING Bank N.V., multiple investigations of Danske Bank, and a censure of Malta's Financial Intelligence Analysis Unit.

- ▶ ING agreed to pay a EUR 775 million fine (about \$900 million) on September 4, 2018 after Dutch prosecutors found numerous deficiencies in the bank's AML controls. Dutch prosecutors cited a number of investigations into ING clients, including a Foreign Corrupt Practices Act investigation.¹ The ING penalty is the largest AML enforcement action ever in Europe.²
- ▶ Danske Bank is under investigation by authorities in Denmark, Estonia, and the United States.³ The investigations concern alleged anti-money laundering/countering the financing of terrorism (AML/CFT) violations related to transactions at Danske Bank's branch in Estonia. Based on Danske Bank's internal investigation, EUR 200 billion (\$234 billion) in transactions involving non-resident customers flowed through the Estonian branch from 2007 to 2015, with "a large part" of the transactions expected to be suspicious.⁴
- ▶ Following the U.S. arrest of the chairman of Malta's Pilatus Bank in March 2018 for alleged sanctions evasion and money laundering,⁵ the European Banking Authority censured the Maltese Financial Intelligence Analysis Unit (FIAU) in July 2018. The European Banking Authority cited failings in the FIAU's supervision of Pilatus Bank in relation to the bank's AML/CFT obligations.⁶ News reports as of October 16, 2018 state that the European Central Bank may revoke Pilatus Bank's license, pending the resolution of "legal hurdles."⁷

At the EU member state level, recent enforcement actions indicate a trend toward larger fines and closer scrutiny by national authorities. Individual countries have their own reasons for stricter enforcement, such as Denmark's concern that the Danske Bank developments could damage the country's impeccable reputation for upholding standards of financial integrity.⁸

- ▶ According to a press release from the Netherlands Public Prosecution Service (NPPS), the NPPS views the large fine against ING as "an appropriate and effective settlement."⁹ As part of its rationale for the settlement amount,



NPPS referenced the seriousness of ING’s AML/CFT violations and the responsibility borne by ING as a systemic bank.¹⁰

- ▶ Multiple jurisdictions (in the EU and the United States) are conducting investigations related to transactions at Danske Bank’s branch in Estonia. Besides the criminal investigations of Danske Bank itself by authorities in Denmark, Estonia, and the United States, media reports have also stated that the UK’s National Crime Agency is investigating the involvement of UK-registered companies,¹¹ and Switzerland’s financial regulator is probing the involvement of Swiss banks.¹²
- ▶ French authorities have also been increasingly active in AML enforcement, with a focus on tax evasion. France’s National Financial Prosecutor settled a case with HSBC’s Swiss subsidiary for EUR 300 million (\$352 million) in November 2017, following allegations that HSBC laundered tax evasion proceeds.¹³

Notable European AML Enforcement Actions

Year	Jurisdiction	Institution	Approximate Penalty
2018	Netherlands	ING Bank N.V.	\$900 million
2017	France	HSBC Private Bank (Suisse) SA	\$352 million
2017	U.K.	Deutsche Bank AG	\$204 million
2016	Italy	Credit Suisse AG	\$116 million
2015	U.K	Barclays Bank plc	\$109 million

SOURCES: Regulator press releases, company annual reports, and settlement documentation.

While the cases described above demonstrate the clout that national authorities have to enforce AML/CFT laws, the EU has also signaled an interest in stronger enforcement. Europe’s move toward stricter financial crimes oversight appears based on both reputational concerns and the recognition of the links between financial integrity and regional and global security.

- ▶ The European Commission in September 2018 proposed enhancements to the European Banking Authority’s role in AML/CFT supervision.¹⁴ In its announcement of the proposal, the European Commission stated its goals for more effective AML/CFT investigations, more consistent AML/CFT



supervision across the EU, and better information exchange among supervisory authorities.¹⁵

- ▶ The Council of the EU adopted a new anti-money laundering directive on October 11, 2018. Among other provisions, the directive sets minimum rules for the definition of criminal offenses and sanctions relating to money laundering.¹⁶
- ▶ The European Commission is planning to issue a “formal opinion” to Malta, according to media reports.¹⁷ The binding opinion would demand that the Maltese financial regulator improve its overall AML/CFT supervision. In July 2018, the European Banking Authority concluded that Malta had “general and systematic shortcomings” in its AML/CFT monitoring.¹⁸ The European Banking Authority has opened an inquiry into Danish supervision of Danske Bank, according to press reporting.¹⁹

Actions at the EU level appear to indicate political will for closing gaps in supervision and enforcement across EU member states, suggesting that financial institutions in the EU will be subject to more stringent regulatory expectations.

Financial institutions both within and outside the EU should ensure that their compliance programs can withstand stricter scrutiny, from EU regulators in the case of the former and from correspondents in the case of the latter.

- ▶ Institutions with headquarters or branches in the EU should be aware of the shifting regulatory risks as regulators’ expectations for implementation of effective AML/CFT measures increase.
- ▶ A more restrictive environment in the EU may cause some European banks to re-evaluate their risk appetites, which may make it more difficult for financial institutions outside the EU to establish or maintain correspondent relationships with EU institutions.
- ▶ Financial institutions should manage their resources according to their risks, rather than allowing resources to drive perceptions of risk. ING’s transaction monitoring system had a predetermined daily number of alerts for certain types of alerts, largely based on staffing capacity for subsequent alert investigations.²⁰ Dutch investigators reasoned that the capped number of alerts potentially contributed to missed signs of money laundering. Similarly, U.S. regulators criticized US Bank for setting alert thresholds based on the number of staff.²¹



When Clients Engage in Bribery, AML Risk Follows

The ING settlement demonstrates the intertwined nature of money laundering and corruption risks. AML/CFT principles can support an institution's anti-bribery and corruption (ABC) agenda, such as the way that AML/CFT controls require scrutiny of a politically exposed person (PEP) client's source of wealth.²² However, when a financial institution fails to properly implement AML/CFT controls, the institution risks missing indications of corrupt activity.

- The origins of the criminal investigation of ING were in separate investigations of corruption and money laundering by ING's clients, including VimpelCom Ltd.
- VimpelCom entered into a \$795 million settlement with U.S. and Dutch authorities in 2016 for major Foreign Corrupt Practices Act violations. VimpelCom and its Uzbek subsidiary admitted to a conspiracy to make bribery payments to an Uzbek government official to enter and operate in the Uzbek telecommunications market.²³
- The 2016 civil complaint related to the VimpelCom case lays out the transactions that were part of the corruption scheme. The transaction data shows that ING was the originating bank for a total of \$55 million in corrupt payments from a VimpelCom subsidiary to a shell company beneficially owned by the corrupt Uzbek government official.²⁴ Two years later, the NPPS investigation of ING explicitly referenced these transactions and stated that ING's transaction monitoring system did not alert for any of them.²⁵

The ING settlement highlights ABC risks and the importance of providing resources to compliance functions that are commensurate with the risks.

Banks with customers involved in corruption may have critical AML deficiencies.

- The ING settlement made plain the supply-side corruption risks facing financial institutions. Though global standards rightly focus on PEP account identification and monitoring, financial institutions must also consider the risks of their clients being on the sending side of a bribery payment. Financial institutions should ensure that their AML investigators understand the typologies of corruption schemes, and staff should be vigilant for signs of customers being on either side of a bribery payment or other attempt at undue influence.²⁶
- Financial institutions should assess their jurisdictional risks in light of the ING case. Financial institutions should gauge their direct and indirect exposure to countries that pose high corruption risks. When assessing indirect risks, financial institutions should consider the risks posed by havens for company formation.



Endnotes

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