



Anti-money laundering and counter-terrorist financing measures - Norway

6. Supervision

Effectiveness and technical compliance



Citing reference:

FATF (2014), "Supervision" in *Anti-money laundering and counter-terrorist financing measures - Norway*, Fourth Round Mutual Evaluation Report, FATF.
www.fatf-gafi.org/topics/mutualevaluations/documents/mer-norway-2014.html

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6. SUPERVISION

Key Findings

- The Financial Supervisory Authority (FSA) is in charge of the supervision and oversight of financial institutions and has established licensing regimes. Real estate agents, auditors and accountants, also come under FSA supervision while lawyers come under the purview of a self-regulatory body (SRB).
- Money laundering / terrorist financing (ML/TF) risks have not been adequately identified and or understood by the FSA and SRBs.
- The FSA uses a combination of off-site and on-site supervision, based mostly on prudential and other industry specific risks. The frequency, scope and intensity of anti-money laundering / counter-terrorist financing (AML/CFT) supervision are not sufficiently ML/TF-risk based and requires enhancement, particularly for large complex institutions.
- The SRBs only undertake limited supervision for AML/CFT compliance.
- While some feedback and guidance on compliance with AML/CFT requirements has been provided, this has generally been insufficient to address significant knowledge gaps on some core issues.
- The FSA is aware that compliance is not at a level it should be, and in some cases serious breaches have been identified.
- There is not a wide enough range of powers to sanction, nor are they sufficiently dissuasive, and even the sanctions that are available to authorities, such as coercive fines and prosecutions, have not been imposed. No sanctions other than written warnings have been applied to financial institutions.
- There are particular concerns with the significant gaps in the supervision of the money valute transfer services (MVTs) sector. Although Norway has identified the MVTs sector as high risk in the National Risk Assessment (NRA), the FSA has not carried out any on-site inspections of MVTs providers, and there is no 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 a robust licensing system, enforcement activities to address the risk posed by unauthorised remitters are inadequate.

6.1 Background and Context

6.1. Norway's financial sector is regulated through comprehensive licensing and prudential requirements contained in sector specific legislation such as the financial institutions Act (FIA), Commercial Banks Act (CBA), Savings Banks Act (SBA), Securities Funds Act (SFA), Securities Trading Act (STA) and Insurance Act (IA). The responsibility for supervising FIs, both for prudential and AML/CFT purposes, is assigned to Norway's Financial Supervisory Authority (FSA), the functions and powers of which are set out in the Financial Services Act (FS Act).

6.2. **The Norwegian FSA** is an independent governmental agency that operates on the basis of on laws and decisions emanating from the Parliament, the Government and the MoF and on international standards for financial supervision and regulation. The FSA is headed by a non-executive board of five members appointed by the MoF upon delegation from the King. The FSA's Director General is appointed by the King in Council for a six year term. The FSA has approximately 280 employees for the prudential and AML/CFT supervision of a wide range of entities. For AML/CFT, the FSA is responsible for the supervision of FIs, estate agencies, and external accountants and auditors. The FSA is also the competent authority for supervising MVTS. Regarding EEA authorised payment institutions and their agents see below. Sanctions for non-compliance with AML/CFT obligations can be imposed based on provisions in the *Money Laundering Act (MLA)* and FS Act.

6.3. **Supervisory Council for Legal Practice** (Supervisory Council) is an independent governmental body financed by lawyers and responsible for AML/CFT supervision of lawyers and assistant attorneys. The governing body is a three person Supervisory Board which is appointed by the Ministry of Justice (MoJ). The Chairman must be a practicing lawyer and one member must be a chartered accountant. The secretariat of the Supervisory Council has 13 employees.

6.4. Norway has no designated supervisors for dealers in precious metals and stones and TCSPs. However, the Police Authority is responsible for the licensing and monitoring of second-hand shops to prevent the sale of stolen goods, though this does not constitute AML/CFT supervision. In addition, to the extent that trust and company services are provided by lawyers and accountants, they would be supervised by the respective supervisors for AML/CFT. In relation to casinos, although there are no land-based casinos, some internet gambling activities are licensed in Norway but are not covered by the *MLA* and therefore not supervised for compliance with AML/CFT requirements.

6.5. **DnR and NARF** – The Norwegian Institute of Public Accountants (DnR), the professional body for auditors in Norway, and the Norwegian Association of Authorised Accountants (NARF), national body for authorised external accountants, carry out quality control of their members including with regard to the implementation of AML/CFT measures. Neither the DnR nor the NARF are self-regulatory bodies for AML/CFT purposes, although they undertake supervision of their members for broader requirements. However, in determining the frequency and intensity of supervision, the FSA has decided to give less priority to those entities which are already subject to control by their respective organisations. Neither organisation has any powers, including sanctioning powers, to enforce compliance of their members with the *MLA*.

6.2 Technical Compliance (R.26-28, R.34, R.35)

Recommendation 26 – Regulation and supervision of financial institutions

6.6. Norway is rated partially compliant (PC) with Recommendation (R.) 26. The licensing function for reporting financial institutions (FIs) is divided between the MoF and the FSA. Licensing covers both core principles and other reporting FIs, including MVTS and money currency exchange providers. As the financial sector supervisor, the FSA conducts fit and proper tests when a reporting FI is granted a license. Investments firms, management companies for securities funds, securities register, regulated market, debt-collecting businesses, real estate agents, foreign branches of Norwegian insurance and pensions companies and savings banks are obliged to notify the FSA of any changes in key functionaries. However, there is no similar requirement for commercial banks, savings banks, and all insurance and finance companies.

6.7. The FSA's supervision of core principles FIs is said to be founded on a risk-based approach but the assessment to determine which reporting FIs are subject to on-site inspections is largely based on prudential information. There is insufficient evidence to conclude that ML/TF risks are adequately taken into account when determining priorities for AML/CFT supervision. In addition, AML/CFT supervision of securities has only formed a minor part of the broader on-site inspections. Before recent on-site visits, no AML/CFT inspections were carried out in the insurance sector. For authorised MVTs providers, the FSA only monitors AML/CFT compliance via off-site or document based supervision. The FSA does not conduct any monitoring for AML/CFT compliance of MVTs providers from the European Economic Area (EEA) which have agents or branches providing services in Norway.

6.8. The FSA has only limited written documentation to support institution specific ML/TF risk assessments and there is no reliable formal risk assessment which could provide a basis for the classification of reporting FIs based on ML/TF risks. As a result, the FSA has no sound basis to decide on the frequency and intensity of on-site and off-site AML/CFT supervision of financial institutions and groups.

Recommendation 27 – Powers of supervisors

6.9. Norway is rated largely compliant (LC) with R.27. The FSA has comprehensive inspection and monitoring powers, including the power to conduct on-site inspections and off-site reviews. The FSA also has the power to compel the production of or obtain access to reporting FIs' records without the need for a court order. However the sanctions powers are inadequate (see R.35).

Recommendation 28 – Regulation and supervision of DNFBPs

6.10. Norway is rated PC with R.28. Casinos are not classified as a reporting designated non-financial business or profession (DNFBP) in Norway, although casinos are prohibited without a licence. Only two entities are currently licenced, one ship-based casino and an entity which offers casino-style gaming on the Internet. For more details see section 5.1 above. The FSA is the competent AML/CFT supervisor for real estate agents, accountants and auditors while the Supervisory Council for Legal Practice is responsible for ensuring compliance by lawyers and other independent legal professionals with AML/CFT requirements. Norway has no designated competent authority for AML/CFT monitoring and supervision of trust and company service providers (TCSPs) and dealers in precious metals and stones. While both the FSA and the Supervisory Council have adequate powers to perform their functions and conduct fit and proper tests, the sanctions at their disposal for non-compliance with AML/CFT obligations are not proportionate and dissuasive, as explained in relation to R.35 below.

6.11. The FSA and the Supervisory Council have no specific ML/TF risk assessments for the categories of DNFBPs that they supervise nor is there a reliable formal risk assessment which could provide a basis for the classification of reporting DNFBPs based on ML/TF risks. AML/CFT supervision of DNFBPs is conducted as part of a more general supervision to ensure compliance with licensing provisions and to monitor professional conduct. As a result, the frequency and intensity of the AML/CFT supervision of DNFBPs is not based on the supervisor's understanding of the ML/TF risks that these professions face.

Recommendation 34 – Guidance and feedback

6.12. Norway is rated LC with R.34. In cooperation with the private sector, Norway's FSA and FIU have set up some formal guidance mechanisms for both the private and public sectors through the creation of a dedicated AML/CFT website and the holding of an annual AML/CFT conference. Information is made available on the legislation, typologies and trends, and on the FATF and the Egmont Group. This information provides relevant background and contributes to a better understanding by the private sector of general AML/CFT issues. The guidance is comparatively high-level and does not provide sufficient assistance to reporting entities regarding the implementation of AML/CFT requirements on a day-to-day basis.

6.13. The FIU has assigned a full-time position dedicated to ensuring compliance by FIs and DNFBPs with the reporting obligation. Concrete feedback and guidance is provided both upon request and spontaneously, including through face-to-face meetings with individual entities. In addition, the FIU also delivers presentations on how to improve compliance with reporting obligations during seminars which specifically focus on certain



categories of reporting entities. The FIU produces annual reports with information on typologies, case examples and statistics and contributes to ØKOKRIM's report on trends in financial crime.

6.14. In June 2009, the FSA issued Circular 8/2009 which contains general AML/CFT guidelines for the implementation of 2009 *MLA* and *MLR* provisions. This guidance paper does not adequately support the effective implementation of the key building blocks of Norway's AML/CFT regime. While the FSA has provided some training and feedback, this has not been proactive or sufficient.

6.15. The PST is well engaged in providing feedback on CFT, including typologies, to both public and private sector entities, often in cooperation with the FIU. This feedback is provided both on a case-by-case basis and through participation in training sessions and seminars. Norway was unable to provide the assessment team with concrete examples of feedback from other LEAs to the reporting entities.

Recommendation 35 – Sanctions

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6.16. Norway is rated PC with R.35. The *MLA* contains specific sanction provisions for failures to comply with AML/CFT obligations, although there are no administrative penalties available. Supervisory authorities are empowered to issue orders and coercive fines against reporting entities as a sanction for non-compliance with those orders. The *MLA* is silent with regard to the level of coercive fines but the MoF does have regulation-making authority regarding coercive fines. So far, the Ministry has not yet issued such implementing regulations. The *MLA* also provides for criminal proceedings, which could result in fines being imposed on both reporting entities and their directors and senior management for non-compliance with s5 (risk-based approach (RBA) to customer due diligence (CDD)), s6-8 (timing of, and requirements when performing, CDD and record keeping of information obtained through CDD), s.15 (enhanced CDD), s.17-18 (STR-reporting) and s.22 (record keeping – suspicious transaction reports (STRs)). In particularly serious cases penalties of up to one year's imprisonment can apply. However, these eight sections do not cover some of the fundamental building blocks of Norway's AML/CFT regime, including certain CDD requirements (e.g., timing, third parties and reliance), the obligation to apply on-going monitoring, corresponding banking relationship requirements, internal control requirements, and the tipping-off provisions. Moreover the need to prove the failings to the criminal standard of proof would be more difficult than the civil standard for administrative fines.

6.17. The sanction provisions of the *MLA* are complemented by the FSA's sanctioning powers included in the FS Act. These include withdrawing, restricting or suspending the licence of the reporting entities, fines and orders to rectify deficiencies. In addition, any person, including officers, employees, senior management and directors of reporting entities supervised by the FSA, can be liable to fines and/or imprisonment when they wilfully or through negligence contravene an order issued by the FSA. As with the *MLA*, these non-coercive fines can only be imposed if criminal proceedings are brought.

6.18. The *MLA*, in combination with the *FS Act*, provides the FSA with a limited range of sanctions for failures to comply with the AML/CFT requirements. These sanctions cannot be considered to be proportionate and dissuasive, especially for directors and senior management. The major shortcomings are that the fines provided for in the *MLA* are not available for the breach of a number of core requirements. Furthermore, non-coercive fines are only available as a result of criminal proceedings, and that the range of sanctions available should be broader.

6.3 Effectiveness: Immediate Outcome 3 (Supervision)

Licensing and other Controls

6.19. Institutional arrangements for the supervision and oversight of financial institutions, as well as real estate agents, auditors and accountants, are well developed, as are the respective licensing regimes. For other DNFBPs there are no such regimes. A pillar of Norway's approach to supervision has been its comprehensive and robust licensing and regulation of financial institutions; Norway maintains that it is easier to refuse a licence than assess an institution for compliance. Notwithstanding such an approach, only limited sanctions

for those engaged in financial activities outside of the relevant licensing regime have been applied, although such unlicensed activity does appear to take place in some sectors, notably MVTS.

6.20. The FSA assesses the fitness and properness of board members and persons directly in charge of the reporting entity. A license must not be granted if persons possessing key functions cannot live up to the fit and proper requirements. Although the FSA, as part of its supervisory objective, examines any changes in key functions, there are no obligations on commercial banks, insurance and finance companies to notify the FSA of any changes in key functions or of information which formed the basis for assessing a person as fit and proper. However, these entities are also required to ensure that the fit and proper requirements are met at all time and the FSA considers this issue in its supervision. Nevertheless, this is a significant technical deficiency which could undermine the FSA's ability to prevent criminals from controlling and holding a management function in financial institutions.

6.21. Norway also permits the operation of branches of credit institutions authorised in other EEA countries. The decision to issue an authorisation valid for the EU is the responsibility of the competent authority of the home Member State. Such a financial institution may then provide services or perform activities throughout the EU, either through the establishment of a branch or through the free provision of services, without the need to obtain additional authorisations in each host Member State. However, these branches in Norway are subject to Norwegian AML/CFT laws, and the FSA is the supervisor for the 42 branches which currently operate in Norway and they are subject to the same level of AML/CFT supervision as Norwegian financial institutions. For a financial institution providing services without a physical presence in Norway, supervision is carried out by the home supervisor for AML/CFT.

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Supervisors' understanding of ML/TF risks

6.22. The measures used by the FSA to understand and assess ML/TF risks of the sectors and entities they supervise do not facilitate a clear understanding of all ML/TF risks. No specific tools have been developed to collect information that is needed for identifying and maintaining an understanding of ML/TF risk. The FSA does not assign an ML/TF risk classification to any reporting entity.

6.23. The FSA has not undertaken sufficient AML/CFT supervision across all sectors. Supervisors have a varied knowledge of ML/TF risks that are primarily based on the inspections, but have too little knowledge of the risks associated with products, services, customers, geographic locations etc., to assist them in evaluating the financial institution's own ML/TF risks. Very limited sharing of knowledge has occurred across the different sections until recently. Supervisors have therefore not been in a position to compare risk factors and procedures as used by peer financial institutions. It was notable that in the NRA, in which the FSA participated a number of risks that were largely assumed and could not be supported by information and analysis, while a number of risks that were consistently raised by different banks were not included at all. ML/TF risk is considered by the FSA to be an integral part of operational risk, which is a concern given its narrow focus.

6.24. Based on the vulnerabilities identified in the NRA, efforts are being made to address shortcomings and recently the FSA has established a working group with participants from across the different sections with the purpose of sharing knowledge in the AML/CFT area.

6.25. The Supervisory Council has neither identified nor assessed, to any extent, ML/TF threats and vulnerabilities for lawyers and subsequently displays a very limited appreciation of ML/TF risks. There is a limited understanding of situations where lawyers are misusing their office for criminal activities and laundering the proceeds of such activities, or where customers are misusing lawyers for ML.

Risk-based approach to AML/CFT supervision – by sector

6.26. The focus, depth and frequency of FSA supervision is primarily driven by prudential and other concerns and is not sufficiently ML/TF risk sensitive. The FSA maintains its AML/CFT supervision of REs is founded on a risk-based approach, based on the "module for the assessment of operational risk". The module is a tool that is used to identify and assess the quality of risk management and operational risk in

institutions. It consists respectively of guidance and information, and poses questions related to institutions' risk management and loss event categories. ML/TF is mentioned as examples in the category "external fraud". The questions are further designed to be used for purposes of institutional self-assessment. The document contains (in an annex) a template of AML/CFT questions, but the framework does not provide a sufficient focus on ML/TF risks for AML/CFT supervisory activity, particularly given that ML/TF risk is defined narrowly under 'external fraud'. ML/TF risk is very different to operational risk, which is focused on potential losses for the institution. The FSA has in its supervision focused on the 18 (now 17) large commercial banks (which due to the concentrated nature of the Norwegian banking sector have the most significant ML/TF risks in the sector), but even for these banks the frequency, intensity and scope of the AML/CFT supervisory activities has been in adequate.

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6.27. The focus on AML/CFT supervision of auditors and audit firms is based on a statutory and cyclical scheme. In addition the FSA carries out risk-based supervision, although ML/TF risk is not a central selection criterion. With regard to external accountants, the FSA's selection of entities for inspection is primarily based on reports from other authorities and bodies, i.e., tax with focus on violations of tax and accounting regulations. Supervision in the securities sector is focused on market abuse, but ML/TF risk is considered to a limited extent.

6.28. Within the FSA, AML/CFT inspections are carried out by sectoral supervisors primarily as a part of their prudential supervision, although some targeted AML/CFT inspections has been carried out. They undertake AML/CFT inspections using standard templates containing basic questions regarding compliance with the *MLA*: risk classification of customers, CDD of non-face-to-face customers and internal controls. In addition, sample testing of the reporting entities' due diligence of the five newest retail and corporate customer relationships is usually carried out.

6.29. In general, the inspections are focused on technical compliance with the AML/CFT regulations and not on the effectiveness and robustness of the preventive measures implemented by the reporting entities. For example, FIs are required to have an electronic monitoring system, which is routinely met by FIs using an external service provider. During the inspections the FSA will audit the fact that the FI has such a system but no examination would be performed to validate whether the system was effective and whether the FI understood the objectives or key performance indicators. No sample testing is conducted. When the FSA has focused on STRs in its monitoring activity, it has focused largely on the quantity, although recently quality has also become an issue. Some key *MLA* requirements relating to high risk activities, such as correspondent banking, have not been subject to any examination or inspection. This stems from the fact that the FSA has not developed any formal policies that specifically ensure that AML/CFT inspections identify and target higher risk activities of the FI.

6.30. As can be seen from Table 6.1 below, the FSA has not undertaken sufficient AML/CFT supervision across the sectors – no inspections in either the MVTs sector which is considered as a high risk sector both by the FSA and in the NRA, or in the life insurance sector.

Table 6.1. On-site inspections with an AML/CFT component

Industry sector	2009	2010	2011	2012	2013
Banks	13	16	32	29	30
Insurance	0	0	0	0	0
Securities	16	24	18	19	12
MVTs	0	0	0	0	0
Other financial institutions	0	0	0	0	0
Real estate agents	29	48	93	43	50
Auditors, Audit firms and External Accountants	159	141	103	108	102
Lawyers	33	48	23	19	20

Source: data provided by Norway

6.31. **Banks** In 2010, the FSA conducted 16 AML/CFT on-site inspections of bank and finance companies for the purpose of obtaining an overview of compliance with the *MLA* that had entered into force in April 2009. The inspections comprised reporting entities from the most significant financial groups operating in Norway, including the private banking and shipping departments of Norway's two largest banks. The inspections generally covered basic obligations such as risk classification of customers, BO information, purpose and intended nature of the customer relationship, ongoing monitoring, internal controls, training of employees, and sample testing of CDD of retail and corporate customers. Although some pre-onsite fieldwork was undertaken, these examinations were very short and high level in nature. The banks concerned described these as akin to audits rather than in depth examinations. FSA findings regarding compliance with the *MLA* revealed considerable room for improvement.

6.32. In 2013, the FSA carried out 30 on-site inspections of bank and finance companies driven by prudential considerations, but which included a small AML/CFT component. The AML/CFT component was carried out on a time interval of between 2-4 hours depending on the size of the bank. Concerns with regard to *MLA* compliance were raised in 30 preliminary inspection reports to 28 banks and 2 finance companies. The concerns were followed up with critical remarks in 19 final reports to 17 banks and 2 finance companies. By April 2014 five of the 30 inspections remained ongoing. Although the FSA found deficiencies, no other sanctions had been imposed in any case at the time of the on-site visit. In addition, the FSA carried out one inspection of one of the largest banks in Norway focusing solely on AML/CFT issues in 2013. During this inspection the FSA not only focused on basic *MLA* obligations but included issues such as the bank's risk assessment and management engagement.

6.33. In 2013, the FSA also conducted a document based off-site inspection of all 140 banks conducting business in Norway (including branches of EEA credit institutions). The questionnaire that the banks had to fill in included questions regarding internal controls, reports from internal audit, procedures regarding BO, enhanced CDD, training of staff and STRs. The off-site review revealed that 35 of 140 banks considered that they had no or very few high risk customers, which the FSA found was a weak understanding of the AML/CFT regulation. The review also revealed a serious lack of *MLA* compliance in several small savings banks that had not been inspected by the FSA between 2010 and 2013. In six cases, owing to the seriousness of the compliance failures it found, the FSA issued "advance notifications" (as required under the *Public Administration Act* s.16) of possible "Orders and coercive measures" that might be imposed under *MLA* s.27. While the types of activities carried out at such small savings banks may present lower ML/TF risks, nevertheless, no sanctions have been imposed. Given that it is five years since the *MLA* was updated, such serious levels of compliance failures suggest that the FSA's approach has not been effective. The FSA's supervision of the banking sector is not effective, focusing on technical compliance with laws rather than effective implementation, and is not based on ML/TF risks.

6.34. **Brokers, investment firms and fund management firms:** While AML/CFT is said to be part of all regular FSA on-site inspections, these focus primarily on conduct of business and has little focus on AML/CFT. For example, issues relating to AML/CFT had never been commented upon in any inspection report. AML/CFT issues are considered at a very high level; sample testing of transactions is carried out, but for the purpose of examining compliance with the MiFid-regulation. Norway maintains that the ML/TF risk in the securities industry is low, which may be the case, but, this is assumed and there is no real consideration of ML/TF risks in the supervision of this sector.

6.35. **Insurance:** The FSA had, up until April 2014, not undertaken any AML/CFT supervision of insurance companies. The FSA has since carried out the first AML/CFT on-site inspection of a non-life insurance company as part of the prudential inspection. The supervisors did not, prior to the undertaking, receive AML/CFT training, although a brief introduction to the template to be filled in during the inspection was given by an employee of the Banking Section. The FSA has programmed another 3 inspections, including for AML/CFT, with the purpose of highlighting AML/CFT and assessing the level of *MLA* compliance in the relevant insurance companies. Again, ML/TF risks have not been taken into consideration and the fact that examinations have been commenced in non-life insurance before life is difficult to understand from a ML/TF risk perspective.

6.36. **MVTS – Domestic:** Concerns exist over the supervision of this high risk sector. While there are a number of offsite controls, no on-site supervision to test the robustness of systems and controls of licensed

remitters has taken place. In 2010, Norway implemented the PSD, and subsequently authorised 31 payment institutions. Norway implemented requirements for limited authorisation of MVTS which are not defined as payment institutions in the legislation, allowing the FSA to waive some of the general rules required for authorisation of payment institutions. The initial approach was to provide for a limited authorisation, including lower capital requirements and low thresholds on the average amount of monthly transactions. In order to get as many MVTS under supervision as possible, the FSA lowered the requirements for a short period. MVTS authorised in this period were given a temporary license with a renewal requirement within two years (the transition period). In the transition period the FSA received 65 applications, and 29 MVTS were granted a limited authorisation. The FSA is still in the renewal process for those MVTS with the temporary license, although five authorisations have been withdrawn. The FSA received 37 applications for limited authorisations after the end of the transition period, but only two of these companies were granted an authorisation.

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6.37. The FSA carries out desk reviews of AML/CFT compliance of the MVTS companies' by assessing semi-annual reports and applications for renewal of the limited authorisations, as well as information received from the Norwegian FIU and other police authorities, the Currency Register, the Directorate of Customs and Excise and the tax authorities. Local MVTS are also subject to independent audit and regular transaction reporting. In 2012 MVTS companies were required to provide additional information on their CDD measures when submitting their semi-annual reports. This consisted of sending in documentation of CDD procedures performed by the company for the last five customers. In addition to these formal channels, the FSA also monitor the press and, occasionally, receive tips and information from outside sources. The level of compliance with AML/CFT requirements is a concern to the FSA. Despite this, no on-site supervision has been carried out which is a significant concern given the ML/TF risk.

6.38. The FSA has established a robust licencing regime for money remitters, rejecting a significant number of applications, but during interviews conducted by the assessment team it was suggested that this may have achieved a result which is inconsistent with the initial policy objectives. Many MVTS in Norway are operating without a license. The Police are the competent authority to identify such unauthorised MVTS providers. However, in practice the FIU also plays an important role identifying unauthorised providers through STRs and currency reporting, and liaising with the FSA to determine whether these providers have made unsuccessful license applications. The FIU has then informed police, as well as financial institutions, of these unauthorised providers. Authorities provided four examples of action taken by police against unauthorised MVTS providers, while authorities informed that some other cases are ongoing. These cases were identified by the FIU through STRs and passed on to police, with some engagement with the FSA, while other cases were identified by the police in the course of criminal investigations. These entities received a criminal fine for providing MVTS services without a license. In one case, the unauthorised MVTS service provider also committed a ML offence. The other case is explained further below.

Box 6.1. Case example: unauthorised MVTS providers

In 2012, Telemark Police District fined a person 30,000 NOK (3,900 EUR) and confiscated 16,000 NOK (2,080 EUR) for operating an unauthorised MVTS provider. The transfers were conducted through the person's sole proprietorship, and no application had been made to the FSA. From January-October 2012, the firm received 1,615,000 NOK that was transferred to a company in a third country and then to the final recipients in Afghanistan. The person pleaded guilty and accepted both the fine and the confiscation. The case started with two STRs being sent to the FIU.

6.39. Although action has been taken on an ad hoc basis, there is no strategy to identify and sanction unauthorised MVTS providers based on a policy objective. Many unauthorised providers are known to authorities given the number of unsuccessful applications for limited authorisations or renewals. The FIU has led the action taken, although there has been no proactive approach. This has resulted in a limited number of sanctions.

6.40. **MVTS – EEA payment institutions and their agents:** The FSA has not carried out any supervision of EEA payment institutions and their agents operating in Norway. Under the EU payment services directive,

this falls under the obligation of the home Member State of the payment institution, except when the home Member State asks for administrative cooperation or when the payment institution operates under right of establishment. EEA payment institutions with an authorisation from another country under the PSD operating in Norway are covered by *MLA*. According to the FSA, agents of EEA payment institutions are also covered by the *MLA* although it is not explicit in the Act. On this basis, both EEA payment institutions and their agents are subject to FSA supervision for their AML/CFT obligations. Despite this acknowledgement by the FSA – and although Norway has identified the MVTs sector as high risk in the national risk assessment – there is no supervision of the extensive network of agents notified to the FSA regarding their AML/CFT obligations.

6.41. The FSA undertakes its supervisory role in accordance with the cooperation system put in place by the PSD. According to the directive the home authority is the designated main supervisor, although the home and host should cooperate in this matter. As the FSA considers that the home supervisor has the primary supervisory responsibility, the FSA has not taken any supervisory action with respect of EEA payment institutions and the large network of passported agents operating in Norway. Along with other Nordic supervisors the FSA attempted to enter into an agreement with the home supervisor of a large MVTs provider operating in the Nordic Countries. This attempt failed and the FSA has not followed through with its engagement with home supervisors. As a result, this part of the MVTs sector, which forms a large part of the MVTs sector in Norway, remains unsupervised.

6.42. **Real Estate Agents:** As part of on-site visits inspecting broader licencing requirements, the FSA examines whether real estate agents have AML/CFT policies and asks questions regarding compliance with the *MLA*. However, AML/CFT comprises only a small portion of the FSA's supervisory activities in the real estate sector. The approach was described by the sector as an audit, the usefulness of which is limited. In 2013 the FSA carried out 42 inspections of both big chains and small agencies. As with other sectors, the FSA had made no clear determination of ML/TF risks within the sector, but the fact that chains tended to be part of large financial groups with higher standards and ranges of procedures should have been taken into consideration. About 6-7 of these inspections did not include AML/CFT. Over the last four years, the FSA has conducted approximately 200 inspections of real estate agencies, including AML/CFT (out of a total of 510 real estate agencies and 1320 lawyers). The reason why the FSA carries out many inspections of real estate agents is not based on consideration of risks, rather that there are less intensive licensing requirements compared to other REs and many consumer protection related activities.

6.43. **Auditors, Audit firms and External Accountants:** There has been limited AML/CFT supervision of auditors, audit firms and accountants. The FSA is the competent supervisory authority for auditors and accountants and is responsible for monitoring of these sectors, and in its supervisory approach takes into account the work undertaken by the professional associations. NARF and DnR, also monitor its members' compliance with AML/CFT to a limited extent as part of its ordinary monitoring for compliance with other professional obligations, although they have no supervisory powers. The FSA has laid down guidelines for cooperation with NARF for coordination of on-site inspections. Under these guidelines, NARF should report findings of non-compliance with AML/CFT obligations to the FSA. However, the level of monitoring is insufficient and it is unclear whether any such findings have been reported.

6.44. The FSA undertakes both on-site and off-site inspections, taking into account the activities of the industry associations of auditors and accountants. The inspections include control of the entities' compliance with *MLA*. An on-site inspection of a larger firm is conducted over a period of 2 weeks, spending around 1 hour on AML/CFT issues. Every second year the FSA carries out off-site supervision of auditors, audit firms and external accountants. All entities must respond to questions concerning their activities, including compliance with *MLA*. The information collected provides a basis for determining how current supervision activities should be arranged, and provides general information about the sector.

6.45. The selection of candidates for inspections of auditors and audit firms is mainly based on a statutory, cyclical scheme. All practicing auditors and audit firms must be subject to a quality control process at least every six years. Auditors whom audit public interest entities (PIE) shall be subject to a quality control process at least every third year.

6.46. **Lawyers:** AML/CFT supervision of lawyers is very limited and not effective. The Supervisory Council has not undertaken a risk assessment and has no policies for carrying out AML/CFT inspections. Preventive

measures on ML/TF are not focused on when carrying out inspection of lawyers. There is some assessment of annual returns but this has a very limited value. The supervisory council displays a limited awareness of AML/CFT issues.

Risk-based supervision and regulatory responses

6.47. There has been no clear determination, based on ML/TF risk, of the type and level of resources needed to ensure effective risk-based AML/CFT supervision. The resources and capacity to conduct effective AML/CFT supervision are not adequate and specialist knowledge is insufficient.

6.48. When an inspection is closed the reporting entity receives a draft inspection report (“preliminary report”) from the FSA. The reporting entity is given an opportunity to rectify breaches by a certain deadline before the report is finalised. The final inspection report is public but does not reflect breaches of the AML/CFT requirements identified at the time when the inspection was carried out, if these have been adequately addressed by the reporting entity. The FSA is authorised to impose a range of sanctions against the reporting entity under FSA supervision. However, although compliance is not at a level it should be (and in some cases serious breaches have been identified), sanctions, including coercive fines or prosecutions, available to the FSA have not been imposed. In addition, the criminal penalties available under the *MLA* have never been applied.

6.49. The majority of regulatory responses imposed by the FSA are “written warnings” in the final reports, also called “red letters”. The FSA follows up within a reasonable time of the on- or off-site inspection. According to the FSA, the majority of institutions (banks and finance companies) have remedied the shortcomings at the time of the follow-up. If that is not the case administrative sanctions may be imposed if considered necessary. This FSA feels that this has not yet occurred concerning AML/CFT. The FSA did advise however about a case where they required a significant increase in the capital adequacy of one large commercial bank due to operational risks, primarily due to IT systems and partly they stated as a result of important deficiencies identified in relation to CDD and AML/CFT controls in the same period.

6.50. The FSA has not given consideration as to how the different requirements under the *MLA* are classified and what constitutes a serious breach of these requirements, and the actions that would be taken pursuant to that breach. As a result, the FSA has not prepared any internal, or public, written policies for the use of the sanctions it has available. In addition, no regulations on the amount of fines under the *MLA* have been issued to date by the MoF, even though the amounts of coercive fines are laid down in regulations for other areas of the FSA’s supervisory function, such as for breaches of prudential requirements. Taken from an industry perspective there is no transparency or degree of what may be expected in the case of serious breaches. In the absence of guidance in this area, there is an expectation that the current status quo will continue and that the FSA would not use more severe actions.

6.51. As such, sanctions appear to neither be effective nor dissuasive.

6.52. Table 6.2 below sets out all warning issued by the FSA including both ordinary warnings and advanced warnings. It shows a significant increase in warnings issued to the banking sector from 2011 to 2012, which was a result of the increased on-site inspections undertaken in 2010. The FSA has issued advanced warnings and an order to cease contravening the *MLA* provisions to seven banks (one in 2010 and six in 2013), which were primarily for severe lack of compliance with AML/CFT obligations in the *MLA*. The advance warnings issued in 2013 were due to compliance failings identified in 2010 and it is a concern that compliance failings had not yet been addressed or remedied by the banks three years after they were identified by the FSA in inspection reports. The length of time between the on-site inspection in 2010 and issuance of advanced warnings in 2013 is a concern as the failings remained three years’ later despite the supervisory activities of the FSA.

Table 6.2. Warnings for AML/CFT deficiencies

Industry sector	2009	2010	2011	2012	2013
Banks	2	2	1	33	27
Insurance	0	0	0	0	0
Securities	0	0	0	0	1
MVTS	0	0	0	0	0
Other financial institutions	0	0	0	0	0
Real estate agents	0	1	1	13	14
Auditors, Audit firms and External Accountants	8	1	4	35	10
Lawyers	3	3	8	3	4

Source: data provided by Norway

6.53. Despite the fact that the FSA had identified severe lack of compliance by banks with AML/CFT obligations, no other types of sanctions, such as fines or restrictions on licencing, have been imposed. In addition, in the absence of internal guidance or procedures the FSA were unable to provide any clarity regarding the nature of the *MLA* breaches that would justify the application of these sanctions and the appropriate level of sanctions that would apply for aggravated breaches. In those instances where advanced warnings were given to six small saving banks, the potential administrative coercive fines advised to the banks if they failed to comply with the cease contravening order (after a certain period of time) were determined by the FSA to be NOK 5000 (EUR 650) per day. To provide some guidance on this, the FSA also advised that it considers, in relation to enforcement of a mandatory pension scheme, that the amount of NOK 250 (EUR 32.50) per day per employee to be an appropriate penalty for lack of compliance. These amounts were communicated to the institution in the order and do not overcome the concerns relating to the dissuasiveness of the sanctions without specified amounts.

6.54. For accountants and auditors, five sanctions were in the form of withdrawal of licences for issues which included an AML/CFT component, and nine orders were made which included requirements to cease contravening the *MLA*. These sanctions were applied for a number of reasons, including severe lack of compliance with the *MLA*, breach of the duty of secrecy provisions in the *MLA*, and failure to implement CDD obligations.

6.55. No sanctions have been applied to the securities sector, other financial institutions, and the real estate sector. In addition, no sanctions other than warnings have been applied to financial institutions. This is likely caused by the insufficient supervision for AML/CFT purposes of these sectors, including the level of on-site visits, which has meant that the FSA has either not identified deficiencies or has not taken action where severe deficiencies have been identified. For MVTS providers authorised by Norway, the FSA has declined to renew certain licences which may, in part, explain the lack of sanctions against this part of the MVTS sector.

Guidance and feedback

6.56. While some feedback and guidance on compliance with AML/CFT requirements has been provided by the FSA, and they are reported as being responsive to direct enquiries from industry, significant knowledge gaps on some core issues remain in the private sector (see 10.4 above). Although the 2009 guidance was issued with industry collaboration, nothing has been issued since, and guidance given at the annual basis industry seminar is comparatively high level. Engagement at the industry or sector level has not been sufficient, despite the fact that ambiguities remain on certain core requirements.

6.57. The FSA has a good practice of publishing final inspection reports, which contain and describe breaches of the *MLA*, and the FSA considers that the key findings in such reports provide guidance. While

industry is supportive of this practice, the focus is primarily on technical compliance, and any guidance on how to improve AML/CFT measures is very limited. However, there appear to be recent developments in the inspection reports prepared by the Banking Section, whereby breaches are described more thoroughly thus making the reports more useful to the banks. The FSA has also provided some ad hoc guidance. In 2010, the FSA sent a summary of the findings of the 2010 on-site inspections to all banks and finance companies operating in Norway, including a request to issue action plans to improve compliance with the *MLA*. In 2013 a letter was sent to all external auditors and accountants to stress the importance of the external auditors' duty to follow up on breaches of requirements by MVTs providers and to report these to the FSA.

6.58. Each year Finance Norway, the Norwegian FIU and the FSA, arrange a two day AML/CFT conference which is attended by around 250 people. The conference is aimed at staff of financial institutions from Norway's largest banks and insurance companies to small hawaladars working with AML/CFT, as well as other groups, subject to the *MLA*, public authorities with AML responsibilities etc. While FSA does engage in this training, the material used was focused on high level concepts, rather than how to implement particular obligations or to mitigate certain risks.

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Supervision of asset freezing measures pursuant to UNSCR 1267

6.59. The FSA does not adequately monitor reporting entities with regard to their obligations to freeze assets related to TF. The FSA has not examined this issue as part of their on-site supervisory activities and has only undertaken limited off-site supervision through a questionnaire. The only instance where the FSA considered this specifically was as part of a questionnaire to the banking sector in 2013, which included some specific questions on how they implement targeted financial sanctions. The FSA is aware that FIs rely solely on private service providers to carry out their obligations. However, it has not considered whether these measures are sufficient to meet the requirements. However, the FSA has not assessed the adequacy of reporting entities processes for the identification of assets related to TF or proliferation financing (PF). There is no supervision of DNFBPs relating to the implementation of the sanctions regimes.

6.60. There is limited coordination between the FSA and other relevant agencies (PST, FIU) in relation to TF and PF issues which appears to be a factor in the lack of focus on these issues by the FSA. The lack of coordination between FSA and PST is an important issue as it increases the difficulty for the FSA to monitor reporting entities as it is unable to apply a risk-based approach to supervision. While financial institutions understand their obligations, this may be due to international focus on UN Taliban/Al Qaida sanctions.

Conclusion on IO.3

6.61. Major improvements are needed to Norway's AML/CFT supervision. The supervisors do not possess a sound understanding of ML/TF risks and supervisory activities are primarily driven by prudential and other supervisory risks and concerns, although some targeted AML/CFT supervision has taken place. The frequency, scope and intensity of such supervision are not sufficient, nor are they based on ML/TF risks. The FSA's supervision has mostly been focused on technical compliance rather than the effectiveness and robustness of the preventive measures implemented. Sampling has been limited and some important measures, such as transaction monitoring systems or wire transfer requirements, have never been tested at all. In addition, guidance and feedback by the FSA on AML/CFT requirements has been insufficient and has not addressed significant knowledge gaps on some core issues. Certain sectors (e.g., securities, MVTs, legal sectors) and activities (e.g., targeted financial sanctions) have only been subject to limited AML/CFT supervision. Only the 18 (now 17) major banks are covered more regularly and slightly more fully for AML/CFT compliance.

6.62. While the licencing system for MVTs providers is robust, this is not combined with adequate measures to identify and sanction unauthorised providers. There is also a particular concern with the lack of supervision of passported MVTs providers which comprise a substantial portion of the market. This is an important factor given the high ML/TF risk posed by this sector. Furthermore, although the FSA is aware that compliance is not at a level it should be, and in some cases serious breaches have been identified, the limited sanctions that are available to authorities, including coercive fines or prosecutions, have not been

imposed. It is a concern that serious compliance failings have not led to remedial action despite continued non-compliance over several years, with little or no supervisory action by the FSA.

6.63. Norway has a **moderate level of effectiveness** for IO.3.

6.4 Recommendations on Supervision¹

- a. Norway should designate supervisors for dealers in precious metals and stones, TCSPs and casino gaming activities.
- b. As part of the NRA, Norway should undertake comprehensive sectoral risk assessments to ensure that the ML/TF risks are adequately identified and understood by supervisors. These should be periodically reviewed to ensure they remain up-to-date.
- c. On the basis of the risk assessment, Norway should ensure its future supervision is sufficiently ML/TF risk sensitive. Norway should ensure a greater level of integration of AML/CFT supervision into its broader framework of prudential and market conduct supervision.
- d. Norway should set supervisory priorities based on risk which address resources and capacity of supervisors, increase the intensity, duration and frequency of off/onsite supervision to commensurate with risk. The FSA should:
 - Continue to use a combination of off-site and on-site supervision but adapt the frequency, scope and intensity of supervision to the ML/TF risks.
 - Ensure higher risk sectors (such as MVTs and banking sectors) are adequately supervised, including more intense, wider scope reviews, and sampling of high risk operations, such as correspondent banking, wire transfers and targeted financial sanctions.
 - Focus on the effectiveness and robustness of the AML/CFT measures, rather than on technical compliance e.g., validating whether monitoring systems are effective and whether the FI understands the objectives or key performance indicators.
- e. Norway should establish and implement procedures, systems and manuals to support effective AML/CFT supervision by the FSA and Supervisory Council².
- f. Norway should ensure sufficiency of resources, to support both onsite supervision and cooperation with domestic and international authorities responsible for performing AML/CFT supervision:
 - The FSA should increase the type and level of supervisory resources put into risk-based onsite supervision (e.g., time allocated to various supervisory tasks such as sample testing).
 - Norway should enhance the type and level of resources required to ensure effective AML/CFT supervision is carried out by supervisors with AML/CFT experience (e.g., prioritise specialist training of its supervisors on ML/TF risk, prevention and supervision, participation in AML/CFT forums, supervisory colleges, etc.).

1 These recommendations should be read in conjunction with the recommendations on preventive measures in Chapter 5.

2 The measures recommended for the FSA are recommended to the Supervisory Council (with appropriate modification).

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- g.** Supervisors, in particular the FSA, should ensure that AML/CFT deficiencies identified during examinations lead to supervisory actions that are dissuasive, proportionate and effective. The FSA should extend the ability to apply administrative sanctions to all provisions of the MLA, and give consideration to developing processes and procedures on what constitutes a serious breach of these requirements, and the actions that would be taken pursuant to that breach. Regulations on the amount of fines under the MLA should be issued.
- h.** The supervisory authorities should ensure adequate on-going private sector engagement (for example, through seminars, guidance or best practices) that supports the effective implementation of preventive measures.

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Recommendation 26 – Regulation and supervision of financial institutions

a6.1. In its 3rd MER, Norway was rated LC for regulation and supervision of financial institutions and PC with the requirements regarding shell banks which are now incorporated in R.26 (see paragraphs 308 and 319 to 322 in relation to market entry; paragraph 306 in relation to shell banks; paragraphs 308-309 and paragraphs 327 and 330 in relation to supervision and monitoring). R.26 puts an enhanced focus on the risk-based approach to supervision and monitoring.

a6.2. **Criterion 26.1** – The FSA is the competent authority for regulating and supervising Norway's reporting FIs, including for AML/CFT purposes. It has the responsibility to ensure that FIs have adequate policies, procedures and practices in place to comply with AML/CFT requirements: *FS Act ss.2-3*.

a6.3. **Criterion 26.2** – The licensing function for reporting FIs is divided between the MoF and the FSA. Licensing covers both core principles and other reporting FIs, including those providing a money or value transfer service or a money currency changing service (see also R.14 above). All FIs as referred to in the FATF's Glossary are covered by the licensing requirement: *CBA s.8; SBA s.3; FIA 3.3,4b.2,4c.2; STA s.9.1; SFA s.2.1,10.3; IA s.2.1; AIM s.2.1; and SRA s.3.1*. Shell banks are indirectly prohibited in Norway by requiring savings and commercial banks to have their registered office and head office in Norway or any other EEA country: *CBA s.8 and SBA s.3*.

a6.4. **Criterion 26.3** – Norway has legal and regulatory procedures in place to prevent criminals or their associates from holding a significant or controlling interest, or holding a management function in a reporting FI. Approval from the MoF is required to acquire/dispose of shareholdings in a bank, insurance company, finance company or mortgage company that go beyond defined thresholds (10%, 20%, 25%, 33% and 50%) or would allow the shareholder to exercise significant influence on the management of the credit institution or its business ("qualifying holding"): *FIA s.2-2*. Engaging in financial activities without being licensed or registered is a criminal offence which could lead to a criminal investigation, prosecution and conviction: *FIA s.5-1, CBA ss.42-43 and SBA ss.58-59*.

a6.5. The FSA conducts fit and proper tests when a reporting FI is granted a license. The FSA assesses the fitness and propriety of the board members, the managing director or other persons directly in charge of a FI (as the key functionalities) to assure proper and adequate management of the entity and its activities: *FSA Circular 5/2012*. This process includes a criminal record check and a self-declaration form. A licence shall be refused if the key functionalities cannot be deemed fit and proper: *CBA s.8a; SBA s.3; SFA ss.2-3 and 2-7(1)(2); FIA s.2-4 and 3-3; IA ss.2-1 and 2-2; and STA s.9-9*, or, alternatively, the FSA can order an FI to replace a person not deemed fit and proper before issuing the licence. Investments firms, management companies for securities funds, securities register, regulated market, debt-collecting businesses, real estate agents, foreign branches of Norwegian insurance and pensions companies and savings banks are obliged to notify the FSA of any changes in key functionalities, and the FSA will conduct a fit and proper test. However, there is no similar requirement for commercial banks, and all insurance and finance companies, although these entities are required to ensure that the fit and proper requirements are met at all times and the FSA considers this in its supervision activity.

a6.6. **Criterion 26.4** – The FSA's regulation and prudential supervision of banks, investment firms and management companies as well as insurance businesses is centred on the Basel, IOSCO and IAIS core principles and Norway reports that AML/CFT supervision is coordinated with this approach. However, even though Norway states that all core principles FIs are subject to supervision on a risk-sensitive basis, it is difficult to conclude that ML/TF risks are adequately taken into account when determining priorities for AML/CFT supervision as explained below. AML/CFT supervision, including the application of consolidated group supervision, is conducted as part of overall supervision and is supplemented with specific thematic AML/CFT reviews. Insurance companies have been subject to prudential supervision but the first AML/CFT inspection as part of a more general prudential supervision took place during the on-site visit without an AML/CFT specific methodology supporting the inspection. In addition, AML/CFT supervision in the securities

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sector has only formed a minor part of the broader on-site inspections.

a6.7. The determination of which FIs should be subject FSA on-sites inspection is to a large extent based on prudential information and not ML/TF risk. The first step for the FSA in the assessment general risks associated with reporting FIs consists of looking at the institutions' specific characteristics, including the licences on the basis they operate, and the market share they represent. This initial assessment is based on information from quarterly reporting by the FIs and information from a broad range of both internal and external sources, such as FSA contacts in the context of licensing and organisational or procedural changes, complaints filed against the FIs, media surveillance, general developments in the markets the FIs operate, and publicly available information on specific FIs. However, the quarterly reports do not generally contain any AML/CFT specific information. The next step consists of identifying the operational risks individual FIs represent as the FSA considers ML/TF risk to be an integral part of the operational risk.

a6.8. Norway reports that other reporting FIs are also subject to regulation and supervision on a risk-sensitive basis. However, this statement is difficult to accept, especially when it comes to MVTS providers. While MVTS services present by their nature a higher risk, the FSA only monitors AML/CFT compliance via off-site or document based supervision and has not yet undertaken any on-site inspections of authorised MVTS providers. In the context of off-site supervision, MVTS providers are required to file a semi-annual report to the FSA with details on monitoring and reporting of suspicious transactions and, in some instances, information collected as part of the CDD process. In addition, as part of the renewal of MVTS providers' "waiver authorisation", the FSA also assesses the information reported on AML/CFT procedures. Moreover, the FSA does not monitor the AML/CFT compliance of MVTS providers from the EEA which have agents or branches in Norway even though these are subject to the *MLA* (see R.14 above for further details on MVTS). Foreign exchange activities may only be carried out by banks, finance companies and EEA branches of such undertakings: FIA chapter 4a. These activities are supervised as part of the overall supervision of these reporting FIs.

a6.9. **Criterion 26.5** – ML/TF risks play a limited role when determining the frequency and intensity of on-site and off-site AML/CFT supervision. The FSA has 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 even though the FSA recognises the need to lay down the principles for an ML/TF risks classification in writing. While compliance with AML/CFT measures is assessed (for instance, identification of beneficial owners and sources of funds, suspicious transaction reporting), the AML/CFT assessments are mostly part of an overall inspection of the reporting FIs. In addition, in the absence of a reliable formal risk assessment, including a risk assessment of reporting FIs as referred to above, it is difficult to conclude that Norway has a sound basis to decide on the frequency and intensity of on-site and off-site AML/CFT supervision.

a6.10. **Criterion 26.6** – As set out above, the FSA has only limited documentation to support institution specific ML/TF risk assessments, including the ML/TF risk profile of individual FIs. While organisational and procedural changes are a set of factors to be considered for prioritisation of prudential supervision of reporting FIs, the FSA has no specific processes in place to review the assessment of the ML/TF risk profile of individual reporting FIs either periodically or when a major event occurs.

a6.11. **Weighting and conclusion:** The FSA does not undertake AML/CFT supervision on the basis of ML/TF risk (c.26.5) which is a serious deficiency. In addition, the limited supervision of certain sectors (MVTS, insurance and securities) is a concern given the ML/TF risks posed in the MVTS and securities sectors. **Norway is rated PC with R.26.**

Recommendation 27 – Powers of supervisors

a6.12. In its 3rd MER, Norway was rated LC with these requirements (paragraphs 311-9 and 331).

a6.13. **Criterion 27.1** – As indicated in relation to R.26 above, the FSA is Norway's competent authority for regulating and supervising Norway's financial sector entities, including for AML/CFT purposes: *FS Act*, ss.2 and 3. It has the responsibility to ensure that reporting FIs have adequate policies, procedures and practices in place to comply with AML/CFT requirements.

a6.14. **Criterion 27.2** – The FSA has comprehensive inspection and monitoring powers, including the power to conduct on-site inspections and off-site reviews: *FS Act* s.3. There are however no written regulations or guidelines prescribing the procedure that the FSA must follow for on-site inspections, particularly on how to assess compliance with AML/CFT obligations and what actions to take when breaches of AML/CFT legislation are detected.

a6.15. **Criterion 27.3** – The FSA has the power to compel production of or obtain access to reporting FIs' records without the need for a court order. Reporting FIs are obliged to provide the FSA with all the information it requires to conduct these inspections and reviews. If a reporting FI fails to comply with this requirement, then the FSA may impose this disclosure obligation on the reporting FI's officers and employees: *FS Act* s.3. Moreover, a reporting FI's auditor may be ordered to disclose information that appears in the annual financial statements, account forms, staff pay summaries and deduction sheets, auditor's records and auditor's report: *FS Act* s.3a.

a6.16. **Criterion 27.4** – The FSA is authorised to impose a range of sanctions against reporting FIs that do not comply with Norwegian law, including AML/CFT requirements. Depending on the gravity of the failure to comply with AML/CFT requirements, the FSA can impose disciplinary and financial sanctions on reporting FIs and their officers/employees: *FS Act* ss.6 and 10; *MLA* ss.27 and 28. However, apart from coercive fines, financial sanctions can only be imposed if criminal procedures are brought. As explained in more detail in relation to R.35 below, the sanctions provisions both in the *MLA* and the *FS Act* cannot be considered to be proportionate and dissuasive, especially for directors and senior management.

a6.17. **Weighting and conclusion:** The only deficiency is that relating to sanctions (c.27.4). **Norway is rated LC with R.27.**

Recommendation 28 – Regulation and supervision of DNFBPs

a6.18. In its 3rd MER, Norway was rated LC with these requirements (see paragraphs 359 to 376). R.28 puts an enhanced focus on the risk-based approach to supervision and monitoring. The minor scope issue regarding casinos identified above has a negative impact on Norway's compliance with R.28.

a6.19. **Criterion 28.1** – As outlined above in the preamble, casinos are not reporting entities and therefore not subject to supervision for AML/CFT compliance. However, as noted above at paragraphs 251-252, land-based casinos are prohibited and entities offering casino-style gaming on ships and through the Internet are required to be licenced and have strict controls in place to restrict gambling. There are only two such entities currently licenced. Foreign companies also offer internet gaming in Norway but this activity is not regulated. In all cases, there are no legal or regulatory measures in place to prevent criminals or their associates from holding a significant or controlling interest, or holding a management function in the companies offering the casino games which are licenced.

a6.20. **Criterion 28.2** – The FSA is Norway's competent authority for monitoring and ensuring compliance with AML/CFT requirements for real estate agents, and accountants and auditors: *FS Act* ss.2-3. The Supervisory Council for Legal Practice is the AML/CFT regulatory and supervisory authority for lawyers and other independent legal professionals (*CJA* s.225). Norway has no designated competent authority for AML/CFT monitoring and supervision of TCSPs and dealers in precious metals and stones.

a6.21. **Criterion 28.3** – The FSA has the responsibility to ensure that real estate agents, and accountants and auditors have adequate policies, procedures and practices in place to comply with AML/CFT requirements: *FS Act* ss.2-3. The Supervisory Council for Legal Practice examines lawyers' files and books to determine whether lawyers are complying with their legal obligations, including those related to AML/CFT and specifically verifies that AML/CFT controls are in place: *Regulation for Lawyers* s.4-7. Norway also reports that as a matter of routine, the Supervisory Council looks into suspicions of unlawful activities by lawyers, including ML/TF. TCSPs and dealers in precious metals and stones are currently not subject to any system for monitoring compliance with their AML/CFT obligations.

a6.22. **Criterion 28.4** – *Adequate powers to perform functions:* The FSA's powers to monitor compliance

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with AML/CFT obligations are explained in criteria 27.2-3 above. These powers, which include the power to conduct on-site inspections and compel documents, equally apply in relation to real estate agents, and accountants and auditors. The general statutory power to inspect lawyers can be found in the *Regulation for Lawyers* s.4-5. The power of the Supervisory Council to conduct AML/CFT specific controls as part of financial audits is included in the *Regulation for Lawyers* s.4-7.

a6.23. **Measures to prevent criminal ownership or management:** A person who carries out the activity of real estate agent needs to either be licensed by the FSA or be licensed as a lawyer who has specifically provided security (a financial guarantee of minimum NOK 30 million (EUR 3.9 million): *REAA* s.1-2. The FSA assesses the fitness and property of the natural person or, in case of a legal person, of the owner, managing director or other persons directly in charge to assure proper and adequate management of the real estate agent's activities: FSA Circular 5/2012. In addition, applicants must submit a police certificate and meet certain professional criteria. The FSA also licenses external accountants (both natural and legal persons) and conducts fit and proper tests based on the same Circular.

a6.24. Lawyers must be licensed by the Supervisory Council to practise law: *CA* s.218. To obtain a licence, a person must have a law degree and present documentation establishing blameless conduct: *CA* s.220. The Supervisory Council requests the submission of a police certificate that is not older than three months at the time of the application and an auditor must be involved for checking the lawyer's potential compliance with AML/CFT measures (i.e. whether there are routines on control and reporting).

a6.25. **Sanctions in line with R.35 to deal with failure to comply with AML/CFT requirements:** Consistent with what is mentioned in relation to c.27.4 above, the FSA is authorised to impose a range of sanctions against real estate agents, accountants and auditors that do not comply with Norwegian law, including AML/CFT requirements. The FSA can impose disciplinary and financial sanctions on these reporting DNFBPs and their directors, officers, and employees: *FS Act* ss.6 and 10; *MLA* ss.27 and 28. However, apart from coercive fines, financial sanctions can only be imposed if criminal procedures are brought. The Supervisory Council has the power to apply sanctions under ss.27 and 28 of the *MLA* and s.225 of the *CA*. The latter provides the power to give a reprimand, issue a warning or revoke the licence of the lawyer. However, concerns exist with the level of sanctions (see R.35 below).

a6.26. **Criterion 28.5** – The FSA supervises real estate agents and accountants and auditors on the basis of on a risk-sensitive basis, primarily relating to prudential and business conduct risks. Priorities for on-site inspections are mainly set for prudential and other supervision, and are based on external sources of information, such as professional bodies (NARF and DnR), the tax authorities, bankruptcy estates, the police and cases in the media. Accountants and auditors provide some feedback on their AML/CFT measures by answering questions as part of a general semi-annual activities report they file with the FSA but this is not considered to provide a sound basis for an AML/CFT specific risk assessment. The FSA has no specific methodology to assess the ML/TF risks these DNFBPs present or establish their individual ML/TF risk profiles. Although the FSA will give priority to those professionals for who there are clear indications of non-compliance with AML/CFT obligations (based on the self-assessment questionnaire), ML/TF risks are only taken into account to a limited extent when determining which individual reporting entities will be inspected. In addition, AML/CFT supervision is one aspect looked at during both on-site and off-site inspections. While the FSA reports that it also conducts thematic inspections, these do not appear to relate to AML/CFT but rather to accounting or auditing practices. AML/CFT supervision of lawyers is also conducted in a much broader context and the risk-sensitive basis for deciding on the frequency and intensity of supervision is not based on ML/TF risks.

a6.27. **Weighting and conclusion:** The absence of a supervisor for TCSPs and dealers in precious metals and stones is an important scope issue for R.28. In addition, supervision is not carried out on the basis of ML/TF risk, and sanctions are not proportionate and dissuasive. **Norway is rated PC with R.28.**

A6

Recommendation 34 – Guidance and feedback

a6.28. In its 3rd MER, Norway was rated PC with these requirements. Norway took action to address some of the deficiencies identified in the MER and Norway's 4th FUR concluded that Norway had raised its compliance

with the FATF's requirements to a level essentially equivalent to LC (paragraphs 77-81).

a6.29. **Criterion 34.1 – Supervisors:** In June 2009, the FSA issued Circular 8/2009 which contains general AML/CFT guidelines to assist reporting entities with the implementation of the *MLA* and *MLR*. This Circular, which is non-binding and was developed in cooperation with industry organisations, contains no examples of how effective implementation of the key building blocks of Norway's AML/CFT regime, including the application of the RBA and the detection of suspicious transactions, can be achieved. The FSA Circular 13/2006 issued in June 2006, which contains specific and tailored AML/CFT guidelines for auditors and external accountants, has not been updated even though the *MLA* has been substantially changed in 2009. Norway explains that it should be read together with Circular 8/2009. In November 2013, the FSA issued revised guidance on how to comply with the obligations to freeze terrorist related assets.

a6.30. The FSA is to a limited extent involved in AML/CFT education and training covering the entire financial sector, and primarily on an ad hoc and reactive basis. It contributes to the yearly AML/CFT conference which is organised in cooperation with the FIU and the industry association, Finance Norway. While the FSA has contributed to the delivery of presentations and training sessions on legislative issues and trends to the 270 participants, the majority was delivered by the FIU and Finance Norway. The FSA only proactively provides feedback on an ad hoc and limited basis. Norway provided one example of this when, in 2011, the FSA sent a public letter to the boards of financial institutions with a summary report from the thematic inspections in 2010 relating to AML/CFT. This is not a consistent or regular practice. Since November 2007, the FSA and the FIU operate the website www.hvitvasking.no which contains information regarding AML/CFT, including laws and regulations; announcements from the public sector; court decisions; news from the FATF, the EU, the Egmont Group, etc.; and typologies and trends.

a6.31. **FIU:** The FIU has assigned a staff member responsibility for compliance in relation to reporting entities. Feedback is provided on a regular basis both via follow-up from the person responsible for compliance at the FIU and via the analysts in connection with specific cases. In addition, FIU staff give lectures at seminars attended by reporting entities. Because of the diverse audience during these seminars, only general feedback is provided. However, during private sector specific seminars the FIU gives more focused feedback regarding the quality and the use of STRs with the aim to improve their quality. The FIU's IT system *Ask* enables a better structure for follow-up of reporting entities by providing better data for this purpose. *Ask* sends an automatic response to reporting entities confirming receipt of an STR within three days and also sends alerts to reporting entities when an STR they reported is being further analysed. The FIU provided the assessment team with a comprehensive overview of its training activities. For example, the FIU in coordination with the MoJ recently conducted outreach to small and medium sized FIs in the regions as part of the program, *Round Norway*. While this program focused on LEAs, the FIU also visited FIs to raise awareness and give feedback on the importance of filing high-quality STRs. The FIU also operates a "hot line" for reporting entities seeking practical guidance on their reporting obligations.

a6.32. **Law enforcement authorities:** The PST is also engaged in providing feedback on CFT, including typologies, to both public and private sector entities, often in cooperation with the FIU. This feedback is provided both on a case-by-case basis and through participation in training sessions and seminars. When PST gives lectures, it focuses on the importance of financial intelligence and STRs. Norway was unable to provide the assessment team with examples of feedback from other LEAs to the reporting entities.

a6.33. **Weighting and conclusion:** While the FIU and PST provide valuable feedback to reporting entities on STRs and TF issues, an important deficiency is the limited guidance provided by the FSA and lack of proactive engagement with the private sector. **Norway is rated LC with R.34.**

Recommendation 35 – Sanctions

a6.34. Norway was rated LC with these requirements. The main deficiencies were that there was a lack of clarity as to whether or not sanctions (whether civil or criminal) were applicable to directors and senior management, in addition to legal persons.

SUPERVISION

a6.35. **Criteria 35.1 & 35.2** – The FSA is authorised to impose a limited range of sanctions against reporting FIs (i.e., FIs and DNFBPs other than casinos) that do not comply with AML/CFT requirements. Supervisors may issue orders to reporting entities to cease contravening provisions of the *MLA* and set time limits for doing so. They may also impose “coercive” fines (either single or recurrent fines) on reporting entities that fail to comply with such orders. The MoF has regulation-making authority concerning the imposition of such coercive fines, including their amount, though no regulations have been issued to date. In the absence of any regulations, it is unclear what the amount of those fines would be. The FSA has flexibility to assess what is reasonable and dissuasive, and generally considers that for all laws for which it is the supervisor, that coercive fines of NOK 250 (EUR 32.50) per day per employee are appropriate. However, the lack of transparency of the amounts reduces the dissuasiveness of the fines to reporting entities. In addition, coercive fines can only be imposed on reporting entities, and not on natural persons such as directors and senior management of the entity: *MLA* s.27.

a6.36. There are no administrative penalties for breaches of the *MLA*. However, criminal penalties may apply. Persons (natural and legal) are liable to fines for wilfully or with gross negligence contravening a defined subset of provisions of the *MLA* and, in the case of aggravated circumstances, to imprisonment of up to one year. This is also applicable to the directors and senior management. However, this provision is limited to the contravention of only eight sections of the *MLA*: s.28 (being s.5 (RBA), 6-8 (CDD), s.15 (enhanced CDD), s.17-18, 22 (STRs)). These eight sections do not cover some of the fundamental building blocks of Norway’s AML/CFT regime, including certain CDD requirements (e.g. timing, third parties and reliance), the obligation to apply on-going monitoring, corresponding banking relationship requirements, internal control requirements, and the tipping-off provisions. In addition, such fines can only be imposed if criminal procedures are brought. The level of fines would be determined by the court taking into account the nature of the offence and the financial position of the person: *PC* s.27.

a6.37. The sanctions provisions of the *MLA* are complemented by the powers in the *FS Act*: s. 4. These include withdrawing, restricting or suspending the licence of the reporting FI, fines and orders to rectify deficiencies. The FSA can order an institution it supervises to correct a failure to discharge its duties as required by law: *FS Act* s.4(7). Contravention of provisions applying to such institutions may also be reported to the relevant prosecuting authority: *FS Act* s.6. Any person, officer or employee of an institution under the FSA’s supervision is liable to fines and/or imprisonment up to one year for wilfully or through negligence contravening an order issued by the FSA, and in aggravated circumstances, to imprisonment of up to three years: *FS Act* s. 10. Again, these fines can only be imposed if criminal procedures are brought. This provision equally applies to directors. In addition, the FSA may take into account breaches of the *MLA* by directors and senior management in its assessment of fit-and-proper person requirements.

a6.38. Persons who wilfully violate regulations to implement targeted financial sanctions related to terrorism and TF pursuant to the *Act relating to the implementation of mandatory decisions of the Security Council of the United Nations* are liable to a fine or imprisonment not exceeding three years or both. Persons who negligently violate or negligently contribute to the violation of such regulations are liable to a fine or imprisonment up to six months, or both: s.2.

a6.39. **Weighting and conclusion:** While overall the *MLA* and the *FS Act* provide the FSA with a range of sanctions, these sanctions are not proportionate and dissuasive, especially for directors and senior management. The lack of clarity over the application of coercive fines is a serious concern relating to their dissuasiveness. In addition, the ability to sanction senior management and directors is limited, as administrative sanctions cannot be imposed. Importantly criminal sanctions, while applicable to natural persons, do not cover several of the essential AML/CFT requirements. **Norway is rated PC with R.35.**

Table of Acronyms

3AMLD	EU 3rd Anti-Money Laundering Directive
AA	Auditors Act
AC/AML Project	Anti-corruption and Money Laundering project
Action Plan 2000	Norwegian Government's Action Plan for Combating Economic Crime 2000
Action Plan 2004	Norwegian Government's Action Plan for Combating Economic Crime 2004
AEAA	Authorisation of External Accountants Act
Al-Qaida Regulations	Regulation on sanctions against Al-Qaida of 22 December 1999
AML	Anti-money laundering
AMLD	EU Anti-Money Laundering Directive
ANSC	Association of Norwegian Stockbrokers Companies
BERA	Business Enterprise Registration Act
BNI	Bearer Negotiable Instruments
BRC	Bronnoysund Register Centre
C	Compliant
CA	Customs Act
CBA	Commercial Banks Act
CCR	Central Coordinating Register for Legal Entities
CCRA	Central Coordinating Register for Legal Entities Act
CDD	Customer due diligence
CFT	Counter-terrorist financing
CJA	Court of Justice Act
Circular 9/2004	FSA Circular 9/2004 of 15 April 2004
CLA	Courts of Law Act
COE Corruption Convention	Council of Europe Criminal Law Convention on Corruption
Control Committee	Control Committee for Measures to Combat Money Laundering
Control Committee Regulations	Regulation on the Control Committee for Measures to Combat Money Laundering
CPA	Criminal Procedure Act
CRA	Currency Register Act
CRR	Currency Register Regulations
Customs	Directorate of Customs and Excise
DGPP	Director General of Public Prosecutions
DNFBP	Designated non-financial businesses and professions
DnR	Norwegian Institute of Public Auditors
DOB	Date of birth
DPA	Data Protection Authority
DPP	Director General of Public Prosecutions
EA	Extradition Act
ECHR	European Court of Human Rights
EEA	European Economic Area
Egmont Principles for Information Exchange	Egmont Principles for Information Exchange Between Financial Intelligence Units for Money Laundering Cases

TABLE OF ACRONYMS

EU	European Union
EU Extradition Convention	European Convention on Extradition
EUR	Euros
FATF	Financial Action Task Force
FCA	Financial Contracts Act
FIA	Financial Institutions Act
FIU	Financial intelligence unit
FNH	Norwegian Financial Services Association
FSA	Financial Supervisory Authority (Kredittilsynet)
FS Act	Financial Services Act
FSA Regulations	Regulations concerning the exchange of information with supervisory authorities from countries within and outside the EEA
FT	Financing of terrorism / terrorist financing
HSH	Federation of Norwegian Commercial and Service Enterprises
FUR	Follow-up report
IA	Insurance Act
ISA	International Standards on Auditing and related services
IOPS	International Pension Supervisors Group
IT	Information technology
KRIPOS	National Criminal Investigation Service
LEA	Law Enforcement Agency
LLC Act	Limited Liability Companies Act
LC	Largely compliant
MFA	Ministry of Foreign Affairs
ML	Money laundering
MLA	Money Laundering Act
MLA Prep. Works	Preparatory Works of the Money Laundering Act
MLR	Money Laundering Regulations
MoF	Ministry of Finance
MoJ	Ministry of Justice and Public Security
MOU	Memorandum/memoranda of understanding
MVTS	Money or value transfer service (i.e. money remitter / alternative remittance service)
N/A	Non Applicable
NARF	Norges Autoriserte Regnskapsføreres Forening (Association of Authorised Accountants)
NAST	National Authority for Prosecution of Organised and Other Serious Crime
NBA	Norwegian Bar Association
NC	Non-compliant
NCB	Non-conviction based
NEA	Nordic Extradition Act
NHO	Confederation of Norwegian Business and Industry
NIPA	Norwegian Institute of Public Auditors
NMFA	Norwegian Mutual Fund Association

TABLE OF ACRONYMS

NOK	Norwegian Kroner
NPD	National Police Directorate
NRA	National Risk Assessment
OECD Bribery Convention	OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
ØKOKRIM	National Authority for Investigation and Prosecution of Economic and Environmental Crime
PA	Police Act
PAA	Public Administration Act
Palermo Convention	United Nations Convention against Transnational Organised Crime (2000)
PC	Partially compliant
PC	Penal Code
PCCC	Police Computer Crime Centre
PEP	Politically exposed person
PLLC Act	Public Limited Liability Companies Act
PF	Proliferation financing
POB	Place of birth
Police Academy	National Police Academy
Police Directorate	National Police Directorate
Population Register	Norwegian Population and Employer Register
Prosecution Authority	Government body responsible for conducting criminal prosecutions (headed by the Director General of Public Prosecutions)
PSP	Payment services provider
PST	Norwegian Police Security Service
PSD	EU Payment Services Directive
RBA	Risk-based approach
RCA	Regulations to the Customs Act
REAA	Real Estate Agency Act
REBA	Real Estate Business Act
Reg.1102	Regulation no.1102 of 30 November 1998 concerning exchange of information with supervisory authorities from countries within and outside the EEA
Regulations on International Cooperation	Regulations relating to International Cooperation in Criminal Matters
Reporting DNFBP or Reporting Designated Non-Financial Businesses and Professions	All non-financial businesses or professions that are obligated to comply with the Money Laundering Act and Regulations
Reporting entity	All entities that are obligated to comply with the Money Laundering Act and Regulations
Reporting FI or Reporting Financial Institution	All financial institutions that are obligated to comply with the Money Laundering Act and Regulations
RFA	Regulations for Advocates
ROK	Advisory Council for Combating Organised Crime
SBA	Savings Banks Act
SFA	Securities Funds Act

TABLE OF ACRONYMS

S/RES/	United Nations Security Council Resolution
SRB	Self-regulating body
SSB	Statistics Norway
STA	Securities Trading Act
STR	Suspicious transaction report
Strasbourg Convention	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 1990
Supervisory Council	Supervisory Council for Legal Practice
Taliban Regulations	Regulation on sanctions against Taliban of 8 November 2013
Tax Bulletin	Tax Directorate Bulletin of 5 November 2003
Tax Directorate	Directorate of Taxes
TCSP	Trust and company service provider
Terrorist Financing Convention	United Nations Convention for the Suppression of the Financing of Terrorism (1999)
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNCTC	United Nations Counter Terrorism Committee
UNSC	United Nations Security Council
USD	United States Dollars
Vienna Convention	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988