EVALUATION OF NORWAY

FIRST BIENNIAL UPDATE

Report from Norway

Norway presents this first biennial update report on the legislative and other measures taken subsequent to Norway's fourth follow-up report made in June 2009.

NORWAY BIENNIAL UPDATE – JUNE 2011

INTRODUCTION

1. The third mutual evaluation report (MER) of Norway was adopted by the Plenary on 10 June 2005. While subject to regular follow up, Norway reported back to the Plenary in June 2007, June 2008 and February 2009. In the fourth regular follow-up report, FATF/PLEN(2009)32, Norway applied to be moved from the regular follow-up procedures to biennial updates. This was granted by the Plenary at the meeting in Lyon on 24 June 2009.

2. The mutual evaluation follow-up procedures indicate that, for a country to have taken sufficient action to be considered for removal from the process, it must have an effective AML/CFT system in force, under which it has implemented all core and key Recommendations at a level essentially equivalent to C or LC, taking into account that there would be no re-rating. The Plenary does, however, retain some limited flexibility with regard to the key Recommendations if substantial progress has also been made on the overall set of Recommendations that have been rated PC or NC. This flexibility was used in Norway's case. The fourth follow-up report addressed all FATF Recommendations and Special Recommendations that where rated PC or NC in the MER and, in addition, one recommendation, R.9, which was not applicable when the MER was established, but which had become so later. The current update addresses the Recommendations where deficiencies were considered to still remain after the fourth follow-up report, and does so in the same sequence as in the follow-up report.

3. Deficiencies identified in the MER concerning implementation of the various recommendations were quoted in the follow-up report, discussed, and evaluated. How the deficiencies had been dealt with by Norway were characterized either in a positive way as "adequately addressed", "substantially addressed", "fully addressed" and the like, or in a negative way as "not adequately addressed", "partially addressed", "not being addressed" or similar expressions. The current update is limited to provide comments to those parts of the follow-up report where stated assessments have been perceived as negative in the sense of not being up to the standards.

RECOMMENDATIONS

Recommendation 5

4. The overall conclusion concerning Recommendation 5 was positive in the follow-up report: «Norway has significantly enhanced its legal framework of CDD measures to a level that is essentially equivalent to an LC», cf. para. 40 of the report. However, certain concerns were expressed in relation to some of the deficiencies identified in Norway's MER. This related to verification of beneficial owners (deficiency 3 and 5), to enhanced and simplified CDD (deficiency 7), to the issue of filing an STR when CDD cannot be completed (deficiency 8), and to the application of CDD to existing customers (deficiency 9). The benefit of further guidance from the Financial Supervusory Authority (FSA) to reporting entities was mentioned. Comments to these various points are provided below.

R. 5 (Deficiency 3): If a Reporting FI knows or has reason to believe that a customer is acting as a (legal) representative of another, on behalf of another, or that another person owns the asset that is

the subject of a transaction, the FI is required to identify that other person (MLA s. 6). Other than this, there is no other requirement to identify a beneficial owner within the meaning of the FATF Recommendations (i.e. the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted, and incorporating those persons who exercise ultimate effective control over a legal person or arrangement). (MER par. 214)

R. 5 (Deficiency 5): Reporting FIs are also not required to obtain information relating to the shareholding or any corporate group behind a customer who is a legal person.

5. The FSA has published guidelines with regards to what constitutes "reasonable measures related to verification of the identity of beneficial owners". Reference is made to Circular No. 8/2009 ("the Circular") (published 23 June 2009) pages 19. – 20 (2.7.5):

> "Section 7 of the Money Laundering Act stipulates that the identity of beneficial owners must be confirmed on the basis of reasonable measures. Confirmation (verification) of the identity of beneficial owners must be conducted on the basis of a risk assessment.
>
> The Money Laundering Act and Regulations stipulate qualitative criteria regarding proof of identity when applying customer due diligence measures in that they contain requirements concerning valid proof of identity. No corresponding formal requirement applies to the confirmation of the identity of beneficial owners.
>
> When it comes to which sources can be used to confirm identity, the entity with a reporting obligation is free to choose. For example, the entity with a reporting obligation can use public registers of beneficial owners, request relevant data from the customer, or obtain relevant information in some other manner. Information about ownership may also appear in the notes to an enterprise's financial statements. The important thing is that the measures are regarded as suitable for confirming identity. In those cases where the risk is considered small it should therefore be sufficient for an entity with a reporting obligation to confirm the identity of the beneficial owner on the basis of information provided by the customer. Information can be obtained verbally, but the recording requirement in Section 8 of the Money Laundering Act means the information must be recorded in writing.
>
> The documentation available to confirm the identity of beneficial owners will vary depending on the type of legal person. The Ministry is of the opinion that it will normally be sufficient to present a share register/printout from the share register, deed of partnership or deed of association, Proposal No. 3 (2008-2009) to the Parliament, page 69.
>
> In the case of companies, the share register and deed of partnership might provide information about ownership. A greater degree of verifiability can normally be attained for public limited companies and limited companies by using shareholder registers in the securities registry. Finanstilsynet assumes that in the case of Norwegian companies there will usually be no problem confirming the identity of beneficial owners based on the information that must be obtained through ordinary customer due diligence measures and which is supposed to result in the entity with a reporting obligation understanding the ownership and control structure of the customer. In the case of foreign legal persons access to information about beneficial owners may in many cases be severely limited. Finanstilsynet assumes that here too it will, in practice, be usual for the entity with a reporting obligation to ask the customer to present documentation about the beneficial owners.
>
> Foundations have a duty to register in the register of foundations. The foundation's charter must stipulate, among other things, the purpose of the foundation, cf. Section 8 of the Foundations Act.

The information that exists about any natural persons who benefit from the foundation could very well vary depending on the formulation of its purpose."

R. 5 (Deficiency 7): There is no enhanced CDD legislation for higher risk categories of customers. Nor does Norwegian legislation provide for any simplified or reduced CDD measures. (MER par. 215)

Enhanced CDD

6. The FSA has published a non-exhaustive list of examples of "high risk" situations other than PEPs and correspondent banking in the Circular pages 28-29:

"Examples of situations and transactions that could entail a high risk of money laundering and terrorist financing:

- The transaction appears to lack a legitimate purpose. This could, for example, be a transaction where money is going to move back and forth between various accounts within a given timeframe, that the same amount goes back and forth between different institutions in relation to a given transaction, and that a larger sum is split into multiple smaller sums but collected together again in a new account.

- The transaction is unusually large or complex, or unusual in relation to the customer's known business related or personal transactions. This requires a concrete assessment of the situation. The institution must use its knowledge about the individual customer. The "know your customer" principle is absolutely key here.

- The transaction is made to or from a customer in a country or region without adequate measures against money laundering or terrorist financing. Particular diligence must be exercised here in relation to transactions outside the FATF region. There is reason to be particularly observant with respect to transactions with customers or institutions in countries with inadequate regulations and supervision with respect to measures against money laundering and terrorist financing, strict secrecy regulations, and which offer high returns and tax exemption. FATF's website, www.fatf-gafi.org, can provide further information and useful background information about measures against countries and regions that are not cooperating in the fight against money laundering and terrorist financing. Finanstilsynet also provides similar information about such countries and territories, including concrete notifications, on its website under the heading "Kunngjøringer fra FN, FATF samt lignende kunngjøringer" (Notifications from the UN, FATF and similar notifications). Therefore, the people responsible for money laundering in an entity with a reporting obligation must regularly monitor these websites to update themselves on this area.

One area that can be especially vulnerable to money laundering and terrorism financing is currency activities. Such activities include currency exchange and systems for overseas payment transactions. Please refer here to the detailed discussion on pages 54-64 of the Proposition to Parliament No. 81 (2002-2003) and to the preface of EU Commission Directive 2006/70/EC, point 13, (incorporated into Proposition to Parliament No. 70 (2006-2007), which states that "Some financial activities, such as money transmission or remittance services, are more likely to be used or abused for money laundering or terrorist financing purposes."

The EU List, the OFAC List and other international lists of terrorists and terror organisations also provide very important and valuable information about customer relationships and transactions that are high risk in relation to terrorist financing and money laundering.

FATF provides the following examples of customer relationships and transactions that may entail a high risk of money laundering:

Examples of higher risk categories (which are derived from the Basel CDD Paper) may include:

a) Non-resident customers,

b) Private banking,

c) Legal persons or arrangements such as trusts that are personal assets holding vehicles,

d) Companies that have nominee shareholders or shares in bearer form.

Types of enhanced due diligence measures may include those set out in Recommendation 6.

There is thus reason to be particularly vigilant with respect to business areas where there is little or no personal contact with the customer. The institutions must be able to fulfil their scrutiny obligations, including in those cases where the Internet or other electronic systems are used by customers."

7. The relevant examples of "high risk situations" which FATF Expert Group A has identified during its work will be published on www.hvitvasking.no as soon as the work of the Group has been completed.

8. The FSA has also published on page 27 of the Circular not exhaustive examples of enhanced customer due diligence measures in situations with an assumed high risk of money laundering or terrorist financing:

> "Finanstilsynet believes that obtaining additional information about the customer relationship, stricter electronic and manual monitoring of the customer relationship and the transactions are examples of such measures. The examples are not exhaustive and the supervisory authority believes entities with a reporting obligation must make the necessary risk-based adjustments."

Simplified CDD

9. In para 33 of the follow-up report some concerns were expressed regarding simplified CDD in relation to customers within the EU/EEA area as it was stated that there is no clear checks whether all countries within this area have effectively implemented the provisions of R. 5. As mentioned under R. 9 below, the FSA will shortly publish a supplement to its guidelines referring to various FATF documents where information may be found on the implementation status of FATF recommendations in various jurisdictions. This supplementary text will also be relevant for the application of simplified CDD, and a reference to that will be made.

R. 5 (Deficiency 8): There is no obligation not to open an account, not establish a business relationship, consider making an STR or (in the case of existing customers) terminate the business relationship in instances where the beneficial owner cannot be identified or information concerning the purpose and intended nature of the business relationship cannot be obtained. This is because there is no obligation to collect this information in the first place. (MER par. 220)

10. The FSA's Circular page 35 addresses deficiency 8. In the Circular the fact that CDD cannot be completed is listed as an example of a situation that should trigger a suspicious transaction report to ØKOKRIM (of which the Norwegian financial intelligence unit (FIU) is a part):

> "If an entity with a reporting obligation cannot apply the full range of customer due diligence measures, the institution should consider reporting the transaction or situation to ØKOKRIM. This obligation is regarded as covered by the general obligation to report suspicious transactions pursuant to Section 18 of the Act, see Clarification on page 44."

R. 5 (Deficiency 9): There are no legal or regulatory measures in place as to how Reporting FIs should apply CDD measures to their existing pool of customers. There is no legal requirement for a customer's identity to be re-verified upon a subsequent enlargement of the customer relationship in the same institution (i.e. the opening of a new account, writing a new insurance policy, etc). (MER par. 221)

11. The FSA has also issued guidelines as regards application of CDD measures to institutions' existing pool of customers, cf. the Circular point 1.5 on page 8:

> "1.5 The transition to new rules – due diligence measures applied to existing customers and beneficial owners
>
> The introduction of new, stricter customer due diligence requirements raises the question of how reporting entities should relate to existing customers.
>
> Reporting entities must apply due diligence measures to their existing customers when required under section 6 of the Money Laundering Act, and on-going monitoring under section 14, on the basis of a risk assessment. The Act does not require renewed due diligence of all existing customers under the new rules when the Act enters into force, including due diligence of de facto beneficial owners and gathering of information about the purpose and intended nature of the customer relationship. However, the reporting entity must, based on a risk assessment, consider whether previously obtained information about the customer is correct or sufficient; see section 6 first paragraph no. 4. Where the identity of a customer has been confirmed under the rules governing checks on identity documents under previous money laundering legislation, risk can in general be assumed to be low unless there are circumstances indicating otherwise. Changes in the nature or scope of a customer relationship may call for new, more thorough due diligence."

Supervisory activities related to AML/CFT legislation, including Rec. 5 and risk based CDD measures

12. Finanstilsynet has during 2010 conducted 13 thematic AML inspections in banks and finance companies. These inspections comprised the AML obligations which entered into force 15. April 2009 (transposition of EU Directive 2005/60/EC) and included i.a risk based customer due-diligence, beneficial ownership information, and ongoing due-diligence. Spot-checks of CDD for legal and natural persons were also conducted during these on-site inspections. Specific comments and final conclusions have been issued to each inspected institution and the inspections will be followed up through the FSA's inspection program.

13. Finanstilsynet's general inspection program (a record number of 70 banks in 2010) also included AML issues in a considerable numbers of the inspections.

Recommendation 26

14. The overall conclusion in the fourth follow-up report was that Norway had addressed the majority of the deficiencies related to R 26, and the overall compliance was assessed at a level essentially equivalent to LC, cf. para. 49 of the report. Two deficiencies were maintained as such. The first, deficiency 4, was related to the Control Committee to supervise the Norwegian FIU, the money laundering unit (MLU) of ØKOKRIM. The second, deficiency 6, referred to the five-year rule for deletion of STR data from the files of the MLU.

> ***R. 26 (Deficiency 4): In theory, the Control Committee could interfere with the MLU's independence, particularly with regards to the exercise of its discretion on the decision to delete records pursuant to section 10 of the MLA; however, in practice, this does not seem to have occurred. At a minimum, the Control Committee's intervention has impacted on the overall effectiveness of the MLU in that a disproportionate amount of the MLU's very limited resources are now expended towards considering whether to delete or justify retaining old STR files. (MER par. 155, 171)***

15. A Control Committee is established to oversee the work of the Norwegian MLU. The stated deficiency relates to the possible interference by the Control Committee impairing on the independence of the MLU.

16. The task of the Control Committee is to ensure that the rule of law and personal privacy issues are adequately protected in the MLU's information handling. The Committee also is mandated to investigate complaints in this respect. In practice, and as reported previously by Norway, the Control Committee has not interfered in the daily work of the MLU. The very existence of the Committee and the tasks allocated to it could be seen as a consequence of the independence of the MLU rather than an arrangement impairing on that independence. The MLU is a public institution operating independently and vested with powers that might infringe upon people's fundamental rights. The Control Committee was established with the aim to prevent possible abuses of such powers and not to interfere with daily operations.

17. The Control Committee has scheduled meetings with the MLU 2-3 times a year and usually also have one unannounced visit a year. The Control Committee publishes an annual report and has also published an information page on The Ministry of Finance's website (http://www.regjeringen.no/nb/dep/fin/tema/finansmarkedene/kontrollutvalget-for-tiltak-mot-hvitvask.html?id=544546). One person from the Ministry of Finance acts as the Committee's secretary. Norway considers that the Control Committee contribute to establishing the right balance between having an effective system for preventing ML/TF, while at the same time taking account of data protection and privacy issues.

18. In the MER, it is stated that «at a minimum, the Control Committee's intervention has impacted on the overall effectiveness of the MLU in that a disproportionate amount of the MLU's very limited resources are now expended towards considering whether to delete or justify retaining old STR files». With the FIU's new and considerably more efficient computer system this is not a problem. The introduction of a new computer system in 2008 facilitated a much more efficient system of cross-checking and deleting STRs than what was the case when the MER was undertaken in 2005

> ***R. 26 (Deficiency 6): While the desire to protect the privacy of information is understandable, to insist that such STR information be deleted may deprive the MLU of a potential source of information that may be exceedingly useful for its work, and inhibit the effectiveness of the MLU's work (MER par. 171)***

19. The stated deficiency relates to the rule that STR data are deleted from the MLU's files after five years unless no other information related to the person concerned has been recorded or legal proceedings have been instituted.

20. Both computerized and manual cross-checking are carried out to see whether any such other information exists. The Norwegian MLU has access to and cross-checks information against various sources, e.g. the national Register of Convictions, the Foreign Exchange Register, the Register of Employees, the Tax Register, and the internal information system of the Police. If *any* information relevant to the STR in question is found, a new period of five years is initiated. As mentioned above, the introduction of a new computer system in 2008 facilitated a much more efficient system of cross-checking than what was the case when the MER was undertaken in 2005. Keeping STR information for five years, with the provision that it may be kept for a prolonged period if any relevant other information is found, strikes, in the view of the Norwegian authorities, a reasonable balance between the aim to combat ML/TF and having regard to issues of privacy and efficiency in the operation of the MLU.

Special Recommendation III

21. Concerning Special recommendation III Norway was considered to have made some progress in improving its implementation of SR III, but not to have taken sufficient action to have implemented SR III at a level essentially equivalent to C or LC, cf. the report para. 60.. Two sets of deficiencies identified in the MER were listed as not being adequately addressed;. Deficiencies 1, 6, and 7, all related to a lack of communication of actual freezing decisions such that other reporting entities than those directly affected could be informed and take adequate actions. The other stated deficiency, deficiency 5, alleged that freezing actions in Norway were not broad enough. These remaining alleged deficiencies relate to implementation of S/RES/1373(2001).

SR.III (Deficiency 1): Norway has not implemented measures to monitor compliance with the 1968 Act and Regulations (S/RES/1267(1999)) or freezing mechanisms issued pursuant to s. 202d of the Penal Code (S/RES/1373(2001)). (MER par. 138)

SR. III (Deficiency 6): There are no other mechanisms to ensure that relevant information is guided through government authorities to the financial community, nor are there any communication channels for providing feedback between the government and the financial sector. (MER par. 130)

SR. III (Deficiency 7): Norway has not issued any guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms issued pursuant to S/RES/1373(2001) (MER par. 130)

22. Reference is made to paragraphs 51, 54, 58, and 59 of FATF/PLEN(2009)32 concerning the implementation of S/RES 1373(2001). Freezing action under this resolution is implemented in Norwegian law by provisions in the Criminal Procedures Act. According to this Act the Head of the Police Security Services or a Public Prosecutor may with just cause of suspicion decide to freeze terrorist-related assets. The objections raised in all the four paragraphs mentioned boil down to an assertion of a lack of communication of freezing decisions to other public bodies and to other reporting entities than the one(s) originally affected. It was maintained that reporting entities that at a later stage might come into possession of assets belonging to the person originally subject to a freezing action, would not necessarily be aware that they would be terrorist-related, and even if they were, they would not know what specific issues that might arise from that. In fact, the same could be said in cases where several reporting entities administer terrorist-related assets simultaneously. It is not given that, in a concrete case, a public prosecutor would have full overview of all the assets belonging to the persons or entities involved.

23. It is admitted that this lack of communication is not up to a required standard. The Norwegian authorities are looking into ways and means to improve communication of asset freeze decisions both to relevant public bodies as well as to a broader group of reporting entities while at the same time having regard to considerations of confidentiality stemming from investigative needs.

SR. III (Deficiency 5): Because the scope of the terrorist financing offence is not quite broad enough, Norway would be unable to freeze the assets in Norway of a person who is considered (more than 50% likely) to have collected funds in the knowledge that they are to be used generally (for any purpose) by a terrorist organisation/individual terrorist. (MER par. 133)

24. In paragraph 56 of FATF/PLEN(2009)32 reference is made to the MER which stated that Norway would be unable to freeze the assets of a terrorist organization or an individual terrorist unless the assets were identified to be used for a terrorist act. It was mentioned that a bill setting out that all assets belonging to terrorists should be frozen had not yet come into force.

25. In the view of the Norwegian authorities the assertion that in it is not possible to freeze all terrorist-related assets in a concrete case must be based on a misunderstanding. Resolution 1373 was adopted by the Security Council on 28 September 2001. Already on 5 October 2001 Norway adopted a Provisional Ordinance to implement the resolution. In a letter to the Security Council Counter-Terrorism Committee (the CTC) it was stated that *"the police authorities shall decide to freeze without undue delay <u>any</u> property belonging to the suspect or such persons or entities that are mentioned."* Moreover, it was stated that *"Temporary freezing <u>all</u> the property of a person is a means of preventing him or her from using the funds to prepare or carry out terrorist acts."* On 17 June 2002 the Parliament passed a new bill to replace the Provisional Ordinance, and on 8 July the same year it was communicated to the CTC that *"Section 202d of the Criminal Procedures Act requires the authorities to freeze <u>any</u> property belonging to the suspect…*(emphases made here).

26. As a general note to SR. III, and other of the special recommendations it should be mentioned that terrorist financing has been an issue of increasing attention by the Police Security Services, and investigation has been started in a some of cases. In this context, the freezing provisions of Chapter 15d of the Criminal Procedure Act have been applied. General awareness is also raised through the Police Security Services' annual threat assessment.

<u>Special Recommendation I</u>

27. In the fourth follow-up report it was considered that Norway had made some progress in improving its implementation of SR I, but that Norway had not taken sufficient action to have implemented SR I at a level essentially equivalent to C or LC, cf. the report para. 64.

28. In the MER, three deficiencies were identified. In the follow-up report one of these was considered to be fully addressed, while a second one was gauged to be adequately addressed. The third was expressed to be an inadequate implementation of S/RES/1373(2001) similar to what has been mentioned in relation to SR III above. It was also stated in the follow-up report that it is «somewhat mitigating that the main concerns relating to SR I are with regard to the insufficient implementation of SR III, and so the underlying issues are the same», cf. para. 9 of the report. Please refer to the description of measures taken under SR III.

<u>Recommendation 7</u>

R. 7 (Deficiency 1): Norway has not implemented any AML/CFT measures concerning establishment of cross-border correspondent banking relationships. (MER par. 225)

29. The follow-up report acknowledges that Norway has taken sufficient action to have reached a level of compliance with R. 7 that is essentially equivalent to LC. However, it is stated that as the MLA and MLR were only recently enacted, the effectiveness of their implementation cannot be assessed and are not taken into account for the purposes of this follow-up report, cf. para 69 of the report. It is further stated that while the language of these provisions in the MLA and MLR is identical to R. 7, there remains a deficiency in that these provisions do not apply to correspondent relationships with credit institutions within the EEA countries, cf. para 68 of the report.

30. While this is correct, it should be kept in mind that cross-border correspondent banking relationships are mainly kept by the largest banks, usually allocating more resources to AML/CFT activities than smaller banks. Branches of foreign banks are included in the AML/CFT-inspection program. Some of the considerations under R. 7 are similar to those under R. 9. In the supplement to the Guidance Paper to be issued by the FSA, see comments to R. 9 below, there will also be a reference to information gathering which is relevant for establishing cross-border correspondent banking relationships.

Recommendation 12

31. The follow-up report states that Norway has taken sufficient action to have reached a level of compliance with R. 12 that is essentially equivalent to LC. However, it is stated that the recent enactment of the Money Laundering Act and the corresponding Regulation implies that the effectiveness of their implementation cannot be assessed. (The provisions came into force on 15 April 2009 and the fourth follow-up report was produced for the Plenary meeting in June the same year.)

32. In the following, a short description is given on how the FSA conducts on-site inspections related to CDD and other requirements for certain types of DNFBPs.

33. The FSA conducts an on-site inspection program of the following DNFBPs: state authorized and registered public auditors, authorized external accountants, and real estate agents. The inspection program also includes AML-issues. The following AML-issues are i.a. evaluated as part of these on-site inspections:

- Internal AML-rules and procedures
- Assignment of an AML-officer
- Risk based customer due-diligence
- Training
- Reporting of suspicious transactions

34. Spot checks of customer due diligence measures are also carried out as part of these on-site inspections.

35. Number of on-site inspections including AML issues in 2010:

- Real estate agents 30
- State authorized and registered public auditors 55

- Authorized external accountants 85

Recommendation 25

36. It is recognised in the follow-up report that Norway has taken sufficient action to have reached a level of compliance with R. 25 that is essentially equivalent to LC. However, certain concerns were expressed in relation to some of the deficiencies identified in Norway's MER.

R. 25 (Deficiency 1): Almost every reporting entity that the assessors met with asked for more specific and tailored guidance concerning AML/CFT obligations. (MER para. 284)

R. 25 (Deficiency 3): The Supervisory Council has not issued AML/CFT guidance to the Reporting BPs it supervises. The Supervisory Council does participate, however, in a working group that has as a mandate to propose guidelines to the lawyers. Likewise, the NARF and NIPA (which are industry associations, not supervisors) participate in a working

37. The main deficiency is stated to be a lack of sufficiently broad guidelines to DNFBPs. The FSA has issued guidelines, and as mentioned above in relation to R 12, conducted on-site inspections of real-estate agents, state authorised and registered public auditors, and authorised external accountants, amongst others for STR reporting. In addition, it should be mentioned that the level of awareness concerning reporting obligations under the Money Laundering Act has increased over the years since the introduction of the obligations. The Supervisory Council for Legal Practice supervises the routines in place as regards the reporting obligations of lawyers. The establishment of www.hvitvasking.no, a joint website between The FIU and the FSA, is considered to have had considerable effect on the understanding of reporting obligations and the functioning of the reporting system in general. The Norwegian Bar Association itself has made significant contributions to the understanding of what the reporting obligations mean in practice for their membership. The Norwegian Bar Association was represented in the law committee that proposed the 2009 Money Laundering Act.

Recommendation 30

38. According to the follow-up report, Norway has taken sufficient action to have reached a level of compliance with R.30 that is essentially equivalent to LC, cf. para. 91 of the report. However, according to the follow-up report one deficiency from the MER has not been adequately addressed.

R. 30 (Deficiency 4): The management and resources of the MLU currently are not ring-fenced.

39. Being a part of ØKOKRIM which also has investigative and prosecutorial powers, the assertion is that the MLU could suffer if ØKOKRIM would change its priorities. This appears to be a rather theoretical possibility. Nothing indicates that this would happen. If a need to cut back on the amount of resources of ØKOKRIM, or more broadly the justice and police sectors, were to arise, an overall assessment of priorities would be made. No sector would be sacred from the outset. The issue of ring-fencing a certain item on the budget of the government is alien to the general fiscal budgetary procedures.

Recommendation 32

40. Norway has, according to the follow-up report, taken sufficient action to have reached a level of compliance with R.32 that is essentially equivalent to LC, cf. para 99 of the report. However, one deficiency from the MER is considered to only be partially addressed and two deficiencies from the MER are considered not to be addressed.

R. 32 (Deficiency 2): No statistical information is available concerning the criminal sanctions that were imposed on persons convicted of money laundering. Norwegian authorities report that it is difficult to know exactly how many money laundering cases really exist because it depends on how the judge characterises the case. (MER par. 200)

41. The deficiency is referred to as a lack of statistical information on the type of criminal sanctions imposed in money laundering cases.

42. The reason for such a deficiency is that reporting of cases for statistical purposes has not distinguished until recently between money laundering and other offences. The reporting system is now in the process of being changed such that money laundering cases will be identified separately. It may take a little time before the new reporting arrangements are fully implemented. But when this is accomplished, statistics on criminal sanctions specifically related to money laundering will be produced.

R. 32 (Deficiency 4): Norway does not collect statistics concerning the nature of the mutual legal assistance request, whether the request was granted or refused, what crime the request was related to or how much time was required to respond. Norway does not collect statistics concerning the nature of the request, whether the request was granted or refused, what crime the request was related to or how much time was required to respond. (MER par. 429)

R. 32 (Deficiency 6): Requests for extradition between the Nordic countries may, pursuant to the Act for extradition within the Nordic countries dated 03 March 1961, be sent directly between the prosecuting authorities. There are no statistics available concerning these requests. (MER par.438)

43. Norway does not produce statistics on mutual legal assistance requests (def. 4) nor on extradition requests between the Nordic countries (def. 6). A larger upgrading of the national police's computer system is in the making and will go on for quite some time. In that context an assessment will be made whether to produce the two types of statistics referred to or not.

Recommendation 38

44. The follow-up report concludes that «Norway has not yet taken sufficient steps to achieve a satisfactory level of compliance with R. 38», cf. para. 101 of the report.

R. 38 (Deficiency 1): Norway must start its own confiscation in situations other than those covered by the Vienna and Strasbourg Conventions. A procedure that requires a case to be made out before a local (Norwegian) court on the basis of foreign evidence is inherently less effective than one where the Norwegian court satisfies itself that a foreign court has made a charging/seizing/confiscation order, and then simply gives effect to that order. (MER par. 431)

45. The amendments of 2006 to Regulation of 01.02.1995 to Act of 20.07.1991 no. 67, covers foreign decisions concerning proceeds acquired through or involved in offences established in accordance with the UNCAC, i.a money laundering (article 23).

Special Recommendation VI

46. It is concluded in the follow-up report that Norway has taken sufficient action to have reached a level of compliance with SR VI that is essentially equivalent to LC, jf. para 105 of the report. However, as the MLA and MLR were only recently enacted, the effectiveness of their implementation could not be assessed and was not taken into account for the purposes of the follow-up report. All the deficiencies identified in the MER are deemed to be adequately addressed.

47. Norway would like to inform the FATF that the Payment Services Directive (2007/64/EC) was transposed into Norwegian law 1. July 2010. Establishment of a payment institution in Norway requires a license in Norway or in an EEA state. The license procedure in Norway requires i.a. a fit and proper test of the management of the payment institution and assessment of the institution's internal AML/CFT routines and procedures.

Special recommendation VIII

48. According to the follow-up report Norway had not taken sufficient steps to achieve a satisfactory level of compliance with SR VIII. It was noted that Norway had taken action to address all three deficiencies identified in the MER – two had been addressed adequately and one partially.

> ***SR. VIII (Deficiency 2): Norway has not implemented measures to ensure that terrorist organisations cannot pose as legitimate NPOs, or to ensure that funds/assets collected by or transferred through NPOs are not diverted to support the activities of terrorists or terrorist organisations. (MER par. 399)***

49. In relation to this deficiency it is stated that Norway needs to apply the full range of measures that follow from the Interpretative Note to SR. VIII: Outreach, supervision, and monitoring of the relevant NPOs.

50. In this respect reference is made to comments under R. 12 and R. 25 above. In addition, it should be mentioned that an increasing number of NPOs has registered in the Register of Non-Profit Organisations, which often is a condition for getting government support or opening a bank account. As of 31 May 2011, 22 783 organisations have been registered in the Register. The Register covers a heterogeneous group of organisations. The types of organisations registered range from sporting-clubs and other leisure activity clubs to religious communities, cultural or professional interest groups, political organisations and regional sub-groups of volunteer organisations such as the Red Cross. All organisations that register are given a unique organisation number, and basic information on all organisations is publicly available on the Internet at the website of the Brønnøysund Register Centre (www.brreg.no). The The Brønnøysund Register Centre is a government body under the Norwegian Ministry of Trade and Industry, and consists of several different national computerised registers. More information on the Register of Non-Profit organisations can be found here (in English): http://www.brreg.no/english/registers/frivillighet/index.html. See also the more general comment on terrorist financing under SR. III.

Recommendation 9

51. When the MER was adopted, R.9 did not apply in the Norwegian context because FIs and other reporting entities were prohibited from relying on third parties to perform CDD. The MLA from 2009 introduced provisions that allow reporting entities to rely on third parties to perform CDD measures, including verification of the identifies of customers and beneficial owners, and gathering of information concerning the purpose and nature of the customer relationship

52. Concerning reliance on third parties to perform CDD the follow-up report stated that competent Norwegian authorities were not required to take into account whether countries where third parties may be established apply the FATF recommendations. It was also pointed out that a reporting entity was not required to satisfy itself that a third party would be able to make customer data available.

53. The FSA has published guidelines on page 26 of Circular which addresses this issue:

> "In assessing the extent to which simplified customer due diligence measures can be applied in relation to foreign financial institutions one should consider the extent to which the institution's

home country has implemented the EU's money laundering directive (2005/60/EC) or FATF's Recommendation 5 "Customer due diligence and record keeping" (source: www.fatf-gafi.org – "Mutual evaluation reports")."

54. In order to supplement the abovementioned guidelines the FSA will shortly publish the following text on www.hvitvasking.no:

"In order to satisfy itself that the third party is regulated and supervised (Recommendation 9) , and has measures in place to comply with CDD requirements in line with Recommendations 5 and 10, the financial institution may consider the mutual evaluation reports, follow-up reports, and ICRG reports issued by FATF. The FATF website contains all the reports
http://www.fatf-gafi.org/pages/0,2987,en_32250379_32235720_1_1_1_1_1,00.html

The FATF evaluation process
Through the evaluation process, the FATF monitors the implementation of the 49 FATF Recommendations concerning measures against money laundering and terrorist financing, and assesses the effectiveness of such measures in FATF member jurisdictions.

The findings of the FATF are compiled in a Mutual Evaluation Report, which describes in detail the system in place and assesses and rates its effectiveness. A summary of each Report is published on the FATF website and FATF members have agreed in principle to make public the full mutual evaluation reports (with the ultimate decision being left to each FATF member for its own report).

Follow-up Reports
The FATF also monitors the progress made by the evaluated jurisdiction in addressing the areas in their AML/CFT system that were found to be weak or deficient. Usually, jurisdictions are required to submit follow-up reports to the FATF Plenary two years after an evaluation, detailing progress made in addressing the issued identified in the mutual evaluation report. If the FATF Plenary finds that not enough progress is being made, then reporting may be required on a more regular basis. Where a member jurisdiction has achieved a high degree of compliance for the "core" and "key" FATF Recommendations, then the jurisdiction simply provides a "biennial update" on any remedial action it is taking.

FATF documents related to high-risk jurisdictions
Since 2007, the FATF's International Co-operation Review Group (ICRG) has analysed high-risk jurisdictions and recommended specific actions to address the ML/FT risks emanating from them. Throughout 2008 and 2009, the FATF issued a series of public statements expressing concerns about the significant deficiencies in the AML/CFT regimes of a number of jurisdictions. In 2009, the Leaders of the Group of 20 ("G20") specifically called on the FATF to reinvigorate its process for assessing countries' compliance with international AML/CFT standards and to publicly identify high-risk jurisdictions by February 2010. This call reinforced the revision process already underway within the FATF and led to the FATF's adoption in June 2009 of new ICRG procedures. Since that time, the G20 has called for the continuation of FATF efforts to fight against money laundering and terrorist financing and to regularly update the public list of jurisdictions with strategic deficiencies.
Based upon the results of this process, the FATF issued two public documents in February 2010—the "Public Statement" and "Improving Global AML/CFT Compliance: Ongoing process." Both documents were updated in June and October 2010 and February 2011, and will be updated at each subsequent FATF Plenary and published on www.fatf-gafi.org, and subsequently also on

www.hvitvasking.no and the FSA's website. The first document lists jurisdictions where the FATF has called upon its members and other jurisdictions to apply countermeasures to protect the international financial system. In the second document, the FATF identifies jurisdictions with strategic AML/CFT deficiencies, and which have provided a high-level political commitment to address the deficiencies through implementation of an action plan developed with the FATF. The situation differs in each jurisdiction and therefore each presents different degrees of ML/FT risks. The FATF encourages its members to consider the information in this document. The FATF closely monitors progress of these jurisdictions and the implementation of their action plans. The FATF will also continue, on an ongoing basis, to identify additional jurisdictions which pose ML/FT risks to the international financial system.

Other evaluations

There exist eight FATF-style regional bodies that are associate members of the FATF and which conduct assessments of their own members based on FATF's principles. In addition, the IMF and the World Bank undertake their own evaluations. Information on these different evaluations is to be found on the respective homepages as listed below.

- The Asia/Pacific Group on Money Laundering (APG) - http://www.apgml.org/default.aspx
- Caribbean Financial Action Task Force (CFTAT) - http://www.cfatf-gafic.org/
- The Eurasian group on combating money laundering and financing of terrorism (EAG) - http://www.eurasiangroup.org/
- The Eastern and South African Anti Money Laundering Group (ESAAMLG) - http://www.esaamlg.org/
- GAFISUD - http://www.gafisud.info/home.htm
- Inter Governmental Action Group against Money Laundering in West Africa (GIABA) - http://www.giaba.org/
- Middle East & North Africa Financial Action Task Force (MENAFATF) - http://www.menafatf.org/
- Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism – MONEYVAL - http://www.coe.int/t/dghl/monitoring/moneyval/

- The International Monetary Fund (IMF) - http://www.imf.org/external/np/leg/amlcft/eng/
- The World Bank (WB) - http://www.worldbank.org/"