



OUR REFERENCE
23/16311

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DATE
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Report from annual review 2023 ES-OSL

1. Introduction

Finanstilsynet has carried out an annual review of Verdipapirsentralen ASA ('Euronext Securities Oslo'/'ES-OSL') in accordance with Article 22 of the CSDR (Regulation (EU) No 909/2014 of the European Parliament and of the Council).¹ The period under review was 1 January to 31 December 2023 (the 'review period').

Minimum requirements for the documentation to be obtained by Finanstilsynet in connection with its annual review are laid down in Articles 40-43 of Commission Delegated Regulation (EU) 2017/392 (RTS 2017/392²). In accordance with Article 40(2)(c) of RTS 2017/392, Finanstilsynet has requested additional information necessary to enable Finanstilsynet to assess ES-OSL's compliance with the requirements of the CSDR during the review period. In addition, Finanstilsynet held a meeting with ES-OSL on 25 April 2024 ('review meeting') focusing on ES-OSL's IT operations.

The basis for the report from the annual review is Finanstilsynet's preliminary report of 27 June 2024 (the 'Report') and ES-OSL's comments to the Report of 2 September 2024 (the 'Response').

Please send a copy of this report to your statutory auditor.

2. CSD links where ES-OSL is the receiving central securities depository (CSD)

2.1. Legal basis

The requirements for CSD links follow from Article 48 of the CSDR and Articles 84-86 of RTS 2017/392.

According to Article 26(2) of the CSDR, ES-OSL is obliged to adopt policies and procedures which are sufficiently effective to ensure compliance with the regulation.

2.2. Finanstilsynet's assessments in the Report

ES-OSL is the receiving CSD in CSD links where [REDACTED] and [REDACTED], respectively, are the requesting CSDs. In the Report, Finanstilsynet noted that ES-OSL has had difficulty identifying whether its relations to [REDACTED] represent a CSD link where the entity is the receiving CSD, and that ES-OSL would continue to follow up [REDACTED] in

¹ Implemented in Norwegian law in the Central Securities Depository Act, section 1-1, first subsection.

² Implemented in Norwegian law in the Central Securities Depository Regulations, section 1(4).

order to clarify the link arrangement. Finanstilsynet expressed an expectation that ES-OSL will ensure that procedures are established to identify CSD links where ES-OSL is the receiving CSD, thereby ensuring that ES-OSL complies with the requirements of Article 84(1) of RTS 2017/392.

2.3. ES-OSL's comments in the Response

In its Response, ES-OSL confirmed that [REDACTED] is being followed up to clarify the link arrangement. According to ES-OSL, however, [REDACTED] has stated that it does not share ES-OSL's view that the relevant arrangement is a CSD link, and the case is still under review.

Furthermore, ES-OSL stated that a procedure has now been established to identify CSD links where ES-OSL is the receiving CSD.

2.4. Finanstilsynet's conclusion

Finanstilsynet expects ES-OSL by 31 December 2024 to clarify whether its relations with [REDACTED] are to be considered a CSD link, and to ensure compliance with the requirements of Article 84(1) (c) of RTS 2017/392 if it in fact is a CSD link. Finanstilsynet has noted that ES-OSL has established a procedure to identify CSD links where ES-OSL is the receiving CSD.

3. Secondary recording of mutual funds using a transfer agent

3.1. Legal basis

Reconciliation requirements in cases where a transfer agent is used to record financial instruments in the CSD ('transfer agent model') follow from Article 62 of RTS 2017/392.

According to Article 64(1) of RTS 2017/392, a CSD shall review at least annually its cooperation and information exchange measures with parties such as transfer agents.

According to Article 26(2) of the CSDR, ES-OSL is obliged to adopt policies and procedures which are sufficiently effective to ensure compliance with the regulation.

3.2. Finanstilsynet's assessments in the Report

In the Report, Finanstilsynet pointed out that there has been no adequate review during the review period of the fund link where [REDACTED] is the transfer agent and [REDACTED] is the account operator and distributor. The follow-up through daily reconciliation procedures and the controls of account operators in the summer of 2023 were not adequate to meet the requirement of Article 64(1) of RTS 2017/392. This could indicate that ES-OSL did not have adequate procedures to ensure compliance with the requirements of the CSDR.

3.3. ES-OSL's comments in the Response

In its Response, ES-OSL acknowledged that the procedure for reviewing links has been inadequate, as the review of fund links was not specified. ES-OSL stated that the procedure has now been updated.

3.4. Finanstilsynet's conclusion

Finanstilsynet concludes that ES-OSL did not conduct an adequate review of the fund link during the review period and thus did not meet the requirement of Article 64(1) of RTS 2017/392. Finanstilsynet notes that the procedure for reviewing links has now been updated to include fund links.

4. Organisation

4.1. Legal basis

According to Article 26(1) of the CSDR, a CSD shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility. This is repeated in Article 49(4) of RTS 2017/392, which also states that a CSD shall have clear and direct reporting lines between the management body and the senior management to ensure that the senior management is accountable for its performance.

In Article 2(1)(46) of the CSDR, ‘senior management’ is defined as ‘those natural persons who exercise executive functions within a CSD and who are responsible and accountable to the management body for the day-to-day management of that CSD’.

4.2. Finanstilsynet's assessments in the Report

4.2.1. Possible dual role

In June 2023, the chairman of ES-OSL’s board also became head of Euronext Securities³. Since then, he has been the closest administrative manager to ES-OSL’s CEO. Euronext has prepared a policy for its matrix structure [REDACTED] and an appendix to this policy [REDACTED] which according to ES-OSL will help ensure the objectivity and independence of the CEO.

In the Report, Finanstilsynet pointed out that the board has a supervisory function vis-a-vis the CEO and that there shall therefore be a clear distribution of roles between the management bodies. In Finanstilsynet’s opinion, the board’s supervisory function became unclear when the chairman of the board also functioned as the CEO’s closest administrative manager. Finanstilsynet further pointed out that several of the escalation possibilities in the [REDACTED] would be problematic as the chairman of the board would have a dual role in cases where there was a conflict between the local board and the head of Euronext Securities.

In the Report, Finanstilsynet concluded that such an organisational structure was likely to create conflicts of interest and an unclear distribution of roles.

4.2.2. Senior management

ES-OSL’s board has decided that the CEO alone represents the CSD’s ‘senior management’, as defined in the CSDR. In the Report, Finanstilsynet pointed out that it disagrees with this interpretation and assumes that ‘senior management’ comprises the CEO and others effectively directing the business of the CSD. In Finanstilsynet’s opinion, the wording of Article 2(1)(46) of the CSDR suggests that the ‘senior management’ consists of more than just the CEO, as the provision refers to both persons and functions in plural. Finanstilsynet also pointed out that the Ministry, in the drafting history of the Norwegian Central Securities Depository Act implementing the CSDR, assumed that ‘senior management’ represented the CEO and others effectively directing the business of the CSD, see Prop.7 L (2018-2019) section 9.5.2. The wording in the Central Securities Depository Act, section 2-1 on police certificates of conduct also supports this, as the

³ Euronext Securities is the term used for the four CSDs in the Euronext Group.

provision requires ‘others effectively directing the business of a CSD’ to present an ordinary police certificate of conduct.

In the Report, Finanstilsynet pointed out that it was vital to Finanstilsynet to obtain information about changes in the persons effectively directing the business of the CSD and to assess the suitability of these managers. This is also in line with the regulation of other undertakings under the supervision of Finanstilsynet.

4.3. ES-OSL's comments in the Response

4.3.1. Possible dual role

In its Response, ES-OSL pointed out that the Euronext group seeks to have an organisational structure in all its subsidiaries that is well defined and transparent and has a consistent division of responsibilities. ES-OSL acknowledged that Finanstilsynet nevertheless preferred organisational changes and stated that it will take appropriate measures. ES-OSL has later informed Finanstilsynet that it will elect a new chairman of the board and that the current chairman will continue to serve as an ordinary board member.

4.3.2. Senior management

In its Response, ES-OSL upheld its interpretation of CSDR whereby ‘senior management’ may represent the CEO alone. ES-OSL argued that the definition of ‘senior management’ refers to persons and functions in plural as CSDR takes into account that in some countries, it may be possible to register more than one CEO. ES-OSL further pointed out that ‘senior management’ has been used three times in the CSDR (in addition to the definition itself) and 34 times in RTS 392, and that the context in which the term is used supports its interpretation. ES-OSL referred to Article 47(2)(c) and Article 49(4) of RTS 2017/392, stating that the provisions refer to the reporting lines between the ‘senior management’ and the ‘management body’ and that the ‘senior management’ is accountable to the board for the CSD’s performance. ES-OSL pointed out that only the CEO has a reporting line to the board and is accountable to the board, and that an interpretation where ‘senior management’ includes the persons effectively directing the business of the CSD would result in a contradiction between company law and the CSDR.

Furthermore, ES-OSL did not agree that the drafting history of the Central Securities Depository Act (Prop. 7 L 2018-2019 (section 9.5.2)) contains relevant interpretations, as it discusses how the requirements for good conduct should be documented. ES-OSL also pointed out that different interpretations of ‘senior management’ by the group’s supervisory authorities would complicate a suitable organisation of the group. Finally, ES-OSL pointed out that it will keep Finanstilsynet informed about changes in the senior management team and, if necessary, provide Finanstilsynet with relevant documentation to be used for fit and proper assessments.

4.4. Finanstilsynet's conclusion and decision

Finanstilsynet notes that ES-OSL will elect a new chairman of the board and finds that it will thus meet the conditions set out by Finanstilsynet in the Report.

In Finanstilsynet’s view, ‘senior management’ in Article 2(1)(46) of the CSDR should be interpreted as the CEO and others effectively directing the business of the CSD. In Finanstilsynet’s opinion, this is a logical interpretation of the wording that also corresponds to the Ministry of Finance’s interpretation of the provision in connection with the implementation of the CSDR in Norwegian law. Reference is made to the Central Securities Depository Act, section 2-1 second

subsection, which also includes ‘others effectively directing the business of a CSD’. It would not make sense to require that they present a police certificate of conduct if they were not covered by the requirement in Article 27(1) of the CSDR and Article 13 of RTS 2017/392.

Finanstilsynet cannot see that such an interpretation is problematic in relation to the provisions of CSDR and RTS 2017/392. Finanstilsynet further refers to point 36 in the preamble to the CSDR, which states that the definitions used in the CSDR do not seek to interfere with the allocation of competences in accordance with national company law. The competence of the CEO is derived from the Public Limited Liability Companies Act.

Finanstilsynet orders ES-OSL at all times to be organised in accordance with our understanding, whereby ‘senior management’ is understood to be the CEO and others effectively directing the business of the CSD.

This decision may be appealed within three weeks of its receipt. Any appeal shall be sent to Finanstilsynet. The appeal authority is the Ministry of Finance. The Public Administration Act, sections 18 and 19 on the parties' right to acquaint themselves with the documents in the case, applies. ES-OSL may apply for deferred implementation of the decision, cf. the Public Administration Act, section 42.

5. Reporting and data quality

5.1. Legal basis

In order to determine whether ES-OSL is of substantial importance for the functioning of the securities markets in other countries pursuant to Articles 5 and 6 of Commission Delegated Regulation (EU) 2017/389, ES-OSL must report certain indicators to ESMA. The same must also be done to identify which central banks issue the ‘most relevant currencies’, cf. Article 2 of RTS 2017/392.

According to Article 42(1) of RTS 2017/392, ES-OSL shall provide Finanstilsynet with a number of statistical data in connection with the annual review.

According to Article 26(2) of the CSDR, ES-OSL is obliged to adopt policies and procedures which are sufficiently effective to ensure compliance with the regulation.

5.2. Finanstilsynet's assessments in the Report

In the Report, Finanstilsynet was critical of the fact that the figures reported to ESMA had contained material errors over several years and that this was not revealed until ESMA questioned the figures. In consequence of the errors, there were also errors in statistics sent to Finanstilsynet in connection with the annual review for 2022, even though Finanstilsynet in the supervisory process for 2022 had questioned several of these figures and been told that the figures were correct. In the Report, Finanstilsynet emphasised the importance of providing correct data.

Finanstilsynet pointed out that the procedure in force during the review period [REDACTED] did not contain specific requirements concerning the quality of the data to be reported. To secure the quality of the data, Finanstilsynet pointed out that validation requirements should be specified in this procedure or in more detailed procedures for the individual reporting.

5.3. ES-OSL's comments in the Response

In its Response, ES-OSL stated that it takes Finanstilsynet's comments on data quality very seriously and acknowledged that there had been inadequate quality control of previous years' reporting. ES-OSL stated that it has established a new procedure for compiling statistics and reporting data. Furthermore, the [REDACTED] procedure has been updated and includes references to more detailed procedures and the requirements for validation and quality control outlined therein.

5.4. Finanstilsynet's conclusion

Finanstilsynet takes a serious view of the fact that the figures reported to ESMA contained errors over several years without this being detected and that statistics sent to Finanstilsynet in connection with the annual review for 2022 also contained errors.

Finanstilsynet notes that ES-OSL has established a new procedure for preparing statistics and reporting data in order to improve quality control and updated existing procedures for reporting to the authorities in accordance with Finanstilsynet's comments.

6. Settlement discipline

6.1. Legal basis

In accordance with Article 15 of Commission Delegated Regulation (EU) 2018/1229 on settlement discipline (RTS 2018/1229), CSDs shall publish information about settlement fails on their websites.

According to Article 13(2) of RTS 2018/1229, CSDs shall establish working arrangements with the participants which have the most significant impact on their securities settlement systems and, where applicable, with relevant central counterparties and trading venues to analyse the main reasons for the settlement fails.

According to Article 26(2) of the CSDR, ES-OSL is obliged to adopt policies and procedures which are sufficiently effective to ensure compliance with the regulation.

6.2. Finanstilsynet's assessments in the Report

In accordance with Article 15 of RTS 2018/1229, ES-OSL has published information on settlement fails in the VPO NOK settlement system for 2023 on its website. According to Finanstilsynet's assessment in the Report, the published figures for settlement fails contained errors. Finanstilsynet therefore stressed the importance of correct information and asked ES-OSL to check and possibly correct published information.

Finanstilsynet further understood that ES-OSL had not prepared written procedures related to Article 13(2) of RTS 2018/1229 on the establishment of working arrangements to analyse the reasons for the settlement fails.

6.3. ES-OSL's comments in the Response

In its Response, ES-OSL expressed its regrets that the control of data quality prior to the publication of information on settlement fails had been inadequate. According to ES-OSL, future updates shall undergo a 'four-eyes control' prior to publication.

ES-OSL further stated that a procedure describing the process for monitoring and reporting the ten settlement participants with the lowest settlement rates, [REDACTED], was established in July 2024. The procedure was included as an attachment to the Response. According to ES-OSL, the procedure also meets the requirements for working arrangements to analyse the main reasons for the settlement fails. ES-OSL pointed out that although the procedure was not formalised until July 2024, ES-OSL has, since the introduction of rules on settlement discipline in 2022, closely monitored the settlement rates of the settlement participants and been in close dialogue with participants with relatively low settlement rates.

6.4. Finanstilsynet's conclusion

Finanstilsynet notes that the errors on the website have now been corrected and that future publications will be subject to enhanced control. Finanstilsynet once again stresses the importance of data being reviewed and validated before being published or sent to the authorities.

Finanstilsynet notes that ES-OSL has now established a procedure intended to meet the requirement to establish working arrangements to analyse the main reasons for settlement fails.

7. IT operations

7.1. Chief Information Security Officer (CISO)

The second line of defence (the compliance function) shall operate independently from the other functions of the CSD in accordance with Article 47(3) of 2017/392 and have direct access to the CSD's management body in accordance with Article 49(9) of RTS 2017/392.

At the review meeting, Finanstilsynet was informed that the Chief Information Security Officer (CISO) at ES-OSL was organised under the Chief Technology Officer (CTO), but that he had a direct reporting line to the CSD's board. In the Report, Finanstilsynet pointed out that this organisational structure entailed that the CISO did not operate independently from ES-OSL's first line and thus could not be considered part of ES-OSL's second line. The second line must therefore be staffed with resources and competences that enable it to monitor the CSD's information security.

In its Response, ES-OSL stated that it has changed its organisational structure, whereby the CISO now reports directly to the CEO. Consequently, the CISO functions as the second line as the role is independent from ES-OSL's first line and performs controls related to information security in the CSD.

Finanstilsynet takes note of ES-OSL's explanation.

7.2. Outsourcing

7.2.1. Annual review and audit assessments of outsourced IT systems

According to Article 75(9) of RTS 2017/392, CSDs shall ensure that the IT systems and the information security framework concerning the CSD's core services are reviewed at least annually and are subject to audit assessments. This also applies to outsourced services and operations.

Finanstilsynet was informed during the review meeting that ES-OSL receives an annual independent assurance report (ISAE 3402) from IT service providers. The audit activities on which the report is based are conducted by the service providers' external auditor. In the Report,

Finanstilsynet emphasised that there is no guarantee that ES-OSL's IT infrastructure is included in the test sample that forms the basis for the tests carried out as part of the audit, and that ES-OSL, upon receipt of ISAE reports, must assess whether the contents of the reports are relevant and applicable to ES-OSL.

In its Response, ES-OSL stated that [REDACTED] has confirmed that ES-OSL was part of the test sample for its assurance report ISAE 3402 for 2023, and that ES-OSL will ensure such confirmation at future audits.

Finanstilsynet takes note of ES-OSL's explanation.

7.2.2. Documentation

According to Article 77(1)(b) of RTS 2017/392, a CSD shall identify and create an inventory of all the components of its IT system that support the processes and activities that contribute to the delivery of the services it provides, as well as their respective interdependencies. This also applies to outsourced services and operations.

In the Report, Finanstilsynet underlined that it is ES-OSL's responsibility to ensure that IT service providers to which ES-OSL has outsourced IT services, have established good procedures for and controls of IT operations that are part of the deliveries to ES-OSL. Based on information received at the review meeting, it was Finanstilsynet's understanding that ES-OSL was unable to verify that the requirement to create an inventory of all the components of its IT system was met for outsourced IT activities.

[REDACTED]

Finanstilsynet takes note of ES-OSL's explanation.

7.3. Access management

According to Article 75(4) of RTS 2017/392, a CSD's IT systems shall ensure that any data at the disposal of the CSD is protected from loss, leakage, unauthorised access, poor administration, inadequate record-keeping and other processing risks.

In order to reduce the risk that access to the CSD's data is misused, Finanstilsynet pointed out in the Report that IT service providers should establish access management solutions and controls that, to the greatest extent possible, ensure that access is granted and controlled for specific assignments rather than grant permanent access to ES-OSL's operating environment. Finanstilsynet also pointed out that ES-OSL had identified weaknesses in its multifactor authentication and that this was not consistent with ES-OSL's own requirements.

In its Response, ES-OSL stated that IT service providers' access to ES-OSL's applications and data is assigned according to their role and work-related needs, subject to approval by the relevant managers on the basis of an individual suitability assessment. Accesses are granted in accordance with internal policies and are regularly reviewed. ES-OSL further stated that it has tightened security requirements for web-based solutions and upgraded multifactor authentication for these solutions. Deployment is scheduled for Q4 2024.

Finanstilsynet takes note of ES-OSL's description of access controls and the controls carried out to prevent internal misuse. Finanstilsynet nevertheless asks ES-OSL to consider access management solutions whereby time-limited access is granted based on work-related needs in order to further reduce the possibility to make non-work-related searches. Finanstilsynet notes that ES-OSL has upgraded its multifactor identification system.

7.4. Disaster recovery

7.4.1. Testing of disaster scenarios

According to Article 76(1) of RTS 2017/392, CSDs shall have a business continuity policy and associated disaster recovery plans. According to Article 79 of RTS 2017/392, these should be tested at least annually and include scenarios of large-scale disasters and switchovers between the primary and the secondary processing site. According to Article 77(2) of RTS 2017/392, a CSD shall conduct a risk analysis to identify how various scenarios affect the continuity of its critical operations.

In the Report, Finanstilsynet pointed out that the tests carried out, both internally and at service providers, were inadequate as they only covered switchovers between processing sites and not testing of disaster scenarios. Nor were the tests performed based on scenarios from the risk analysis.

In its Response, ES-OSL agrees with Finanstilsynet's assessment that the testing of disaster scenarios can be strengthened and to a greater extent be based on risk analysis scenarios. ES-OSL states that the test for 2024 will take Finanstilsynet's comments into consideration.

Finanstilsynet takes note of ES-OSL's explanation.

7.4.2. Change management process

According to Article 79 of RTS 2017/392, the CSD shall also test its business continuity policy and disaster recovery plan after substantive changes to the systems or related operations.

In the Report, Finanstilsynet pointed out that ES-OSL's change management process did not include controls of whether notified changes could result in changes in the configuration of disaster recovery plans. Finanstilsynet thus concluded that ES-OSL did not have adequate policies to ensure that it complies with Article 79 of RTS 2017/392.

In its Response, ES-OSL stated that it agrees with the conclusion that their policies did not ensure adequate compliance with the requirements of Article 79 of RTS 2017/392. ES-OSL has therefore implemented mandatory controls in the case processing system to monitor whether notified changes will result in changes in its disaster recovery plan.

Finanstilsynet takes note of ES-OSL's explanation.

8. Compliance function

8.1. Legal basis

According to Article 47(3) of RTS 2017/392, a CSDs shall establish a compliance and internal control function with the necessary resources and expertise to carry out the tasks assigned to that function.

Further to Article 49(7) of RTS 2017/392, a CSD shall have a Chief Compliance Officer ('CCO') who shall implement the compliance and internal control framework including the policies and procedures established by the management body.

According to Article 26(2) of the CSDR, ES-OSL is obliged to adopt policies and procedures which are sufficiently effective to ensure compliance with the regulation.

8.2. Finanstilsynet's assessments in the Report

In the Report, Finanstilsynet emphasised the importance of ES-OSL having procedures in place to ensure compliance with the requirements of the CSDR. According to ES-OSL's [REDACTED], the compliance function is responsible for monitoring and assessing the effectiveness of the CSD's procedures for regulatory compliance. In the Report, Finanstilsynet referred to the fact that the 'Annual Compliance Report 2023' showed that the CCO had not prioritised such controls⁴ but rather had prioritised assisting the business areas in updating procedures according to new templates for the group. In the Report, Finanstilsynet pointed out that the annual review had revealed that ES-OSL had failed to comply with CSDR requirements in several areas and had no or inadequate procedures in these areas. In the Report, Finanstilsynet was critical of the fact that the compliance function had given lower priority to monitoring and evaluating the CSD's procedures, pointing out that the compliance function had thus not been able to reveal that the procedures were inadequate, which in turn had resulted in ES-OSL not meeting the requirements of the law.

In the Report, Finanstilsynet pointed out that during 2023, in addition to acting as CCO for both ES-OSL and ES-CPH, the CCO had been assigned the role as Head of Compliance CSDs with responsibility for tasks covering the entire compliance function in Euronext Securities. In the Report, Finanstilsynet questioned whether the new role would result in the CCO's FTE fraction at ES-OSL being lower than the stated 40 per cent. In addition to the CCO, the compliance function during the review period consisted of one person who had been employed in ES-OSL in a 100 per cent position since April 2023.

In the Report, Finanstilsynet concluded that the staffing of the compliance function did not meet the requirements of Article 47(3) of RTS 2017/392. Finanstilsynet emphasised that several of the tasks assigned to the compliance function according to RTS 2017/392 and ES-OSL's own policies had not been completed.

⁴ Referred to as 'an annual control of business procedures' in the 'Annual Compliance Report 2023'.

8.3. ES-OSL's comments in the Response

In its Response, ES-OSL pointed out that since 2022 and the appointment of the new CCO, they had focused on increasing the maturity level of the compliance function across ES-OSL and listed several activities that had been completed. According to ES-OSL, it had been ambitious to carry out these activities in parallel with the implementation of the compliance plan for 2023, but ES-OSL nevertheless believed that it had been important to implement these to strengthen its future compliance capabilities.

In its Response, ES-OSL stated that it will work on various measures to ensure sufficient capacity in the years ahead. Among other things, ES-OSL will consider which tasks may be transferred to Group Compliance in order to reduce the workload of the compliance function in ES-OSL.⁵ ES-OSL will further give priority to the obligations set out in the compliance procedures and perform planned controls. Cooperation within compliance across Euronext Securities will continue. In addition, ES-OSL will carry out a comprehensive assessment of ES-OSL's compliance tasks and the capacity required to complete these tasks, and thereafter consider further measures to strengthen the capacity of ES-OSL's compliance function. ES-OSL will give Finanstilsynet an update on this work by the end of October.

With respect to the priority given to implementing the group's new procedure templates, ES-OSL emphasised in its Response that this work was more comprehensive than a mere conversion to a new template. The work included identifying new procedures and updating existing procedures regarding, among other things, structure, content, responsibilities and systems.

In its Response, ES-OSL acknowledged that the capacity of the compliance function had not been adequate to cover the planned tasks. Furthermore, ES-OSL stated that it is on schedule in carrying out the activities described in the compliance plans for 2024.

8.4. Finanstilsynet's conclusion

In Finanstilsynet's opinion, ES-OSL's staffing of the compliance function did not meet the requirements of Article 47(3) of RTS 2017/392 during the review period. Finanstilsynet notes that ES-OSL implemented measures during the review period to strengthen the compliance function and that this was resource-demanding. Finanstilsynet is nevertheless critical of the fact that this has resulted in the requirements to monitor and assess the CSD's procedures for compliance with the CSDR being deprioritised. Finanstilsynet points out that the CSD has had no or inadequate policies and procedures in several areas, and that ES-OSL thus did not comply with the requirements for sufficiently effective policies and procedures set out in Article 26(2) of the CSDR. Finanstilsynet points out that ES-OSL at all times must ensure that it has sufficient resources to comply with statutory requirements.

Finanstilsynet notes that ES-OSL is planning various measures to ensure sufficient capacity in the future. One of the measures specified in the Response was to look at which tasks could be transferred to Group Compliance. With respect to the other specific measures outlined in the Report, Finanstilsynet does not see that this will necessarily strengthen the capacity of ES-OSL's compliance function in the short term.

⁵ Finanstilsynet has subsequently been informed that the data protection function has been outsourced from ES-OSL to the CSD's parent company, thus aiming to reduce the workload of ES-OSL's compliance function.

However, Finanstilsynet notes that ES-OSL will consider further measures to strengthen the capacity of the compliance function after a comprehensive assessment of the tasks to be performed by ES-OSL. Finanstilsynet will follow up on this and expects that further measures will be implemented to strengthen the capacity of the compliance function in ES-OSL and ensure adequate staffing.

For Finanstilsynet

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This document has been electronically approved and does not require handwritten signatures.