



**Financial Action Task Force**  
Groupe d'action financière

**THIRD MUTUAL EVALUATION/DETAILED ASSESSMENT REPORT  
ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF  
TERRORISM**

**SWEDEN**

**17 FEBRUARY 2006**

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## EXECUTIVE SUMMARY

### **Preface – information and methodology used for the evaluation**

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Sweden was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004. The evaluation was based on the laws, regulations and other materials supplied by Sweden, and information obtained by the evaluation team during its on-site visit to Sweden from 5-16 September 2005, and subsequently. During the on-site mission, the evaluation team met with officials and representatives of all relevant Swedish government agencies and the private sector. A list of the bodies the team met is set out in Annex 2 to the mutual evaluation report.

2. The evaluation was conducted by a team of assessors composed of FATF and MONEYVAL experts in criminal law, law enforcement and regulatory issues. The evaluation team consisted of: Ms. Vida Šeme Hočevar LL.M., Assistant Director, Office for Money Laundering Prevention (OMLP), Slovenia (legal expert); Ms. Heli Rajaniemi, Senior Officer, Ministry of the Interior, Police Department, Management, Finland (law enforcement expert); Ms. Birgit Ertl, Senior Advisor, Financial Markets, Federal Ministry of Finance, Austria (financial expert); Ms. Adrienne M. Joves, Terrorist Financing and Financial Crime, United States Department of the Treasury (financial expert); and Mr. John Carlson and Mr. Kevin Vandergrift from the FATF Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

3. This report provides a summary of the AML/CFT measures in place in Sweden as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). It also sets out Sweden's levels of compliance with the FATF 40+9 Recommendations (see Table 1).

## Executive Summary

### 1. Background Information

1. This report provides a summary of the AML/CFT measures in place in Sweden as of September 2005 (the date of the on-site visit). The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Sweden's levels of compliance with the FATF 40 + 9 Recommendations. (See attached table on the Ratings of Compliance with the FATF Recommendations).

2. Overall, the Swedish legal requirements in place to combat money laundering and terrorist financing are generally comprehensive; however the evaluation team had concerns about the systems' effectiveness. Penalties for money laundering are low, generally charges for predicate offences are pursued (due to the fact that in Sweden self-laundering is co-punished with the predicate offence), and there have been a limited number of convictions for the money laundering offence. The terrorist financing offence is generally broad, although it does not specifically cover collecting/providing funds for a terrorist organisation or individual terrorist. Still, the legislation has been shown to be effective since it has been used to convict two individuals. The FIU functions, powers, and processes are generally satisfactory, but would be improved if additional resources were allocated, there were less reliance on manual processes, and limitations on the timeframes allowed to keep suspicious transaction reports were removed. Measures for international co-operation are generally comprehensive.

3. Basic customer identification measures are in place, but there is a need to adopt comprehensive customer due diligence requirements. Record-keeping measures are largely comprehensive. The scope of the suspicious transaction reporting requirements is generally sufficient; however, there were significant concerns regarding the effectiveness of the system. The supervisory powers including the power to issue sanctions are generally broad; however, powers should be expanded with regard to registered financial institutions (money exchange and remittance companies and deposit companies). At the time of the on-site visit, there were other concerns about the overall effectiveness of the supervisor system—i.e., the need for additional resources and the current focus on larger financial institutions. Basic AML/CFT measures apply to most DNFBPs; however, there are also concerns regarding how effectively they are implemented, and more comprehensive measures need to be adopted.

4. The Swedish National Economic Crimes Bureau has estimated that the yearly proceeds of crime in Sweden are approximately 130 billion SEK<sup>1</sup>. The information gained from suspicious transaction reports (STRs) and from investigations indicates that the main predicate offences are drug crimes, smuggling and illegal trade of alcohol and tobacco, theft, fraud, document forgery, receiving, human trafficking, violation of the Firearms Act, bribery, dishonesty to creditors, violation of the Companies Act, tax and VAT evasions crime and bookkeeping crimes.

5. Money laundering operations are increasingly performed through more complex techniques, by individuals or groups that are connected to organised crime in Sweden and its international counterparts. Identified money laundering is mostly performed through banks, money exchange offices (bureaux de change) and money remitters. A relatively sophisticated method of money laundering technique involves the use of bank accounts abroad. Credit cards are connected to these accounts; the cards may be used in Sweden for cash withdrawals through ATMs and for credit card purchases.

6. Swedish authorities report that the financing of terrorism has not so far been a major problem in Sweden. The few active groups found use different methods for acquiring money. Intelligence indicates that the few groups and persons in Sweden that fit into the extremist category are largely self-supporting, i.e. do not receive funding from abroad. Intelligence also indicates that some of these groups engage in various types of fraud and also seem to acquire funds from theft or fraudulent behaviour in shops, as well

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<sup>1</sup> The National accountings PM2005:08. SEK = Swedish Krona. At the time of the on-site visit, 1 SEK = 0.11 EUR or 0.14 USD.

as through fundraising through individual donors. Money collected from fundraising seems mostly to be deposited into accounts in the conventional banking system and forwarded in larger lots, making it more difficult to link money from a particular fundraising campaign to terrorism. In October 2005, two individuals were convicted under the Swedish counter terrorist financing legislation.

7. A wide range of financial institutions exists in Sweden, including credit institutions (banks and credit market undertakings), insurance companies and brokers, securities companies, investment companies, deposit companies, money exchange and money transfer businesses. A range of designated non-financial businesses and professions became subject to the AML Act as of 1 January 2005: casinos, real estate agents, dealers in precious metals and stones, lawyers and auditors. Company service providers exist in Sweden but are not subject to the AML Act. Sweden is currently in the process of further reviewing its legislation for the purposes of implementing the third EU Money Laundering Directive.

## **2. Legal System and Related Institutional Measures**

8. Money laundering is criminalised through sections 6, 6a, 7 and 7a of Chapter 9 of the Swedish Penal Code on receiving and money receiving. The basic money receiving offence covers the mandatory physical elements required by the Vienna and Palermo Conventions. Sweden has adopted an “all crimes” approach to the criminalisation of money laundering, and the penal code and other criminal laws cover the designated categories of offences (as defined in the Glossary of the FATF 40 Recommendations), although participation in an organised criminal group is not a specific criminal offence. While conspiracy applies for the aggravated offences of many crimes in the Swedish Penal Code (e.g. murder, kidnapping, robbery), it is not clear if conspiracy applies to the full range of profit-generating activities in which criminal groups engage. Sweden’s receiving/money receiving offence does not apply to persons who commit the predicate offence if the predicate offence can be proven (i.e. self-laundering). In such cases, receiving/money receiving is “co-punished” with the predicate offence in the way that the punishment for the predicate offence also covers the activity covered by the receiving/money receiving offences. Such activity might lead the predicate offence being considered to be an aggravated offence or could otherwise result in higher penalties. The Supreme Court has ruled that self-laundering is not separately punishable under current Swedish Law. However, it did not indicate whether self-laundering would be contrary to the Constitution or another fundamental principle of Swedish law. Therefore, the evaluation team could not confirm that this was a fundamental principle according to FATF standards. The principle does not prevent a perpetrator being convicted of money receiving when that person cannot, due to lack of evidence, be convicted of the predicate offence.

9. The ancillary offence of “complicity” (which covers investigation, aiding and abetting, facilitation, and counselling the commission) is applicable to the *money receiving* offences. However, conspiracy, attempt, and preparation apply only in the more serious cases of money laundering (“gross money receiving/money receiving”) and not to the general offences. The evaluation team recommends that these minor technical weaknesses be remedied.

10. It appeared that there are limited numbers of convictions (for *money receiving*) since the inception of the anti-money laundering regime in 1999, and the assessment team was concerned about the limited focus on money laundering and proceeds of crime issues. One reason appears to be the understanding that the offence of money receiving is encompassed within and ancillary to the predicate offence. Penalties that have been provided for the money laundering convictions have also been low.

11. Sweden’s criminalisation of terrorist financing is largely in line with international standards—in particular, with the Terrorist Financing Convention—yet it does not cover all the requirements of Special Recommendation II. Sweden should amend its legislation to ensure that the offence specifically covers collecting or providing of funds in the knowledge that they are to be used (for any purpose) by a terrorist organisation or an individual terrorist without the need to demonstrate intent to commit a terrorist act. The current penalty for the basic offence is a maximum of two years imprisonment. If an act that constitutes terrorist financing also constitutes another offence under the Penal Code or the Act on responsibility for Terrorist Offences subject to the same or more severe penalties, this offence should be applied, which could lead to penalties up to life imprisonment. Despite this, authorities should provide higher penalties

for the specific offence of terrorist financing, which would more properly take into account the grave nature of the offence.

12. Rules on forfeiture are found in the Chapter 36 of the Penal Code and in special penal laws. The provisions provide for criminal confiscation of the proceeds of any crime with a penalty of at least one year (which covers money laundering offences), property of corresponding value, instrumentalities used in or intended for use in the commission of the offence, as well as property that is derived directly or indirectly from proceeds of crime.

13. There are also provisional measures to prevent dealing in property possibly subject to confiscation. "Provisional attachment" generally prevents such dealing, though the need to demonstrate a reasonable cause that the property will be removed is a limitation. Rules on seizure are comprehensive and can be applied explicitly for instrumentalities and implicitly for proceeds. No specific data on forfeiture from receiving and money receiving offences was available, nor on freezing/seizing property. However, general data on the total amount forfeited annually showed a declining amount forfeited over the past three years.

14. As in other European Union countries, Sweden's obligations to freeze terrorist assets are derived from Common Positions adopted by the European Union, and their resulting EU Council Regulations. The obligation to freeze under S/RES/1267(1999) has been implemented through Council Regulation (EC) No 881/2002. Annex I to the Regulation contains the same information as the list maintained by the Al-Qaida and Taliban Sanctions Committee; and the Annex is regularly and promptly updated. On 13 November 2001, the assets of the Swedish citizens and the entities listed under this mechanism were immediately frozen (an amount of 1,070,000 SEK), although two citizens were later de-listed, and their assets were returned.

15. Sweden's obligation to freeze under S/RES/1373(2001) is implemented through Council Regulation (EC) No. 2580/2001. Article 2 of this Regulation contains an obligation to freeze and a prohibition on making any funds available to the group targeted by the Regulation. The targeted group is determined by the Council acting by unanimity. The EU Regulation does not allow for the freezing of funds and other assets of EU internals. Sweden should implement a national mechanism to supplement the EU Regulation in order to give effect to requests for freezing assets and designations from other jurisdictions and to enable freezing the funds of European citizens/residents.

16. The Swedish financial intelligence unit (FIU), *Finanspolisen*, is one of the intelligence units of the National Criminal Police within the National Police Board. The FIU was established in 1994 and has been a member of the Egmont Group since 1995. The total number of the STRs received has been around 10,000 per year, with most of the STRs forwarded to the FIU by fax, although at the time of the on-site visit the government was developing a new electronic system for receiving and analysing STRs. The FIU staff is well qualified and has a wide range of previous police experience; however, the current number of staff (16) is not adequate and should be increased.

17. The FIU submits two kinds of reports to investigative agencies: Operative Reports (ORs) indicate a specific crime conducted by specific natural persons; and Intelligence Reports (IRs) indicate an event or a possible crime performed by known or unknown natural persons. In 2004, the FIU sent 139 ORs and 846 IRs, to National Police, County Police Authorities, or the Economic Crimes Bureau.

18. The FIU provides reporting parties with specific reporting forms, although it does not provide other guidance. The FIU also publishes an annual report that includes statistics, recent money laundering trends and techniques, and information regarding the FIU's activities. The FIU informs reporting parties when a preliminary investigation based on an STR is opened and when a sentence based on one of these cases is pronounced.

19. There are significant limitations regarding the timeframe that the FIU may store the STRs. To retain STRs for more than six months, the FIU staff must first make a determination on every incoming STR that some suspicion of money laundering exists. After being stored, STRs must then be deleted after

3 years unless the FIU has received supplementary STRs and/or background information. These timeframes reduce the effectiveness of the FIU and should be remedied.

20. The National Police Board (NPB) is the central administrative and supervisory authority of the police service. The NPB is responsible for the development of new work methods and technological support. The NPB has two operative branches: The Swedish Security Service (*Säkerhetspolisen* – SÄPO) is responsible for protection of sensitive objects, counter-espionage, anti-terrorist activities and protection of the constitution. In the fight against threats to national security, the national Security Service conducts investigations, provides intelligence, resources and methodological know-how. The National Criminal Police (Rikskriminalpolisen – RKP) provides investigation and criminal intelligence support in cases involving crimes with worldwide or international ramifications, but also works at the local level of the police organisation, providing reinforcement for police authorities as required.

21. The National Economic Crimes Bureau (*Ekobrottsmyndigheten*—EBM) is both an investigative and prosecutorial authority and is dedicated to combating economic crime, mainly in metropolitan areas.

22. Authorities have comprehensive powers to compel production of, obtain access to, search premises for, and seize any documents needed during their investigations; as well as other investigative powers. However, there is little evidence that ML investigations are effectively pursued and ML prosecutions brought. Currently, charges are laid for predicate offences and not ML/FT offences, mainly due to the self laundering rule and the obligation to prosecute the predicate offence if the elements of that offence exist. Charges will be pursued only if it is believed the defendants cannot be prosecuted for predicate offences. Despite this, the limited number of investigations/prosecutions of third-party money launderers is a concern. The Swedish government should develop a more pro-active approach to pursuing money laundering charges. Training and education for law enforcement authorities in ML/FT offences should also be enhanced.

23. At present, there is no obligation to declare or disclose cash or bearer negotiable instruments while entering or leaving Swedish territory. However, the implementation of the EC Regulation on Cash Control in the near future will result in changes to the Swedish AML/CFT system in this regard.

### **3. Preventive Measures - Financial Institutions**

24. Sweden in general is considered to be a safe country and not a major money laundering or terrorist financing centre. However, as for any developed financial centre, Sweden's financial sector is vulnerable to money laundering and terrorist financing. Sweden has not conducted a risk assessment of its financial sector for AML/CFT, though it does use risk factors for other purposes.

25. The Swedish *Act on Measures against Money Laundering* (1993:768 as amended by 2005:409) (hereafter “AML Act”) contains customer identification as well as the other AML obligations that apply to a wide range of financial institutions. The *Act on Criminal Responsibility for Particularly Serious Crimes in some cases* (2002:444) (hereafter “CFT Act”) also contains CFT measures for financial institutions. The only exceptions being that some credit card companies do not fall within the scope of the AML/CFT legislation and that the CFT Act does not apply to investment companies. Finansinspektionen (the Swedish financial supervisory authority) issued AML/CFT Regulations/Guidelines in June 2005. This publication contains elements (regulations) that are directly binding and enforceable, and other elements (general guidelines) that are indirectly enforceable and subject to sanctions where the institution is also failing to conduct its business in a sound manner.

26. Although Sweden has implemented customer identification obligations, it has not implemented full customer due diligence (CDD) requirements. The AML/CFT Acts require the financial institutions to conduct customer identification when: entering into a business relationship, for occasional transactions of 15,000 EUR or more, when there are doubts if the customer is acting on his/her own behalf, or when a financial institution has grounds to suspect that a transaction may constitute money laundering or terrorist financing. However, there are numerous exemptions to the requirements related to customer identification, which appear overly broad. There are insufficient requirements to ascertain the beneficial owner, e.g. no

obligation to identify and verify the beneficial owner of a legal person. There are similarly no regulations to conduct ongoing CDD, enhanced CDD, or CDD on existing customers. Laws, regulations and other mechanisms should be amended to ensure that the full CDD requirements are implemented.

27. While the legal system regarding financial institution secrecy is mostly satisfactory, statutes dealing with a duty of confidentiality, both for domestic and international matters, allow for certain exceptions that result in a lack of fully effective implementation of the FATF requirements regarding financial institution secrecy laws. Sweden's record-keeping requirements are generally broad and require legal persons as well as natural persons conducting business operations to maintain comprehensive accounts and accounting records for 10 years.

28. Financial institutions are required by the AML/CFT Acts to examine any transaction where there are reasonable grounds for suspecting money laundering or terrorist financing, and there are indirectly enforceable obligations in guidance that require examination of all unusual transactions. There are also AML/CFT Regulations which require financial institutions to set forth any findings in writing. Moreover, financial institutions may keep records of STRs filed, but must generally delete them after one year if they are filed under the Money Laundering Registers Act.

29. The requirement to report suspicious transactions is a direct, mandatory obligation, which applies regardless of any threshold and includes tax matters and attempted transactions. The AML and CFT Acts require financial institutions to report any circumstances that may be indicative of money laundering or terrorist financing to the FIU. It should be noted however, that limitations on the terrorist financing offence may also limit the reporting obligation. The laws provide a "safe harbor" for complying with reporting obligations and criminalise tipping off.

30. Several factors indicate that the system is not being implemented effectively: the rules to delete STRs (after one year for financial institutions and six months/three years for the FIU) reduce the effectiveness of the STR system. While money exchange businesses are required to file STRs, in practice, these businesses file reports on the basis that the transaction involves a large amount of currency—i.e., above a threshold of 130,000 SEK (approximately 13,000 EUR) with little, if any, information as to what made the reported transactions suspicious.

31. Sweden should continue to work with the financial sector to improve the total number of reports, the sectors that are reporting, the percentage of reporting entities and improve the overall quality of the reports filed. Finansinspektionen and the FIU should continue to identify red flag indicators and models of suspicious transactions that they can share with the private sector, along with examples of what constitutes helpful and informative suspicious transaction reports.

32. Financial institutions are obligated to establish internal procedures and policies to prevent money laundering and terrorist financing, which meet most of the FATF requirements. These internal procedures include *inter alia* CDD record retention, the detection of unusual and suspicious transactions and the reporting obligation. All financial institutions subject to Finansinspektionen's AML/CFT Regulations/Guidelines are obligated to designate an AML/CFT compliance officer. However, appropriate screening procedures for employees should be introduced.

33. Subsidiaries of Swedish institutions abroad are subject to the regulations of the host country; however, Finansinspektionen can take corrective measures against a Swedish credit institution if the competent authority of the host country notifies Finansinspektionen that the Swedish credit institution has breached any rule of the host country. Sweden should implement an obligation to require financial institutions to apply the higher standards in the event that the AML/CFT requirements of the home and host countries differ, and to notify Finansinspektionen if they are unable to apply such standards.

34. Finansinspektionen is responsible for licensing and supervising most financial institutions such as banks and other credit institutions, insurance companies, insurance intermediaries, securities companies, collective investment companies and e-money businesses. Finansinspektionen exercises prudential supervision regarding all these financial institutions and has stated that it looks to Core Principles (Basel,

IOSCO, IAIS) in its supervision of banks, insurance companies, and the securities sector also with regard to AML/CFT purposes. Certain “other financial institutions” (including currency exchange businesses, money transfer businesses and other financial services such as financial leasing companies) and deposit companies have to register at Finansinspektionen.

35. For licensed financial institutions, Finansinspektionen conducts full supervision. It may do both off and on-site inspections and has the power to compel production and to obtain access to all records, documents or information. There are generally adequate powers of enforcement and sanction for failure to comply with or properly implement AML/CFT requirements. Criminal sanctions can apply for tipping-off and for failure to comply with STR requirements. The range of administrative sanctions is broad and includes the power to remove a license or remove a board member or managing director (but not other senior management). Adequate fit and proper tests apply for board members and managing directors but not other senior management.

36. For registered financial institutions (deposit companies, money exchange and money remittance), the supervision is more limited and should be expanded. Finansinspektionen has no power to conduct on-site inspections, and the range of sanctions is also more limited. In general, the only registration requirement refers to ownership and Board of Directors: a person who has significantly neglected business or financial obligations or who has committed a serious crime may not engage in such business operations.

37. The AML/CFT Regulations/Guidelines contain guidance on internal control systems, customer identification procedures, risk management, the principle of Know Your Customer, monitoring and reporting of suspicious transactions, record keeping and staff training. The guidelines are relatively complete based on the current legislation but would be improved if sector-specific guidance were provided, and will need further modification when the FATF recommendations are fully introduced. In addition, guidelines are not currently applicable to certain credit card companies.

38. Following the FATF on-site, the primary responsibility for AML/CFT issues was shifted to a new unit of Finansinspektionen which will have three staff. For AML/CFT on-site inspections, support has also been provided by the Prudential Supervision Department. The focus of supervision during the last years was on larger financial groups, and the number of on-site inspections solely devoted to AML/CFT is still quite low. The current staffing changes in the area of AML/CFT should result in a higher number of employees focusing on this issue and a higher number of inspections focussed on a range of financial institutions (taking into account AML/CFT risk).

39. Money or value transfer services must register with Finansinspektionen in Sweden. However, the full range of requirements for financial institutions will need to be applied to remitters in the same way as for other institutions, as noted above.

#### **4. Preventive Measures – Designated Non-Financial Businesses and Professions**

40. The AML Act, as revised in 2005, includes AML obligations for most categories of DNFBPs: casinos, real estate agents, dealers in precious metals and stones (part of a larger category of dealers in high value items), lawyers and other legal professionals, and auditors (but not other accountants). There are several concerns regarding the scope of the Act: company service providers exist in Sweden but are not covered by the AML Act; and the Act does not apply to accountants that are not auditors (unless they are also tax advisors). Sweden should also bring DNFBPs under the scope of the CFT Act and develop adequate AML/CFT regulations.

41. The requirements in the AML Act apply equally to DNFBPs as for financial institutions. Customer identification must be conducted upon establishing business relations, for occasional transactions above 15,000 EUR, where there is a suspicion of money laundering. Casinos should be required to identify customers conducting transactions of 3,000 EUR and keep records for at least five years. Similarly as with financial institutions, Sweden should create a mandatory, direct obligation for all DNFBPs to monitor all unusual, large transactions or transactions with no visible economic purpose, make out findings in writing and maintain them for at least five years.

42. Like financial institutions, DNFBPs must report any circumstances that may be indicative of money laundering to the FIU, with the same “safe harbour” provisions. However, advocates, associate lawyers at law firms and auditors may disclose any information (“tip off”) 24 hours after the moment an investigation has been started, information has been handed over to the police or the police have started a formal preliminary investigation. This could hamper investigations heavily and should be amended.

43. From the time the new reporting obligation came into force (1 January 2005) up to August 2005, the FIU had received 35 STRs from casinos, but only 10 STRs from other DNFBPs. It is too early to assess the effectiveness of the system. However, parts of the DNFBP sector pointed out that problems could arise: on the one hand, they feel obliged to terminate a relationship after filing an STR; on the other they may be obliged by other laws to inform their supervisory authority and the client when they resign from a contract.

44. The Swedish government has not yet designated any authority(ies) or SROs to monitor DNFBPs for compliance with AML/CFT requirements. Dealers in precious metals and stones are not monitored by any authority for any purpose; trust and company service providers are not subject to AML/CFT Acts or monitored by any authority. There are no administrative sanctions available specifically dealing with DNFBPs for breaches of AML/CFT obligations. For certain DNFBPs, such as real estate agents, auditors, and members of the Bar Association, sanctions might be applied for breaches of their relevant legislation.

45. Licenses to arrange casino gaming shall only be issued to companies that wholly, directly or indirectly, are owned by the state. No further requirements to grant a license are defined. The Gaming Board (Lotteriinspektionen) supervises casinos, lotteries and other gaming for compliance with the Lotteries Act although only the Government itself may decide upon a sanction.

46. The Board of Supervision of Real Estate Agents is responsible for registration, supervision and guidance pursuant to the Estate Agents Act. The Board viewed AML compliance as a necessary condition to be in accordance with sound estate agency practice (as mentioned in Section 12 of the Estate Agents Act) and the integrity criteria mentioned above. The Board also prepared guidelines to assist the sector with its AML obligations. The Bar Association registers advocates and also sees itself as responsible for the supervision of advocates’ compliance with the obligations according to the AML Act and indicated that an advocate who fails to fulfil his or her AML obligations could be subject to disciplinary action including being expelled from the Bar. Approved or authorized auditors have to be registered at the Supervisory Board of Public Auditors. FAR – the professional institute for authorized public accountants – was working on AML guidelines at the time of the on-site visit, and these were adopted in October 2005.

47. In addition to the non-financial businesses and professions that are designated according to the FATF Recommendations, the obligations of the AML Act also apply to tax advisors and natural and legal persons who conduct professional commerce with, or sales by auction of, antiques, art, scrap metal or means of transport in cases where cash payment is made in an amount corresponding to 15,000 EUR or more.

## **5. Legal Persons and Arrangements & Non-Profit Organisations**

48. Sweden’s national system of registering companies—the vast majority of legal persons in Sweden—provides that comprehensive and accurate information on directors shall be collected and made available publicly. Information regarding shareholders is required to be kept at the company’s registered office and be made available to the public. Although there is no time period specified to update changes in shareholdings for private companies, shareholders cannot formally exercise shareholder rights until they are registered. Information is collected and made available on a public registry for registered partnerships and economic associations. However, the provisions do not require that information on beneficial ownership be collected or made available, and do not provide adequate access to information on beneficial ownership in a timely manner.

49. Certain foundations—foundations that conduct business activities, parent foundations, foundations set up with participation of the state, charitable foundations—are subject to broad disclosure requirements and monitoring by the County Administrative Board (CAB). While much information is public, the system would be improved if the information collected were centralized, possibly at the Companies Registration Office. In addition, a majority of foundations (those of smaller size, family foundations, and foundations for the benefit of one person) do not need to be registered, and therefore relevant information is not collected on these entities. Also, since they are not registered, the CAB's ability to effectively monitor these entities is limited. Sweden should consider broadening the registration and/or recordkeeping requirements for foundations to ensure that adequate information on ownership and control is available to competent authorities.

50. Several forms of non-profit organisations exist in Sweden with different requirements for registering and record-keeping. The legal forms include non-profit associations, religious communities, foundations including family foundations, and economic associations established before 1951. No specific review of the adequacy of laws and regulations that relate to non-profit organisations that can be abused for FT had been completed at the time of the evaluation visit.

51. There are no specific measures in place to ensure that terrorist organisations cannot pose as legitimate non-profit organisations, although some are subject to significant oversight on a voluntary basis through membership in the Swedish Foundation for Fundraising Monitoring (SFI). It is unclear how much of the sector this actually covers in terms of size and risk, although SFI indicates that it has approximately 400 members, through which it believes the vast majority of charitable donations which are provided in Sweden are channelled. SFI monitoring includes the vetting of potential members, annual audits, and a special account number which helps to assure potential donors as to the foundation's credibility.

## **6. National and International Co-operation**

52. Sweden has a generally comprehensive system for national and international co-operation. National co-operation and co-ordination at the operational level is coordinated by the FIU and is generally strong, especially as the FIU is part of the National Police and engages in numerous projects to combat crime. The FIU co-operates with at least 51 other law enforcement bodies (including units within the National Police, county police authorities, the EBM, and the Customs Service) through information sharing and through participation in intelligence or co-operation projects. However, co-operative projects could more specifically target money laundering and terrorist financing issues.

53. There is also some co-ordination and co-operation at the policy level; however, a more pro-active approach to policy co-ordination on AML/CFT issues is recommended. Sweden should also review the effectiveness of its systems for combating money laundering and terrorist financing on a regular basis.

54. Sweden has signed and ratified the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention), the Convention against Transnational Organized Crime 2000 (Palermo Convention), and the Convention on the Suppression of the Financing of Terrorism 1999 and has implemented the vast majority of the three Conventions provisions relevant to the FATF recommendations. However, as noted above, certain aspects of the ML offence should be strengthened, as could measures for customer due diligence.

55. The Swedish authorities are able to provide a wide range of mutual legal assistance. Swedish authorities are able to assist foreign states with all the powers available for Swedish authorities in domestic investigations or proceedings. Requests from Nordic and European countries can be handled expeditiously as they are channelled directly between judicial authorities. Sweden should keep a more complete set of statistics, thus enabling it to better track the mutual legal assistance requests it receives and makes, and ensuring they are handled in a timely way. Dual criminality is not required for non-coercive measures or for search or seizure requests from EU countries, Norway, or Iceland.

56. Requests made under the Act on International Co-operation in the Enforcement of Criminal Judgements 1972 are sent to the Ministry of Justice. The process for executing an order from an EU state

is more efficient and can be sent directly to the prosecutor, without the need for a separate Swedish decision on the matter. At this time Swedish authorities are not considering establishing an asset forfeiture fund.

57. Both ML/FT (as criminalised) are extraditable offences in Sweden; however, there are differences among the principles applied for extradition in Nordic countries, countries with which Sweden signed a bilateral agreement, EU countries, and non-EU countries. Within the EU, the procedure for extradition has in general been replaced by surrender according to the European Arrest Warrant. Dual criminality is not required as long as the offences are punishable by at least three years imprisonment in the requesting state. For a non-Nordic State, dual criminality is required, and the act for which extradition is requested must be equivalent to a crime that is punishable under Swedish law by imprisonment for at least one year. In these cases, Swedish nationals may not generally be extradited.

58. Where Swedish nationals are not extradited, the government may submit the case to its competent authorities for the purpose of prosecution of the offences set forth in the request. The Central Authority at the Ministry of Justice, informs the prosecuting authorities who are able to decide whether investigation or prosecution should take place. However, there were no statistics available to indicate whether this system was working effectively.

59. For extradition to another Nordic state, it is only required that the act is punishable by law in the requesting state. There is therefore no general requirement of “dual criminality”, and a Swedish national can be extradited if the offender was domiciled in the other country for at least two years or if the act committed is punishable in Swedish by more than four years imprisonment.

60. In general, other forms of international co-operation appear satisfactory. Exchanges of information are not made subject to disproportionate or unduly restrictive conditions, and there appears to be a range of mechanisms or channels that can be used to co-operate with other countries. There are a series of bilateral agreements on police co-operation, and Finansinspektionen has the statutory power to share prudential information with other supervisory authorities, including banking, insurance and securities supervisors. Finansinspektionen has not received any foreign supervisory requests relating to AML/CFT. There are no indications that co-operation is ineffective; however, comprehensive statistics should be maintained in order to evaluate properly the effectiveness of the systems for information exchange.

# 1. Overview

## 1.1 General information on Sweden and its economy

1. Sweden covers a surface of 449,964 square kilometres in northern Europe. On 31 March 2005 Sweden had a population of 9,014,921, with almost 1.9 million in the Stockholm Metropolitan Area. The literacy level is nearly 100 per cent and life expectancy at birth is 82.7 years for women and 78.4 years for men. Sweden does not have an official language, even if Swedish is used as the official language. There are five official minority languages.

2. Sweden is a constitutional monarchy with a parliamentary democratic system of governance. The legislative branch consists of a 349-seat unicameral Parliament called the Riksdag whose members are directly elected by popular vote to serve four-year terms. The head of the government is the Prime Minister who appoints the cabinet. Since 1995, Sweden has been a member of the European Union, although Sweden has not entered the EMU. The Instrument of Government is monistic, with all power deriving from the citizens, as represented by parliament. The citizens elect the Riksdag, the Riksdag – in turn indirectly – elects the government, the government governs the country with the help of the administrative authorities, and the courts administer justice in accordance with the directives laid down by the Riksdag in fundamental and other laws.

3. The Riksdag has exclusive jurisdiction to enact criminal laws. The government presents bills, including “preparatory works” that explain the provisions in the bill, to the Riksdag for consideration. Once enacted, jurists, academics and practitioners may author “commentaries” on the law. Courts may consult the preparatory works and commentaries when interpreting the law, but they are not bound to follow them. A growing proportion of legislation affecting Sweden is enacted by the European Union. Some of these laws apply directly, without prior sanction by the Riksdag, while others must be implemented in Swedish legislation before they can take effect.

4. The Swedish judiciary is independent. The government appoints permanent judges, but appointments are not politically motivated. There are 62 district courts, six appeal courts and the Supreme Court (Högsta Domstolen). There is no constitutional court, but all courts may ascertain whether a law is in accordance with the Constitution, to which all other laws are subordinate. Judges, in principle, may not be removed. A judge can be removed from office without being convicted of a crime if through “gross or repeated neglect of his official duties he has shown himself to be manifestly unfit to hold the office.” Questions concerning the discharge of judges on grounds of dereliction of duty are dealt with as matters of labour law, and final judgment is made in the Labour Courts, rather than as matters of public law.

5. Sweden is a developed, industrial country with an open, export-oriented economy, and is listed as one of the richest economies in the world. As in most other highly developed economies, services contribute the biggest share of total GDP. The share of the secondary sector (including manufacturing) in GDP has recovered from its low point in the recession of the early 1990s. The IT sector has grown extremely rapidly and Sweden is now a world leader in investment in information and communications technology. Sweden is home to some highly influential companies in numerous sectors, including pharmaceuticals, transport equipment, construction, engineering, telecommunications, electronics, financial services, and retailing. Many of these companies are now foreign-owned or in cross-border co-operations.

6. The value of exports and imports of goods amounted to approximately 35% and 28%, respectively, of nominal GDP in 2004. The composition of exports has changed from raw materials and semi-manufactures at the end of WW II to items with a high value-added component such as some of the above-mentioned products. Major trading partners are the United States, the Nordic countries and the European Union.

## 1.2 General Situation of Money Laundering and Financing of Terrorism

7. A report by the Swedish National Economic Crimes Bureau estimated the yearly amount of proceeds of crime in Sweden to be about 130 billion SEK<sup>2</sup>. Sweden's assessment of the general situation on money laundering and terrorist financing comes mainly from the FIU's analysis of suspicious transaction reports (STRs), which total approximately SEK 3.3 billion in value annually. The information gained from the STRs and from the subsequent money laundering investigations indicates that the main predicate offences are drug crimes, smuggling and illegal trade of alcohol and tobacco, theft, frauds, document forgery, receiving of the proceeds of crime, human trafficking, violation of the Firearms Act, bribery, dishonesty to creditors, violation of the Companies Act, tax and VAT evasions crime and bookkeeping crimes.

8. The Swedish FIU has noted that money laundering operations are increasingly performed through organized methods and techniques, by individuals or groups that are directly or indirectly connected to organized crime in Sweden and its international counterparts. Several money laundering investigations have revealed connections to so called motorcycle gangs (e.g. Hells Angels, Bandidos) and to Mafia style organisations in the Balkans and Eastern Europe.

9. Most visible money laundering is performed through banks, money exchange offices (bureaux de change), and money remitters. A major part of the STRs from the banks can be connected to tax and VAT frauds performed within businesses where there is an extensive use of contractors. These businesses include, for example, construction, cleaning, taxi and restaurant businesses.

10. Informal remittance operators have been used in money laundering operations connected to drug crime, human trafficking, tax and VAT frauds and in transfers of proceeds of crime, to be invested abroad in vehicles like real estates and restaurant businesses. It is also believed that proceeds of crime have also been laundered via investments in high value goods, e.g. expensive vehicles, boats, art, antiquities, jewels and real estate (which have been subject to AML regulation only since 1 January 2005).

11. The FIU has for several years observed an increasing usage of cash in the Swedish economy, and this is reflected in the large number of STRs that report large cash transactions. Several cases indicate that large cash transactions are often connected to tax and VAT evasions/fraudulent transactions performed by natural and legal persons. A project concerning the cross-border trade of groceries within the EU showed that the legal persons involved make payments in cash, and in order to meet their need of currency exchanges, often use certain money exchange offices that do not fully observe their AML/CFT obligations.

12. A relatively sophisticated method of money laundering technique involves the use of bank accounts abroad. Credit cards are connected to these accounts; the cards may be used in Sweden for cash withdrawals through ATMs and for credit card purchases. The Tax Authority has successfully conducted an investigation aimed at natural persons living in Sweden who make use of credit cards in Sweden, which are connected to bank accounts abroad.

13. Swedish authorities report that the financing of terrorism has not so far been a major problem in Sweden. The few active groups found use different methods for acquiring money. Intelligence indicates that the few groups and persons in Sweden that fit into the extremist category are largely self-supporting, i.e. do not receive funding from abroad. Intelligence also indicates that some of these groups engage in various types of fraud and also seem to acquire funds from theft or fraudulent behaviour in shops, as well as through fundraising through individual donors. Money collected from fundraising seems mostly to be deposited into account in the conventional banking system and forwarded in larger lots, making it more difficult to link money from a particular fundraising campaign to terrorism. The possible use of alternative remittance systems means that often crimes are more difficult to detect and prove in a court of law.

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<sup>2</sup> SEK = Swedish Krona. At the time of the on-site visit, 1 SEK = 0.11 EUR or 0.14 USD.

14. In October 2005, two individuals were convicted under the Swedish counter terrorist financing legislation. In November 2001, assets were frozen in Sweden for three individuals and three organisations pursuant to designation by the UN Sanctions committee under S/RES/1267(1999) for associations with Al Qaida.

### 1.3 Overview of the Financial Sector and DNFBPs

#### a. Overview of Sweden's financial sector

15. The following financial institutions operated in Sweden at the end of 2004.

Type of Institution	Number
Credit institutions:	
<i>Banking institutions</i>	126
<i>Credit market undertakings</i>	75
Securities companies	102
Investment companies/mutual fund companies	73
(Securities funds)	641
Deposit companies	11
Financial institutions:	77
<i>Money exchange offices</i>	30
<i>Money transfer institutions</i>	25
<i>Other financial businesses</i>	20
Life insurance companies (including fund insurance)	45
Insurance brokers	1455
Foreign branches:	30
<i>Life insurance companies</i>	6
<i>Banking institutions</i>	19
<i>Credit market undertakings</i>	2
<i>Securities companies</i>	15
<i>Investment companies</i>	2

16. **Credit institutions:** Credit institutions consist of both banks and credit market undertakings. The term bank includes banking companies, savings banks and members' banks. Banks are engaged in payment services via general payment systems and receipt of funds; they hold total assets of 3,879 billion SEK. Credit market undertakings include credit market associations, credit market companies and mortgage companies. Credit market undertakings are authorized to accept repayable funds from the public, directly or via a closely linked undertaking, and to grant loans, guarantees for loans or, for financing purposes, to acquire claims or grant rights of use in personal property (leasing).<sup>3</sup> They hold assets of approximately 2,058 billion SEK.

17. **Certain financial institutions:** The Obligation to Notify Certain Financial Operations Act (1996:1006) regulates registered financial institutions, including: natural or legal persons that operate

<sup>3</sup> Credit institutions may also conduct operations naturally connected with the financing operations described above. A credit institution may, in its operations, inter alia: borrow funds, for example by accepting deposits from the general public or issuing bonds or other comparable debt instruments; grant and broker loans, for example in the form of consumer credit and loans secured by charges over real property or claims; participate in financing, for example by acquiring claims and leasing personal property; negotiate payments; provide means of payment; issue guarantees and assume similar obligations; participate in the issuance of securities; provide financial advice; hold securities in safekeeping; conduct letters of credit operations; provide bank safety deposit services; engage in currency trading; engage in securities operations subject to the conditions prescribed in the Securities Operations Act (1991:981); and provide credit information subject to the conditions prescribed in Credit Information Act (1973:1173).

currency exchange, money transfer, or other financial businesses. Other financial businesses primarily conduct one or more of the operations as stated for credit institutions.

18. **Deposit companies:** Deposit companies are engaged in accepting repayable funds from the public which following notice of termination are available for the customer within one year. Funds accepted from the public are not covered by the public deposit guarantee system.

19. **Securities companies:** Securities companies conduct securities operations such as: trading in financial instruments in its own name on behalf of another party; brokering of contracts between purchasers and sellers of financial instruments and co-operation in transactions in respect of such instruments; trading in financial instruments on its own account; management of another party's financial instruments; and underwriting or other participation in issuances of securities or offers to purchase or sell financial instruments directed to the public. Securities companies hold total assets of 34 billion SEK.

20. **Life insurance companies:** Life insurance companies carry on activities such as underwriting of life insurance policies and hold total assets of 1,567 billion SEK. The life insurance companies also provide supplementary insurance such as insurance against personal injury, insurance against death resulting from an accident, insurance against disability resulting from an accident or sickness.

21. **Insurance brokers:** Insurance brokers are natural or legal persons who act as professional intermediaries in the sale of insurances directly to various principals, by insurers that are independent of each other, including insurers that are not established in Sweden. New legislation entered into force on 1 July 2005 that widens the scope to include also other kinds of insurance intermediaries.

22. **Electronic money institutions:** The Issuance of Electronic Money Act (2002:149) regulates the business of electronic money institutions. An electronic money institution issues e-money that can be used as means of payment in for example shops and parking machines which accept e-money. At the time when the legislation was enacted only banks provided e-money as a part of their operations. Currently no electronic money institution is licensed for provision of e-money.

23. **Investment companies:** Investment companies/mutual funds companies are Swedish limited liability companies authorized to conduct fund operations such as management of collective investment funds, the sale and redemption of units in the fund, and administrative measures relating thereto. They hold total fund assets of approximately 791 billion SEK, which includes those of securities companies that conduct fund operations.

24. **Foreign branches:** Foreign branches are regulated in the Act of Foreign Branches (1992:160). Credit institutions, securities companies, life insurance companies and investment companies have branches operating in Sweden. Foreign branches of financial institutions domiciled in the EEA, operating in Sweden, are in accordance with the main rules of the home and host supervision system under the supervision of the competent authority in their home state in accordance with the home and host supervision system. As regards AML/CFT supervision and regulations, the host state has the main responsibility even though the home state also has a responsibility on the consolidated level. The same rules apply mutatis mutandis on the Swedish branches in the EEA.

**b. Overview of designated non-financial businesses and professions (DNFBPs)**

25. **Casinos:** The Casinos Act (1999:355) allows for the establishment of a maximum of six casinos in Sweden. Permits to arrange casino gaming shall only be issued to companies that wholly, directly or indirectly, are owned by the state. Such a permit has been issued to AB Svenska Spel (the State Lottery), which operates casinos in Sweden since 2001 through its wholly owned subsidiary Casino Cosmopol AB. Casino Cosmopol AB currently operates four casinos located in the cities of Göteborg, Malmö, Stockholm and Sundsvall. Last year, the casinos recorded a gross gaming revenue of 853 million SEK. The casinos employ more than 1,000 people and during 2004 they had 870,000 visitors. Gaming is offered on approximately 100 gaming tables and 830 gaming machines.

26. **Real estate agents:** There are approximately 5,500 registered real estate agents. Rules governing real estate agents are found in the Estate Agents Act (1995:400). According to the Estate Agents Act a real estate agent is a natural person whose occupation is to negotiate the sale of real estate, parts of real estate, buildings on property belonging to other persons, site-leasehold interests in land, proprietary to apartments, ground leases or floor-space tenancies. Every estate agent shall be registered with the Board of Supervision of Estate Agents. Excluded from this provision are only members of the Swedish Bar Association. The Board of Supervision of Estate Agents shall have supervisory authority over the estate agents and shall ensure that in the performance of their business activities estate agents comply with the obligations imposed by the Estate Agents Act.

27. **Dealers in precious metals and dealers in precious stones:** According to statistics there are 800 dealers in precious stones and metals in Sweden. The dealers are involved in customer transaction of precious stones and metals. The dealers have 2,200 employees and the turnaround is 2.7 billion SKR. The dealers in precious stones/metals are not supervised or monitored.

28. **Lawyers and other independent legal professionals:** (advocates and associate lawyers): Any person may practice law, offering his services to the public, without the need for an authorisation. Anyone may appear before any court, on any level of the court system, representing himself or another person. However, only members of the *Swedish Bar Association* (Sveriges advokatsamfund) may offer legal advice under the professional title “advokat” (advocate). Litigants are not required to employ qualified legal counsel in court; however, Bar members are retained in the vast majority of court cases. In-house lawyers are not permitted to become members of the Bar. The number of advocates is approximately 4,200. There are also about 1,300 associate lawyers, not yet members of the Bar, employed in law-firms. In a recent survey among the members, almost 60 % stated that business law was their main field of work, while criminal law was stated as the main field by 36 %. The two largest Swedish firms currently employ more than 300 lawyers each.

29. **Notaries:** Some advocates are Public Notaries, with the task of certifying documents. However, this is not a common task for Swedish advocates. This is a result of the fact that contracts normally do not require notarisation or any other form of public involvement to become valid. In the meaning that notaries are public legal officials, notaries do not exist in Sweden.

30. **Accountants and auditors:** In Sweden, auditors and the audit firms must register at the Supervisory Board of Public Auditors – Revisorsnämnden. Revisorsnämnden is the government office responsible for the examination of applicants to the profession as well as the supervision of members of the profession. The systematic control yearly covers a number of public auditors, selected on a random basis or on the basis of certain risk elements – such as an unusually large number of audits. Other supervisory measures are conducted in a systematic way. According to Revisorslagen, (the Auditors Act, 2001:883) an auditor may not carry on any other business than audit business or business that has a natural connection therewith, if such other business is of such a nature or scope that it may undermine confidence in the auditor’s independence, or such other business is in some other way incompatible with the position following from the right to carry out statutory audits. The auditor, as well as his or her assistants, is also obligated to observe professional ethics for auditors. There are approximately 4,200 active authorized or approved public auditors in Sweden. There are also approximately 90 registered public auditing firms. The majority of the registered and non-registered firms are small, employing one or a few accountants. The “Big Four” firms employ more than half of the public auditors. There are few medium sized firms. The sector is broadly supervised and within the scope of the AML Act.

31. Other accountants (that are not auditors) may engage in any legal financial activity and business and are often engaged as advisers on business transactions. The sole activity as an accountant, however, does not call for registration and is not subject to any regulation or supervision or coverage within the AML Act, although accountants who also provide tax advice would be covered under the AML Act.

32. **Trust and company service providers:** Company service providers exist in Sweden but are not regulated. Hence, there are no applicable restrictions on their activities or business; nor is there information on the number of professionals in this sector.

## 1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

33. **Limited companies (around 308,000):** The limited liability company (aktiebolag) is the predominant type of business organisation used in Sweden. Public (publikt) companies (approximately 1,500) must have at least three directors, a managing director, and minimum share capital of 500,000 SEK; private (privat) companies must have at least one director and one deputy director and a minimum share capital of 100,000 SEK. Directors must be natural persons. About 400 public companies are traded on the stock exchange. A limited liability company is established by one or several founders, who can be a physical person living within the European Economic Area (EEA), a Swedish legal person or a legal person founded in a country within the EEA and which has its registered office, main office or its main activity within the EEA. Limited companies must also keep accounts and shall draw up annual accounts. Every limited company is subject to statutory audit.

34. **Partnerships (approximately 100,000 registered):** Partnerships exist as limited partnerships (kommanditbolag), trading partnerships (handelsbolag) and non-trading partnerships (enkla bolag). Trading partnerships (approximately 96,000) and limited partnerships (approximately 29,000) are run by two or more partners (bolagsmän). The partners can be legal persons or individuals; there are no specific requirements for partners being resident in Sweden and/or the partnership carrying on business in Sweden. Trading and limited partnerships are legal persons and must register with the Companies Registration Office according to the Trading Registry Act (1974:157). A non-trading partnership is created when two or more persons agree to carry out a commercial activity. The partners can be either legal persons or individual but the partnership is not a legal person. Partnerships must keep accounts and shall under certain conditions draw up annual accounts. Partnerships are under certain conditions subject to statutory audit; for example, if one of the partner in a kommanditbolag or handelsbolag is a legal person or if the partnership runs a large operation.

35. **Sole traders (approximately 524,000):** Sole Traders register with the Companies Registration Office but are not legal persons. The business is run and represented by one person. The registration number of the enterprise is the person's personal identification number. The business can allocate profits for future use and use a deficit in a newly started business to offset earned income or future surpluses. Sole traders must keep accounts and shall draw up annual accounts if the trader runs a large operation. Sole traders are subject of statutory audit if the trader must draw up annual accounts.

36. **Foreign companies:** The Act on Foreign Branches. (1992:160) applies to foreign entities operating some form of business in Sweden through the agency of a local office that is independently run and administered. If such an office is deemed to be a branch under the terms of the Act, it must be officially entered into the Register of Company Branches. All overseas traders are also required to register with the Tax Authorities if they have a fixed establishment in Sweden or if they sell goods and/or services which result in the liability to pay VAT. A branch office must keep accounts that are separate from the foreign company. A branch office shall draw up annual accounts and is subject to statutory as required for a Swedish company.

37. **Economic associations (around 12,800):** An economic association is a legal entity and must register with the Companies Registration Office. Its purpose is to further the interests of the members by economic activities in which the members "take part as customers or suppliers or by contributing their labours or making use of the services of the association or in some other such manner". The member's interest must not be to obtain yield from capital. The register contains information on, among other things, the names and addresses of the board members. It is formed by a minimum of three physical persons or legal entities and is open to all. There is no requirement for starting capital similar to a share capital. Economic associations must keep accounts and shall draw up annual reports. These are to be kept available to the public. Large associations must file annual reports with the Companies Registration Office; others must do so upon special instruction. Economic associations must keep accounts and shall draw up annual accounts. Economic associations are subject to statutory audits.

38. **Non-profit associations** (*Not known since it is not required that all such entities be registered; probably around 200,000*): The non-profit association (*ideella föreningar*) is used as a legal form by as diverse organisations as trade unions, employers' associations, charities, sports associations, voluntary organisations, political parties, etc. To attain legal capacity a non-profit association must have a committee and rules of sufficient completeness clearly laying down how decisions are to be taken and specifying the organs authorized to represent the association in its external relations. The constitution of a non-profit association must allow the number of members to vary without amendment of the rules. Non-profit associations must keep accounts if they are engaged in any business activity or if they have assets exceeding approximately 1.200.000 SEK. Large non-associations shall draw up annual accounts.

39. **Foundations** (*approximately 15,000 registered; maybe as many as 30,000 in total*): There are two main categories of foundations. The largest group covers grant making foundations that receive their income from the return of invested assets (*avkastningsstiftelse*); the second group is formed of operating foundations with some kind of project or business related activities (*verksamhetsstiftelse*.) Foundations are legal persons in Sweden. One or more founders (natural or legal persons) may establish a foundation. A foundation deed (*stiftelseförordnande*) must be established in writing and signed by the founders describing the purpose of the foundation and the assets, which are handed over to a third party who manages the assets in accordance with the will of the founder. There is no minimum capital required. Foundations that conduct business activities, parent foundations, foundations set up with participation of the state, foundations with a fundraising objective and foundations with assets over a certain amount must register with the relevant County Administrative Board (*Länsstyrelsen*), maintain accounting records, and submit annual reports.

40. **Religious Communities** (*60 registered*): Under the Act on Religious Communities (1998:1593), a religious community, at its own request, can be registered by The Legal, Financial and Administrative Services Agency (*Kammarkollegiet*), if the community has: 1. statutes containing provisions about the religious community's purposes and about how decisions concerning its affairs are taken, and 2. a governing board or equivalent body. A religious community that has been registered in accordance with the law may acquire rights and assume obligations and be party to legal actions before courts or other authorities. Independent organisational parts of a community may also be registered.

41. **Trusts**: Trusts cannot be set up under Swedish law. However, there are no obstacles for a Swedish citizen to be trustee of a foreign trust. In such a case the settlers and beneficiaries will therefore necessarily be governed by the law of a jurisdiction which recognizes the trust concept. If information is considered necessary for Swedish tax assessment purposes, the taxpayer has a requirement to disclose such information to the tax authorities. This may concern information about settlers, protectors, enforcers and/or beneficiaries. It should also be noted that foundations, which are legal persons in Sweden, show similar characteristics to those of trusts.

## 1.5 Overview of strategy to prevent money laundering and terrorist financing

### a. AML/CFT Strategies and Priorities of the Swedish government

42. Swedish authorities indicate that prevention of and the fight against economic crimes, including money laundering, terrorism and the financing of terrorism, are priorities for the Swedish Government. The National Police has been reinforced by means of around 280 million euros since 2000 with the aim of 4,000 new officers trained and in full service by September 2006. The Prosecution Service has been financially reinforced with a view to further develop its efficiency in crime investigations. The Security Service has been allocated additional resources and has also been internally reorganised to strengthen capacities to prevent and fight terrorism. The issues are expected to stay high on the agenda for the foreseeable future.

43. Just as for the fight against crime in general, six central principles guide the Swedish government's policy and development as regards the fight against economic crime and terrorism: 1) adequate legislation; 2) efficient instruments for the police; 3) intelligence-led policing; 4) Co-operation and

coordination within the legal chain and with other actors; 5) the rule of law; and 6) international co-operation.

44. In order to keep the Swedish legislation on money laundering and financing of terrorism an effective and adequate tool in the fight against this kind of crime, the development in the ways the financial system is used for money laundering and financing of terrorism is closely watched. A successful fight against economic crime, organised crime and terrorism presupposes efficient instruments and methods for the police, including the Security Service, and other law enforcement agencies. The government is therefore currently reviewing, for the purpose of proposing new legislation, the use of compulsory means such as secret wire-tapping, telecommunications surveillance and camera surveillance.

45. Criminal intelligence departments have a central role to play in supporting the daily work of preventing economic crime, organised crime and terrorism. The information collected should be used in operative investigations and also for planning and long-term strategic work. Several police authorities already use a model for intelligence-led policing and the Government is actively supporting a wider application.

46. Co-operation and co-ordination between relevant law enforcement agencies dealing with different forms of economic crime has been given increased attention. In their respective approval documents for 2005, the National Police Board (NPB), the Prosecutor General's Office and the EBM were tasked with reporting back to the Government by the end of 2005 on the measures taken to improve forms of cooperation and coordination in fighting economic crime. The Security Service has also set up a Co-ordination council involving all relevant agencies with a stake in the fight against terrorism and is similarly setting up an informal network to facilitate contacts between relevant actors in the fight against terrorist financing.

47. The rule of law is fundamental principle for all work within the legal system and is understood to mean that the individual can put trust in legislation, authorities and courts. Efforts in the field of counter-terrorism must be based on the rule of law and with full respect for international law, including human rights and international humanitarian law. Ensuring that measures to counter terrorism are fully in line with rule of law aspects and human rights and fundamental freedoms is one of the Swedish government's highest priorities in international negotiations.

48. The Swedish government and agencies take an active and constructive part in ongoing work within the UN, EU, Council of Europe, OECD, FATF, OSCE, etc., to enhance existing co-operation and develop new ways of working together.

49. The work carried out in the Financial Action Task Force is also very important when it comes to outreach to countries that need technical assistance and other forms of support. In order to give priority to this, Sweden took on the assignment of the Presidency of the FATF during July 2003-July 2004. In parallel inter-governmental and inter-agency work was enhanced by the creation of a delegation of officials involving the Ministries of Finance and Justice, the Riksbank, Finansinspektionen, the FIU, the Prosecutor-General, and the EBM. A recent effort has also been the active negotiation in Brussels concerning the third Money laundering Directive. The establishment of a Commission of Inquiry on Money Laundering and the upcoming third Money Laundering Directive and other related issues is also planned during September 2005. The Commission was scheduled to be appointed in January 2006.

## ***b. The institutional framework for combating money laundering and terrorist financing***

### **(i) Ministries**

50. The *Ministry of Finance* has the responsibility for issues relating to economic policy, the government budget, taxes, customs policy and legislation, financial markets regulation, international economic co-operation, government administration and relations with local authorities. The Financial Institution and Markets Department is responsible for the anti-money laundering legislation. The Financial Institution and Markets Department has a co-responsibility for issues related to financing of

terrorism under the Ministry of Justice and Ministry of Foreign Affairs. The Financial Institution and Markets Department is also responsible for legislation related to the banking, insurance and securities sectors. This also includes as responsibility for payments, bureau de changes and e-money.

51. The **Ministry of Justice** is responsible for legislation concerning the Constitution and general administrative law, civil law, procedural law and criminal law. The Ministry also handle matters relating to democratic issues, human rights, integration and minority issues, metropolitan affairs, sports issues and non-governmental organisations. The Ministry of Justice is responsible for the major part of the judicial system; i.e. authorities and agencies responsible for the rule of law and legal safety. The Ministry thus oversees e.g. the National Police Board (which houses the FIU), the Security Service, and the Courts.

52. The **Ministry for Foreign Affairs** has a leading role in the Government's international political cooperation against terrorism and is in charge of legislation implementing international sanctions, which includes responsibility for EU and EC instruments. Finally, the Ministry is in charge of coordinating the national preparations when considering proposals for designation under the EU and EC instruments implementing S/RES/1373(2001) and also receives and handles pre-notifications from other countries concerning designations of terrorists.

53. The **Ministry of Industry** has wide-ranging responsibility, including labour markets, industry and communications. In the area of anti-money laundering the Ministry of Industry is responsible for legislation related to dealers of high value goods, including dealers of precious stones and dealers of precious metals.

#### (ii) Criminal justice and operational agencies

54. The **National Police Board** (NPB) is the central administrative and supervisory authority of the police service. The NPB is responsible for the development of new work methods and technological support. The Swedish Security Service and the National Criminal Police (*Rikskriminalpolisen*—RKP) are units within the NPB.

55. The **National Criminal Police** (*Rikskriminalpolisen*—RKP) provides investigation and criminal intelligence support in cases involving crimes with nationwide or international ramifications. The RKP also works at the local level of the police organisation, providing reinforcement for police authorities as required, and is in charge of the Police Helicopter Service, Swedish Police Peace Support Operations and the National Communications Centre.

56. The **Swedish Security Service** (*Säkerhetspolisen*—SÄPO) is responsible for protection of sensitive objects, counter-espionage, anti-terrorist activities and protection of the constitution. In the fight against threats to national security, the national Security Service conducts investigations, provides intelligence, resources and methodological know-how.

57. Finanspolisen (FiPo) is Sweden's **Financial Intelligence Unit** (FIU) and belongs to RKP and is the competent authority on the national level for money laundering and financial intelligence, financing of terrorist activities, counterfeiting of currency and other non-cash means of payment. Banks, credit market companies, holding companies, exchange offices, insurance agents, remittance dealers and life insurance companies are obliged to report any transaction that may reasonably be assumed to constitute money laundering. From 1 January 2005, a range of other companies also falls under the obligation to report, including independent lawyers, public accountants, tax advisers, real estate agents, casinos and dealers in expensive goods such as antiques, art, precious stones, metals and means of transport.

58. The **National Public Prosecution Authority** (NPPA) is one of two overall agencies responsible for prosecuting crimes. (The other is the Swedish National Economic Crimes Bureau.)

59. The **Prosecutor-General** is the highest prosecutor in the country and as such acts for legal development and guidance for the application of law by taking certain cases to the Supreme Court. The

Prosecutor-General supervises the decisions of all public prosecutors. The Prosecutor-General is also the central administrative authority of the National Public Prosecution Authority

60. The **public prosecutors** at the NPPA decide whether to open a preliminary investigation (criminal investigation), whether to prosecute or not, and are responsible for the prosecution during the trial in the local court and the court of appeal. The prosecutors normally get support from the local or regional Police Authorities (normally the local or regional Criminal Investigation Department, CID) or the National CID in form of detached investigators and specialists.

61. The **Swedish National Economic Crimes Bureau** (*Ekobrottsmyndigheten*—EBM) is a specialist government agency dedicated to combat economic crime, mainly in metropolitan areas. EBM was established in 1998 and is a prosecutor authority. EBM has competence to handle cases such as those involving economic crime that is nationwide or has international links or is of principle interest or of great scope. Such cases may be taken over by EBM upon the request of another prosecutor authority. EBM handles cases relating to Chapter 11 of the Penal Code (dishonesty to creditors, careless disregard of creditors, favouritism to a creditor and bookkeeping crime), the Tax Offences Act, the Companies Act, and cases relating to fraud, if the act concerns the financial interests of the EU.

62. **The Swedish Economic Crimes Council:** The co-operation and exchange of information amongst law enforcement agencies and other organisations involved in the combat of economic crimes are indispensable tools in the effective investigation of economic crimes. The partnership, often informal in nature, is continually evolving. Structured, overarching and functionally oriented collaboration through the Swedish Economic Crimes Council and its task force supplements that arrangement. The Council is composed of the Prosecutor-General as chairman, the NPB, the Swedish Tax Authorities, the Customs Service, the Swedish National Council for Crime Prevention, Finansinspektionen, the Swedish Companies Registration Office and EBM, which also runs the Swedish Economic Crimes Council office.

63. **SAMEB:** A regional co-operation has been set up against serious economic criminality, including actions against organised crimes. Each regional co-operating platform (SAMEB) is chaired by the County Governor and includes the Public Prosecution Authority, the County Police Commissioner, the Tax Authority, the Swedish Custom Service, EBM and representatives of the county administrative board. These networks annually analyses different kind of threats and set up actions plans. In this network, actions against money laundering could be on the agenda.

64. The **Swedish Tax Agency** (TA) is responsible for the administration of all kinds of taxes, with the exception of VAT, excise duties and customs duties levied on imported goods at the external border. The Swedish Tax Agency has special Tax Fraud Investigation Units that may assist prosecutors from the National Public Prosecution Authority. There is no direct role for the TA in combating money laundering. However, information gathered by the FIU is often valuable to the TA, as in identifying new trends and payment patterns.

65. The **Customs Service** is divided into two main processes – Law Enforcement and Managing the Trade. Law Enforcement is responsible for preventing and stopping commodities from illegally being brought into the country. The subdivision operating against organised crime is responsible for measures against large-scale and organised crime, including economic crime and environmental crime. The subdivision for preventing other kinds of crime supervises the compliance with import and export regulations and is responsible for discovery of and operations against crime in the traffic flows.

66. The **Swedish Companies Registration Office** is a government agency under the Ministry of Industry. Almost every legal person has to register with the Office.

67. The **County Administrative Board** (Länsstyrelsen) is responsible for supervising foundations, inter alia the registration of such entities. The Board has actively been trying to detect and prevent fraudulent fundraising campaigns.

### (iii) Financial sector bodies—government

68. *Finansinspektionen* is responsible for licensing and prudential AML/CFT supervision of the main bulk of financial institutions such as banks and other credit institutions, insurance companies, securities companies, collective investment companies and e-money businesses. *Finansinspektionen* also registers and has limited supervision for certain other financial institutions such as currency exchange businesses, money transfer businesses, and deposit companies. *Finansinspektionen* also has the competence to issue secondary regulations and general guidelines in the areas of responsibility.

69. *Sveriges Riksbank* is Sweden's central bank and an authority under the Riksdag, the Swedish Parliament. The Riksbank's main tasks are to maintain price stability and to promote a safe and efficient payment system. On 1 January 1999, the Riksbank was granted its independent status in Swedish law. No authority may determine the decisions made by the Riksbank on issues relating to monetary policy. The Riksbank has no operative role or responsibility in detecting, preventing, and taking repressive action in relation to money laundering and terrorist financing.

### (iv) Financial sector bodies—associations

70. The *Swedish Bankers' Association* represents banks as well as finance companies and mortgage credit institutions within the banking groups. Branches of foreign banks operating in Sweden are also members of the Association. The Association represents the member companies towards authorities and organisations as well in Swedish as international matters. The Association disseminates information about the banks and their position in society. The Swedish Bankers' Association has 30 member companies – 20 banks, 6 finance companies and 5 credit institutions.

71. The *Swedish Insurance Federation* is the trade association for insurance companies. Its member companies account between them for more than 95 per cent of the insurance business in Sweden. The members of the Federation are 35 insurance companies or company groups.

72. The *Swedish Investment Fund Association* is a trade organisation whose purpose is to look after the collective interests of management companies and fund savers alike in all dealings with the public authorities and the legislature. As the recognised representative for the industry, the official consultative body and a shaper of public opinion, the Association's mission is lobbying politicians and decision makers. Another important mission is to provide basic and extended information to the fund saving general public. The Association has about 30 members.

73. The *Swedish Securities Dealers Association* was founded in 1908 and is a cooperative organisation for companies which deal in securities in Sweden. According to its constitution, the Association is intended to be an association for institutions trading in securities in Sweden under the Securities Business Act, or carrying on some other comparable activity on the Swedish securities market. Its stated purpose is to look after the common interest of the members. The Association has about 35 members.

### (v) DNFBP and other matters

74. The *Gaming Board* (*Lotteriinspektionen*) is a government authority under the Ministry of Finance and is the central supervisory authority for gambling in Sweden, including lotteries, sports betting and casinos. The Board's tasks also include licensing, mainly of lotteries. As regards casino gaming, the government has delegated the issuing of some conditions and regulations of a more detailed nature to the Gaming Board. The Board is also responsible for exercising supervision of compliance with the Casinos Act and conditions and regulations issued pursuant to the Act.

75. The *Board of Supervision of Estate Agents*, which has supervisory authority over the registered estate agents to ensure that they in the performance of their business activities comply with the obligations imposed by the Estate Agents Act, has no direct responsibilities in detecting, preventing or taking repressive action in relation to money laundering and terrorist financing. The Board has issued AML guidelines for the real estate agents.

76. The **Supervisory Board of Public Auditors** (Revisorsnämnden) is the government office responsible for the examination and supervision of “revisors” (authorised or approved public auditors). The aim of the Board is to meet society’s need of qualified, independent external auditors and audit firms and to ensure that the profession meets the demands on high technical quality and ethical conduct. The legislation is based on the Auditors’ Act (2001:883). The legislation regulates requirements for qualification, the professional obligations of public accountants and accounting firms – notably ethics and independence – and disciplinary procedures.

77. The **Swedish Bar Association (the Council of the Bar)** and its Disciplinary Committee supervise Bar members and ensure that they satisfy the professional duties of an advocate. The Disciplinary Committee deals with cases concerning possible contraventions of the ethical guidelines for advocates (“god advocated”). The Swedish Bar Association has a self-regulatory role regarding AML and has issued AML guidelines.

78. The **Chancellor of Justice** (Justitiekanslern) also has supervisory powers with regard to advocates. He may request that disciplinary measures are implemented by the Disciplinary Committee against a negligent member, or by the Council in respect of members who no longer fulfils the formal requirements for membership. The Chancellor of Justice may also appeal decisions by the Disciplinary Committee to the Supreme Court.

79. **Associated Legal Firms** (Sveriges Juridiska Byråer, SJB) is a professional association that for independent lawyers other than advocates and their associate lawyers. The association has ethical rules and disciplinary proceedings can be initiated against those who do not follow these rules. The SJB has only about a hundred members.

80. **FAR** is the professional institute for authorized public auditors (auktoriserade revisorer, which requires at least three years of work experience), approved public auditors (godkända revisorer, which requires at least five years of work experience) and other professionals in the accountancy sector in Sweden. FAR includes most of Sweden’s 2,400 authorized public auditors. FAR plays an important role in the development of professional standards, education and information for the audit profession in Sweden. FAR published AML guidelines for the sector in October 2005.

81. The **Swedish Association of Auditors** (Svenska Revisorsamfundet—SRS) is another organisation for public auditors. Most of its members are approved public auditors, typically auditing small and medium sized enterprises.

### **c. Approach concerning risk**

82. A revised AML Act and related legislation came into force as of 1 January 2005 mainly for the purpose of implementing of the second EC money laundering directive. The FATF revised 40 Recommendations risk based approach has thus not been taken into account in the amended legislation. However, Finansinspektionen’s GCF Guidelines and the new AML/CFT Regulations contain general guidelines on risk management. Financial institutions covered by the AML/CFT Regulations should identify and analyse the risk of being used for money laundering and terrorist financing in its operations. The analysis should be comprehensive and cover all products, services and distribution channels provided for customers in all areas of business. Such a risk analysis is aimed at creating an overview and better understanding of the AML/CFT risk in a financial institution’s operations and business, and consequently provides a useful instrument for allocation of resources, provision of relevant guidance and training of staff in various business areas and functions within the financial institution. The general guidelines on risk management which addresses the institution’s risk of being exposed to ML/FT in its provision of products, services and distribution channels in the various business areas also have an impact when exercising the principle of Know Your Customer.

**d. Progress since the last mutual evaluation or assessment**

83. The second mutual evaluation of Sweden took place in March 1996. In the second mutual evaluation report the following the main deficiencies and weaknesses were identified, followed by the actions taken since 1996.

*i. The anti-money laundering system in the area of legal and law enforcement sectors did not appear to operate effectively.*

84. Since 1996 a number of measures have been enacted to develop the operative work of the law enforcement agencies, foremost of which was the creation of the Swedish Economic Crimes Bureau (EBM) on 1 January 1998. The prime focus of all the work undertaken by EBM is the effective prevention of economic crime. This created smoother co-operation with prosecutorial officers and the investigative officers in the FIU. EBM takes proactive crime prevention measures, which are implemented jointly with other government agencies or sector organisations and trade union organisations. Co-operation and intelligence sharing is frequent between intelligence or investigation units at the NPB or at the County Police Authorities, the Swedish Prosecutor Authority, the intelligence or investigation units of the EBM, the intelligence or investigation units at the Customs Service, and the intelligence unit of the Economic Crimes Unit at the Tax Authority. See section 2 of this report for a further update on the effectiveness of the legal and law enforcement aspects of the AML/CFT system.

85. The budget for Finanspolisen (FIPO, the financial intelligence unit) has increased since 1996 and the annual level for the last years is approximately 1,400,000 EUR. FIPO now has a staff of about 20, which is also an increase since 1996.

*ii. Finansinspektionen should take a more active role generally, and in particular it should make greater efforts to speed up and check the implementation of effective anti-money laundering measures in the non-bank financial sector.*

86. Since 1997 Finansinspektionen has conducted an increased number of on-site examinations missions devoted solely to AML/CFT including two rounds of the four major Swedish banks on group level including branches abroad, three major Swedish life insurance companies on group level and a number of smaller banks. Additionally, AML issues have been dealt with as a part of general on-site examinations in other types of institutions as smaller and middle sized savings banks, credit market companies and securities companies. Some off-site inspections addressing various types of financial institutions have also been conducted using various questionnaires on AML/CFT issues.

87. During 2005, Finansinspektionen conducted an off-site inspection addressing a wide range of financial institutions. The aggregated result of this examination along with the outcome of the recent examination round of the four major banking groups was released in a public report in October 2005. Most recently, since the examination team visited Sweden, Finansinspektionen has together with inter alia Finanspolisen and the National Economic Crimes Bureau participated in an information campaign aimed at exchange offices. Finansinspektionen together with the Finanspolisen has also conducted two seminars on AML with representatives from local banks in northern Sweden. Furthermore, Finansinspektionen held a seminar on AML/CFT in conjunction with the branch organisation for credit market companies with their members. Finally, Finansinspektionen has concluded the thematic AML/CFT examinations for the four major banks with an on-site visit in the U.S. where Finansinspektionen also held meetings with the U.S. bank regulators.

88. More detailed Regulations and General Guidelines on measures against money laundering were issued in 1999, FFFS 1999:8, followed 2002 by Regulations and General Guidelines on measures against terrorist financing, FFFS 2002:19. A specific inspection manual on operational risks including AML/CFT issues for examiners at Finansinspektionen has been produced. The manual has been partly revised in order to reflect the requirements in the newer AML/CFT Regulations (FFFS 2005:5) and will be put into Finansinspektionen's new web-based manual, which is under construction.

89. Finansinspektionen has expanded its activity regarding its liaison and information exchange with other authorities and now participates in an increased number of committees and groups including the Swedish Economic Crimes Council that was established 1998. Following changes to the AML Act in January 2005, Finansinspektionen issued revised AML/CFT Regulations and guidelines in July 2005, which are much more substantial than the previous regulations.

90. Finansinspektionen in conjunction with the FIU and others has in recent years been more active in the participation in seminars, education and similar arrangements in the AML/CFT area.

*iii. lack of effective penal legislation against money laundering and in relation to confiscation and provisional measures, combined with organisational structures which do not encourage these types of measures to be effectively pursued.*

91. The new offence *money receiving* was introduced in 1999. According to the new legislation also offences where there has been an avoidance of payment by the criminal, e.g. revenue or Customs Act offences, can constitute predicate offences, and not only offences where there is a transfer of property to the criminal, as was the case before 1999. A predicate offence could be any kind of crime, serious or less serious, including a transfer of property to the criminal or an avoidance of payment by the criminal committed in Sweden or abroad. When proposing the new legislation it was stated in the bill to Parliament that the definition of money laundering in the AML Act has a wider application than the penal provision. Thus, the same definition is not used in the AML ACT and the penal provision. To clarify this, the new offence was named *money receiving* and not money laundering.

92. Swedish rules on confiscation of proceeds of crime and of instrumentalities have also changed since the last mutual evaluation. These changes are described in Section 2.3 of the report and concerns, inter alia, the possibilities to confiscate property which has replaced the proceeds of crime, the return of proceeds, and the return of what has replaced the proceeds. The Swedish rules against whom a decision of confiscation can be directed are explained in the same section. See section 2 of this report regarding the effectiveness of money laundering and confiscation measures.

## 2. Legal System and Related Institutional Measures

### Laws and Regulations

#### 2.1 Criminalisation of Money Laundering (R.1, 2, & 32)

##### 2.1.1 Description and Analysis

###### Overview

93. In the past, Sweden dealt with money laundering offence under Sections 6 and 7 of Chapter 9 (Fraud and Other Dishonesty) of the Swedish Penal Code, dealing also with offences of receiving stolen goods. The provisions concerning money laundering came into force in 1991. Issues were raised in previous FATF evaluations, which recommended specific money laundering criminal offences. Swedish authorities revised their system and instituted changes in 1999. The system based on the legal interpretation of the classical criminal offence of receiving stolen goods remained as the basis in the Swedish legal anti-money laundering regime.

###### **Recommendation 1**

94. Money laundering is criminalised through Sections 6, 6a, 7 and 7a of Chapter 9 of the Swedish Penal Code, dealing with offences of receiving stolen goods and money receiving. The specific “money receiving” offence, which is covered by Sections 6a and 7a, was introduced in 1999 and is used together with the classic criminal offence of receiving to cover different situations of money laundering.

95. The provision in Section 6a (2) deals with so-called “enrichment through the criminal act”, covering fiscal and other similar criminal offences, whereby proceeds do not derive from criminal acquisition but from legally earned money that became tainted with the perpetration of the criminal offence. This provision now unequivocally penalises such situations. The examiners were told that the rationale for criminalizing money laundering as described in the preceding paragraph was due to the principle that money laundering is “co-punished” with the predicate offence. The assessors were concerned that in practice this results in a general belief that money laundering is not viewed as the principal crime in its own right. Authorities indicated that the predicate criminal offence would generally thus also cover the activity covered by the money receiving offences, and might be considered as aggravated offences or could otherwise result in higher penalties.

96. Sweden’s *money receiving* offence (Section 6a and 7a) meets the requirements of the Vienna Convention and Palermo Convention which oblige countries to make it a criminal offence to intentionally conceal or disguise, or convert or transfer property knowing that it is derived from a list of enumerated drug offences (in the Vienna Convention) or serious crime (in the Palermo Convention). Section 6a (1) (1) covers anyone who “improperly promotes the opportunity for another person to take advantage of property emanating from criminal acquisition. Sections 6a (1) (2) and 6a (2) cover anyone who “participates in removing, transferring, conveying, or taking other such measure with property emanating from criminal acquisition with the intent of concealing the origin of the property” or “improperly participates in removing, transferring, conveying or taking other such measure with property with the intention to conceal that another person has enriched himself or herself through a criminal act.” While concealment and possession are not explicitly covered in these sections, authorities explained that any type of conduct that helps someone to profit from what has emanated from criminal acquisition can constitute “promoting” as covered in Section 6a (1) (1). This was also explained in the preparatory works and has been confirmed by case law.

97. The terms “*property emanating from a criminal acquisition*”, “*property from enrichment of oneself through a criminal act*” (6a) and “*proceeds of a crime*” (6) have been interpreted very broadly and cover

all types of property that directly or indirectly represents the proceeds of crime, regardless of its value. Although the law itself does not define the term, the authorities confirmed that meaning of all mentioned terms covers property (including money) that has been obtained by a criminal offence or is otherwise closely connected with a criminal offence, with the exception of ordinary transactions, among other, receiving customary payment for goods or services etc. are not covered due to the prerequisite that the gain has to be *improper* or that the act has to be considered *undue* to be punishable. The value of the property can be of importance when deciding, *inter alia*, whether an act is *undue* or not. Apart from this, any type of property can be subject to laundering.

98. It is apparent that provisions cover property that directly or indirectly represents the proceeds of crime. In Chapter 9, Section 6 (2) it is not required that the gain has to be something that has replaced the unlawfully acquired property, only that there is a causal link in-between. Furthermore, Chapter 9, Section 6a (1) is about property emanating from criminal acquisition. Chapter 9, Section 6a (2) deals with situations when someone has enriched him-/herself, but it is not possible to identify to which part of the criminal's property this gain can be traced.

99. It is not necessary that a person is convicted of a predicate offence when proving that property is the proceeds of crime, only proof that the property emanates from a criminal acquisition is sufficient. This does not require proof, *inter alia*, of the exact circumstances of the offence when it was committed, against whom, etc. It suffices that it is apparent that the property is the proceeds from crime. This principle has been confirmed by case law. For example, in the case RH 1982:95, the Court of Appeal convicted a person of *receiving* since it was apparent – due to the circumstances – that the property in question had been “dispossessed by a crime,” even though it had not been shown which these crimes were. However, the examiners were told that in practice there is still a need to show that a certain kind of crime has taken place, and that this could therefore still present a problem.

100. Sweden has adopted an “all crimes” approach to the criminalization of money laundering, with all criminal offences (“*a crime*”), which generate proceeds being predicates to money laundering. No limitations or thresholds are placed on the term *crime*. Consequently, any criminal act mentioned in the Penal Code and other penal acts (including terrorist offences (Act on Criminal Responsibility for Terrorist Offences (2003:148)) and terrorist financing (Act on Criminal Responsibility for the Financing of Particularly Serious Crime in Some Cases (2002:444)) could constitute a predicate offence, as could any criminal act mentioned in other legislation (i.e. tax offences, customs offences). For example, acts involving “counterfeiting and piracy of products” are criminalized under various acts of Intellectual Property Law, for instance Act (1960:729) on Copyright in Literary and Artistic Works, the Trademarks Act (1960:644), the Patents Act (1967:837) and the Design Protection Act (1970:485). “Piracy” is criminalised through the provisions on “hijacking” and “maritime or air traffic sabotage” in Chapter 13, Section 5a of the Penal Code in combination with the general provisions on theft and robbery in Chapter 8 of the Penal Code.

101. Participation in an organised criminal group and racketeering are not specific criminal offences, and it is not clear if the ancillary offences otherwise adequately cover participation in the activities of organised criminal groups as required by Articles 5(1)a(i) and 5(1)b of the Palermo Convention. Conspiracy for aggravated (or “gross” money laundering, which carries a penalty of six years) is criminalised. Conspiracy applies for the aggravated offences of other crimes in the Swedish Penal Code (e.g. murder, kidnapping, robbery); however, it is not clear if the conspiracy applies to the full range of profit-generating activities in which criminal groups engage.

102. Sweden can prosecute the laundering of proceeds that were generated from a predicate offence that occurred in another country. Although Chapter 9 itself is silent in this regard, a principle of universal applicability based on legal custom would apply according to the authorities—a foreign offence would constitute a predicate criminal offence in Sweden provided that the activity constituting the foreign offence would have been a criminal offence if committed in Sweden.

103. In addition, Swedish law in Chapter 2 confers criminal law jurisdiction over a wide range of offences committed abroad (*outside the Realm*). The basic instances stated in Chapter 2, Section 2, are

where a crime has been committed: by a Swedish citizen or an alien domiciled in Sweden, by an alien not domiciled in Sweden who, after having committed the crime, has become a Swedish citizen or has acquired domicile in the Realm or who is a Danish, Finnish, Icelandic, or Norwegian citizen and is present in the Realm, or by any other alien, who is present in the Realm, and the crime under Swedish Law can result in imprisonment for more than six months. The cases stated in the previous sentence do not apply if the act is not subject to criminal responsibility under the law of the place where it was committed or if it was committed within an area not belonging to any state and, under Swedish law, the punishment for the act cannot be more severe than a fine. In cases mentioned in the Section 2 of Chapter 2, a sanction may not be imposed which is more severe than the severest punishment provided for the crime under the law in the place where it was committed (Law 1972:812).

104. Sweden's *money receiving* offence (or the *receiving of stolen property* offence) does not apply to persons who commit the predicate offence (i.e. self-laundering). The proceeds must stem from a crime committed by a person(s) other than the money launderer. Swedish authorities indicate this is due to the fundamental (in their view) principle that money receiving is "co-punished" with the predicate offence, since the receiving offence is a necessary and evident subsequent action following the predicate offence. Swedish authorities also indicate that, in their view, to introduce separate criminal liability for concealing a person's own crime could also come into conflict with the fundamental principle that no one should be forced to testify against himself. The same principle would apply to foreign predicate offences. The principle described does not prevent a perpetrator being convicted of money receiving when that person cannot due to lack of evidence be convicted of theft.

105. The Supreme Court has ruled that self laundering is not separately punishable under current Swedish law; however, it did not indicate whether self-laundering would be contrary to the Constitution or another fundamental principle of Swedish law. Therefore, the evaluation team could not confirm that these were fundamental principles—according to the FATF standards—that prevented the possibility of self-laundering from being an offence.

#### Ancillary offences (conspiracy, attempt, aiding and abetting, facilitating, counselling the commission)

106. Chapter 23 of the Penal Code contains provisions on *attempt, preparation, conspiracy* to commit and *complicity* in committing crimes in the Penal Code.

#### *Complicity:*

107. The general provision on *complicity* (which cover aiding and abetting, facilitation, and counselling the commission) in Section 4 in the Chapter 23, of the Penal Code is applicable to all offences in the penal code, including *receiving* and *money receiving*. In relation to acts criminalised in other laws the only condition for application of the provision on complicity is that imprisonment is provided.

#### *Attempt and Conspiracy:*

108. The ancillary offences of attempt and conspiracy are criminalized with regard to the different offences if this is *explicitly* stated in the primary law. According to Section 1 of Chapter 23, a person who has begun to commit a crime without bringing it to completion, shall, *in cases where specific provisions exist for the purpose*, be sentenced for *attempt* to commit crime if there was a danger that the act would lead to the completion of the crime or such danger had been precluded only because of fortuitous circumstances. Punishment for attempt shall be "at most what is applicable to a completed crime and not less than imprisonment if the least punishment for the completed crime is imprisonment for two years or more." Similar provisions apply for *conspiracy* and *preparation*. According to Chapter 9, Section 11 – which refers to the provisions in Chapter 23, Sections 1 and 2 – attempt and conspiracy to commit as well as preparation of *gross receiving* and *gross money receiving* are criminalized.<sup>4</sup>

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<sup>4</sup> It should be noted that, since "gross money receiving" provides for a penalty of six years imprisonment, conspiracy for this crime is adequately covered for the purposes of Article 5a(1) of the Palermo Convention.

109. These ancillary offences (attempt, preparation of and conspiracy) for other types of money laundering (i.e., those that are not considered *gross*) are not criminalised. Swedish authorities indicated that criminalisation of these ancillary offences means that criminal liability arises at an early stage of the course of events, when the act not necessarily needs to imply any immediate harm to the interest that is protected by the penal provision. Thus, as a basic concept of Swedish criminal law, criminalisation of the ancillary offences in question is reserved for the most serious crime. However, the evaluation team did not find that fundamental principles were preventing full criminalisation of these ancillary offences.

#### Additional elements

110. Where the proceeds of crime are derived from conduct that occurred in another country, which is not an offence in that other country but which would have constituted a predicate offence had it occurred in Sweden, this would also be considered a predicate criminal offence for the offence of *money receiving* or *receiving*.

#### **Recommendation 2**

111. The offences of *money receiving* and *receiving* apply to natural persons that *knowingly* engage in “money laundering” activity (intentional receiving and money receiving), as required by the FATF Recommendations. Except for *negligent petty receiving* or *negligent petty money receiving*, which is expressly provided for in Sections 7 (2) (2) and 7a (2) (“did not realize, but had reasonable cause to assume”), the mental element *mens rea* is wilfulness (“knowledge”) and intent to somehow obscure the illegal origin of the proceeds (“conceals or attempts to conceal”). Therefore Sections 7 and 7a go farther than the FATF Recommendations by also expressly criminalising forms of negligent money laundering.

112. The law does not expressly state that the mental element of the offence can be inferred from objective factual circumstances, yet according to the Swedish authorities and legal tradition the mental element of the offence may be inferred from objective factual circumstances.

#### Corporate criminal liability

113. According to fundamental principles of Swedish law, laid down in precedents by the Swedish Supreme Court, only natural persons can bear criminal responsibility, and only natural persons can commit crimes. This fundamental principle evolved through a series of decisions by the Supreme Court in the 1870-1890's.<sup>5</sup> In these cases, the Supreme Court regularly overturned decisions by the lower courts and rejected the indictments for criminal liability of legal persons, with the express reasoning that the indictments had not been directed against identified physical persons. This Supreme Court case-law confirms that legal persons can not be subject to criminal liability.

114. Nevertheless, legal persons can through the extensive interpretation of the legal term “entrepreneur”, also be subject to *quasi* criminal sanctions in certain circumstances. According to Chapter 36, Section 7 of the Penal Code, an “entrepreneur” shall be ordered to pay a “corporate fine” for a “crime committed in the exercise of business activities” if: 1) the crime has entailed gross disregard for the special obligations associated with the business activities or is otherwise of a serious kind, and 2) the entrepreneur has not done what could reasonably be required of him for the prevention of the crime. There are, however, exceptions to the above cited rule if the crime was directed against the entrepreneur or if it would otherwise be manifestly unreasonable to impose a corporate fine. The notion of an “entrepreneur” is of a general kind and used in many different statutes. The customary understanding of the term is “any natural or legal person that professionally runs a business of an economic nature” and covers also state owned and municipal trading companies.

115. A fine can be imposed pursuant to this provision for a crime committed by a natural person in the exercise of business activities. There is no requirement that a specific, identified natural person has been

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<sup>5</sup> See NJA 1876 p. 571, NJA 1880 p. 375, NJA 1881 pp. 254 and 309, NJA 1883 pp. 118, 245 and 266 NJA 1884 p. 418, NJA 1890 p. 484 and NJA 1891 pp. 279 and 605. See also NJA 1901 p. 93.

convicted or even prosecuted for a corporate fine to be imposed, when the requirements under Chapter 36, Section 7 are satisfied. There is no requirement that a person in a Board or senior management position in the company has committed the crime. One current requirement is that the “entrepreneur has not done what could reasonably be required of him/her for prevention of the crime”. The entrepreneur has a far-reaching obligation to monitor the business, except where there is a weak link between the business and the crime. To avoid liability the business must be organized in such a way that it can be reasonably supervised. Instructions to prevent the commission of a crime must be detailed, appropriate and focused and the entrepreneur must supervise their application.

116. In determining whether a crime entails “a gross disregard for the special obligations associated with the business activities” or is otherwise “serious” a consideration of the criminal activity as a whole is taken. The economic aspects of the crime are of particular importance, including the economic gain and future economic prospects as a result of the crime. The provisions on corporate fines are obligatory. Thus where the requirements of Chapter 36, Section 7 are satisfied, a corporate fine shall be imposed. A corporate fine shall not be imposed (exemptions) where it would be “manifestly unreasonable” to impose such a fine (example: if the crime was directed against the entrepreneur; if the nature of the crime is such that it would be unreasonable to expect of the entrepreneur to have taken protective measures; if a new owner took over the business after the crime was committed, or the business no longer exists).

117. The rules on corporate liability do not preclude the possibility of parallel civil proceedings, such as claims for damages, against the legal person.

#### Criminal, civil, and administrative sanctions

118. Sweden has implemented the following penalties for natural persons - imprisonment for at most two years is prescribed for basic *receiving* and *money receiving*. In aggravated cases (*gross offences*) at least six months and at most six years of imprisonment can be imposed. When considering whether the offence is aggravated, the court shall have regard to all relevant circumstances, including the amount involved, whether the money laundering measures have been performed in a systematic manner or formed part of an activity carried out on a large scale. The penalty for *petty offences* is a fine or imprisonment for at most six months. Swedish authorities point out that the penalties are comparable to the basic and aggravated types of other non-violent offences in Sweden such as drug trafficking, theft, fraud, embezzlement and bribery (two or three years for the basic offence; six years for the aggravated offence).

119. The corporate fine applicable to an entrepreneur for a “crime committed in the exercise of business activities” is, pursuant to Chapter 36, Section 8 of the Penal Code, “at least 10,000 SEK and at most 3,000,000 SEK”. Chapter 36 further contains some guidelines on determining the appropriate fine in a particular case. Pursuant to Section 9, “special consideration shall be given to the nature and extent of the crime and to its relation to the business activity”. The severity of the crime, the motive of the crime (especially economic gain), the position of the perpetrator and the significance of the affected public interest are all important in this determination. Moreover, whether the crime is committed with intent or through negligence, and whether it was committed at the request of management or without management’s knowledge are also factors to be considered. The examiners were told by the authorities that it is an unwritten rule that a corporate fine should amount to 50 percent of the gain of the crime where it is committed with intent and with the purpose of gaining an economic advantage, and 10 to 30 percent of the gain if it is committed through negligence and the crime normally gives rise to economic advantages. The Ministry of Justice is currently reviewing the legislation on corporate fines in order to make the system more effective. Sweden’s international commitments in this regard are being given special consideration. The scope of the regime will presumably be broader, including also minor offences. The Swedish authorities are planning to raise the maximum fine.<sup>6</sup>

<sup>6</sup> Swedish authorities informed that after the on-site visit the Government decided on a legislative bill, which has been presented to the Parliament, with proposals to make the system of corporate fines more effective (prop. 2005/06:59 Företagsbot [Corporate Fine]). The changes are proposed to enter into force by 1 July 2006. In developing the bill, the Government considered the possibility of instituting criminal liability for legal persons; however, the Government reached the conclusion that a system with penal sanctions would not be more effective than the current system where the fine is considered as a special effect of the crime.

120. There are difficulties in making an accurate assessment of how the money receiving offence is used in practice. On the basis of discussions during the on-site visit, it was apparent to the examiners that the Swedish authorities are principally concerned with economic crimes, particularly revenue offences, all of which are regarded as major problems. Money laundering *alias* “money receiving” continues to be regarded as an issue that relates primarily to economic crime, and in relation to both drug and economic crimes, the major interest for law enforcement and prosecutorial authorities is obtaining a conviction for the predicate criminal offence. Nevertheless, it appeared that there was not a strong interest in taking action in relation to the proceeds of crime.

121. Despite this, subsequent to the on-site visit, Swedish authorities provided statistics on convictions for the offence of money receiving (Chapter 9, sections 6a and 7a of the Penal Code). These statistics are set out in the table below, although the evaluation team noted that some of the convictions appeared to relate to receiving of stolen goods.

122. In addition, penalties provided for these convictions were low; many cases resulted in either probation or suspended sentence, and the most severe penalty imposed was two years and six months for gross receiving (for laundering of SEK 10 million.).

	2000	2001	2002	2003	2004	2005
Number of cases that resulted in convictions	2	9	5	7	3	8
Number of persons convicted of the offence <i>money receiving (incl. petty)*</i>	2	10	6	9	3	14*

\*Figures are not final for 2005 but include up to approximately 1 December 2005.

123. The prosecutorial authorities indicated that they would like to prosecute money laundering and have the necessary knowledge to do so; however, their work is mainly centred on prosecuting the predicate crimes. The emphasis on and preference for pursuing the predicate crimes, in addition to the lack of statistical data on investigations and prosecutions, lead the evaluation team to conclude that the statutes available for countering money laundering are not being used effectively. Swedish authorities explained to the contrary that money laundering is investigated as part of the entirety of the criminal activity of the particular case, as part of the Swedish concept of “co-punishment” of separate crimes that involve the same range of activities. While this may help to explain why “self-laundering” might not be pursued as a separate charge, this does not explain the lack of prosecutions of third-party money launderers.

124. While there have been recent anti-money laundering initiatives in the financial area, these have not been accompanied by any significant enhancement since 1999 of the criminal law. Despite this, there is awareness of, and willingness to rectify, the deficiencies of the current system. Based on the information available it appears that money laundering, albeit not on a huge scale, is a problem in Sweden, particularly in relation to economic crime, and that the criminal law is not effective in preventing or punishing it.

### **Recommendation 32**

125. As in 1992 and 1996, there are no statistics on money laundering investigations or prosecutions.<sup>7</sup> Statistics for convictions were provided; however, there is no system for recording and accessing data on investigations and prosecutions.

#### **2.1.2 Recommendations and Comments**

126. The basic money receiving offence covers the mandatory physical and mental elements required by the Vienna and Palermo Conventions. However, the authorities should criminalise *self-laundering*. *Money laundering* itself is an independent criminal offence according to the Swedish legal system: the

<sup>7</sup> Swedish authorities reported that in the end of 2006 a new data-system (Cåbra) for the handling of information within the Swedish Prosecution Authority will become operational. The system will improve the possibilities to collect statistics concerning individual cases including, *inter alia*, ML investigations and prosecutions.

limited case law shows that to be able to convict for money laundering, the money must have emanated from criminal acquisition or enrichment through a criminal act.

127. The authorities should extend the ancillary offences for basic instances of the criminal offence of money laundering, including conspiracy to commit and attempt.

128. Another potential challenge to prosecution is the requirement to prove a purpose of intent to conceal the origin of the assets in Section 6a (1) (2). Even if consistent with the relevant international standards, it constitutes an extra burden that may sometimes incapacitate the prosecution. However, the authorities should consider removing the purpose element, insofar as this is not contrary to the constitutional principles or basic concepts of the legal system.

129. Most importantly, there are a limited number of convictions (including for *money receiving*) since the inception of the anti-money laundering regime in 1999. There are various causes, but the main reason appears to lie in the understanding of the offence as a special type of a receiving offence, which is more of an ancillary nature and that, according to the Swedish authorities, it is co-punished with the predicate offence. The authorities should institute a more pro-active approach to prosecuting money receiving.

130. Similarly, as proof of the mental element of knowledge can often cause large evidential difficulties, the authorities may wish to consider broadening the mental element of suspicion, with appropriately lower penalties so that a full range of mental elements is available in these offences (subjective knowledge, subjective suspicion, and objective negligence). Currently the mental element of suspicion is generally covered in the provisions for “petty receiving”, since it covers situations where the defended suspected the illicit origin of the proceeds. (This is also stated in the preparatory works of the legislation.) However, Swedish authorities could also consider applying these elements to the basic offence and/or increasing the penalties for petty receiving.

### 2.1.3 Compliance with Recommendations 1, 2 & 32

	Rating	Summary of factors underlying rating
<b>R.1</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• Self-laundering is not covered, and the evaluation team could not confirm that this was due to fundamental principles as defined by the FATF.</li> <li>• The ancillary offences of conspiracy to commit and attempt are not available for the basic offence of money laundering.</li> <li>• The evaluation team concluded that the offence is not effectively implemented; generally, only charges for predicate offences are pursued, and there are a limited number of convictions for money receiving.</li> </ul>
<b>R.2</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• The evaluation team concluded that the offence is not effectively implemented; generally, only charges for predicate offences are pursued, and there are a limited number of convictions for money receiving and petty money receiving. Moreover, penalties imposed in those cases were low.</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• There were generally no statistics on ML investigations or prosecutions.</li> </ul>

## 2.2 Criminalisation of Terrorist Financing (SR.II & R.32)

### 2.2.1 Description and Analysis

131. Section 3 in the Act on Criminal Responsibility for the Financing of Particularly Serious Crime in some cases, etc. (2002:444) criminalizes the conduct when a person collects, provides or receives funds or other assets with the intention that they should be used or in the knowledge that they are to be used in order to commit “particularly serious crime.” The notion “particularly serious crime” is defined in Section 2 of the same act, where reference is made to, inter alia, the offences covered by the Act on Criminal Responsibility for Terrorist Offences. Particularly serious crime according to Section 2 refers to:

- a. murder, manslaughter, gross assault, kidnapping, unlawful deprivation of liberty, gross unlawful coercion, arson, gross arson, devastation endangering the public, sabotage and spreading poison or a contagious substance if the purpose of the act is to intimidate a population or a group of population or to compel a government or an international organisation to perform an act or abstain from acting;
- b. terrorist offences according to section 2 of the Act on Criminal Responsibility for Terrorist Offences (2003:148), gross sabotage, hijacking, maritime or air traffic sabotage and airport sabotage;
- c. such offences as set forth in article 1 of the International Convention of 17 December, 1979, Against the Taking of Hostages, article 7 of the Convention of 3 March, 1980, on the Physical Protection of Nuclear Material and article 2 of the International Convention of 15 December, 1997, for the Suppression of Terrorist Bombings;
- d. murder, manslaughter, assault, gross assault, kidnapping, unlawful deprivation of liberty, gross infliction of damage, arson, gross arson as well as threats of such offences, if the act is committed against internationally protected persons as referred to under the Convention of 14 December, 1973, on the Prevention and Punishment of Crimes Against Internationally Protected Persons.

132. Through application of the Act on Criminal Responsibility for Terrorist Offences and the mentioned conventions, the provisions cover the offences mentioned in the annex to the Terrorist Financing Convention and are consistent with the Article 2 of the Terrorist Financing Convention. However, it is not fully consistent with SR II since it does not specifically cover financing of (collection or provision of funds for, for any purpose) an individual terrorist or a terrorist organisation. The law does not expressly provide for the situation where the funds are used in full or in part but the examiners were assured by Swedish authorities that such wording is not necessary according to Swedish legal standards.

133. Section 3 covers, according to the prompt Swedish wording, “money and other assets”. This notion covers “assets of every kind, whether tangible or intangible, movable or immovable, however, acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit” as defined in the Interpretative Note to SR II. It is sufficient for criminal liability according to Section 3 of the Act on Criminal Responsibility for the Financing of Particularly Serious Crime in some cases, etc. that a person collects, provides or receives funds or other assets with the intention that they should be used or in the knowledge that they are to be used in order to commit particularly serious crime. This includes funds from legitimate or illegitimate source.

134. Whether the funds were actually used is, according to the Swedish provisions, irrelevant to the question of criminal liability. The funds need not be linked with a specific terrorist act; however, there is a need to show that funds were provided with intent that a particular serious crime sooner or later will be carried out. In the court case described below, the court of appeals found it evident that the accused had the required intent or knowledge despite their explanations that the funds were meant for legal purposes. Swedish authorities point out that in the court decision, it was evident to court that, in this case, the required intent was met because the funds were sent to the terrorist organisation. Nevertheless, this need

to prove, according to the circumstances, that there is an intent or knowledge that a particularly serious crime would sooner or later occur is a limiting provision and was also noted as an obstacle in practice by the prosecution authorities.

135. Attempted terrorist financing is explicitly criminalised through the provision in Section 4 of the Act on Criminal Responsibility for the Financing of Particularly Serious Crime. The general provision on *complicity* in Chapter 23, Section 4 of the Penal Code is also applicable to the terrorist financing offence. Thus, a person also commits an offence if that person: participates as an accomplice in FT or contributes to the commission of one or more FT offences by a group of persons acting with a common purpose. Thus, the acts mentioned in Article 2 (5) of the Terrorist Financing Convention are covered. Although it is not explicitly that organisation or direction of others to commit an offence is covered, this is sufficiently covered under the Swedish rules on complicity. Complicity to attempt is also punishable according to Swedish law.

136. A terrorist financing offence can be a predicate offence for money laundering if the requirements under Chapter 9, Section 6 or 6a are met, as described in section 2.1 above. The terrorist financing offence is applicable regardless of whether the person committing the offence is in the same country in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur.

137. The terrorist financing offence is subject to the same principles as the money laundering offence concerning: (i) inferring the intentional element of the offence from objective circumstances (this occurs in practice); (ii) there is no general criminal liability for legal persons (although corporate fines can apply as described in the previous chapter on the ML offence); and (iii) the possibility of parallel criminal, civil or administrative proceedings (see previous chapter of this report). The law does not expressly permit the intentional element of the FT offence to be inferred from objective factual circumstances though the courts use this rule in practice. The current system of corporate fines does not preclude the possibility of parallel criminal, civil or administrative proceedings when these are available.

138. The perpetrator of basic FT offence shall be sentenced to imprisonment for at most two years. If the FT offence is regarded as gross, imprisonment for at least six months and at most six years shall be imposed. In assessing whether the offence is gross, special consideration is given to whether the offence was part of an activity carried out on a large scale or otherwise was of a particularly dangerous kind. Punishment is not imposed in petty cases. Generally, the current criminal penalties provided for various types of financing of terrorism do not appear effective, proportionate and dissuasive. As with money laundering, the terrorist financing offence is perceived as an ancillary criminal offence with a rather low penalty. The Swedish authorities noted that Section 5 of the Act on Criminal Responsibility for the Financing of Particularly Serious Crime, requires that criminal acts that would fall under the Swedish terrorist financing offence but which would also constitute other more serious offences in Swedish Penal Law are to be subsumed under these more serious offences and thus subject to more severe penalties under the Penal Code or the Act (2003:148) on Criminal Responsibility for Terrorist Offences, which could extend up to life imprisonment.

139. The effectiveness of Sweden's terrorist financing offence can be measured only in a very limited scope, based on the experience of the FIU, investigation and prosecution authorities. The FIU received very few suspicious transaction reports in which it was indicated that the underlying suspicion relates to terrorist financing. However, this is not very surprising given the Swedish context in which threat assessments assume there are low levels of terrorist financing threats present in Sweden.

140. On 3 October 2005, the Court of Appeal (Svea Court of Appeal case number B 3687-05) convicted two defendants of preparation of terrorist offence and preparation of gross devastation endangering the public and financing of particularly serious crimes since the two defendants had received and provided funds for the organisation Ansar al-Islam, which was considered to be a terrorist organisation, inter alia, since it is listed as a terrorist organisation by the UN and the EU. Charges were originally brought for preparation for gross devastation endangering the public and for preparation for terrorist offence under the Act on Criminal Responsibility for Terrorist Offences (2003:148), since the prosecutors felt the conditions

to pursue charges under that legislation were fulfilled (and this was required by Section 5 of the CFT Act, as described in paragraph 138 above).

141. The Court of Appeal concluded that parts of the funds had been provided for Ansar al-Islam before the entering into force of the Act (2003:148). Thus, the defendants could not be held liable of preparation for terrorist offence for those funds, and they were instead convicted of preparation of gross devastation endangering the public. Other parts of the funds had been provided for Ansar al-Islam after the entering into force of the Act (2003:148), thus the court found that the acts in these parts constituted preparation for terrorist offence. Since there was no proof that the rest of these funds actually had been provided to Ansar al-Islam, the defendants could not—in relation to these funds—be held liable for preparation of terrorist offence. But since they had received these funds with the intention that the funds should be used in order to commit particularly serious crime, they were also held liable according to the Act on Criminal Responsibility for the Financing of Particularly Serious Crime in some cases, etc. (2002:444). Apparently, it was sufficient that the funds were intended for a terrorist organisation and that a link to a *specific* terrorist act was not required. The Supreme Court has rejected the appeal and the Court of Appeal's judgment thus stands.

142. The authorities are aware of the terrorist financing issues and have monitored cases where signs of possible terrorist financing existed. Additionally, the police initially had a weak suspicion of terrorist financing in two cases on Hawala banking (both of which were later prosecuted), but terrorist financing did not become a specific subject in these investigations.

143. It is important to note that the authorities indicated that they are ready to pursue the criminal offence of FT, although the legal basis could be broadened to enable further successful prosecutions. In addition, the penalties are too low for such a serious offence. The requirement to demonstrate intent, in the particular case, that the funds would sooner or later be used to carry out a particularly serious crime (e.g. a terrorist act), is working against the efforts of the mentioned authorities. Sweden, like many other countries, reports that the greatest challenge and difficulty in investigating terrorist financing has been to prove the final destination of the funds and whether the individuals involved (i.e. in collecting, transmitting, transporting or receiving funds) are connected to terrorist acts or terrorist organisations. Swedish authorities indicated that proof of financing of a terrorist organisation would be easier in cases where no charitable activities are organized by a terrorist organisation. To prove the money trail connection with a specific terrorist offence is in most cases not possible.

### ***Recommendation 32 (terrorist financing investigation/prosecution data)***

144. Swedish authorities reported that there has been one case (two convictions) for terrorist financing. There were no clear statistics on investigations, only references by law enforcement authorities as these statistics are not centralised.

## **2.2.2 Recommendations and Comments**

145. Sweden's criminalization of terrorist financing is largely in line with international standards—in particular, with the Terrorist Financing Convention, and the two convictions under the legislation demonstrate that the legislation can be applied. Yet the legislation does not cover all the requirements of SRII. Sweden should amend its legislation to also specifically cover collecting or providing of funds in the knowledge that they are to be used (for any purpose) by a terrorist organisation or an individual terrorist. Authorities should also provide higher penalties for the specific offence of terrorist financing, which would take into account the grave nature of the offences.

### 2.2.3 Compliance with Special Recommendation II & R.32

	Rating	Summary of factors underlying rating
SR.II	LC	<ul style="list-style-type: none"> <li>• Current law does not specifically criminalise the collection or provision of funds in the knowledge that they are to be used (for any purpose) by a terrorist organisation or an individual terrorist.</li> <li>• Sanctions for the terrorist financing offence are not effective, dissuasive and proportionate.</li> </ul>
R.32	PC	(Statistics are collected on terrorist financing prosecutions/convictions.)

## 2.3 Confiscation, freezing and seizing of proceeds of crime (R.3 & 32)

### 2.3.1 Description and Analysis

#### *Recommendation 3*

##### Forfeiture of property and instrumentalities

146. In Swedish law, confiscation (or forfeiture, which is the term used in the English translation of the Penal Code) is considered a special legal effect of crime (Penal Code, Chapter 1, Section 8) and is applied for proceeds and instrumentalities used in or intended for use in ML and FT criminal offences. Specific rules on forfeiture are found in the Chapter 36 of the Penal Code and in special penal laws. Legislation that entered into force in July 2005 extended forfeiture provisions for crimes in the Penal Code to those in other special penal laws, under the condition that the penalty for the crime concerned is imprisonment for more than one year, and extended provisions for instrumentalities as described below.

147. Section 1 of Chapter 36 provides that the proceeds of a crime, the corresponding *value*, or anything a person has received as payment for costs incurred in conjunction with a crime (provided that such receipt constitutes a crime under the Penal Code) shall be declared forfeited unless this is manifestly unreasonable. It is not a prerequisite to establish that a crime has been committed when applying the rules on forfeiture of objects (Chapter 36, Section 3). Section 1a in Chapter 36 of the Penal Code provides that when it would be manifestly unreasonable to declare the proceeds of a crime forfeited, consideration shall be given *inter alia*, to whether there is reason to believe that liability to pay damages in consequence of the crime will be imposed or otherwise discharged.

148. Forfeiture of instrumentalities is regulated in Sections 2 and 3 of Chapter 36. Instrumentalities are interpreted as “property which has been *used* as an auxiliary means in the commission of a crime” and may be declared forfeited if this is called for in order to prevent crime or for other special reasons. This also applies to property, which has been *intended for use* as an auxiliary means in crime, provided the crime has been completed or the conduct constitutes a punishable attempt or punishable preparation or conspiracy. Property of *corresponding value* is also forfeited. Further, according to Chapter 36, Section 3, of the Penal Code forfeiture may also be decided on in cases other than those described in Section 2 in respect of objects which: 1) by reason of their special nature and other circumstances, give rise to a fear that they may be put to criminal use; 2) are intended for use as a weapon in a crime against human life or health and which have been discovered in circumstances, which give rise to a fear that they would be put to such use; or 3) are intended for use as an auxiliary aid in a crime entailing damage to property and have been discovered in circumstances which clearly give rise to a fear that they would be put to such use.

149. Forfeiture applies to property that is the product of a crime, property the use of which constitutes such a crime or which has been used in a manner, which constitutes such a crime (Section 2, second paragraph). Forfeiture also applies to property that has replaced the proceeds, return of proceeds, and the return of what has replaced the proceeds. This would cover property that is derived *directly* or *indirectly*

from proceeds of crime, including income, profits or other benefits from the proceeds of crime (yields of proceeds).

150. Property can be forfeited regardless of whether it is held or owned by a criminal defendant or by a third party, subject to the protection of the third party. This is regulated in Section 5 of the Chapter 36 of the Penal Code, which states that forfeiture of property or its worth in consequence of crime may, unless otherwise stated, be exacted of: a) the offender or an accomplice in the crime; b) the person whose position was occupied by the offender or an accomplice; c) the person who profited from the crime or the entrepreneur described in Section 4 of Chapter 36 of the Penal Code; d) any person who after the crime acquired the property through the division of jointly held marital property, or through inheritance, will or gift, or who after the crime acquired the property in some other manner and, in so doing, knew or had reasonable grounds to suspect that the property was connected with the crime. Property may be forfeited if it belonged to or if it replaced property belonging to persons in categories a) to c). Any special right to property that has been declared forfeited remains if the special right is not also declared to be forfeited.

151. If the entrepreneur has profited from a crime committed in the course of business, the value thereof shall be declared forfeited, unless forfeiture is unreasonable (Chapter 36, Section 4). If proof of what is to be declared forfeited cannot easily be presented, the value may be estimated reasonably in view of the circumstances. Similar sets of rules concerning forfeiture of proceeds of crime and instrumentalities are found in special penal laws.

152. Forfeiture for FT offences is regulated in Section 7 of the Act on Criminal Responsibility for the Financing of Particularly Serious Crime in some cases, etc. (2002:444). *Proceeds* of offences under the Act, and *assets* subject to an offence under the Act or their *corresponding value* shall be declared forfeited unless it is manifestly unreasonable. The Act does not cover forfeiture of *instrumentalities used in or intended for use in* or when FT property is held by a third party (which would be most unusual in practice); however, these are covered by the revised provisions of the Penal Code (Chapter 36, Sections 2 and 3), described above, which deal with property used or intended for use as an auxiliary to a crime or give cause to fear that they may be put to criminal use.

### Provisional measures

#### *Freezing*

153. The Code of Judicial Procedure, Chapter 26 contains rules for provisional attachment, which operate in a similar way to freezing orders. Orders for the provisional attachment of property belonging to a suspect (similar in effect to a restraint order) can be obtained from the Court when a person is reasonably suspected of an offence and there is reasonable cause to anticipate that, by fleeing, removing property or otherwise, he would evade his obligation to pay fines, the value of forfeited property, corporate fines, or other compensation to the community, or damages or any other compensation to an aggrieved person. Provisional attachment may be ordered only if the reasons for the measure outweigh the consequent intrusion or other detriment to the suspect or to any other adverse interest. While these provide basic powers to prevent dealing, transfer or disposal of property subject to confiscation, the system could be strengthened by the removal of the need to demonstrate a reasonable cause to anticipate flight or removal of property.

154. Provisional attachment may be ordered to the amount of the suspect's property that the claim may be assumed to be secured on execution (Section 1). This could limit the full amount of criminal proceeds from being frozen, such as those in bank accounts, as the attachment could only be made for a specific amount estimated at the time of being made, while investigation could reveal the actual criminal proceeds to be higher.

155. Issues on provisional attachment may be entertained at the request of the investigation leader, the prosecutor, or the aggrieved person and, once the prosecution has been initiated, by the court on its own motion. The investigation leader or the prosecutor may take moveable property into custody while awaiting the court's order of provisional attachment (Section 3). In such cases, the investigation leader or

the prosecutor shall apply to the court for provisional attachment within five days after the moveable property has been taken into custody (Section 4). The examiners have noted that on the basis of Chapter 30, Section 12, of the Code of Judicial Procedure, a court order for provisional attachment shall be effective immediately.

### *Seizing*

156. Rules on seizure are found in Chapter 27, Sections 1 through 14, of the Code of Judicial Procedure and can be applied explicitly for instrumentalities and implicitly for proceeds. According to Section 1, objects reasonably presumed important to a criminal investigation, or taken from a person through a criminal act or subject to criminal confiscation may be seized. Proceeds of crime can be subject to criminal confiscation, which means that proceeds can be seized. There are special rules in regard to written documents and dispatches in Sections 2 and 3. Objects may be seized by order of the investigation leader or the prosecutor (Section 4). Provisions about the procedure are contained in Sections 5 and 6, according to which the court may order seizure of an object presented to the court or otherwise for seizure; a person subjected to a seizure executed without a court order may request a court determination thereof. The person executing the seizure shall take seized objects into custody (Section 10), and any seized object shall be carefully preserved and strict supervision shall be maintained to ensure that the object is not exchanged, altered or otherwise misused. If the object is a substantial amount of money, the sum is normally placed on an interest-bearing bank account.

157. There is no requirement of prior notice in the rules on seizure in the Swedish Code of Judicial Procedure. It is thus possible to make the initial application to seize property subject to confiscation *ex parte* or without prior notice.

### Powers to identify and trace property

158. Law enforcement agencies, the FIU or other competent authorities have adequate powers to identify and trace property that is or may become subject to confiscation or is suspected of being the proceeds of crime. According to the Banking and Financing Business Act, Chapter 1 Section 11, credit institutions are obliged to report information regarding an individual's relations with the institution where such information is requested by an investigating officer during the course of an investigation pursuant to the provisions regarding preliminary investigations in criminal cases or where such information is requested by a prosecutor in a matter regarding legal assistance in a criminal case upon request by another state or an international court.

159. The FIU also has powers to trace assets and request information from all obligated entities from the AML Act. The normal powers also exist if there is reason to believe that an offence punishable by imprisonment has been committed: house, rooms or closed storage space may be searched to look for an object susceptible to seizure (*inter alia* proceeds of crime or other property which can be subject to confiscation) or to detect other information of potential importance to the investigation. The premises of a third party may also be searched if the offence was committed there or the suspect was apprehended there, or if an extraordinary reason indicates that the search will reveal an object or other information to obtain concerning the offence (The Code of Judicial Procedure, Chapter 28 Section 1).

160. Laws and other measures in Sweden provide protection for the rights of bona fide third parties. Such protection is consistent with the standards provided in the Palermo Convention. The Palermo Convention leaves it to State Parties to regulate the protection for the rights of bona fide third parties. As stated above, forfeiture of property may only apply to the persons mentioned in Chapter 36, Section 5 (a)-(d).

161. The Courts in Sweden may take steps to prevent or void actions, whether contractual or otherwise, where persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation (Code of Judicial Procedure, Chapter 26).

162. The Swedish Economic Crimes Bureau, the Swedish Tax Authority, the Swedish Enforcement Authority, the Prosecution Authority, the FIU and the Customs Service run the project “Bloodhound,” which aims to improve and effectuate the abilities to trace, seize and confiscate the proceeds of crime. The Swedish Economic Crimes Bureau is to a larger extent working with “economic profiling” in order to chart the economy of the suspects. Money laundering behaviour and confiscation are important issues within the framework of the education. The EBM has training twice a year for prosecutors and police officers concerning ML. A number of seminars have also been held and are planned to be held regarding ML and confiscation.

#### Additional elements

163. Swedish laws do not contain special provisions to confiscate the property of organisations that are found to be primarily criminal in nature (i.e. organisations whose principal function is to perform or assist in the performance of illegal activities).

164. Swedish law does not contain rules that require an offender to demonstrate the lawful origin of property. There are no general provisions for confiscation in the absence of a conviction. However, if the sanction for the crime is remitted, the Court may order, insofar as circumstances give cause that the property be confiscated nonetheless (Chapter 36, Section 12). Provision is also found in Section 14 of Chapter 26 of the Penal Code which deals with a situation when a sanction can no longer be imposed because of the death of the offender or for other cause, property may be declared forfeited or a corporate fine imposed in certain cases.

165. The examiners received general data provided by the Ministry of Justice concerning forfeiture. No specific data on forfeiture from receiving and money receiving offences was available, nor was data on freezing/seizing property. This data relates to forfeiture decisions reported to and executed by the Enforcement Service, which provides statistical information through its national computer system.

166. The total amount of forfeited assets in recent years:

2001: 14,848,016 SEK  
2002: 106,824,743 SEK  
2003: 35,898,826 SEK  
2004: 17,501,886 SEK

167. While the statistics do not show more detail regarding the specific offences, they do show a declining amount forfeited over the past three years, which appears to confirm that the forfeiture statute has not been widely used.

#### ***Recommendation 32 (confiscation/freezing data)***

168. There are no statistics available for the number or amount of property frozen or seized. Although there is a total amount indicated for the value of property confiscated, there is no indication of the underlying predicate offences.<sup>8</sup>

### **2.3.2 Recommendations and Comments**

169. Although the rules for seizing and provisional attachment generally prevent dissipation of suspected proceeds of crime, the authorities should consider providing stronger provisional measures of freezing of property to prevent any dealing, transfer or disposal of property subject to confiscation. For example, the system could be strengthened by the removal of the need to demonstrate a reasonable cause to anticipate flight or removal of property.

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<sup>8</sup> Swedish authorities reported that in the end of 2006, a new data-system (Cåbra) for the handling of information within the Swedish Prosecution Authority will be taken into use. The system will improve the possibilities to collect statistics concerning individual cases including, inter alia, ML investigations and prosecutions.

170. The Swedish authorities are considering extending their forfeiture regime and are encouraged to implement more comprehensive measures to freeze, seize and later confiscate proceeds of crime.<sup>9</sup> Sweden should also consider whether a specific, focussed multi-disciplinary body should be created that focuses on confiscation and related measures.

171. The authorities should consider providing additional training and encourage law enforcement authorities to focus on the tracing of criminal assets when investigating any type of crime and seize funds and other property on a regular basis whenever possible, with the emphasis in cases of ML and FT. Currently, it appears that investigators or prosecutors could more effectively utilise the methods and techniques of tracing proceeds or other criminal property.

### 2.3.3 Compliance with Recommendations 3 & 32

	Rating	Summary of factors underlying rating
<b>R.3</b>	<b>LC</b>	Confiscation and related provisions need to be used more effectively, and there should be a greater focus on taking action to seize and confiscate the proceeds of crime.
<b>R.32</b>	<b>PC</b>	No statistics available for the number or amount of property frozen or seized. Although there is a total amount indicated of the value of property confiscated, there is no indication of the underlying predicate offences. Data is generally limited.

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<sup>9</sup> After the on-site visit, Swedish authorities reported that there is ongoing work within the Ministry of Justice to extend the possibilities to confiscate, i.a., proceeds of crime, in order to fulfil the obligations in the European Union Framework Decision on Confiscation of Crime-Related Proceeds, Instrumentalities and Property on *extended powers of confiscation* with respect to the burden of proof. In this work, consideration will be given to the proposals made by a special Swedish Governmental Commission (SOU 1999:147) on lowering the level of proof of forfeiture in cases where certain serious crimes (“trigger crimes”) has been committed.

## **2.4 Freezing of funds used for terrorist financing (SR.III & R.32)**

### **2.4.1 Description and Analysis**

#### *General*

172. Since the Treaty on European Union was put into force, the EU has sought to implement international sanctions through joint instruments as far as possible. In all instances where a specific Regulation is used to impose restrictive measures to help attain the objectives of the Common Foreign and Security Policy (CFSP), this requires the adoption of a Common Position under Article 15 of the Treaty establishing the European Union. As an instrument of the CFSP, a Common Position on new sanctions is adopted by Council and requires unanimity. Where restrictive measures target persons, groups and entities that are not directly linked to the regime of a third country, Articles 60, 301 and 308 of the Treaty establishing the European Community apply. In this case, adoption of the Regulation by the Council requires unanimity and prior consultation of the European Parliament. The Council Regulations imposing sanctions and the implementing Commission Regulations are part of Community law and directly applicable in Member States without any further implementing measures. It is also standing case law that Community law takes precedence over conflicting legislation of the Member States.

#### *Special Recommendation III*

##### S/RES/1267(1999) and successor resolutions and S/RES/1373(2001)

173. The obligation to freeze under S/RES/1267(1999) has been implemented through Council Common Position 2002/402/CFSP, which constitutes the CFSP base to adopt an EC Regulation. The resulting Regulation is Council Regulation (EC) No 881/2002. Article 2 of this Regulation contains the operative obligation to freeze, as well as the prohibition on making any funds available to any natural or legal person, group or entity targeted by the Regulation. The targeted natural or legal persons, groups or entities are listed in Annex I to the Regulation, which contains the same information as the list maintained by the Al-Qaida and Taliban Sanctions Committee. The Annex is regularly and promptly updated by the Commission when the Sanctions Committee amends its list. The Common Position has so far been amended on one occasion, through Council Common Position 2003/140/CFSP, in order to implement UNSCR 1452(2002). The Regulation has so far been amended 61 times.

174. Similarly, Sweden follows the obligation to freeze under S/RES/1373(2001) implemented in the EU through Council Common Positions 2001/930/CFSP and 2001/931/CFSP. The resulting Regulation is Council Regulation (EC) No. 2580/2001. Article 2 of this Regulation contains the operative obligation to freeze, as well as the prohibition on making any funds available to persons, groups or entities targeted by the Regulation. The targeted persons, groups or entities are determined by the Council acting by unanimity and is listed in a separate Council Decision. The current list of targets can be found in Council Decision 2005/1848/EC.

175. EC Regulation 2580/2001 does not cover persons, groups and entities having their roots, main activities and objectives within the European Union (EU internals). EU internals are still listed in an Annex to the Common Position 2001/931/CFSP, where they are marked with an asterisk, signalling that they are not covered by the freezing measures but only by an increased police and judicial cooperation between the Member States. Swedish authorities explained that this is due to a political compromise when the legislation was adopted, where some Member States claimed that the Treaty establishing the European Community does not contain a sufficient legal basis to direct freezing measures against EU internals. Swedish authorities stated that in their view the legal situation regarding the exact scope and content of remaining competence for EU Member States to adopt national measures in this area is unclear, and the European Court of Justice, which is the only institution with the right to interpret EU law, has not yet ruled on the matter.

176. However, in the view of the assessors the above-mentioned EU legislation does not prevent EU MS to adopt national freezing measures. The Presidency Conclusions of the EU RELEX/Sanctions meeting of

July 2004 noted that for the freezing of funds and assets of groups, entities and persons which appear listed as "internal" (marked with an 'asterisk') in the list annexed to Common Position 2001/931, if read together with articles 2 and 3 of Common Position 2001/930 (combating terrorism), national legislation is necessary. This was supported at an informal meeting of the EU finance ministers in September 2005 when they agreed that there is a benefit in complementing the EU action with administrative or judicial mechanisms at the national level to identify and freeze terrorist assets effectively. Nevertheless, presently, Sweden cannot take administrative freezing measures against EU internals. This is a significant loophole in Sweden's ability to effectively freeze and seize terrorist-related assets. Swedish authorities pointed out that they have recognised this loophole, and with their view of the importance of resolving the issue within the EU framework, worked with EU authorities to address this in the draft EU Constitution. (In the Treaty establishing a Constitution for Europe, a specific legal base was included in Article III:160, in order to make it possible to direct freezing measures also against the EU internals.)

177. On 25 April 2005, the Swedish Government launched an official commission to give the national legislation on international sanctions a comprehensive overhaul. One important task of this commission is to look into and make proposals on how to deal with the freezing of funds and assets of the EU internals. The report of this commission is due 1 March 2006.

178. The freezing obligations in both Council Regulations implementing S/RES/1267 and S/RES 1373 are defined thoroughly in Article 1 of each Regulation. Regulation 881/2002 (implementing S/RES/1267) applies to "funds"<sup>10</sup> and "economic resources"<sup>11</sup> Regulation 2580/2001 (implementing S/RES/1373) obliges freezing of "funds, financial assets and economic resources"<sup>12</sup> "belonging to, or owned or held by, a natural or legal person, group or entity" included on the list; it is also prohibited to make such funds available, directly or indirectly to, or for the benefit of, such a person, group or entity. The EC Regulations do not explicitly cover funds owned, *directly or indirectly*, by designated persons, or those controlled (but not owned) directly or indirectly, by designated persons. However, Swedish authorities explained that in the Swedish translation of the regulations, the translation of "belonging to" into Swedish ("tillhör") is very broad and that the separate term "controlled" is in practice not needed for Sweden to fulfil the demand to freeze funds owned, directly or indirectly, by designated persons, groups or entities, and those controlled (but not owned) directly or indirectly, by designated persons.<sup>13</sup> In addition, it is unclear how freezing mechanisms could apply to funds of individual terrorists or terrorist organisations which are not also on the UN or EU list, since these activities are not specifically incorporated into the current terrorist financing offence in Sweden.

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<sup>10</sup> Defined as "financial assets and economic benefits of every kind, including but not limited to cash, cheques, claims on money, drafts, money orders and other payment instruments; deposits with financial institutions or other entities, balances on accounts, debts and debt obligations; publicly and privately traded securities and debt instruments, including stocks and shares, certificates presenting securities, bonds, notes, warrants, debentures, derivatives contracts; interest, dividends or other income on or value accruing from or generated by assets; credit, right of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale; documents evidencing an interest in funds or financial resources, and any other instrument of export-financing."

<sup>11</sup> Defined as "assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services."

<sup>12</sup> Defined as "assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit."

<sup>13</sup> In the newest version of the EU guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy, adopted by the Council of the European Union on 12 December 2005, and the EU Best Practices for the effective implementation of restrictive measures (point 29), taken note of by Coreper II on 8 December 2005, the word "controlled" has been added to the standard text that will be inserted in future regulations so that it will read "belonging to, owned, held or controlled by". All terms, including "controlled" are now included in the EU standard text.

179. When determining if a person, group or entity should be targeted by freezing measures, the Council must follow the criteria for listing in Article 1(4), (5) and (6) of Common Position 2001/931/CFSP (Article 2). Other jurisdictions can submit requests to the EU Presidency to include a person, group or entity on the list of targets that accompanies Council Regulation (EC) No 2580/2001. Requests are sent to the EU Presidency, who immediately forwards the request to all EU Member States. The Member States then normally have 15 days to scrutinize the request and determine if they can support it (if need be this time can be shortened). If all Member States agree to the request, the name or names in question are added to the list of targets through a decision by the Council. The requirement for unanimity among EU member States impedes Sweden's ability to unilaterally give effect to the freezing mechanisms of other jurisdictions. Outside of a unanimous position of EU member States, Sweden does not have a national mechanism to designate a person, group or entity, even if the Swedish government desired the designation (and regardless of whether the requested designation was from Sweden or a foreign jurisdiction).

180. Every amendment of the list of targets means that a new Common Position, amending the Annex to Common Position 2001/931/CFSP, must be adopted. The Swedish Government regards such a Common Position as an international agreement between the Member States, which, according to the Swedish Constitution, must be concluded by the Government. This procedure is not in any apparent way an obstacle to the effective implementation of freezing actions, since the Government is prepared to take its decision as soon as unanimity has been found in the relevant preparatory working group.

181. The criteria that must be fulfilled in order for a proposed designation to be accepted can be found in Article 1.4 of Common Position 2001/931/CFSP. These criteria contain no exact evidentiary standard that must be fulfilled but concentrates on what information must be available in order to take a decision to designate. In practice a decision can be taken already on the basis of, for example, a decision by a prosecutor to instigate an investigation of a terrorist act, if the decision is based on credible evidence (reasonable grounds, or a reasonable basis, to suspect or believe).

182. On 9 November 2001, three Swedish citizens and three entities were designated by the Al-Qaida and Taliban Sanctions Committee ("the 1267 Committee") and included in its consolidated list of individuals and entities belonging to or associated with the Al-Qaida organisation. On 13 November 2001, Commission Regulation (EC) No 2199/2001, implementing the decision by the Sanctions Committee, was put into force and the assets of the Swedish citizens and the entities were immediately frozen. The amount frozen and reported to *Finansinspektionen* was 1,070,000 SEK. On 26 August 2002, the Sanctions Committee approved the deletion from its list of two of the Swedish citizens, a decision that was implemented by Commission Regulation (EC) No 1580/2002 which was put into force on 5 September 2002. Their assets were returned. The remaining Swedish citizen and one of the entities filed a suit against the Council and the Commission in the European Court of First Instance (case T-306/01). The judgement, which came on 21 September 2005, upheld the sanctions. Today the remaining Swedish citizen and the three entities are still targeted by sanctions under this sanctions regime.

183. There have been no assets frozen in Sweden under the European procedure implementing S/RES/1373.

#### Communication and guidance to financial institutions and other potential holders of assets

184. Amendments to the lists of targets pursuant to both Regulations implementing S/RES/1267 and S/RES/1373 are published in the Official Journal, which can be accessed by anyone through the Internet and which is also available in hardcopy. *Finansinspektionen* (FI, the Swedish financial supervisory authority) keeps itself updated on all changes to these and other sanctions regimes by checking the Official Journal. Furthermore, when changes are made to the list of targets accompanying the Regulation implementing S/RES/1267 (where the European Commission has been entrusted to make changes to the list on its own pursuant to a decision by the Sanctions Committee), the Sanctions Division at the European Commission usually sends an e-mail notifying the Member States, in Sweden the Ministry for Foreign Affairs, before the amended list is published in the Official Journal. The Ministry for Foreign Affairs then immediately forwards this information to *Finansinspektionen*, who passes the information on to the financial institutions. When changes are made to the list of targets accompanying the Regulation

implementing S/RES/1373, these changes are always preceded by a decision by the Swedish Government. This decision is then forwarded to *Finansinspektionen*, who passes the information on to the financial institutions.

185. At the time of the on-site visit, there had been little specific and clear guidance to financial institutions and other persons or entities that may be holding targeted funds in Sweden.<sup>14</sup> The *Finansinspektionen*'s webpage has a link to the European Commission's webpage: [http://europa.eu.int/comm/external\\_relations/cfsp/sanctions/measures.htm](http://europa.eu.int/comm/external_relations/cfsp/sanctions/measures.htm) for information and procedures. The EC webpage contains all applicable legislation on terrorism financing under the headline "Terrorist groups (foreign terrorist organisations)" and a database where all persons, groups and entities, including designated terrorists that are subjected to freezing measures are listed. The Government also publishes updated lists of EU decisions on sanctions in the Swedish code of statutes (SFS).

#### Procedures for de-listing and unfreezing

186. In order to be de-listed from the list of targets accompanying the Regulation implementing S/RES/1267 such requests must be considered by the UN Al-Qaida and Taliban Sanctions Committee. This Committee has published its de-listing procedure in its guidelines, a document that is available on its web page on the included hyperlink: [http://www.un.org/Docs/sc/committees/1267/1267\\_guidelines.pdf](http://www.un.org/Docs/sc/committees/1267/1267_guidelines.pdf). The procedure was drafted after a model case where two Swedish Citizens were de-listed in 2002. At this time, only one Swedish citizen is included in the list. This individual also instituted proceedings before the Court of First Instance of the European Communities to petition for delisting, which is possible according to Article 230 of the Treaty establishing the European Community. As of the on-site, there were three cases pending at the Court of First Instance and two cases pending before the Court of Justice concerning the 1267 list. There were also four cases pending at the Court of First Instance and four cases pending before the Court of Justice concerning the list accompanying Council Regulation (EC) No 2580/2001 implementing S/RES/1373. On 21 September 2005, the Court at First Instance ruled on the Swedish case that the listing by the EU, following the decision by the UN Sanctions Committee, was compatible with EU law. The decision has been appealed but the Court of Justice has not yet ruled on the matter.

187. In order to be de-listed from the list of targets accompanying the Regulation implementing UNSCR 1373 (Regulation 2580/2001), one can also go the Court at First Instance and appeal its rulings to the Court of Justice. Otherwise, a Council Decision is required as per Article 2 of Regulation 2580/2001. Sweden has no citizens or residents on this list.

188. As regards unfreezing, the amended lists are published in the Official Journal in the same way as when names are added to the lists. Also, when the two Swedish citizens mentioned above were de-listed from the list accompanying Regulation 881/2002 in 2002, the Ministry for Foreign Affairs immediately contacted and informed everyone who had reportedly taken freezing measures against these persons, about their obligation to unfreeze. In addition, *Finansinspektionen* required written confirmation from the institutions concerned that the unfreezing measures had been carried out.

189. A procedure for cases of mistaken identity is contained in the document "EU Best Practices for the effective implementation of restrictive measures", Doc No 15115/05 PESC 1085 RELEX 705 COTER 87 FIN 476. This procedure was originally adopted in December 2004.

#### Access to funds for necessary expenses

190. S/RES/1452(2002) has been implemented by Council Common Position 2003/140/CFSP and Council Regulation (EC) No 561/2003 of 27 March 2003, which includes a new Article 2a in Council

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<sup>14</sup> However, the EU issued guidelines and Best Practices, in December 2005. They contain specific, clear and detailed guidance on the interpretation of EU freezing decisions. They are available to the public and to the financial institutions. Sweden has found that they contain all the adequate and necessary information for those who need to take to take freezing measures.

Regulation (EC) No 881/2002 that follows the wording of S/RES/1452 to the letter, and therefore authorises access to funds that were frozen as necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses. The Swedish competent authority in charge of these requests for exemptions is the Swedish Social Insurance Agency. In Regulation 2580/2001, Article 5, a similar construction can be found. The same agency is in charge of exceptions under this regulation.

#### Freezing, seizing and confiscation in other circumstances

191. The Swedish regulation on seizing, provisional attachment and confiscation as stated in previous chapter also applies to cases of FT. The rules on seizing and provisional attachment are found in the Swedish Code of Judicial Procedure (Chapter 26 and 27), whereas the rules on forfeiture are found in the Swedish Penal Code (Chapter 36) and in special penal laws. Furthermore, Section 11 of the Swedish Act (1996:95) on Certain International Sanctions states, "Proceeds from an offence under Section 8 of this Act shall be declared forfeited unless this would be manifestly unreasonable." Section 12 states that "Property used as an auxiliary means in the commission of an offence under Section 8 of this Act or which is the product of such an offence may be declared forfeit, if this is called for in order to prevent crime or for other special reasons. This also applies to property the use of which constitutes an offence under Section 8 of the Act. The value of the property may be declared forfeited instead of the property itself." Amendments to the bill that come into force on 1 July 2005 make it possible to also forfeit instrumentalities intended for use in an offence under section 8 of the Act, if the offence has been completed.

#### Bona fide third parties

192. There is no explicit provision regarding the protection for the rights of bona fide third parties in the Swedish law, though it appears that the law does provide the usual legal remedies and procedures for such parties. As indicated above, it is possible for a person or entity to institute proceedings before the European Court of Justice, which has a mandate to review the legality of the acts in question. Also, the Council Regulation (EC) No 881/2002 states in Article 6 "The freezing of funds, other financial assets and economic resources, in good faith that such action is in accordance with this Regulation, shall not involve the natural or legal person, group or entity implementing it, or its directors or employees, in liability of any kind unless it is proved that the freezing was due to negligence." This provision is directly applicable in Sweden. Furthermore, the EU Member States have agreed on a procedure to deal with claims concerning mistaken identity. This procedure is set out in Section A.II of the EU Best Practices document.

#### Monitoring Compliance

193. Compliance with the freezing requirements is monitored in different ways. Generally, *Finansinspektionen* is responsible for monitoring the compliance and can issue certain sanctions for non-compliance. On-site inspections carried out since 2002 (apart from some examinations with specific targets) included checks on financial institutions measures to comply with relevant EC Regulations containing obligations to freeze funds and other assets as well as the prohibition on making funds available to the groups and individuals listed. After September 11, a specific off-site examination took place on this subject addressing a wide range of financial institutions. Furthermore, the EU has formed its own Sanctions Committee, RELEX/Sanctions, where different sanctions regimes are evaluated and where problems and issues concerning implementation can be discussed. The group has put a large focus on terrorism financing.

194. Sanctions against persons who infringe the prohibitions of the EC-Regulations implementing S/RES/1267 and S/RES/1373 can be imposed under Section 8, paragraph 2 of the Swedish Act (1996:95) on certain international sanctions. According to this Act, any person who intentionally violates such a prohibition can be sentenced to a fine or imprisonment for at most two years or, if the offence is gross, to imprisonment for at most four years. Persons who commit such an offence through gross carelessness can be sentenced to a fine or imprisonment for at most six months. In minor cases, no sanctions are imposed.

### Additional elements

195. In addition to the designation procedures described above, Sweden has developed a process whereby the Ministry for Foreign Affairs acts as coordinator and gathers information and opinions from all interested parties, mainly the Security Service (through the Ministry of Justice) and the regional divisions at the Ministry, which are then presented to the political leadership to form a basis for a decision whether to support or deny a request for designation.

196. With regard to co-operation and pre-notification, within the EU-system there are certain rules on pre-notification of pending designations to certain countries; however, the details are classified. Sweden has never had a problem with sharing information with other countries or making public the amounts frozen pursuant to terrorism financing freezing orders.

#### ***Recommendation 32 (terrorist financing freezing data)***

197. Sweden maintains statistics on the amounts frozen according to the provisions implementing S/RES/1267 and S/RES/1373.

#### **2.4.2 Recommendations and Comments**

198. Sweden should implement a national mechanism to give effect to requests for freezing assets and designations from other jurisdictions and to enable freezing funds of EU internals (citizens/residents). The Swedish authorities should also enact measures that would allow for the possibility of freezing funds or other assets where the suspect is an individual terrorist or belongs to a terrorist organisation, where that person or organisation is not already a designated person.

199. The Swedish authorities should establish an effective system for communication among governmental institutions and with the private sector (and the like) to facilitate every aspect of the freezing/unfreezing regime within Sweden.

200. The Swedish authorities should consider providing more clear and practical guidance to financial institutions that may hold terrorist funds concerning their responsibilities under the freezing regime and clarify the procedure for authorising access to funds/assets that are frozen and that are determined to be necessary on humanitarian grounds in a manner consistent with S/RES/1452(2002). Clear communication channels for providing feedback between the government and financial sector may be considered<sup>15</sup>.

#### **2.4.3 Compliance with Special Recommendation III & 32**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>SR.III</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• Within the context of S/RES/1373, Sweden does not have a national mechanism to consider requests for freezing from other countries (outside the EU mechanism) or to freeze the funds of EU internals (citizens/residents);</li><li>• At the time of the on-site visit, very little guidance had been issued to financial institutions and other persons/entities that may be holding targeted funds/assets.</li><li>• Due to some concerns about the scope of the terrorist financing offence, it is unclear how Sweden would be able to freeze funds or other assets where the suspect is an individual terrorist or belongs to a terrorist organisation (where that person or organisation is not already a designated person by the UN or the EU).</li></ul>

<sup>15</sup> Swedish authorities point out that the EU Best Practice Guidance, issued in December 2005, are now sufficiently detailed and clear for all those who need to use them and they are easily accessible, on the web or through hard-copies from Finansinspektionen.

		<ul style="list-style-type: none"> <li>At the time of the on-site visit, the definition of funds in the EU Regulations did not fully cover the terms in SR.III. (It does not explicitly cover funds owned, <i>directly or indirectly</i>, by designated persons, or those controlled (but not owned) directly or indirectly, by designated persons), although in practice this did not present a problem and any potential loophole has been clarified.</li> </ul>
<b>R.32</b>	<b>PC</b>	(Compliant for statistics with regard to TF amounts frozen.)

## Authorities

### **2.5 The Financial Intelligence Unit and its functions (R.26, 30 & 32)**

#### **2.5.1 Description and Analysis**

##### ***Recommendation 26***

201. The Swedish financial intelligence unit (FIU), *Finanspolisen*, is one of the intelligence units of the National Criminal Investigation Department within the National Police Board. The FIU was established in 1994 in relation to the introduction of the AML Act (1993:763) concerning measures against money laundering. The Act states that entities that are subject to the law are to report suspicious transactions to the National Police Board or to the unit that the government decides. The FIU collects, processes and analyses information, and the objective of the FIU's activities is to reveal the underlying criminal activities in the area.

202. According to section 9 of the AML Act, the natural or legal person must report any circumstances that may be indicative of money laundering to the National Police Board or other police authority designated by the Government. Pursuant to the Act on Criminal Responsibility for the Financing of Particularly Serious Crime in some cases, etc. (2002:444) entities that have reporting obligations based on AML Act must submit information to the National Police Board, or the police authority appointed by the Government, on all circumstances indicating that a transaction involves assets subject to a terrorist financing offence (section 8). However, suspicious transactions subject to an offence under this Act must be reported only by the entities mentioned in the old AML Act 1993:768, so it seems that the provision is not applicable to, for example, lawyers who were added into the sphere of the AML Act in the beginning of 2005. The total number of the STRs received has been around 10,000 per year (See section 3.7 for details on STRs). However, the assessors were told that in 2005 year the number will be close to 12,000.

203. The FIU provides reporting parties with specific reporting forms, but otherwise not adequate specific guidance or practical assistance concerning the manner of reporting or the procedures that should be followed when reporting. The FIU states that according to law the FIU does not have the power to give any detailed guidance or prescribe measures that financial institutions should follow. . However, the assessors were told that the FIU can be contacted for guidance when reporting suspicious cases. The FIU also gives general training and education to reporting parties concerning the AML Act and its obligations. For example, Swedish authorities reported that in 2005 the FIU visited approximately 30 reporting entities with the aim of providing information on the revised AML Act.<sup>16</sup> In addition, according to the preparatory works of the new AML Act (2004:1182) the FIU can give general guidance on reporting to parties which were included in the sphere of the Act in the beginning of the year 2005.

204. STRs are normally submitted to the FIU in a standardised form which is sent out by the FIU. However, different reporting parties seem to use different kinds of forms and at least one bank seems to differentiate between a suspicion of ML or FT in each case. The Real Estate Agents Board has also prepared a special form for the members of the board which all the same information from the form issued by the FIU.

205. Most of the STRs from the entities that are subject to the AML regulations are forwarded to the FIU by fax, though a few are sent electronically by the Internet. For now, only some of the major banks can use electronic reporting system via the Internet. However, the FIU has participated in a project for

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<sup>16</sup> Swedish authorities reported that special attention has recently been given to money exchange offices, which were invited to informational meetings in December 2005 and January 2006, where they were provided information on the new legislation, the role of the FIU, the duties of the money exchange offices and the STR process etc. This campaign will be followed up with training and information brochures.

developing a new money laundering database with improved ability to receive reports and search electronically, which may be used in both operational and strategic work.<sup>17</sup>

206. The information from the STRs concerning the reported natural and/or legal persons is registered in the money laundering database after checking if the natural and/or legal person has previous occurrences in the register (which are categories by name, date of birth and organisation registration number). As at the moment the search must be done manually, this might make it more difficult to recognize name variations that might have occurred with different spellings. Also, information concerning the reported natural and/or legal persons is gathered from civil, police and intelligence registers.

207. There are significant limitations on the FIU regarding the timeframe that it may store the STRs it receives. STRs are considered “criminal intelligence records” under the Police Data Act (1998:622). According to section 19 of the Act, a record may contain data that may be referable to an individual “only if the data gives cause to assume that serious criminal activity has been conducted or may be conducted and that the person to whom the data refers, may reasonably be suspected of having conducted, or may conduct, the serious criminal activity.” Thus, the FIU must first establish that the above criteria are met; otherwise it has no powers to keep the STR, even though it was considered suspicious by the reporting entity. In practice, if the FIU does not believe that the above criteria are met and/or there is no notable background information concerning the reported natural and/or legal person, the FIU registers these STRs in the database only with a serial number and not a case number. They are deleted after six months if there is no information/indications which confirm the need for further investigation, e.g. (criminal record, new STRs, intelligence information). The FIU indicated that in practice few STRs are deleted after the six month deadline, although statistics were not provided.

208. If the criteria in section 19 of the Act are met, STRs may be registered for more than six months. However, according to section 21 of the Act, the data (STRs) stored in the money laundering database have to be deleted after three years, unless the FIU has received supplementary STRs and/or background information. If new information of importance is registered, a new three-year deadline shall apply from the date of registration. These two deadlines (six months and three years) are limitations that the evaluation team believed seriously affected the FIU’s ability to effectively analyse and cross-reference STRs over the short and long term.

209. Primarily, it is the person in charge of the case (a police officer) who makes the decision of what to do with a new STR. If the persons do have a previous occurrence in the money laundering database, the FIU decides whether:

- a. the reported STR will be added to the earlier case (because the earlier case is not finished or it concerns an ongoing criminal investigation or an ongoing intelligence project);
- b. the STR should lead to the creation of a new case (i.e., because the earlier STR did not concern a notable transaction or the background information concerning the natural and/or legal person was not notable); or if
- c. the STR should only be registered with a serial number, not with a case number, and without any further actions (because the information concerning the transaction is not notable or the background information concerning the natural and/or legal persons is not notable or there is a reasonable explanation for the transaction).

210. If the natural and/or legal persons do not have any previous occurrence in the money laundering database, there is a decision made if:

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<sup>17</sup> Reflects the situation at the time of the on-site visit. Swedish authorities subsequently reported that the new database became operational on 9 December 2005. In January 2005, the system was to be extended so as to be able to accept web-based reporting of STRs. The database reportedly will also contain better statistical details and will also enable filing of cases concerning different categories of crime.

- a. the reported STR should lead to the creation of a new case (because the transaction was notable or there is no reasonable explanation to the transaction or the background information concerning the natural and/or legal persons is notable); or if
- b. the STR only should be registered in the money laundering database with a serial number (because the transaction was not notable or that there was a reasonable explanation to the transaction or the background information concerning the natural and/or legal persons was not notable).

#### Powers to access and provide information

211. Information may be gathered from other units at the National Police Board, County Police Authorities, the Swedish Customs Authority, the Swedish Economic Crimes Bureau and the Economic Crimes Unit of the Swedish Tax Authority. The information that was included in the STR and the supplementary information is then processed, analyzed and compiled.

212. To support its analysis functions, the FIU has a wide range of access to financial, administrative, and law enforcement information to assist it in undertaking its functions and STR analysis. The FIU has direct access to different databases and registers, including all police registers (the Criminal Records Registry, the Registry of Suspects, the Police Surveillance Registry, the National Police Intelligence Registry, the Schengen Information System, the National Prison and the Probation Registry) and official registers like National Registration Registry, National Company Registry, House and land property registry, Automobile Registry, National Phone Registry and Postal codes. The FIU also has indirect access to the Customs Intelligence Registry as well as some access to the information stored in the National Tax Authority Registry. The FIU can contact the Tax Authority, who must provide information needed (e.g. what the natural and legal persons have provided in their income tax returns, e.g. VAT, social security contribution and income tax) when there is an on-going case investigation. The FIU, like all law enforcement units and intelligence units, has access to official administrative information, which is not subject to secrecy regulations. During an ongoing criminal investigation the investigating unit has access to financial information according to the criminal investigation regulations. The decision to gather the financial information is made by a police officer or a prosecutor, depending on the severity of the crime.

213. According to the AML Act (section 9) the FIU also has the authority to obtain additional financial information from the entity that made the report and is subject to the AML regulations. The FIU also has the power to ask information from other reporting entities (other than the entity that made the STR). Additionally, the FIU has access to all official administrative information concerning the entities that are subject to the AML regulations.

214. The FIU co-operates with other law enforcement intelligence units and other authorities through information sharing and through participation in intelligence or co-operation projects. According to the Police Data regulations the FIU is authorised to forward financial information to other law enforcement intelligence units and other authorities with intelligence units. According to the criminal investigation regulations, the FIU is authorised to forward financial information to the investigating unit. According to the Secrecy regulations the FIU is authorised to forward financial information to other authorities as for example the Tax Authorities, the Customs Authorities and the Enforcement Authorities.

#### Information Security

215. The FIU is the single unit that receives the STRs from the entities subject to the AML regulations and is therefore the sole owner of the information included in the STRs. The current money laundering database was developed in the late 1990s. The system is kept outside the ordinary police computer network as a measure of security: the database is separate and not available to other police. The STRs filed by reporting entities are scanned and afterwards saved in the money laundering database. Information from STRs is stored in a database placed on the premises of the FIU, where the server is located. The premises are protected by a security door and an alarm system connected to the police under surveillance. The database cannot be operated from the outside, and everything done in the database is logged. All physical material resulting from STRs is stored in the premises of the FIU. The FIU has an internal

regulation that gives permission to use and make changes for employees at FIU. The IT administration has no direct access to the database.

216. The legal regulations that condition and regulate the FIU's methods and system of the work with the flow of information are the AML regulations, the Police Data regulations, the Secrecy Act and the Code of Judicial Procedure. The Secrecy Act concerns the information flow to and from non-intelligence or non-criminal investigating authorities. The Police Data regulations concern the information flow to and from other intelligence authorities and units. The Code of Judicial Procedure concerns the information flow during ongoing criminal investigations.

#### Reports to investigative authorities

217. If the FIU determines that concrete details support the suspicion of ML/FT, a criminal investigation may be initiated. The information held by the FIU is only forwarded if there is sufficient suspicion of ML or FT and that the information is allowed to be forwarded according to the Police Data and criminal investigation regulations. The FIU submits two kinds of reports to investigative agencies: Operative Reports (ORs) indicate a specific crime conducted by specific natural persons, and Intelligence Reports (IRs) indicate an event or a possible crime performed by known or unknown natural persons. Reports are forwarded normally by hand or by post or in a case of hurry, by fax; the FIU does not use e-mail for sending the reports by security reasons. The recipients of the information are the intelligence and investigation units within the National Police or the County Police Authorities, the Economic Crimes Bureau (*Ekobrottsmyndigheten*—EBM), the Economic Crimes Unit of the Swedish Tax Authority, the Swedish Prosecution Authority and the Customs Service. Mostly the reports are forwarded to either National Police and County Police Authorities or the EBM as indicated below.

	<b>OPs 2004</b>	<b>IRs 2004</b>	<b>OPs 2003</b>	<b>IRs 2003</b>
National Police and County Police authorities	26	435	21	110
National Economic Crimes Bureau	109	198	106	70
Tax Authority		149		6
County Police Authorities and other recipients	1	30	1	11
Customs Authority		17	1	13
Other recipients	3	8		2
Prosecution Authority		9	6	11
<b>Total</b>	<b>139</b>	<b>846</b>	<b>135</b>	<b>223</b>

218. The FIU indicated that of the 139 operative reports forwarded in 2004, 21 resulted in preliminary reports being opened. Otherwise, the FIU is usually not informed about what happens to the cases that are reported. The FIU states that information forwarded from the FIU may result either criminal sanctions or administrative sanctions:

- a. Information forwarded to the Customs Service may result in an audit of natural or legal persons, which might result in increased customs and/or VAT fees.
- b. Information forwarded to the Tax Authorities may result in audit of natural or legal persons, which might result in increased taxation.
- c. Information forwarded to the Swedish Enforcement Authority may result in the enforcement of natural or legal person's debts

219. The FIU annual report of 2004 indicated that it received a total of 9,929 STRs in 2004. (See section 3.7 for a breakdown of STRs.) 2,144 of these cases were subject to further measures. The FIU supported 365 other cases. These include cases from other Swedish authorities as well as requests from Egmont and Interpol. The FIU also reported in 2004 that it had registered 512 cases in the Swedish National Criminal Intelligence Record.

220. The FIU publishes an annual report, which among others describes recent money laundering trends, techniques and money laundering statistic and information regarding activities conducted by the FIU. In addition, and as regards feedback on specific STRs, the FIU states that it has a daily contact with money exchange offices and money transfer institutions. The FIU also informs financial institutions if and when

STRs resulted in a case being forwarded to law enforcement authority, resulted in a preliminary investigation being opened, or if a sentence is pronounced. Other reporting entities are given a receipt after sending an STR. The formula gives information of the person in charge, phone number and case number. These discussions with reporting parties may provide additional feedback to the Swedish authorities

### The Egmont Group

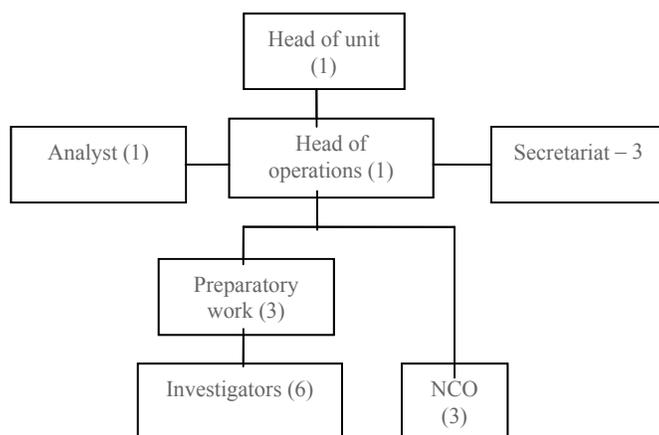
221. The FIU has been an active part of Egmont since 1995. Each year, staff members participate in meetings and seminars of the Egmont Group. The FIU also engages in frequent information exchange via the Egmont Group's own Secure Web System. As an Egmont member, the FIU is aware of the Egmont Group Statement of Purpose and its Principles for Information Exchange Between Financial Intelligence Units for Money Laundering Cases (Egmont Principles for Information Exchange). The FIU reported that it respects the Egmont statement of purpose and principles for information exchange. When the FIU exchanges information, it considers points under C, D and E in the principles. If the FIU gets a request from another FIU, it does not disseminate this information without consent from the requesting part. If the FIU requests information from another FIU, it considers the information in the same way.

### ***Recommendation 30 (Structure, funding, staffing, and resources of the FIU:***

#### Structure and staffing

222. The Swedish FIU belongs to the Criminal Police Unit of the Swedish National Criminal Police (*Rikskriminalpolisen—RKP*), which is one of the units of the National Police Board. The FIU is of the opinion that the unit is operationally independent as it is the single unit that receives the STRs from the entities subject to the AML regulations. However, at the time of the on-site visit a re-organisation of the RKP was being planned, with the aim of having the FIU closer to the investigative parts of the National Criminal Police and to make co-operation with those parties closer and more continuing.<sup>18</sup>

223. Organisation and personnel of the FIU:



- a. The head of the units responsibilities are among others the unit's strategic alignment and to lead the overall work of the unit.

<sup>18</sup> Swedish authorities have indicated that the re-organisation took effect on 1 January 2006. The RKP now consists of three main units: the National Liaison Office (NSK) and the Police Unit (OPE); the Criminal Police Unit (KPE). The KPE is divided into: the Intelligence section, the Surveillance section, the Analyst section, the IT-crime section, the FIU section, and the Investigation section.

- b. The head of operations responsibilities are among others to have an overview of the incoming STRs and to lead the preparatory work with those, divide the investigation capabilities after the character and content of the STRs.
- c. The analyst's responsibilities are among others to identify trends and to initiate and lead project connected to specific areas of money laundering.
- d. The secretariat's responsibilities are among others to register incoming STRs and to check information concerning the natural and legal persons in the STRs against the money laundering register and public, police and intelligence registers.
- e. The preparatory section responsibilities are among others to conduct the first assessment of the STRs and to decide if the following money laundering investigation is to be conducted by them or by the investigators.
- f. The money laundering investigator's responsibilities are among others to conduct money laundering investigations, by gathering, analyzing and compiling of information and forwarding of the compiled information. Moreover one the investigator's participates in intelligence and investigation project aimed at specific problem areas or criminal organisations.
- g. The National Central Office (NCO) has the national co-ordination responsibility for money forgeries and forgeries with other means of payments.

224. The size of the FIU's staff has varied during the previous years as some officers have moved on to other jobs, and it has not been possible to replace them immediately. The FIU now has 16 staff, from which 13 are working with money laundering issues in practice. There is only one analyst (part-time), three secretaries, three persons in preparatory work and six investigators. Because the scope of the AML Act was extended in the beginning of 2005 to include additional reporting entities, which will result in an increase in the number of STRs, the current resources are not sufficient. Also, in order to develop the analysing methods of the FIU, there may also be a need to widen the competence and background of the staffing.<sup>19</sup>

225. The FIU states that its staff maintains high professional standards, including standards concerning confidentiality, and is of high integrity and appropriately skilled. There is a variety of backgrounds among the staff: an analyst, persons with law, economical and statistic studies, police officers and also a person with prosecution background. The person is checked through police records before hiring but there is no other type of background investigation.

226. The staff has a wide range of previous police experience, including drug investigation, economics crimes investigations and violent crimes investigations. To be able to handle and detect ML and FT there is a need for the staff to be able to update their knowledge of ML and FT trends and news. Every new member of the investigation staff of the FIU passes through an introduction program concerning national and international AML regulations, studies of money laundering methods and techniques under the supervision and coaching of an experienced investigator, studies of the AML work at some of the entities subject to the AML regulations (such as at a bank and a casino). FIU has participated in lectures held by the Ministry of Finance, Finansinspektionen, and EBM. The FIU staff participates in national and international AML/CFT seminars provided; for example the FIU participated in the Egmont AML training in Hong Kong, China, in 2004. The FIU has also participated in some of the AML/CFT projects conducted by the FATF.

#### Technical resources

227. The FIU has access to sophisticated tools of analysis outside the main database, for instance iBase, Analyst Notebook and Excel to assist in analysing the information gathered. Experiences in the use of these programs in large ML cases have clearly shown the need to educate the entire staff of the FIU in the

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<sup>19</sup> Reflects the situation at the time of the on-site visit. Swedish authorities reported that with the reorganisation taking effect and when the new positions are filled, the total staff would be about 25; staff working with money laundering will be 18, including 3 analysts and a tax-liaison officer. The FIU will also be able to call on additional staff as needed. It was planned that the FIU will get a liaison officer from the tax authorities in the beginning of 2006.

skill needed to handle of these programs. Continuous competence development in this field is therefore pursued within the FIU.

228. However, much of the FIU's activities are based on manual processes. STRs are generally received by fax, and the information is registered in the money laundering register after checking if the natural and/or legal person has previous occurrences in the register. Because of the need to manually register STRs, there was a backlog of 4-5 months of STRs to be registered.<sup>20</sup> In addition, as much of the FIU's analytical processes were also handled manually, with its current systems, there was no possibility for the system to automatically draw connections between STRs (other than a name match). Manual analysis is done, but is often dependent upon the MLU staff remembering a person's name or a previous STR.<sup>21</sup> As indicated earlier, at the time of the on-site visit the FIU was redesigning its money laundering database, which may be used in both operational and strategic work. This will allow for electronic receipt and of STRs, allow the FIU to handle the increased inflow of STRs, and improve capabilities to analyse and detect ML and FT. This should significantly increase the effectiveness of the FIU.

### Funding

229. Organisationally, the FIU's budget is part of National Criminal Police's total budget. The budget for the FIU has increased since 1996 and the annual level for the last years is around 1,400,000 EUR. Pursuant to the ordinary national procedure regarding budgeting, the National Police Board is responsible for deciding the budget for different functions. Head of the FIU applies for money in every budget negotiation and is responsible of handling the internal budget. Although the head of the FIU has a power to address resources quite freely, principal priorities and guidelines set out in budgetary documents issued by the government have to be kept in mind.

### ***Recommendation 32 (Statistics collected by the FIU):***

230. The FIU maintains the following statistics relating to suspicious transaction reports:

- a. The number of suspicious transaction reports received and registered by the FIU;
- b. A breakdown of the type of financial institution or business/professional making the STR;
- c. The number of Operative Reports (OP) and Intelligence Reports (IR) forwarded from the FIU to different recipients;
- d. The number of cash withdrawals in money laundering cases made from bank and postal giro accounts;
- e. A breakdown of the amount of domestic and foreign currency involved in the STRs from currency exchange companies.

231. However, during the on-site visit certain statistics on STRs collected and registered were not consistent. The assessors were told at least by two sectors that numbers of STRs presented by the FIU were not correct. These figures were corrected later by the FIU. Swedish authorities indicated that when checks were made it was found that a few reports were filed under another category. This was corrected when pointed out Swedish authorities did not consider this to be any systematic shortcoming, and that it did not affect the handling of the case or the possibility of tracking it in the database. Authorities also indicated that this problem would be avoided in the future once the new database was fully operational.

232. In addition, the FIU has tried to follow up the sentences that are directly connected to information forwarded from the unit. The below table shows the number of sentences that are connected with information forwarded by the FIU. The FIU indicated the difficulty in following up on criminal investigations and the criminal sanctions because of the time span from the time when the information was forwarded from the FIU to the time of the eventual conviction. Also, following up on administrative sanctions is difficult as the feedback from the recipient authorities is minimal or absent.

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<sup>20</sup> Swedish authorities advised that since the on-site visit, the backlog has been eliminated.

<sup>21</sup> Reflects the situation at the time of the on-site visit. The new database, which intends to improve the process for receiving and analysing STRs, became operational in December 2005.

Year	Number of sentences
2001	7
2002	18
2003	19
2004	10

233. There are also statistics available about the geographical origin of money laundering cases (Finanspolisen, Verksamhetsuppföljning 2005). It seems that half of the money laundering cases come from the Stockholm area. The FIU states, that the progress within the EU connected to the ability to trace, seize and confiscate the proceeds of crime and the assets of the criminals will probably result in changes in the Swedish legal system concerning the abilities to confiscate proceeds of crime and also concerning the working methods of the FIU and the upgraded value of the information received, gathered, compiled and forwarded by the unit. So, in the near future there is a possibility that the need and the importance of the information received and gathered by the FIU will be upgraded.

234. The FIU stated that the importance of the FIU's activities still lies mostly in tax matters. The same issue was mentioned by several co-operative parties: the assessors were told that the majority of the FIU's reports are tax matters.

## 2.5.2 Recommendations and Comments

235. The FIU meets most of the requirements of R.26; however, there are several factors that the evaluation team concluded diminished the FIU's effectiveness. Taking into account the number of STRs submitted to the FIU yearly, the staff in the FIU has done a good job. However, results are not adequate given the size of Sweden's financial sector and the number of STRs being received. There is a larger concern that the addition of the non-financial sector into the sphere of the AML Act from the beginning of 2005, will increase the yearly number of STRs. Because the FIU is already understaffed to handle the STRs that it currently receives, it is recommended that Sweden allocate more staff to the FIU as soon as possible. When hiring staff to the FIU, there is a need to review composition of the specialists in the FIU; for instance, for the provision of more analysts.

236. In addition, much of the FIU's activities were, at the time of the on-site visit, based on less efficient manual processes, and there is a need for more technical resources. Sweden should follow through on its project of a new database in order to enable larger electronic reporting for the reporting parties. Systems and tools to analyse the register should also be enhanced in order to allow automatically connections between STRs, and to properly receive and analyse the large number of the STRs (over 90%) coming from the money exchange offices, which in practice report every transaction over the threshold EUR 15,000. .

237. It is the opinion of the evaluation team that the time limits for storing data in the money laundering register cause serious concerns and impede the overall effectiveness of Sweden's FIU and AML/CFT system. The situation where information is generally deleted of the register after a period of three years is vulnerable taking into account the character of the economic criminality. The three years/six months time limits are inadequate to ensure that STRs and ML/FT suspicions are investigated correctly and effectively. The initial time limit of six months to store data is not sufficient given that there might not within that timeframe be grounds or indications which would confirm further investigation. It is also a concern that a person working at the FIU can make the decision of whether the STR should only be registered in the money laundering register without any further actions (only with a serial number). Despite the fact that suspicion has already been stated by the reporting party when submitting the STR, the Swedish FIU can decide when receiving the STR that no further actions should be taken to analyse or investigate the case. Sweden should make the changes needed in the legislation to remove these time limits and allow for automatic storing for at least five years of all STRs from reporting entities.<sup>22</sup>

<sup>22</sup> Swedish authorities reported in January 2006 that the Police Data Act was under review.

238. There are no indications that the work done by the FIU is not done properly; the FIU is properly performing its tasks given its current legal and resource limitations. However, the impression is that in many cases the FIU's reports to other law enforcement bodies contain only the information from the STRs as they were submitted to the FIU. Thus, the quality of the reports seems to depend on where the STRs came from; the FIU's reports to investigative bodies based on STRs from banks are said to be generally better than for example those reports which are based on STRs from money exchange business. Swedish authorities have explained that the differences in quality can be attributed to the prioritising of the important cases where analyses are of high quality. The less important cases where further information is hard to find could be closed. Instead, and as an extra service, the FIU still reports them for further notice and intelligence use.

239. It might be possible that the lack of more detailed guidance on reporting (e.g. manner of reporting and the procedure) has an influence on quality of the reports received by the FIU. The contents of the STRs vary depending on where they came from: for instance, many reports below amount of EUR 15,000 submitted did not contain any more detailed information about the reasons for reporting. In general, it is recommended that the FIU take a more active role in guiding reporting parties to improve the quality of reporting and reduce the high number of threshold reports.<sup>23</sup> It might also add general knowledge on ML/FT matters, which could widen the group of reporting parties. Sweden should also increase ML/FT awareness especially in the other places than in Stockholm area.

240. The FIU should also broaden its attention beyond the scope of examining mainly tax matters and devote itself to the whole scale of ML/FT offences. Therefore, more training in these areas is recommended, and more co-operation is needed with investigative and law enforcement authorities other than Tax Authorities.

241. Sweden should be able to breakdown the number STRs by ML/FT suspicions and offences. In addition, there should be separate statistics for FI and DNFBPs, as at least for 2005 the statistics do not separate between these two sectors.

### 2.5.3 Compliance with Recommendations 26, 30 & 32

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
<b>R.26</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• The time limits for storing data in the money laundering database (6 months/3 years) cause serious concerns and impede the overall effectiveness of Sweden's FIU and AML/CFT system.</li> <li>• The FIU does not currently give adequate guidance to reporting parties on the manner and procures for reporting, which reduces the quality of the reports.</li> <li>• The FIU is overburdened by the large number of threshold reports which contain no other suspicion.</li> <li>• The reliance on manual processes and the shortage of resources diminish the effectiveness of the FIU.</li> </ul>
<b>R.30</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• There is a need for more staff in general, and in particular, analysts within the FIU.</li> <li>• Improved tools and resources to enhance analysis are needed.</li> </ul>
<b>R.32</b>	<b>PC</b>	Sweden should be able to breakdown ML/FT suspicions and offences. In addition, there should be separate statistics for FI and DNFBP.

<sup>23</sup> As indicated earlier, Swedish authorities indicated that the FIU, together with the EBM and Finansinspektionen, launched an information campaign for reporting parties in December 2005 to reach all money exchange offices and spread information on AML and duties following from it. In these meetings it was underlined that the report must include the reasons for suspicion, that reports should only be filed when ML/FT is suspected and merely for threshold (15,000 EUR) transactions. Swedish authorities considered these meetings successful and intend to follow up.

## 2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30 & 32)

### 2.6.1 Description and Analysis

#### *Recommendation 27*

##### Investigative authorities

242. The **National Police Board** (NPB) is the central administrative and supervisory authority of the police service. The NPB is responsible for the development of new work methods and technological support. The National Criminal Police (*Rikskriminalpolisen*—RKP) and the Swedish Security Service (*Säkerhetspolisen*—SÄPO) and are units within the NPB. The RKP is specifically charged with combating organised crime and money laundering offences. The RKP provides investigation and criminal intelligence support in cases involving crimes with nationwide or international ramifications. The RKP also works at the local level of the police organisation, providing reinforcement for police authorities as required, and is in charge of the Police Helicopter Service, Swedish Police Peace Support Operations and the National Communications Centre. The FIU is an intelligence branch within the RKP.<sup>24</sup>

243. The role of the RKP is largely for intelligence gathering and coordinating; most field investigations are conducted by the local 21 county police units. These police authorities are responsible for police work at the local level, such as responses to emergency calls, crime investigations and crime prevention. The assessors were told that the local/county police investigate so called normal cases while the most difficult and largest cases as well as bookkeeping crimes and tax frauds are investigated by the *Swedish National Economic Crimes Bureau* (EBM). However, the local police investigate also economic crimes in their area though 90-95 percent of economic crimes take place in largest cities where the EBM works.

244. The other operational branch of the National Police Board is the **Security Service** (*Säkerhetspolisen*—SÄPO). The SÄPO is the main body to address issues of national security, including counter-espionage, terrorism and financing of terrorism. SÄPO has the double function of a law enforcement as well as a domestic security intelligence service. (There is no non-police civil security service in Sweden). Investigations on terrorism and financing of terrorism offences are led by a prosecutor working together with SÄPO. The local police generally do not investigate terrorist financing cases on their own; however, when there is an issue of FT, the police assist the Security Service. There is not much experience on the FT investigations in Sweden.

245. The **National Economic Crimes Bureau** (*Ekobrottsmyndigheten*—EBM) is a specialist government agency dedicated to combat economic crime, mainly in metropolitan areas. EBM was established in 1998 and is both an investigative and prosecutorial authority. EBM is a centre of knowledge and expertise for combating economic crimes and is responsible for issues concerning coordination and other measures against economic crimes and shall develop methods to make the combat more efficient. Depending on a case, EBM handles cases either nationwide (Ch. 9, s. 1-3 of the Penal Code and the Insider Penal Act) if the act concerns the financial interests of the EU; Ch. 9, s. 3a of the Penal Code) or within the area of the County of Stockholm, the County of Västra Götaland, the County of Skåne, the County of Halland, the County of Blekinge or the County of Gotland (Ch. 11 of the Penal, the Act on Safeguarding of Pension Undertakings etc, the Tax Offences Act, the Companies Act or the Insider Penal Act as long as the offence was committed in the area).

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<sup>24</sup> Swedish authorities have indicated that the re-organisation took effect on 1 January 2006. The RKP now consists of three main units: the National Liaison Office (NSK) and the Police Unit (OPE); the Criminal Police Unit (KPE). The KPE is divided into: the Intelligence section, the Surveillance section, the Analyst section, the IT-crime section, the FIU section, and the Investigation section.

246. EBM also has competence to handle cases that may suitably be dealt with by EBM such as, primarily, cases involving qualified economic crime that is nationwide, cases that have international links, or cases of principle interest or of great scope. Such cases may be taken over by EBM upon the request of another prosecutor authority. If it is uncertain whether a case should be processed by the EBM or by a prosecutor from the National Public Prosecution Authority, the matter is determined by the Prosecutor-General. In counties where EBM is not in charge of prosecution, its instructions render it jointly responsible with the Prosecutor-General for coordinating activities related to economic crime.

247. While the EBM's primary mission is to combat economic crimes including money laundering, much of its focus appeared to be on tax fraud-related investigations and prosecutions. The EBM highlighted a particular case of money laundering that it had successfully prosecuted. However, the money laundering charges were pursued because: 1) the case was ancillary to the conviction in a larger tax fraud case, so the predicate offence had been proven; 2) the evidence was not strong enough to support its own tax fraud case, which would have been the preferred charges by the prosecution.

248. Swedish Prosecution Authority said it received 52 reports from the FIU in 2004. At the same time EBM got 109 reports from the FIU (total amount of reports to investigate is around 3,500 per year). Around half of the reports were so called preliminary cases (new cases). Only some of the reports were taken to the court as criminal offences, mainly as tax frauds. According to a police officer from EBM 99 percent of the reports forwarded to them focus on the predicate offence (main crime) rather than ML offences: 95-99% of the reports are tax fraud suspects. In fact, assessors were told that there have not been any cases in the EBM where the investigation would have concentrated on ML; on the other hand, there have been some ML investigations within local police in Sweden (although there were no statistics presented to support this).

249. According to prosecution authorities, money receiving provisions in the Penal Code (Ch. 9 s. 6a and 7a) are rarely used; the investigation lies mostly on the predicate offences for a variety of reasons. Swedish authorities explained that if the elements of a predicate offence are fulfilled, the prosecutor is obliged to prosecute accordingly. Thus, cases that might fulfil the essential elements of the ML offences are investigated and judged, for example, as frauds (especially tax frauds). Also, while the ML offence is a separate charge under the Swedish legislation (and this has been confirmed in the limited case law), there is in practice a need to prove that an underlying predicate offence has occurred. The evaluation team was told that this makes prosecution of a separate ML charge more difficult. Also, so called self-laundering is not a specific criminal act in Sweden; rather it is "co-punished" with the predicate offence. In these cases, Swedish authorities explained that the money laundering component would, if appropriate, be part of the investigation of the overall predicate offence. However, this does not account for the lack of investigations or prosecutions of third-party money launderers. Insufficient attention is paid to pursuing money laundering offences, and there is little evidence of the effectiveness of the regime for investigating or prosecuting ML.

250. There was one case of the financing of terrorism that was pursued in 2004, with two convictions in October 2005. However, Section 5 of the Act on Criminal Responsibility for the Financing of Particularly Serious Offences ("the CFT Act") requires that, if that if the committed act is punishable with the same or a more severe penalty under the Penal Code or the Act (2003:148) on Criminal Responsibility for Terrorist Offences, those offences must be pursued. Thus, it was decided to accuse the perpetrator of preparation of a terrorist act under the Act on Criminal Responsibility for Terrorist Offences (2003:148) and not under the CFT Act (Act on Criminal Responsibility for the Financing of Particularly Serious Crime in some cases, etc. (2002:444)); the latter is said to be used when the Penal Code or the Act (2003:148) is not applicable.

#### Authority to postpone or waive arrest

251. According to Section 8 of the Police Act (1984:837) a police officer exercising an official duty shall, with due observance of the provisions of acts and other statutory instruments, intervene in a way that is justifiable in view of the object of the intervention and other circumstances. Section 8 also sets out certain basic principles that apply to the work of the police. It follows from the principle of legality that a police intervention must be made within the framework of the law. According to the principle of necessity, an

intervention must only be made when it is necessary for the prevention or elimination of a danger or disturbance, while according to the principle of proportionality the damage and inconvenience that may be caused to an opposing interest must not be disproportionate to the purpose of the intervention.

252. The law enforcement authorities may decide to postpone or waive the arrest of suspected persons and/or seize money for the purpose of identifying persons who are involved in such activities or for evidence gathering. The method of controlled delivery, for instance, is a method regularly used by Swedish law enforcement authorities, above all in connection to narcotics crime. The method is not considered in opposition to the duty of a policeman to intervene as it is only a case of so called “interimistic passivity”.

#### Additional elements

253. Sweden has some legislative measures in place that provide law enforcement with a range of specialised investigative techniques when conducting ML/FT or other criminal investigations, including:

- a. interception of communications: secret interception of telephone conversation (wire tapping) and secret telecommunication surveillance (Code of Judicial Procedure, Ch. 27);
- b. secret camera surveillance (law 1995:1506);
- c. cross-border (hot) pursuits (Act 2002:343 on International Police Co-operation).

254. Wire tapping may be used in preliminary investigations concerning: (1) crimes punishable by imprisonment for at least two years; (2) attempt preparation or conspiracy to commit such a crime; or (3) another offences, if it can be assumed in view of the circumstances that the offence will carry a penalty of more than two years imprisonment. Telecommunication surveillance may be used in preliminary investigations concerning: (1) crimes punishable by imprisonment for at least six months; (2) certain drug offences; or (3) attempt, preparation or conspiracy to commit crimes that are punishable according to (1) or (2).

255. In case of an on-going investigation in another state (EU member and Norway and Island) concerning a crime that could lead to extradition, foreign officers may continue the surveillance of a suspect, initiated on their own territory, on Swedish territory, if a Swedish competent authority has given its authorization (cross-border pursuit). Surveillance may be conducted without preceding authorization, if the matter is of such urgency that authorization can not be acquired in advance and if it concerns crimes referred to under Article 40.7 of the Schengen Convention.

256. In addition, the Act (1952:98) with special regulations on coercive measures in certain cases (e.g. crimes against national security and terrorism), contains supplementary and exception stipulations for urgent cases. According to this law, interception of communications and secret camera surveillance may be used for some crimes that do not meet the requirements of the Code of Judicial Procedure. According to the Act of 1952, the prosecutor may also decide in urgent cases (instead of the court). The decision must, without delay, be reported to the court, which speedily shall review the matter.

257. Bugging is currently not permitted in Sweden. While some types of undercover work occur within the context of controlled delivery in narcotics investigations, there is not a wide availability for the use of undercover operations or assumed identities. The need for legislation explicitly allowing for more broadly allowing special investigative is being discussed in a drafting committee on the development of the judicial system in Sweden. Work is currently underway on new legislation on assumed identities, with the aim of strengthening the possibilities to use this method. Also specific regulation on controlled delivery is being considered.

258. Co-operative investigations with appropriate competent authorities in other countries are conducted on the requests for legal assistance.

259. According to Swedish authorities, ML/FT methods, techniques and trends are discussed in a specific informal network for the exchange of information and experiences between various governmental

bodies. On the ministerial level this includes the Ministry of Justice, the Ministry of Foreign Affairs and the Ministry of Finance. The governmental agency level is represented by the Security Service, the FIU, Finansinspektionen, the Military Intelligence and Security Service, the National Defence Radio Institute and the Board of Customs.

### ***Recommendation 28***

#### Production orders

260. The competent authorities responsible (leader of the preliminary investigation, court or if delay entails risk a police officer) for investigating ML, FT and other underlying predicate offences have the power to compel production of information that are deemed to be significant as evidence if the possessor is obliged to testify in the case. Section 11 of the Banking and Financing Business Act 2004:297) states that “a credit institution is obliged to report information regarding an individual’s relations with the institutions where such information is requested by an investigating officer during the course of an investigation pursuant to the provisions regarding preliminary investigations in criminal cases or where such information is requested by a prosecutor in a matter regarding legal assistance in a criminal case upon request by another state or an international court.” This is interpreted very broadly and includes all types of records from financial institutions including CDD records, account files and business correspondence.

261. The assessors were told by investigative authorities that there has not been any difficulty in obtaining information; the assessors were similarly told by financial authorities that there have been no difficulties in providing any information requested. To obtain wanted documents, the competent authority must seek them for the person or business. When asked, normally the documents are given on the same day. In addition, banks have also tried to charge the prosecution for collecting data; this is not, however, a problem anymore. However, the team was informed that there might be some difficulty or delay in obtaining information from lawyers through production orders, since lawyers fall outside the scope of the above provisions.

#### Search and seizure

262. Swedish authorities have the authority to search persons and premises and conduct body searches and body examinations (Code of Judicial Procedure, Ch. 28). If there is reason to believe that an offence punishable by imprisonment has been committed, any house, room, or closed place of storage, may be searched in order to uncover any object which is subject to seizure, or otherwise to detect any circumstance which may be of importance or the investigation of the offence. The premises of a person, other than one reasonably suspected of having committed the offence, may not be searched unless the offence was committed there, the suspect was apprehended there, or extraordinary reason indicates that the search will reveal an object to seizure or other information concerning the offence.

263. Orders authorizing a search of premises are issued by the investigation leader, the prosecutor, or the court (s. 4). However, if delay entails risk, a police officer may search premises without having obtained a search order. According to Section 8, a postal or telegraphic communication, an account book, or another private document found during a search of premises may be more closely examined, and a letter or other closed document may be opened only as prescribed in Chapter 27, Section 12, paragraph 1. This paragraph states that only the court, the investigation leader, or the prosecutor may examine more closely a seized postal or telegraphic communication, account book, or another private document, or may open a letter or other closed documents: however, on the direction of any of the named authorities, the document may be inspected by an expert or another person in aid of the criminal inquiry.

264. In addition, if there is reason to believe that an offence punishable by imprisonment has been committed a person reasonably suspected of the offence may be subjected to a body search to discover an object subject to seizure or other information of potential importance to the investigation of the offence. A person other than one reasonably suspected of the offence may be subjected to a body search if there is extraordinary reason to assume that an object subject to seizure thereby be discovered or it is otherwise of

importance for investigating the offence. A body search means the examination of clothes and other objects which a person has with him. Orders authorizing a body search or a body examination are issued by the investigation leader, the prosecutor, or the court; however, it may be decided by a police officer if delay entails risk.

265. Swedish authorities also have adequate powers of seizure. Objects, in principle also written documents, reasonably presumed important to a criminal investigation or taken from a person through a criminal act or subject to criminal forfeiture may be seized (Code of judicial Procedure, Ch. 27). Orders authorizing a seizure are issued by the investigation leader, the prosecutor, or the court; however, it may be decided by a police officer if delay entails risk. There are special rules in regard to written documents and dispatches. If it can be assumed that a document contains information that an official or other person may not disclose under testimony (e.g. attorneys, counsel or defence counsel may be heard as a witness concerning matters entrusted to them in the performance of their assignment only if the party gives consent), the document may not be seized from the possession of that person or the person who is owed the duty of confidentiality. Nor may from the person of the suspect or his relative, written communications between the suspect and his relative or between such relatives be seized, except if the issue concerns an offence in respect of which a less severe penalty than imprisonment for two years is not prescribed. A letter, telegram or other dispatch in the possession of a postal or telecommunications undertaking may be seized only if the offence is subject to a penalty of imprisonment for one year or more and the dispatch would have been possible to seize from the addressee.

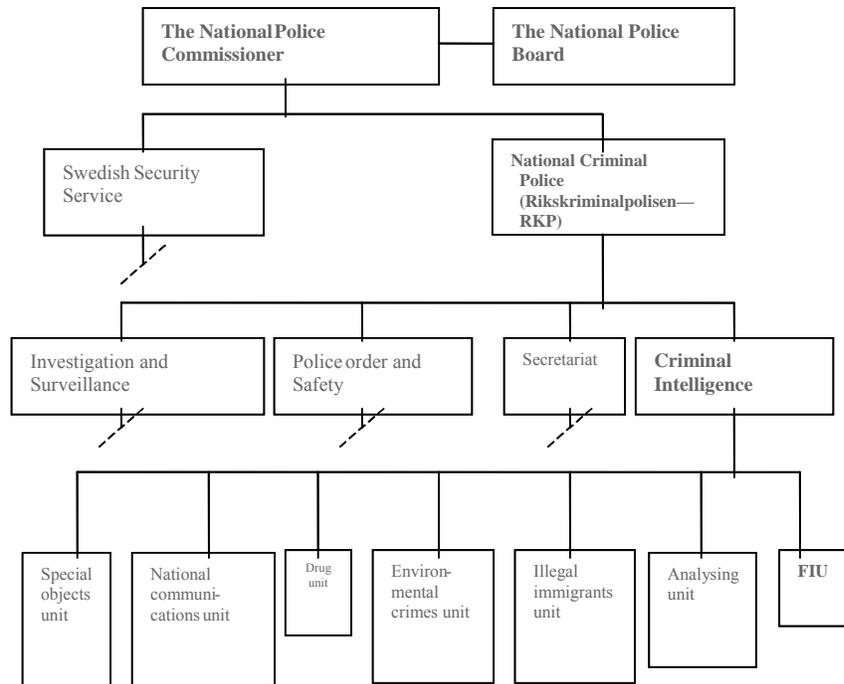
#### Witness statements

266. Competent authorities have the powers to take witness statements for use in investigations and prosecutions of ML, FT and underlying predicate offences. The rules on preliminary investigation are found in Chapter 23 of the Code of Judicial Procedure. According to Section 6, anyone who is reasonably likely to possess information relevant to the inquiry may be questioned. If a person ordered to appear for questioning fails to obey the summons without a valid excuse, and the person resided or was staying no more than one hundred kilometres, by road, from the place fixed for the questioning when he received the order to appear, he may be brought in custody to the questioning. In cases, specified in Section 7 paragraph 2, a person may be brought to the questioning without prior summons.

267. In addition, anyone found at the scene of an offence is required to accompany the officer for questioning, which shall be held immediately. A person not under arrest or in detention is not obliged to stay for questioning longer than six hours. If there is extraordinary need to have a person suspected of an offence available for continued questioning, he is obliged to stay an additional six hours. If a person refuses to make a statement concerning a matter of importance to the inquiry, and that person would be required to give testimony as a witness in the event of a prosecution, a witness examination may be held before the court at the request of the leader of the investigation (Ch. 23 s. 13 paragraph 1). If a witness, without a valid excuse, refuses to take an oath, to testify, to answer a question, or to obey an order pursuant to Chapter 36 Section 8, the court shall order the witness to perform his duty under penalty of fine, and, if the witness persists in his refusal, under penalty of detention. A witness so detained may not be held in custody longer than three months and in no case beyond the time when the court disassociates itself from the case. A detained witness shall be brought before the court at least once every two weeks (Ch. 36 s. 21).

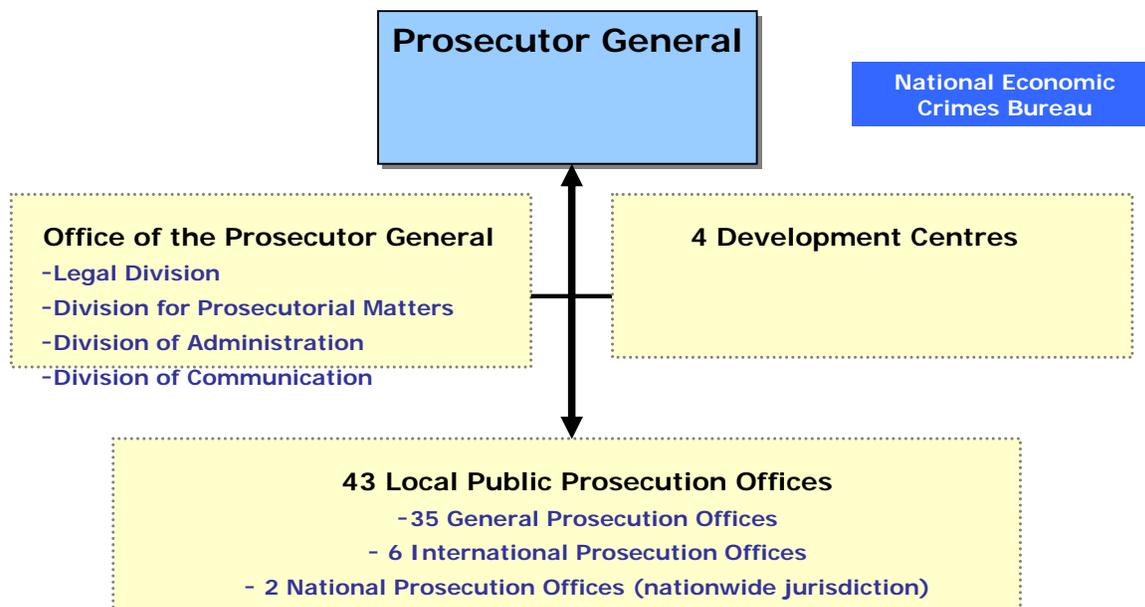
**Recommendation 30 (Structure, Funding, staffing and resources of law enforcement and prosecution authorities):**

The National Police Board



268. The National Police Board (NPB) is headed by the National Police Commissioner, who is appointed by the government. The National Police Board (NPB) is the central administrative and supervisory authority of the police service. The NPB consists of two main units: The National Criminal Police (*Rikskriminalpolisen*—RKP), which houses the FIU, and the Swedish Security Service (SÄPO). There are more than 22,000 total employees in the Swedish Police Organisation. This includes the 21 county police authorities in Sweden, headed by a county chief of police and operating within the same county jurisdictions.

## The Swedish Prosecution Authority



269. The National Public Prosecution Authority (NPPA) is one of two overall agencies responsible for prosecuting crimes. There are more than 1,000 employees within the NPPA, approximately 700 of which are prosecutors while the rest work with administration and support. The Public Prosecutor authority is an independent authority; general regulations for overall goals and an amount of money are set by the Government on a yearly basis. Total budget for 2005 is about SEK 840 million.

270. , The *Prosecutor-General* is the highest prosecutor in the country and is also the administrative director of the NPPA. The Prosecutor-General acts for legal development and guidance for the application of law by taking certain cases to the Supreme Court. The Prosecutor-General works towards legal conformity and consistency in adjudication at the National Public Prosecution Authority and the Swedish National Economic Crimes Bureau. The Prosecutor-General supervises generally the decisions of all public prosecutors. If needed, he has the competence to take over a case from any public prosecutor and change an earlier decision of a public prosecutor decision by a decision by himself. Administrative tasks like planning, follow-up of results, economy, personnel, training, premises, etc, as well as development and support regarding work methods and IT systems are also handled in the Office of the Prosecutor-General.

271. Since the beginning of 2005 the Prosecutor-General has established four *Centres of Excellence* (Utvecklingscentrum), in Stockholm, Göteborg, Malmö and Umeå. The head of a Centre is a Director of Prosecution. One important task for the Centres is to support the Prosecutor General to ensure that the public prosecutors' work shall be uniform when examining the question of prosecution and deprivation of liberty. The Centres of Excellence are supervising the decisions of public prosecutors but are also supporting the public prosecutors by being a centre of knowledge and expertise for combating a certain type of crime and responsible for issues concerning development of methods and working models for prosecutors to make the combat of crime more efficient. The competence for each Centre is based on different areas of criminal law. The Centre in Stockholm has responsibility for questions about money laundering.

272. The *Public Prosecutor* is in charge of criminal investigations (preliminary investigations), decides whether to prosecute or not, and is responsible for the prosecution during the trial in the local court and in the court of appeal. The prosecutor decides if and when a preliminary investigation should be initiated (if the matter is not of a simple nature), is the head of an investigation, and leads the police or customs work by giving instructions. The prosecutor shall also look after the interests of the aggrieved person in the investigation work. By the decision to prosecute and the description of the criminal act, the prosecutor sets the framework for the criminal trial. The court is bound by the prosecutor's account of the criminal action and is therefore not allowed to judge other actions than that which is being accounted for. The public prosecutors at the NPPA are divided into some 40 local public prosecution offices (Åklagarkammare, ÅK, Prosecution Chambers), responsible for the operational public prosecution activities. The prosecutors normally get support from the local or regional Police Authorities (normally the local or regional Criminal Investigation Department, CID) or the National CID in form of detached investigators and specialists. A prosecutor may also enlist the assistance of investigators from the Swedish Custom Service. Serious crimes, cases concerning organized or international crime (which is usually the case with money laundering and terrorist financing) are prioritised by giving the cases precedence and by letting public prosecutors with specialist competence handle them. Six of the Prosecution Chambers are specialised in combating cross border and organised crime with a regional competence (Internationella åklagarkammaren, IÅK's, International Prosecutor Chambers). These public prosecutors cooperate with the intelligence divisions as well as with the qualified reconnaissance and investigating resources within the police.<sup>25</sup>

273. The staff of the NPPA maintains high professional standards. Prosecutors are recruited in strong competition. The basic education and training is the same that is given to judges. Swedish public prosecutors are educated for two years at the NPPA. The education is practical as well as theoretical and covers issues such as predicate offences, investigation techniques and confiscation. After these two years all prosecutors are competent to handle all kinds of issues, including cases about money laundering. Public prosecutors also take part in further education, including seminars on money laundering and confiscation. Prosecutors in the International Prosecutor Chambers participate to a great extent in different forms of international co-operation, e.g. within Eurojust or other international organisations.

274. The protection and integrity of prosecutors is strong. Neither the parliament or government nor prosecutor, or any one else for that matter is permitted to intervene in the work of a prosecutor or in a particular case handled by a prosecutor. The Public Prosecutor authority is said to have sufficient resources and has also access to various IT-systems and registers. The Public Prosecutors normally uses investigation resources from the local, regional or national CID or FIU or The Custom to carry out investigations. Information that is produced as a result of a preliminary investigation is normally secret. To this purpose the Swedish secret act protects the possibility to successfully perform an investigation and also to protect the integrity for all individuals.

#### The Swedish National Economic Crimes Bureau (*Ekobrottsmyndigheten*—EBM)

275. EBM is an independent investigative and prosecutorial authority. Within a frame set by the Riksdag and the Government, which consist of laws and other regulations, overall goals and an amount of money on a yearly basis, EBM decides its own organisation and how it shall perform its task. The preliminary investigation is carried out by an investigatory team made up of police officers, financial experts and administrative personnel, supervised by a prosecutor. Prosecutors work together with police officers as well as financial investigators and other experts such as computer technology specialists. A prosecutor at EBM may also enlist the assistance of investigators from the Swedish Custom Service and the special Tax Fraud Investigation Units of the Swedish Tax Agency.

276. The head of the EBM is a Director-General and he or she has, when processing prosecutor issues, the status of Director of the Public Prosecution Authority. EBM is located in: Stockholm, Visby,

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<sup>25</sup> Swedish authorities reported that in December 2005, the Prosecutor-General stated that his intention is to change the organisation of the international Prosecutor Chambers. The goal is to make the activities against serious and organised crime more efficient.

Karlskrona, Kristianstad, Malmö, Halmstad, Göteborg, Borås, and Skövde. The agency has a total workforce of 400 persons, of whom 80 are prosecutors, 180 police officers and 40 financial experts. The police officers work permanently at EBM, although they are still employed by a Police Authority.

277. The staff of EBM maintains high professional standards. Prosecutors at EBM are normally recruited from the National Public Prosecution Authority. Together with policemen they are recruited either among those who already are experienced in the field of economic crimes or other complicated types of crime or among those who has a suitable background and a potential of becoming specialists. Together with other prosecutors handling cases related to economic crimes they participate in a three-step practical and theoretical training program over a period of five years. Police officers and financial experts who are part of EBM's investigation teams also participate in such a training program. Some parts of the education are held jointly with the prosecutors. According to Swedish authorities, money laundering behaviour and confiscation are important issues within the framework of this education. EBM is said to have sufficient resources such as vehicles, weapon and protection equipment and has access to various IT-systems.

278. Each year EBM arranges a training course for prosecutors, police officers and financial experts. New or changed trends, methods for investigation as well as new or changed laws or regulations are the main issues. In 2005 the course is dealing with matters like house search, confiscation, freezing and mutual legal assistance.

#### The Swedish Economic Crimes Council

279. The co-operation and exchange of information amongst law enforcement agencies and other organisations involved in the combat of economic crimes are indispensable tools in the effective investigation of economic crimes. The partnership, often informal in nature, is continually evolving. Structured, overarching and functionally oriented collaboration through the Swedish Economic Crimes Council and its task force supplements that arrangement. The Council is composed of the Prosecutor-General as chairman, the NPB, the Swedish Tax Authorities, the Customs Service, the Swedish National Council for Crime Prevention, Finansinspektionen, the Swedish Companies Registration Office and EBM, which also runs the Swedish Economic Crimes Council office.

#### Swedish Tax Agency (TA)

280. The TA has special Tax Fraud Investigation Units, which are separated from other functions of the tax authority. A prosecutor from the National Public Prosecution Authority or EBM may enlist the assistance of a unit. The unit is used mainly in the area of tax frauds, and there is no direct role for the TA in combating money laundering. However, according to Secrecy Act the TA is allowed to share information with law enforcement authorities, at least when a preliminary investigation has been initiated, and in the view of the TA, co-operation with the FIU in this area is very rewarding.

#### Customs Service

281. The Customs Service employs approximately 2,300 people and is divided into two main processes: Law Enforcement and Managing the Trade. The major process Law Enforcement is responsible for preventing and stopping commodities from illegally being brought into the country. The process is subdivided in two production processes, prevention of organised crime (including economic and environmental crime) and prevention of other kinds of crime (supervises the compliance with import and export regulations and is responsible for discovery of and operations against crime in the traffic flows).

#### ***Recommendation 32 (Statistics relating to law enforcement and prosecution)***

282. Sweden does not maintain any statistics relating to ML/FT investigations or prosecutions. Sweden maintains statistics on terrorist financing investigations and prosecutions: one case involving terrorist financing (although as described earlier it was charged under the terrorism legislation) was presented in the statistics of the overall criminal situation in Sweden submitted by Brottsförebyggande rådet (Swedish

Crime Prevention Council). Swedish authorities report that it is difficult to know exactly how many ML cases really exist because it depends on whether the case was pursued and convicted as a normal receiving case based on Ch. 9 s. 6 of the Penal law or as a money receiving case based on Ch. 9 s. 6 a of the Penal Code.

## **2.6.2 Recommendations and Comments**

283. There are designated authorities to investigate ML and FT offences, but charges for these offences have only been pursued in a limited number of cases. Though the EBM seems to work efficiently against economic crimes and has the needed experience and specialisation, it only takes cases in the biggest cities while the economic crimes made elsewhere are left to the local police, who may lack special knowledge in ML/FT issues.

284. Currently, investigators and prosecutors in the RKP, the EBM, and the NPPA mainly pursue predicate offences. One reason for this is the inability to prosecute self-laundering. While authorities explained that self-laundering is investigated as part of the predicate crime, this would not account for the limited number of cases pursued in relation to third-party money launderers. Also, prosecutors may be obliged by legislation to pursue charges on predicate offences if the criteria for those charges appear to be met. Charges under the AML/CFT Acts are only pursued when if a crime cannot be investigated and prosecuted based on some material act (drugs, terrorism etc.).

285. In relation to FT offences, Swedish authorities note that the legislation requires that acts meeting the elements of offences in the Penal Code or the Act on terrorist offence (2003:148) that would incur the same or a more severe punishment must be prosecuted as such and not as FT offences. Thus, it is not in the hands of the prosecutor to “choose” when prosecuting offences involving financing of terrorism.

286. The Swedish government should develop a more pro-active approach to pursuing money laundering and terrorist financing charges. A stronger focus on proceeds of crime and understanding of ML process by investigators is needed.<sup>26</sup> Education and training of law enforcement authorities in ML/FT offences should be improved. Changes to allow for prosecution of self-laundering and to allow prosecutors more flexibility to pursue ML and FT charges are also recommended.

287. It is difficult to evaluate the adequacy of resources for ML/FT because of the lack of data on ML/FT investigations. Because there are a limited number of ML investigations in Sweden, more resources would probably not allow for greater expertise and more investigations. It was however stated that the reports received from the FIU are put first on the line in the police investigations; some of the cases can still rest in line for one year. Prosecution authorities appear to have enough resources; however, those resources are dealing with other offences than ML/FT offences.

288. The resources for different investigative methods should also be reviewed; for example, the lack of people in e.g. surveillance teams was said to be a problem. It is recommended that Swedish authorities review the adequacy of total resources allocated to ML investigation.

289. Sweden should collect statistics on a systematic basis concerning the ML/FT investigations, prosecutions, convictions and types of sanctions (criminal and administrative) imposed for ML/FT as well as on property frozen, seized or confiscated.<sup>27</sup>

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<sup>26</sup> Swedish authorities have indicated that in the new organisation from 1 January 2006, the Criminal Police Unit within the National Criminal Police will also have a function to co-ordinate and prioritise special projects related to organised crime. In this way the Swedish FIU should more effectively work to combating money laundering. The Swedish FIU will work closely to the newly built local intelligence centres in Gothenburg, Malmö and Stockholm. A prosecutor will also be connected to The Criminal Police Unit (KPE) in order to trace money.

<sup>27</sup> Swedish authorities indicate that a new data system within the NPPA will become operational at the end of 2006 which will improve the possibility to collect statistics regarding individual cases including, inter alia, ML investigations and prosecutions.

### 2.6.3 Compliance with Recommendation 27, 28, 30 & 32 (Law enforcement and prosecution only)

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
<b>R.27</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>Legal measures appear comprehensive; however, insufficient attention is paid to pursuing money laundering offences, and there is little evidence of the effectiveness of the regime for investigating or prosecuting ML.</li> </ul>
<b>R.28</b>	<b>C</b>	Recommendation 28 is fully observed.
<b>R.30</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>More education and training of law enforcement authorities in ML/FT offences is needed.</li> <li>The total resources for ML/FT investigation should be reviewed.</li> </ul>
<b>R.32</b>	<b>PC</b>	No statistical information is available concerning ML investigations and prosecutions.

## 2.7 Cross Border Declaration or Disclosure (SR.IX & R.32)

### 2.7.1 Description and Analysis

290. At present, there is no obligation to declare or disclose cash or bearer negotiable instruments while entering or leaving Swedish territory. However, the implementation of the EC Regulation on Cash Control will result in changes to Swedish requirements.<sup>28</sup> It is expected that the competent authorities will have the necessary tools in order to fully enforce the Council Regulation. The preparation of the new legislation will also take into account the need of intelligence sharing between the different law enforcement authorities.

#### *Recommendation 32*

291. There are no statistics kept on physical cross-border movements of currency or bearer negotiable instruments.

### 2.7.2 Recommendations and Comments

292. Sweden should adopt legislation and implement measures conforming to the requirements of SR.IX.

### 2.7.3 Compliance with Special Recommendation IX & Recommendation 32

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
<b>SR.IX</b>	<b>NC</b>	Currently, there is no obligation to declare or disclose cash or bearer negotiable instruments while entering or leaving Swedish territory.
<b>R.32</b>	<b>PC</b>	There are no statistics kept on physical cross-border movements of currency or bearer negotiable instruments.

<sup>28</sup> Since the on-site visit, the EU regulation on cash control has been approved and will apply as of 15 June 2007.

### **3. Preventive Measures - Financial Institutions**

#### **Customer Due Diligence & Record Keeping**

##### **3.1 Risk of money laundering or terrorist financing**

293. Sweden in general is considered to be a safe country and not a major money laundering or terrorist financing centre. However, like in any highly developed financial marketplace, Sweden's financial sector is vulnerable to money laundering and terrorist financing. Sweden has had an AML Act in place since 1993 and a CFT Act in place since 2002. As regards regulations/guidelines, Finansinspektionen had in place FFFS 1999:8 concerning AML issues (which succeeded FFFS 1994:9 and 10) and FFFS 2002:19 concerning CFT issues. Both the legislation and the regulations that address AML/CFT have relatively recently been amended, with the revised AML Act in force as of January 2005 and the corresponding regulations coming into force in July 2005. The legislation and regulations currently in place do not sufficiently implement all the FATF 40+9. There are certain characteristics of Swedish law as regards financial institutions, like the strong presumption that basic financial services must normally be made available to every person that when coupled with a developing AML/CFT regime, may make implementing the FATF 40+9 more challenging.

294. Finansinspektionen has used a risk-based approach to prudential supervision since 2003; however, the risk assessment has been based on the impact on the financial market—AML/CFT risks are not taken into account. In the 2003 model, the companies of the financial sector have been placed in four risk categories, based on the impact these companies have on the financial markets. The use of risk categories was combined with a risk analysis intended to assess the likelihood of negative outcomes of the companies' risks. The companies in risk category 1 have been subject to the most extensive and comprehensive supervision, called the "total risk assessment". For the companies in the other three risk categories, the analysis has been more focused on targeted risks. In addition, theme-based investigations in a number of companies representing a specific sector or company type have been carried out to investigate specific issues or trends. At the time of the on-site visit, Finansinspektionen was in the process of supplementing its risk model.<sup>29</sup>

##### **3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)**

###### **3.2.1 Description and Analysis**

###### **General**

295. Sweden has not yet implemented the FATF Recommendations 2003. As a result, although its AML statute has provisions related to customer identification, it does not have appropriate measures concerning customer due diligence. Sweden's measures have focussed on implementing the 2<sup>nd</sup> EU Money Laundering Directive. Sweden anticipates implementing the 3<sup>rd</sup> EU Money Laundering Directive and therefore measures to implement the FATF Recommendations 2003 after completing a currently ongoing legislative cycle.

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<sup>29</sup> On 19 December 2005, Finansinspektionen's management and general director instituted a new risk tool that supplemented the four risk categories with a supervision-prioritising risk tool in order to further strengthen the market conduct supervision (which now includes the AML/CFT supervision). The four risk categories are being supplemented with a tool that takes into account market risks as well as company-specific risks, such as the risks of the products/services in the company, which includes the risk of these products/services being used for criminal purposes. According to Swedish authorities, this new risk tool will help strengthen the focus of Finansinspektionen's supervision and allow for better-targeted supervision activities according to the needs of that company type or sector. Aspects such as the company's experience and awareness of AML/CFT issues are also important in the planning of appropriate supervision activities for each sector or company type.

296. The Swedish *Act on Measures against Money Laundering* (1993:768 as amended by 2005:409) (hereinafter “AML Act”) contains customer identification obligations that apply to the following types of financial institutions in Sweden:

- a. Banks or Financing Businesses (as defined by Swedish law);
- b. Life insurance business;
- c. Securities Business, to include those trading in, brokering, managing or underwriting securities;
- d. Businesses that require a registration from Finansinspektionen: for example, Currency Exchange and Money Transmitters (as defined by Swedish law);
- e. Deposit Businesses (as defined by Swedish law, but not including some exempted, small deposit taking institutions);
- f. Insurance Brokers and other insurance intermediaries;
- g. Businesses Issuing Electronic Money;
- h. A fund business (as defined by Swedish law);

297. Sweden’s *Act on Criminal Responsibility for the Financing of Particularly Serious Crimes in some cases, etc.* (2002:444—the “CFT Act”) does not apply to investment fund companies. In addition, certain credit card companies (such as American Express) that have less than a 45-day credit repayment period are not under the supervision of Finansinspektionen nor within the scope of the AML Act and regulations.

298. Further details of these and other AML requirements for financial institutions are contained in *Finansinspektionen’s Regulations and General Guidelines Governing Measures against Money Laundering and Financing of Particularly Serious Crimes in Certain Circumstances* (FFFS 2005:5) of 9 June 2005 (“the AML/CFT Regulations/Guidelines”).

299. It is noteworthy that Sweden has within its financial sector another unique type of financial institution, namely deposit companies, which was created in an effort to increase competition. The legislation permitting deposit companies in Sweden is the Deposit Taking Operations Act (2004:299). The total number of these companies registered with Finansinspektionen is small, estimated to be at ten companies. These deposit companies may engage in various types of financial activities, under the condition that the business in such cases does not require a licence. An individual consumer may deposit up to 50,000 SEK, but for companies, there is no limit. Deposit companies must have a minimum statutory capital of 5/10 million SEK depending on whether the entity is an economic association or a limited company. Deposit companies must appoint an auditor, advise Finansinspektionen as to the identify the owner, and report limited information to Finansinspektionen on a yearly basis. Generally, though, the deposit companies receive limited supervision. For example, Finansinspektionen shall check compliance on a yearly basis regarding minimum statutory capital, owners and management, deposits, information duty, AML and audit issues.

300. It is important to note that there is no direct requirement for those entities covered under the scope of the AML/CFT Acts to comply with all of the elements of Finansinspektionen’s regulation and/or guidance. The AML/CFT Regulations/Guidelines implementing the requirements of the AML Act (FFFS 2005:5) (as is true with all Finansinspektionen regulation), contains both mandatory elements, where the term “shall” is used, and non-mandatory elements, which are usually described as “General Guidelines” and use the term “should” to indicate measures and other actions which are recommended but not directly legally binding. Finansinspektionen in its practice urges undertakings to follow the recommendations, and if they do not, explain why under the Swedish regulatory principle of “comply or explain”, which is referred to in the AML Regulations. (See General Guidelines regarding Governance and Control of Financial Undertakings, FFFS 2005:1). Swedish authorities explained that these guidelines underline an established practice concerning an authority’s interpretation of certain legislation. This is explicitly stated in its preparatory works, which indicate that guidelines are akin to recommendations and have a significant importance (prop. 1976/77:123 s. 370). Consequently, General Guidelines are indirectly enforceable for licensed financial institutions where the principle of sound business regulation is breached.

301. The General Guidelines Regarding Governance and Control of Financial Undertakings (FFFS 2005:1) also introduce, in accordance with the above mentioned, the general principle of “comply or explain”. If the subject undertakings do not follow the recommendations (i.e., recommendations included in guidelines), they should be able to adequately explain their approach. In these cases Finansinspektionen must make a qualitative judgement if the fact that an institution does not follow a recommendation could for example be seen as a breach of the obligation to conduct business in a “sound manner” as is stated for example in the Banking and Financing Business Act (2004:297, chapter 6, section 4) and corresponding acts for other licensed financial institutions. This is also supported by practice, where Finansinspektionen reported that approximately 30% of the sanctions it has issues has involved non-compliance with various guidelines it has issued. This principle is also supported by case-law, including a 1995 civil case in which the Supreme Court ruled that guidelines issued by public authorities are not just formalities but also have substance; failure to comply with guidelines may amount to negligence.

302. It should be noted however, that registered financial institutions (money remitters, exchange businesses and deposit companies) do not have corresponding requirements in other legislation for “sound business practice”; therefore, the guidelines within the AML/CFT Regulations/Guidelines do not create any enforceable obligations for these institutions.

303. Finally, Sweden’s regulations and guidelines concerned with the revised AML Act were put into force in July 2005. The 2005 Regulations and General Guidelines replaced the 1999 Regulations and General Guidelines on AML and the 2002 Regulations and General Guidelines on CFT. As there was little time between when the revised regulations came into force and the September 2005 date of the on-site visit for Sweden’s mutual evaluation, it was difficult to ascertain that there had been effective implementation of those regulations pertinent to much of the essential criteria of Recommendation 5.

## ***Recommendation 5***

### Anonymous Accounts

304. Financial institutions do not open anonymous accounts or accounts in names other than the legal name of the person or entity. Numbered accounts are not provided in Sweden. Although Sweden has no explicit legislation or regulation prohibiting the existence of anonymous accounts, anonymous accounts are effectively prohibited by the customer identification requirements of the AML Act and in large part pertinent tax-related requirements. To open an account, Swedish financial institutions require the personal identification number of a person or entity to be provided. The Swedish Tax Agency administers a computerised population registration system, which serves as the basic register of the Swedish population, and assigns a personal identity number to every person who is or has been a Swedish resident. The register serves as an open source depository of identifying information on persons for many facets of Swedish society, including financial institutions. Both current and earlier information regarding the following is maintained for every registrant: a personal identity number (PIN); name; date of birth; residence; familial relationships including parents, spouse, and children; place of birth; nationality; immigration from abroad; removal from the registers (due to death, migration abroad or other circumstance); and nationality.

### When CDD is Required

305. The AML/CFT Acts require the financial institutions (within the scope of the law as well as other natural and legal persons covered by the law) to conduct customer identification in certain circumstances. Customer identification is required when entering into a business relationship (AML Act Section 4, first paragraph, CFT Act Section 11). Guidance contained in FFFS 2005:5, while only indirectly binding, interprets the phrase “business relationship” as meaning contractually based dealings. The guidance lists examples that include: the opening of a deposit account, taking of loans, credit card agreements, renting safe deposit boxes, opening accounts with a central securities depository or settlement accounts, purchases and sales of fund units and securities, management services and the procurement of pension or endowment policies. (FFFS 2005:5 Section 9, General Guidance).

*Exemptions:* The AML Act exempts from its customer identification requirements:

- Financial institutions within the scope of the Act that are: 1) established in the EEA; or are 2) established in a country outside the EEA if the country has AML provisions comparable to those prescribed by 1<sup>st</sup> and 2<sup>nd</sup> EU Directives; (AML Act, Section 4a)
- When a transaction is being made to an account belonging to someone whose identity has been previously checked; (AML Act, Section 4a)
- Life insurance companies and companies that conduct business activities under Section 1 of the Insurance Brokers Act (1989:508) (2005:405) are not required to carry out identity checks in connection with an insurance contract where the annual premium does not exceed an amount corresponding to EUR 1 000 or when a one-off premium does not exceed an amount corresponding to EUR 2 500; (AML Act, Section 5) and
- When a payment in connection with an insurance contract is made from an account that has been opened at a credit institution established in the EEA. (AML Act, Section 5)

306. FFFS 2005:5 further reflects the exemptions above and exempts foreign financial institutions conducting operations within the scope of the AML Act from verification of customer identity requirements when the financial institution has its registered office in the EU/EEA or in another country with a comparable level in its systems against money laundering. The Appendix to the regulation lists the following countries in the following order as having comparable AML systems: Australia, Japan, Canada, China/Hong Kong, New Zealand, Switzerland, Singapore, Turkey, and the United States of America. Finansinspektionen reports that newer members of FATF that are not also EU/EEA countries were not included in the list of countries with comparable AML systems because Sweden was not satisfied that these newer members had comparable or adequate AML systems.

307. Customer identification must also be conducted when a person seeks to use a financial institution to carry out an occasional, single transaction involving 15,000 euro or more, or where more than one linked transaction in the aggregate involves 15,000 euro or more. If the total amount is not known at the time of the transaction, an identity control must be carried out as soon as the total sum of the transactions reach 15,000 euro or exceed that amount (AML Act Section 4, second paragraph, CFT Act Section 11).

308. The AML/CFT Acts also require financial institutions within the scope of the Acts to check and verify customer identification when a financial institution has grounds to suspect that a transaction may constitute money laundering or terrorist financing (AML Act Section 7, CFT Act Section 11). There is a general requirement in the Privacy Act (1998: 204) for institutions that maintain registers of people to keep that information correct and, if necessary, up-to-date. However, there is no specific requirement to check customer identity when there are doubts as to the veracity or adequacy of previously obtained customer identification data nor when the preconditions of SR VII are met.

309. Further guidance on customer identification is elaborated in Finansinspektionen's AML/CFT Regulations/ Guidelines (FFFS 2005:5). The principle of Know Your Customer (KYC) is indicated as being central to good business practice. The guidelines recommend that financial institutions collect and keep relevant information about their customers, their background, source of money and intended use of the institution's products and services. The guidelines recommend that financial institutions engage in KYC both at the onset and during the course of the relationship (FFFS 2005:5 Section 9).

310. The Regulations/Guidelines give guidance on how to conduct customer identification, and defer to the banks and to the FIU to identify the documents and other sources of information that may be used to validate the identity of the customer (FFFS 2005:5, Section 9). The guidelines recommend that KYC be conducted on natural and legal persons, natural persons authorized to represent legal persons, and residents and non-residents of Sweden who enter into a relationship with a financial institution. Customer identification is completed in large part by requiring customers to present government issued identification cards and their personal identification numbers. Also, the provisions address measures that must be taken when the relationship is established with the customer present (face-to-face) or not present (non face-to-face), and recommends that financial institutions carry out proper risk identification and analysis while conducting the business of providing products and services to its customers.

### Required CDD Measures

311. Regulations contained in FFFS 2005:5 apply to both natural and legal persons that fall within the scope of the AML and CFT Acts and require verification of a customer's identity (FFS 2005:5 §1, 3 and 8). For natural persons who are Swedish citizens, when the customer is not known to the financial institution, verification of identity should be ensured through a valid, certified identity card, other identity cards approved by the banks as an identity document, or a driving license. Verification may also be conducted through the use of passports issued after 1997.

312. For foreign natural persons who do not have one of the forms of identification used for Swedish citizens noted above, the regulations state that verification of identity should be carried out by means of a valid passport or other identity documents issued by a governmental authority or other authorised issuer which evinces citizenship. The regulations further state that where deemed necessary, additional documentation shall be obtained such as bank certification or other references from the customer's home country. And it is common for financial institutions to pose additional questions to all foreign nationals. When a foreign passport or other foreign identity documents are used for customer verification, the regulations require that a copy of the document shall, without exception, be preserved (See FFFS 2005:5, section 8).

313. Resident foreign nationals may obtain temporary identification cards from the Swedish Tax Agency that may be used for customer identification purposes. However, banks in Sweden noted that it has been problematic to identify resident foreign nationals, as many attempt to use informal means of identification.

314. Verification of the identity of both Swedish and foreign legal persons, and of the legal representatives of those legal persons, must be done through a registration certificate, or where a certificate has not been issued, other authorising documents. Legal representatives of a legal person, or other persons who represent a legal person by virtue of a power of attorney, shall have their identity verified in the same manner as used for natural persons. The Swedish Bankers' Association (SBA) reported, however, that it is common for smaller associations to open bank accounts under the name of the natural person representing the association, and that any customer identification procedures undertaken focus on the representative's identity only, and does not examine the identity of the underlying association.

315. One of strengths of the Swedish system is the ability of financial institutions and others to use the Swedish Tax Agency's national registry and the corresponding PINs as a reliable, independent source of customer identification information for Swedish residences. It is advised through guidance that Sweden use these PINs, and in practice, financial institutions rely heavily on the national registers, though there is some reliance on identification documents published by certain authorized, private entities like large corporations. Financial institutions often also use the credit information registers for information. These are held by large credit information companies (one of the largest of these is the bank-owned Upplysningscentralen (UC)).

316. In the case of Swedish nationals, financial institutions obtain customer identification information by requesting a customer's PIN. Customer identification must be verified via a valid, certified identification card. The Swedish Banker's Association (SBA) has compiled and published a list of acceptable identity cards, and Finansinspektionen cites this list in its guidelines (FFFS 2005:5, Section 8). The list was updated in November 2005. One potential vulnerability is that identity cards can be issued by not only state authorities, but also by companies and by the banks themselves. However, companies in good standing that follow certain requirements are granted permission by the National Certification Committee on Identification Cards (includes members from the Standardisation organisations, FIU, Finansinspektionen, the national Criminal Techniques Laboratory and private sector representatives from the Swedish Banker's Association and the Swedish Commerce Association) to issue identification cards for up to a five year period, and must keep a record of all identification cards issued. Central registers are held by the manufacturers of ID cards as well as by the issuing parties of which entities are certified to issue forms of identification. Since 1 October 2005, the Swedish Tax Agency may also distribute national identification cards.

## Legal Persons

317. Swedish financial institutions are required to ascertain the identity of the natural persons that are the authorised legal representatives for a legal person, including those that have been granted a power of attorney (FFFS 2005:5, Section 8). The Swedish Companies Registration Office compiles and maintains identifying information on limited companies, economic associations and some other legal persons that financial institutions may access in order to identify their customers that are legal persons or arrangements.

318. Certificates of registration or other appropriate documents are used to confirm the status of an entity as being a legal person, and the certificate contains the: name of the company, registration number, date for registration, names, PINs and addresses of the members of board, alternate board members and the managing director (if appointed), authorized legal representatives, and an appointed person to receive service of process. Additional information that can be obtained from the Companies Registration Office includes information concerning the company's: articles of association, board members and managing director, annual accounts reports and annual audit report, appointed auditors, historical records, bankruptcy or liquidation decisions, if any, and persons subject to trade prohibitions. Finally, the Companies Registration Office also holds an EBR register that contains information regarding foreign companies within the European Union (EU). In practice, Swedish financial institutions heavily rely upon certificates of registration obtained from the Swedish Companies Registration Office to conduct customer identification and verification and other related KYC.

319. All legal persons are covered by the Swedish Companies Registration Office with the exemption of sole traders, non-profit associations and foundations. The latter are registered by the County Administrative Board even though representatives of the Swedish Companies Registration Office would prefer also to have the competence to register foundations in order to have one centralised registration system.

320. There are no specific requirements to take reasonable measures to understand the ownership and control structure of the customer or to determine the natural persons that ultimately own or control the customer. However, section 9 of the AML/CFT Regulations/Guidelines states that "Where, in conjunction with the initiation of a business relationship with a customer or regularly during the course of such relationship, it may be assumed that a person other than the customer actually controls the customer's assets and directs the customer's use of the products and services provided by the undertaking, the situation is normally such that the undertaking must, in accordance with Section 6, first paragraph on the AML Act, attempt to obtain in a suitable manner information regarding the identity of the party on whose behalf the customer is acting". Cases where the ownership is complicated is also given as example where the financial institution should be alerted. Otherwise, Sweden has no other requirements to identify to understand the ownership and control structure of the customer nor determine the natural persons that ultimately control the customer.

## Identifying the beneficial owner

321. Sweden's AML/CFT Acts require that when there is a suspicion that someone wishing to enter into a business relationship with a financial institution, or carry out a transaction, is not acting on his or her own behalf, the institution shall take appropriate steps to establish the identity of the party on whose behalf he is acting. (AML Act Section 6, CFT Act Section 11). This provision applies equally to natural or legal persons. However, exempted from this requirement are those financial institutions conducting business that have been established within the EEA, or within a country with AML measures that correspond to the EU Directives, or when a transaction is made to an account belonging to someone whose identity has been previously checked as required by the AML Act. Also exempted from this requirement is when there are "special grounds for concluding that a check is not necessary" (AML Act, Section 6).

322. FFFS 2005:5 further requires financial institutions to have internal rules regarding verification of identity when it may be assumed that the person seeking to commence a business relationship or conduct a transaction, consistent with other customer identification requirements and exceptions, is not acting on his

or her own behalf (FFFS 2005:5, Section 4). In further guidance, Section 9 indicates that financial institutions should take note of several situations that may be indicative of a situation where a person is not acting on his or her own behalf, and suggests that the identity of that other person should be ascertained, but allows that it may not always be possible to identify that other person.

323. 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). As used in the FATF Recommendations, the term *beneficial owner* captures both the notion of equitable owner, as well as the notion of a person exercising ultimate ownership and control over a legal person or arrangement.

324. Finansinspektionen notes the following circumstances as examples where a customer may be acting on behalf of someone else:

- Only persons other than those persons constituting legal representatives according to the registration certificate represent the customer pursuant to general powers of attorney.
- The customer's use of the undertaking's products and services give reason to assume that the customer is controlled by persons other than legal representatives of the customer;
- The customer's legal representatives have previously acted as straw men;
- The customer has a complicated ownership structure which is impossible to clarify; or
- The customer's operations have suddenly changed focus and financial position without any formal changes to its management or ownership.

325. While many of the examples given by Finansinspektionen are merely descriptive of a beneficial owner relationship, instead of serving as red flag indicators, Finansinspektionen does attempt to give some guidance in this area. Nevertheless, despite this guidance, the AML/CFT laws and Finansinspektionen regulations do not contain any direct obligation to identify beneficial owners or take reasonable measures to verify the identity of beneficial owners such that the financial institutions is satisfied that it knows who the beneficial owner is.

326. Guidelines within FFFS 2005:5 indicates that that financial institutions should obtain information on the purpose and intended nature of the business relationship as part of an institution's KYC procedures (Section 4). Unfortunately, private financial institutions reported that they are not regularly seeking information on the purpose and intended nature of the business relationship in their KYC efforts.

327. Similarly, the guidelines indicate that financial institutions should "regularly follow-up the customer relationship in respect of, for example, changes in the customer's operations and the customer's use of the undertaking's products and services" as a part of its KYC efforts (FFFS 2005:5, Section 4). There is no other general requirement for on-going customer due diligence.

#### Enhanced and simplified CDD

328. Swedish financial institutions do not use a risk-based approach in conducting CDD. Neither Swedish legislation nor regulation specifically require financial institutions to perform enhanced due diligence for higher risk categories of customers, such as private banking or legal persons that are personal assets holding vehicles.

329. As indicated earlier, the AML/CFT act and regulations exempt four main areas from identification control requirements: 1) when the financial institution is established within the EEA; 2) when the financial institution is established in a country outside the EEA but has similar AML measures as those outlined in the EU Directives; 3) when a transaction is made to an account belonging to someone whose identity has been previously checked and 4) in relation to an insurance contract where the annual premium does not exceed an amount corresponding to EUR 1,000 or when a one-off premium does not exceed an amount corresponding to EUR 2,500. The last situation is specifically described in FATF Recommendation 5 as a situation where reduced or simplified CDD measures could be applied. However,

this is not the case for the other exemptions. And it should also be noted that these current exemptions mean that, rather than reduced or simplified CDD measures, no customer identifications measures apply whatsoever for these cases. This appears to be an overly broad exemption from CDD requirements.

330. Section 7 of the AML Act states that an identity check must always be performed when there are grounds for assuming that a transaction may constitute money laundering, and therefore simplified CDD would not be acceptable.

331. Except to note that financial institutions should have internal rules for the identification and analysis of risk (FFFS 2005:5, Section 4), Swedish regulators have not issued any guidance regarding the extent of CDD measures that should be employed by a financial institution after determining the risk of conducting a transaction or engaging in a business relationship with a customer.

#### Timing of Verification

332. Sweden has no requirements regarding the timing of verification of a customer's identity. In the guidelines contained in FFFS 2005:5, the AML Act customer identification requirement is interpreted to be obligatory at the initiation of the business relationship. It is recommended that supplementary verification of a customer's identity should be carried out when the customer executes agreements regarding additional products and services, unless the customer is already known to the institution (FFFS 2005:5, Section 9).

333. While the main rule is that the customer identification shall take place at the time when the customer relationship is established, it is in practice sometimes difficult to maintain that rule in all kinds of customer relations with the financial institutions. For example it was reported that in practice a number of institutions operating within the securities sector and the funds industry do not verify the identity of the customer and the beneficial owner immediately at the establishment. Finansinspektionen has held lengthy discussions with, inter alia, representatives for the investment fund industry on this matter and made clear that it may be acceptable in practice with a slight delay in the verification process.

#### Failure to Satisfactorily Complete CDD

334. While the AML Act requires customer identification, conditioned on certain exceptions, and prohibits natural or legal persons from knowingly taking part in transactions where there are grounds for assuming that they constitute money laundering (Section 3), there is no explicit prohibition against opening an account, commencing with a business relationship, or performing a transaction when a financial institution is unable to properly conduct customer identification procedures, although Swedish authorities explained that it is understood in the formulation of the AML/CFT Acts that failure to carry out the mandatory identification process must have the consequence that the customer relation will be refused. Further, there is no explicit requirement to terminate an existing business relationship. Finally, there is no guidance that encourages a financial institution to consider making a STR when the institution is unable to satisfactorily complete CDD.

335. The Swedish Bankers' Association (SBA) reported that financial institutions feel obliged to make basic financial services, including opening an account, internet banking, debit cards and ATM access, to everyone in order to comply with a Swedish law that creates for deposit taking institutions a duty to accept deposits from the general public. The Act on the Deposit Guarantee Scheme, Section 11(b) reportedly states, "An institution that offers to accept deposits in accordance with the definition in Section 2 is obliged to accept such deposits from every party, unless there is a special reason not to do so."

336. The SBA reported that Finansinspektionen had in its general advice (referencing FFFS 2001:8) on deposit accounts and related services emphasized the duty to open an account and offer bank services to anyone who requests them. While there are exemptions to the duty to include violating the AML Act, the SBA reported that in practice it is exceedingly rare for a bank not to make an account available upon request. SBA reported that this often leads to banks having great difficulty in ending business relationships with customers, even after reporting suspicious transactions to the FIU.

337. The Act on Deposit Guarantee Scheme, Section 11(b), states that “an institution that offers to accept deposits in accordance with the definition in Section 2 is obliged to accept such deposits from every party, unless there is special reason not to do so”. The mentioned rule is seen as a consumer protection rule and needs as such a strict interpretation. In the preparatory works to Section 11(b) of the mentioned Act “special reason not to do so” is exemplified by meaning situations when a customer has been dishonest towards the financial institution, a suspicion of money laundering, or if there is a risk that an employee within the financial institution by opening the deposit account might be promoting criminal activity. This possibility not to open a deposit account must, in light of consumer protection issues, be used carefully. Furthermore, Section 11(b) of the Deposit Guarantee Scheme is only applicable to such deposits as defined in Section 2 of the mentioned legislation, e.g. nominally set deposits, which are available to the depositor within a short period following notice of termination. This means that banks have the possibility of applying stricter rules to such deposit accounts that are not within the Act on Deposit Guarantee Scheme.

#### Existing Customers

338. Sweden has no requirement in the AML/CFT Acts that financial institutions perform CDD measures on existing customers at any time on the basis of materiality and risk although Swedish authorities note that this would normally be part of financial institution practice in their implementation of an adequate KYC policy.

#### ***Recommendation 6***

339. Sweden has not implemented any AML/CFT measures in the AML/CFT Acts concerning the establishment of customer relationships with politically exposed persons (PEPs). In practice, Swedish banks reported that they are prohibited by Swedish law to keep a register maintained within Sweden to help identify PEPs, and there has been uncertainty within the Swedish banking community as to what the definition of a PEP is. However, a limited number of banks use foreign service providers to avoid this loophole and help identify PEPs. Sweden has ratified the 2003 UN Convention Against Corruption.

#### ***Recommendation 7***

340. Sweden has not implemented any AML/CFT measures concerning the establishment of cross-border correspondent banking relationships.

#### ***Recommendation 8***

341. Requirements regarding non-face to face business relationships or transactions exist. However, there is no specific regulation or guidance regarding the need for internal policies within financial institutions to prevent the misuse of technological developments in money laundering or terrorist financing schemes.

342. Finansinspektionen regulations (FFFS 2005:5, section 9) require that verifying the identity of a customer in a non-face to face transaction must be done by means of documents or information which the financial institution obtains in writing or in another manner from the customer, from a third party, or from the undertaking’s own or external registers. External registers may include credit information registers, registers available at card issuers/ card manufacturers and registers administered by governmental authorities such as population registers and business registers.

343. Verification of identity must be carried out through a combination of the following controls:

- Signature verified against a certified copy of identity document;
- Information regarding PIN, company registration number, company signatory and board of directors, address, employer, credit card number, numbers on identity documents compared against information in the undertaking’s own register or external registers;

- Electronic methods for identification of a customer such as what are commonly referred to as e-IDs or identification methods used in Internet banking services, telephone banking services or credit card services;
- Telephone call-back or exchanges of faxes;
- Other documentation to verify a customer's identity such as bank certification and certificates from notaries public (or equivalent in the foreign country), embassies, consulates and business partners abroad; or
- The first deposit of funds take place from an account opened in the customer's name in a financial institution within the EU/EEA which is subject to the Act on Money Laundering or comparable provisions.

344. In the event a customer is a foreign citizen who lacks a valid certified Swedish identity card or other Swedish identity document approved by the Swedish banks, or where a customer is a foreign legal person whose legal representative is such foreign citizen, one of the aforementioned control measures shall, however, be conducted by obtaining a certified copy of a passport or other identification document which evinces citizenship.

345. Also, Finansinspektionen has issued guidance regarding ATMs, namely that identification of depositors should take place by means of a card and PIN code or other similar method in conjunction with deposits of cash funds in an automatic deposit machine.

### **3.2.2 Recommendations and Comments**

346. While Sweden has in place basic customer identification requirements, the transition from customer identification to full customer due diligence has not been made. Customer due diligence is recommended in indirectly enforceable guidance promulgated by Finansinspektionen under the concept of "know your customer," along with other general guidelines dealing with various situations. The assessors found little to suggest that financial institutions were complying with any but the requirements related to customer identification. Sweden should engage with the private sector to promote full compliance with its existing regulations, and should as a matter of priority make mandatory existing guidance relating to customer due diligence.

347. Sweden should implement as mandatory requirements (some of them by law or regulation) the following missing elements of Recommendation 5 as a matter of priority:

- Financial institutions should be required to undertake full CDD measures;
- Financial institutions should be required to perform customer identification when there are doubts as to the veracity of the previously obtained customer or when required under SR VII;
- Financial institutions should be required to extend the identification and verification measures regarding the identity of the beneficial owner;
- Financial institutions should be required to inquire as to the purpose and intended nature of the business relationship in extension to what is said in the AML/CFT general guidelines on KYC;
- Ongoing due diligence on the business relationship should be required in extension to what is said in the AML/CFT general guidelines on KYC;
- Enhanced due diligence for higher risk categories of customer, business relationship or transaction should be required in extension to what is said in the AML/CFT general guidelines on KYC;
- The timing of verification should be regulated;
- Financial institutions should not be permitted to open an account when adequate CDD has not been conducted;
- Extension of what is said in the AML/CFT general guidelines concerning rules governing the CDD treatment of existing customers on the basis of materiality and risk.

348. Sweden should also include investment fund companies within the scope of the CFT Act and all means of payment, including the credit card companies like American Express that are not currently

covered, should also be placed within the scope of the AML and CFT Acts and regulations. Where guidelines may be enforced for licensed financial institutions, Sweden should introduce corresponding, enforceable obligations for registered financial institutions (money exchange, remittance, and deposit companies).

349. Finansinspektionen has heavily focused on the banking sector, and as a result, has not issued regulations or guidance taking into account the normal business operations of other sectors, notably securities and funds. It is recommended that Sweden engage all aspects of the private sector to develop regulations and guidance that are responsive to the unique realities and vulnerabilities of each part of the financial sector.

350. Sweden should address whether or not financial institutions should be permitted to apply simplified or reduced CDD measures, and issue appropriate guidance.

351. Sweden should require financial institutions to refuse to open accounts either when it is not possible for the financial institution to complete CDD.

352. Measures should be mandated to fully implement Recommendations 6 and 7.

353. Sweden has a regulation that addresses the issue of non-face to face transactions, but there is no clear general guidance regarding emerging technological developments. Sweden should continue addressing this issue.

### 3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
<b>R.5</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Although Sweden has implemented customer identification obligations, it has not implemented full customer due diligence (CDD) requirements.</li> <li>• The CFT Act does not cover within its scope investment companies, and the AML/CFT legislation does not cover certain credit card companies.</li> <li>• As the existing regulations were implemented in July 2005, there is little evidence of their effectiveness.</li> <li>• Guidance relating to KYC is only indirectly enforceable for financial institutions.</li> <li>• There are numerous exemptions to the requirements related to customer identification, which appear overly broad.</li> <li>• There is no specific requirement to check customer identity when there are doubts as to the veracity or adequacy of previously obtained customer identification data nor when the preconditions of SR VII are met</li> <li>• There are similarly insufficient requirements to ascertain the beneficial owner, including: no general requirement to identify and verify the identity of the beneficial owner; no direct requirement for financial institutions to determine whether the customer is acting on behalf of another person (only when doubts arise as to whether the customer is acting on his/her own behalf), and if so, identify that other person; no requirements to take reasonable measures to determine the natural person with ownership or control over a legal person.</li> <li>• There are only to a limited extent and in indirectly enforceable guidance recommendations regarding the purpose and nature of the business relationship, ongoing CDD, enhanced CDD or conducting CDD on existing customers.</li> <li>• There are no regulations that clearly address the timing of verification, even if the Swedish practice may reflect the FATF recommendations in this area.</li> </ul>

		<ul style="list-style-type: none"> <li>Financial institutions have indicated that they face significant obstacles both not to open accounts when satisfactory CDD cannot be completed and to terminate a business relationship with a customer.</li> </ul>
<b>R.6</b>	<b>NC</b>	Sweden has not implemented any AML/CFT measures concerning the establishment of customer relationships with politically exposed persons (PEPs).
<b>R.7</b>	<b>NC</b>	Sweden has not implemented any AML/CFT measures concerning establishment of cross-border correspondent banking relationships.
<b>R.8</b>	<b>LC</b>	Sweden has legislation and regulation concerning non-face to face business relationships, but no specific requirement that financial institutions have policies in place to deal with the misuse of technological developments. However, it is implied in the risk analysis and assessments that this should be done according to the AML/CFT General Guidelines.

### 3.3 Third parties and introduced business (R.9)

#### 3.3.1 Description and Analysis

##### *Recommendation 9*

354. The AML/CFT Acts do not specifically deal with the issue of relying on third parties or other intermediaries to conduct due diligence. However, there is a requirement that the responsibility always stays with the financial institution. Swedish legislation does, however, allow financial institutions to enter into outsourcing agreements. Section 7 of the Banking and Financial Business Act states, for example, that “where a credit institution wishes to engage any third party to perform any of the services...the institutions shall notify such fact to Finansinspektionen.” Such services may be procured, among other things, when “the operations are conducted by the service provider in a supervised and, from a security perspective, satisfactory manner.” Finansinspektionen reported that all outsourcing may only be allowed under a contract and after approval by Finansinspektionen. Section 9 of the AML/CFT Guidelines also allows for outsourcing of functions to verify customer identity, (although reliance on third parties through such outsourcing agreements is outside the scope of Recommendation 9.) The guidelines also stress that the ultimate responsibility for conducting appropriate compliance procedures falls with the financial institution. (See FFFS 2005:1) Nevertheless, as the situations and exceptions apply only to outsourcing agreements under contract, which are outside the scope of Recommendation 9, the evaluation team determined that this Recommendation is not applicable to Sweden.

#### 3.3.2 Recommendations and Comments

#### 3.3.3 Compliance with Recommendation 9

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.9</b>	<b>N/A</b>	Although financial institutions do rely on outside agencies to perform CDD for them, this is only done in the context of outsourcing agreements that must be performed under contract, and thus this falls outside the scope of Recommendation 9.

### 3.4 Financial institution secrecy or confidentiality (R.4)

#### 3.4.1 Description and Analysis

##### *Recommendation 4*

355. Generally, Sweden's financial institution secrecy laws do not inhibit implementation of the FATF Recommendations. The Banking and Financing Business Act (2004:297) is the primary statute dealing with the issue of a bank or financing business' domestic duty of confidentiality to its customer. The Act explicitly applies to banks, savings banks, members' banks, and LLCs licensed to conduct banking businesses. Entitled "Duty of Confidentiality", Chapter 1, Section 10 of the Act states that in the absence of authorisation, an individual's relations with a credit institution may not be unduly disclosed. Sweden reports that with authorisation, a financial institution would be able to share information without violating the duty of confidentiality. For example, section 11 of the Act specifies that a financial institution must comply with requests for information on customers during the course of an investigation or pursuant to authorised foreign requests for information. Under Section 9 of the AML Act, a bank must also provide information to the FIU about circumstances indicative of money laundering and any information necessary for a resulting investigation. Section 8 of the CFT Act contains corresponding provisions.

356. The Banking and Financing Business Act does not, however, apply to securities companies, electronic money institutions, or equivalent foreign undertakings. For securities, electronic money institutions and equivalent foreign undertakings, Sweden reports that there are several statutes<sup>30</sup> that provide for a similar duty of confidentiality to that found in the Banking and Financing Business Act, with one major difference. These statutes do allow for the imposition of penal sanctions for violating the duty of confidentiality, whereas the Banking and Financing Business Act and The Issuance of Electronic Money Act (2002:149) do not.

357. Also, the Banking and Financing Business Act explicitly states that for public operations, instead of applying its duty of confidentiality, those entities should apply the appropriate provisions of the Secrecy Act (SFS 1980:100). For public operations, the Secrecy Act imposes secrecy unless the information "can be disclosed without the person concerned suffering loss or being harmed." For any borrowing or commercial lending activities, it is to be assumed that the person would suffer a loss or harm.

358. The Secrecy Act (1980:100) also states that, "Neither shall secrecy hinder the communication of information to another public authority if an obligation to communicate the information arises under an act of law or under a Government decree" (Chapter 14, section 1). This general exception to the provisions of the Secrecy Act in theory allows competent authorities to gain access to information necessary to carrying out their duties.

359. To share information between competent authorities internationally, the Secrecy Act in Chapter 1, Section 3 states that information to which secrecy applies may not be disclosed to foreign authorities unless the disclosure is made in accordance with a special regulation, or if the information may in a corresponding case be issued to a Swedish authority, and following a review by the disclosing authority, it is found to be compatible with Swedish interests for the information to be provided.

360. In practice, private sector representatives reported that secrecy requirements negatively affect the sharing of information, both internally within their own businesses, and externally with competent authorities. Banks reported that to share information internally, a determination would first need to be made whether or not other persons within the bank needed the information in order to conduct further

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<sup>30</sup> See Section 5 of the Securities Fund Act (1990:1114); Chapter 1, Section 8, first paragraph of the Securities Business Act (1991:981); Chapter 2, Section 8 of the Securities and Clearing Operations Act (1992:543); Chapter 7, Section 13 of the Capital Adequacy and Large Exposures (Credit Institutions and Securities Companies) Act (1994:2004); and also Chapter 8, Section 2 of the Financial Instruments Accounts Act (1998:1479).

business. The banks reported that this causes a unique problem when financial conglomerates housing both banking and insurance services seek to share information, as the insurance sector does not have the same secrecy restrictions as the banking industry. While many in the insurance sector voluntarily adhere to the same duty of confidentiality imposed upon the banks, the inconsistency in the duty has caused some inconvenience to the financial sector. Similarly, banks operating in concert with investment fund brokers or securities dealers also reported difficulty sharing customer information across functional areas within their shared business entity.

### 3.4.2 Recommendations and Comments

361. Sweden's statutes dealing with a duty of confidentiality, both for domestic and international matters, allow for exceptions that prevent the secrecy laws from inhibiting the implementation of the FATF Recommendations. However, Sweden should consider explicitly allowing for the sharing of information within a business operation, like a business conglomerate offering multiple financial services to its customers, in order to provide the clarity needed for the private sector that would promote free information exchange for commercial purposes.

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.4</b>	<b>LC</b>	Sweden's statutes do not generally inhibit the implementation of the FATF Recommendations, but the varying interpretations within the private sector of the duty of confidentiality as defined in the many statutes has led, in practice, to less effective sharing of AML/CFT information.

### 3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

#### 3.5.1 Description and Analysis

362. Sweden's requirements for maintaining necessary records exceed Recommendation 10 by requiring that legal persons maintain records on transactions for ten years. The Accounting Act (1999:1078) provides general rules as to how transaction records must be filed. The Act is very broad in its scope—most legal persons must maintain on-going accounts or annual accounts. The exceptions include foundations under a certain size (approximately 309,000 SEK), foundations the assets of which may be applied only for the benefit of designated natural persons, and non-profit associations/organisations with assets under 927,000 SEK. All legal as well as natural persons that conduct “business operations” are also obliged to maintain accounts. In these cases, the “undertaking” must “maintain regular accounts of all business transactions” (Chapter 4, Section 1). Business transactions are defined as all changes in size and composition of an undertaking's assets due to external economic relations, such as deposits and disbursements, receivables and liabilities, as well as internal contributions of cash, goods, or other assets to the operations, or withdrawals (Chapter 1, Section 2(7)).

363. The requirements regarding transaction records provide for the preservation of records in such a manner as to make them readily accessible by competent authorities for investigations or prosecutions. The permanent and easily accessible preservation of accounting information is required, and the information must be preserved as documents, microfiche, or other mechanically readable media up to and including the tenth year following the expiration of the calendar year in which the accounting year was closed (Chapter 7, Section 1). Further, transaction records must be stored in Sweden in an orderly, safe and comprehensible manner. Records must detail business transactions in order of registration and systematically so that it is possible to verify the completeness of the accounting items and obtain an overview of the development of the operations, financial position, and results of business (Chapter 5, Section 1).

364. Vouchers that correspond to the records regarding the overview of the business transaction must be available for every business transaction, and must contain information as to: when the voucher was prepared, when the business transaction occurred, matters to which the voucher relates, the amount involved, the identity of the other party to the transaction, and when applicable, information regarding documents or other information that constituted the basis for the transaction. Vouchers include a voucher number or other identifying symbol as well as other information required in order to determine without difficulty the relationship between the voucher and the booked transaction (Chapter 5, Sections 6 and 7).

365. The AML Act imposes an additional requirement to keep documents or information used in connection with an identity check for a minimum period of five years after the date on which the business relationship came to an end (Section 8). Also, the *Finansinspektionen's Regulations and General Guidelines Governing Measures against Money Laundering and Financing of Particularly Serious Crimes in Certain Circumstances* (FFFS 2005:5) of 9 June 2005 requires that documents or information kept in conjunction with verification of identity of customers like customer's signatures, copies of identity documents and registration certificates, or other authorisation documents with notations regarding verifications of identity carried out in respect of legal representatives or holders of powers of attorney, shall be preserved for not less than five years following termination of the business relationship (Section 14). This generally covers all account files and business correspondence related to the accounts as indicated in Recommendation 10.

366. Sweden has no explicit requirement that all customer transaction records and information are available on a timely basis to domestic competent authorities upon appropriate request. However, financial institutions should in accordance with the Accounting Act, maintain documents for accounting information that are “easily accessible” (Accounting Act Chapter 7, Section 2); Finansinspektionen's AML/CFT Regulations/Guidelines (FFFS 2005:5 Section 14) states that financial institutions shall have systems and routines in place to ensure that such documents on customer identity may be “retrieved within a reasonable

time” However, this is laid out in “general guidelines”, which while indirectly enforceable, are not requirements laid out in law or regulation, as required by Recommendation 10.

367. During the on-site visit, the team was disappointed to learn from some private sector representatives that their record keeping methods were simple to the point of not instilling much confidence that transaction records would be readily accessible to law enforcement. Representatives described boxes of individual vouchers warehoused without much else in the way of organisation. This simple filing system would make it extremely difficult and time consuming to reconstruct the course of a business relationship with a customer, even if appropriate documentation had been preserved. As a result, the team questions whether or not the recordkeeping requirements under the Accounting Act and the AML Act are being properly observed by the entire private sector. Swedish government authorities noted, however, that in practice customer identification and transaction records have been made available on a timely basis.<sup>31</sup>

### ***Special Recommendation VII***

368. Sweden has not yet implemented SR VII. Sweden notes, however, that the Swedish banking companies are all members of the SWIFT-system and fulfil, as such, the rules of the Swedish SWIFT association (SWIFT Sverige NMG). An EC regulation will enter into force 1 January 2007.

### **3.5.2 Recommendations and Comments**

369. *Recommendation 10:* Sweden is largely compliant with the requirements of Recommendation 10. However, there is not an explicit requirement that transaction records and information are available on a timely basis to competent domestic authorities upon authorised request, nor a requirement spelled out in a law or regulation for customer identification records to be available on a timely basis. In some respects, notably the ten-year time frame for the preservation of records, Sweden has exceeded the requirements under Recommendation 10. Finansinspektionen should make explicit these record keeping requirements to bring Sweden into full compliance with the recommendation. Finansinspektionen, should also ensure through on-site examinations or another regulatory tool that the record keeping requirements of the AML Act and Finansinspektionen regulations are being fully complied with by the private sector.

370. *Special Recommendation VII:* Sweden should implement SR VII.

### **3.5.3 Compliance with Recommendation 10 and Special Recommendation VII**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.10</b>	<b>LC</b>	There is no requirement in law or regulation that customer identification records must be made available on a timely basis; however, indirectly enforceable guidelines generally cover this area.
<b>SR.VII</b>	<b>NC</b>	Sweden has not implemented SR VII.

<sup>31</sup> Swedish authorities noted that since the on-site visit by FATF, Finansinspektionen has taken measures to inform the private sector about the AML/CFT record keeping requirements. Finansinspektionen also plans to, in the beginning of 2006, via a web-based questionnaire (and appropriate on-site inspections), follow up the general compliance of the AML/CFT Acts, as well as the AML/CFT regulations and guidelines.

## Unusual, Suspicious and other Transactions

### **3.6 Monitoring of transactions and relationships (R.11 & 21)**

#### **3.6.1 Description and Analysis**

##### *Recommendation 11*

371. Financial institutions are required by the AML/CFT Acts to examine any transaction where there are reasonable grounds for suspecting money laundering or terrorist financing. (*See* AML Act Section 9, CFT Act Section 8.) In Finansinspektionen's regulations (FFFS 2005:5, Section 11) it is required that when a customer matter gives rise to a suspicion of money laundering or terrorist financing, an employee must immediately notify his or her superior in accordance with the institution's reporting routines for closer scrutiny of transactions. Indirectly enforceable guidance in this section advises financial institutions to collect on an on-going basis relevant information on new trends, patterns and methods used in money laundering and terrorist financing. Specific reference is given to leading international organisations such as FATF, the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors, and the International Organization of Securities Commissions. The guidelines go on to list examples of transactions which justify closer scrutiny and investigation, namely:

- Cash transactions or other transactions which are large or deviating from the customer's normal performance and/or deviating in comparison with the customer's peers;
- Target number of transactions during a certain period of time which appears to be unnatural for the customer or in comparison with the customer's peers;
- Transactions which can not be explained from what is known about the customer's economic position;
- Transactions which can be assumed to lack a legitimate purpose or economic motivation;
- Transactions which geographical destination deviate from the normal transaction patterns of the customer;
- The customer asks for unusual products or services without giving a reasonable explanation;
- Transactions to or from entities or persons assumed to act with a purpose to conceal the real interests and control behind the customer;
- Large cash deposits into accounts through a deposit teller machine and immediately thereafter spent or transferred;
- Large loans which are repaid rapidly after being granted, unless rapid repayment has been agreed before the loan was granted.

372. There is thus an indirectly enforceable requirement that financial institutions examine all complex, unusual, large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. There is not an explicit obligation to examine as far as possible the background and purpose of such transactions. Section 12 of the AML/CFT regulations/guidelines requires that "measures and decisions in conjunction with an examination pursuant to section 11 shall be documented and signed by the officials or decision-takers," which generally fulfils the requirement to set forth the findings in writing. There is not a requirement for financial institutions to keep any findings made by a financial institution regarding these or other suspicious transactions available for competent authorities and auditors for at least five years. Under the Money Laundering Registers Act, financial institutions *may* keep records of STRs filed (which is already a range of transactions smaller in scope than those that should be monitored under R. 11), but they must delete them after one year if there is no further investigation of money laundering, an investigation has been discontinued, or there has been a preliminary hearing which did not result in a prosecution (section 6). Swedish authorities note that records of the transactions that generated the scrutiny (albeit not the findings of the scrutiny itself) would be maintained under the normal record-keeping rules.

### **Recommendation 21**

373. Financial institutions in Sweden are subject to an indirectly enforceable obligation that addresses conducting business with entities located in NCCT countries. Finansinspektionen's guidelines in FFFS 2005:5, section 11, recommends that particular attention should be paid to the scrutiny of transactions connected to persons or entities in countries where it is difficult or impossible to obtain information about the customer, or for transactions connected to persons or entities in countries or territories on the FATF NCCT list. Finansinspektionen provides information regarding NCCT countries and territories to financial institutions through its website and through an e-mail distribution list linked. Also, in the past, where FATF has taken additional counter measures against countries or territories, Finansinspektionen has issued specific advisories to financial institutions regarding the examination and reporting of transactions connected to persons or entities in such countries or territories. These advisories, however, do not appear to have the same level of indirect enforceability as the guidelines.

#### **3.6.2 Recommendations and Comments**

374. Finansinspektionen guidelines generally cover the obligations for financial institutions regarding the scrutiny of certain transactions and making findings in writing. Finansinspektionen has recognised the importance of international standard-setters like the FATF in its work to publish guidance to financial institutions. However, Sweden should consider implementing more directly enforceable obligations that would explicitly require financial institutions to pay attention to all complex, unusually large transactions and transactions with no visible economic purpose and make the findings out in writing. Sweden should create an obligation to keep the findings of these examinations available for at least five years and make them available to competent authorities. Sweden should also make more mandatory the specific obligations of Recommendation 21. Finansinspektionen should continue to promote effective implementation of that guidance within the private sector.

#### **3.6.3 Compliance with Recommendations 11 & 21**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.11</b>	<b>LC</b>	Sweden does not require that the findings regarding the scrutiny of certain transactions be kept for five years: Under the Money Laundering Registers Act, financial institutions <i>may</i> keep records of STRs filed, but they must delete them after one year if there is no further investigation of money laundering, an investigation has been discontinued, or there has been a preliminary hearing which did not result in a prosecution (section 6).
<b>R.21</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• There are currently no measures to ensure that institutions are advised about concerns about weaknesses in the AML/CFT systems of other countries.</li><li>• Sweden issues advisories regarding countries against which appropriate countermeasures would apply due to continuing not to apply or insufficiently applying the FATF Recommendations. These advisories do not constitute a legally binding requirement.</li></ul>

### **3.7 Suspicious transaction and other reporting (R.13-14, 19, 25 & SR.IV)**

#### **3.7.1 Description and Analysis**

##### ***Recommendation 13***

375. As discussed in Section 2.5 of this report, Section 9 of the AML Act requires that natural and legal persons must examine any transaction where there are “reasonable grounds” for assuming that these constitute money laundering, and that they must report any circumstances that may be “indicative” of money laundering to the authority designated by the Government, namely the FIU. The requirement to report suspicious transactions is a direct, mandatory obligation.

376. Under Section 8 of the CFT Act, a direct mandatory obligation also exists to make a STR in all circumstances that indicate that a transaction involves assets related offences under the Act. However, the while the offences cover financing of individual terrorist acts, they does not cover funds to be used by individual terrorists and or terrorist organisations (as discussed in section 2.2 of this report). This limits the scope of the reporting obligations. In addition, the CFT Act does not extend to investment fund companies, so these entities are not obliged to file STRs that relate to terrorist financing.. . In both the AML and the CFT Acts, however, it is clear that the obligation to file STRs extends to “any” and “all” suspicious transactions, regardless of thresholds and including tax matters and attempted transactions.

377. The assessors found several areas of concern when related to Sweden’s implementation of Recommendation 13. First, as discussed earlier in Section 2.5, the “deletion rule” of the Money Laundering Registers Act requires that financial institutions delete information in a money laundering register, for example STR information, after one year (Money Laundering Registers Act, section 6). This is problematic for several reasons, not the least of which is that this rule greatly inhibits the ability of a financial institution to supply the FIU with important information related to suspicious transactions. Similarly, the FIU must delete STRs after six months or three years according to the Police Data Act. This further reduces the effectiveness of the FIU to analyse STR information over the short and long term.

378. Second, the overall number of reports that the FIU is receiving is inconsistent with the overall size of the financial sector, and the percentage of the financial institutions reporting to the FIU is poor. The private sector, however, explained that they had filed more STRs than the FIU reported to the assessment team. (*See* charts below for numbers reported by the FIU.) While a good number of entities within the financial sector have only been subject to the reporting requirements of the new AML Act since December 2004, it was of concern to the assessors that according to the FIU only approximately half of the banks were reporting. Further, while some financial institutions seem to be aware of the reporting requirements related to money laundering, there was less awareness of the reporting requirements related to terrorist financing offences.

379. Third, while money exchange businesses are required to file STRs, in practice, these businesses file reports on the basis that the transaction involves a large amount of currency—i.e., above a threshold of 140,000 SEK (approximately 15,000 EUR) with a varying amount of information provided as to what made the reported transaction suspicious. This is a matter of concern as the FIU reported in its 2004 Annual Report that approximately 90% of the suspicious transaction reports for 2004 came from currency exchange companies (and most of those were these types of threshold reports). In comparison to the 868 reports from banks, there were ten times as many reports from the currency exchange companies, at 8,658 reports. This concern is directly linked to a more general concern regarding the quality of the reports. STRs submitted across the financial sector were often less than informative, and lacked basic information to explain why a transaction was suspicious.

**Table: Number of STRs, number of entities that have reported STRs, and the number of entities for the years 2002-2004:**

Type of entity	Number of STRs				Number of entities reporting			Approximate total number of entities	
	2002	2003	2004	2005	2002	2003	2004	2004	% reporting
<i>Credit Institutions/ banks**</i>	604	754	857		14	11	14	29	48%
<i>Savings banks</i>	10	11	11		10	11	11	78	14%
<i>Life Insurance companies</i>			1				1	100	1%
<i>Securities brokers</i>		1		3					
<i>Investment firms</i>		1				1			
<i>Mutual Funds</i>								60	
<i>Money exchange offices</i>	7346	8820	8658		3	3	4	30	13%
<i>Money Transfer institutions</i>	92	221	369		3	5	4	25	16%
<i>Lawyers*</i>								4100	
<i>Notaries*</i>									
<i>Accountants/ Auditors*</i>								4200	
<i>Tax Advisors</i>									
<i>Real Estate Agents*</i>								3500	
<i>Casinos</i>	4	4	23	25			4	4	100%
<i>Traders in goods &gt; 15,000*</i>									
<i>Other ML Case**</i>	28	25	11						
<b>TOTAL</b>	<b>8084</b>	<b>9836</b>	<b>9930</b>		<b>30</b>	<b>31</b>	<b>39</b>	<b>12128</b>	

**Table: The number of STRs from money exchange offices and money remitters for 2002-2004.**

	2002	2003	2004
<b>Company 1</b>	643	835	659
<b>Company 2</b>	5115	4994	4737
<b>Company 3</b>		7	
<b>Company 4</b>			5
<b>Company 5</b>	1	7	8
<b>Company 6</b>		3	3
<b>Company 7</b>			3
<b>Company 8</b>		1	1
<b>Company 9</b>	92	213	352
<b>Company 10</b>	5	6	
<b>Company 11</b>	1626	3004	3259

#### *Special Recommendation IV*

380. As described above, the CFT Act contains a direct, mandatory obligation that financial institutions make an STR in all circumstances that indicate that a transaction involves assets related offences under the Act. However, the offences in the Act do not cover funds to be used by individual terrorists or terrorist organisations (as discussed in section 2.2 of this report). This limits the scope of the reporting obligation. This obligation extends to all suspicious transactions, including attempted transactions and those transactions that involve tax matters, regardless of the amount of the transaction. However, as described

above, this obligation does not extend to the full scope of financial institutions in Sweden (i.e., it does not cover investment companies and certain credit card companies), and the assessors had serious concerns related to the lack of effective implementation of this Special Recommendation.

#### ***Recommendation 14***

381. Sweden is fully compliant with Recommendation 14. Section 10 of the AML Act, which is also applicable to terrorist financing related STRs under Section 11 of the CFT Act, states that a natural or legal person, or a board member of a legal person, who files a STR may not be held liable for breach of professional secrecy if there is reason to assume that that the information should have been provided. Also, Section 11 of the AML Act and Section 10 of the CFT Act prohibit “tipping off” by mandating that a natural or legal person, or its board members or employees, may not disclose to a customer or any outside party that closer scrutiny has been paid to a transaction or customer, that an STR has been filed, or that the police are conducting an investigation. Further, according to the Secrecy Act, information gathered by the FIU is confidential as this information is related to policy intelligence activities. The FIU reported that there had been approximately five STRs reported in 2005 which involved suspected terrorist financing.

#### ***Recommendation 25 (Guidelines and feedback related to STRs)***

##### Guidelines

382. Sweden gives general guidance related to STRs to assist its financial institutions in implementing and complying with STR requirements. The FIU provides reporting parties with specific reporting forms but little other guidance or practical assistance is available concerning the manner of reporting or the procedures that should be followed when reporting. The FIU states that according to law the FIU does not have the power to give any detailed guidance. There is not any specific guidance to individual industries on for instance how to file the STRs, only general guidance from Finansinspektionen on the forms on the website. However, the assessors were told that the FIU can be contacted for guidance when reporting suspicious cases. The FIU has also given some training and education to reporting parties concerning the AML Act. In addition, according to preparatory work of the new AML Act (2004:1182) the FIU can give general guidance on reporting to parties which were included in the sphere of the Act in the beginning of the year 2005.<sup>32</sup>

383. Finansinspektionen also gives general guidance to financial institutions to help aid them in their obligation to file STRs, but this guidance is not specific to the type of financial institution. *Finansinspektionen's* AML/CFT regulation FFFS 2005:5 includes some guidance in recognising and reporting STRs. The guidance lists 10 different situations that justify closer scrutiny and investigation, including: transactions that are large or deviate from the customer's normal behaviour, large numbers of transactions which do not appear normal for the customer, transactions which cannot be explained on the basis of what is known regarding the customer's financial position, and where the customer requests unusual services or products. This guidance is limited; there is no other specific guidance to financial institutions or sector-specific guidance with the financial sector to assist entities in implementing and complying with STR requirements. The guidance is supplemented by information given on an ongoing basis in dialogue among the financial sector representatives, the FIU and other bodies.

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<sup>32</sup> Swedish authorities reported that special efforts have been made as regards the money exchange offices. All offices were invited to information meetings in Stockholm, Göteborg and Malmö in December and January. The information given at this meeting includes the new legislation, the role of the FIU, the duties of the money exchange offices and the STR process. This campaign will be followed up with training and information brochures. This work will be done in co-operation with the EBM (National Economic Crimes Bureau), which is responsible for preventing economic crime.

## Feedback

384. General feedback is given by the FIU in its Annual Report, which contains general statistics on the number of STRs filed, some basic information on current techniques, methods and trends, and a limited number of actual money laundering cases. For example, the FIU identified the basic observations that in Sweden, money laundering is facilitated through the use of cash, that there are a number of alternative money transfer agencies operating in Sweden that engage in unusual cross-border transactions, and that the number of non face-to-face transactions are increasing. However, the ability of Sweden to give meaningful general feedback is hindered by the fact, as reported in the FIU's Annual Report, that Sweden had no convictions for money laundering in 2004.

385. Regarding specific feedback on STRs, the FIU acknowledges receipt of each STR. The FIU also informs financial institutions if and when STRs resulted in a case being forwarded to law enforcement authorities, resulted in a preliminary investigation being opened, or if a sentence is pronounced. The FIU also gives some informal, oral feedback to its colleagues working in the private sector. The banking sector reported that it generally receives satisfactory feedback from the FIU.

## ***Recommendation 19***

386. Sweden has not adequately considered the feasibility and utility of implementing a system whereby financial institutions report all transactions in currency above a fixed threshold to a central authority with a computerised database. In October, 1996 the Minister of Justice appointed a Working Party on International Economic Crime to investigate international economic crime. Its instructions were to examine the situation, threat scenarios and development trends and to prepare proposals on the orientation of crime policy reform in this area. The members were selected from various ministries, public authorities and the business sector. The Working Party looked at several aspects of economic crime such as for example business fraud, criminal activities directed at banks and other financial institutions, crime involving the EU budget, organized crime, corruption, money laundering and the investment of the proceeds of criminal activity in legitimate businesses.

387. The Working Party presented its findings and recommendations in the report "International Economic Crime" (Internationella ekobrott, Ds 1997:51). It was published in the governmental series of reports (departementsserien). The chapter dealing with money laundering includes a presentation of transaction reporting systems in a few countries (USA, UK, the Netherlands and Sweden). The FinCEN system in the USA with reporting based on formal criteria such as a threshold was included. The report discusses experiences and the crucial components of a transaction reporting system. The Working Party suggested that the Swedish Authorities look at the approach taken by FinCEN. However, when the Swedish Money Laundering Act was subsequently amended in 1999 the Government did not include a system for cash-based transaction reporting.

388. Of interest, though, is that Sweden's FIU regularly receives STRs from some financial institutions like currency exchange offices and money remitters that, in practice, have very little if any difference from traditional large cash transaction reports. Both private industry and the FIU reported that these reports are submitted as a matter of course whenever the amount of money being exchanged or transmitted exceeds 130,000 SEK. The reports are not based on suspicion, but merely on the case that the transaction amount exceeds the threshold, and contain identifier information and the transaction amount. Private industry reported that they had an oral agreement with the FIU to submit these reports in this fashion, but the FIU disputes this claim and had addressed their concerns with the team regarding this practice in advance of our meeting with the money transmitters. Also, the team learned that the FIU is currently taking steps to implement an electronic system for the transmission of STRs from financial institutions to the FIU (which has become operational since the on-site visit).

## **3.7.2 Recommendations and Comments**

389. *Recommendation 13 and Special Recommendation IV:* Sweden should extend the scope of its reporting requirement to the remaining financial institutions in the FATF definition not currently covered

by the AML Act (i.e., other means of payment including services like American Express) and the CFT Act (investment companies). Sweden should also amend the CFT Act to ensure that the reporting obligation would not exclude transactions related to funds to be used by a terrorist organisation or an individual terrorist. While there is a positive trend in the number of STRs being filed by financial institutions, Sweden should continue to work with the financial sector to improve the total percentage of reporting entities and improve the overall quality of the reports filed. As the new AML Act was only passed into law in December 2004, it is likely that Sweden's implementation of Recommendation 13 and Special Recommendation IV will continue to improve with time if Finansinspektionen and the FIU continue outreach to the private sector and are able to provide better general and specific guidance.<sup>33</sup>

390. *Recommendation 19:* As it is already the case in practice that some financial institutions are submitting STRs that have no discernable difference from traditional large currency transaction reports, and the FIU is currently working to implement an electronic system for transmitting STRs, it would stand to reason that Sweden has the capability of easily considering the feasibility and utility of implementing a system whereby financial institutions report all transactions above a fixed threshold to the FIU with its centralised database. Sweden should give further consideration to this as they move towards implementing an electronic system for submitting STRs.

391. *Recommendation 25:* As Sweden continues to improve its AML/CFT regime, the FIU and Finansinspektionen will be in a better position to give more guidance to the private sector. Sweden should consider providing sector-specific feedback, which might make the STR system more effective. Finansinspektionen and the FIU should continue to identify red flag indicators and models of suspicious transactions that they can share with the private sector, along with examples of what constitutes helpful and informative suspicious transaction reports, to aide the private sector in complying with their obligation to file STRs.

### 3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
<b>R.13</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The obligation to report suspicious transactions related to terrorist financing does not extend to investment funds and the AML/CFT obligation does not cover certain credit card companies.</li> <li>• The scope of the terrorist financing offence (which does not specifically include funds to be used by a terrorist organisation or an individual terrorist for any purpose) could limit the scope of the reporting requirement for terrorist financing STRs.</li> <li>• The large majority of STRs have been filed by a small number of financial institutions; only approximately half of the banks reported suspicious transactions in 2004.</li> <li>• The assessors had several concerns regarding the lack of effective implementation of this Recommendation.</li> </ul>
<b>R.14</b>	<b>C</b>	Sweden is fully compliant with Recommendation 14.
<b>R.19</b>	<b>PC</b>	Sweden has not adequately considered the feasibility and utility of implementing a system whereby financial institutions report all transactions in currency above a fixed threshold to a centralised agency with a computerised database.
<b>R.25</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• The FIU and Finansinspektionen have not given adequate guidance to assist entities in implementing and complying with STR requirements, although</li> </ul>

<sup>33</sup> Swedish authorities reported that Finansinspektionen is planning to conduct an analysis in 2006 as to why the spread of STRs between different types of sectors, as well as amongst the same type of companies with a sector, is so vast. Depending on the outcome of the analysis, an action plan to improve the quantity and quality of STRs can be developed.

		<p>efforts area already underway to improve this.</p> <ul style="list-style-type: none"> <li>• General feedback given by the FIU and Finansinspektionen would be more helpful if it were industry-specific.</li> </ul>
<b>SR.IV</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The scope of offences in the CFT Act does not include funds to be used by individual terrorists or terrorist organisations; so transactions involving such funds would not be reportable under the CFT Act's STR provisions.</li> <li>• The obligation to report suspicious transactions related to terrorist financing does not extend to investment funds.</li> <li>• The assessors had several concerns regarding the lack of effective implementation of this Recommendation.</li> </ul>

### **Internal controls and other measures**

#### **3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)**

##### **3.8.1 Description and Analysis**

###### ***Recommendation 15***

###### Internal procedures

392. All financial institutions are obligated to establish internal procedures and policies to prevent money laundering (AML Act, Section 13) and terrorist financing (CFT Act, Section 11). These internal procedures include *inter alia* CDD record retention, the detection of unusual and suspicious transactions and the reporting obligation. According to Section 4 of Finansinspektionen's AML/CFT Regulations/Guidelines (FFFS 2005:5) a financial institution's board of directors or the managing director shall introduce internal rules with regard to:

- (i) the decision-making and reporting procedures for the handling of matters where there is reason to suspect money laundering or terrorist financing;
- (ii) tasks and functions of the compliance officer;
- (iii) procedures for customer identification;
- (iv) procedures for checking the identity when it can be assumed that a person is not acting on his/her own behalf;
- (v) procedures for scrutinising transactions;
- (vi) procedures for record keeping; and
- (vii) policies for staff training in AML/CFT matters.

393. Further indirectly enforceable guidance in this section explains that the board of directors or the managing director should establish common internal rules for the identification and analysis of money laundering or terrorist financing risks within all business areas. The obligation on financial institutions to establish internal controls is being implemented satisfactorily. However, it should be noted that this guidance cannot be enforced for registered financial institutions (money exchange and remittance companies and deposit companies), since they do not have corresponding "sound business practice" requirements in other legislation.

394. All financial institutions subject to Finansinspektionen's AML/CFT Regulations/Guidelines (FFFS: 2005:5) (which includes all the institutions in the FATF definition except for certain issuers of means of payment such as American Express) are obligated to designate an AML/CFT compliance officer which is referred to as Central Functional Manager (CFM) (FFFS: 2005:5, Section 5). The CFM has to be appointed by the board of directors or the managing director and shall take overall responsibility for AML/CFT-matters, specifically regarding the implementation of control systems, working routines, decision making and reporting procedures and training programs within the organisation. The CFM shall

be a leading manager directly under the managing director, but can delegate powers to another person whom he/she appoints. In financial groups, the CFM of the parent undertaking may have a group-wide responsibility: The CFM of the parent undertaking should be informed about STRs filed by a branch or subsidiary abroad as long as this would not mean a breach of laws and regulations of the host country (Section 7 of the AML/CFT Regulations). Representatives of the largest Swedish banks confirmed that reports of branches and subsidiaries abroad are regularly submitted to the Swedish headquarters.

395. The indirectly enforceable guidelines in section 7 further elaborate that the CFT should have timely access to relevant information. However, the CFM should be provided explicit access to the central money laundering register of the financial institution. According to the Money Laundering Registers Act (1999:163), all STRs reported to the FIU are recorded in this register until their deletion, which has to take place at latest one year after the report has been submitted to the FIU (section 6).

396. All financial institutions under the scope of the AML/CFT regulations should also have a general compliance function according to Chapter 5 of the Finansinspektionen's General Guidelines Regarding Governance and Control of Financial Undertakings (FFFS 2005:1). The Board of directors should ensure that a compliance function is in place to support and monitor that all operations are in accordance with governing regulations. The function should regularly ensure that the relevant staff receives information and training regarding new regulations. The board of directors or the managing director should issue internal guidelines with respect to the function's area of responsibility, scope and implementation of the function's work as well as routines for information regarding observations. The function should be answerable to the board of directors or the managing director. It may also be situated in a way that it is subordinate to another senior officer in possession of sound knowledge regarding the financial institution's risks and operations in general, who is directly answerable to the managing director.

397. The representatives of the private sector met during the onsite visit confirmed the active and important role of the compliance function with regard to internal AML/CFT procedures.

398. For investment companies a special rule applies (Finansinspektionen's Regulations Regarding Investment Companies (FFFS 2004:2): they must appoint a compliance officer who is responsible for ensuring that employees within the firm and its board of directors are acquainted with the rules governing the conduct of the operations as applicable from time to time (Chapter 4). The board of directors shall ensure that the compliance officer reports directly to the board of directors or to the company's management. In addition, the board of directors shall issue instructions concerning when, and the manner in which, information concerning the applicable rules shall be provided to the board of directors and the firm's employees. In contrast to other financial institutions the compliance function is mandatory for investment companies, however AML/CFT measures are only part of the more general tasks of the compliance officer.

#### Independent audit function

399. There is an indirectly enforceable requirement that financial institutions should have an independent audit function. In addition to the Central Function Management (CFM) and the compliance function, Chapter 6 of Finansinspektionen's General Guidelines Regarding Governance and Control of Financial Undertakings (FFFS 2005:1) recommends that a financial institution's board of directors should ensure that a function is in place which monitors and evaluates the internal control procedures (including the risk control and the compliance function). The board of directors should, in internal regulations, determine the function's responsibilities, work duties and reporting routines. The function should monitor that the scope and focus of the operations are in accordance with the board of directors' internal regulations and audit and evaluate the financial institution's organisation and routines. The function's work should also be documented. Otherwise external consultants can perform the audit, but the board of directors and managing director shall at all times be responsible for the outsourced activities.

400. According to the Guidelines, in undertakings with an internal audit function, the duties should be performed by such a function. The function should possess sufficient resources for its duties and its staff should have sound knowledge of the financial institution's risks and the regulations applicable to financial

institutions, and particular expertise in auditing and evaluating the development, operation and management of the financial institution's information systems. The function should be directly answerable to the board of directors. Organisationally, it should be entirely separated from the operations that are audited. The independence of the function thus requires that it should not participate in the operative business.

401. The role of the Independent Monitoring Function with regards to AML/CFT matters is regulated in Section 15 of the AML/CFT Regulations/Guidelines (FFFS 2005:5). If a financial institution's independent audit function finds circumstances, which give reason to suppose that a transaction constitutes money laundering or terrorism financing, the transaction must be reported to the AML/CFT compliance officer or another person in the corporate management.

402. Further guidance indicates that the independent audit function should prepare specific audit programmes in order to check compliance with all AML/CFT obligations. The results of such scrutiny should also be reported to the CFM. In financial institutions with an internal audit function, the aforementioned duties should be performed by such a function. Otherwise external consultants should perform the audit. The function should possess sufficient resources for its duties and its staff should have sound knowledge of the financial institution's risks and the regulations applicable to financial institutions, and particular expertise in auditing and evaluating the development, operation and management of the financial institution's information systems. The function should be directly answerable to the board of directors. Organisationally, it should be entirely separated from the operations that are audited. The independence of the function thus requires that it should not participate in the operative business.

#### Training

403. Financial institutions must have effective internal information and communication systems and have to offer an employee-training program regarding AML/CFT matters (Section 11 and 16 of the AML/CFT Regulations/Guidelines). The training shall give all employees dealing with customer matters a sound AML/CFT education. It must also be adapted – when possible – to the needs of individual employees. The employees must also on an ongoing basis be informed of changes and developments in the AML/CFT regulations and in their application. Representatives of the commercial banks confirmed that training procedures are established also for temporary hired people. In addition to the internal training offered in each bank the Working Group on Money Laundering of the Banker's Association developed training material including case studies for all its members. Also the securities sector developed internal training systems, however it was deemed desirable by representatives of this sector to get more support from the authorities regarding new trends and techniques. Financial advisors who give advise to consumers (e.g. in banks, securities companies) shall, according to Chapter 2 of Finansinspektionen's Regulations and General Guidelines regarding Financial Advise to Consumers (FFFS 2005:4), attain knowledge in AML/CFT regulations and pass an independently monitored test.

#### Screening procedures

404. There are no general formal obligations imposed on financial institutions regarding screening procedures to ensure high standards when hiring employees. In practice there are no programs for screening for employees other than the board of directors, the managing director and the deputy managing director, whom Finansinspektionen assesses according to guidelines contained in FFFS 1998:14 *Finansinspektionen's General Guidelines regarding ownership and management assessment*. Finansinspektionen is currently considering recommending all financial institutions to implement similar screening procedures regarding other senior management.

#### ***Recommendation 22***

405. With regard to foreign branches of Swedish institutions, Swedish law applies. Subsidiaries of Swedish institutions abroad are subject to the regulations of the host country. In the event that a Swedish credit institution wants to establish a branch within the EEA for conducting banking or financial business, the institution must notify Finansinspektionen in advance (Chapter 5, Section 1 of the Banking and

Financing Business Act (2004:297)). There is an assumption that AML/CFT legislation is harmonised in the EEA area and that it is consistent with the FATF standards. Therefore, the credit institution does not need a separate license for the branch, but can use the Swedish license already given. If a credit institution wishes to establish a branch in other countries than those of the EEA, Chapter 5 Section 5 of the Banking and Financing Business Act states that a license of Finansinspektionen is necessary. Such a license should only be granted where there is reason to assume that the planned operations will be conducted in accordance with the Swedish law.

406. As a principle, Finansinspektionen initiates a procedure in order to conclude a Memorandum of Understanding with the supervisory body of the host country. According to Chapter 15 Section 5 of the Banking and Financing Business Act, Finansinspektionen can take corrective measures against a Swedish credit institution if the competent authority of the host country notifies Finansinspektionen that the Swedish credit institution has breached any rule of the host country. However, there is no obligation to ensure that foreign subsidiaries or branches observe AML/CFT rules consistent with Swedish requirements and the FATF recommendations.

407. According to the indirectly enforceable guideline in Section 4 of the AML/CFT Regulations/Guidelines (FFFS 2005:5), the board of directors or the managing director of the parent company of a group should endeavour to establish common internal principles within the group. For foreign branches and subsidiaries, the internal regulations of the group should be seen as a complement to each host country's laws. Representatives of commercial banks met during the onsite visit explained that they all use group wide KYC policies. However, legal obstacles in other countries concerning the information sharing e.g. with regard to STRs, were mentioned.

408. There is no obligation to pay particular attention to branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations. However, in practice the need to apply for a license gives the supervisory authority the possibility to forbid the establishment of a branch. There is also no obligation to apply the higher standard in the event that the AML/CFT requirements of the home and host countries differ. Nevertheless, according to Section 4 of the AML/CFT Regulations/Guidelines (which are indirectly enforceable), Finansinspektionen should immediately be informed if the financial institution's internal regulation regarding AML/CFT cannot be applied because of deficiencies in the host country's laws and regulations. .

#### Additional elements

409. According to Section 4 of the AML/CFT Regulations it is recommended that the board of directors or the managing director of the parent company of a group work for the establishment of common internal regulations for customer due diligence. Furthermore, the independent audit function should establish a common system to check compliance with all AML/CFT obligations in a group of undertakings (Section 15 of the AML/CFT Regulations). These recommendations apply to all branches and subsidiaries, regardless of the country in which they are established.

### **3.8.2 Recommendations and Comments**

410. *Recommendation 15:* Overall, the Swedish provisions are largely consistent with Recommendation 15, and the financial institutions met with during the on-site visit seem to comply with the obligations. Nevertheless Sweden should expand the coverage of AML Act and Finansinspektionen regulations to all issuers of means of payment. Furthermore, it should be made a more direct obligation to allow the compliance officer timely access to all relevant information and to establish an independent audit function. An obligation should be introduced to require financial institutions to establish screening procedures to ensure high standards when hiring employees. Finally, where enforceable measures are created in guidance (access to information for the compliance officer and establishment of an independent audit function) for licensed financial institutions, corresponding obligations should be created for registered financial institutions (money exchange and remittance companies, and deposit companies).

411. *Recommendation 22:* Sweden should consider implementing a more direct obligation to require financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with the Swedish requirements and the FATF recommendations. It should add provisions to clarify that particular attention has to be paid to branches and subsidiaries in countries which do not or insufficiently apply the FATF recommendations and that the higher standards have to be applied in the event that the AML/CFT requirements of the home and host countries differ.

### 3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	LC	<ul style="list-style-type: none"> <li>• Certain details (access to information for the compliance officer and establishment of an independent audit function), which are laid in indirectly enforceable guidelines for licensed institutions, are not currently enforceable for registered financial institutions (money remittance and exchange companies, deposit companies)</li> <li>• There is no legal obligation on reporting financial institutions to establish screening procedures to ensure high standards when hiring employees.</li> </ul>
R.22	PC	<ul style="list-style-type: none"> <li>• There is no direct obligation for foreign branches and subsidiaries to observe AML/CFT measures consistent with Swedish requirements and the FATF recommendations to the extent that host country's laws and regulations permit; there is an indirectly enforceable obligation to "endeavour" to establish common group policies.</li> <li>• There is no requirement that particular attention be paid to branches and subsidiaries in countries which do not or insufficiently apply the FATF recommendations and that the higher standard be applied in the event that the AML/CFT requirements of the home and host countries differ.</li> <li>• It is only indirectly binding that Finansinspektionen be informed if the financial institution's internal regulation regarding AML/CFT can not be applied because of deficiencies in the host country's laws and regulations.</li> </ul>

## 3.9 Shell banks (R.18)

### 3.9.1 Description and Analysis

#### *Recommendation 18*

412. Licensing provisions effectively prohibit the establishment of shell banks in Sweden. Chapter 6, Section 6 of the Banking and Financing Business Act (2004:297) states that every credit institution (banks and credit market undertakings) shall have its head office in Sweden. Only Swedish undertakings are able to get a license (Chapter 3). There is also a residency requirement (Chapter 8 Section 8 of the Companies Act) stating that at least one-half of the members of the board of directors must be resident within the EEA (similar for the managing director in Chapter 8 Section 23 of the Companies Act). Furthermore shareholders' meetings must take place at the registered office (which has to be in Sweden according to Chapter 2 Section 4 of the Companies Act) (Chapter 9 Section 10 of the Companies Act).

413. Section 9 of the AML/CFT Regulations/Guidelines (FFFS 2005:5) indicates that if the customer can be assumed to be a shell bank, customer relationship should not be established. This includes correspondent relationships. However, it is not a binding provision and not directly enforceable by Finansinspektionen. There is no specific obligation on financial institutions to satisfy themselves that a respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.

### 3.9.2 Recommendations and Comments

414. Sweden should implement provisions with regard to a prohibition on financial institutions to enter or continue correspondent banking relationship with shell banks. In addition, there should be an obligation on financial institutions to satisfy themselves that a respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.

### 3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
<b>R.18</b>	<b>PC</b>	There is no legally binding prohibition on financial institutions to enter or continue correspondent banking relationship with shell banks nor is there any obligation on financial institutions to satisfy themselves that a respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.

### Regulation, supervision, guidance, monitoring and sanctions

### 3.10 Supervision and oversight—competent authorities and SROs. Roles, functions, duties and powers (including sanctions) (R. 23, 30, 29, 17, 32, & 25)

#### Authorities/SROs roles and duties & Structure and Resources (R23, 30)

#### *Recommendation 23 (Criterion 23.1)*

415. Finansinspektionen is responsible for licensing and supervising most financial institutions such as banks and other credit institutions, insurance companies, insurance intermediaries, securities companies, collective investment companies and e-money businesses. Finansinspektionen exercises prudential supervision regarding all these financial institutions and has stated that it looks to Core Principles (Basel, IOSCO, IAIS) in its supervision of banks, insurance companies, and the securities sector also with regard to AML/CFT purposes. Certain “other financial institutions” (including currency exchange businesses, money transfer businesses and other financial services such as financial leasing companies) and deposit companies have to register at Finansinspektionen. Registered financial institutions are not subject to prudential supervision, but to a limited, off-site supervision. Finansinspektionen is the designated competent authority to control that all these financial institutions comply with the legislation and regulations in the AML/CFT area.

Financial institution	Registration/License	Legal basis for supervision of Finansinspektionen
Banks	Licence	Banking and Financing Business Act, Chapter 13
Credit market undertaking	Licence	Banking and Financing Business Act, Chapter 13
Life insurance companies	Licence	Insurance Business Act, Chapter 19
Investment companies	Licence	Investment Funds Act, Chapter 10
Securities companies	License	Securities Operations Act, Chapter 6, Section 1 and Chapter 6, Section 6b
Insurance intermediaries	License	Insurance Brokers Act, Section 7; Insurance Intermediation Act, Chapter 7, Section 3
E-Money institutions	License	Issuance of Electronic Money Act, Chapter 6
Foreign branches	Branches from financial	depending on the financial

	institutions from another EEA country: Notification Branches from financial institutions from outside EEA: License	institution (e.g. Banking and Financing Business Act, Chapter 13)
Swedish branches abroad	Branches in another EEA country: Notification Branches outside EEA: License	Consolidated authority of Finansinspektionen (mainly host country supervision) as regards AML/CFT. Otherwise the home country is the main supervisor.
Deposit companies	Registered	Deposit Taking Operations Act, Section 18
Money transfer service	Registered	Obligation to Notify Certain Financial Operations Act, Section 10
Bureaux de Changes	Registered	Obligation to Notify Certain Financial Operations Act, Section 10
Other financial institutions (e.g. financial leasing)	Registered	Obligation to Notify Certain Financial Operations Act, Section 10

416. Some other financial institutions (for example clearing companies, the stock exchange and non-life insurance companies) are not covered by the AML/CFT Act, but are supervised by Finansinspektionen. There are also some concerns with regard to some institutions which are within the scope of the FATF definition of “financial institution” but are not fully and comprehensively regulated and supervised by Finansinspektionen, e.g. economic associations which accept repayable funds from its members. There are some cases conceivable of issuing and managing means of payment (such as certain credit cards) without the need to get a license or to be registered. Economic associations are as of 1 July 2004 required to apply for a registration as a deposit company. However in practice it seems that not many of these economic associations are registered as deposit companies what would bring them in the scope of the AML Act and under supervision of Finansinspektionen.

417. Finansinspektionen also has the competence to issue secondary regulations and general guidelines in the area it is responsible for. The AML/CFT Regulations issued by Finansinspektionen provide rules for the company’s internal procedures to control that the services of the company are not used for money laundering and terrorist financing.

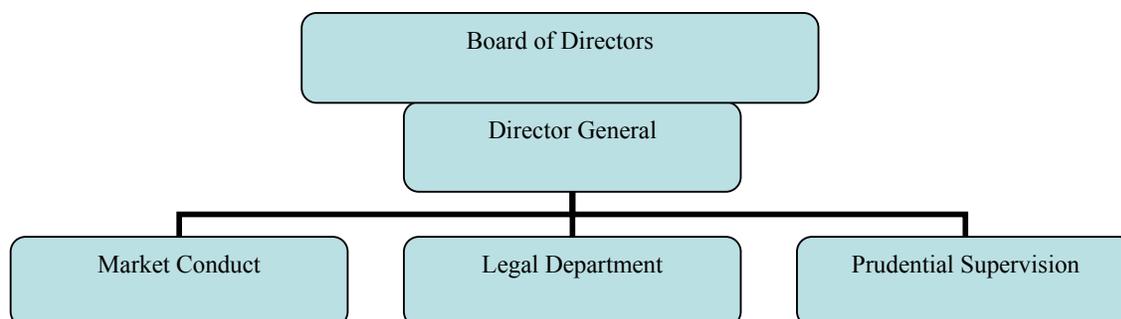
418. There are some concerns about how effectively the financial sector has been supervised. In particular, the assessment team noted that Finansinspektionen focused during the last years on inspections of financial institutions that were important for general financial stability reasons and did not sufficiently cover other areas that had high AML/CFT risks such as money transfer service, money or currency changing service and deposit companies. In addition there is only a limited supervision available (e.g. no onsite visits are possible).<sup>34</sup>

***Recommendation 30 (Structure and resources of the supervisory authority)***

419. Finansinspektionen is an independent authority responsible for the supervision of all Swedish financial institutions (approximately 3,500). The nine members of the Board of Directors are appointed

<sup>34</sup> Since the on-site visit by FATF, Finansinspektionen has had several information meetings with representatives of the private sector (like for example investment companies) in order to educate the private sector and to help interpret regulations/guidelines and discuss the companies’ compliance level with regulations/guidelines. Finansinspektionen has also participated along with the Economic Crimes Bureau in 2 training seminars for the money or currency changing service companies. Additional training seminars for the securities companies and the investment companies are planned for 2006.

by the Government and have to report to the Government. Also the Director General is appointed by the Government; the first appointment lasts for six years, following appointments for three years. The Director General has to report to the Board of Directors. Finansinspektionen has a staff complement of around 200 people.



420. All main units within Finansinspektionen (except supporting units as Communications, IT, Administration) deal with questions involving AML/CFT issues within its area of competence. The Legal Department is responsible for legal matters with regard to AML/CFT issues and approximately 0.5 man years are dedicated to this activity. The Legal Department is also in charge of the licensing and registration procedures, as well as sanctions. The primary responsibility for AML/CFT issues lies with the Market Conduct Department and is currently performed by the full-time equivalent of approximately 2 employees. For AML/CFT on-site inspections support has been provided by the Prudential Supervision Department and the Market Conduct Department.<sup>35</sup>

421. When hiring new employees the focus is on confidentiality: Everybody must declare not to disclose secret information to others. However screening procedures are only applied in case of the senior management. Most of the staff consists of legal counsellors and economists. The remaining employees are mainly administrative staff. Finansinspektionen recruits high quality staff at all levels and asks for high professional standards. Finansinspektionen staff has been provided with internal training for combating money laundering and financing of terrorism. Staff are also taking part in external education as a teacher and are from time to time assigned by the EU, the UN, the Council of Europe and others as speakers at conferences/workshops in the AML/CFT area.

422. The staffing and organisation within Finansinspektionen regarding the area of AML/CFT is currently under review. Some representatives of the Swedish banking sector felt that Finansinspektionen currently has limited resources and thus has no capacity to conduct sufficient AML/CFT focused inspections can be shared. This appears to be the case.

<sup>35</sup> Since the on-site visit, Finansinspektionen reported that it has taken measures to improve the supervision by in the AML/CFT area. In November 2005, Finansinspektionen established a group of three people at the Market Conduct Department to be responsible for Finansinspektionen's AML/CFT work. This group will work solely with AML/CFT issues and supervision. Several people at the Legal Department will continue to be involved in the policy work and the work during licensing, registration and sanction procedures. Approximately 0.5—1 man-years will be devoted to AML/CFT work at the Legal Department. In addition, every supervision unit at Finansinspektionen will from now on have an express responsibility to include AML/CFT issues in their supervision activities. Swedish authorities also point out that the decisions on this restructuring were taken in September 2005.

## *Authorities' Powers and Sanctions – R. 29 & 17*

### *Recommendation 29*

423. Finansinspektionen is the authority in Sweden responsible for ensuring that financial institutions adequately comply with the requirements to combat money laundering and terrorist financing. All financial institutions as listed in the chart above (R.23) are subject to the AML Act; however it should be noted that certain issuers of means of payment (i.e., credit card companies such as American Express that do not have more than a 45-day credit period) are not under supervision and the AML/CFT Regulations of Finansinspektionen are not applicable to them.

424. For licensed financial institutions (banks and credit market undertakings, investment funds companies, life insurance companies, securities companies, electronic money institutions, insurance intermediaries), Finansinspektionen may do both off and on site inspections in order to make sure that financial institutions subject to the Core Principles fulfil their obligations on anti-money laundering and terrorist financing.

425. Specific powers to conduct on-site inspections of banks and credit market undertakings are found in Chapter 13, section 4 of the Banks and Financing Business Act: “the Financial Supervisory Authority may, where it deems necessary, carry out an investigation at the premises of a credit institutions and any foreign credit institutions has have established branches.” On-site inspections include the typical tools of supervision, such as the review of policies procedures, books and records, and extend also to sample testing of customer files.

426. On-site inspections can be done either to inspect these areas only (thematic examinations) or can be combined with inspections of other areas of the institutions' businesses (AML/CFT as part of the operational risk within the prudential supervision). There are no restrictions in that matter.

427. Finansinspektionen also has the power to compel production and to obtain access to all records, documents or information relevant to monitoring compliance from all financial institutions. This includes also samples of STRs filed or samples of written reports about suspicious cases which have not been reported to the FIU. Chapter 13, Section 4 of the Bank and Financing Business Act states that the bank or credit institution “shall provide Finansinspektionen with any and all information regarding their operations and related circumstances as the supervisory authority requests.” Thus, Finansinspektionen does not need a court order before it can take action.

428. Similar provisions allowing Finansinspektionen to access information and conduct on-site inspections for the other relevant sectors are found in the legislation governing those sectors—i.e., the Investment Companies Act (Chapter 10, section 14), the Insurance Brokers Act (section 7), the Insurance Business Act (Chapter 19, section 9), the Securities Companies Act (Chapter 6, section 1 and Chapter 6, section 6b), and the Issuance of Electronic Money Act, Chapter 6, section 1).

429. With regards to registered financial institutions (i.e., money exchange and remittance dealers) Finansinspektionen does not have the authority to conduct on-site visits. However, there is the obligation to provide Finansinspektionen with all information about the operations that is needed to be able to verify that the AML Act (in case of deposit companies: Section 10 of the Deposit Taking Operations Act) or the AML and CFT Act are complied with (in case of MVTs providers, exchange businesses and other financial institutions: Section 7 of the Obligation to Notify Certain Financial Operation Act (1996:1006)).

430. There are adequate powers of enforcement and sanction against most financial institutions for failure to comply with or properly implement AML/CFT requirements. With regard to licensed institutions the sanction regime is limited to directors; and a liability of the senior management has not been introduced. As explained below, these powers of enforcement and sanction are broader for licensed financial institutions than for registered financial institutions. Certain financial institutions meeting the FATF definition but not under the supervision of Finansinspektionen (i.e., certain issues of travellers checks and credit cards), are not subject to enforcement powers or sanctions.

431. In general, the supervision with regard to the compliance with AML/CFT obligations should be founded on a risk-based approach. At the moment the focus is defined according to the risks related to financial market stability and thus onsite inspections and intense supervision have been concentrated on the largest banks and financial groups.

### ***Recommendation 17 (Sanctions)***

#### Criminal Sanctions

432. There are criminal sanctions in place in the event that a person subject to the AML or CFT Act fails to fulfil the requirement to examine suspicious transactions and to submit a STR to the FIU and in case that the prohibition of disclosure is breached (Section 14 of the AML Act, Section 12 of the CFT Act). However there are concerns since these sanctions have not been applied. Criminal sanctions are not available for failure to comply with other parts of the AML or CFT Act.

#### Administrative Sanctions

433. The range of administrative sanctions available for licensed financial institutions (banks, credit market undertakings, investment companies, insurance companies and intermediaries, and securities companies) is quite broad. The basic legislation of each sector gives Finansinspektionen the authority to impose sanctions if an Act applicable for the business (e.g. Banking and Financing Act), other applicable legislation (AML Act, CFT Act), the articles of associations or internal instructions (e.g. the AML Instructions) have been violated and include: issuance of an order to take measures within a certain time; injunction against executing a decision; a notification. These measures may generally be undertaken in conjunction with a fine. In the case of securities companies and investment companies, the possibilities of using a notification or a fine are not available.

434. Finansinspektionen has no possibility to impose sanctions addressed to the directors and senior management of a financial institution but only to the institution itself. However, Finansinspektionen may notify an institution if a board member or managing director does not meet the fit and proper criteria as set forth. If the said institution has not replaced that person within a period of 3 months, Finansinspektionen may revoke the license or impose a warning against the institutions. Finansinspektionen may also order that a board member or a managing director of a credit institution no longer can serve in such a position. This power does not apply to other senior management, and there are no other administrative sanctions (such as a fine) or criminal sanctions available.

435. Finansinspektionen has been designated as the authority to apply sanctions towards financial institutions subject to the AML/CFT Act; it should be noted that investment companies do not fall under the scope of the CFT Act, and therefore sanctions are not available if the company fails to comply with CFT obligations.

436. It should be mentioned that some relevant parts of the AML/CFT Regulations/Guidelines (FFFS 2005:5) are only indirectly binding. The General Guidelines Regarding Governance and Control of Financial Undertakings (FFFS 2005:1) introduce the general principle of “comply or explain”. If the subject undertakings do not follow the recommendations, they should be able to explain the reason why not. In these cases Finansinspektionen must make a qualitative judgement if the fact that an institution to not follow a recommendation could for example be seen as a breach of the obligation to conduct business in a sound manner as it is stated for example in the Banking and Financing Business Act (2004:297, section 4). Sweden indicates that it can and has sanctioned financial institutions on this basis, for example in case of a bank which has violated some recommendations. As a consequence the securities business segment of the bank was closed down because it was deemed by Finansinspektionen that the business was not conducted in the sound manner to be expected of professional bankers. Finally, obligations in guidelines that exist for licensed financial institutions may not be applied for registered financial institutions (money exchange and remittance companies and deposit companies), since these institutions do not have corresponding requirements for “sound business practice” in other legislation.

437. The issuance of a sanction may be initiated by Prudential Supervision Department, the Market Conduct Department or through an external complaint. After the Legal Department has drafted a decision, it is up to the Board to decide upon. There is the possibility to appeal at the County Administrative Board, the Administrative Court of Appeal and finally the Supreme Administrative Court, depending on the sanction chosen by Finansinspektionen. At the time of the evaluation no sanctions due to a breach of AML/CFT obligations have been imposed.

#### Banks and credit market undertakings

438. As regards credit institutions falling under the scope of the Banking and Financing Business Act (banks and credit market companies), there are a wide range of administrative sanctions available. The sanctions available are found in Chapter 15. Sanctions may be applied where an institution has violated obligations pursuant to the Act or “other legislation governing the operations of the institution” (Section 1).

439. Where the violation is serious, the credit institution’s license may be revoked or, where sufficient, a warning issued. Finansinspektionen may refrain from intervening where a violation is of minor significance or excusable, where the institution effects rectification, or where any other authority has taken measures against the institution and such measures are deemed sufficient.

440. If a person serving in a credit institution’s board of directors or its managing directors fails to fulfil the requirements set, Finansinspektionen may, instead of revoking the license, order that the person in question may no longer server in such capacity. Finansinspektionen may thereupon appoint a replacement. The appointment of the replacement shall apply until such time as the institution has appointed a new board member or managing director (Chapter 15 Section 2). Where a credit institution has been notified of a decision regarding a notification in its file or a warning, Finansinspektionen may order the institution to pay a fine. The fine shall be determined as not less than 5000 Swedish crowns and not more than 50 million Swedish crowns. The possibility to give a notification and to combine a notification or a warning with a fine was introduced when the Banking and Financing Business Act came into effect on 1 July 2004.

441. Matters concerning interventions against a bank shall be submitted to the Government where a matter of principle or of particular importance is involved (Chapter 15, Section 6). Corresponding rules for insurance companies are found in Chapter 19 Section 2 of the Insurance Business Act. This possibility has been used very rarely so far.

#### Investment companies

442. In the event a Swedish management company has adopted a decision in violation of the Investment Companies Act (2004:46), other legislation governing its operations, regulations issued pursuant to such legislation (It should be noted that the AML/CFT Regulations are not applicable), the fund rules or the articles of association, Finansinspektionen may prohibit implementation of such decision. Where the decision has already been implemented, Finansinspektionen may order the company to effect rectification where such is possible (Chapter 10, section 19). Finansinspektionen may revoke authorization pursuant to the Investments Companies Act if the Swedish management company has obtained the authorization by providing false information or in some other undue manner or if it no longer fulfils the conditions for authorization or finally, as a consequence of a violation of a provision (Chapter 10, section 20). In some cases a warning may be issued, instead of revoking authorization, where this is deemed sufficient.

443. It should be noted that for investment companies, the means of notification and fine are not available. Finansinspektionen has no possibility to impose sanctions addressed to the directors and senior management of an investment company but only to the institution itself.

444. In the event a management company or a foreign investment-undertaking acts in violation of the Investment Companies Act or regulations issued pursuant to the Act or otherwise proves unsuitable to conduct such operations, Finansinspektionen may demand the company to undertake rectification (chapter 10, sections 24 and 26, and 27). Should the foreign management company fail to comply with the demand,

Finansinspektionen shall notify the competent authorities in the company's home state. Upon failure to effect rectification, Finansinspektionen may prohibit the company or the undertaking from commencing new transactions in Sweden. Where a party conducts such operations as are covered by the Investments Companies Act without authorization or notification thereof, Finansinspektionen shall demand such party to cease operations. Finansinspektionen may demand a conditional fine in conjunction with the issuance of demand or injunction pursuant to the Act.

#### Insurance Brokers

445. According to Section 15 of the Insurance Brokers Act, Finansinspektionen can revoke a registration as an insurance broker if the conditions for registration no longer are fulfilled; relevant information is not given or if prescribed fees are not paid. A warning can be issued instead if Finansinspektionen finds it sufficient. If someone carries out insurance broker activities without the proper registrations, Finansinspektionen can, according to Section 16 of the Act, impose a junction under penalty of a fine to cease the activities.

#### Life Insurance Companies

446. Sanctions concerning life insurance companies are mainly found in Chapter 19 Section 11 of the Insurance Business Act. The Swedish Financial Supervisory Authority shall order the company or the board to effect a rectification if the Supervisory Authority considers that "a deviation has been made from this Act *or any other enactment governing the business operations of the insurance company* or from the articles of association." Finansinspektionen can issue decisions of complaint concerning activities of the insurance companies. The complaint can be combined with a fine. Finansinspektionen shall impose on the company or the board to take measures within a certain time to correct discrepancies. The authorization to conduct insurance activities can be forfeited if the company no longer fulfils the conditions for the authorization, if rectification has not been made according to an acknowledged plan or if the company in another way seriously neglects regulations for the activities. Finansinspektionen can issue a warning instead of revoking the authorization. The warning can also be combined with a fine (section 11d). The Swedish Financial Supervisory Authority may decide that a member of the board or a managing director should no longer be such and if necessary, appoint a substitute (section 11c).

447. Activities in Sweden by foreign life insurance companies are regulated by the Act on Foreign Insurers' Activities in Sweden (1998:293). Sanctions concerning insurers within the European Economic Area are found in Chapter 3 Section 6 of this act. Finansinspektionen can impose on the insurer to make rectification if the act or regulations according to the act are violated. If rectification is not made, Finansinspektionen can forbid the insurer to continue its marketing and to conclude new insurance-agreements that are to be fulfilled in Sweden. When it concerns third-country insurers, the possibilities for sanctions are similar to the ones concerning Swedish insurance companies.

#### Securities companies and e-money institutions

448. According to Chapter 6 Section 7 of the Securities Operations Act, Finansinspektionen may intervene where a Swedish securities institution has taken a decision which contravenes the Securities Operations Act *or other legislation which governs its operations*, or contravenes regulations issued pursuant to such legislation or its articles of associations. In such a situation Finansinspektionen may enjoin the implementation of such a decision. If the decision has been implemented, Finansinspektionen may order the company to effect rectification, where possible. Finansinspektionen may order a Swedish securities institution to cease operations which entail trading in financial instruments on a market where, with regard to the regulations concerning, or the supervision of, the market, it appears to be manifestly inappropriate that the institution conduct trading there. According to Chapter 6 Section 9 of the Securities Operations Act, Finansinspektionen shall revoke the license of a securities company if the institution has demonstrated that it is unsuitable to carry out such operations that are set forth in the license. In this case, Finansinspektionen may issue a warning instead of revocation of the license, if sufficient.

449. The license shall also be revoked if a person who is a member of the board of directors of the company, or is its managing director, or the acting managing director does not possess sufficient knowledge and experience in order to participate in the management of a securities company or is otherwise not suitable for such a position. Finansinspektionen can only decide to revoke the license if Finansinspektionen has decided to oppose a person and where, after the time determined by Finansinspektionen which is not in excess of three months, the person is still a member of the board, managing director or acting managing director.

450. For securities companies, the means of notification and fine are not available. Nor are any sanctions available for the directors and senior management of the securities company but rather only to the institution itself. Swedish authorities note that the new EU Markets in Financial Instruments Directive (MiFID), which was adopted on 30 April 2004) will, when implemented, give Finansinspektionen the ability to use additional administrative sanctions for securities companies. The MiFID was intended to be formally implemented by 30 April 2006, but due to delays within the European legislative process, it is now expected to enter into full force in 2007.

451. The sanctions available for electronic money institutions correspond completely to the sanctions available for securities companies and can be found in Chapter 6 of the Issuance of Electronic Money Act.

#### Registered institutions: deposit companies, money exchange and money remittance

452. The range of sanctions towards registered institutions is more limited compared to those applicable to licensed institutions and generally includes: rectification orders, revocation of license, and an order to divest shares.

453. Generally, a sanction can be issued towards registered companies if an Act applicable for the business or other applicable legislation (AML Act, CFT Act, legally binding Regulations) has been violated. With regard to general guidelines (since parts of the AML/CFT Regulations have to be seen as such) there is no possibility to impose sanctions, since in the different laws there is no general obligation to conduct business in a sound manner. It should also be noted that with regard to sanctions the different laws contain a reference to the AML Act, but not to the CFT Act. In the case of deposit companies, the CFT Act and the AML/CFT Regulations are generally not applicable.

454. Sections 15-19 of the Deposit Taking Operations Act (2004:299) detail Finansinspektionen's sanction authority with regard to deposit companies. Finansinspektionen may order a deposit company to effect rectification where it fails to comply with the AML Act. Finansinspektionen may also order it to effect rectification if any of the board members or managing director of the company or the qualified owner of the company have failed to perform their obligations in commercial operations or other financial affairs or have been convicted of a serious criminal offence. If a company does not make correction, Finansinspektionen may deregister the company from Finansinspektionen's register of deposit companies. Fines may also apply.

455. Finansinspektionen may also order a qualified owner to divest such a portion of its shares or the ownership rights that the holding thereafter no longer constitutes a qualifying holding. There are no other sanctions available directly for other directors or senior management. However, Finansinspektionen may also notify an institution that a board member or managing director does not meet the fit and proper criteria set forth. In the case the institution has not replaced that person within three months, Finansinspektionen may impose a warning or de-register the institution.

456. Section 10 of the Obligation to Notify Certain Financial Operations Act (1996:1006) contains the relevant sanctions available to companies registered under this act—i.e., money exchange and money remittance businesses, and certain other financial business (including financial leasing).

457. If the company is run by a natural person and that person has failed to perform his/her obligations in commercial operations or other financial affairs or has been convicted of a serious criminal offence, Finansinspektionen may order that person to cease the business. If the company is run by a legal person,

Finansinspektionen may order the company to effect rectification or if necessary to cease the business. Finansinspektionen may also order a qualified owner to divest such a portion of its shares or the ownership rights that the holding thereafter no longer constitutes a qualifying holding.

458. Finansinspektionen may order a company to effect rectification if the company violates a provision in the AML Act (1993: 768) or its regulations. If the company does not make a correction, Finansinspektionen may decide to order the company to cease the business. There are no sanctions that could apply to directors or senior managers.

### **Market Entry (R. 23)**

#### ***Recommendation 23 (Criteria 23.3, 23.5, 23.7)***

459. Finansinspektionen is responsible for licensing and prudential supervision of the main bulk of financial institutions such as banks and other credit institutions, insurance companies, securities companies, collective investment companies and e-money businesses. During the licensing process Finansinspektionen examines that the institution has satisfactory internal instructions as regards anti-money laundering and anti-terrorist financing (e.g. regarding identification procedures, training, record keeping and reporting). In the case of other financial institutions, a registration at Finansinspektionen fulfils the legal requirements. Since an intense dialogue between Finansinspektionen and the applicant precedes every application for a license or a registration, Finansinspektionen has had to refuse a license only in a few cases; in others cases the applicants withdrew their applications.

#### **Banks and credit market undertakings**

460. *Licensing:* According to the Banking and Financing Business Act, banking business is defined as payment services via general payment systems and the receipt of funds which, following notice of termination, are available to the creditor within not more than 30 days. A license to conduct banking business may be granted to Swedish limited companies, savings banks and members' banks. Financing business is defined as the acceptance of repayable funds from the public, directly or indirectly via a closely linked undertaking or the granting of loans, providing of guarantees for loans or, for financing purposes, the acquiring of claims or granting of rights of use in personal property (leasing). A license to conduct financing business may be granted to Swedish limited companies and economic associations. A license should be granted where:

- a. the articles of association, by-laws or regulations accord with the legal provisions (=provisions of the Banking and Financing Business Act and other statutes that govern the undertaking's operations) and otherwise contain the specific provisions required taking into consideration the scope and nature of the planned operation;
- b. where there exists reason to assume that the planned business will be conducted in accordance with the legal provisions;
- c. where there is reason to assume that any party which holds or may be expected to hold a qualifying holding in the undertaking will not impede the conduct of business in accordance with the legal provisions and is otherwise suitable to exercise a significant influence over the management of a credit institution and
- d. where any person who is to serve on the undertaking's board of directors or serve as managing director, or as a substitute for any of the aforesaid, possesses sufficient insight and experience to participate in the management of a credit institution and is otherwise suitable for such duties.

461. According to Chapter 2, Section 2 of the *Finansinspektionen's General Guidelines regarding Applications for a License to Conduct Banking or Financing Business or to Issue Electronic Money* (FFFS 2004:9), an application for a license to conduct banking or financing business should be accompanied by a business plan. It should contain, inter alia, information regarding owners of qualifying holdings of shares or other participating interests in the institution. The ownership structure should be illustrated through a group or ownership diagram. The business plan should also contain a description of the measures taken or which are intended to be taken in order to prevent money laundering and to counteract transactions which

relate to terrorist financing. In addition it should describe the manner in which the independent internal review function is to be structured and how it is going to work. In addition to the register at Finansinspektionen, the Swedish Companies Registration Office keeps a bank register for bank joint stock companies, savings banks, member banks and foreign banks with branches in Sweden.

462. *Fit and proper test for owners:* Finansinspektionen evaluates any party which holds or may be expected to hold a qualifying holding in a bank or credit market company. A qualified holding is a direct or indirect ownership in an institution where the holding represents 10 % or more of the equity capital or of the voting capital or where the holding otherwise renders it possible to exercise a significant influence over the management of the undertaking. According to Chapter 3, Section 2 of the Banking and Financing Business Act a license shall be granted where there is reason to assume that any such party will not impede the conduct of the business in accordance with the Banking and Financing Business Act and other statutes that govern the undertaking's operations and is otherwise suitable to exercise a significant influence over the management of a credit institution. Natural or legal persons who intend to acquire, directly or indirectly a qualified holding in a Swedish credit institution must inform Finansinspektionen in advance of that intention and of the percentage of that interest under menace of sanctions.

463. *Fit and proper test for management:* Finansinspektionen evaluates the board of directors and the managing director, both when they are proposed in an application for banking license and during on-going business. A license shall be granted where the persons who will constitute the company's boards of directors or serve as the managing director or the acting managing director possess sufficient insight and experience in order to participate in the management of a bank and are otherwise suitable for such a task. The General Guidelines regarding Ownership and Management Assessment (FFFS 1998:14) issued by Finansinspektionen give more detailed information on the fit and proper test. A license is not granted if a member of the board of directors or the (acting) managing director to a significant extent have failed to perform their obligations in commercial operations or in other financial affairs or have been convicted of a serious criminal offence. Correspondent requirements are applicable to all other licensed financial institutions.

464. However, the whole senior management is not subject to a fit and proper test. In order to try to enhance the possibilities for Finansinspektionen to prevent criminals from holding management functions, there is a study going on at Finansinspektionen in order to see if there is a possibility to have senior management made subject to a fit and proper test.

#### Branches of foreign credit institutions in Sweden

465. A credit institution from another EEA country does not need a license from Finansinspektionen before it can establish a branch in Sweden. According to Chapter 4 Section 1 of the Banking and Financing Business Act, such a credit institution may conduct financing business in a branch in Sweden using its home country license two months after Finansinspektionen has been notified by the home supervisory authority of the credit institution.

466. A credit institution domiciled outside the EEA needs a license from Finansinspektionen before it can conduct business from a branch in Sweden. According to Chapter 4 Section 4 of the Banking and Financing Business Act, a license shall be granted if certain prerequisites are fulfilled. For example, the credit institution must be subject to satisfactory supervision by a competent authority in the home state and the authority has consented to the institution establishing itself in Sweden. Also, there should be reasons to assume that the planned operations will be conducted in a manner that is compatible with Banking and Financing Business Act and other statutes that govern the institution's undertaking.

#### Electronic money institutions

467. According to the "Issuance of Electronic Money Act," electronic money is defined as a monetary value as represented by a claim on the issuer and which, without being placed in an individualised account is stored on an electronic medium and accepted as means of payment by undertakings other than the issuer. A license may be granted to Swedish joint-stock company or a Swedish cooperative society. In general,

the same rules apply as for banks and credit market undertakings. With regard to the management and the ownership the rules for credit institutions are also applicable: Natural or legal persons who intend to acquire, directly or indirectly a qualified holding in a Swedish e-money institution must inform Finansinspektionen in advance of that intention and of the percentage of that interest under menace of sanctions.

468. No person has applied for a license yet, although an e-money institution makes use of the waiver according to Section 6 of the "Issuance of Electronic Money Act". The Swedish Financial Supervisory Authority may exempt an institution under certain conditions from the provisions of the Act (including the licensing requirements and the fit and proper test) if: the monetary value to be stored on each particular medium issued does not exceed 150 Euro, and the planned operation is only of such scope that the outstanding liabilities referable to the electronic money issued do not normally exceed five million Euro and never exceed six million Euro, or the electronic money that will be issued is approved as a means of payment only by a limited number of undertakings (e.g. only used as a means of payment between the issuer and a subsidiary). A joint-stock company or an economic association that has been granted such an exemption shall submit annually to the Swedish Financial Supervisory Authority a report on the operations and accounts for outstanding liabilities referable to electronic money that has been issued. Further supervisory powers are not available.

### Securities Companies

469. In order to conduct business, securities companies require prior authorisation from Finansinspektionen according to Chapter 1 Section 3 of the Securities Operations Act. A license may be issued to credit institutions as well as Swedish limited liability companies and foreign undertakings which are not credit institutions. A license should be granted where:

- a. the articles of association do not conflict with the legal provisions (=provisions of the Securities Operations Act and other statutes that govern the undertaking's operations);
- b. where there exists reason to assume that the planned business will fulfil the requirements of a sound securities operation;
- c. where there is reason to assume that any party which holds or may be expected to hold a qualifying holding in the undertaking will not act against the sound development of the operations in the company and is otherwise suitable to exercise a significant influence over the management of a credit institution, (iv) where any person who is to serve on the board of directors or serve as managing director or the acting managing director possesses sufficient knowledge and experience to participate in the management and is otherwise suitable for such duties; and
- d. the company fulfils other conditions in the Securities Operations Act (e.g. capital requirements).

470. As it is the case for credit institutions, Finansinspektionen has to be informed if a natural or legal person intends to acquire, directly or indirectly a qualified holding in a Swedish securities company.

471. Besides the requirements stated by law, the Securities Dealers Association, in which most of the securities companies are members, adopted a self-regulation in 2001 which made a test mandatory for everyone practising in this area. This test also concentrates on AML/CFT questions.

### Investment Companies

472. Swedish limited liability companies may also be granted a license to conduct fund operations by Finansinspektionen. Under certain conditions this is also possible for foreign undertakings in Sweden. In general the requirements to get a license are similar to those applicable to banks and securities companies: According to Chapter 2 Section 1 of the Investment Funds Act, the company must maintain its head office in Sweden; there must be cause to assume that the planned operations will be conducted in accordance with the legal provisions. Furthermore, it must be assumed that any person holding a qualifying holding as well as persons who shall serve as the company's board of directors or act as managing director or their alternates fulfil the necessary requirements (fit and proper test; in case of the management sufficient

insight and experience). Finansinspektionen has to be informed if a natural or legal person intends to acquire, directly or indirectly a qualified holding in a Swedish investment company. Due to a change in the EU-legislation all Swedish investment funds companies have to apply for a new license before 2007.

#### Life Insurance Companies

473. Insurance business may only be conducted by insurance joint-stock companies and mutual insurance companies that have been granted a license according to the Insurance Business Act. As it is the case for other licensed institutions, it is necessary that the planned operations satisfy the legal requirements and that the head office is located in Sweden. A fit and proper test for beneficial owners of a significant or controlling interest or holding a management function is conducted by Finansinspektionen which has to be informed if a natural or legal person intends to acquire, directly or indirectly a qualified holding in a Swedish insurance company. Persons intended to be on the board of directors or be its managing director or the alternate must demonstrate the necessary knowledge and experience.

#### Insurance Intermediaries

474. According to Section 3 of the Insurance Brokers Act, an insurance broker shall be licensed with the Finansinspektionen. However, a new law (Insurance Intermediation Act) entered into force in July 2005 and widened the scope to include also other forms of insurance intermediaries. Insurance intermediation is defined as professional operations comprising:

- a. submitting or proposing insurance contracts or performing other preparatory work prior to an insurance contract being concluded;
- b. concluding insurance contracts on behalf of another or
- c. assisting in the management and performance of insurance contracts.

475. In order to conduct insurance intermediation, a natural or legal person must be licensed. According to Section 5 of the Insurance Intermediation Act, a licence to conduct insurance intermediation may only be granted to a Swedish natural person if the natural person is not a minor, in bankruptcy or subject to a trading prohibition, is not listed in the Criminal Records Register and has demonstrated conscientiousness in financial affairs, has appropriate knowledge and competence for the operation to be conducted, and is covered by insurance for liability in damages that may be imposed upon him or her if he or she should neglect his or her obligations.

476. A licence to conduct insurance intermediation may only be granted to a Swedish legal person if the legal person is not in bankruptcy or liquidation, the legal person is covered by insurance for liability in damages that may be imposed upon it if it neglects its obligations, the management has no criminal records and also has sufficient insight, and the employees are not in bankruptcy and have appropriate knowledge and competence. Until the end of March 2006 all insurance brokers have to apply for a new license according to the new act.

#### Credit/Debit Cards/Issuers of travellers checks

477. Financing business (e.g. credit market undertakings) is defined as a business which includes commercial operations - the purpose of which is to accept repayable means from the public and to grant loans, provide guarantees for loans or, for financing purposes, to acquire claims or grant rights of use in personal property (leasing). This means that a company that issues credit cards and receives repayable means from the public generally needs a licence from Finansinspektionen. If such a company does not receive repayable means from the public then it, normally, needs to register its business with Finansinspektionen in accordance with the Notification of Certain Financial Business Act. Companies that issue debit cards and operate payment services via a general payment system need a licence as a banking business in accordance with the Banking and Financing Business Act.

478. According to the Notification of Certain Financial Business Act a company operating "other financial business as described in Chapter 7 Section 1 of the Banking and Financing Business Act

normally needs to register the business with Finansinspektionen. In this respect Chapter 7 Section 1.5 stipulates “provide means of payment”. This means that a company that issues travellers cheques normally needs to register the business with Finansinspektionen in accordance with the Notification of Certain Financial Business Act.

479. While generally covering most means of payments systems, it should be noted that the above rules do not apply to providers of means of payment where there is less than 45-day credit extension; thus certain providers such as American Express would not be covered, and would not require a license or registration.

#### Registered financial institutions: money exchange and remittance, deposit companies

480. According to the Obligation to Notify Certain Financial Operations Act, natural or legal persons providing money transfer service or a money or currency changing service or “other financial operations” (defined as such business in Chapter 7 Section 1 item 2-12 of The Banking- and Financing Business Act) must be registered by Finansinspektionen. With regard to money exchange services, the requirement only applies in case of “large scale” which has been interpreted by Finansinspektionen that they should only be registered when the exchange business is an essential part of their business activity. Hence it is in line with a person or entity which carries out financial activities only on an occasional basis according to the Glossary to the 40 Recommendations and does not influence the rating in a negative way.

481. A person who collects payments and transfer them through the banking system—which could include some alternative remittance dealers—is not, in normal cases, within the scope of the definition of payment transfer in the above mentioned act and therefore does not need to register the business in accordance with the mentioned act. However, a person that “negotiates payments” in accordance with Chapter 7 Section 1(4) of the Banking and Financing Business Act normally needs to register the business with Finansinspektionen according to the Notification of Certain Financial Businesses Act (if the business constitutes a large part of the person’s business), regardless of whether the transfer goes through the banking system. Therefore, Swedish authorities report that informal money remitters are normally subject to the AML/ CFT Acts. It should be noted however, that the last category would not include a requirement for someone who for example, might have an informal remittance business through a restaurant or other business, since the remittance might not make up the majority of the remittance dealer’s business. It is therefore unclear if the requirements fully cover the scope of the informal remittance sector.

482. *Fit and proper test for owners:* In general the only registration requirement refers to the question of ownership and management: According to Section 3 of the Obligation to Notify Certain Financial Operations Act, a person who has to a significant extent neglected obligations in business operations or in other financial affairs or who has committed a serious crime may not engage in such financial operations. For legal persons this requirement applies to those who have a qualified holding in the institution or are part of its management. As for other institutions qualified holding is defined as a direct or indirect ownership in the financial institution, if the holding represents 10 % or more of the capital or of all the votes or otherwise facilitates significant power to be exercised over the management of the institution. The institution shall notify all changes to Finansinspektionen as soon as possible. If a legal person has a qualified holding in the institution, this legal person shall notify to Finansinspektionen as soon as possible any changes regarding the persons forming part of its management. However, in contrast to licensed financial institutions there are no sanctions towards registered institutions in case they fail to inform Finansinspektionen about a change in the ownership. There is also a limited requirement in contrast to licensed institutions with regard to the management: The board of director and the managing director are not fit and proper tested as regards expertise and integrity but only checked with different registers e.g. from the Tax Authorities, the Enforcement service or the Criminal Records.

483. *Deposit Companies:* According to the Deposit Taking Operations Act, deposit companies may only be conducted by joint-stock companies or cooperative societies that are registered with Finansinspektionen. The Banking and Financing Business Act exempts small economic associations which accept repayable

funds from their members from the requirement to get a license. However they were obliged to apply for registration as deposit companies until the beginning of 2005. Only 11 deposit companies have registered so far.<sup>36</sup> The Deposit Taking Operations Act contains the same requirements on owners and management as can be found in the Obligation to Notify Certain Financial Operations Act (that are explained above for MVTs providers, money or currency changing service and other financial institutions).

**Ongoing supervision and monitoring (R. 23-Criteria 23.4, 23.6, 23.7, and R.32)**

***Recommendation 23 (Criteria 23.4, 23.6, 23.7)***

484. As indicated above, Finansinspektionen conducts on-going monitoring of financial institutions in Sweden. For licensed financial institutions, this includes on and off-site inspections. In the event that Finansinspektionen, in the course of its supervisory inspections or in some other manner, discovers any transactions which can be assumed to involve money laundering (Section 12 of the AML Act) or terrorist financing (Section 13 of the CFT Act) it must inform the FIU.

485. Since 1997, Finansinspektionen has conducted an increased number of on-site examinations missions devoted solely to AML/CFT including two rounds of the four major Swedish banks on group level including branches abroad, three major Swedish life insurance companies on group level and a number of smaller banks. Additionally, AML issues has been dealt with as a part of general on site examinations in other types of institutions as smaller and middle sized savings banks, credit market companies and securities companies.

Type of institutions	Number of inspections since 2002			
	2002	2003	2004	2005
<b>As part of general supervision</b>				
- in savings banks		12	15	4
- in other smaller/midsize banks		2		
<b>Solely devoted to AML/CFT</b>				
- major banks in group/global level		1	2	1
- major life insurance companies on group level	3			
- life insurance branches/subsidiaries abroad	2			

486. This chart shows that the focus of on-site inspections during the last years was on larger financial groups and that the number of on-site inspections solely devoted to AML/CFT is still quite low.

487. Currently, Finansinspektionen is working on a web-based inspection manual for examiners on operational risk including AML/CFT. At the moment, a “checklist for examinations on AML/CFT” is used during onsite inspections. More than 50 detailed questions cover the most relevant AML/CFT areas:

- Operations and organisation;
- Risk identification and risk analysis;
- Policies and internal rules;
- Customer identification/KYC;
- Scrutiny of transactions;
- Handling of suspicious transactions; reporting to the FIU;
- Preservation of records;
- Staff training;

<sup>36</sup> Swedish authorities also reported that, starting in January 2006, Finansinspektionen and the Swedish Tax Authority will together investigate the possibility to jointly find companies that should be registered but are not.

- Independent audit function.

488. Onsite examinations have also included checks on financial institutions' measures to comply with the EC-Regulations containing obligations to freeze funds and other assets as well as the prohibition on making any funds available to the groups and individuals listed. As a typical follow-up procedure for an onsite investigation, a list with issues which should be rectified is submitted to the visited institution.

489. For registered financial institutions—i.e., money exchange and remittance dealers, deposit companies, there is no on-going supervision or monitoring in the way that annual financial reports have to be submitted to Finansinspektionen. However, there is the obligation to provide Finansinspektionen with all information about the operations that is needed to be able to verify that the AML Act (in case of deposit companies: Section 10 of the Deposit Taking Operations Act) or the AML and CFT Act are complied with (in case of formal MVTs providers, exchange businesses and other financial institutions: Section 7 of the Obligation to Notify Certain Financial Operation Act). A possible way for supervision has been chosen by conducting thematic off-site examinations. After the events of 11 September 2001, a specific off-site examination took place on the subject of financial sanctions and asset freezing addressing a wide range of financial institutions.

490. In 2004/05, a questionnaire addressed 27 smaller financial institutions (including registered financial institutions). Since the conclusions have been drawn that there is a significant spread of STRs submitted to the FIU and that not all institutions are fully compliant with the regulations regarding customer identification, record keeping and risk analysis follow-up activities on a bilateral and general level are planned. A questionnaire (concerning AML/CFT compliance) has also addressed exchange offices.

491. These examinations are an example of the increasing regulatory demand of Finansinspektionen and have shown that the highest risk (resulting from the highest level of non-compliance and non-awareness) might be in the smaller institutions. However, in the case of registered financial institutions (currency exchange businesses, money transfer businesses and other financial service and deposit companies) the range of sanctions is limited: Finansinspektionen may order rectification and if the company does not effect rectification, Finansinspektionen may order it to cease its business.

492. Checking compliance with AML/CFT obligations is part of Finansinspektionen's supervisory activities. However, the focus of supervision during the last years was explained to have been on larger financial groups (esp. commercial banks and life insurance companies). Although these institutions may represent a large sector of the Swedish financial market (80% of the banking assets are held by 4 major banks), there are some concerns since this focus does not take into account any risk assessment and does not reflect the results of the examinations of Finansinspektionen (e.g. questionnaire 2004/05).

493. The limited resources and the focus of Finansinspektionen on larger financial groups with regard to AML/CFT issues has to some extent been negatively influencing the effectiveness of the overall AML/CFT supervision. In addition, natural and legal persons providing money exchange or money remittance services are not subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. On-site inspections to verify compliance are not allowed. In addition, while Swedish authorities indicate that all informal money value transfer systems are currently within Finansinspektionen's regulation, it was not clear if the current provisions fully cover the scope of the remittance sector.

### ***Recommendation 32***

494. Finansinspektionen maintains statistics on the number of on-site examinations conducted relating to ML/CFT and sanctions applied.

## Guidelines (R.25)

### **Recommendation 25 (Criterion 25.1: Guidance for financial institutions other than on STRs)**

495. Finansinspektionen, the integrated supervisory authority for the financial sector, informs all financial institutions about new trends, patterns and methods which may be used for money laundering or terrorist financing. The standards of FATF, EU, Basel Committee on Banking Supervision, IOSCO and IAIS have been mentioned explicitly in this connection. Based on Section 13a of the AML Act Finansinspektionen issued AML/CFT Regulations/Guidelines in May 2005 (Finansinspektionen's Regulations and General Guidelines Governing Measures against Money Laundering and Financing of Particularly Serious Crimes in Certain Circumstances—FFFS 2005:5) that explain financial institutions how to implement and comply with the requirements in the AML/CFT Acts. The Regulations were developed in cooperation with representatives of the private sector and are applicable to all financial institutions with the exception of investment fund companies when it comes to CFT measures.

496. The AML/CFT Regulations/Guidelines contain regulations and guidance on internal control systems, customer identification procedures, risk management, the principle of Know Your Customer, monitoring and reporting of suspicious transactions, record keeping and staff training. The AML/CFT Regulations are available on the Finansinspektionen website and have been distributed to all financial institutions.

497. The guidelines issued by Finansinspektionen are relatively complete in terms of current Swedish legislation but would be improved if sector-specific guidance were provided, and will need to be further supplemented if they are to set out full guidance that comprehensively meets the new FATF Recommendations.

#### **3.10.2 Recommendations and Comments**

498. *Recommendation 17:* There are criminal sanctions in place in the event that a person subject to the AML or CFT Act fails to fulfil the requirement to examine suspicious transactions and to submit a STR to the FIU and in case that the prohibition of disclosure is breached. However, sanctions should also be applicable for other failures such as with regard to customer identification or record keeping.

499. With regard to administrative sanctions, the range of sanctions available for licensed institutions is generally broad but should be broadened to include a wider range of sanctions that could apply for senior management across the various financial categories. The range of sanctions which can be imposed on registered financial institutions should be expanded.

500. It should also be noted that the different laws for registered institutions do not foresee any sanctions in case of a violation of the CFT Act. The effectiveness is not easy to assess since Finansinspektionen has imposed many sanctions during the last years but none of them has been imposed due to failure to comply with national AML/CFT requirements.

501. *Recommendation 23:* It would be useful to clarify the need for a natural or legal person who conducts as a business the issuing or managing of means of payment (such as American Express) to apply for a license or a registration. The same concerns apply to the area of economic associations which have not yet been registered as deposit companies.

502. The various procedures for licensing financial institutions appear adequate to prevent criminals from gaining control or significant influence of these businesses with the exception that the fit and proper test should also apply to senior management. With regard to registered financial institutions it is recommended to have the ability to apply sanctions in case Finansinspektionen is not informed of changes regarding qualified holding and to introduce also a broader fit and proper test for the management.

503. In general, Finansinspektionen seems to be able to ensure compliance with AML/CFT provisions; however, it should be made possible to apply the provisions of the CFT Act to investment companies and

to enforce guidelines in the AML/CFT Regulations/Guidelines to registered financial institutions. Furthermore, the quality of supervision of MVTs providers and money or currency exchange services should be improved through increased authority for on-going monitoring and increased resources of Finansinspektionen so as to focus on entities other than just the larger financial groups.<sup>37</sup>

504. *Recommendation 25:* Sweden should consider more sector-specific AML/CFT guidance, as well as other enhancements to the guidelines.

505. *Recommendation 29:* The powers of Finansinspektionen with regard to registered financial institutions are limited, and it could be more difficult to ensure full compliance. Finansinspektionen should be given the authority to conduct on-site inspections of deposit companies, money transfer service, money or currency changing service or other registered financial institutions.

506. With regard to licensed institutions the sanction regime is limited to directors; a liability of the senior management should be introduced. In general, the supervision with regard to the compliance with AML/CFT obligations should be founded on a risk-based approach. At the moment the focus is defined according to the risk for the financial market stability and thus on-site inspections and intense supervision have been concentrated on the largest banks and financial groups. An AML/CFT risk-based approach should be introduced as basis of supervision—Finansinspektionen is considering taking AML/CFT risks more into account in the future. Especially MVTs providers and foreign exchange offices which are deemed to be of a particular high risk in Sweden should be supervised more closely. In general, the number of onsite inspections solely devoted to AML/CFT should be increased.

507. *Recommendation 30:* The current limited resources in the area of AML/CFT could limit the effectiveness of the supervision. Finansinspektionen and its decision makers seem to be aware of this possible weakness and of the importance of an efficient control of the financial sector’s compliance with the AML/CFT obligations as necessary supplement to the prudential supervision. The current review of the staffing in the area of AML/CFT should lead to a higher number of employees focusing on this issue.

### 3.10.3 Compliance with Recommendations 23, 30, 29, 17, 32, & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
<b>R.17</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• The range of administrative sanctions that can be imposed on registered financial institutions is limited; it is currently limited to rectification orders and de-registration.</li> <li>• For investment companies, securities companies, deposit companies, money exchange and money remittance businesses, there are no sanctions that can apply to directors or senior managers.</li> <li>• For banks/credit institutions and insurance companies, board members and managing directors may be removed from office. However, there are not sanctions for other senior management, and there are no other administrative penalties (fines) or criminal sanctions available.</li> </ul>
<b>R.23</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• It is currently not possible to apply the provisions of the CFT Act to investment companies, and certain credit card companies are not subject to the legislation or supervised.</li> <li>• There is no fit and proper test for the senior management (other than the board of directors and managing director) of licensed financial institutions or for to registered financial institutions in order to prevent criminals from gaining control or significant influence.</li> <li>• The limited resources and the focus Finansinspektionen on larger financial groups with regard to AML/CFT issues may be negatively influencing the effectiveness of the overall AML/CFT supervision.</li> </ul>

<sup>37</sup> As indicated earlier, Finansinspektionen has already begun plans to increase staff and devote more resources towards AML/CFT compliance.

		<ul style="list-style-type: none"> <li>• Natural and legal persons providing money exchange or money remittance services are not subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. On-site inspections to verify compliance are not allowed. In addition, it is unclear if all informal money value transfer systems are currently within the scope of the Swedish legislation and supervision</li> <li>• The quality of supervision of MVTS providers and money or currency exchange services is not sufficient due to limited on-going monitoring powers for these entities.</li> </ul>
<b>R.25</b>	<b>LC</b>	The guidelines issued by Finansinspektionen are relatively complete in terms of current Swedish legislation but would be improved if sector-specific guidance were provided, and will need to be further supplemented if they are to set out full guidance that comprehensively meets the new FATF Recommendations.
<b>R.29</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• The powers of the supervisory authority to monitor and ensure compliance by registered financial institutions (deposit companies, money remittance and money exchange) are too limited; it should be possible to conduct on-site inspections of these institutions.</li> <li>• The number of on-site inspections solely devoted to AML/CFT should be increased.</li> <li>• Investment companies are not within the scope of the CFT Act and certain credit card companies are not subject to the legislation or supervised.</li> <li>• For certain financial institutions meeting the FATF definition but not under the supervision of Finansinspektionen (i.e., certain credit card companies if they offer less than a 45-day credit extension), there is no supervisor and no enforcement powers or sanctions available.</li> </ul>
<b>R.30</b>	<b>PC</b>	Finansinspektionen does not seem to have sufficient resources to fully supervise compliance with AML/CFT obligations.
<b>R.32</b>	<b>PC</b>	(Sweden maintains adequate statistics on the number of on-site examinations conducted relating to ML/CFT and sanctions applied.)

### 3.11 Money or value transfer services (SR.VI)

#### 3.11.3 Description and Analysis (summary)

508. MVT service operators are generally required to be registered in Sweden. Section 1 of the Obligation to Notify Certain Financial Operations Act requires person engaging in payment transfer—defined as “professional transfer of money on behalf of another” to register with Finansinspektionen. While this covers “traditional” money remittance such as Western Union, according to this definition a MVTS provider does not have to register in the event that it uses a bank account to transfer the money. A person who collects payments and transfer them through the banking system—which could include some alternative remittance dealers—is not, in normal cases, within the scope of the definition of payment transfer in the above mentioned Act and therefore does not need to register the business in accordance with the mentioned Act. However, a person that “negotiates payments” in accordance with Chapter 7 Section 1(4) of the Banking and Financing Business Act normally needs to register the business with Finansinspektionen according to the Notification of Certain Financial Businesses Act (if the business constitutes a large part of the person’s business), regardless of whether the transfer goes through the banking system. Therefore, Swedish authorities report that informal money remitters are normally subject to the AML/ CFT Acts. It should be noted however, that the last category would not include a requirement for someone who for example, might have an informal remittance business through a restaurant or other business, since the remittance might not make up the majority of the dealer’s business. It is therefore unclear if the current requirements fully cover the scope of the informal remittance sector.

509. According to the Annual Report 2004 of the FIU, the group of alternative money transfer agencies that are not registered and monitored is 20-30 companies. In 2003, the cross-border payments conducted by the alternative MVTS were estimated at more than one billion SEK (approximately 107,000,000 EUR

or 128,000,000 USD) which matches the sum paid via the global money transfer companies. However, it should be noted that this estimate reflects only the turnover of those MVTS that are known by the authorities. This seems to confirm that many natural or legal persons providing a service for the transmission of money or value are not registered or monitored.

510. MVT service operators register with Finansinspektionen, which keeps a register of these companies. In general, MVT service operators make a list of agents available to Finansinspektionen, although this is not an obligation. Finansinspektionen had registered 93 undertakings as financial institutions under the Obligation to Notify Certain Financial Operation Act. Of these, 41 are conducting money remittance activities, both “traditional” money remittance activity such as Western Union and money remittance undertakings which use a bank account for transferring the money. Thirty-two of these undertakings were registered before 1 July 2004 when the new Obligation to Notify Certain Financial Operation Act came into force and 9 undertakings were registered after 1 July 2004.

511. In addition to the above, Finansinspektionen has received 9 applications for registration from undertakings which are about to conduct money remittance activities (this figure contains both of the alternatives of money remittance activities). These applications have not yet been approved. Furthermore, there is an ongoing investigation at Finansinspektionen concerning undertakings which might conduct money remittance activities without a registration, but who should in fact be registered with Finansinspektionen. The investigation includes 21 cases.

512. The AML Act, the CFT Act and the AML/CFT Regulations/Guidelines are applicable to the registered MVT service operators. However, as explained before, these regulations do not fully implement the 40 Recommendations. For example, there is no obligation to identify the beneficial owner.

513. For registration under the Obligation to Notify Certain Financial Operations Act, Finansinspektionen has to ensure that no person who has to a significant extent neglected obligations in business operations or in other financial affairs or who has committed serious crimes may engage in the business as MVTS provider. As part of the application procedure the internal instructions regarding money laundering and terrorist financing must be provided to Finansinspektionen. Finansinspektionen ensures that the internal instructions comply with the regulations set out in the AML Act, the CFT Act and in the regulations and guidelines issued by Finansinspektionen.

514. There are concerns about the effectiveness of systems in place to monitor MVT service operators and ensure that they comply with AML/CFT obligations. Although Finansinspektionen is the supervisory authority with regard to formal payment transfer, it only applies a limited supervision. Finansinspektionen cannot, for example, carry out searches of premises belonging to such companies and conduct an on-site inspection. Available sanctions generally include rectification orders and de-registration.

515. During the last years Finansinspektionen has focused on inspections of larger banks and did not sufficiently cover other high-risk areas such as money transfer services, money or currency changing services and deposit companies. Since ongoing observations of the Tax Authorities and the FIU showed that there could be a higher risk of money laundering or terrorist financing (compared to other financial institutions) it would be desirable to apply a similar level of supervision also to registered companies and to broaden the range of sanctions available.

### **3.11.2 Recommendations and Comments**

516. MVT service providers, both formal and informal, are generally required to register with Finansinspektionen, which maintains a list of providers. However, Sweden should review its legislation to ensure it adequately covers the full range of these service providers. Sweden should also require all MVT service operators to maintain a current list of their agents which must be made available to the designated competent authority.

517. There is also room for improvement regarding the supervision. Sweden should broaden the inspection powers of these institutions and broaden the range of sanctions available for failure to comply

with AML/CFT provisions. It should consider placing MVTS providers under the full supervision of Finansinspektionen. This could be deemed useful since Swedish authorities confirmed that these are high risk activities from an AML/CFT perspective. In general, Sweden should also take immediate steps to properly implement Recommendations 5-7, SR VII, and other relevant FATF recommendations, and to apply them also to MVTS providers.

### 3.11.3 Compliance with Special Recommendation VI

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>SR.VI</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• There is no requirement for MVT service operators to maintain a current list of their agents and to make this available to the designated competent authority.</li> <li>• In general, Sweden should take immediate steps to properly implement Recommendations 5-7, SR VII, and other relevant FATF recommendations, and to apply them also to MVTS providers.</li> <li>• There are also specific problems in the MVTS sector relating to the effectiveness of supervision and sanctions. There is no authority to conduct on-site inspections, and the range of sanctions is too limited.</li> </ul>

## **4. Preventive Measures – Designated Non-Financial Businesses and Professions**

### **4.1 Customer due diligence and record-keeping (R.12)** (applying R.5, 6, 8-11 (only sanctions for these Recommendations))

518. The AML Act, as revised in 2005, includes AML obligations for most categories of DNFBPs: casinos, real estate agents, dealers in precious metals and stones (part of a larger category of dealers in high value items), advocates and other lawyers, and public auditors. Notaries do not conduct any of the activities which would make the FATF Recommendations applicable and thus have not been taken into account.

519. A separate business sector for trust and company service providers does not exist in Sweden and therefore AML/CFT obligations are not applicable to persons offering these services. Yet it has been confirmed by Swedish authorities that services like acting as a formation agent of legal person are not only offered by advocates or other regulated and supervised professionals but also by professionals focusing on these activities. Furthermore, only authorised or approved auditors are within the scope of the AML Act while the sector of unregulated accountants which also conducts activities as for example the managing of a client's funds is not covered. Additionally, there is an overall concern about how effectively AML/CFT measures are being implemented by dealers in precious metals and stones because this sector is not subject to any monitoring or supervision for compliance with AML/CFT obligations. The same applies for lawyers who are not members of the Bar Association and therefore not regulated and supervised.

520. The main deficiencies in the AML/CFT preventative measures applicable to financial institutions (i.e., Recommendations 5, 6, and 8-11 and described in Section 3 above) apply also to DNFBPs, since the core obligations for both DNFBPs and financial institutions are based in the same AML Act, although financial institutions in most cases have stricter obligations because they also fall under Finansinspektionen's regulations and the CFT Act. Overall, the ratings for both Recommendation 12 and Recommendation 16 have been lowered due to concerns about the scope of application of AML obligations (with regard to trust and company service providers, unregulated accountants) and of CFT obligations (no application of the CFT Act with regard to the non-financial sector) and effectiveness (in relation to lawyers and dealers in precious metals and stones). It is recommended to apply the AML rules also to trust and company service providers and to all accountants and it is absolutely necessary to apply the CFT obligations also to the DNFBPs.

#### **4.1.1 Description and Analysis**

##### ***Recommendation 12***

521. DNFBP are by and large covered by the AML Act, but not the CFT Act. Furthermore, there are no other detailed provisions (as it is the case for financial institutions with regard to Finansinspektionen's regulations).

##### ***Applying Recommendation 5***

###### **Casinos**

522. Casinos are subject to the AML Act and have the same requirements as outlined by that law for complying with Recommendation 5 as financial institutions. (See Section 3.1.) With regard to casinos, the relevant part of Section 4 of the AML Act requires an identity check for customers where a transaction involving a 15,000 euro threshold is met. This threshold is far higher than the 3,000 EUR/USD threshold required by Recommendation 12.

523. Casinos are not covered by Finansinspektionen's regulations (*See* FFS 2005:5, Section 1), and as a result, principles like KYC are not applicable to casinos. However, while the Casinos Act (SFS 1999:355) does not specify the manner in which customer identification should be conducted, it does address the types of information records must contain about a customer, specifically the customer's name, PIN or other identifying number, and postal address. Records must also contain a photograph of the visitor and information about the time of the visit. The Casinos Act requires that persons who are not known to the casino and who do not provide proof of identity shall not be admitted, and as a result, identification of the customer takes place at entry. While this allows for a complete identification of every casino customer, as determined by the FATF in October 2005, this system does not adequately connect the customers to their relevant transactions.

524. Finally, while Sweden does not permit internet casinos, the assessment team learned that Swedish persons have been known to establish internet casinos in jurisdictions like Malta and then market them to the Swedish population. This issue is a current challenge for Sweden, and like many other countries dealing with issues related to the borderless nature of the internet, Sweden is engaged in addressing the topic.

#### Real Estate Agents

525. According to the Estate Agents Act a real estate agent is a natural person whose occupation is to negotiate the sale of real estate, parts of real estate, buildings on property belonging to other persons, site-leasehold interests in land, proprietary to apartments, ground leases or floor-space tenancies. Real estate agents are covered under the AML Act but are not within the scope of the CFT Act. Thus, real estate agents would have to customer identity upon entering into a business relationship or when a transaction involves an amount of 15,000 EUR or more.

526. Real estate agents, subject to a number of exemptions, must also be registered with the Real Estate Agents Board in order to be a member of the profession (Estate Agents Act, Section 5). The Real Estate Agents Board, in turn, may issue guidance but not regulation for the profession. In consultation with Finansinspektionen, FIU and the National Economic Crimes Bureau, the Real Estate Agents Board has issued AML guidelines that address: the timing of customer identification, identification of the purchaser (but notably not the seller), how identification should be carried out, and red flag indicators for money laundering.

#### Dealers in Precious Metals and Dealers in Precious Stones

527. Similarly to casinos and real estate agents, while dealers in precious metals and stones are covered by the AML Act (*See* Section 2b), they are not within the scope of the CFT Act. The provisions of the AML act require customer identification involving transactions of 15,000 euros or more.

#### Lawyers, Notaries and Other Independent Legal Professionals

528. Lawyers are within the scope of the AML Act, but not the CFT Act. Specifically, section 2a applies the entirety of the AML Act to: "Advocates, associate lawyers at law firms and other independent legal professionals when they:

- i. help in the planning or implementation of transactions on behalf of a client in connection with:
  - a. the purchase or sale of property or companies,
  - b. managing the client's money, securities or other assets,
  - c. opening or managing bank, savings or securities accounts,
  - d. acquiring capital necessary for setting up, operating or managing a company,
  - e. setting up, operating or managing companies, associations and foundations, or
- ii. act on behalf of a client in financial transactions or property transactions. (Section 2a)."

529. The concept of “planning” includes a situation in which advocates, associate lawyers at law-firms or another independent lawyers give legal advice to the client. Company lawyers and other lawyers who act on behalf of their employee are not covered by the law, nor are trustees in bankruptcies or liquidations.

530. While “advocate” can refer only to members of the Bar Association, the other category of “independent legal professionals” would cover all other practicing lawyers for the purposes of Recommendation 12.

531. The Swedish Bar Association has compiled a guidance/instruction for law firms on how advocates and associate lawyers should apply the AML Act, and this guidance is published on the internet. These guidelines refer to Finansinspektionen’s guidelines.

#### Accountants/Auditors

532. The AML Act includes the categories “godkänd revisor” (approved or registered public auditor) and “auktoriserad revisor” (authorised or chartered public auditor). These terms may only be used by those whose are certified as such by the Supervisory Board of Public Auditors according to the Auditors Act (2001:883). While “revisor” is translated as both “auditor” and “accountant,” the Auditors Act and the system it governs pertains to auditing functions (i.e., the law authorises those individuals who may conduct audits). According to the Auditors Act, an auditor may not carry on any other business than audit business or business that has a natural connection therewith, if 1) such other business is of such a nature or scope that it may undermine confidence in the auditor’s independence; or 2) such other business is in some other way incompatible with the position following from the right to carry out statutory audits according to Section 25 of the Auditors’ Act (2001:883).

533. The broader accounting sector as a whole is not under any similar regulation or supervision. Swedish authorities point out that other legislation broadly covers supervision for this category. The law was amended in 2001 and renamed to the Act Against Legal and Financial Counselling in certain cases (lagen om förbud mot juridiskt eller ekonomiskt biträde i vissa fall). The purpose of the Act is to prevent unserious legal or financial counselling that makes it possible to carry out economic crimes. A person that carelessly gives advice in legal or financial matters and thereby promotes economic crimes can be held responsible for careless counselling. The penalty may be up to two years of imprisonment (Section 2). A person that has been negligent when giving advice may be given consultancy prohibition up to ten years (Section 3). The Swedish Company Registration Office shall keep a register over persons that have been banned from their profession and shall make an announcement when the court has made such a decision. In the government bill such examples as drawing up contracts, formation of companies, accounting and financial transactions are given as such counselling that may be covered by the act (prop. 1984/85:90 page 34).

534. While this may provide some supervision of the broader accounting category, there is still a concern that other accountants who may also be involved in the activities listed in Recommendations 12 and 16 are not regulated and not covered under the AML Act. As it is the case for all other DNFBPs, accountants/auditors are not bound to report according to the CFT Act. However, Swedish authorities also point out that accountants who provide tax advice would be covered under the AML Act, as this category is specifically included in the Act.

535. The professional institute for authorized public auditors (FAR) was in the process of drafting AML/CFT guidelines during the time of the on-site visit and published these guidelines in October 2005.

#### Trust and Company Service Providers

536. Although trusts do not exist in the Swedish legal system and trust service providers do not exist as a profession, Sweden does have company service providers. However, this is not a regulated activity and does not fall under the scope of the AML or CFT Act. Swedish authorities point out that those providers who also provided financial counselling as described above would, however, be subject to those obligations.

### ***Applying Recommendations 6, 8, and 9***

537. Sweden has no specific requirements regarding PEPs.

538. Sweden has no legislation or regulation that applies to DNFBP and adequately addresses Recommendation 8 (new technologies and non-face to face customers). Only the AML Act in Section 4 states that the special measures necessary to establish the person's identity must be taken when a business relationship is entered into or a transaction takes place with someone not physically present, but no requirement is made to pay special attention to the risks associated with such transactions. Furthermore, these "special measures" are only described in Finansinspektionen's AML/CFT Regulations/Guidelines (FFFS 2005:5), which are not applicable for DNFBPs.

539. Swedish regulation does not address the issue of relying on intermediaries or third parties to perform elements of the CDD process. See Section 3.

### ***Applying Recommendation 10***

540. Section 8 the AML Act states that documents or information used in connection with an identity check must be kept for at least five years, calculated from the date the identity check was conducted or where a business relationship was entered into, the date on which the business relationship ended. The Casinos Act (SFS 1999:355, Section 8, as revised in January 2005) also requires identity records to be kept for five years.

### ***Applying Recommendation 11***

541. There are not sufficient requirements for DNFBPs to pay special attention to all unusual, complex transactions or transactions that have no visible economic purpose, make their findings in writing and keep these records for five years, and make these available to competent authorities. The deficiencies are similar to those for financial institutions: there is only an indirect obligation to discover these transactions through reporting of suspicious transactions (not all complex, unusual large transactions, etc.). In addition, DNFBPs do not benefit from the additional guidance provided in Finansinspektionen's AML/CFT Regulations/Guidelines (FFFS 2005:5), which only applies to financial institutions. However, the guidance notes issued by various DNFBPs have in many aspects been formulated with the Finansinspektionen AML/CFT Regulations and General Guidance in mind and with the addition of sector wise specific guidance. Also, any records kept on suspicious transactions reported would have to be discarded after one year according to the Money Laundering Registers Act (1999:163), section 6.

542. Further, lawyers and associate lawyers are not required to provide information under Section 9 when it concerns information regarding a client that was garnered while assessing a client's legal situation. In addition, advocates, associate lawyers, other independent legal professionals, and chartered accountants are exempted from Section 9 of the AML Act and are not required to provide information to competent authorities where there are reasonable grounds suspecting money laundering if the information was confided in them when they defend or represent a client in, or in connection with, legal proceedings, including providing advice concerning initiating or avoiding legal proceedings. This exception applies irrespective of when the information was garnered.

#### **4.1.2 Recommendations and Comments**

543. Sweden should bring DNFBPs into the scope of the CFT Act and adequate AML/CFT regulations.

544. Casinos should be required to identify customers conducting transactions of 3,000 EUR (down from the current 15,000 EUR threshold).

545. Sweden should create a mandatory, direct obligation to monitor all unusual, large transactions or transactions with no visible economic purpose, and make out findings in writing. These findings should be kept for at least five years.

546. Problematic sections of the AML Act regarding the obligation of a lawyer to not assist in the facilitation of money laundering should be properly addressed.

#### 4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	PC	<ul style="list-style-type: none"> <li>• The scope of the DNFBPs that are subject to the AML Act is not adequate: it does not apply to company service providers and some accountants.</li> <li>• As the DNFBPs are not subject to Finansinspektionen’s regulations or the CFT Act, many of the requirements that Swedish financial institutions are subject to that correspond to criteria under Recommendation 5 do not correspond to this sector.</li> <li>• There is no direct obligation to monitor all unusual, large transactions or transactions with no visible economic purpose, and make out findings in writing. Records of reported suspicious transactions must be deleted after one year.</li> <li>• For these sectors, the effectiveness of the implementation of Sweden’s current laws can be improved. The effectiveness is further reduced by the fact that there is no designated authority to monitor or impose sanctions for non-compliance.</li> </ul>

#### 4.2 Monitoring transactions and other issues (R.16) (applying R.13-15 & 21)

##### 4.2.1 Description and Analysis

##### *Applying Recommendation 13*

547. Section 9 of the AML Act stipulates the general reporting obligation for financial institutions and for DNFBPs. The rule states that a natural or legal person must examine any transactions where there are reasonable grounds for assuming that these constitute money laundering. Furthermore, the natural or legal person must report any circumstances that may be indicative of money laundering to the FIU. The law could be misleading since one could assume that the level of suspicion or proof which is the inducement for the examination by the reporting persons or institutions (“reasonable grounds”) is higher than the level of suspicion or proof for the reporting itself (“indicative”).

548. According to Section 1 of the AML Act, money laundering is defined as any measures relating to property acquired through crime which may lead to the concealment of this characteristic of the property or enable the perpetrator to evade legal sanctions or impede the recovery of the property, or any measures involving the disposal, acquisition, possession or use of the property. Money laundering is also defined as any measures involving property other than those set out in before if the purpose of such measures is to conceal the fact that a person has enriched himself/herself from a criminal act. All funds that are proceeds of a criminal act that would constitute a predicate offence for money laundering domestically are covered. The obligation to declare suspicious transactions applies also to operations that might involve questions of tax. In all cases, the circumstances that may be indicative of money laundering have to be reported directly to the FIU. However, the law does not introduce any obligation with regard to the timing; the DNFBPs are not bound to submit the report to the FIU *promptly*.

549. Parts of the DNFBP sector pointed out that problems could arise after having submitted a STR: Section 3 of the AML Act states that natural and legal persons subject to the Act may not knowingly take part in transactions where there are grounds for assuming that these constitute money laundering. This has

been interpreted as an obligation to terminate the relationship after having submitted a STR. In addition to the problems which may arise for the investigations of the FIU, this seems to be a critical situation for example in case of real estate agents and auditors since they are obliged by other laws to inform their supervisory authority and the client when they resign from a contract. Therefore, representatives of these professional groups see an inconsistency between different laws. Finally, it should be noted that this interpretation of Section 3 of the AML Act (obligation to terminate the relationship after the submission of a STR) is not shared by the financial sector and the supervisory authority for the financial sector, Finansinspektionen.

550. The obligations on DNFBPs to report suspicious transactions in case of AML could be deemed as satisfactory overall with the exception of trust and company service provider and parts of the accountant sector. Furthermore, there is no obligation to submit information to the FIU where there are reasonable grounds to suspect that the involved funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism.

551. From the time the new reporting obligation came into force (1 January 2005) up to August 2005, the FIU had received 35 STRs from casinos, but only 10 STRs from other DNFBPs. It is too early to assess the effectiveness of the system, however, since the obligation entered into force in January 2005.

### Casinos

552. Since the establishment of the first casino in Sweden in 2001, STRs have been submitted to the FIU. After the amendment to the AML Act in January 2005 Section 9 of the AML Act obliges all casinos to report in case of a suspicion of money laundering. The reporting obligations seem to be fulfilled by casinos quite satisfactorily. This may be a result of the close cooperation with the FIU. As it is the case for the other DNFBPs, there is no obligation to submit a report in case of a suspicion of terrorist financing.

553. Information of the Gaming Board (the supervisory authority for casinos) about the number of STRs filed is as follows:<sup>38</sup>:

<b>Year</b>	<b>Number of reports submitted to the FIU</b>
2001	3
2002	12
2003	20
2004	21
First half of 2005	35

554. The growing number of STRs can be explained through the fact that the number of casinos in Sweden increased during the last years (from one casino in 2001 up to 4 casinos in 2005). This may also be an indication of increasing awareness and compliance with STR obligations.

555. Section 9c of the AML Act stipulates that persons operating lotteries and gambling activities on a professional basis, if requested by the FIU, must provide any information that the FIU considers to be important for the investigation. Even if these persons are not within the scope of the AML Act and not required to report, in case of an investigation they are obliged to submit information to the FIU.

<sup>38</sup> It should be noted that the information of the FIU with regard to the number of STRs received from the casinos differs from the information of the Gaming Board. During the onsite visit the Swedish authorities could not clarify this instance. After the on-site, the FIU reported the following statistics as STRs received from casinos (which varied greatly from the Gaming Board's figures): 4 reports in 2002; 4 reports in 2003, 23 reports in 2004; and 35 reports in the first half of 2005.

### Real estate agents

556. Real estate agents are according to the AML Act obligated to report all circumstances that may be indicative of money laundering. The Board of Supervision of Real Estate Agents modified together with the FIU the standardized form for a STR and is going to distribute it to all registered agents and to put it on its website. From the moment the new AML Act came into force up to August 2005, the FIU had not received any reports from real estate agents. It should also be mentioned that there is no obligation to report in case there is a suspicion of terrorist financing.

557. Representatives of the sector and of the supervisory authority expressed concerns with regard to the consequences of submitting a STR: Section 3 of the AML Act states that natural and legal persons subject to the Act may not knowingly take part in transactions where there are grounds for assuming that these constitute money laundering. This has been interpreted by the Board of Supervision of Real Estate Agents as an obligation to terminate the relationship when submitting a STR; however, this view is not shared by representatives of the financial sector. Real estate agents are afraid of the possibility to be subject of a claim for damages when they resign from a relationship without having the possibility to explain the reason since they are obliged to safeguard the interests of both the seller and the buyer (Section 12 of the Estate Agents Act). This problem does not seem to be solved by Section 10 of the AML Act where it is stated that a natural or legal person who submitted an STR may not be held liable for breach of professional secrecy.

### Dealers in precious metals or stones

558. Section 2b of the AML Act states that dealers in precious stones and metals are obliged to report to the FIU if they suspect that a cash payment of 15,000 EUR or more is associated with the proceeds of a criminal act. Again, there is no obligation to submit a report with regard to a suspicion of terrorist financing. Since dealers in precious metals and stones are not regulated and supervised it cannot be said how clear it is to the representatives of the sector that they are subject to AML obligations and that they have to report to the FIU. Up to September 2005 there had been no report submitted to the FIU.

### Advocates, associate assistant lawyers at law firms and other independent legal professionals

559. According to Chapter 8, Section 4 of the Swedish Code of Judicial Procedure an advocate shall in his/her practice honestly and diligently perform the assignments entrusted to him/her, and shall always observe the code of professional conduct (*god advokatsed*). In general, the professional secrecy is an absolute obligation of confidentiality towards the client and covers everything what has been entrusted by the client or someone who wanted to establish a relationship. The professional secrecy may only be lifted in danger of life or if the client gives his/her authorization to disclose information or if the advocate has to appear as witness before court in case the minimum sentence is 2 years. However, it should be noted that only advocates (i.e. members of the Bar Association) may rely on the professional secrecy.

560. The general rule of professional secrecy is breached by the reporting obligation of Section 9 of the AML Act. This obligation applies to advocates, associate lawyers at law-firms and other independent lawyers when they help in the planning or implementation of transactions on behalf of a client in connection with the purchase or sale of property or companies, managing the client's money, securities or other assets, opening or managing bank, savings or securities accounts, acquiring capital necessary for setting up, operating or managing a company, setting up, operating or managing companies, associations and foundations, or when they act on behalf of a client in financial transactions or property transactions. The reporting obligation of the CFT Act (Section 8: to report all circumstances indicating that a transactions involves assets subject to the CFT Act) does not apply to advocates, associate lawyers at law-firms and other independent lawyers.

561. According to Section 9a of the AML Act, advocates, associate lawyers at law firms and other independent lawyers are not obliged to report about matters that have been confided to them when they defend or represent a client in, or in connection with, legal proceedings, including advice on initiating or

avoiding legal proceedings, whether such information is received or obtained before, during or after such proceedings. Legal proceedings could be proceedings by penal, administrative or civil law.

562. Advocates and associate lawyers at law firms are, according to Section 9b of the AML Act, also excluded from the obligation to report information concerning a client that comes to their knowledge (not necessarily from the client himself) in the course of assessing the legal position of a client. This exemption does, however, not apply to other independent legal professionals than advocates and their associate lawyers, because legal advice should be given only by advocates and associate lawyers. Exceptions from the duty to report is considered by representatives of the sector to be possible at least in the two following cases:

- Preliminary consultation that does not lead to an assignment;
- Assignments limited solely to ascertaining the legal position of a client.

563. In general, the definition of “assessing the legal position of a client” seems to reach quite far according to the interpretation of the Bar Association and covers everything as long as it cannot be seen as direct assistance in conducting the transaction itself.

564. On basis of the regulation about self-incrimination in Article 6 in the European Convention for the Protection of Human Rights and Fundamental Freedoms, it is argued by the Swedish Bar Association that a situation where an advocate discovers that he/she himself/herself, as a result of fulfilling an assignment of a client, could be held responsible for a crime of negligence (e.g. petty money receiving) would constitute a situation where there would be no obligation to report a certain transaction or activity. This interpretation would be applicable to all reporting entities and could endanger an efficient reporting procedure and the compliance with international standards in the fight against money laundering and terrorist financing.

565. According to Paragraph 18 of the Code of Conduct (*Vägledande regler om god advokatsed*), an advocate must be faithful and loyal to his or her client. The effect of this professional obligation is that an advocate who has reported the client for an action of money laundering, has to leave his/her assignment.

566. It seems too early to assess the effectiveness of the reporting obligations; however, it should be noted that only one STR was filed in the 1<sup>st</sup> half of 2005 by an advocate. It is difficult to determine whether there is any awareness outside of the regulated sector of advocates and associate lawyers at law firms.

#### Accountants/Auditors

567. Professional secrecy obligations arise from Section 37, Chapter 10 of the Companies Act (as far as the audit activity at limited companies is concerned) and from Section 26 of the Auditors Act. However, the general reporting obligation of Section 9 of the AML Act overrules these provisions.

568. Certain accountants are also within the scope of the AML Act but are not within the scope of Finansinspektionen’s regulations. The AML Act includes the categories “godkänd revisor” (approved or registered public auditor) and “auktoriserad revisor” (authorised or chartered public auditor). These terms may only be used by those who are certified as such by the Supervisory Board of Public Auditors according to the Auditors Act (2001:883). While “revisor” is translated as both “auditor” and “accountant,” the Auditors Act and the system it governs pertains to auditing functions (i.e., the law authorises those individuals who may conduct audits) and not to the accounting sector as a whole, which is not under any similar supervision.

569. There is a concern that other accountants who may also be involved in the activities listed in Recommendations 12 and 16 are not regulated, not covered under the AML Act and thus not obligated to report circumstances that may be indicative of money laundering according to section 9 of the AML Act. As it is the case for all other DNFBPs, accountants/auditors are not bound to report according to the CFT Act.

570. Like advocates, auditors are not obliged to report about matters that have been confided to them when they defend or represent a client in, or in connection with, legal proceedings, including advice on initiating or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings (Section 9a of the AML Act). Representatives of the sector confirmed that defending or representing a client in, or in connection with, legal proceedings may only be the case in connection with tax matters and only with regard to clients who have not made use of their auditing service.

#### Trust and Company Service Providers

571. Company service providers are not regulated and therefore are not bound to the reporting obligations.

#### ***Applying Recommendation 14***

572. According to Section 10 of the AML Act, a natural or legal person who makes a suspicious transaction report “may not be held liable for the breach of professional secrecy if the natural or legal person had reason to assume that the information should be provided”. The same applies in cases where a board member or an employee provides information on behalf of the natural or legal person to the FIU, also in the case of lotteries and gambling activities. Special provisions regarding the liability for auditors in joint stock companies, economic associations, foundations and certain other companies are quoted in Section 10 AML Act and complement the general principle. In general, an auditor is only subject to civil liability if he/she has disclosed information which he/she had reasonable cause to believe was false (e.g. Chapter 15, Section 2 of the Swedish Companies Act, Chapter 13, Section 2 of the Economic Associations Act, Chapter 5, Section 2 of the Foundations Act and Section 37 of the Auditing Act).

573. Section 11 of the AML Act stipulates that the reporting natural or legal person, its board members or its employees may not disclose to a customer or any third party that an examination has been carried out or that a suspicious transaction report has been provided to the FIU or that the police are conducting an investigation. In most of the DNFBP sectors, this obligation seems to be implemented adequately. However, there is some concern how it is implemented by some legal professionals and auditors.

#### Advocates and associate lawyers at law firms

574. For advocates and associate lawyers at law firms (not for other independent legal professionals), the prohibition to disclose any information applies only for 24 hours from the moment an investigation has been started, information has been handed over to the police or the police has started a formal preliminary investigation. In fact, according to the Code of Conduct advocates are even obliged to explain their clients why they have resigned from an engagement (which seems to be mandatory in case of the submission of a STR according to the Bar Association). This provision was explained by the special confidentiality which accompanies a relationship between a lawyer and his/her client. However the notification of a client 24 hours after a report was submitted to the FIU could hamper an investigation.

#### Accountants/Auditors

575. The auditor of a limited liability company is obliged to report suspicions of criminal offences (inter alia offences which may fall under the AML Act) without undue delay to the board of directors and to the public prosecutor (Section 39 of the Companies Act). In this regard, Section 11 of the AML Act states that the possibility to disclose any information after 24 hours applies also for auditors. This special provision only applies if the information has been obtained during the practice of statutory audit. In practice, after 24 hours an accountant is even bound to inform the board of directors. As it was said before

with regard to advocates and associate lawyers this provision may endanger an effective investigation by the FIU or other law enforcement authorities.<sup>39</sup>

576. The FIU protects the names of the reporting persons in accordance with the Secrecy Act. In those cases where the FIU transmits information it is important to assess whether secrecy applies or not. There are cases where the receiving investigating authority has a need to know the name in order to carry out supplementary information gathering under investigation. In those cases the FIU informs the receiving investigating authority that there is a strong need to protect the name of the informer.

### ***Applying Recommendation 15***

577. According to Section 13 of the AML Act, all DNFBPs covered by the AML Act must have measures in place to prevent the business from being used for money laundering, and must ensure that its employees receive necessary information and training for this purpose. If a natural person operates his/her business as an employee of a legal person, the obligation to have internal procedures in place applies to the legal person. The requirement to establish internal control in the AML Act is defined quite generally, more specific provisions can only be found in the AML/CFT Regulations of Finansinspektionen which are not applicable for DNFBPs. As a consequence, there is no legal requirement to: appoint an AML compliance officer, to maintain an internal audit function or to put in place screening procedures to ensure high standards when hiring employees. Furthermore, there are no obligations to maintain any internal procedures, policies and controls to prevent the financing of terrorism. However, it should be noted that in practice most larger companies (e.g. law firms, real estate companies) seem to have established an AML compliance officer at a senior level.

### Casinos

578. The organisation of the Swedish casinos ensures a high degree of internal control: A central security unit in the headquarters is responsible for all four casinos. In each casino a security manager and an operating security manager are in charge of AML issues and have to decide if a report to the FIU should be filed. In addition, an independent surveillance unit, supported by floor security and door security, works closely with the security manager, but reports to the general manager in order to guarantee a system of double control. An internal audit unit from Svenska Spel, the parent company of Casino Cosmopol, complements the control mechanism. Internal manuals which were cleared with the Gaming Board, the supervisory body for casinos, explain possible indicators for money laundering. The surveillance officer and the central security unit should ensure that the internal manuals are followed. Ongoing internal trainings are offered to the employees. There are screening procedures in place for all employees of the casinos; the security check before employees are hired consists of a background screening, a security interview and the check of criminal records and financial records.

### Real estate agents

579. The most important trade association for real estate agents (*Mäklarsamfundet*; about 70% of all real estate agents are members) defines in its non enforceable guidelines similar obligations as laid down in the AML Act: “Real estate agents are obliged to have routines in order to prevent that their business activity may be used for money laundering and shall also be responsible for the education and information of the staff.” Further requirements or even legally binding obligations are not in place.

### Dealers in precious metals or stones, advocates, associate assistant lawyers at law firms and other independent legal professionals, auditors

580. Only the general requirement of Section 13 of the AML Act is applicable to these professionals.

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<sup>39</sup> Swedish authorities have noted that in the third EU directive, the possibility for Member States to allow tipping-off after a certain time is changed. Sweden will take this into account when the AML Act is amended and will also take necessary action to change the Companies Act in consequence of this.

### ***Applying Recommendation 21***

581. There are no specific legal provisions in the AML/CFT Acts or other binding legislative instruments or regulations which deal with non-cooperating countries. Finansinspektionen issued more detailed guidance for financial institutions, but DNFBPs are not required to give special attention to transactions/relationships with non-cooperating countries. Therefore, these professionals are not obliged to make a written report on transactions involving natural or legal persons resident in NCCTs where these transactions have no obvious lawful or economic justification.

#### **4.2.2 Recommendations and Comments**

582. *Applying Recommendation 13:* There are overall concerns about the scope of application of the AML obligations, as it does not apply to company service providers or the non-regulated sector of lawyers and accountants—the AML Act should be amended accordingly—and with regard to the effectiveness (since there is no oversight of other independent legal professionals and dealers). A main priority for the Swedish authorities should be to apply the requirements of the CFT Act to the DNFBPs as soon as possible. Even if this must automatically be part of the implementation of the 3<sup>rd</sup> Money Laundering Directive, due to the rather long period of time the implementation of EU-directives takes in Sweden, it may be desirable to change the CFT law as soon as possible.

583. Furthermore, it should be added to the AML Act that a report to the FIU has to be submitted promptly. This requirement can be found in the AML/CFT Regulations for the financial sector; however, there is no binding rule for the DNFBPs that defines when they should be obliged to report to the FIU. It should also be considered to introduce an obligation for all supervisory bodies to report a STR to the FIU in the event that they become aware of any facts that may be indicative of money laundering or terrorist financing. The Swedish authorities should also ensure that there are no open questions left with regard to the interpretation of the AML Act. At the moment the question if there is the obligation to terminate a relationship after having submitted a STR is answered differently by the DNFBPs and the financial sector. Besides, it should be avoided that the concept of self-incrimination in Article 6 in the European Convention for the Protection of Human Rights and Fundamental Freedoms becomes an excuse for not reporting a suspicion. This problem could be solved by introducing into the Swedish law the concept of active repentance.

584. *Applying Recommendation 14:* There are some fundamental concerns with regard to the possibility for advocates, associate lawyers at law firms and auditors to disclose any information 24 hours after the moment an investigation has been started, information has been handed over to the police or the police have started a formal preliminary investigation. This allowance for tipping-off could hamper investigations heavily and should be amended.

585. *Applying Recommendation 15:* DNFBPs should be required to designate a person responsible for implementing the AML/CFT obligations. Such an obligation (at least in the case of larger structures) and more detailed rules with regard to internal control mechanism might seem appropriate.

586. *Applying Recommendation 21:* DNFBPs should also be required to give special attention to businesses with non-cooperative countries and other countries with weaknesses in their AML/CFT systems.

587. Finally, it is difficult to assess the overall effectiveness of the measures in place, as they have only been put into place recently. However, the Swedish authorities should continue to undertake information campaigns directed at the DNFBPs to clarify their obligations especially with regard to the duty to make suspicious transaction reports.

### 4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	PC	<ul style="list-style-type: none"> <li>• There are concerns about the scope of application of AML obligations: measures do not apply to company service providers, and the non-regulated sector of accountants.</li> <li>• CFT obligations (including an obligation to report an STR related to FT) do not apply to any DNFBP.</li> <li>• It is not required that STRs must be filed to the FIU “promptly.”</li> <li>• The possibility for advocates, associate lawyers at law firms and auditors to disclose any information 24 hours after the moment an investigation has been started, information has been handed over to the police or the police has started a formal preliminary investigation does not comply with the requirements of Recommendation 14.</li> <li>• There are also some concerns with regard to the compliance with Recommendation 15 and 21, since there is no requirement to designate a person responsible for implementing the AML/CFT obligations and there are no rules with regard to NCCTs or other countries which have not implemented an effective AML/CFT system.</li> </ul>

## 4.3 Regulation, supervision and monitoring (R. 24-25)

### 4.3.1 Description and Analysis

#### *Recommendation 24*

588. The Swedish government has not yet designated any authority to monitor DNFBPs for compliance with AML/CFT requirements, nor has any existing DNFBP supervisory authority been authorised to sanction a DNFBP for breaches of the AML or CFT Acts. In the preparatory work to the AML Act, it is recommended that existing control mechanisms of the supervisory bodies of the non-financial sector should be used also for the purpose of ensuring compliance with AML obligations.

589. There are criminal sanctions available for DNFBPs according to section 14 of the AML Act, which states that a fine shall be imposed on anyone who intentionally or through gross negligence:

- a. fails to comply with its obligation to conduct checks and supply information to the FIU in case there are circumstances that may be indicative of money laundering; or
- b. contravenes the provisions prohibiting the release of information after having submitted a suspicious transaction report.

590. These criminal sanctions are not available for any other breaches of the AML Act such as customer identification or record keeping requirements. In any case, these sanctions have not been applied and their effectiveness can be doubted. DNFBP are not covered by the CFT Act (hence for example they are not required to submit an STR related to terrorist financing), and there are therefore no corresponding sanctions for failure to comply with the CFT Act’s requirements.

591. There are no administrative sanctions available for DNFBPs which do not comply with the provisions of the AML Act. Finansinspektionen is the only authority designated to apply administrative sanctions according to a violation of the AML/CFT Act which can only be addressed towards financial institutions. For certain DNFBP, specific, private sanction systems might apply for breaches of their relevant legislation as described below.

592. Since the obligation to comply with the revised AML Act was established in 2005, it is too early to assess the sanction system with regard to the AML Act.

## Casinos

593. The Casinos Act (1999:355) allows for the establishment of a maximum of six casinos in Sweden. Licenses to arrange casino gaming shall only be issued to companies that wholly, directly or indirectly, are owned by the state. No further requirements to grant a license are defined. There are also no statutory requirements relating to the employment of casino staff. A license has been issued to AB Svenska Spel (the State Lottery), which operates casinos in Sweden since 2001 through its wholly owned subsidiary Casino Cosmopol AB. Casino Cosmopol AB currently operates four casinos located in the cities of Göteborg, Malmö, Stockholm and Sundsvall.

594. According to the Act and the license, AB Svenska Spel is authorized to offer roulette games, dice games, card games and similar games as well as gaming on gaming machines. The government annexed the license to some limitations (maximal bet; ratio between tables and slot machines; technical security for the gaming equipment; opening hours; etc.). In addition to the four casinos applying “international casino rules,” 220 private operators and 2 cruise companies have received a license to operate “restaurant casinos” according to Section 32 of the Lotteries Act. The gaming bets are limited to an amount of less than 1 EUR/USD.

595. The Gaming Board (Lotteriinspektionen), a governmental organisation under the Ministry of Finance, is the central supervisory authority for lotteries in Sweden (including gambling and gaming). As a supervisory authority, the Gaming Board is responsible to cover compliance with the Lotteries Act and the Casinos Act.

596. In order to monitor compliance with the legal requirements of the Lotteries Act and the Casinos Act, the Gaming Board may call meetings with the central management, conduct anonymous visits or request information. The Gaming Board may initiate oral discussions, send formal letters, or submit an order to comply with specific instructions. On average, three supervisory activities are conducted monthly in each casino. Approximately 1.5 full time staff is responsible for the supervision of casinos, supported by about 80 controllers, which are temporary workers of the Gaming Board and used to ensure compliance with the legal requirements within all different sectors of lotteries, gaming and gambling. Quarterly meetings with the central management of Casino Cosmopol AB guarantee an ongoing dialogue.

597. Neither the Gaming Board nor any other authority has been designated to monitor casinos for compliance with the AML Act. The Gaming Board exercises some de facto supervision of compliance with regard to certain AML measures, as the Gaming Board is authorised to monitor for internal procedures, customer identification, and record keeping as required by the Casinos Act. (Although it should be pointed out that these measures do not adequately cover the obligations of Recommendations 12 as indicated in section 4.1 above.) Thus, the Gaming Board initiated a meeting with the FIU in 2004 to discuss the AML reporting obligations of casinos. Casinos are obliged to inform the Gaming Board about the annual number of STRs.

598. Nevertheless, Gaming Board may issue an order but has no possibility to enforce any sanctions in case of non-compliance (for AML or any other breaches). Only the government itself may decide upon a sanction such as a revocation of the license. While the Gaming Board does not have any influence concerning the appointment of casino management, the state-owned casino operator does take security measures in order to prevent criminals and otherwise unsuitable persons from being employed.

## Internet casinos

599. According to Section 9 of the Lotteries Act, all forms of gambling shall only be arranged after a permit has been obtained. Hence, the arrangement of an internet casino is prohibited, but not the use of it. Furthermore, it could not be stated exactly which actions and measures would constitute “arranging.” Since gambling is quite popular in Sweden and 85-90% of all Swedish households have internet access Sweden could be an interesting market for internet casinos. Sweden has not taken any measures to

identify if there is any involvement of Swedish citizen in the activities of arranging internet casinos in Sweden.

### Real Estate Agents

600. To be authorised to carry out activities as a real estate agent, a natural person must either be registered by the Board of Supervision of Real estate Agents or be an advocate (i.e. a member of the Bar Association). If a person who is not authorized acts as an estate agent, the person shall be fined or sentenced to a term of imprisonment of a maximum of 6 months. In order to be registered, an estate agent must fulfil the requirements of Section 6 of the Estate Agents Act: *inter alia* the agent has to possess an adequate education (at least 2 years at the university) and integrity (e.g. no conviction for a criminal offence) and be otherwise suitable to be an estate agent.

601. Approximately 5,500 persons are registered as real estate agents at the Board of Supervision of Real Estate Agents, which is a governmental authority of 11 people who conduct the main daily. The Ministry of Agriculture is responsible for the budgetary control, yearly instructions, and the appointment of the members of the Board. The authority also has a Board, which consists of 12 members coming from different areas (e.g. estate agents, people from the competition authority, from Finansinspektionen, or the consumer authority) and makes the main decisions during monthly meetings including decisions on revocations.

602. The Board of Supervision of Real Estate Agents is responsible for registration, supervision and guidance for this sector. It oversees the practice of the profession pursuant to the Estate Agents Act (1995:400). A registered real estate agent is obliged to permit the Board to inspect all files, accounts and other documents, and to provide all information requested. The Board is also empowered to carry out on-site visits. However, on-site visits are not conducted on a regular basis, but only when the Board receives a complaint or a suspicion arises. Every five years the Board of Supervision of Real Estate Agents checks to see if an estate agent is recorded in the criminal register or in the register of the bailiffs (public enforcement agency) and has debts above around 10,000 EUR. The Board may issue a warning in lieu of revocation of the registration. In 2004, 43 estate agents received a warning and 3 agents had their licences revoked.

603. Although the Board desired the authority to issue regulations concerning AML/CFT, the Board was not granted this authority; nor has it or any other authority been specifically designated for AML/CFT compliance of the sector. Nevertheless, the Board was planning to monitor the AML obligations of the sector, as the Board viewed AML compliance as a necessary condition to be in accordance with sound estate agency practice (as mentioned in Section 12 of the Estate Agents Act) and the integrity criteria mentioned above. At the time of the on-site visit the Board of Supervision of Estate Agents was also developing AML guidelines that it hoped would be accepted at its 28 September meeting. The draft AML guidelines are similar to those issued by Finansinspektionen, and cover the requirements of the AML Act and similarly provide gave additional on verification of identity, examples of types of suspicious transactions.

604. The obligation for estate agents to comply with the AML Act was established in 2005, and as a result, it is too early to assess the sanction system. It should be noted that most revocations take place because of an involvement in economic crimes.

### Dealers in precious metals or stones

605. Dealers in precious metals or stones are not obliged to register their activity; however, most dealers are registered with the Companies Registration Office (but not mandatory for sole traders) or the tax authorities. The sector is not supervised or monitored by any authority, although the Ministry of Industry has raised the awareness of the sector via trade associations (e.g. the Swedish precious stones and gold association). Besides criminal sanctions of Section 14 AML Act (for breaches of STR obligations), dealers in precious metals or stones are not subject to any other sanctions.

## Advocates, associate assistant lawyers at law firms and other independent legal professionals

606. To practice law, one does not have to fulfil any specific requirements. Furthermore, only a part of the legal professionals is organized and regulated. There is no supervision with regard to lawyers ("jurists") not being advocates. The occupational title "advocate" is protected and can only be used by members of the Swedish Bar Association. A person may be admitted as a member of the Bar Association only if he/she:

- is domiciled in Sweden or another state within the European Union or the European Economic Area or Switzerland;
- has passed all proficiency exams prescribed for competency to a judge's office;
- has practised law in a satisfactory way for at least five years after passing the above-mentioned proficiency examinations, during which time he/she has for at least three years devoted himself/herself to professionally assisting the general public in legal matters, either as an employee of a member of the Swedish Bar Association or as a self-employed person;
- at the time the application is considered professionally assists the public in the manner set forth above;
- has attained a pass grade in the examination following the special training course arranged by the Bar Association;
- has become known for his/her integrity; and
- is otherwise considered suitable to carry on the profession of *Advokat*.

607. The criminal sanctions of Section 14 AML Act (for failure to comply with STR requirements) apply to advocates, associate assistant lawyers at law firms and other independent legal professionals. In addition, the Bar Association is empowered to supervise and apply administrative sanctions to advocates. Swedish Bar Association's Disciplinary Committee has at its disposal a range of sanctions ranging from a warnings, fines up to 50,000 SEK, and disbarment. Pursuant to Section 52 of the Code of Conduct for Members of the Swedish Bar Association a member must submit statements or replies as requested by the Bar Association and is obliged to reply fully and truthfully to all questions and to provide the information requested notwithstanding his/her duty of confidentiality. A similar provision can be found in Section 46 of the Charter of the Swedish Bar Association, where it is stated that a member must file at the Bar Association an audit report with a certified statement that the accounts have been kept in accordance with law.

608. In addition, the Board of the Bar Association may order that a member's accounts and administration of funds be examined by an authorized public auditor appointed by the Board. However, a proactive oversight e.g. through on-site visits, has not been chosen, since the supervision of the Bar Association is mainly based upon the annual auditor's report. The Bar Association would only in case of a suspicion ask for further information. In this event, the advocate may not invoke professional secrecy and has to submit all information asked for by the Bar Association. At the moment the Bar Association has around 4,500 members and 1,250 people work as associate lawyers, but there are no figures available with regard to other independent legal professionals.

609. Even if it has not been designated as the competent authority with regard to the compliance with the AML Act, the Bar Association sees itself also as responsible for the supervision of compliance with the obligations according to the AML Act and indicated that an advocate who fails to fulfil his or her obligations as stated in the AML Act could, after an inquiry, be subject to disciplinary action including being expelled from the Bar.

610. The Disciplinary Committee hears approximately 600 disciplinary cases per year, mostly initiated by clients or prosecutors, including cases of money receiving. All decisions of the Disciplinary Committee are submitted to the Chancellor of Justice who may ask for a handling by the Supreme Court.

611. The Bar Association may not discipline associate lawyers. Disciplinary sanction, instead, may be imposed on the advocate supervising the associate lawyer. There are no sanctions in place regarding other independent legal professionals.

## Accountants/Auditors

612. According to Revisorslagen (2001:883), an auditor may not carry on any other business than audit business or business that has a natural connection therewith, if such other business is of such a nature or scope that it may undermine confidence in the auditor's independence, or such other business is in some other way incompatible with the position following from the right to carry out statutory audits. This means that the auditor may not be engaged in the management of an audit client's assets or acting on behalf of the client, etc.

613. Approved or authorised auditors have to be registered at the Supervisory Board of Public Auditors (*Revisorsnämnden*). The registration at the Supervisory Board of Public Auditors is mandatory to conduct any auditing activities. There is no restriction to work as an accountant without being registered and supervised.

614. The Supervisory Board of Public Auditors and its 20 employees consider matters relating to approval, authorization and registration in accordance with the Auditors Act, supervise audit business and auditors and registered public accounting firms, consider disciplinary and other measures against auditors and registered public audit firms, and ensure that professional ethics for accountants and generally accepted auditing standards are developed in an appropriate way. Any person who falsely claims to be an approved or authorized public auditor ("revisor") shall be sentenced to a fine. To be registered at the Board an approved public auditor shall, according to Section 4 of the Auditors Act:

- be carrying on audit business professionally;
- be a resident of Sweden or another state in the European Economic Area;
- not be declared bankrupt, subject to trading prohibition, under guardianship under chapter 11, section 7 of the Code on Parents and Children, subject to consultancy prohibition under section 3 of the Act (1985:354) on the Prohibition of Professional Consultancy in Certain Cases, or be under similar restrictions in another state;
- have the education and experience required for audit business;
- have passed the examination of professional competence as an approved public accountant set by the Supervisory Board of Public Accountants; and
- be a fit and proper person to carry on audit business.

615. In order to become an authorized public auditor, one has to pass an additional examination of professional competence and has to prove business experience. These provisions signalise that the Supervisory Board of Public Auditors is mainly focused on questions of auditing. Other activities like the managing of the client's money, securities or other assets, the opening or managing of bank, savings or securities accounts, or the acting on behalf of a client in financial transactions or property transactions do not get as much attention since they are not deemed as core business of approved or authorised auditors (i.e. members of the Supervisory Board of Public Auditors).

616. Auditors are obliged to allow the Supervisory Board of Public Auditors to inspect files, accounts and other documents and to provide the information necessary for the supervision according to Section 28 of the Auditors Act. On-site visits are possible; however, it does not seem that it is often made use of them.

617. A systematic yearly control covers a number of public accountants, selected on a random basis or on the basis of certain risk elements. All cases are concluded by a formal decision. If the Board finds professional negligence, it will render the public auditor a disciplinary sanction (reminder, warning, or withdrawal of the qualification). The decision is public. The public accountant may appeal against the decision to Administrative Courts. In 2003, the Board reviewed 145 disciplinary cases and issued disciplinary sanctions in 50 of these cases.

618. The two business organisations/associations of auditors, FAR and SRS, also conduct a quality review of their members every five years and inform the Board if they find any signs of misbehaviour.

These two business organisations cover the main part of the market, about 5,000 auditors, whereas only 300 are not members in one of these organisations. With regard to the latter, the Supervisory Board of Public Auditors has initiated a special supervision program which concentrates on auditors and their compliance with all relevant laws.

619. There have been no sanctions for AML breaches. The FAR – the professional institute for authorized public accountants – was working on AML guidelines at the time of the on-site visit and these were adopted in October 2005. If the Supervisory Board of Public Auditors deems these guidelines adequate, public accountants will risk disciplinary sanctions if they do not adequately apply the guidelines.

#### Trust and Company Service Providers

620. The sector is not supervised or monitored by any authority or subject to any administrative or criminal sanction for breaches of the AML or CFT Act.

#### ***Applying Recommendation 25***

621. Finansinspektionen is the only authority which has been given the power to issue regulations according to the AML/CFT Acts. There are ongoing discussions about enabling other authorities to issue binding regulations. According to the preparatory work to the AML Act, the FIU and Finansinspektionen are allowed to provide information and education with regard to the new AML Act to all sectors without supervision. Thus, training seminars for lawyers, auditors, casinos, estate agents, car dealer, and antique dealers have been organised. Further seminar activities are planned by the Ministry of Finance, FIU and Finansinspektionen.

#### Casinos

622. The casinos use internal manuals which have been agreed by the supervisory authority, the Gaming Board.

#### Real Estate Agents

623. The Board of Supervision of Real Estate Agents has no possibility to issue binding regulations regarding the AML Act, but is currently working to issue guidelines which will be developed in cooperation with Finansinspektionen, the Economic Crime Bureau, the FIU and the private sector. These guidelines contain information about identification procedures, non-face-to face business and reporting obligations, including potentially suspicious transactions. Furthermore, training activity is offered by the Board of Supervision of Real Estate Agents. Instructions for real estate agents have already been issued by the Association of Swedish Real Estate Agents (ASREA/Mäklarsamfundet), a business organisation in which more than 70% of all real estate agents are organised. However the only sanction in case of non-compliance with these instructions is the revocation of the membership and informing the Board of Real Estate Agents.

#### Dealers in precious metals or stones

624. The sector is not supervised or monitored by any agency, although the Ministry of Industry tries to raise the awareness of the sector via trade associations (e.g. the Swedish precious stones and gold association).

#### Advocates, associate assistant lawyers at law firms and other independent legal professionals

625. The Bar Association developed guidelines regarding the new AML Act and distributed them to all advocates. Representatives of the sector explained that they modified the guidelines of Finansinspektionen; however, no translation has been submitted to the evaluators. The association also claimed to be active in informing its members about the new obligations and offering training.

## Accountants/Auditors

626. The Supervisory Board of Public Accountants does not intend to publish any guidelines or regulations. However, FAR and SRS, the two most important business organisations for auditors, developed standards on how accountants should apply the AML Act, which were adopted in October 2005. These business organisations also prepared training activities through their education institute.

## Trust and Company Service Providers

627. No guidelines have been issued.

### **4.3.2 Recommendations and Comments**

628. Even if the existing supervisory authorities may exercise some supervision with regard to compliance with the AML obligations in practice, the Swedish government should formally designate authorities to have responsibility for the AML/CFT regulatory and supervisory regime and allow the full range of administrative sanctions to be applied for AML/CFT breaches. These authorities should also be allowed to issue binding guidelines since these sectors would need more guidance concerning how to properly implement the AML. Although it is commendable that some supervisory bodies and some business organisations have issued guidelines, it would be desirable to ensure that these obligations have the force of law and can be enforced through sanctions.

629. Since the non-financial sector is not obliged to follow the rules of the CFT Act, no sanctions can be imposed in the case of CFT failings. The DNFBPs sectors should be brought into the scope of the CFT act so that compliance with these obligations will be mandatory and monitored.

630. The supervisory authorities of a number of non-financial professions (e.g. Bar Association, Board of Supervision of Real Estate Agents) have the possibility to impose sanctions. However, with regard to casinos, the Gaming Board or another authority should be provided adequate powers to enforce sanctions.

631. In general, it has to be said that the supervisory authorities of the non-financial sector seem to prefer an indirect and reactive way of supervision. In most cases inspections are limited to suspicious cases for example as a consequence to a complaint.

632. An authority should be designated to monitor and supervise dealers in precious metals and stones for compliance with AML/CFT obligations. Trust and company service providers should be brought within the scope of the AML Act and properly monitored for AML/CFT obligations. Furthermore, it should be considered how legal professionals who are not members of the Bar Association and accountants who are not registered by the Supervisory Board of Public Accountants may be monitored with regard to AML/CFT.

633. Most DNFBPs sectors do not yet have adequate AML/CFT guidelines. For sectors where guidelines do not yet exist, the appropriate SRO or other authority should issue appropriate guidelines as soon as possible.

### **4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1: DNFBP)**

	<b>Rating</b>	<b>Summary of factors relevant to s.4.3 underlying overall rating</b>
<b>R.24</b>	<b>NC</b>	<ul style="list-style-type: none"><li>• Overall, the supervisory bodies of the different sectors are not designated as authorities, which have any responsibility for the AML/CFT regulatory and supervisory regime.</li><li>• There are no administrative sanctions available specifically dealing with DNFBPs for breaches of AML/CFT obligations.</li><li>• Dealers in precious metals and stones are not monitored by any authority; trust and company service providers are not subject to AML/CFT Acts nor monitored by any authority.</li></ul>

		<ul style="list-style-type: none"> <li>• Legal professionals who are not members of the Bar Association, and accountants who are not registered by the Supervisory Board of Public Auditors are not monitored or supervised for compliance with AML/CFT obligations and are not subject to administrative sanctions. There is no indication that Sweden has considered this issue following a risk-based approach.</li> <li>• The supervisory powers of the Gaming Board (Casinos) are too limited.</li> <li>• The supervisory authorities of the DNFBPs should initiate a more proactive and consequent supervision with regard to compliance with AML obligations.</li> </ul>
<b>R.25</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• AML guidelines have not been issued for casinos, real estate agents, or company service providers.</li> <li>• Appropriate CFT guidelines also need to be issued for DNFBPs.</li> </ul>

#### 4.4 Other non-financial businesses and professions and modern secure transaction techniques (R.20)

##### 4.4.1 Description and Analysis

634. In addition to the non-financial businesses and professions that are designated according to FATF Recommendations, the obligations of the AML Act also apply to:

- tax advisors; and
- natural and legal persons who conduct professional commerce with, or sales by auction of, antiques, art, scrap metal or means of transport in cases where cash payment is made in an amount corresponding to 15,000 EUR or more.

635. Finansinspektionen monitors compliance with the AML and CFT Acts and the corresponding regulations and general guidelines, but does not directly stipulate the use of certain secure techniques for conducting financial transactions. An example of this can be found for example in the AML/CFT Regulations/Guidelines where Finansinspektionen specifically underlines that “in light of the increased automation in the financial system both in Sweden as well as internationally companies should consider the use of the electronic systems as support in conjunction with the examination of transactions”.

636. Regarding the use of secure techniques it should be underlined that Finansinspektionen in the authorisation/licensing process receives extensive information concerning the applicants’ information technology (incl. security aspects). This is specifically mentioned in Section 2, Chapter 4 of the general guidelines regarding applications for a license to conduct Banking or Financing Business or to issue Electronic money. If its systems are insufficient, then the company will not be authorised/licensed. Compliance with the use of secure information technology is also monitored in the regular supervision of financial institutions. Currently, the largest bank note in Sweden is SEK 1,000.

##### 4.4.2 Recommendations and Comments

637. Sweden should continue to take measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering especially with regard to the increase of cash withdrawals which has been observed by the FIU.

##### 4.4.3 Compliance with Recommendation 20

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.20</b>	<b>C</b>	Recommendation 20 is fully observed.

## **5. Legal Persons and Arrangements & Non-Profit Organisations**

### **5.1 Legal Persons – Access to beneficial ownership and control information (R.33)**

#### Limited companies

638. To be incorporated a company must register with the Swedish Companies Registration Office (CRO) (Bolagsverket). The application must supply the date of the formation of the company, the registered address of the company and the municipality of the company, the directors and deputy directors, if any, the managing director, and the person(s) who signs for the company. A new registration must be submitted “thereafter following each change in circumstance in respect of which an application has been submitted” (Ch. 8, section 36). The company shall also submit for registration information on the auditor (Ch. 10, section 43).

639. The CRO processes the application and examines that it is in compliance with the Companies Act; it does not verify the facts behind the submitted information. However, minors, those in bankruptcy and those with a trade ban, and those which do not intend to participate in the activities of the company are disqualified from being a director (Ch. 8, section 9) may not serve as directors. Corporate directors are also not allowed. The CRO screens applications against its trade ban register (approximately 700 people) and bankruptcy register. The CRO also verifies the personal identification numbers of applying individuals against the Swedish Population Register, which is maintained by the Swedish Tax Agency and contains updated information on names, citizenship, date of birth, and current addresses. If the application is approved, a certificate of registration and registration number are issued. The number is used as a term of identification when in contact with authorities and others, such as opening bank accounts.

640. Share ownership is not registered with the Swedish Company Registration Office. However, all limited companies must establish and maintain an updated register of all shareholders, including name and address (Ch. 3, section 7). Swedish company law does not allow for the issuance of bearer shares; shares must be registered to a particular person (Ch. 3, section 4). When shares are sold, there is no explicit obligation for the name of the new shareholder to be entered in the share register; however, persons to whom shares have been sold shall not be able to exercise shareholders’ rights until they are registered in the share register (Ch 3, section 14). However, there is no requirement to disclose ultimate beneficial ownership at any time. There are no restrictions regarding the country in which a shareholder can be resident. Other persons beside the board of directors that have been authorised to sign for the company are registered in the public register at the CRO. Changes have to be reported immediately.

641. There are 308,000 limited companies currently registered. 1,500 are public limited companies (400 are present on the stock market).

642. In the case of public companies, the register is normally kept and managed by the Security Registers Centre (Värdepapperscentralen – VPC); otherwise, all companies must maintain a book of shareholders, which must be kept at the company’s address in Sweden and be publicly available (Ch 3. section 13). Failures to maintain a proper share register and keep it publicly available are offences and subject to a fine or imprisonment up to one year (Ch. 19, section 1).

643. All limited companies are obliged to submit their annual accounts, including the auditor’s report, to the CRO. Annual accounts must be submitted to the CRO within one month after being adopted by the annual general meeting. If the annual accounts are submitted too late, the company will have to pay a fine. The CRO also monitors the company register to check that the company has a legally competent board and company auditor and, when it is necessary according to Swedish law, a Managing Director and a person authorized to receive service of process. If this is not the case, the Registration Office can initiate a liquidation process. The CRO has issued about 11,000 late filing penalties. About 800-900 companies have been put into liquidation for failing to file an annual report; 500 have been put into liquidation for failure to have an auditor; 200 have been but into liquidation for failure to have a qualified board of directors.

644. Nearly all of the information supplied to CRO is publicly available on the CRO website. This includes the supplied details on directors, addresses, date of incorporation, share capital, and articles of association. Upon request the CRO will also distribute information regarding minutes from shareholders' meetings. This information will therefore sometimes provide information on particular shareholders. The CRO currently has a staff of approximately 460 people, which includes about 200 dedicated to checking documents, 100 dedicated to responding to public requests for information. The staff responds to approximately 3,000 telephone calls per day.

645. In accordance with Swedish tax law, the income tax return for private limited liability companies shall also contain information about the legal owners and their shareholdings. Information about purchases, sales and dividends are reported to the Tax Authorities by annual statements. The basic data for the income tax return (including ownership information for close companies) must be kept for seven years, whereas the accounting documents must be kept by the company for ten years, even after liquidation. The income tax returns must be destroyed by the Tax Authorities after ten years.

### Partnerships

646. Trading partnerships and limited partnerships must also register with the CRO according to section 2 of the Trading Registry Act. The registration must contain information about the partnership's activity as well as the identity and addresses of the partners, personal identity numbers or equivalent (section 4). For example, the registration for a trading partnership or limited partnership (the two types of "handelsbolag") must contain:

- a. the corporate identity number and the business name;
- b. the nature of the partnership's activities;
- c. the county and municipality where the main office of the partnership is situated, and the postal address; 4. the full names, personal identity numbers or equivalent of every partner and their postal addresses;
- d. if a foundation with a board or a non-profit organisation is a partner, the full names, personal identity numbers or equivalent of every board member of the foundation or organisation;
- e. if a foundation with an administrator is a partner, the name, corporate organisation number and postal address of the administrator and the full name, personal identity number and postal address of a representative of the administrator;
- f. every person authorized to sign for the partnership;
- g. if the partnership is limited, which partner/s that has limited responsibility and for what amount s/he is responsible.

647. If there is any change in the registration information, such as changes to the above or if the partnership is terminated or liquidated, a new registration must be submitted (section 13). This information is also available publicly in the CRO's "Trade and Industry Register" (Section 1 and 1 A of the Trading Registry Ordinance (1974:188)). Incorrect or misleading information in a registration or failure to comply with the obligation of registration could be subject to a fine (section 22).

648. As legal persons, according to the Accounting Act trading and limited partnerships are also required to keep accounting records (Ch. 2, section 1), and accounting records must be kept for at least 10 years, even in case of liquidation or other subsequent event. Larger partnerships and those with legal persons as partners must also draw up an annual report which together with the auditor's report must be submitted to the CRO. The annual report must give a true and fair view of the enterprise's assets, liabilities and equity, financial position and results for the year. Failure to comply with the obligation to keep accounts is a crime, punishable by a prison sentence or by a fine.

649. According to the Swedish authorities, there are 96,000 trading partnerships registered and 29,000 limited partnerships registered at the Tax Authorities.

## Economic associations

650. According to the Economic Associations Act, economic associations must register with the CRO within six months of the decision taken to create the association (Chapter. 1, section 2, and Chapter 15, section 1). Registration will be allowed only if according to its rules the society is of a co-operative character, i.e. its purpose is to further the interests of the members by economic activities in which the members “take part as customers or suppliers or by contributing their labours or making use of the services of the association or in some other such manner”. Economic associations must keep records of members and the names and addresses of the board members and keep this available to the public (Chapter 6, section 1).

651. The association’s board members, persons authorized to sign for the association, auditors and, if applicable, the executive directors are registered in the public register at the Registration Office. Changes have to be reported immediately. Economic associations must keep accounts and shall draw up annual reports. These are to be kept available to the public, but only in the case of large associations do they have to be filed at the CRO without special instruction.

652. There are currently 12,500 economic associations and 22,000 tenants associations, which are a special kind of economic association.

## Foundations

653. A foundation deed (stiftelseförordnande) must be established in writing and signed by the founders describing the purpose of the foundation and the assets. The assets are handed over to a third party (the board or the administrator) who represents the foundation, manages the assets in accordance with the will of the founder, and ensures that the accounting is done in accordance with the law. Loans and loan guarantees to the founder or the management of the founder cannot be granted (Foundation Act, Ch. 2, article 6).

654. Swedish authorities indicated that there may be a total of 30,000 foundations. Foundations that conduct business activities, parent foundations, foundations set up with participation of the state, charitable foundations (according to Ch. 11, section 1 of the Foundations Act) and foundations with assets over a certain amount (approximately 390,000 SEK) must keep accounts according to the Accounting Act (Ch. 2, article 3) and correspondingly must also register with the appropriate County Administrative Board (Länsstyrelsen) (CAB) (Foundation Act, Ch 1). The information to be provided upon registration includes: foundation’s address, telephone number, board members’ names, personal identification numbers, home addresses, postal addresses and telephone numbers or the administrator’s name or company name, organisation number, postal address and telephone number (Ch 10, paragraph 2). The register is publicly available at the local CAB; it is not centralised or on-line. There are currently 15,000 registered foundations, about 9,000 of which have a charity objective.

655. These types of foundations must also maintain accounting records according to the Accounting Act (Ch. 2, article 3). In these cases, all business transactions must be entered into account in a way so that they can be presented in order of recording and in systematic order. They must also submit an annual report within six months after the end of each financial year. The annual report must give a true and fair view of the enterprise’s assets, liabilities and equity, financial position and results for the year.

656. The foundation is also required to keep information on settlers. It is the task for the board or the manager of the foundation to keep information about whom and which are the settlers (stiftare). Normally, the names of the settlers are easily found in the first, establishment document. This document is usually kept by the board manager and a copy of it shall be available at the supervisor (CAB). Foundations also generally keep information on beneficiaries—while the foundation’s rules indicate generally who or which people are to be beneficiaries, in some cases it is not possible to maintain information on all possible beneficiaries.

657. Other foundations; i.e., those that are not required to keep annual accounts according to the Accounting Act (Ch. 2, section 5)—foundations of a smaller size (having less than “10 times the price base amount in accordance with the National Insurance Act”—or approximately 390,000 SEK) and foundations for the benefit of one natural person only (“family foundations”) correspondingly do not need to be registered (Ch. 1, section 7, and Ch. 10, paragraph 1). However, with the exception of family foundations, foundations that are not required to keep accounts under the Accounting Act must maintain continuing accounts over the amounts received and paid by the foundation (Foundation Act, Ch. 3, article 1). In addition, all foundations except family foundations must have an auditor.

658. The CAB has certain supervisory powers over Foundations. These include the powers to: intervene where there is reason to believe that the foundation’s administration or auditing is not performed in accordance with the foundation deed, demand documents or information from foundations, call meetings with the foundation’s board or administrator, conduct an inspection of the foundation, remove a board member or administrator if they are not performing their duties, and issue an injunction or fine for failure to comply with CAB instructions (Ch. 9, sections 3, 4, 5, and 6). It may also bring an action for damages against the board on behalf of the foundation.

### Non-profit associations

659. The Swedish legal form “ideell förening” is usually translated into English as “non-profit association,” although it has also been translated as “non-profit organisation.” It can operate as a foundation or as a religious community. In order to qualify as a non-profit association, the association must have another purpose with its business than making profit for its members or management. The definition the non-profit association is used, as a legal form, by as diverse organisations as trade unions, employers’ associations, charities, sports associations, voluntary organisations, political parties etc. Non-profit organisations in these legal forms can also include churches, schools, clinics and hospitals, legal aid societies, volunteer services organisations, professional associations, research institutes and museums. The border between profit and non-profit activity may in some individual cases be subtle. There is no general legislation or general registration requirement for non-profit associations (ideella föreningar). However, if such an association conducts business, it should in certain circumstances be registered in the Trade Register under the Trading Register Act. This register is also maintained by the Companies Registration Office; the register includes 1,000 other non-profit organisations. In this case the register shall contain *inter alia* names, personal identity numbers and addresses of the board members, and the persons authorized to sign for the association. Many also register with the Tax Authority in order to receive a company registration number and thereby be able to carry about business activities such as having a bank account.

660. To attain legal capacity a non-profit association must have a committee and rules of sufficient completeness clearly laying down how decisions are to be taken and specifying the organs authorized to represent the association in its external relations. Minutes kept in accordance with the rules currently in force constitute evidence as to the person or persons authorized to represent the association.

### **5.1.2 Recommendations and Comments**

661. Sweden’s national system of registering companies—the vast majority of legal entities in Sweden—provides that comprehensive and accurate information on directors is collected and made available publicly. Information regarding shareholders is required to be kept at the company’s registered office and is also available to the public. Although there is no time period specified to update changes in shareholdings for private companies, shareholders cannot formally exercise shareholder rights until they are registered. Access to shareholder information would be made more timely if the information were centralised (i.e., submitted to the CRO). Information is similarly collected and made available on a public registry for registered partnerships and economic associations. However, the provisions do not require that information on beneficial ownership be collected or made available, and therefore do not provide adequate access to information on beneficial ownership in a timely manner. Sweden should broaden the system to require information on beneficial ownership/control to be supplied to the CRO and/or recorded

by the legal entity itself to ensure that it is made readily available on a more timely basis, and to require the information to be kept up to date.

662. Certain foundations are subject to broad disclosure requirements and monitoring from the County Administrative Board (CAB). While much information is public, the system would be improved if the information collected were centralized, possibly at the Companies Registration Office. In addition, a majority of foundations (those of smaller size, family foundations, and foundations for the benefit of one person) do not need to be registered, and therefore relevant information is not collected on those entities. Also, since they are not registered, the CAB's ability to effectively monitor these entities is limited. Sweden should consider broadening the registration and/or recordkeeping requirements for foundations to ensure that adequate information on ownership and control is available to competent authorities.

### 5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	PC	<ul style="list-style-type: none"> <li>The law does not require that information on beneficial ownership be collected or made available; the system does not provide adequate access to up-to-date information on beneficial ownership in a timely manner.</li> <li>The majority of foundations do not need to be registered, and therefore relevant information is not collected on those entities.</li> </ul>

## 5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

### 5.2.1 Description and Analysis

663. Trusts cannot be set up under Swedish law. However, there are no obstacles for a Swedish citizen to be trustee of a foreign trust. In such a case the settlers and beneficiaries will therefore necessarily be governed by the law of a jurisdiction which recognizes the concept. The applicable law is the foreign law chosen by the parties or, if none has been chosen, that with which the trust shows the closest connection. If information is considered necessary for Swedish tax assessment purposes, the taxpayer has a requirement to disclose such information to the tax authorities. This may concern information about settlers, protectors, enforcers and/or beneficiaries. There are no other legal arrangements similar to trusts that exist in Sweden. Certain foundations have characteristics of trusts; however, foundations are legal persons in Sweden and are therefore explained in the previous chapter of this report.

### 5.2.2 Recommendations and Comments: N/A

### 5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	N/A	Trusts are not recognised under Swedish law

## 5.3 Non-profit organisations (SR.VIII)

### 5.3.1 Description and Analysis

#### *Special Recommendation VIII*

664. The different legal forms in which non-profit organisations can operate are: non-profit associations, religious communities, foundations including family foundations, and economic associations established before 1951. All in all only establishing capital is transparent from the Business Register. NPOs can also

include churches, public schools, public charities, public clinics and hospitals, political organisations, legal aid societies, volunteer services organisations, labor unions, professional associations, research institutes, museums, and some agencies. The border between profit and non-profit activity is very subtle. Swedish authorities indicated that there may be as many as 200,000 NPOs altogether, of which 110,000 are registered with the tax authorities.

665. No specific review of the adequacy of laws and regulations that relate to non-profit organisations that can be abused for FT has been completed at the time of the evaluation visit, even though during 2004 the Ministry of Justice set up an inquiry into the matter of the legal conditions of non-profit associations. This work was planned to be finished in August 2005, but was extended.

666. There are no specific measures in place to ensure that terrorist organisations cannot pose as legitimate non-profit organisations, including for the purpose of escaping asset freezing or seizing measures. It has been explained to the examiners that EU asset freezing and seizing measures concerning FT, which are described in the Section 2.4 of this report, can be applied in cases of NPOs, with the exception of administrative freezing measures against the category consisting of persons, groups and entities having their roots, main activities and objectives within the European Union (EU-internals).

667. The question of adopting specific legislation for non-profit associations has been raised several times in the Swedish Parliament but has gained only small support. However, if such an association conducts business, it should in certain circumstances be registered in the Trade Register under the Trade Register Act; and all non-profit associations able to effectively carry out activities are in fact registered with the Tax Authority and given an organisation number (as explained in section 5.1 above). This means in practice that the civil legal position of NPOs and is based on established practice and any legal conflicts are solved on case law.

668. The Swedish State Tax Authority (*Skatteverket*) is the overall national authority, and its local tax offices decide on tax liability of NPOs. The Swedish State Tax Authority issues interpretative guidelines on the tax legislation for the local offices to act on. Several organisations have also approached the Swedish Ministry of Justice and the national tax authority to obtain a tax exemption for volunteers. One of the sources to look for NPOs is the present Business Register of Statistics Sweden, which is based on information obtained from the Swedish State Tax Authority's registers. Since the Register is not designed for information on NPOs it does not give the full picture for these kinds of institutions. If an institution has employees or has to pay VAT or has F-tax card, it is included in statistics Sweden's Business Register and has an identifiable organisational number. But other types of NPOs do not fulfil any of the three above-mentioned criteria and do not keep official records in most cases. When a group associated in an NPO opens a bank account, it sometimes performs this in the name of one of its members (a natural person).

669. Swedish authorities estimate there are approximately 15,000 registered foundations, of which about 9,000 have a charity objective. As indicated in section 5.1 above, foundations that conduct business activities, parent foundations, foundations set up with participation of the state, charitable foundations according to Chapter 11, section 1 of the Foundations Act, and foundations with assets over a certain amount (approximately 390,000 SEK) must keep accounts according to the Accounting Act (Ch. 2, article 3) and correspondingly must also register with the appropriate County Administrative Board (*Länsstyrelsen*) (CAB) (Foundation Act, Ch 1). The legislation was also recently sharpened (prop. 2004/05:50; Measures to prevent misuse of foundations). According to the new rules, if a foundation does not have an individual authorised to sign for the foundation who is resident in Sweden, the County Administrative Board appoints one. Another novelty is that the foundation's accountant has to be registered in the public register. Swedish authorities indicated that there may be a total of 30,000 foundations.

670. An economic association has, by existing legal definition, as its purpose to further the interest of the members by economic activities in which the members take part as customers or suppliers or by contributing their labours or making use of services of the association in some other cases. In some rare cases, non-profit activity could also be performed in economic associations in Sweden, provided that they

were registered before 1951 and according to the existing law at that time. The main legal forms and requirements have been described in the previous section 5.1 on legal persons.

671. If a religious community is registered, registration includes *inter alia* the statutes of the community, the members of the governing board or equivalent body or of those who are otherwise authorized to represent the community, including their names, postal addresses and personal identity numbers. Any changes concerning any of the above conditions shall be reported for registration without delay.

672. Although there is no oversight of the non-profit sector as a whole, Sweden has some measures in place to ensure that funds or other assets collected by or transferred through non-profit organisations are not diverted to support the activities of terrorists or terrorist organisations.

### Monitoring

673. Although there is no requirement laid down by legislation according to which charitable/non-profit associations are obliged to maintain registered bank accounts or to use formal or registered channels for transferring funds, some oversight of the sector is exercised by the private organisation called the Swedish Foundation for Fundraising Monitoring (*Stiftelsen för Insamlingskontroll*—SFI). SFI monitors those non-profit organisations that have accepted to be monitored according to the SFI's conditions and also cooperates internationally with fundraising organisations in other countries through membership in the International Committee on Fundraising Organizations (ICFO). All non-profit organisations collecting money can apply to be an SFI member if their goal is not mainly political or contrary to the law or ethical standards. Applications are vetted by SFI; if accepted, the SFI grants a postal giro account through which funds will be transferred. SFI giro account numbers always start with 90 and are monitored by the SFI. Only those fundraising organisations that comply with SFI standards are allowed to maintain giro accounts. These standards include for example, the requirements for annual audits and the requirement that no more than 25% of the organisations costs can be allotted for administration costs. Every year the SFI cancels three to five of its accounts for lack of complying with obligations.

674. SFI can also check to see if funds have been spent as advertised and planned. If funds are to be transferred abroad, donors must indicate to SFI to whom the funds are going; funds cannot be transferred to a physical person.

675. SFI indicates that it has approximately 400 members, through which it believes the vast majority of charitable donations which are provided in Sweden are channelled. Although membership in SFI is voluntary, SFI and other Swedish authorities indicate that most Swedes trust the organisation, as SFI's monitoring activities provide a guarantee for the donor and a quality control for the public. Hence, most Swedes would verify that a foundation or other fundraising organisation was a member of SFI before making a donation.

676. All non-profit organisations given an organisation number by the Tax Authority must submit an income tax return to the authority. Tax Authorities thus have certain insight into the spending of a NPO, but this is quite limited and mostly depending on the statement of accounts attached to the income tax return. Based on the income tax return, the Tax Authority has far reaching powers to investigate individual organisations' economic activities. The Tax Authority can order a non-profit organisation to reply to its requests.

### Record-keeping

677. There are some record keeping and reporting policies to enhance the financial transparency of non-profit organisations; however, these provisions are limited. According to Chapter 2, section 2 of the Accounting Act (1999:1078), non-profit organisations are specifically obliged to maintain accounts if they are conducting business or where their assets exceed “30 times the price base amount in accordance with the National Insurance Act”—or approximately 1,200,000 SEK. In these cases, there must be a receipt or voucher for every business transaction, including any transaction involving bearer debt instruments. The voucher must among other things contain information about what it concerns and which counterpart it

concerns. Where appropriate the voucher must also contain information about documents or other information that has underlined the transaction and where these can be found. According to Chapter 19, Section 2 of the Act (2001:1227) on income tax returns and income statements, all legal persons are obliged to keep records for the figures in the income tax return. If the Tax Authority so requests, the NPO must present the records.

### 5.3.2 Recommendations and Comments

678. NPOs consist of a wide range of entities and institutions in Sweden. As such, they are subject to varying requirements for registry, and there are varying record keeping requirements. Some are subject to significant oversight on a voluntary basis through membership in the SFI, though it is unclear how much of the sector this actually covers in terms of size and risk.

679. Swedish authorities should also consider strengthening coordination between non-profit sector oversight/regulatory bodies, law enforcement and security agencies, the FIU, and financial system regulators.

680. Sweden should implement measures to ensure that terrorist organisations cannot pose as legitimate NPOs. Sweden should implement broader measures to ensure that funds or other assets collected by or transferred through NPOs are not diverted to support the activities of terrorists or terrorist organisations.

681. Swedish authorities should consider providing guidance to financial institutions with regard to CDD and suspicious transaction reporting where the client is an NPO.

### 5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
<b>SR. VIII</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Sweden has not yet finished a review of the laws and regulations that relate to non-profit organisations (NPOs) that may be abused for the financing of terrorism.</li> <li>• Sweden has not implemented measures to ensure that terrorist organisations cannot pose as legitimate NPOs, or comprehensive measures (outside of the voluntary membership in SFI) to ensure that funds/assets collected by or transferred through NPOs are not diverted to support the activities of terrorists or terrorist organisations;</li> <li>• The system is further weakened by the fact that Recommendation 5 has not been implemented with regards to beneficial ownership.</li> </ul>

## **6. National and International Co-operation**

### **6.1 National co-operation and coordination (R.31 & 32)**

#### **6.1.1 Description and Analysis**

##### *Recommendation 31*

682. The FIU co-operates with at least 51 other law enforcement intelligence units (including units within the National Police, county police authorities, the EBM, and the Customs Service) through information sharing and through participation in intelligence or co-operation projects. The legal basis for this is provided in the Police Data Regulations. In some cases the co-operation and information sharing may lead to the renewal of a money laundering investigation. This may occur in relation with a request concerning one or more natural and/or legal persons from some of the co-operating intelligence units.

683. The FIU also participates co-operates in various projects various law enforcement and other authorities throughout Sweden. Operative co-operation is carried out with intelligence and/or investigation units at the National Police, at the County Police Authorities, the EBM, the Economic Crimes Unit of the Tax Authority and/or at the Customs Service. These projects may concern gathering, and analyzing information linked to specific problem areas or criminal organisations, and may lead to the initiation of a criminal investigation or to support an ongoing criminal investigation. Some of these projects have concerned organized crime connected to drug trade, human trafficking, supply and control of illicit working craft and VAT frauds with the EU. Swedish authorities indicate that many successful investigations have been initiated by the FIU as a result of these co-operative efforts. For example, in 2004 a major drug ring was exposed by the FIU and the narcotic section in Gothenburg following a seizure of approximately 90 kg of amphetamines from Poland. A mapping of money transfers reported to the FIU greatly contributed to the final dismantling of the organisation.

684. In June 2005, a new initiative “Cooperation against Economic Crime” (SAMEB) was launched with the aim of deepening control of financial institutes, money exchange offices and money remitters. The project began in June 2005 and it is a common project of investigative authorities, prosecutors, the FIU and tax authorities. Approximately 20 people will be attached to the project, which focuses in Stockholm. The task is to gather information from the STRs for analysis, and important tools are surveillance and co-ordination of information. A special focus in this project will be trying to trace money originating in narcotic crime. Money exchange offices have taken over a large part of banking services related to exchange or bank money orders. These money exchange offices are increasingly handling large amounts of money and in cases where the FIU is given notice, or should rightly have been so, a follow-up operation will take place to target all suspicious objects, as far as possible in joint action between relevant authorities.

685. The FIU also participate is “method developing” projects, run with the National Police, the County Police Authorities and other authorities with the aim to improve and effectuate the information sharing between these authorities.

686. FIU projects with the National Police, the County Police Authorities, and other authorities aim to investigate and illuminate the legislative weaknesses with AML regulations. During 2004-2005, the FIU has run a project with the purpose to investigate and illuminate the formal and informal remittance dealers in Sweden. The participants in this project have been the FIU, Finansinspektionen, the EBM, the Tax Authorities, the Customs Service and the Prosecutors Authority. The project has described the ARS situation both on an operational level and on a legislative level; the results have estimated the number of formal and informal operators in Sweden and the amount of money each of these categories transfers cross border yearly from Sweden. The different authorities have described the ARS situation from their point of view and contributed with their specific problems with specially the informal ARS operators—for example, the lack of in sight and transparency in the business of the informal ARS operators is a legal weakness of interest. Another project, called Bloodhound, is run with the Swedish Economic Crimes

Bureau, the Swedish Tax Authority, the Swedish Enforcement Authority, the Prosecutors Authority the FIU and the Customs Service, and aims to improve and effectuate the abilities to trace, seize and confiscate the proceeds of crime.

687. *Finansinspektionen* (the Swedish financial supervisory authority) has regular information exchange with other national authorities such as the FIU, the EBM, the NPB and others. *Finansinspektionen* also has regular discussions and information exchange with financial sector representatives and their professional bodies. *Finansinspektionen* participates in the National Economic Crime Council, the Operational Liaison Group (consisting of representatives from the *Finansinspektionen*, the FIU, the Tax Authorities, the Customs Service, the EBM and the Prosecutor’s Office), the National Committee on the Certification of ID-cards, a contact group on terrorist financing issues and in various ad hoc groups.

688. National co-operation and coordination at the operational level is generally strong, especially as the FIU is part of the National Police and engages in numerous projects to combat crimes. It is unclear how effective they are at targeting money laundering or terrorist financing specifically, however, as these types of cases are only pursued on a limited basis.

689. There is also some co-ordination and co-operation at the policy level. The various government authorities communicate during the development of new policies to combat money laundering and terrorist financing, especially as they pertain to implementing the second and third EU directives. However, this coordination appears more reactive and could be improved.

**Recommendation 32 (Criterion 32.1)**

690. Sweden does not review the effectiveness of its systems for combating money laundering and terrorist financing on a regular basis.

**6.1.2 Recommendations and Comments**

691. National co-operation and coordination at the operational level coordinated by the FIU is generally strong, especially as the FIU is part of the National Police and engages in numerous projects to combat crimes. However, co-operative projects could more specifically target money laundering and terrorist financing issues. There is also some co-ordination and co-operation at the policy level; however, a more pro-active approach to policy co-ordination on AML/CFT issues is recommended. Sweden should also review the effectiveness of its systems for combating money laundering and terrorist financing on a regular basis.

**6.1.3 Compliance with Recommendations 31 & 32 (criteria 32.1 only)**

	Rating	Summary of factors underlying rating
<b>R.31</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>It is unclear how effective coordination is at targeting money laundering or terrorist financing specifically, as these types of cases are only pursued on a limited basis.</li> <li>While some policy co-ordination exists, it appears mainly reactive and could be improved.</li> </ul>
<b>R.32</b>	<b>PC</b>	Sweden does not review the effectiveness of its systems for combating money laundering and terrorist financing on a regular basis.

## **6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)**

### **6.2.1 Description and Analysis**

#### ***Recommendation 35***

##### Vienna Convention

692. Sweden signed the Vienna Convention on 20 December 1988 and ratified the Convention 22 July 1991. Sweden has implemented the Convention's provisions as applicable to the FATF Recommendations.

##### Palermo Convention

693. The Palermo Convention was signed 12 December 2000 and ratified 30 April 2004. While Sweden has implemented most elements of the Convention, Article 6(2)(e) obligates countries to make self-laundering an offence unless it is contrary to fundamental principles of domestic law. Self-laundering is not an offence in Sweden, but this cannot be justified on the basis of its being contrary to the Swedish fundamental law. Participation in an organised criminal group is not a specific offence, although Article 5a(i) allows countries to instead cover these through conspiracy provisions for ML and other serious crimes in which organised criminal groups would engage. While conspiracy applies for the aggravated offences of some crimes in the Swedish Penal Code (e.g. murder, kidnapping, robbery), it is not clear if the conspiracy applies to the full range of profit-generating activities in which criminal groups engage. Nor is it clear that the current penalties for conspiracy to these crimes (at most two years unless imprisonment for eight or more years can follow for the completed crime) is effective, proportionate and dissuasive.

##### CFT Convention

694. The United Nations International Convention for the Suppression of the Financing of Terrorism was signed 15 October 2001 and ratified 6 July 2002. The majority of the Convention's provisions are implemented. Legislation entered into force 5 August 2002. However, Article 18(1)(b) of the Convention, which requires countries to implement efficient measures to identify customers in whose interest accounts are opened is insufficiently implemented. Sweden's implementation of Recommendation 5 does not include adequate measures to ascertain the identity of beneficial owners.

#### ***Special Recommendation I***

695. Sweden has ratified The Convention for the Suppression of the Financing of Terrorism. As indicated above, however, Article 18(1)(b) of the Convention, which requires countries to implement efficient measures to identify customers in whose interest accounts are opened is insufficiently implemented. Sweden's implementation of Recommendation 5 does not include adequate measures to ascertain the identity of beneficial owners.

696. Sweden has implemented S/RES/1267(1999) and its successor resolutions as well as UNSCR 1373(2001). The details are presented mainly in the answers to the questions in Chapter 2. However, the regulations do not cover EU internals, and there is not a national system for listing procedures under S/RES/1373.

##### Additional elements

697. Sweden signed the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 8 November 1990 and ratified the Convention 15 July 1996. Legislation entered into force 1 November 1996. The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism was signed 16 May 2005.

## 6.2.2 Recommendations and Comments

698. Sweden should strengthen its money laundering offence by including self-laundering as required by the Palermo Convention. Sweden should enact more effective, proportionate and dissuasive sanctions, and review its conspiracy provisions to ensure that conspiracy applies to the range of criminal acts in which criminal groups engage. Sweden should enact stronger measures for customer identification so as to be more fully compliant with Article 18 of the CFT Convention.

## 6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	LC	<p><b>Implementation of the Palermo Convention:</b> Article 6(2)(e) of the Convention obligates countries to make self-laundering an offence unless it is contrary to fundamental principles of domestic law. Self-laundering is not an offence in Sweden, but this cannot be justified on the basis of its being contrary to the Swedish fundamental law.</p> <p><b>Implementation of the Terrorist Financing Convention:</b> Article 18(1)(b) of the Convention, which requires countries to implement efficient measures to identify customers in whose interest accounts are opened is insufficiently implemented. Sweden's implementation of Recommendation 5 does not include adequate measures to ascertain the identity of beneficial owners.</p>
SR.I	LC	<p><b>Implementation of the Terrorist Financing Convention:</b> Article 18(1)(b) of the Convention, which requires countries to implement efficient measures to identify customers in whose interest accounts are opened is insufficiently implemented. Sweden's implementation of Recommendation 5 does not include adequate measures to ascertain the identity of beneficial owners.</p> <p><b>Implementation of S/RES/1267 (1999) and S/RES/1373(2001):</b> Sweden has implemented both resolutions mainly through EU Regulations; however the regulations do not cover EU internals, and there is not a national system for listing procedures under S/RES/1373.</p>

## 6.3 Mutual Legal Assistance (R.36-38, SR.V, R.32)

### 6.3.1 Description and Analysis

#### General

699. Sweden's mutual legal assistance measures apply equally to ML matters (Rec.36) and FT matters (SR. V). There are two main acts that regulate the Swedish MLA: the International Legal Assistance in Criminal Matters Act (2000: 562) and the Act on International Cooperation in the Enforcement of Criminal Judgments (1972:260). The latter allows for enforcement of foreign decisions on confiscation, provided Sweden has entered into a treaty on this subject with the other country concerned. The Act from 2000 deals in a more comprehensive way with mutual legal assistance matters and enables the Swedish authorities to assist foreign states for the purpose of criminal investigations and criminal proceedings. Sweden is engaged also in the MLA co-operation within the EU: Europol, the European Judicial Network and Eurojust.

## ***Recommendation 36 and Special Recommendation V***

### Scope of assistance allowed

700. The Swedish authorities are able to provide a wide range of mutual legal assistance. Reciprocity is not required, and assistance may be given to states even though there is no obligation for Sweden to do so under an agreement or convention. The underlying principle is that Swedish authorities are able to assist foreign states with every measure that is available for Swedish authorities in domestic investigations or proceedings. This includes the powers of competent authorities required under R. 28 (compelling production of, search of premises for, and seizure of transaction, CDD, and other records from financial institutions.) Measures are listed in Chapter 1 Section 2 of the Swedish International Legal Assistance in Criminal Matters Act (2000:562) (ILACMA) and comprise the following. There are special provisions relating to transfer, extradition and service

- i. examination in conjunction with preliminary investigation in criminal matters,\*
- ii. taking of evidence in court, \*
- iii. hearing by telephone conference, \*
- iv. hearing by video conference, \*
- v. provisional attachment, seizure and search of premises and other measures under Chapter 28 of the Code of Judicial Procedure, \*\*\*
- vi. interception and surveillance of telecommunications, \*\*
- vii. technical assistance with interception and surveillance of telecommunications,\*
- viii. permission for cross border interception and surveillance of telecommunications,\*\*
- ix. secret camera surveillance, \*\*
- x. transfer of persons deprived of liberty for hearing,\*
- xi. forensic medical examination of the body of a deceased person.\*\*

\*Dual criminality not required.

\*\*Dual criminality required.

\*\*\*Generally dual criminality is required; however, dual criminality is not required for search of premises and seizure if the requesting state is from the EU, Norway, or Iceland provided that imprisonment may be imposed by the requesting state.

701. There are still some shortcomings that may hinder mutual legal assistance. Certain activities are not specifically criminalised in Sweden and therefore it is unclear if coercive measures would be available for requests involving those acts, including collecting or providing funds/asset where the funds/assets are to be used (for any purpose) by a terrorist organisation or individual terrorist. The money laundering offence does not apply to the person who committed the predicate offence; however, Swedish authorities explained that underlying ML activity—as part of the predicate crime in the concept of “co-punishment”—is criminalised and therefore the problem of dual criminality does not apply. This has been confirmed by the Supreme Court (see paragraph 740). Conspiracy to commit the basic ML offence is not an offence. While dual criminality would prevent coercive measures for requests involving these crimes, Swedish authorities indicate that this has never presented a problem in practice because countries have not submitted requests (and normally would not) involving this crime. But without any statistical data on mutual legal assistance requests, the evaluation was unable to confirm if these situations presented any practical difficulty.

702. In addition to the above framework, Sweden has a series of mutual legal assistance treaties with other countries in order to facilitate such assistance. However, the agreements with France, Poland and Hungary are rarely used since these states have ratified the European Convention from 1959 on Mutual Assistance in Criminal Matters.

<b>France</b>	Agreement between The Kingdom of Sweden and the Republic of France on mutual assistance in criminal matters (7 March 1956)
<b>Hungary</b>	Agreement between The Kingdom of Sweden and The Hungarian People's Republic on mutual assistance in criminal matters (28 September 1983)

<b>UK</b>	Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Sweden concerning the restraint and confiscation of the proceeds of crime (14 December 1989)
<b>Poland</b>	Agreement between the Kingdom of Sweden and the Polish People's Republic on legal assistance in criminal matters (10 February 1989)
<b>Australia</b>	Treaty between Australia and Sweden on mutual assistance in criminal matters (18 December 1998)
<b>Canada</b>	Treaty between the Government of Sweden and the Government of Canada on mutual assistance in criminal matters (15 February 2000)
<b>USA</b>	Treaty between the Government of the United States of America and the Government of the Kingdom of Sweden on Mutual Legal Assistance in Criminal Matters (17 December 2001)

#### Conditions for refusal

703. Mutual legal assistance is not subject to unreasonable conditions. Impediments for granting assistance are restricted in accordance with Chapter 2 Section 14 of the Swedish Act on International Legal Assistance in Criminal Matters. A request for legal assistance is refused if execution of the request would violate Sweden's sovereignty, involve a risk to national security or conflict with Swedish general principles of law or other essential interests. A request for legal assistance may also be refused (provided a refusal would not conflict with an international agreement that applies between Sweden and the requesting state) if:

- a. the act is in the nature of a political offence; (But this does not apply to a request from a state that is a Member of the European Union or from Norway or Iceland.)
- b. the act comprises a military offence, unless the act also corresponds to another offence under Swedish law that is not a military offence;
- c. a judgment or decision on waiver of prosecution concerning the act has been issued in Sweden;  
or
- d. circumstances are otherwise such that the request should not be granted.

704. If a prosecutor or a court considers that a request should be refused on any such ground, the request is transferred to the Government; final decisions on refusals are made by the Government. A request may also be transferred to the Government for determination of a refusal in other cases. Otherwise, the instance that deals with the matter considers and decides whether the prerequisites and conditions applicable under the Act are satisfied. If the request has been submitted to the Ministry of Justice and it is manifest that the request should be refused, the Minister of Justice may directly decide to refuse the request instead of passing it on in accordance with Section 6.

705. A request for legal assistance is not refused on the sole ground that the offence involves fiscal matters. The fiscal offences tax fraud and tax evasion are criminalized in Sweden.

706. Bank secrecy or confidentiality may not be used to refuse mutual legal assistance requests. Chapter 5 Section 10 of the ILACMA contains rules concerning exemptions from bank and other secrecy information. A person who is under an obligation to observe secrecy according to the Banking Business Act (1987:617), the Securities Business Act (1991:981), the Financing Operations Act (1992:1610) or the Act on Investment Funds (2004:46) may nonetheless provide information in matters concerning legal assistance relating to examination in conjunction with preliminary investigations in criminal matters or search of premises and seizure. The provisions of Section 10 of the AML Law are also used by legal analogy for other financial institutions and DNFBPs. Section 9(c) of the AML Law provides an exemption from secrecy provisions for persons operating lotteries and gambling activities.

### Processes for executing requests

707. Sweden appears to have generally clear and efficient processes for the execution of mutual legal assistance requests in a timely way and without undue delays. According to Chapter 2 Section 10 of the ILACMA, requests for legal assistance should be executed “promptly”. The main rule is that the same procedure shall be applied as is applied when the corresponding measure is taken in connection with a Swedish investigation or proceeding. In minor cases even a prosecutor may issue legally binding decisions to allow for a faster execution of foreign legal judgments (Section 16 of the 1972 Act on International Cooperation in the Enforcement of Criminal Judgments).

708. Requests for legal assistance under the ILACMA “shall be sent to the Ministry of Justice, which will pass the request on to the Prosecutor-General or to the competent court unless request shall be considered by the Government. The Ministry of Justice may, following consultation with the Prosecutor-General, pass the matter on directly to a competent prosecutor” (Chapter 2, section 6). Requests from certain countries may go directly to the competent prosecutor or court: Norway, Iceland, a European Union country, or a country with which Sweden has a bilateral agreement providing for this. (This may be included, for example, in some of the treaties listed above.)

709. The Swedish Government has recently adopted new legislation in order to implement the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, the Protocol of 16 October 2001 to that Convention and a treaty between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the mentioned Convention and Protocol thereto. The provisions entered into force on 1 July 2005.

710. Swedish prosecutors and police authorities may co-operate with other country’s authorities in order to determine the best venue for prosecution of defendants, although there are no specific provisions. Some guidance is provided through the application of provisions on the transfer of proceedings are provided in the Act on International Cooperation in Criminal Proceedings (1976:19).

### Joint investigation teams

711. There are also special provisions concerning legal assistance in criminal matters for certain international bodies. On 1 January 2004, a Swedish Act on Joint Investigation Teams for criminal investigation (2003:1174) entered into force. With this Act the EU Council Framework Decision on Joint Investigation Teams (OJ L 162, 20.6.2002, s. 1) has been implemented into Swedish law. The purpose of the investigation teams is that officials from crime investigation authorities in two or more EU member states co-operate in the investigation of crimes, which have links with those member states that arranged the investigation team. By arranging a joint investigation team the investigations in different member states regarding a certain crime (or crimes) are coordinated in accordance with the rules of each concerned member state. If a measure has to be taken in Sweden for the work of a joint investigation team and if the measure cannot be taken within the framework of an ongoing Swedish preliminary investigation, a Swedish official who is a member of the team may apply for the measure to be taken. The International Legal Assistance in Criminal Matters Act (2000:562) is applicable in these situations in the same way as if a foreign authority had made the application. The application shall be made directly to a prosecutor or court that is competent to deal with the matter under that Act.

### Additional elements

712. The direct contact between competent authorities concerning ML or FT cases is possible if the requests are coming from other EU member countries, countries with which Sweden has signed an agreement explicitly allowing for direct requests and from Nordic countries. Separate provisions that regulate direct cooperation are provided for in the International Legal Assistance in Criminal Matters Act (foreign request: Chapter 2, Section 6(2); domestic request: Chapter 3, Section 2 (2)). It is not possible to enforce or recognize a foreign non-criminal confiscation order in Sweden.

### ***Recommendation 37 and Special Recommendation V***

713. There is no dual criminality requirement relating to less intrusive and compulsory measures. However, dual criminality is required for coercive measures. The scope of the double criminality requirement is regulated in Chapter 2 Section 2 of the ILACMA, which specifies which procedures require dual criminality as described in paragraph 700 above. As indicated earlier, the underlying principle of the ILACMA is to equate a foreign criminal investigation or proceeding with a national case. Consequently, legal assistance shall be afforded under the same conditions as under domestic law, i.e. on the condition that the measure requested, according to the Swedish Code of Judicial Procedure or according to any other legal norms, could be taken in a corresponding Swedish investigation or proceeding. Thus, the general preconditions for the use of different measures in internal Swedish investigations and proceedings apply in relation to requests for international legal assistance as well (Chapter 2, section 1).

714. These general rules are supplemented by the rules in the International Legal Assistance Act. Primarily the rules in the ILACMA form a bridge between the foreign and national procedural law and take into account the fact that the executed measure is to be used in an investigation or proceeding under foreign procedural law. Thus, when considering a request for assistance the responsible Swedish authority must have regard to both the general rules and the rules in the International Legal Assistance Act.

715. According to the Chapter 2 Section 2 of the ILACMA, the requirement of dual criminality is fulfilled if the offence corresponds to an offence under Swedish law. The word “corresponds” is used to indicate that it is not required that the offence in Sweden and the offence in the requesting state coincide completely. As a consequence of this Swedish authorities are allowed to reconstruct the offence to some extent when considering whether the requirement is fulfilled (e.g. assume that the offence has been committed in Sweden instead of abroad or has been directed against Swedish interests instead of against the interests of the requesting state etc.). This may be of importance since certain Swedish offences presuppose that the offence is committed within Sweden (e.g. illicit gambling), is directed against Swedish interests (e.g. tax crime), or is committed by a person who has some relation to Sweden (e.g. misuse of office can only be committed by a person authorized to exercise Swedish public authority). Thus, since it is allowed for Swedish authorities to reconstruct the offence (within certain boundaries) such limitations of the scope of Swedish offences does not, generally, constitute an impediment for granting assistance.

### ***Recommendation 38 and Special Recommendation V***

716. Sweden’s measures to give effect to foreign requests for identification, freezing, seizing and confiscation apply equally to ML (Recommendation 38) and FT (SR V). Investigative and other judicial measures may be applied for proceeds, property and instrumentalities used in or intended for use in ML and FT criminal offences, and property of corresponding value. (See description of domestic confiscation powers in section 2.3.) The main rule is that the same procedure shall be applied as is applied when the corresponding measure is taken in connection with a Swedish investigation or proceeding. Section 1 of Chapter 36 provides that the proceeds of a crime as defined in the Penal Code shall be declared forfeited unless this is manifestly unreasonable. The same shall apply to anything a person has received as payment for costs incurred in conjunction with a crime, provided that such receipt constitutes a crime under the Penal Code.

717. The general conditions for enforcing foreign criminal judgments are found in the 1972 “Act on International Co-operation in the Enforcement of Criminal Judgements.” (1972:260). Section 1 allows for enforcement of confiscation order from a foreign court in Sweden “insofar as required by an agreement which Sweden has entered into with a foreign state.” Swedish authorities indicate that in practice this includes not only bilateral agreements but also multi-lateral agreements such as the Strasbourg and Palermo Conventions and protocols. However, this appears to be a potentially limiting provision, as foreign requesting states might not also be parties to these agreements. Dual criminality must also apply (section 5 (2)). Swedish authorities point out that it is reasonably expected that foreign states requesting assistance would be parties to these international agreements, and that in practice these requirements therefore present no practical difficulties.

718. Another potentially limited provision could be section 5 (3), which indicates that European criminal judgments cannot be enforced against someone not domiciled in Sweden. However, this is clarified in the Ordinance to the Act, which indicates that the provision is applicable only in relation to the European Convention on the International Validity of Criminal Judgements (ETS No. 70), where it corresponds to/implements article 5 a-d. Where it comes to other agreements on execution of confiscation orders, this provision does not apply. The agreements (where Section 5.3 of the 1972 Act does not apply) are:

- a. The agreement between the Government of the United Kingdom of Great Britain and the Government of the Kingdom of Sweden concerning the restraint and confiscation of the proceeds of crime;
- b. The European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime;
- c. The 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
- d. The 2000 UN Convention against Transnational Organized Crime;
- e. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
- f. Treaty Between the Government of Sweden and the Government of Canada on Mutual Assistance in Criminal Matters;
- g. Treaty Between Sweden and Australia on Mutual Assistance in Criminal Matters
- h. Rome Statute of the International Criminal Court.

719. As with the limited problem described above in paragraph 717, Swedish authorities point out that for those countries requesting assistance, these various international agreements generally apply, that therefore the limitation in section 5 (3) does not apply, and that therefore there are no practical obstacles in rendering assistance.

720. Requests made under this legislation are sent first to the Ministry of Justice (section 8), who after examination would send it to the Prosecutor General, who must go to the Court for a decision for a Swedish decision on the matter. There is not a separate investigation on the matter, but the Court must determine if the conditions of the 1972 law are met. The Court then issues its own decision, based on the request, which is then used in the execution of the request.

721. The process for executing a freezing order from an EU state is efficient, and a freezing decision can be sent directly to a Swedish prosecutor. In July 2003, a partly Swedish initiative was adopted within the EU for the implementation of framework decision on freezing of property and evidence. As to Sweden the adoption took place after the approval of the Parliament of the Law Implementing the EU Council Framework Decision of 22 July 2003 on the execution in the European Union of orders of freezing property or evidence (OJ L 196, 2.8.2003 p. 45) (prop. 2002/03:67, bet. 2002/03:JuU15, rskr. 2002/03:169).

722. The law consists of regulations that make it possible for the judicial authorities in a Member State decide on freezing of property or evidence in the course of a preliminary investigation. Freezing is carried out for the purpose of securing a future decision on forfeiture or that evidence does not disappear. A decision on freezing shall as a rule be effected in the Member State where the property or the evidence exists. This law includes a system where a Swedish prosecutor may address a national decision on seizure or sequestration – in this context a freezing order – to an authority in another Member State. That other State's authority then has to execute the freezing order in accordance with the provisions of the Framework Decision. The new law also contains provisions on how another Member State's judicial decisions on freezing of property or evidence may be executed in Sweden. In general, the procedure and preconditions for such execution corresponds to the provisions on execution in Sweden of a national decision issued for a similar purpose. As a rule, a freezing order should be executed in Sweden within 24 hours from when it was received by the Swedish prosecutor. The described EU Council framework decision was implemented in practice in Sweden by 5 July 2005.

723. Sweden has agreements enabling co-ordination of seizure and confiscation actions with other countries. Sweden has stated that one such agreement is the EU decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crimes. Successful co-operation in these fields could also be arranged within the Europol-cooperation. In most cases such co-ordination has been executed among Nordic countries.

724. At this time Swedish authorities are not considering establishing an asset forfeiture fund.

725. Chapter 5, Section 11 of the ILACMA and Section 36 of the Act on International Co-operation in the Enforcement of Criminal Judgments (1972) contain provisions on the transfer of confiscated property to another state. The former provision allows the Government to decide that property or its value that is confiscated by a Swedish order that has entered into final legal force shall completely or partially be transferred to another state that during the preliminary investigation or trial has provided Sweden with such legal assistance as is referred to in this Act or that in another way has provided information or support that has been of significance for investigating the offence. According to the latter provision, property or its value that has been confiscated in Sweden as a result of the execution in Sweden of another state's confiscation decision may be transferred to that other state.

#### Additional elements

726. Foreign non-criminal confiscation orders are not recognised or enforced in Sweden.

#### ***Recommendation 32***

727. No statistics on mutual legal assistance or other international requests for co-operation were provided. Specified statistical information on mutual legal assistance requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused, and the time required to respond was not received by the examination team. The authorities explained that only limited statistics are kept in more general terms. The registration system at the Ministry of Justice does not make it possible to collect such statistics since it does not indicate which specific crime the requests concern.

#### ***Recommendations and Comments***

728. Overall, Sweden has an effective system for responding to mutual legal assistance requests from Nordic and European countries. Requests from both Nordic and EU member countries can be handled expeditiously as they are channelled directly between judicial authorities. In addition, the International Legal Assistance in Criminal Matters Act allows the Swedish authorities to assist other foreign states with every measure that is available for Swedish authorities in domestic investigations or proceedings. Dual criminality is not required for non-coercive measures (or for search or seizure requests from EU countries, Norway, or Iceland).

729. In order to ensure that coercive measures could consistently be applied, Sweden should specifically criminalise the following types of ML/FT activities (i) conspiracy for basic money laundering offences; and (ii) collecting or providing funds/asset where the funds/assets are to be used by a terrorist organisation or individual terrorist.

730. Although there does not currently appear to be any difficulty enforcing foreign criminal judgements in practice, in order to avoid any future difficulties, Sweden should consider broadening the provisions of the 1972 Act on International Co-operation in the Enforcement of Criminal Judgments so that a treaty or other agreement with a foreign country is not needed and that would allow for a European confiscation order to be enforced, absent an international agreement, for someone not domiciled in Sweden. Sweden could also consider streamlining the system so that a Swedish court decision is not required before beginning proceedings.

731. Sweden should consider establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes.

732. Sweden should keep a complete set of statistics, thus enabling it to better track the mutual legal assistance requests it receives and makes, and ensuring they are handled in a timely way. Sweden should keep statistics concerning: (i) the nature of mutual legal assistance requests; (ii) whether the mutual legal assistance request was granted or refused; (iii) what crime the request was related to; and (iv) how much time was required to respond to the request.

### 6.3.3 Compliance with Recommendations 36 to 38, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
<b>R.36</b>	<b>LC</b>	Since dual criminality is required, it is not clear how effectively Sweden could execute coercive measures relating to requests involving conspiracy to commit basic money laundering, and collecting/providing funds/assets to be used by a terrorist organisation or individual terrorist.
<b>R.37</b>	<b>C</b>	This Recommendation is fully met.
<b>R.38</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>Sweden has not considered establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes.</li> <li>The requirement for a treaty or agreement could limit the number of countries for which Sweden could execute a confiscation order, although as most requesting states are parties to international conventions, this does not appear to be a problem in practice.</li> <li>Relating to requests from European countries not parties to certain international agreements, foreign judgments cannot be executed for someone not domiciled in Sweden, although this does not appear to be a problem in practice.</li> </ul>
<b>SR.V</b>	<b>LC</b>	Since dual criminality is required, it is not clear how effectively Sweden could execute coercive measures relating to requests involving collecting/providing funds/assets (for any purpose) to be used by a terrorist organisation or individual terrorist.
<b>R.32</b>	<b>PC</b>	No statistics available.

## 6.4 Extradition (R.39, 37 & SR.V, R.32)

### 6.4.1 Description and Analysis

#### *Recommendation 39 and SR V*

733. Both ML/FT (as criminalised) are extraditable offences in Sweden. It has been expressed to the examiners that requests for extradition are treated as a matter of urgency within the Ministry of Justice, the Prosecution authority and in the courts.

734. Extradition is regulated by the following legal acts: the Act on Extradition for Criminal Offences (1957:668) and the Act on Extradition for Crimes to Denmark, Finland, Iceland and Norway (1959:254). There are main differences among the principles applied for extradition in Nordic countries, countries with which Sweden signed a bilateral agreement, EU countries and non-EU countries.

735. Sweden has the following extradition treaties in place:

USA	Convention on Extradition between the United States of America and Sweden (24 October 1961) Supplementary Convention on Extradition between the United States of America and Sweden (14 March 1983)
UK	Extradition Treaty between the United Kingdom of Great Britain and Sweden (26 April 1963)
Australia	Treaty between Sweden and Australia concerning Extradition (20 March 1973)
Canada	Bilateral Treaty between Sweden and Canada concerning Extradition (30 October 2001)
France	Agreement with France concerning the Application of the European Convention on Extradition (23 and 27 May 1991)

### Extradition

736. Within the EU, the procedure for extradition has in general been replaced by surrender according to the European Arrest Warrant. Sweden is also a party to the 1957 European Convention on Extradition (SÖ 1959:65, SÖ 1967:46) with the Additional Protocol of 15 October 1975 on Extradition (SÖ 1976:27) and Second Additional Protocol of 17 March 1978 on Extradition (SÖ 1979:13), Agreement 1989 between the Member States of the European Union on the simplification and modernization of methods of transmitting extradition requests (San Sebastian), Convention on Simplified Extradition Procedure between the Member States of the European Union 1995 (SÖ 1998:43) and Convention relating to Extradition between the Member States of the European Union 1996 (SÖ 2001:49).

737. The Extradition for Criminal Offences Act, which is the basic legal regulation in this area, prohibits the extradition of Swedish nationals. The prohibition against extradition of Swedish nationals is not absolute. Under the Act on Co-operation between Sweden and the International Tribunals for Violations of International Humanitarian Law (1994:569) it is possible to extradite a Swedish national for trial by the tribunal. According to the Act on Co-operation with the International Criminal Court (2002:329), a Swedish citizen may be surrendered to the Court. Within the EU, Swedish nationals are surrendered in accordance with the European Arrest Warrant. That framework decision does not permit member states to refuse surrender solely because the requested person is a national of the executing member state.

738. There are also other exceptions provided for EU countries. For example, an exception is provided in Chapter 2, Section 2 of the Act (2003:1156) on Surrender from Sweden According to the European Arrest Warrant in a specific case if the European arrest warrant states that an act is of the kind specified in the Annex to this Act and that, under the issuing Member State's legislation, a custodial sentence or detention order of three years or more is prescribed, then surrender is granted even if the act does not constitute an offence under the Swedish law.

### Extradition to a non-Nordic state

739. As stated above, the Extradition for Criminal Offences Act prohibits the extradition of Swedish nationals. When Sweden signed the 1957 Convention on Extradition, it declared that for the purposes of the Convention, aliens who are residents of Sweden, nationals of Denmark, Finland, Iceland and Norway, and aliens who are residents of any of these states, might be considered equivalent to Swedish nationals. Although this declaration is not transposed in the Swedish Extradition for Criminal Offences Act, it does make it possible for Sweden to refuse to extradite such persons to a state outside the EU.

740. The act for which extradition is requested must be equivalent to a crime that is punishable under Swedish law by imprisonment for at least one year. In addition, if a sentence has been passed in the state applying for extradition, the penalty must be imprisonment for at least four months or other institutional detention for an equivalent period. Thus, extradition requires an offence punishable under the law of both countries ("dual criminality") that, in principle, is of a certain degree of seriousness. In relation to self-

laundering, a Supreme Court decision confirmed that Sweden can extradite persons for the criminality involved in the self laundering, since this is considered to be part of the predicate offence.

741. Extradition may not be granted for:

- for military or political offences;
- if there is reason to fear that the person runs a risk - on account of his or her ethnic origins, membership of a particular social group or religious or political beliefs - of being subjected to persecution threatening his or her life or freedom, or is serious in some other respect;
- if it would be contrary to fundamental humanitarian principles, e.g. in consideration of a person's youth or the state of this person's health;
- if a judgment has been pronounced for the same offence in Sweden, whether the person has been acquitted or convicted;
- if the offence would have been statute-barred by limitation under Swedish law.

742. The state requesting for extradition must show that there is reason for extradition in the specific case. The outcome of the crime investigation in the requesting state - generally a conviction or a detention order - must be enclosed with the request for extradition. When extradition is granted, certain conditions may be laid down. For example, without the consent of the Government in the particular case, the person who is extradited may not be prosecuted or punished in the other state for any other offence committed prior to extradition (the "principle of specialty"). Nor may he or she be re-extradited to another state without the consent of the Government. Furthermore, nor may the person who is extradited be sentenced to death.

#### Extradition to a Nordic state

743. As a general rule, all that is required for extradition to another Nordic state is that the act is punishable by law in the requesting state. There is therefore no general requirement of "dual criminality". The Extradition Act for Criminal Offences to Denmark, Finland, Iceland and Norway (1959:254) is a product of close cooperation between the Nordic countries, which have all passed similar legislation. The Ordinance Concerning Provisions on Extradition for Criminal Offences (1982:306) also contains rules regarding extradition within the Nordic countries. In relation to Denmark and Finland, the Act on Surrender from Sweden According to the European Arrest Warrant (2003:1156) is applicable, if the competent authorities do not agree that, in the specific case, the Act on Extradition for Criminal Offences to Denmark, Finland, Iceland and Norway (1959:254) should be applied.

744. A Swedish national can be extradited if, at the time when the offence was committed, he had been permanently domiciled for at least two years in the state requesting extradition or if the act committed is equivalent to an offence for which the range of punishment in Swedish law includes imprisonment for more than four years. However, extradition is not permitted if the act is only punishable by a fine in the requesting state.

745. There is no impediment to extradition for military offences. Extradition for political offences is only permitted if the act is an offence according to Swedish law and if the person whose extradition is requested is not a Swedish national. A person who is extradited may not be prosecuted for an offence committed before extradition if he has been sentenced, or has been granted a waiver of prosecution, for that offence in Sweden. If the case concerns a Swedish national or a political offence, prosecution for another offence is only permissible if: 1) the Government has given special assent for this; 2) the person extradited has consented to such prosecution or has voluntarily remained in the country after the prosecution for which extradition was granted; or 3) the person has voluntarily returned to the requesting state after having left it. Re-extradition to a third state requires, in principle, a special agreement of the Government.

746. Unlike extradition requests involving non-Nordic countries, no assessment of guilt is made in Nordic cases. The evaluation of the evidence is left entirely to the requesting country. However, a conviction or a decision (usually a detention order) demonstrating the existence of probable cause for

suspicion must be presented in connection with the application. If the person whose extradition is requested consents to extradition or confesses to the act, not even a demonstrative decision needs to be included with the request. The authorities concerned establish direct contact with one another instead of submitting an application for extradition to the Central Authority. This means that an extradition request should be sent to the regional or local public prosecution office in the locality where the wanted person is living. A local prosecutor conducts an investigation, following the regulations for preliminary investigations in criminal cases.

747. If the person who is wanted consents to extradition, the local prosecutor himself can, with certain exceptions, deliver a decision on extradition. If not, the case must be transferred to the Office of the Prosecutor-General. The Prosecutor-General has the authority to decide on extradition if it is evident that the request should be approved and if the case does not involve a Swedish national or extradition for a political offence. In these cases the authority to decide is reserved for the Government. The Government then has the option of procuring a statement from the Supreme Court. As in non-Nordic cases, if the Supreme Court rejects the request, the Government is not allowed to give its approval.

#### Prosecution of Swedish nationals in lieu of extradition

748. In cases where Sweden does not extradite its own nationals it may submit the case without undue delay to its competent authorities for the purpose of prosecution of the offences set forth in the request. The Central Authority at the Ministry of Justice, immediately after learning of the decision of the government that an extradition will not be executed, informs the prosecuting authorities who are able to decide whether investigation or prosecution should take place. In such cases, the competent authorities take their decision and conduct their proceedings in the same manner as in the case of any other offence of a serious nature under the domestic law of Sweden also on the basis of the Act on International Cooperation in Criminal Proceedings (1976:19).

749. The application of the Act is restricted to the states that have acceded to the 1972 European Convention on the Transfer of Proceedings in Criminal Matters. Relatively infrequent use is made of this convention as only a few states have ratified it. A number of other conventions also contain provisions on the transfer of proceedings, such as the European Convention on Mutual Assistance in Criminal Matters, the European Convention on Extradition and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

750. Transfer of proceedings is primarily an option when the suspect is a habitual resident or national of the requested state, or when the state in question is this person's country of origin. It is also possible for the proceedings to be transferred for various other practical reasons, e.g. when the suspect is undergoing or is about to undergo custodial measures in the requested state or when proceedings have been initiated against him in that state for the same offence or some other offence. A transfer of proceedings can be an option when extradition for an offence has not been possible. A request for transfer of proceedings must be made in writing. The conventions regulating transfer of proceedings state that requests must be made by the Ministry of Justice in the requesting state and addressed to the Ministry of Justice in the requested state. In Sweden, the Ministry of Justice - and at the Ministry, the Central Authority - has been appointed to send and receive requests.

751. In cases involving transfers between Nordic countries, which are based on the Nordic co-operation agreement, the public prosecution offices in the countries concerned communicate directly with one another. A transfer of proceedings to Sweden is only permitted in cases where the act would have been an offence under Swedish law, if it had been committed in Sweden and where the person perpetrating the act would have been liable under Swedish law as well. Various circumstances, however, can force the rejection of some such requests, including the expiration of the time limitation for prosecution and a potential conflict with Sweden's international commitments or Swedish basic legal principles.

752. When a request for transfer of legal proceedings has been made and approved, and a prosecution has been brought to Sweden, the court passes judgment for the offence to which the act corresponds in Swedish law. If a judgment in Sweden is based on the Act on International Co-operation in Criminal

Proceedings or on the provisions in Chapter 2, Section 2 of the Penal Code, the court may not impose a penalty that is more severe than the most rigorous punishment allowed for the offence by the law of the place where the act was committed. The Act on International Cooperation in Criminal Proceedings (1976:19) (only in Swedish) contains provisions on the legal consequences in Sweden of a request for transfer of proceedings and on the further effects of a decision to approve the request. For example, after a request has been made for the transfer of proceedings to another state, an action may not be brought for the offence in Sweden, unless such an action has already been initiated.

753. A transfer from Sweden can take place at any stage up to the point at which the judgment in the case begins its enforcement; a transfer of proceedings to another state can therefore occur even when sentence has been passed in Sweden and has become final. However, certain restrictions do apply. In 1970, as already stated above, the public prosecution offices in the Nordic countries entered into a mutual cooperation agreement. Finland and Iceland have implemented the agreement in its entirety, while Sweden, Norway and Denmark apply only certain parts of the agreement. According to the Nordic cooperation agreement, an action can be brought in one Nordic state for an offence committed in another, provided that the suspect is domiciled in the state where the action is brought and the offence also is punishable there.

754. If special reasons exist and the state concerned consents, a prosecution for the offence can instead be initiated in whichever Nordic state the suspect is currently living. The proceedings then follow the criminal law and procedural legislation in force in the state, which takes over the prosecution of the case. The authorities in the country where the act was committed are responsible for taking the initiative to transfer the proceedings to another Nordic country. A request from Sweden must be made by the relevant prosecutor. In practice cooperation of involved countries on procedural and evidentiary aspects, to ensure the efficiency of the prosecution, is arranged by the Ministry of Justice through the Central Authority.

#### Procedures for processing requests without delay

755. Sweden has no explicit measures or procedures that would allow extradition requests and proceedings relating to ML to be handled without undue delay, even though undue delay seems not to be an issue. Certain measures that limit delay are provided but only in specific situations. For example, the examiners were told that the Ministry of Justice has a right to set a time limit concerning coercive measures that may be applied in connection with the extradition request and that these time limits are in general applied also in other extradition procedures. This time limit is 40 days.

756. The prosecutor who has decided on the use of coercive measures must submit his or her decision to the district court under whose jurisdiction the case falls. If the court confirms the decision by the prosecutor to use coercive measures, the head of the Ministry of Justice, i.e. the Minister for Justice, must *immediately* be informed. If the Minister is of the opinion that future extradition is out of the question, the Government orders the cancellation of the decision to use coercive measures. In all other cases, the Minister for Justice sets a date by which a request for extradition must be received. The other state is informed of the decision by the Central Authority. The time allowed for submitting a request must not exceed 40 days. If the other state does not present a request by the appointed date, the decision to use coercive measures is revoked. In all other cases, a decision to implement coercive measures remains in force until extradition is enforced. The law also allows the possibility to decide whether to implement coercive measures after a request for extradition has been granted but before this decision has been enforced.

#### Additional elements

757. Direct transmission of extradition requests between appropriate ministries is allowed; the Central Authority in this case is located in the Swedish Ministry of Justice. Also direct extradition request are possible among Nordic countries.

758. Persons can also be extradited based only on warrants of arrests or judgments on the basis of the Act on Surrender from Sweden according to the European Arrest Warrant (2003:1179). Surrender can be

requested for two reasons: 1) when a person has to serve a sentence already passed in the other country; or 2) when legal proceedings can be started against the person there. A decision relating to surrender from Sweden is made by a District Court. The Court's decision to surrender a person against his/her own will can be appealed against to the Court of Appeal and - if a review dispensation is granted - to the Supreme Court. The District Court shall in principle issue its decision within 30 days from the date when the requested person was apprehended.

759. A simplified procedure of extradition of consenting persons who waive formal extradition proceedings is in place in certain circumstances. When a person consents to surrender, the decision of the District Court is issued within ten days from the consent. The requested person has the right to be assisted by a public defence counsel. The trial in court shall as a rule include a hearing. The Act indicates the conditions under which surrender can be approved. These correspond largely to the conditions, which apply for extradition. A condition for the surrender of a person to face trial is that the offence according to the legislation of the requesting member state can lead to imprisonment for at least one year. A condition for surrender for the execution of a custodial sentence or detention order is that a sentence or order of at least four months has been imposed. The previous requirement of double criminality also applies, i.e. that the act also constitutes an offence under Swedish law.

760. A local prosecutor conducts an investigation, following the regulations for preliminary investigations in criminal cases. If the person who is wanted consents to extradition, the local prosecutor himself can, with certain exceptions, deliver a decision on extradition. If not, the case must be transferred to the Office of the Prosecutor-General. The Prosecutor-General has the authority to decide on extradition if it is evident that the request should be approved and if the case does not involve a Swedish national or extradition for a political offence. In these cases the authority to decide is reserved for the Government. The Government then has the option of procuring a statement from the Supreme Court. As in non-Nordic cases, if the Supreme Court rejects the request, the Government is not allowed to give its approval.

#### ***Recommendation 37 (dual criminality relating to extradition) and Special Recommendation V***

761. Dual criminality is generally required for extradition to non-Nordic states. However, it is the act itself, not the categorization or denomination of the offence, which determines whether or not the requirement concerning dual criminality, is satisfied. Technical differences between the laws in the requesting and requested states, such as differences in the manner in which each country categorizes or denominates the offence should not pose an impediment to the provision of mutual legal assistance, including extradition.

#### ***Recommendation 32 (statistics on extradition)***

762. Sweden does not maintain specific statistics on extradition requests made or received, relating to FT, ML, and predicate offences.

### **6.4.2 Recommendations and Comments**

763. Sweden should ensure that the execution of the declaration of Sweden when signing the 1957 Convention on Extradition should does not impede the processes of extradition of other nationals especially aliens who are residents of Sweden, to other countries.

764. Sweden should also collect and maintain statistics on: (i) the number of requests for extradition; (ii) the nature of the request; (iii) whether the request was granted or refused; (iv) what crime the request was related to; or (v) how much time was required to respond. Statistics concerning requests for extradition between the Nordic countries that are sent directly to the prosecuting authorities should also be collected and maintained.

### 6.4.3 Compliance with Recommendations 37 & 39, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	C	
R.37	C	
SR.V	LC	The application of dual criminality may create an obstacle to extradition in cases involving FT activities that are not specifically criminalised in Sweden: collecting/providing funds/assets to be used (for any purpose) by a terrorist organisation or individual terrorist.
R.32	PC	Sweden 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. There are no statistics available concerning ML/FT.

## 6.5 Other Forms of International Co-operation (R.40, SR.V & R.32)

### 6.5.1 Description and Analysis

#### *Recommendation 40 and Special Recommendation V*

##### FIU co-operation

765. As a matter of general policy, the competent authorities in Sweden for international co-operation in the combat of crime give an effort to international co-operation through participation in international bodies and projects. In addition, Swedish legislation allows passing information to authorities in other countries relevant for preventing and detecting criminal acts. National publicity of the information is a major principle based on Swedish legislation. This principle is applicable also to information disseminated to authorities in other countries. The FIU and law enforcement authorities are aware of the fact that information, which can be shared with national authorities, can also be disseminated abroad.

766. When information is exchanged with foreign counterparts, the receiver of information in another country has to respect the handling codes how they can use the information. Swedish authorities seem to be satisfied with international co-operation in this sector. There are no indications that Swedish assistance would not be provided rapid, constructive and effective manner. This is however not easy to rate because of the lack of statistics and other written information. Sweden does not refuse requests for co-operation solely on the ground that the request is considered to involve fiscal matters.

767. In general, exchanges of information are not made subject to disproportionate or unduly restrictive conditions. Information can be exchanged with foreign FIUs, both spontaneously and upon request, regardless of whether the FIU is organised within the police or prosecution authority or within the administration.

768. Information exchange with foreign authorities is made by the FIU itself through Egmont. Sweden was also connected to the Egmont Secure Web (ESW) in 1995. The Swedish FIU is authorised to search and provide information both of its own database and other public databases to which the FIU has access. In general, other forms of international co-operation are run by the FIU through participation in international bodies and projects.

769. The work with affiliation to the FIU-net is under progress and ongoing. The aim is that Sweden should be connected to the information sharing system during the upcoming year. The FIU has regularly participated in the FIU-net meetings during the years. The FIU participates in the EU-project Karin,

which aims to create information channels to improve and effectuate the abilities to trace, seize and confiscate the proceeds of crime and criminal assets within EU.

770. The FIU does not need to have a memorandum of understanding (MOU) in order to be able to exchange information with foreign counterparts. If there is a MOU with a foreign FIU, it is possible to disseminate information regardless whether the information is defined secret under Secrecy Act. There are also bilateral MOUs with Russian and Belgian FIU. The FIU stated that there are also plans to achieve a police co-operation agreement with Thailand.

#### Law enforcement co-operation

771. Sweden has several bilateral agreements on police co-operation. Swedish law enforcement authorities are authorised to conduct investigations on behalf of foreign counterparts on the conditions that formal procedures laid down in legal instruments are applied. The abovementioned principles in FIU co-operation apply similarly to law enforcement authorities.

**Table: Bilateral agreements on police co-operation concluded by Sweden**

France	<ul style="list-style-type: none"> <li>• Agreement on police co-operation as regards combating of terrorism, illegal trafficking in narcotics and organised crime (15 December 1989)</li> </ul>
Hungary	<ul style="list-style-type: none"> <li>• Agreement between the Government of the Kingdom of Sweden and the Government of the Republic of Hungary on co-operation in combating organized crime, illegal trafficking in narcotic drugs and psychotropic substances, terrorism and other forms of serious crime (23 April 1997)</li> </ul>
Malta	<ul style="list-style-type: none"> <li>• Co-operation Agreement between the Government of the Kingdom of Sweden and the Government of Malta on the fight against illicit trafficking in narcotic drugs and psychotropic substances and against organised crime (10 May 2001)</li> </ul>
Poland	<ul style="list-style-type: none"> <li>• Agreement between the Government of the Kingdom of Sweden and the Republic of Poland on co-operation in combating serious crime (14 April 2005)</li> </ul>
Romania	<ul style="list-style-type: none"> <li>• Agreement between the Government of the Kingdom of Sweden and the Government of Romania on co-operation in combating organized crime, illicit trafficking in narcotic drugs, psychotropic substances and precursors, trafficking in human beings, terrorism and other serious crime (11 May 2004)</li> </ul>
Russia	<ul style="list-style-type: none"> <li>• Agreement between the Government of the Kingdom of Sweden and the Government of the Russian Federation on co-operation as regards measures to combat crime (19 April 1995)</li> <li>• Agreement between the National Police Board of Sweden and the Security Service of the Russian Federation (2 May 1996)</li> <li>• Agreement between the National Police Board of Sweden and the Ministry of Interior of the Russian Federation (2 May 1996)</li> <li>• Additional protocol to Agreement between the Government of the Kingdom of Sweden and the Government of the Russian Federation on co-operation as regards measures to combat crime of 19 April 1995 (30 October 1996)</li> <li>• Additional protocol to Agreement between the Government of the Kingdom of Sweden and the Government of the Russian Federation on co-operation as regards measures to combat crime of 19 April 1995 (2 December 1997)</li> <li>• Agreement between the National Police Board of Sweden and the Tax police of the Russian Federation (2 December 1997)</li> <li>• Agreement between the National Police Board of Sweden and the Exchange and Export Control Agency as regards measures to combat economic and financial crime (23 April 1998)</li> <li>• Agreement between the National Police Board of Sweden and the Financial Monitoring Federal Service (The Russian Federation) concerning cooperation in the sphere of counteracting legalisation (laundering of proceeds from crime (6 July 2004) <i>In effect substituting agreements from 2 December 1997 and 23 April 1998.</i></li> <li>• <i>New additional protocol to governmental agreement is being negotiated with</i></li> </ul>

	<i>aim of updating list of competent authorities on both sides.</i>
Slovenia	<ul style="list-style-type: none"> <li>• Agreement between the Government of the Kingdom of Sweden and the Republic of Slovenia on co-operation in the fight against organised crime, illicit trafficking in drugs and precursors, terrorism and other serious crime (18 May 2004)</li> </ul>
Spain	<ul style="list-style-type: none"> <li>• Agreement on police co-operation as regards combating of terrorism, illegal trafficking in narcotics and organised crime (11 May 1989)</li> </ul>
Sweden	<ul style="list-style-type: none"> <li>• Agreement between the Government of the Kingdom of Sweden and the Cabinet of Ministers of Ukraine concerning co-operation as regards measures to combat crime (23 March 1999)</li> <li>• Protocol on co-operation between the National Police Board of Sweden and the Ministry of Interior of Ukraine (10 May 2000)</li> <li>• Memorandum of Understanding between Swedish National Police Board and the State Department for Financial Monitoring within the Ministry of Finance of Ukraine concerning co-operation in combating legalization (laundering) proceeds from crime is being negotiated.</li> </ul>
<i>Turkey, and Uzbekistan</i>	<ul style="list-style-type: none"> <li>• Under negotiation</li> </ul>
<i>Croatia</i>	<ul style="list-style-type: none"> <li>• Agreement between the Government of the Republic of Croatia and the Government of the kingdom of Sweden on co-operation in combating crime, Zagreb 3 October 2005</li> </ul>

### Finansinspektionen

772. Finansinspektionen has the statutory power to share prudential information with other supervisory authorities, including banking, insurance and securities supervisors. The basis for this system is an applicable principle of public access to information held by Swedish authorities that means that the public shall have insight into state and municipal activities. This principle is expressed in various ways *inter alia*, public access to official documents, and means that all Swedish citizens and foreigners are entitled to read official documents held by public authorities, unless there is an applicable provision in the Secrecy Act from 1980. With regard to Finansinspektionen, according to Section 5 Chapter 8 of the Secrecy Act, secrecy shall apply in such activities of a public authority which consist of the issuance of permits or supervision with regard to the banking system, the securities market or the insurance business, to information regarding:

- the business or management conditions on the part of an undertaking subject to supervision, if it may be assumed that a disclosure of the information will harm the company;
- the financial or personal conditions on the part of anyone else, who has entered into a business relation or a similar relation with a party subject to supervision.

773. A breach of this obligation is a crime according to the Swedish Secrecy Act. Finansinspektionen has the right to disclose information to a foreign authority if the information is communicated in accordance with special provisions (MOUs) or the information in a corresponding case might be given to a Swedish authority and it is deemed to be consistent with Swedish interests that the information may also be released to the foreign authority. Thus, this provision is applicable in case of a preliminary investigation. Before a preliminary investigation has been initiated it seems that in practice information sharing is mostly based on Memorandums of Understanding.

774. MOUs are Finansinspektionen's primary gateway for sharing information with other supervisory authorities. Such agreements can be bilateral or multilateral; they can also be either general in nature or regarding a specific financial institution. Finansinspektionen has entered into or is currently negotiating such agreements with countries where Swedish financial institutions have a significant presence, either through a branch or a subsidiary, and countries whose financial institutions have a controlling interest in a Swedish financial institution of significant size.

775. Overall, Sweden has concluded more than 30 MOUs with its counterparts. An MOU's primary purpose is to facilitate information sharing since it is also possible to share information if it would be

prohibited according to the Secrecy Act. Furthermore, also according to Chapter 8 Section 5 of the Secrecy Act, the Swedish Government may decide that secrecy applies at Finansinspektionen on information that Finansinspektionen has received according to an agreement with a foreign authority. If the Swedish Government decides to include such an agreement between Finansinspektionen and a foreign supervisory authority within the framework of Section 1 c of the Secrecy Ordinance confidentiality is thus preserved at Finansinspektionen concerning information received according to that agreement. The Government has so far always decided that secrecy applies to information that Finansinspektionen has received according to an MOU, and those agreements have always been added to Section 1 c of the Secrecy Ordinance.

776. A competent authority in another EEA state may, after notification to Finansinspektionen, carry out an investigation at the premises of a branch of a credit institution, insurance company, investment company or securities company. Finansinspektionen shall provide any and all information that a competent authority in another state within the EEA requires for its supervision.

### ***Recommendation 32 (Statistics related to other forms of international co-operation)***

777. *FIU and Law enforcement:* Sweden does not maintain adequate statistics concerning the number of formal requests for assistance made to or received by the FIU from foreign counterparts; no statistics are maintained on spontaneous referrals made by the FIU to foreign authorities. Assessors were told that there has not been any formal request for assistance received by the Swedish FIU. There are numbers of so called “support cases” registered by the FIU in the FIU’s annual report. Support cases include questions from different parties, for instance from Egmont, from other countries and from Swedish police, and total amount of these support cases was 365 in 2003. The FIU states that approximately more than 100 incoming requests and some fewer outgoing requests take place every year. According to the FIU, statistics on requests from other Egmont members shows that it has been 110 requests for 2003, 105 request for 2004 and 32 request until 15 March 2005. There are no statistics available on law enforcement requests relating to AML/CFT.<sup>40</sup>

778. *Finansinspektionen:* No formal requests for assistance in AML/CFT cases have been made or received by Finansinspektionen yet. However, on two occasions Finansinspektionen assisted US authorities regarding indictments against Swedish registered economic associations carrying out illegal banking operations and investment fraud abroad with some links to money laundering schemes. There have also been joint examinations within the area of AML/CFT with other supervisory authorities. In general, international co-operation with regard to Finansinspektionen seems to function fairly well.

## **6.5.2 Recommendations and Comments**

779. Swedish authorities are satisfied with international co-operation concerning the FIU and law enforcement authorities. There are not any indications that co-operation would be ineffective or would not be used as provided in the Recommendations. However, statistics should be available in order to evaluate sufficiently enough the investment in international co-operation requested by the recommendations in Sweden. The FIU maintains some statistics concerning requests from foreign authorities (“support cases”); however, it was not entirely clear for the assessors what these support cases include. Sweden should collect and maintain statistics concerning the number of requests made and received by the FIU and the law enforcement authorities, including the nature of the request, whether it was granted or refused and the time required to respond.

780. In general, international co-operation between Finansinspektionen and its counterparts seems to function fairly well.

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<sup>40</sup> Swedish authorities have indicated that the database that became operational on 9 December 2005 will allow for more complete statistics for support cases to be kept.

### 6.5.3 Compliance with Recommendation 40, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
<b>R.40</b>	<b>C</b>	Recommendation 40 is fully observed.
<b>SR.V</b>	<b>LC</b>	(Provisions of R.40 relating to SR.V are sufficient.)
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Sweden does not maintain adequate statistics concerning the number of formal requests for assistance made to or received by the FIU from foreign counterparts; only the FIU has statistics on so called support cases. No statistics are maintained on spontaneous referrals made by the FIU to foreign authorities.</li> <li>• There are no statistics available on law enforcement requests relating to AML/CFT.</li> </ul>

## TABLES

**Table 1: Ratings of Compliance with FATF Recommendations**

**Table 2: Recommended Action Plan to improve the AML/CFT system**

**Table 3: Authorities' Response to the Evaluation (if necessary)**

**Table 1. Ratings of Compliance with FATF Recommendations**

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (NA). These ratings are based only on the essential criteria, and defined as follows:

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
Not applicable	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country.

Forty Recommendations	Ra- ting	Summary of factors underlying rating
<b>Legal systems</b>		
1. ML offence	LC	<ul style="list-style-type: none"> <li>• Self-laundering is not covered, and the evaluation team could not confirm that this was due to fundamental principles as defined by the FATF.</li> <li>• The ancillary offences of conspiracy to commit and attempt are not available for the basic offence of money laundering.</li> <li>• The evaluation team concluded that the offence is not effectively implemented; generally, only charges for predicate offences are pursued, and there are a limited number of convictions for money receiving.</li> </ul>
2. ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> <li>• The evaluation team concluded that the offence is not effectively implemented; generally, only charges for predicate offences are pursued, and there are a limited number of convictions for money receiving and petty money receiving. Moreover, penalties imposed in these cases were low.</li> </ul>
3. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> <li>• Confiscation and related provisions need to be used more effectively, and there should be a greater focus on taking action to seize and confiscate the proceeds of crime.</li> </ul>
<b>Preventive measures</b>		
4. Secrecy laws consistent with the Recommendations	LC	<ul style="list-style-type: none"> <li>• Sweden's statutes generally do not inhibit the implementation of the FATF Recommendations, but the varying interpretations within the private sector of the duty of confidentiality as defined in the many statutes has lead, in practice, to less information sharing than would be optimal.</li> </ul>
5. Customer due diligence	PC	<ul style="list-style-type: none"> <li>• Although Sweden has implemented customer identification obligations, it has not implemented full customer due diligence (CDD) requirements.</li> <li>• The CFT Act does not cover within its scope investment companies, and the AML/CFT legislation does not cover certain credit card companies.</li> <li>• As the existing regulations were implemented in July 2005, there is little evidence of their effectiveness.</li> <li>• Guidance relating to KYC is only indirectly enforceable for financial institutions.</li> <li>• There are numerous exemptions to the requirements related to customer identification, which appear overly broad.</li> <li>• There is no specific requirement to check customer identity when there are doubts as to the veracity or adequacy of previously obtained customer identification data nor</li> </ul>

		<p>when the preconditions of SR VII are met.</p> <ul style="list-style-type: none"> <li>• There are similarly insufficient requirements to ascertain the beneficial owner, including: no general requirement to identify and verify the identity of the beneficial owner; no direct requirement for financial institutions to determine whether the customer is acting on behalf of another person (only when doubts arise as to whether the customer is acting on his/her own behalf), and if so, identify that other person; no requirements to take reasonable measures to determine the natural person with ownership or control over a legal person.</li> <li>• There are only to a limited extent and in indirectly enforceable guidance recommendations regarding the purpose and nature of the business relationship, ongoing CDD, enhanced CDD or conducting CDD on existing customers.</li> <li>• There are no regulations that clearly address the timing of verification, even if the Swedish practice may reflect the FATF recommendations in this area.</li> <li>• Financial institutions have indicated that they face significant obstacles both not to open accounts when satisfactory CDD cannot be completed and to terminate a business relationship with a customer.</li> </ul>
6. Politically exposed persons	NC	<ul style="list-style-type: none"> <li>• Sweden has not implemented any AML/CFT measures concerning the establishment of customer relationships with politically exposed persons (PEPs).</li> </ul>
7. Correspondent banking	NC	<ul style="list-style-type: none"> <li>• Sweden has not implemented any AML/CFT measures concerning establishment of cross-border correspondent banking relationships.</li> </ul>
8. New technologies & non face-to-face business	LC	<ul style="list-style-type: none"> <li>• Sweden has legislation and regulation concerning non-face to face business relationships, but no specific requirement that financial institutions have policies in place to deal with the misuse of technological developments. However, it is implied in the risk analysis and assessments that this should be done according to the AML/CFT General Guidelines.</li> </ul>
9. Third parties and introducers	N/A	<ul style="list-style-type: none"> <li>• Although financial institutions do rely on outside agencies to perform CDD for them, this is only done in the context of outsourcing agreements that must be performed under contract, and thus this falls outside the scope of Recommendation 9.</li> </ul>
10. Record keeping	LC	<ul style="list-style-type: none"> <li>• There is no requirement in law or regulation that customer identification records must be made available on a timely basis; however, indirectly enforceable guidelines generally cover this area.</li> </ul>
11. Unusual transactions	LC	<ul style="list-style-type: none"> <li>• Sweden does not require that the findings regarding the scrutiny of certain transactions be kept for five years: Under the Money Laundering Registers Act, financial institutions <i>may</i> keep records of STRs filed, but they must delete them after one year if there is no further investigation of money laundering, an investigation has been discontinued, or there has been a preliminary hearing which did not result in a prosecution (section 6).</li> </ul>
12. DNFBP – R.5, 6, 8-11	PC	<ul style="list-style-type: none"> <li>• The scope of the DNFBPs that are subject to the AML Act is not adequate: it does not apply to company service providers and some accountants.</li> <li>• As the DNFBPs are not subject to Finansinspektionen's regulations or the CFT Act, many of the requirements that Swedish financial institutions are subject to that correspond to criteria under Recommendation 5 do not correspond to this sector.</li> <li>• There is no direct obligation to monitor all unusual, large transactions or transactions with no visible economic purpose, and make out findings in writing. Records of reported suspicious transactions must be deleted after one year.</li> <li>• For these sectors, the effectiveness of the implementation of Sweden's current laws can be improved. The effectiveness is further reduced by the fact that there is no designated authority to monitor or impose sanctions for non-compliance.</li> </ul>
13. Suspicious transaction reporting	PC	<ul style="list-style-type: none"> <li>• The obligation to report suspicious transactions related to terrorist financing does not extend to investment funds and the AML/CFT obligation does not cover certain credit card companies.</li> <li>• The scope of the terrorist financing offence (which does not specifically include funds to be used by a terrorist organisation or an individual terrorist for any purpose) could limit the scope of the reporting requirement for terrorist financing STRs.</li> <li>• The large majority of STRs have been filed by a small number of financial institutions; only approximately half of the banks reported suspicious transactions in 2004.</li> <li>• The assessors had several concerns regarding the lack of effective implementation of this Recommendation.</li> </ul>

14. Protection & no tipping-off	C	This Recommendation is fully observed.
15. Internal controls, compliance & audit	LC	<ul style="list-style-type: none"> <li>• Certain details (access to information for the compliance officer and establishment of an independent audit function), which are laid in indirectly enforceable guidelines for licensed institutions, are not currently enforceable for registered financial institutions (money remittance and exchange companies, deposit companies).</li> <li>• There is no legal obligation on reporting financial institutions to establish screening procedures to ensure high standards when hiring employees.</li> </ul>
16. DNFBP – R.13-15 & 21	PC	<ul style="list-style-type: none"> <li>• There are concerns about the scope of application of AML obligations: measures do not apply to company service providers, and the non-regulated sector of accountants.</li> <li>• CFT obligations (including an obligation to report an STR related to FT) do not apply to any DNFBP.</li> <li>• It is not required that STRs must be filed to the FIU “promptly.”</li> <li>• The possibility for advocates, associate lawyers at law firms and auditors to disclose any information 24 hours after the moment an investigation has been started, information has been handed over to the police or the police has started a formal preliminary investigation does not comply with the requirements of Recommendation 14.</li> <li>• There are also some concerns with regard to the compliance with Recommendation 15 and 21, since there is no requirement to designate a person responsible for implementing the AML/CFT obligations and there are no rules with regard to NCCTS or other countries which have not implemented an effective AML/CFT system.</li> </ul>
17. Sanctions	LC	<ul style="list-style-type: none"> <li>• The range of administrative sanctions that can be imposed on registered financial institutions is limited; it is currently limited to rectification orders and de-registration.</li> <li>• For investment companies, securities companies, deposit companies, money exchange and money remittance businesses, there are no sanctions that can apply to directors or senior managers.</li> <li>• For banks/credit institutions and insurance companies, board members and managing directors may be removed from office. However, there are not sanctions for other senior management, and there are no other administrative penalties (fines) or criminal sanctions available.</li> </ul>
18. Shell banks	PC	<ul style="list-style-type: none"> <li>• There is no legally binding prohibition on financial institutions to enter or continue correspondent banking relationship with shell banks nor is there any obligation on financial institutions to satisfy themselves that a respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.</li> </ul>
19. Other forms of reporting	PC	<ul style="list-style-type: none"> <li>• Sweden has not adequately considered the feasibility and utility of implementing a system whereby financial institutions report all transactions in currency above a fixed threshold to a centralised agency with a computerised database.</li> </ul>
20. Other NFBP & secure transaction techniques	C	This Recommendation is fully observed.
21. Special attention for higher risk countries	PC	<ul style="list-style-type: none"> <li>• There are currently no measures to ensure that institutions are advised about concerns about weaknesses in the AML/CFT systems of other countries.</li> <li>• Sweden issues advisories regarding countries against which appropriate countermeasures would apply due to the countries continuing not to apply or insufficiently applying the FATF Recommendations. These advisories do not constitute a legally binding requirement.</li> </ul>
22. Foreign branches & subsidiaries	PC	<ul style="list-style-type: none"> <li>• There is no direct obligation for foreign branches and subsidiaries to observe AML/CFT measures consistent with Swedish requirements and the FATF recommendations to the extent that host country's laws and regulations permit; there is an indirectly enforceable obligation to “endeavour” to establish common group policies.</li> <li>• There is no requirement that particular attention be paid to branches and subsidiaries in countries which do not or insufficiently apply the FATF recommendations and that the higher standard be applied in the event that the AML/CFT requirements of the home and host countries differ.</li> <li>• It is only indirectly binding that Finansinspektionen be informed if the financial institution's internal regulation regarding AML/CFT can not be applied because of</li> </ul>

		deficiencies in the host country's laws and regulations.
23. Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> <li>It is currently not possible to apply the provisions of the CFT Act to investment companies, and certain credit card companies are not subject to the legislation or supervised.</li> <li>There is no fit and proper test for the senior management (other than the board of directors and managing director) of licensed financial institutions or for registered financial institutions in order to prevent criminals from gaining control or significant influence.</li> <li>The limited resources and the focus Finansinspektionen has on larger financial groups with regard to AML/CFT issues may be negatively influencing the effectiveness of the overall AML/CFT supervision.</li> <li>Natural and legal persons providing money exchange or money remittance services are not subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. On-site inspections to verify compliance are not allowed. In addition, it is unclear if all informal money value transfer systems are currently within the scope of the Swedish legislation and supervision</li> <li>The quality of supervision of MVTS providers and money or currency exchange services is not sufficient due to limited on-going monitoring powers for these entities.</li> </ul>
24. DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> <li>Overall, the supervisory bodies of the different sectors are not designated as authorities, which have any responsibility for the AML/CFT regulatory and supervisory regime.</li> <li>There are no administrative sanctions available specifically dealing with DNFBPs for breaches of AML/CFT obligations.</li> <li>Dealers in precious metals and stones are not monitored by any authority; trust and company service providers are not subject to AML/CFT Acts nor monitored by any authority.</li> <li>Legal professionals who are not members of the Bar Association, and accountants who are not registered by the Supervisory Board of Public Auditors are not monitored or supervised for compliance with AML/CFT obligations and are not subject to administrative sanctions. There is no indication that Sweden has considered this issue following a risk-based approach.</li> <li>The supervisory powers of the Gaming Board (Casinos) are too limited.</li> <li>The supervisory authorities of the DNFBPs should initiate a more proactive and consequent supervision with regard to compliance with AML obligations.</li> </ul>
25. Guidelines & Feedback	LC	<p><u>Financial institutions: Guidelines and feedback on STRs</u></p> <ul style="list-style-type: none"> <li>The FIU and Finansinspektionen have not given adequate guidance to assist entities in implementing and complying with STR requirements, although efforts are already underway to improve this.</li> <li>General feedback given by the FIU and Finansinspektionen would be more helpful if it were industry-specific.</li> </ul> <p><u>Financial Institutions: Guidelines on AML/CFT other than STRs:</u></p> <ul style="list-style-type: none"> <li>The guidelines issued by Finansinspektionen are relatively complete in terms of current Swedish legislation but would be improved if sector-specific guidance were provided, and will need to be further supplemented if they are to set out full guidance that comprehensively meets the new FATF Recommendations.</li> </ul> <p><u>DNFBPs</u></p> <ul style="list-style-type: none"> <li>AML guidelines have not been issued for casinos, real estate agents, or company service providers.</li> <li>Appropriate CFT guidelines also need to be issued for DNFBPs.</li> </ul>
<b>Institutional and other measures</b>		
26. The FIU	LC	<ul style="list-style-type: none"> <li>The time limits for storing data in the money laundering database (6 months/3 years) cause serious concerns and impede the overall effectiveness of Sweden's FIU and AML/CFT system.</li> <li>The FIU does not currently give adequate guidance to reporting parties on the manner and procedure for reporting, which reduces the quality of the reports.</li> <li>The FIU is overburdened by the large number of threshold reports which contain no other suspicion.</li> <li>The reliance on manual processes and the shortage of resources diminish the</li> </ul>

		effectiveness of the FIU.
27. Law enforcement authorities	LC	<ul style="list-style-type: none"> <li>Legal measures appear comprehensive; however, insufficient attention is paid to pursuing money laundering offences, and there is little evidence of the effectiveness of the regime for investigating or prosecuting ML.</li> </ul>
28. Powers of competent authorities	C	This Recommendation is fully observed.
29. Supervisors	LC	<ul style="list-style-type: none"> <li>The powers of the supervisory authority to monitor and ensure compliance by registered financial institutions (deposit companies, money remittance and money exchange) are too limited; it should be possible to conduct on-site inspections of these institutions.</li> <li>The number of on-site inspections solely devoted to AML/CFT should be increased.</li> <li>Investment companies are not within the scope of the CFT Act and certain credit card companies are not subject to the legislation or supervised.</li> <li>For certain financial institutions meeting the FATF definition but not under the supervision of Finansinspektionen (i.e., certain credit card companies if they offer less than a 45-day credit extension), there is no supervisor and no enforcement powers or sanctions available.</li> </ul>
30. Resources, integrity and training	PC	<p><u>FIU</u></p> <ul style="list-style-type: none"> <li>There is a need for more staff in general, and in particular, analysts within the FIU.</li> <li>Improved tools and resources to enhance analysis are needed.</li> </ul> <p><u>Police/Prosecution</u></p> <ul style="list-style-type: none"> <li>More education and training of law enforcement authorities in ML/FT offences is needed.</li> <li>The total resources for ML/FT investigation need to be reviewed.</li> </ul> <p><u>Supervisors</u></p> <ul style="list-style-type: none"> <li>Finansinspektionen does not seem to have sufficient resources to supervise compliance with AML/CFT obligations.</li> </ul>
31. National co-operation	LC	<ul style="list-style-type: none"> <li>It is unclear how effective coordination is at targeting money laundering or terrorist financing specifically, as these types of cases are only pursued on a limited basis.</li> <li>While some policy co-ordination exists, it appears mainly reactive and could be improved.</li> </ul>
32. Statistics	PC	<ul style="list-style-type: none"> <li>Sweden does not review the effectiveness of its systems for combating money laundering and terrorist financing on a regular basis.</li> <li>No statistical information is available concerning the ML/FT investigations and prosecutions.</li> <li>No statistics available for the number or amount of property frozen or seized. Although there is a total amount indicated of the value of property confiscated, there is no indication of the underlying predicate offences. Data is generally limited.</li> <li>Sweden should be able to breakdown ML/FT suspicions and offences. In addition, there should be separate statistics for FI and DNFBP.</li> <li>There were no statistics available on mutual legal assistance and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offences and FT, including the nature of the request, whether the request was granted or refused, and the time that was required to respond.</li> <li>Sweden does not maintain adequate statistics concerning the number of formal requests for assistance made to or received by the FIU from foreign counterparts; only the FIU has statistics on so called support cases. No statistics are maintained on spontaneous referrals made by the FIU to foreign authorities. There are no statistics available on law enforcement requests relating to AML/CFT.</li> </ul>
33. Legal persons – beneficial owners	PC	<ul style="list-style-type: none"> <li>The law does not require that information on beneficial ownership be collected or made available; the system does not provide adequate access to up-to-date information on beneficial ownership in a timely manner.</li> <li>The majority of foundations do not need to be registered, and therefore relevant information is not collected on those entities.</li> </ul>

34. Legal arrangements – beneficial owners	N/A	Trusts are not recognised under Swedish law. There are no other legal arrangements similar to trusts that exist in Sweden
<b>International Co-operation</b>		
35. Conventions	LC	<ul style="list-style-type: none"> <li>• <b>Implementation of the Palermo Convention:</b> Article 6(2)(e) of the Convention obligates countries to make self-laundering an offence unless it is contrary to fundamental principles of domestic law. Self-laundering is not an offence in Sweden, but this cannot be justified on the basis of its being contrary to the Swedish fundamental law.</li> <li>• <b>Implementation of the Terrorist Financing Convention:</b> Article 18(1)(b) of the Convention, which requires countries to implement efficient measures to identify customers in whose interest accounts are opened is insufficiently implemented. Sweden's implementation of Recommendation 5 does not include adequate measures to ascertain the identity of beneficial owners.</li> </ul>
36. Mutual legal assistance (MLA)	LC	<ul style="list-style-type: none"> <li>• Since dual criminality is required, it is not clear how effectively Sweden could execute coercive measures relating to requests involving conspiracy to commit basic money laundering and collecting/providing funds/assets to be used by a terrorist organisation or individual terrorist.</li> </ul>
37. Dual criminality	C	This recommendation is fully observed.
38. MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> <li>• Sweden has not considered establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes.</li> <li>• The requirement for a treaty or agreement could limit the number of countries for which Sweden could execute a confiscation order, although as most requesting states are parties to international conventions, this does not appear to be a problem in practice.</li> <li>• Relating to requests from European countries not parties to certain international agreements, foreign judgments cannot be executed for someone not domiciled in Sweden, although this does not appear to be a problem in practice.</li> </ul>
39. Extradition	C	This Recommendation is fully observed.
40. Other forms of international co-operation	C	This Recommendation is fully observed.
<b>Nine Special Recommendations</b>	<b>Rating</b>	<b>Summary of factors underlying rating</b>
SR.I Implement UN instruments	LC	<ul style="list-style-type: none"> <li>• <b>Implementation of the Terrorist Financing Convention:</b> Article 18(1)(b) of the Convention, which requires countries to implement efficient measures to identify customers in whose interest accounts are opened is insufficiently implemented. Sweden's implementation of Recommendation 5 does not include adequate measures to ascertain the identity of beneficial owners.</li> <li>• <b>Implementation of S/RES/1267 (1999) and S/RES/1373(2001):</b> Sweden has implemented both resolutions mainly through EU Regulations; however the regulations do not cover EU internals, and there is not a national system for listing procedures under S/RES/1373.</li> </ul>
SR.II Criminalise terrorist financing	LC	<ul style="list-style-type: none"> <li>• Current law does not specifically criminalise the collection or provision of funds in the knowledge that they are to be used (for any purpose) by a terrorist organisation or an individual terrorist.</li> <li>• Sanctions for the terrorist financing offence are not effective, dissuasive and proportionate.</li> </ul>
SR.III Freeze and confiscate terrorist assets	PC	<ul style="list-style-type: none"> <li>• Within the context of S/RES/1373, Sweden does not have a national mechanism to consider requests for freezing from other countries (outside the EU mechanism) or to freeze the funds of EU internals (citizens/residents);</li> <li>• At the time of the on-site visit, very little guidance had been issued to financial institutions and other persons/entities that may be holding targeted funds/assets.</li> <li>• Due to some concerns about the scope of the terrorist financing offence, it is unclear how Sweden would be able to freeze funds or other assets where the suspect is an individual terrorist or belongs to a terrorist organisation (where that person or</li> </ul>

		<p>organisation is not already a designated person by the UN or the EU).</p> <ul style="list-style-type: none"> <li>At the time of the on-site visit, the definition of funds in the EU Regulations did not fully cover the terms in SR.III. (It does not explicitly cover funds owned, <i>directly or indirectly</i>, by designated persons, or those controlled (but not owned) directly or indirectly, by designated persons), although in practice this did not present a problem and any potential loophole has been clarified.</li> </ul>
SR.IV Suspicious transaction reporting	LC	<ul style="list-style-type: none"> <li>The scope of offences in the CFT Act does not specifically include funds to be used by individual terrorists or terrorist organisations; so transactions involving such funds would not be reportable under the CFT Act's STR provisions.</li> <li>The obligation to report suspicious transactions related to terrorist financing does not extend to either investment funds or certain credit card companies.</li> <li>The assessors had several concerns regarding the lack of effective implementation of this Recommendation.</li> </ul>
SR.V International co-operation	LC	<ul style="list-style-type: none"> <li>Since dual criminality is required, it is not clear how effectively Sweden could execute coercive measures relating to requests, either for mutual legal assistance or for extradition involving collecting/providing funds/assets (for any purpose) to be used by a terrorist organisation or individual terrorist.</li> </ul>
SR.VI AML requirements for money/value transfer services	PC	<ul style="list-style-type: none"> <li>There is no requirement for MVT service operators to maintain a current list of their agents and to make this available to the designated competent authority.</li> <li>In general, Sweden should take immediate steps to properly implement Recommendations 5-7, SR VII, and other relevant FATF recommendations, and to apply them also to MVTS providers.</li> <li>There are also specific problems in the MVTS sector relating to the effectiveness of supervision and sanctions. There is no authority to conduct on-site inspections, and the range of sanctions is too limited.</li> </ul>
SR VII Wire transfer rules	NC	<ul style="list-style-type: none"> <li>Sweden has not implemented SR VII.</li> </ul>
SR.VIII Non-profit organisations	PC	<ul style="list-style-type: none"> <li>Sweden has not yet finished a review of the laws and regulations that relate to non-profit organisations (NPOs) that may be abused for the financing of terrorism.</li> <li>Sweden has not implemented measures to ensure that terrorist organisations cannot pose as legitimate NPOs, or comprehensive measures (outside of the voluntary membership in SFI) to ensure that funds/assets collected by or transferred through NPOs are not diverted to support the activities of terrorists or terrorist organisations.</li> <li>The system is further weakened by the fact that Recommendation 5 has not been implemented with regards to beneficial ownership.</li> </ul>
SR.IX Cross Border Declaration & Disclosure	NC	<ul style="list-style-type: none"> <li>Currently, there is no obligation to declare or disclose cash or bearer negotiable instruments while entering or leaving Swedish territory.</li> </ul>

**Table 2: Recommended Action Plan to Improve the AML/CFT System**

AML/CFT System	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
Criminalisation of Money Laundering (R.1, 2 & 32)	<ul style="list-style-type: none"> <li>• Swedish authorities should criminalise <i>self-laundering</i>.</li> <li>• Another potential challenge to prosecution is the requirement to prove a purpose of intent to conceal the origin of the assets in Sections 6a (1) (2). Authorities should consider removing this purpose element, insofar as this is not contrary to the constitutional principles or basic concepts of the legal system.</li> <li>• The authorities should extend the ancillary offences for basic instances of the criminal offence of money laundering, including conspiracy to commit and attempt.</li> <li>• Sweden should ensure that the ancillary offence of conspiracy covers the full range of profit-generating activities in which criminal groups engage, or Sweden should specifically criminalise participation in an organised criminal group.</li> <li>• The authorities should institute higher penalties for the criminal offence of money laundering and develop a more pro-active approach to prosecuting money receiving offences.</li> <li>• Currently the mental element of suspicion is generally covered in the provisions for “petty receiving”, since it covers situations where the defended suspected the illicit origin of the proceeds. (This is also stated in the preparatory works of the legislation.) However, Swedish authorities could also consider applying these elements to the basic offence and/or increasing the penalties for petty receiving. The authorities of Sweden should expand the system to be able to more effectively apply a “corporate fine” to legal persons.</li> </ul>
Criminalisation of Terrorist Financing (SR.II, R.32)	<ul style="list-style-type: none"> <li>• Sweden should amend its legislation to specifically cover collecting or providing of funds in the knowledge that they are to be used (for any purpose) by a terrorist organisation or an individual terrorist.</li> <li>• Authorities should also provide higher penalties, which would take into account the grave nature of the offences.</li> </ul>
Confiscation, freezing and seizing of proceeds of crime (R.3, R.32)	<ul style="list-style-type: none"> <li>• The authorities should consider providing stronger provisional measures of freezing of property to prevent any dealing, transfer or disposal of property subject to confiscation. For example, the system could be strengthened by the removal of the need to demonstrate a reasonable cause to anticipate flight or removal of property.</li> <li>• Sweden should also consider whether a specific, focussed multi-disciplinary body should be created that focuses on confiscation and related measures.</li> <li>• The authorities should consider providing additional training and encourage focus of the law enforcement authorities to trace and look for assets when investigating any type of crime and seize funds and other property on a regular basis whenever possible, with the emphasis in cases of ML and FT.</li> </ul>
Freezing of funds used for terrorist financing (SR.III, R.32)	<ul style="list-style-type: none"> <li>• Sweden should implement a national mechanism to give effect to requests for freezing assets and designations from other jurisdictions and to enable freezing funds of European citizens/residents.</li> <li>• The Swedish authorities should also enact measures that would allow for the possibility of freezing funds or other assets where the suspect is an individual terrorist or belongs to a terrorist organisation, where that person or organisation is not already a designated person.</li> <li>• The Swedish authorities should establish an effective system for communication among governmental institutions and with the private sector (and the like) to facilitate every aspect of the freezing/unfreezing regime within Sweden.</li> <li>• The Swedish authorities should consider providing more clear and practical guidance to financial institutions that may hold terrorist funds concerning their responsibilities under the freezing regime and clarify the procedure for authorising access to funds/assets that are frozen and that are determined to be necessary on humanitarian grounds in a manner consistent with S/RES/1452(2002). Clear communication channels for providing feedback between the government and financial sector may be considered.</li> </ul>

The Financial Intelligence Unit and its functions (R.26, 30 & 32)	<ul style="list-style-type: none"> <li>• It is recommended that Sweden allocate more staff to the FIU as soon as possible. When hiring staff to the FIU, there is a need to review composition of the specialists in the FIU; for instance, for the provision of more analysts.</li> <li>• Sweden should make the changes needed in the legislation to remove the time limits and allow for automatic storing for at least five years of all STRs from reporting entities.</li> <li>• Sweden should follow through on its project of a new register in order to enable larger electronic reporting for the reporting parties.</li> <li>• In general, it is recommended that the FIU take a more active role in guiding reporting parties to improve the quality of reporting and reduce the high number of threshold reports. The FIU should also broaden its attention beyond the scope of examining mainly tax matters and devote itself to the whole scale of ML/FT offences. Therefore, more training in these areas is recommended, and co-operation with investigative and law enforcement authorities can be enhanced.</li> <li>• Sweden should also be able to breakdown the number STRs by ML/FT suspicions and offences. In addition, there should be separate statistics for FI and DNFBPs, as at least for 2005 the statistics do not separate between these two sectors.</li> </ul>
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	<ul style="list-style-type: none"> <li>• The Swedish government should develop a more pro-active approach to pursuing money laundering and terrorist financing charges.</li> <li>• A stronger focus on proceeds of crime and understanding of ML process by investigators is needed. Education and training of law enforcement authorities in ML/FT offences should be improved. Changes to allow for prosecution of self-laundering and to allow prosecutors more flexibility to pursue ML and FT charges are also recommended.</li> <li>• It is recommended that Swedish authorities review the adequacy of total resources allocated to ML investigation. The resources for different investigative methods should also be reviewed; for example, the lack of people in e.g. surveillance teams was said to be a problem.</li> <li>• Sweden should collect statistics on a systematic basis concerning the ML/FT investigations, prosecutions, convictions and types of sanctions (criminal and administrative) imposed for ML/FT as well as on property frozen, seized or confiscated.</li> </ul>
Cross Border declaration or disclosure (SR.IX)	<ul style="list-style-type: none"> <li>• Sweden should adopt legislation and implement measures conforming to the requirements of SR.IX</li> </ul>
<b>3. Preventive Measures – Financial Institutions</b>	
Risk of money laundering or terrorist financing	<ul style="list-style-type: none"> <li>• Sweden should conduct a risk assessment of the financial sector in order to identify areas of higher and lower AML risk.</li> </ul>
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<ul style="list-style-type: none"> <li>• Sweden should engage with the private sector to promote full compliance with its existing regulations.</li> <li>• Sweden should implement as mandatory requirements (some of them by law or regulation) the following missing elements of Recommendation 5 as a matter of priority: <ul style="list-style-type: none"> <li>• Financial institutions should be required to undertake full CDD measures;</li> <li>• Financial institutions should be required to perform customer identification when there are doubts as the veracity of the previously obtained customer or when required under SR VII;</li> <li>• Financial institutions should be required to extend the identification and verification measures regarding the identity of the beneficial owner;</li> <li>• Financial institutions should be required to inquire as to the purpose and intended nature of the business relationship in extension to what is said in the AML/CFT general guidelines on KYC;</li> <li>• Ongoing due diligence on the business relationship should be required in extension to what is said in the AML/CFT general guidelines on KYC;</li> <li>• Enhanced due diligence for higher risk categories of customer, business relationship or transaction should be required in extension to what is said in the AML/CFT general guidelines on KYC;</li> <li>• The timing of verification should be regulated;</li> <li>• Financial institutions should not be permitted to open an account when adequate CDD has not been conducted;</li> <li>• Extension of what is said in the AML/CFT general guidelines concerning rules governing the CDD treatment of existing customers on the basis of materiality and risk.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>• Sweden should also include investment fund companies within the scope of the CFT Act and all means of payment, including the credit card companies like American Express that are not currently covered, should also be placed within the scope of the AML and CFT Acts and regulations.</li> <li>• Where guidelines may be enforced for licensed financial institutions, Sweden should introduce corresponding, enforceable obligations for registered financial institutions (money exchange, remittance, and deposit companies).</li> <li>• It is recommended that Sweden engage all aspects of the private sector to develop regulations and guidance that are responsive to the unique realities and vulnerabilities of each part of the financial sector.</li> <li>• Sweden should address whether or not financial institutions should be permitted to apply simplified or reduced CDD measures, and issue appropriate guidance.</li> <li>• Sweden should require financial institutions to refuse to open accounts either when it is not possible for the financial institution to complete CDD.</li> <li>• Measures should be mandated to fully implement Recommendations 6 and 7.</li> <li>• Sweden has a regulation that addresses the issue of non-face to face transactions, but there is no clear general guidance regarding emerging technological developments. Sweden should continue addressing this issue.</li> </ul>
Third parties and introduced business (R.9)	
Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> <li>• Sweden should consider explicitly allowing for the sharing of information within a business operation, like a business conglomerate offering multiple financial services to its customers, in order to provide the clarity needed for the private sector that would promote free information exchange for commercial purposes.</li> </ul>
Record keeping and wire transfer rules (R.10 & SR.VII)	<ul style="list-style-type: none"> <li>• Sweden should create an obligation in law or regulation to require that customer identification records must be made available on a timely basis.</li> <li>• Finansinspektionen should also ensure through on-site examinations or another regulatory tool that the record keeping requirements of the AML Act and Finansinspektionen regulations are being fully complied with by the private sector.</li> <li>• Sweden should implement SR VII.</li> </ul>
Monitoring of transactions and relationships (R.11 & 21)	<ul style="list-style-type: none"> <li>• Since guidance is not enforceable for registered financial institutions (money exchange and remittance companies, deposit companies), Sweden should create enforceable obligations for these institutions to implement the specific requirements of Recommendations 11 and 21.</li> <li>• Sweden should consider implementing more directly enforceable obligations that would explicitly require financial institutions to pay attention to all complex, unusually large transactions and transactions with no visible economic purpose and make the findings out in writing.</li> <li>• Sweden should create an obligation to keep the findings of these examinations available for at least five years and make them available to competent authorities.</li> <li>• Sweden should also make more mandatory the specific obligations of Recommendation 21.</li> <li>• Finansinspektionen should continue to promote effective implementation of that guidance within the private sector.</li> </ul>
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	<ul style="list-style-type: none"> <li>• <i>Recommendation 13 and Special Recommendation IV:</i> <ul style="list-style-type: none"> <li>○ Sweden should extend the scope of its reporting requirement to the remaining financial institutions in the FATF definition not currently covered by the AML Act (i.e., other means of payment including services like American Express) and the CFT Act (investment companies).</li> <li>○ Sweden should also amend the CFT Act to ensure that the reporting obligation would not exclude transactions related to funds to be used by a terrorist organisation or an individual terrorist.</li> <li>○ Sweden should continue to work with the financial sector to improve the total percentage of reporting entities and improve the overall quality of the reports filed.</li> <li>○ Finansinspektionen and the FIU should continue outreach to the private sector and provide better general and specific guidance.</li> </ul> </li> <li>• <i>Recommendation 19:</i> Sweden should give further consideration to the feasibility of a system whereby financial institutions report all transactions in currency above a fixed threshold to a central agency with a computerised database.</li> <li>• <i>Recommendation 25:</i> <ul style="list-style-type: none"> <li>○ Sweden should consider providing sector-specific feedback, which might make the</li> </ul> </li> </ul>

	<p>STR system more effective.</p> <ul style="list-style-type: none"> <li>○ Finansinspektionen and the FIU should continue to identify red flag indicators and models of suspicious transactions that they can share with the private sector, along with examples of what constitutes helpful and informative suspicious transaction reports, to aide the private sector in complying with the obligation to file STRs.</li> </ul>
Internal controls, compliance, audit and foreign branches (R.15 & 22)	<ul style="list-style-type: none"> <li>● <i>Recommendation 15:</i> <ul style="list-style-type: none"> <li>○ Sweden should expand the coverage of AML Act and Finansinspektionen regulations to all issuers of means of payment.</li> <li>○ Furthermore, it should be made a more direct obligation to allow the compliance officer timely access to all relevant information and to establish an independent audit function.</li> <li>○ An obligation should be introduced to require financial institutions to establish screening procedures to ensure high standards when hiring employees.</li> <li>○ Finally, where enforceable measures are created in guidance (access to information for the compliance officer and establishment of an independent audit function) for licensed financial institutions, corresponding obligations should be created for registered financial institutions (money exchange and remittance companies, and deposit companies).</li> </ul> </li> <li>● <i>Recommendation 22:</i> <ul style="list-style-type: none"> <li>○ Sweden should consider implementing a more direct obligation to require financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with the Swedish requirements and the FATF recommendations.</li> <li>○ Sweden should add provisions to clarify that particular attention has to be paid to branches and subsidiaries in countries which do not or insufficiently apply the FATF recommendations and that the higher standards have to be applied in the event that the AML/CFT requirements of the home and host countries differ.</li> </ul> </li> </ul>
Shell banks (R.18)	<ul style="list-style-type: none"> <li>● Sweden should implement provisions with regard to a prohibition on financial institutions to enter or continue correspondent banking relationship with shell banks.</li> <li>● There should be an obligation on financial institutions to satisfy themselves that a respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.</li> </ul>
The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)	<ul style="list-style-type: none"> <li>● <i>Recommendation 17:</i> The range of administrative sanctions available for licensed institutions is generally broad but should be broadened to include a wider range of sanctions that could apply for senior management across the various financial categories.</li> <li>● The range of sanctions which can be imposed on registered financial institutions is limited and should be expanded.</li> <li>● It should also be noted that the different laws for registered institutions do not foresee any sanctions in case of a violation of the CFT Act.</li> <li>● <i>Recommendation 23:</i> It would be useful to clarify the need for a natural or legal person who conducts as a business the issuing or managing of means of payment (such as American Express) to apply for a license or a registration. The same concerns apply to the area of economic associations which have not yet been registered as deposit companies.</li> <li>● For licensing financial institutions, the fit and proper test should also apply to senior management. With regard to registered financial institutions it is recommended to have the ability to apply sanctions in case Finansinspektionen is not informed of changes regarding qualified holding and to introduce also a broader fit and proper test for the management.</li> <li>● It should be made possible to apply the provisions of the CFT Act to investment companies and to enforce guidelines in the AML/CFT Regulations/Guidelines to registered financial institutions.</li> <li>● The quality of supervision of MVTs providers and money or currency exchange services should be improved through an increased authority for on-going monitoring and increased resources of Finansinspektionen to allow focus on entities other than the larger financial groups.</li> <li>● <i>Recommendation 25:</i> Sweden should consider more sector-specific AML/CFT guidance, as well as other enhancements to the guidelines.</li> <li>● <i>Recommendation 29:</i> The powers of Finansinspektionen with regard to registered</li> </ul>

	<p>financial institutions are limited, and it could be more difficult to ensure full compliance. Finansinspektionen should be given the authority to conduct onsite inspections of deposit companies, money transfer service, money or currency changing service or other registered financial institutions</p> <ul style="list-style-type: none"> <li>• With regard to licensed institutions the sanction regime is limited to directors; a liability of the senior management should be introduced.</li> <li>• In general, the supervision with regard to the compliance with AML/CFT obligations should be founded on a risk-based approach.</li> <li>• Especially MVTS providers and foreign exchange offices which are deemed to be of a particular high risk in Sweden should be supervised more closely.</li> <li>• In general, the number of onsite inspections solely devoted to AML/CFT should be increased.</li> <li>• <i>Recommendation 30:</i> Finansinspektionen should increase the number of staff devoted to AML/CFT compliance. The current review of the staffing in the area of AML/CFT should lead to a higher number of employees focusing on this issue.</li> </ul>
Money value transfer services (SR.VI)	<ul style="list-style-type: none"> <li>• Sweden should review its legislation to ensure it adequately covers the full range of MVT service operators.</li> <li>• Sweden should also require all MVT service operators to maintain a current list of their agents which must be made available to the designated competent authority.</li> <li>• Sweden should broaden the inspection powers of these institutions and broaden the range of sanctions available for failure to comply with AML/CFT provisions. It should consider placing MVTS providers under the full supervision of Finansinspektionen. This could be deemed useful since Swedish authorities confirmed that these are high risk activities from an AML/CFT perspective.</li> <li>• In general, Sweden should also take immediate steps to properly implement Recommendations 5-7, SR VII, and other relevant FATF recommendations, and to apply them also to MVTS providers.</li> </ul>
<b>4. Preventive Measures –Non-Financial Businesses and Professions</b>	
Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> <li>• Company service providers and those accountants not currently subject to the AML Act should be brought into the AML regime.</li> <li>• Sweden should bring all DNFBPs into the scope of the CFT Act and adequate AML/CFT regulations.</li> <li>• <i>Applying Recommendation 5:</i> Casinos should be required to identify customers conducting transactions of 3,000 EUR (down from the current 15,000 EUR threshold) and keep records for at least five years.</li> <li>• <i>Applying Recommendations 6, 8, and 9:</i> Sweden should adopt measures to implement Recommendations 6, 8, and 9 and also apply them to all DNFBPs.</li> <li>• <i>Applying Recommendation 11:</i> Sweden should create a mandatory, direct obligation for DNFBPs to monitor all unusual, large transactions or transactions with no visible economic purpose, and make out findings in writing. These findings should be kept for at least five years.</li> </ul>
Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> <li>• <i>Applying Recommendation 13:</i> The AML Act should be amended to also cover company service providers and the non-regulated sector of accountants accordingly.</li> <li>• A main priority for the Swedish authorities should be to apply the requirements of the CFT Act to the DNFBPs as soon as possible.</li> <li>• It should be added to the AML Act that a report to the FIU has to be submitted promptly. It should also be considered to introduce an obligation for all supervisory bodies to report a STR to the FIU in the event that they become aware of any facts that may be indicative of money laundering or terrorist financing.</li> <li>• The Swedish authorities should also ensure that there are no open questions left with regard to the interpretation of the AML Act.</li> <li>• It should be avoided that the concept of self-incrimination in Article 6 in the European Convention for the Protection of Human Rights and Fundamental Freedoms becomes an excuse for not reporting a suspicion. This problem could be solved by introducing into the Swedish law the concept of active repentance.</li> <li>• <i>Applying Recommendation 14:</i> The allowance for advocates, associate lawyers at law firms and auditors to tip off (disclose any information 24 hours after the moment an investigation has been started, information has been handed over to the police or the police have started a formal preliminary investigation) should be amended.</li> </ul>

	<ul style="list-style-type: none"> <li>• <i>Applying Recommendation 15:</i> DNFBPs should be required to designate a person responsible for implementing the AML/CFT obligations. Such an obligation (at least in the case of larger structures) and more detailed rules with regard to internal control mechanism might seem appropriate.</li> <li>• <i>Applying Recommendation 21:</i> DNFBPs should also be required to give special attention to businesses with non-cooperative countries and other countries with weaknesses in their AML/CFT systems.</li> <li>• The Swedish authorities should continue to undertake information campaigns directed at the DNFBPs to clarify their obligations especially with regard to the duty to make suspicious transaction reports.</li> </ul>
Regulation, supervision and monitoring (R.24-25)	<ul style="list-style-type: none"> <li>• The Swedish government should formally designate authorities to have responsibility for the AML/CFT regulatory and supervisory regime and allow the full range of administrative sanctions to be applied for AML/CFT breaches.</li> <li>• These authorities should also be allowed to issue binding guidelines since these sectors would need more guidance concerning how to properly implement the AML.</li> <li>• The DNFBPs sectors should be brought into the scope of the CFT Act so that compliance with these obligations will be mandatory and monitored.</li> <li>• With regard to casinos, the Gaming Board or another authority should be provided adequate powers to enforce sanctions.</li> <li>• An authority should be designated to monitor and supervise dealers in precious metals and stones for compliance with AML/CFT obligations.</li> <li>• Trust and company service providers should be brought within the scope of the AML Act and properly monitored for AML/CFT obligations. Furthermore, it should be considered how legal professionals who are not members of the Bar Association and accountants who are not registered by the Supervisory Board of Public Accountants may be monitored with regard to AML/CFT.</li> <li>• <i>R.25:</i> For sectors where AML guidelines do not yet exist, the appropriate SRO or other authority should issue appropriate AML guidelines as soon as possible. Appropriate CFT guidelines also need to be issued for DNFBPs</li> </ul>
Other designated non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> <li>• Sweden should continue to take measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering especially with regard to the increase of cash withdrawals which has been observed by the FIU.</li> </ul>
<b>5. Legal Persons and Arrangements &amp; Non-Profit Organisations</b>	
Legal Persons – Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> <li>• Sweden should broaden the system to require information on beneficial ownership/control to be supplied to the CRO and/or recorded by the legal entity itself to ensure that it is made readily available on a more timely basis, and to require the information to be kept up to date.</li> <li>• The system for registering foundations would be improved if the information collected were centralized, possibly at the Companies Registration Office.</li> <li>• Sweden should consider broadening the registration and/or recordkeeping requirements for foundations (to also apply to those of a smaller size, family foundations, and foundations for the benefit of one person) to ensure that adequate information on ownership and control is available to competent authorities.</li> </ul>
Legal Arrangements – Access to beneficial ownership and control information (R.34)	
Non-profit organisations (SR.VIII)	<ul style="list-style-type: none"> <li>• Swedish authorities should also consider strengthening coordination between non-profit sector oversight/regulatory bodies, law enforcement and security agencies, the FIU, and financial system regulators.</li> <li>• Sweden should implement measures to ensure that terrorist organisations cannot pose as legitimate NPOs. Sweden should implement broader measures to ensure that funds or other assets collected by or transferred through NPOs are not diverted to support the activities of terrorists or terrorist organisations.</li> <li>• Swedish authorities should consider providing guidance to financial institutions with regard to CDD and suspicious transaction reporting where the client is an NPO.</li> </ul>

<b>6. National and International Co-operation</b>	
National co-operation and coordination (R.31 & 32)	<ul style="list-style-type: none"> <li>• Co-operative projects could more specifically target money laundering and terrorist financing issues. There is also some co-ordination and co-operation at the policy level; however, a more pro-active approach to policy co-ordination on AML/CFT issues is recommended.</li> <li>• Sweden should review the effectiveness of its systems for combating money laundering and terrorist financing on a regular basis.</li> </ul>
The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> <li>• Sweden should strengthen its money laundering offence by including self-laundering as required by the Palermo Convention.</li> <li>• Sweden should enact more effective, proportionate and dissuasive sanctions, and review its conspiracy provisions to ensure that conspiracy applies to the range of criminal acts in which criminal groups engage.</li> <li>• Sweden should enact stronger measures for customer identification so as to be more fully compliant with Article 18 of the CFT Convention.</li> </ul>
Mutual Legal Assistance (R.36-38, SR.V, and R.32)	<ul style="list-style-type: none"> <li>• In order to ensure that coercive measures could consistently be applied, Sweden should specifically criminalise the following types of ML/FT activities: (i) conspiracy for basic money laundering offences; and (ii) collecting or providing funds/asset where the funds/assets are to be used by a terrorist organisation or individual terrorist.</li> <li>• Although there does not currently appear to be any difficulty enforcing foreign criminal judgements in practice, in order to avoid any future difficulties, Sweden should consider broadening the provisions of the 1972 Act on International Co-operation in the Enforcement of Criminal Judgments so that a treaty or other agreement with a foreign country is not needed and that would allow for a European confiscation order to be enforced, absent an international agreement, for someone not domiciled in Sweden. Sweden could also consider streamlining the system so that a Swedish court decision is not required before beginning proceedings.</li> <li>• Sweden should consider establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes.</li> <li>• Sweden should keep statistics concerning: (i) the nature of mutual legal assistance requests; (ii) whether the mutual legal assistance request was granted or refused; (iii) what crime the request was related to; and (iv) how much time was required to respond to the request.</li> </ul>
Extradition (R.39, 37, SR.V & R.32)	<ul style="list-style-type: none"> <li>• Sweden should ensure that the execution of the declaration of Sweden when signing the 1957 Convention on Extradition does not impede the processes of extradition of other nationals especially aliens who are residents of Sweden, to other countries.</li> <li>• To ensure that dual criminality does not impede extradition when the case involves FT activities, Sweden should specifically criminalise the collecting/providing funds to be used (for any purpose) by a terrorist organisation or individual terrorist.</li> <li>• Sweden should also collect and maintain statistics on: (i) the number of requests for extradition; (ii) the nature of the request; (iii) whether the request was granted or refused; (iv) what crime the request was related to; or (v) how much time was required to respond.</li> </ul>
Other Forms of Co-operation (R.40, SR.V & R.32)	<ul style="list-style-type: none"> <li>• Sweden should collect and maintain statistics concerning the number of requests made and received by the FIU and the law enforcement authorities, including the nature of the request, whether it was granted or refused and the time required to respond.</li> </ul>

## **ANNEXES**

- Annex 1: List of abbreviations
- Annex 2: Details of all bodies met during the on-site mission - ministries, other government authorities or bodies, private sector representatives and others.
- Annex 3: List of all laws, regulations and other material used for the evaluation
- Annex 4: Copies of key laws, regulations and other measures

## **Annex 1: List of abbreviations**

CAB:	County Administrative Board (Länsstyrelsen)
CRO:	Swedish Company Registration Office (Bolagsverket)
EBM:	Swedish National Economic Crimes Bureau (Ekobrottsmyndigheten)
EEA:	European Economic Area
FIU:	Financial Intelligence Unit (Finanspolisen—FiPo)
ILACMA:	Swedish International Assistance in Criminal Matters Act
MOU:	Memorandum of Understanding
NPB:	National Police Board
NPPA:	National Public Prosecution Authority
RKP:	National Criminal Police (Rikskriminalpolisen)
SÄPO:	Swedish Security Service (Säkerhetspolisen)
SEK:	Swedish Krona
SFI:	Swedish Foundation for Fundraising Monitoring (Stiftelsen för Insamlingskontroll).
SRS:	Swedish Association of Auditors (Svenska Revisorsamfundet)
TA:	Swedish Tax Authority
VAT:	Value added tax

**Annex 2:**  
**Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others**

**I. Ministries**

- Ministry of Finance
  - The Financial Institution and Markets Department
- The Ministry of Justice
- The Ministry for Foreign Affairs
- The Ministry of Industry

**II. Criminal justice and operational agencies**

- National Police Board
  - National Criminal Police (Rikskriminalpolisen—RKP)
    - Finanspolisen (Financial Intelligence Unit)
    - Drugs Unit
    - Immigrations Unit
  - Swedish Security Service (Säkerhetspolisen—SÄPO)
- The National Public Prosecution Authority (NPPA)
- The Swedish National Economic Crimes Bureau (Ekobrottsmyndigheten—EBM)
- SAMEB (Co-operation project with the County of Stockholm)
- Swedish Tax Authority (TA)
- Swedish Customs Service

**III. Bodies overseeing legal persons**

- The Swedish Companies Registration Office (Bolagsverket)
- County Administrative Board (Länsstyrelsen)
- Swedish Foundation for Fundraising Monitoring (Stiftelsen för Insamlingskontroll—SFI)

**IV. Financial sector—government**

- Finansinspektionen (the financial supervisory authority)

**V. Financial sector—associations and private sector entities**

- The Swedish Bankers' Association
- The Swedish Insurance Federation
- The Swedish Investment Fund Association
- The Swedish Securities Dealers Association
- X-Change in Sweden

**V. DNFBPs—government and SROs**

- Gaming Board (Lotteriinspektionen)
- Board of Supervision of Real Estate Agents
- Supervisory Board of Public Accountants (Revisorsnämnden)
- Swedish Bar Association
- FAR (professional institute for authorized public accountants)
- Swedish Association of Auditors (Svenska Revisorsamfundet—SRS)

**Annex 3:**  
**List of laws, regulations and other legislation**  
**used for the purpose of conducting the mutual evaluation**

**Acts and ordinances**

- Act on Measures against Money Laundering (SFS 1993:768). Promulgated 6 October 1993
- Act on amendments to the Measures against Money Laundering Act (SFS 1993:768). Issued 2 December 2004
- Act on Measures against Money Laundering (SFS 1993:768, as amended by 2004:1182)
- The Police Act *with commentary of The Swedish National Police Board* (November 1999)
- Deposit Taking Operations Act (SFS 2004:299)
- Act on Criminal Responsibility for the Financing of Particularly Serious Crime in some cases, etc. (SFS 2002:444). Issued on 30 May 2002
- Auditors Act (SFS 2001:883) issued on 29 November 2001
- The Secrecy Act (SFS 1980:100)
- The Extradition for Criminal offences Act (SFS 1957:668)
- An Act (1959:254) concerning Extradition to Denmark, Finland, Iceland and Norway for criminal offences
- Act on international co-operation in the enforcement of criminal judgments (1972:260)
- Act on Certain International Sanctions (1996:95)
- International Legal Assistance in Criminal Matters Act (2000:562)
- Ordinance concerning International Legal Assistance in Criminal Matters (2000:704)
- The Swedish Rules on International Legal Assistance in Criminal Matters
- Act (2003:1156) on surrender from Sweden according to the European arrest warrant
- Act on Joint Investigation Teams for Criminal Investigations (SFS 2003:1174)
- Ordinance on Joint Investigation Teams for Criminal Investigations (SFS 2003:1176)
- Ordinance on surrender to Sweden according to the European Arrest Warrant (SFS 2003:1178)
- Money laundering registers Act (SFS 1999:163)
- Securities Operations Act (SFS 2004:680)
- Banking and Financing Business Act (SFS 2004:297)
- The Swedish Investment Funds Act (SFS 2004:46)
- Estate Agents Act (SFS 1995:400)
- Casinos Act (SFS 1999:355)
- Accounting Act (SFS 1999:1078)
- Foreign Branch Offices Act (SFS 1992:160)
- Insurance Brokers Act (1989:508)
- Insurance Brokers Ordinance (1989:854)
- Insurance Intermediation Act (2005:405)
- Insurance Intermediation Ordinance (2005:411)
- The Securities Operations Act (SFS 1991:981)
- Police Data Act (SFS 1998:622)
- Police Data Ordinance (SFS 1999:81)
- Lotteries Act (SFS 1994:1000) amended 1996:860; amended 1996:1168; amended 1998:1475; amended 1999:358; amended 2000:1252; amended 2001:270 amended 2001:1045; amended 2002:592 amended 2003:346
- The Co-operative Societies Act (SFS 1987:667)

**Codes**

- The Swedish Code of Judicial Procedure (Ds 1998:000)
- The Swedish Penal Code (Ds 1999:36)
- Charter of the Swedish Bar Association
- Code of Conduct For Members Of The Swedish Bar Association

## **Regulations**

- Finansinspektionen's (the Swedish Financial Supervisory Authority) Regulations and General Guidelines Governing Measures against Money Laundering and Financing of Particularly Serious Crimes in Certain Circumstances (FFFS 2005:5)
- Finansinspektionen's General Guidelines Regarding Governance and Control of Financial Undertakings (FFFS 2005:1)
- Information regarding management examination Attachment C (FFFS 1998:14)
- Finansinspektionen's Regulations Governing Rules of Conduct on the Securities Market (FFFS 2002:7)
- Finansinspektionen's General Guidelines regarding Applications for a Licence to Conduct Banking or Financing Business or to Issue Electronic Money (FFFS 2004:9)
- Finansinspektionen's General Guidelines regarding Reporting of Events of Material Significance (FFFS 2005:12)
- Amendments to Finansinspektionen's General Guidelines (1998:14) regarding ownership and management assessment (FFFS 2002:16)
- Finansinspektionen's General Guidelines regarding ownership and management assessment (FFFS 1998:14)
- Finansinspektionen's Regulations Governing Rules of Conduct on the Securities Market (FFFS 2002:7)

## Annex 4: Copies of key laws, regulations and other measures

### Penal Code Chapter 9 – Receiving and Money receiving offences etc – as of 1 Jan 2002

#### 6 §

Den som

1. på ett sätt som är ägnat att försvåra ett återställande tar befattning med något som är frånhänt annan genom brott,

2. bereder sig otillbörlig vinning av annans brottsliga förvärv, eller

3. genom krav, överlåtelse eller på annat liknande sätt hävdar genom brott tillkommen fordran

döms för häleri till fängelse i högst två år.

För häleri döms likaledes den som i näringsverksamhet eller såsom led i en verksamhet, som bedrivs vanemässigt eller annars i större omfattning, på ett sätt som är ägnat att försvåra ett återställande förvärvar eller mottar något som skäligen kan antas vara frånhänt annan genom brott.

Är brott som anges i första eller andra stycket grovt, döms till fängelse, lägst sex månader och högst sex år. (Lagar 1993:207 och 1999:164).

#### 6 a §

Den som

1. otillbörligen främjar möjligheterna för annan att tillgodogöra sig egendom som härrör från brottsligt förvärv eller värdet av sådan egendom, eller

2. med uppsåt att dölja egendomens ursprung medverkar till att bortföra, överlåta, omsätta eller vidta annan sådan åtgärd med egendom som härrör från brottsligt förvärv döms för penninghäleri till fängelse i högst två år.

För penninghäleri döms också den som, i annat fall än som anges i första stycket, otillbörligen medverkar till att bortföra, överlåta, omsätta eller vidta annan sådan åtgärd med egendom, om åtgärden är ägnad att dölja att annan har berikat sig genom brottslig gärning.

Är brott som anges i första eller andra stycket grovt, döms till fängelse, lägst sex månader och högst sex år. (Lag 1999:164).

#### 7 §

Är brott som avses i 6 § att anse som ringa, döms för häleriförseelse till böter eller fängelse

#### Section 6

A person who

1. takes possession of something of which another has been dispossessed by a crime, and does so in such a manner that the nature thereof renders its restitution difficult.

2. procures an improper gain from another's proceeds of crime, or

3. by a demand, transfer or other similar means asserts a claim arising from a crime, shall be sentenced for *receiving* to imprisonment for at most two years.

A person who, in business activities or as a part of business activities which are conducted habitually or otherwise on a large scale, acquires or receives something which may reasonably be assumed to have been misappropriated from another person by a crime, and does so in such a manner that the nature thereof renders its restitution difficult, shall be similarly sentenced for receiving.

If the crime referred to in the first or second paragraph is gross, imprisonment for at least six months and at most six years shall be imposed. (Laws 1993:207 and 1999:164)

#### Section 6 a

A person who

1. improperly promotes the opportunity for another person to take advantage of property emanating from criminal acquisition, or the value of such property, or

2. participates in removing, transferring, conveying or taking other such measure with property emanating from criminal acquisition with the intent of concealing the origin of property shall be sentenced for *money receiving* to imprisonment for at most two years.

A person who, in cases other than those mentioned in the first paragraph, improperly participates in removing, transferring, conveying or taking other such measure with property with the intention to conceal that another person has enriched himself or herself through a criminal act, shall also be sentenced for money receiving.

If the crime referred to in the first or second paragraph is gross, imprisonment for at least six months and at most six years shall be imposed. (Law 1999:164)

#### Section 7

If a crime under Section 6 is considered to be petty, imprisonment for at most six months or a fine shall

i högst sex månader.

För häleriförseelse skall också dömas den som

1. i annat fall än som avses i 6 § andra stycket på ett sätt som är ägnat att försvåra ett återställande förvärvar eller mottar något som skäligen kan antas vara frånhänt annan genom brott,

2. i fall som avses i 6 § första stycket inte insåg men hade skälig anledning att anta att brott förelåg, eller

3. på sätt som anges i 6 § första stycket 1 medverkat vid det brott varigenom egendomen frånhöndes annan och inte insåg men hade skälig anledning att anta att brott förövades. (Lag 1991:451).

### 7 a §

Är brott som avses i 6 a § att anse som ringa, döms för penninghäleriförseelse till böter eller fängelse i högst sex månader.

För penninghäleriförseelse skall också dömas den som

1. i fall som avses i 6 a § första stycket inte insåg men hade skälig anledning att anta att brott förelåg, eller

2. i fall som avses i 6 a § andra stycket inte insåg men hade skälig anledning att anta att annan berikat sig genom brottslig gärning. (Lag 1999:164).

### 11 §

För försök eller förberedelse till bedrägeri, grovt bedrägeri, utpressning, ocker, grovt häleri eller grovt penninghäleri och för stämpling till grovt häleri eller grovt penninghäleri döms till ansvar enligt bestämmelserna i 23 kap. Vad som anges i 23 kap. 3 § skall dock inte gälla i fråga om försök till utpressning.

Såsom för förberedelse till bedrägeri eller grovt bedrägeri dömes den som för att bedraga försäkringsgivare eller eljest med bedrägligt uppsåt skadar sig eller annan till person eller egendom. Detsamma skall gälla, om någon med uppsåt som nyss sagts söker åstadkomma sådan skada. Har han innan skadan inträtt frivilligt avstått från att fullfölja gärningen, skall han vara fri från ansvar. Lag (2001:780).

be imposed for *petty receiving*.

A sentence for petty receiving shall also be imposed on a person who

1. in a case other than that provided for in Section 6, second paragraph, acquires or receives something, which may reasonably be assumed to have been misappropriated from another person by a crime, in such a manner that the nature thereof renders restitution difficult,

2. in a case as provided for in Section 6, first paragraph, did not realise, but had reasonable cause to assume that a crime was involved, or

3. in a manner as provided for in Section 6, first paragraph, point 1, participated in the crime whereby property was misappropriated from another and did not realise, but had reasonable cause to assume, that a crime had been committed. (Law 1991:451)

### Section 7 a

If a crime under Section 6 a is considered to be petty, imprisonment for at most six months or a fine shall be imposed for *petty money receiving*.

A sentence for petty money receiving shall also be imposed on a person who

1. in a case as provided for in Section 6 a, first paragraph, did not realise, but had reasonable cause to assume that a crime was involved, or

2. in a case provided for in Section 6 a, second paragraph, did not realise, but had reasonable cause to assume that another person had enriched himself or herself through a criminal act. (Law 1999:164)

### Section 11

An attempt or preparation to commit fraud, gross fraud, extortion, usury, gross receiving and gross money receiving or conspiracy to gross receiving and gross money receiving shall be punished in accordance with the provisions of Chapter 23. The provisions of Chapter 23, Section 3, however, shall not apply to attempt at extortion.

A person who, in order to defraud an insurer, or otherwise with fraudulent intent, inflicts bodily harm on himself or on another or harm to property of his own or of another, shall be sentenced for preparation to commit fraud or gross fraud. The same shall apply if a person with the intent previously mentioned endeavours to bring about such harm. If, before the harm has been inflicted, he has voluntarily refrained from carrying out the act, he shall be free from criminal responsibility. (Law 2001:780)

## Unofficial translation

### **Act on Criminal Responsibility for the Financing of Particularly Serious Crime in some cases, etc. (2002:444)**

Issued on 30 May, 2002

In accordance with the decision<sup>41</sup> of the Riksdag, the following is enacted:

#### **Purpose of this Act**

**Section 1** This Act contains provisions for the implementation of the International Convention for the Suppression of the Financing of Terrorism, adopted by the United Nations General Assembly on 9 December 1999 (54/109).

#### **Particularly serious crime**

**Section 2** In this Act particularly serious crime refers to

1. murder, manslaughter, gross assault, kidnapping, unlawful deprivation of liberty, gross unlawful coercion, arson, gross arson, devastation endangering the public, sabotage and spreading poison or a contagious substance if the purpose of the act is to intimidate a population or a group of population or to compel a government or an international organisation to perform an act or abstain from acting,
2. terrorist offences according to section 2 of the Act on Criminal Responsibility for Terrorist Offences (2003:148), gross sabotage, hijacking, maritime or air traffic sabotage and airport sabotage,
3. such offences as set forth in article 1 of the International Convention of 17 December, 1979, Against the Taking of Hostages, article 7 of the Convention of 3 March, 1980, on the Physical Protection of Nuclear Material and article 2 of the International Convention of 15 December, 1997, for the Suppression of Terrorist Bombings,
4. murder, manslaughter, assault, gross assault, kidnapping, unlawful deprivation of liberty, gross infliction of damage, arson, gross arson as well as threats of such offences, if the act is committed against internationally protected persons as referred to under the Convention of 14 December, 1973, on the Prevention and Punishment of Crimes Against Internationally Protected Persons.

#### **Criminal Responsibility**

**Section 3** A person who collects, provides or receives funds or other assets with the intention that they should be used or in the knowledge that they are to be used in order to commit particularly serious crime shall be sentenced to imprisonment for at most two years.

If the offence under the first paragraph is regarded as gross, imprisonment for at least six months and at most six years shall be imposed. In assessing whether the offence is gross, special consideration shall be given to whether the offence was part of an activity carried out on a large scale or otherwise was of a particularly dangerous kind.

Punishment shall not be imposed in petty cases.

**Section 4** Attempts to commit an offence as set forth in section 3 are punishable in accordance with the provisions of Chapter 23, section 1 of the Penal Code.

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<sup>41</sup> Government Bill 2001/02:149, Report 2001/02:JuU25, Riksdag Communication 2001/02:268.

**Section 5** If the act is punishable with the same or a more severe penalty under the Penal Code or the Act (2003:148) on Criminal Responsibility for Terrorist Offences, punishment under sections 3 and 4 of this Act shall not be imposed.

### **Jurisdiction**

**Section 6** A Swedish citizen or an alien who is present in the Realm and who has committed an offence under section 3 or 4 of this Act shall be adjudged by a Swedish court even if Chapter 2, section 2 or 3 of the Penal Code does not stipulate jurisdiction. This applies also when, in accordance with section 5 of this Act, punishment for the offence shall be imposed under the Penal Code or the Act (2003:148) on Criminal Responsibility for Terrorist Offences.

Provisions on requirements for authorisation to institute prosecution in some cases are set out in Chapter 2, section 5 of the Penal Code.

### **Forfeiture**

**Section 7** Assets subject to an offence under this Act shall be declared forfeited unless this is manifestly unreasonable. The value of the assets may be declared forfeited instead of the assets themselves. Also the proceeds of offences under this Act shall be declared forfeited, unless this is manifestly unreasonable.

### **Certain obligations of financial companies, etc.**

#### **Obligation to examine and submit information on transactions**

**Section 8** Companies referred to in section 2, first paragraph [items 1-6], of the Act (1993:768) on Measures against Money Laundering must examine all transactions that may reasonably be assumed to involve assets subject to an offence under this Act.

In doing so, the company must submit information to the National Police Board, or the police authority appointed by the Government, on all circumstances indicating that a transaction involves assets subject to an offence under this Act. Having submitted this information, the company must, upon request by the relevant authority, submit all further information necessary for the investigation of offences under this Act.

When information has been submitted in accordance with the second paragraph, also other companies referred to in section 2, first paragraph, of the Act on Measures against Money Laundering must submit the information requested by the relevant authority for the investigation of offences under this Act.

#### **Prohibition against taking part in certain transactions**

**Section 9** A company referred to in section 2, first paragraph, of the Act (1993:768) on Measures against Money Laundering must not knowingly take part in transactions that may be assumed to involve assets subject to an offence under this Act.

#### **Prohibition against disclosing information**

**Section 10** A company referred to in section 2, first paragraph, of the Act (1993:768) on Measures against Money Laundering, its board of directors or its employees must not disclose to the customer or an outsider that an examination has been made, that information has been submitted to the police pursuant to section 8 or that a matter is being investigated by the police.

#### **Other applicable provisions**

**Section 11** The provisions of sections 4-8, 10 and section 13, first paragraph, of the Act (1993:768) on Measures against Money Laundering shall apply correspondingly to transactions referred to in section 8.

## **Criminal responsibility**

**Section 12** A person who intentionally or by gross negligence

1. neglects the obligation to examine or to submit information as set out in section 8, or
  2. breaches the prohibition against disclosing information under section 10
- shall be sentenced to a fine.

## **The notification duty of the Financial Supervisory Authority**

**Section 13** If the Financial Supervisory Authority, in the course of an inspection of a company or otherwise, becomes aware of transactions that may be assumed to concern assets subject to an offence under this Act, it must notify the National Police Board, or a police authority appointed by the Government, of these transactions.

## **Authorisation**

**Section 14** The Government or, by authorisation of the Government, the Financial Supervisory Authority may issue further provisions regarding the procedures to be followed by the companies referred to in section 2, first paragraph, of the Act (1993:768) on Measures against Money Laundering to prevent them from being used for transactions involving assets subject to an offence under this Act, as well as regarding the information and training to be provided for this purpose to the employees of these companies.

## **Records issues**

### **Scope**

**Section 15** The provisions of sections 16-22 shall apply in addition to the Personal Data Act (1998:204) to the processing of personal data in relation to such transactions as referred to in section 8.

### **Purpose**

**Section 16** Companies referred to in section 8, first paragraph, may keep a record of information submitted by the company by virtue of section 8, second paragraph, in order to

1. prevent the company from taking part in transactions involving assets subject to an offence under this Act, and
2. enable the company to comply with the obligation to submit information referred to in section 8, second paragraph.

### **Contents**

**Section 17** A record referred to in section 16 may contain only

1. name, personal identity number or classification number or organisation registration number and address,
2. account number or similar, and
3. other information submitted by virtue of section 8, second paragraph.

## **Information to the registered person**

**Section 18** Information from a record referred to in section 16 must not be disclosed to the registered person.

## **Expungement**

**Section 19** Information in a record referred to in section 16 must be expunged

1. if the authority referred to in section 8, second paragraph decides not to initiate or to discontinue an investigation of an offence referred to in this Act,
2. if an investigation is concluded without prosecution being instituted on the grounds of the information submitted,
3. if a court has pronounced a judgement or made a decision that has become legally binding on the grounds of the information submitted, or
4. no later than one year following the date on which information was submitted by virtue of section 8, second paragraph.

#### **Linkage of records**

**Section 20** A company record as referred to in section 16 must not be linked with a corresponding record kept by another company.

#### **Rectification and damages**

**Section 21** The provisions of the Personal Data Act (1998:204) on rectification and damages apply to the processing of personal data pursuant to this Act.

#### **Obligation of secrecy**

**Section 22** A person active in a company referred to in section 8 must not unauthorizedly disclose information in a record referred to in section 16.

Criminal responsibility pursuant to Chapter 20, section 3 of the Penal Code shall not apply to a person who breaks the prohibition in the first paragraph.

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This Act shall enter into force on 1 July, 2002.

## Penal Code Chapter 36 – Forfeiture of Property – as of 1 July 2005

### 36 kap.

#### 1 §

Utbyte av brott enligt denna balk skall förklaras förverkat, om det inte är uppenbart oskäligt. Detsamma gäller vad någon har tagit emot som ersättning för kostnader i samband med ett brott, om mottagandet utgör brott enligt denna balk; i stället för det mottagna får dess värde förklaras förverkat.

Om inte annat är särskilt föreskrivet, skall bestämmelserna i första stycket också tillämpas i fråga om utbyte av brott och ersättning för kostnader i samband med brott enligt annan lag eller författning, om det för brottet är föreskrivet fängelse i mer än ett år.

#### 1 a §

Vid bedömningen av om det är uppenbart oskäligt att förklara utbyte av brott förverkat skall bland andra omständigheter beaktas om det finns anledning att anta att skadeståndsskyldighet i anledning av brottet kommer att åläggas eller annars bli fullgjord.

Som utbyte av brott anses vid förverkande även egendom som har trätt i stället för utbyte, avkastning av utbyte samt avkastning av det som trätt i stället för utbyte.

#### 2 §

Egendom som har använts som hjälpmedel vid brott enligt denna balk får förklaras förverkad, om det behövs för att förebygga brott eller om det annars finns särskilda skäl. Detsamma gäller egendom som varit avsedd att användas som hjälpmedel vid brott enligt denna balk, om brottet har fullbordats eller om förfarandet har utgjort ett straffbart försök eller en straffbar förberedelse eller stämpling.

Vad som har sagts i första stycket gäller även egendom som frambragts genom brott enligt denna balk, egendom vars användande utgör sådant brott samt egendom som någon annars tagit befattning med på ett sätt som utgör sådant brott.

I stället för egendomen kan dess värde förklaras förverkat.

Om inte annat är särskilt föreskrivet, skall bestämmelserna i första och tredje styckena också tillämpas i fråga om egendom som använts eller varit avsedd att användas som hjälpmedel vid brott enligt annan lag eller författning, om det för brottet

### Chapter 36

#### Section 1

The proceeds of a crime as defined in this Code shall be declared forfeited unless this is manifestly unreasonable. The same shall apply to anything a person has received as payment for costs incurred in conjunction with a crime, provided that such receipt constitutes a crime under this Code. The value of the article received may be declared forfeited instead of the article itself.

Unless otherwise stated, the provisions in the first paragraph also apply to proceeds of crime and payment for costs incurred in conjunction with a crime under another law or statute, if imprisonment for more than one year is prescribed for that crime.

#### Section 1a

In determining whether it would be manifestly unreasonable to declare the proceeds of a crime forfeited under the provisions of the first paragraph, consideration shall be given *inter alia*, to whether there is reason to believe that liability to pay damages in consequence of the crime will be imposed or otherwise discharged.

In the context of forfeiture, property that has replaced proceeds of crime, yield of such proceeds and yield of such property that has replaced proceeds of crime shall also be regarded as proceeds of crime.

#### Section 2

Property which has been used as an auxiliary means in the commission of a crime under this Code may be declared forfeited if this is called for in order to prevent crime or for other special reasons. This also applies to property, which has been intended for use as an auxiliary means in a crime under this Code, provided the crime has been completed or the conduct constitutes a punishable attempt or punishable preparation or conspiracy.

The provisions of the first paragraph also apply to property which is the product of a crime under this Code, property the use of which constitutes such a crime or which has been used in a manner which constitutes such a crime.

The value of property may be declared forfeited instead of the property itself.

Unless otherwise stated, the provisions in the first and third paragraphs also apply to property, which has been used or intended for use as an auxiliary means in a crime under another law or statute, if imprisonment for more than one year is prescribed for that crime.

är föreskrivet fängelse i mer än ett år.

### 3 §

Förverkande får även i annat fall än som avses i 2 § beslutas i fråga om föremål

1. som på grund av sin särskilda beskaffenhet och omständigheterna i övrigt kan befaras komma till brottslig användning,
2. som är ägnade att användas som vapen vid brott mot liv eller hälsa och som har påträffats under omständigheter som gav anledning att befara att de skulle komma till sådan användning, eller
3. som är ägnade att användas som hjälpmedel vid brott som innefattar skada på egendom och som har påträffats under omständigheter som gav uppenbar anledning att befara att de skulle komma till sådan användning.

### 4 §

Har det till följd av ett brott som är begånget i utövningen av näringsverksamhet uppkommit ekonomiska fördelar för näringsidkaren, skall värdet därav förklaras förverkat även när det inte följer av 1 eller 2 § eller annars är särskilt föreskrivet.

Vad som har sagts i första stycket gäller ej, om förverkande är oskäligt. Vid bedömningen av om så är förhållandet skall bland andra omständigheter beaktas om det finns anledning att anta att annan betalningsskyldighet som svarar mot de ekonomiska fördelarna av brottet kommer att åläggas näringsidkaren eller annars fullgöras av denne.

Kan bevisning om vad som skall förklaras förverkat inte alls eller endast med svårighet föras, får värdet uppskattas till ett belopp som är skäligt med hänsyn till omständigheterna.

### 5 §

Förverkande till följd av brott av egendom eller dess värde får, om ej annat har föreskrivits, ske hos

- a) gärningsmannen eller annan som medverkat till brottet,
- b) den i vars ställe gärningsmannen eller annan medverkande var,
- c) den som genom brottet beretts vinning eller näringsidkare som avses i 4 §,
- d) den som efter brottet förvärvat egendomen genom bodelning eller på grund av arv eller testamente eller genom gåva eller som efter brottet förvärvat egendomen på annat sätt och därvid haft vetskap om eller skälig anledning till antagande om egendomens samband med brottet.

### Section 3

Forfeiture may also be decided on in cases other than those described in Section 2 in respect of objects which:

1. by reason of their special nature and other circumstances, give rise to a fear that they may be put to criminal use,
2. are intended for use as a weapon in a crime against human life or health and which have been discovered in circumstances which give rise to a fear that they would be put to such use, or
3. are intended for use as an auxiliary aid in a crime entailing damage to property and have been discovered in circumstances which clearly give rise to a fear that they would be put to such use.

### Section 4

If, as a result of a crime committed in the course of business, the entrepreneur has derived financial advantages, the value thereof shall be declared forfeited, even if this is not so provided for in Section 1 or 2 or otherwise specially provided for.

The provisions of the first paragraph shall not apply if forfeiture is unreasonable. In assessing whether such is the case, consideration shall be given inter alia to whether there is reason to believe that some other obligation to pay a sum corresponding to the financial gain derived from the crime will be imposed upon the entrepreneur or will be otherwise discharged by him.

If proof of what is to be declared forfeited cannot, or can only with difficulty, be presented, the value may be estimated to be an amount that is reasonable in view of the circumstances.

### Section 5

Forfeiture of property or its worth in consequence of crime may, unless otherwise stated, be exacted of:

- a) the offender or an accomplice in the crime,
- b) the person whose position was occupied by the offender or an accomplice,
- c) the person who profited from the crime or the entrepreneur described in Section 4,
- d) any person who after the crime acquired the property through the division of jointly held marital property, or through inheritance, will or gift, or who after the crime acquired the property in some other manner and, in so doing, knew or had reasonable grounds to suspect that the property was connected with the crime.

If the property did not belong to any of the persons in the categories a)-c) in the first paragraph, it may not be declared forfeited.

Tillhörde egendomen vid brottet inte någon av dem som anges i första stycket a–c, får den inte förklaras förverkad. Egendom som enligt 1 a § skall anses som utbyte får dock förklaras förverkad om den egendom, som den förverkade egendomen trätt i stället för, vid brottet tillhörde någon av dem som anges i första stycket a–c.

Särskild rätt till egendom som förklarats förverkad består, om ej även den särskilda rätten förklaras förverkad.

Sådan rätt som har vunnits genom utmätning eller betalningssäkring upphör, om egendomen förklaras förverkad, såvida ej av särskild anledning förordnas att rätten skall bestå.

#### **17 §**

Förverkad egendom och företagsbot tillfaller staten, om ej annat är föreskrivet.

Har utbyte av brott som svarar mot

1. skada för enskild eller
2. medel som en enskild är berättigad att få

tillbaka

förklarats förverkat hos någon, svarar staten i dennes ställe för ersättning åt den skadelidande eller ersättningsberättigade intill värdet av vad som har tillfallit staten på grund av beslutet om förverkande. Vid verkställighet av detta beslut har den hos vilken förverkandet skett rätt att räkna av vad han eller hon visar sig ha utgett som ersättning till den skadelidande eller ersättningsberättigade.

Property that according to Section 1 a shall be regarded as proceeds of crime may be declared forfeited if the property, which the forfeited property has replaced, belonged to any of the categories a)-c) in the first paragraph.

Any special right to property that has been declared forfeited remains if the special right is not also declared to be forfeited.

Such a right gained by distraint or security for payment ceases if the property is declared forfeited unless for some special reason it is ordered that the right shall remain.

#### **Section 17**

Forfeited property and corporate fines accrue to the State unless otherwise prescribed.

If the proceeds of crime corresponding to

1. the damage occasioned to an individual, or
2. funds that an individual is entitled to retrieve

are declared forfeited from someone, the

State shall in that person's stead pay compensation to the injured party or the person entitled to compensation to an amount corresponding to the value that has accrued to the State as a consequence of the decision on forfeiture. In the enforcement of this decision, the party subject to the forfeiture shall be entitled to make a deduction for any amount he or she shows himself to have already paid in compensation to the injured party or the person entitled to compensation.

## **Act on Measures against Money Laundering (1993:768)**

Unofficial translation of: Lag om åtgärder mot penningtvätt  
Swedish Code of Statutes  
SFS 1993:768

Promulgated 6 October 1993  
Omtryck: SFS 1999:162

### **Introductory provisions**

**Section 1.** For the purposes of this Act, money laundering is defined as any measure relating to property acquired through crime which may lead to the concealment of this characteristic of the property or enable the perpetrator to evade legal sanctions or impede the recovery of the property, or any measure involving the disposal, acquisition, possession or use of the property.

Money laundering is also defined as any measure involving property other than those set out in paragraph 1 if the purpose of such measures is to conceal the fact that a person has enriched himself from a criminal act.

### **Scope**

**Section 2.** The provisions of this Act are applicable to undertakings conducting:

1. banking services and other activities that involve borrowing from the public and granting credits,
2. life insurance business,
3. business operations of the type specified in Chapter 1, Section 3 of the Securities Business Act (1991:981).
4. business operations subject to supervision by the Financial Supervisory Authority and which chiefly involve one or more of the activities referred to in Chapter 3, Section 1, paragraphs 2–13 of the Financial Business Act (1992:1610),
5. business operations requiring notification to the Financial Supervisory Authority under the Currency Exchange and Money Transmission Act (1996:1006), and
6. business operations of the type defined in Section 1 of the Insurance Brokers Act (1989:508).

The Act applies only to those customer-targeted business operations defined in paragraph 1 which are conducted from a permanent place of business in Sweden. The obligation to submit information in the case of certain other undertakings is regulated by the provisions in Section 9a.

### **Prohibition from taking part in certain transactions**

**Section 3.** The actions referred to in Section 1 may be punishable under the provisions relating to the crimes of money-related receiving and petty money-related receiving in Chapter 9, Sections 6a and 7a of the Penal Code.

Nor may an undertaking as defined in Section 2, paragraph 1 knowingly take part in transactions where there are grounds for assuming that the transactions constitute money laundering.

### **Identity verification**

**Section 4.** An undertaking shall check the identity of those who wish to enter into a business relationship with it.

Identity checks shall also be carried out in cases involving others than those referred to in paragraph 1 with regard to transactions which exceed 110,000 crowns. The same applies if the transaction does not exceed this limit, but where there are grounds for assuming that the transaction is linked to another transaction and the combined amount will exceed the said limit. If the total amount is not known at the

time of a transaction, an identity check must be carried out as soon as the total sum of the transactions exceeds the said limit.

Identity checks are not required in the case of undertakings conducting business operations of the type referred to in Section 2, paragraph 1 if the undertaking is based in the European Economic Area (EEA). This also applies to transactions to an account held by someone whose identity has been previously checked in accordance with the provisions of this Act.

**Section 5.** Life insurance undertakings and undertakings conducting business operations of the type referred to in Section 1 of the Insurance Brokers Act (1989:508) need not carry out identity checks in connection with insurance contracts for which the annual premium does not exceed 7,000 crowns or 18,000 crowns in the case of a single premium. Nor is an identity check required where payment is made from an account held by an undertaking of the type referred to in the first sentence of Section 4, paragraph 3.

**Section 6.** If there are grounds for assuming that someone wishing to enter into a business relationship with an undertaking, or carry out a transaction of the type referred to in Section 4, paragraph 2, is not acting on his own behalf, the undertaking shall take appropriate steps to establish the identity of the party on behalf of whom he is acting. The provisions of paragraph 1 do not apply in cases covered by Section 4, paragraph 3, or where there are special grounds for concluding that a check is not necessary.

**Section 7.** Although an identity check may not be required under the terms of Sections 4–6, a check of the kind specified in these sections must always be performed if the company in question has grounds for assuming that a transaction may constitute money laundering.

#### **Conservation of records**

**Section 8.** Documents or information used in connection with an identity check shall be kept in accordance with criteria laid down by the Government or, if the Government so decides, by the Financial Supervisory Authority for a minimum period of five years after the date on which the business relationship came to an end.

#### **Obligation to examine and report**

**Section 9.** The undertaking shall examine any transaction which can be assumed on reasonable grounds to constitute money laundering.

The undertaking shall report any circumstances that may be indicative of money laundering to the National Police Board or other police authority designated by the Government. Once a report has been made, the undertaking shall, if the authority so requests, supply additional information required in connection with the investigation into money laundering.

Once information has been supplied by an undertaking in accordance with paragraph 2, undertakings referred to in Section 2, paragraph 1 must also provide such information as the authority requires to conduct the money laundering investigation.

**Section 9a.** If requested to do so by the National Police Board or other authority designated by the Government, anyone engaged in business involving the sale or purchase of antiques, works of art, precious stones, metals, scrap or transportation services, real estate or tenant-owner property agency, or a lottery or gambling business, shall supply any information deemed by the authority to be of importance to an investigation into money laundering.

**Section 10.** An undertaking that supplies information under the terms of Section 9 shall not be held liable for breach of professional confidentiality if the undertaking had grounds for assuming that the information should have been provided. Nor shall an undertaking that supplies information in obedience to the provisions in Section 9a be held liable for breach of professional secrecy. The above provisions also apply to any member of the undertaking's board of directors or to any employee who supplies information on behalf of the undertaking.

### **Disclosure of information relating to an examination**

**Section 11.** An undertaking, its board of directors or its employees shall not make known to a customer or any outside party that an examination has been carried out or that information has been passed on in accordance with Sections 9 or 9a, or that the matter is under investigation by the police.

### **Obligation of the Financial Supervisory Authority to report**

**Section 12.** If the Financial Supervisory Authority should, in the course of inspecting an undertaking or in some other way, learn of transactions which may be deemed to constitute money laundering, it shall inform the National Police Board or a police authority designated by the Government of the said transactions.

### **Internal procedures and training**

**Section 13.** An undertaking shall adopt and apply procedures aimed at preventing it from being used for money laundering. The undertaking shall ensure that its employees receive information and training appropriate for this purpose.

The Government, or if the Government so decides, the Financial Supervisory Authority, may issue additional instructions on the procedures to be implemented and the kind of training and information to be provided.

### **Sanctions**

**Section 14.** A fine shall be imposed on anyone who intentionally or through gross negligence 1. fails to comply with its obligation to conduct checks and supply information in accordance with the provisions of Section 9, or 2. contravenes the provisions prohibiting the release of information set out in Section 11.

### **Transitory provisions**

1. This Act comes into force on 1 July, 1999.

2. Transactions conducted before the Act comes into force shall be subject to the provisions in Section 9 in its earlier form and not to those in Section 14 in its present form.1§ hmhmhm

**Act on amendments to the Measures against Money Laundering Act (1993:768);**

Issued 2 December 2004.

In accordance with a decision by the Riksdag<sup>42</sup> it is enacted<sup>43</sup> concerning the Measures against Money Laundering Act (1993:768)<sup>44</sup>

*firstly*, that the current Section 9a shall be designated Section 9c,

*secondly*, that Sections 2-6, 8, 9, the new 9c and 10-13 shall have the wording given below,

*thirdly*, that six new sections (Sections 2a, 2b, 4a, 9a, 9b and 13a) shall be introduced in the Act and that a new heading shall be introduced immediately before Section 13a, with the wording given below.

Section 2<sup>45</sup>

The provisions of this Act apply to natural and legal persons who operate

1. a banking or financing business under the Banking and Financing Business Act (2004:297),
2. a life insurance business,
3. a business operation of the type described in Chapter 1, Section 3 of the Securities Business Act (1991:981),
4. a business operation requiring notification or application to the Financial Supervisory Authority under the Currency Exchange and Money Transmission Act (1996:1006) or the Deposits Business Act (2004:299),
5. a business operation of the type described in Section 1 of the Insurance Brokers Act (1989:508),
6. a business operation for issuing electronic money under the Electronic Money Issuers Act (2002:149),
7. a fund business under the Investment Funds Act (2004:46),
8. a business operation as an estate agent under the Estate Agents Act (1995:400),
9. a business operation for casino games under the Casinos Act (1999:355),
10. a business operation as a registered or chartered accountant, or
11. a professional business operation consisting of supplying advice with the intent of influencing the size of a tax or a fee (tax advisor).

The Act applies only to those customer-oriented business operations referred to in the first paragraph. Regarding business operations referred to in items 1-7 of the first paragraph, the Act also applies to Swedish branch offices of foreign legal persons whose head office is located abroad. Provisions regarding the obligation for certain other natural and legal persons to provide information are found in Section 9c.

## Section 2a

The provisions of this Act also apply to lawyers and associate lawyers at law firms and other independent legal professionals conducting professional activities when they

1. help in the planning or implementation of transactions on behalf of a client in connection with:
  - a) the purchase or sale of property or companies,
  - b) managing the client's money, securities or other assets,
  - c) opening or managing bank, savings or securities accounts,
  - d) acquiring capital necessary for setting up, operating or managing a company,
  - e) setting up, operating or managing companies, associations and foundations, or

<sup>42</sup> Government Bill 2003/04:156, Committee report JuU7, Parliamentary Communication 2004/05:70.

<sup>43</sup> Compare Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ L 166, 28.6.1991, p 77, Celex 31991L0308), amended by Directive 2001/97/EC (OJ L 344, 28.12.2001, p 76, Celex 32001L0097) of the European Parliament and of the Council.

<sup>44</sup> Act reprinted as 1999:162.

<sup>45</sup> Last wording Act 2004:313

2. act on behalf of a client in financial transactions or property transactions.

#### Section 2b

The provisions of this Act also apply to natural and legal persons who conduct professional commerce with, or sales by auction of, antiques, art, precious stones, metal, scrap metal or means of transport in cases where cash payment is made in an amount corresponding to EUR 15 000 or more.

#### Section 3

The actions referred to in Section 1 may be punishable under the provisions concerning money-related receiving or petty money-related receiving as stated in Chapter 9, Sections 6a and 7a of the Penal Code. Moreover, natural and legal persons referred to in Section 2, first paragraph and Sections 2a and 2b may not knowingly take part in transactions where there are grounds for assuming that these constitute money laundering.

#### Section 4

The natural or legal person must check the identity of any person who wishes to enter into a business relationship with the natural or legal person.

An identity check must also be made in cases involving persons other than those referred to in the first paragraph in the event of transactions involving an amount corresponding to EUR 15 000 or more. The same applies if the transaction amounts to less than EUR 15 000, where there are grounds for assuming that it is linked to another transaction and together the total sum will reach at least this amount. If the total amount is not known at the time of the transaction, an identity check must be made as soon as the total sum of the transactions amounts to at least EUR 15 000.

When a business relationship is entered into or a transaction takes place with someone not physically present, the natural or legal person must take the special measures necessary to establish the other person's identity.

There are special regulations for casinos regarding identity checks in Sections 4 and 5 of the Casinos Act (1999:355).

#### Section 4a

An identity check does not need to be carried out with regard to natural or legal persons conducting business operations referred to in Section 2, first paragraph, items 1-7, which:

1. are established in the European Economic Area, or
2. are established in a country outside the Area if the country has provisions regarding measures against money laundering that correspond to those prescribed by Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, last amended by Directive 2001/97/EC<sup>46</sup> of the European Parliament and of the Council.

An identity check is not required if a transaction is made to an account belonging to someone whose identity has been checked at an earlier time under this Act.

#### Section 5

Life insurance companies and companies that conduct business activities under Section 1 of the Insurance Brokers Act (1989:508) are not required to carry out identity checks in connection with an insurance contract where the annual premium does not exceed an amount corresponding to EUR 1 000 or when a one-off premium does not exceed an amount corresponding to EUR 2 500. Nor is an identity check required where payment is made from an account that has been opened at a credit institution established in the European Economic Area.

#### Section 6

If there are grounds for assuming that someone wishing to enter into a business relationship with the natural or legal person – or carry out a transaction of the type referred to in Section 4, second paragraph – is not acting on his own behalf, the natural or legal person must take appropriate steps to try and establish the identity of the party on whose behalf he is acting.

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<sup>46</sup> OJ L 344, 28.12.2001, p 76, (Celex 32001L0097).

The provisions of the first paragraph do not apply in cases covered by Section 4a or where there are special grounds for concluding that a check is not necessary.

#### Section 8

Documents or information used in connection with an identity check must be kept for at least five years. This time is to be calculated from the date the identity check was conducted or, in those cases where a business relationship was entered into, the date on which the business relationship ended.

#### Section 9

The natural or legal person must examine any transactions where there are reasonable grounds for assuming that these constitute money laundering.

The natural or legal person must report any circumstances that may be indicative of money laundering to the National Police Board or other police authority designated by the Government. Once this information has been supplied, the natural or legal person must, if the authority so requests, supply additional information required in connection with the investigation into money laundering.

Once information has been supplied under the second paragraph, other natural or legal persons referred to in Section 2, first paragraph and Sections 2a and 2b must also provide such information as the authority requests for the money laundering investigation.

#### Section 9a

Lawyers, associate lawyers at law firms and other independent legal professionals, registered and chartered accountants as well as tax advisors are not required to provide information under Section 9 about what has been confided in them when they defend or represent a client in, or in connection with, legal proceedings, including providing advice concerning initiating or avoiding legal proceedings. This applies irrespective of whether they received the information before, during or after such proceedings.

#### Section 9b

Lawyers and associate lawyers at law firms are not required to provide information under Section 9 when this concerns information regarding a client and which they received while assessing their client's legal situation.

#### Section 9c

Those who operate lotteries and gambling activities on a professional basis, if requested by the National Police Board or other authority designated by the Government, must provide any information that the authority considers to be of importance to the investigation into money laundering.

#### Section 10

A natural or legal person who provides information pursuant to Section 9 may not be held liable for breach of professional secrecy if the natural or legal person had reason to assume that the information should be provided. Nor may persons who provide information pursuant to section 9c be held liable for breach of professional secrecy. The same applies to a board member or an employee who provides information on behalf of the natural or legal person.

Under Chapter 15, Section 2 of the Swedish Companies Act (1975:1385), Chapter 13, Section 2 of the Economic Associations Act (1987:667), Chapter 5, Section 2 of the Foundations Act (1994:1220) and Section 37 of the Auditing Act (1999:1079), there are special provisions regarding liability for accountants in joint stock companies, economic associations, foundations and certain other companies.

#### Section 11

The natural or legal person, its board members or its employees may not disclose to a customer or any outside party that an examination has been carried out or that information has been provided under Sections 9 or 9c, or that the police are conducting an investigation.

With regard to lawyers and associate lawyers at law firms, the prohibition against disclosing the circumstances referred to in the first paragraph applies for 24 hours from the time the examination has begun, information has been provided to the police or the police have initiated an investigation. The same applies to registered and chartered accountants when they have taken measures that are related to their

auditing activity.

#### Section 12

Should the Financial Supervisory Authority, in the course of an inspection of a natural or legal person, or in some other manner learn of transactions involving funds which can be assumed to constitute money laundering, it must inform the National Police Board or the police authority designated by the Government of these transactions.

#### Section 13

The natural or legal person must have procedures to prevent the business from being used for money laundering, and must ensure that its employees receive necessary information and training for this purpose. If a natural person as specified in Section 2, first paragraph, Sections 2a or 2b operates his business as an employee of a legal person, the obligation under the first paragraph applies to the legal person.

### **Authorisation**

#### Section 13a

The Government or the authority designated by the Government may issue regulations concerning

1. identity checks under Sections 4 and 6,
2. which countries fulfil the condition specified in Section 4a, first paragraph, item 2,
3. the extent to which documents or information used for identity checks are to be kept under Section 8, and
4. what procedures must be followed and what information and training must be provided under Section 13.

1. This Act shall enter into force on 1 January 2005.

2. The provisions of Section 2, first paragraph, item 7 on fund businesses under the Investment Funds Act (2004:46) are also to apply to businesses that operate pursuant to Section 3 of the Act (2004:47) concerning introduction of the Investment Funds Act (2004:46).

On behalf of the Government,

SVEN-ERIK ÖSTERBERG

Maria Hallqvist  
(Ministry of Finance)

## FFFS 2005:5

### **Finansinspektionen's (the Swedish Financial Supervisory Authority) Regulations and General Guidelines Governing Measures against Money Laundering and Financing of Particularly Serious Crimes in Certain Circumstances**

decided 27 May 2005.

Finansinspektionen hereby prescribes the following pursuant to the Measures Against Money Laundering and Financing of Particularly Serious Crimes in Certain Circumstances Ordinance (2002:552).

Finansinspektionen provides general guidelines following each section in the regulations.

In supplementation of these general guidelines, Finansinspektionen has also issued general guidelines regarding Governance and Control of Financial Undertakings (FFFS 2005:1).

#### **Scope and definitions**

**1 §** These regulations shall be applied by:

1. natural and legal persons conducting operations as set forth in section 2, first paragraph, subsections 1–7 of the Act on Measures Against Money Laundering (SFS 1993:768) (hereinafter referred to as the Act on Money Laundering);
2. branch offices in Sweden of foreign legal persons with head offices abroad which conduct such operations as referred to above;
3. natural and legal persons set forth in section 8, first paragraph of the Act on Criminal Responsibility for the Financing of Particularly Serious Crimes in Certain Circumstances (SFS 2002:444) (hereinafter referred to as the Act on Financing).

Provisions applicable to the board of directors or managing director of legal persons shall apply similarly in respect of authorised representatives in types of association in which a board of directors or managing director is not appointed.

**2 §** The regulations govern, *inter alia*, the following:

- the internal routines to be applied for the purpose of preventing an undertaking's products and services being used for money laundering or financing of particularly serious crimes;
- the manner in which identity shall be verified;
- the extent to which documents or information used in verification of identity are to be preserved; and – the training to be undertaken by the employees of the undertaking.

The rules have principally been drafted to cover measures against money laundering and measures against financing of especially serious crimes.

**3 §** In these provisions:

*undertaking* means such natural and legal persons as referred to in section 1, subsections 1–3;

*internal rules* means policy and governance documents, guidelines, instructions or other written documents through which the issuer (board of directors, managing director or other official) directs the operation.

#### **Internal rules regarding measures against money laundering and financing of particularly serious crimes**

**4 §** The undertaking's board of directors or managing director shall establish the following in internal rules in order to prevent money laundering or financing of particularly serious crimes:

- decision-making and reporting routines in the administration of matters when there is reason to assume that transactions are occurring which constitute money laundering or financing of particularly serious crimes;
- duties and responsibilities of the central functional manager;
- routines for the manner in which identity shall be verified in respect of a person who wishes to initiate a business relationship with the undertaking and in respect of any other person in conjunction with transactions involving an amount equal to EUR 15,000 or more or where the transaction is less than EUR 15,000 but may be assumed to be related to another transaction in combination with which the amount is equal to not less than this amount;
- routines for verification of identity where it may be assumed that the person who wishes to commence a business relationship with the undertaking or carry out such a transaction as referred to in the second part of the immediately preceding indent is not acting on his own behalf;
- routines for scrutinising transactions;
- routines for preservation of documents; and – routines for training employees in respect of money laundering issues and issues regarding financing of particularly serious crimes.

### *General guidelines*

*Policy* The undertaking's board of directors should establish an overall policy regarding measures against money laundering and financing of particularly serious crimes. This may also entail the undertaking's policy to counteract other criminal activities.

*Risk management* FFFS 2005:1 provides guidelines for, *inter alia*, the administration and control of risks by undertakings. The undertaking's level of risk exposure to money laundering and financing of particularly serious crimes is, to a significant extent, associated with the type of activity conducted by the undertaking and the markets on which the undertaking operates. The undertaking's board of directors or managing director should establish internal rules for the identification and analysis of risks of being exposed to money laundering and financing of particularly serious crimes in the undertaking's operations. The rules should pertain to products, services and distribution channels aimed at customers within all business areas.

The undertaking should also document in internal rules circumstances which may constitute indications of money laundering or financing of particularly serious crimes. Examples of such circumstances are provided in the general guidelines in section 11.

The documentation should be regularly reviewed and supplemented.

### *Know your customer*

The undertaking's board of directors or managing director should establish internal rules for the application of the principle of know your customer in the undertaking's business relationships with customers.

This principle entails that the undertaking should, in addition to that which is prescribed by law, obtain to the extent relevant, information regarding the customer's background, origin of money or other assets, the purpose of the customer relationship and the intended use of products and services. The undertaking should also regularly follow up the customer relationship in respect of, for example, changes in the customer's operations and the customer's use of the undertaking's products and services.

The principle of know your customer should be applied within all of the undertaking's business areas aimed at customers and in respect of all types of customers.

### *Group relationships*

In a group of undertakings, the board of directors or managing director of the parent undertaking should, provided that the parent undertaking is an undertaking subject to the Act on Money Laundering, endeavour to establish:

- a group-wide policy for measures against money laundering or financing of particularly serious crimes;
- common internal principles in the formulation of the routines set forth in section 4;
- common internal principles for carrying out risk analysis and the application of the know your customer principle.

In the event the group conducts operations through foreign branch offices or subsidiaries, Finansinspektionen should be immediately informed in the event the undertaking determines that its internal rules against money laundering and financing of particularly serious crimes cannot be applied due to deficiency in such country's regulation within this area. The aforementioned does not refer to appropriate adjustments to internal rules due to local legislation or the requirements imposed by governmental authorities in such country.

### **Central functional manager**

**5 §** The undertaking's board of directors or managing director shall appoint a central functional manager with responsibility for the control systems, work routines, decision-making and reporting routines and training programmes to be applied within the organisation in respect of issues regarding money laundering and financing of particularly serious crimes.

The central functional manager shall also otherwise constitute a central support in respect of measures against money laundering or financing of particularly serious crimes.

**6 §** The central functional manager shall have an executive position within the undertaking which is directly subordinate to the managing director. The central functional manager can appoint one or more persons to assist him or her and delegate powers thereto.

### **Decision-making and duty to provide information**

**7 §** Decisions regarding the provision of information to the Financial Intelligence Unit of the National Police pursuant to section 9, second and third paragraphs of the Act on Money Laundering and section 8, second and third paragraphs of the Act on Financing shall be taken by the central functional manager or by the person or persons appointed to assist him or her. Such a decision may also be taken by another senior official in the undertaking.

The information shall be provided to the Financial Intelligence Unit without delay and only through the central functional manager or the person or persons appointed to assist him or her.

#### *General guidelines*

The undertaking should provide information in the manner designated by the Financial Intelligence Unit. The central functional manager, or the person or persons appointed to assist him or her, shall be the first contact person in this communication. In conjunction with decisions pursuant to section 9, second paragraph, first sentence of the Act on Money Laundering and section 8, second paragraph, first sentence of the Act on Financing, such should be reported internally in accordance with the undertaking's internal rules. Reporting should at all times take place to the unit or the function which initiated the matter. The aforementioned should apply also in those cases in which decisions are taken not to provide information to the Financial Intelligence Unit.

In a group of undertakings, the central functional manager of the parent undertaking should be informed regarding decisions to provide information to the Financial Intelligence Unit taken by

another company in the group, provided that the parent undertaking is an undertaking which is subject to the Act on Money Laundering.

In the event the group also conducts operations via foreign branch offices and subsidiaries, the central functional manager should be regularly informed of decisions taken by the foreign branch offices and subsidiaries to provide information to the Financial Intelligence Unit (or equivalent) concerning suspicion of money laundering or financing of particularly serious crimes. However, the aforementioned shall be conditional upon the provision of information to the central functional manager in the parent undertaking conforming with the legislation and requirements established by governmental authorities in such country.

## **Verification of identity**

**8 §** Verification of the identity of a customer in the administration of a matter in the presence of the customer shall be carried out in the following manner.

### *Natural persons*

In the event the customer is not known to the undertaking, verification of identity shall be carried out on the basis of a valid certified identity card, other identity cards approved by the banks as an identity document, and driving licence. Verification shall also be conducted by means of passports issued following the expiry of 1997.

In respect of foreign citizens who lack a valid certified Swedish identity card, another Swedish identity card approved by the banks or a Swedish driving licence, the verification of identity shall be carried out by means of a valid passport or other identity documents issued by a governmental authority or other authorised issuer which evinces citizenship. Where deemed necessary in order to ensure the customer's identity, additional documentation shall be obtained such as bank certification or other references from the customer's home country. In respect of foreign passports or another foreign identity document, a copy of the document shall at all times be preserved.

### *Legal persons*

Verification of the identity of a Swedish legal person and information regarding legal representatives thereof shall be conducted on the basis of a registration certificate or, to the extent such has not been issued in respect of the legal person, other authorising documents. The aforementioned shall apply similarly to a foreign legal person.

Legal representatives of a legal person or other persons who represent a legal person by virtue of a power of attorney shall be identified in the same manner as set forth above in the section regarding natural persons.

**9 §** Verification of the identity of a customer in conjunction with the administration of a matter not in the presence of the customer shall be carried out in the following manner.

Verification of the identity of natural and legal persons shall be carried out by means of documents or information which the undertaking obtains in writing or in another manner from the customer, from a third party or from the undertaking's own or external registers. Such external registers may be credit information registers, registers available at card issuers/card manufacturers and registers at governmental authorities such as population registers and business registers.

Verification of identity shall be carried out through an appropriate combination of controls as follows:

– signature verified against certified copy of identity document;

- information regarding personal identification number, company registration number, company signatory and board of directors, address, employer, credit card number, numbers on identity documents compared against information in the undertaking's own register or external registers;
- electronic methods for identification of a customer such as what are commonly referred to as e-IDs or identification methods used in Internet banking services, telephone banking services or credit card services;
- telephone call-back or exchanges of faxes;
- other documentation to verify a customer's identity such as bank certification and certificates from notaries public (or equivalent in the foreign country), embassies, consulates and business partners abroad;
- the first deposit of funds takes place from an account opened in the customer's name in a financial institution within the EU/EEA which is subject to the Act on Money Laundering or comparable provisions.

In the event a customer is a foreign citizen who lacks a valid certified Swedish identity card or other Swedish identity document approved by the Swedish banks, or where a customer is a foreign legal person whose legal representative is such foreign citizen, one of the aforementioned control measures shall, however, be conducted by obtaining a certified copy of a passport or other identification document which evinces citizenship.

### *General guidelines*

#### *Initiation of a business relationship, etc.*

According to section 4, first paragraph of the Act on Money Laundering and section 11 of the Act on Financing, verification of identity is obligatory when a customer wishes to initiate a business relationship with the undertaking. Contractually based dealings should normally be regarded as such business relationships. Examples of such a business relationship is the opening of a deposit account, taking of loans, credit card agreements, renting safe deposit boxes, opening accounts with a central securities depository or settlement accounts, purchases and sales of fund units and securities, management services and the procurement of pension or endowment policies.

Supplementary verification of a customer's identity should normally be carried out when the customer executes agreements in respect of additional products and services, unless the customer is known to the unit administering the customer matter.

Information regarding identity documents which are approved by the banks are available at the Swedish Bankers' Association and Finansinspektionen.

In respect of information regarding foreign legal persons, guidance may be obtained from, *inter alia*, what is commonly referred to as the European Business Register at the Swedish Companies Registration Office, national company registers in the respective countries, and national and international credit information companies.

#### *Verification of identity where it may be assumed that the customer is not acting on his own behalf*

Section 4 provides that the undertaking's internal rules shall contain routines for verification of identity where it may be assumed that a customer is not acting on his own behalf.

Several situations may arise in an undertaking's business activities directed towards customers in which it may be assumed that a customer is not acting on his own behalf.

Where, in conjunction with the initiation of a business relationship with a customer or regularly during the course of such relationship, it may be assumed that a person other than the customer actually controls the customer's assets and directs the customer's use of the products and services which are provided by the undertaking, the situation is normally such that the undertaking must, in accordance with section 6, first paragraph of the Act on Money Laundering, attempt to obtain in a

suitable manner information regarding the identity of the party on whose behalf the customer is acting.

Notwithstanding that the identity of the party on whose behalf the customer may be assumed to be acting cannot be verified, the undertaking should, within the scope of the know your customer principle, evaluate and take into account the information obtained for the assessment of the business relationship and the use of the undertaking's products and services. Circumstances which may indicate that a customer is not acting on his own behalf may include:

- only persons other than those persons constituting legal representatives according to the registration certificate represent the customer pursuant to general powers of attorney;
- the customer's use of the undertaking's products and services give reason to assume that the customer is controlled by persons other than legal representatives of the customer;
- the customer's legal representatives have previously acted as straw men;
- the customer has a complicated ownership structure which is impossible to clarify; or
- the customer's operations have suddenly changed focus and financial position without any formal changes to its management or ownership.

Where the customer may be assumed to be what is commonly referred to as a shell bank, a customer relationship should not be established. A shell bank normally refers to a bank established in a jurisdiction in which the bank has no physical presence and which is not tied to any financial group under supervision.

#### *Use of automatic deposit machines*

Identification of depositors should take place by means of a card and PIN code or other similar method in conjunction with deposits of cash funds in an automatic deposit machine.

#### *Outsourcing agreements, etc., for the performance of verification of identity*

FFFS 2005:1 provides general guidelines regarding outsourcing agreements. These guidelines provide that outsourcing agreements may be executed with another undertaking to perform verifications of the identity of a customer.

In a group of undertakings, agreements may be entered into with another undertaking within the group to conduct verifications of customer identity. Such verification may be carried out on behalf of another undertaking within the same group without a separate outsourcing agreement where the customer relationship is established in more than one undertaking within the group.

The undertaking's own agents or representatives or other undertakings within the same group and independent agents, insurance brokers and other parties who are themselves subject to the Act on Money Laundering or similar legislation in another country may, in conjunction with the introduction by them of a customer to the undertaking, conduct verification of the identity of the customer on behalf of the undertaking.

When a business relationship with a customer is initiated through the opening of a bank account via an employer, the identity may be established by such employer. The aforementioned should apply when an employer procures occupational pension insurance on behalf of its employees and when an organisation obtains or brokers pension insurance policies for its members.

The responsibility pursuant to the Act on Money Laundering, Act on Financing and these regulations always rests with the undertaking which procures the service or initiates a business relationship with a customer who is introduced by a third party. The aforementioned also covers responsibility for archiving documentation regarding verification of identity in accordance with the aforementioned provisions and the Act on Bookkeeping.

## **Exemptions for certain financial institutions from the obligation to conduct verification of identity**

**10 §** Foreign financial institutions which conduct operations set forth in section 2, first paragraph, subsections 1–7 of the Act on Money Laundering need not conduct verification of identity in the event the institution has its registered office in the EU/EEA or in another country with a comparable level in its systems against money laundering.

A list of countries outside of the EU/EEA referred to in section 4 a, first paragraph, subsection 2 of the Act on Money Laundering is set forth in the *Appendix*.

## **Routines for examination of customer matters**

**11 §** In the event a customer matter gives cause to assume the existence of a transaction constituting money laundering or financing of particularly serious crimes, an official shall, immediately notify the matter to a superior in accordance with the undertaking's reporting routines for closer scrutiny pursuant to section 9, first paragraph of the Act on Money Laundering and section 8, first paragraph of the Act on Financing.

### *General guidelines*

Money laundering and financing of particularly serious crimes are a national and international phenomena and also characterised by significant complexity and continuous development. Accordingly, the undertaking should regularly obtain information regarding new trends, patterns and methods which may be used for money laundering or financing of particularly serious crimes. Guidance may be obtained from relevant international organisations, governmental authorities and other bodies within the area. Particular note may be made of the Financial Action Task Force on Money Laundering (FATF), the European Union (EU), the Basel Committee on Banking Supervision, the International Organisation of Securities Commissions (IOSCO) and the International Association of Insurance Supervisors (IAIS). In respect of financing of particularly serious crimes, the EU has adopted regulations which contain lists of suspected terrorists whose assets are to be frozen.

The principle of know your customer forms a natural basis for examination of whether the transaction may be reasonably assumed to constitute money laundering or financing of particularly serious crimes. The examination should, where applicable, comply with the same basic principles irrespective of whether the transaction was initiated in conjunction with personal customer contact or in some other manner. Transactions pertaining to funds which are initiated in earlier stages by another undertaking subject to the Act on Money Laundering or the Act on Financing, e.g. transfers between customer accounts, do not entail that the recipient undertaking can avoid conducting an independent review in accordance with section 9 of the Act on Money Laundering and section 8 of the Act on Financing. In light of the increased automation in the financial system both in Sweden as well as internationally there are reasons to consider the use of the electronic systems as support in conjunction with the examination of transactions.

Examples of transactions which justify closer scrutiny and investigation are:

- cash transactions or other transactions which are large or deviate from the customer's normal behaviour and/or deviate in comparison with the category in which the customer is included;
- large numbers of transactions during a certain interval which do not appear normal for the customer or the category in which the customer is included;
- transactions which cannot be explained on the basis of what is known regarding the customer's financial position;
- transactions which may be assumed to be without justification or financial purpose;
- transactions where the geographic destination deviates from the customer's normal transaction patterns;

- where the customer requests unusual services or products without providing a satisfactory explanation therefor;
- transactions to or from undertakings or persons who may be deemed to be acting for the purpose of concealing underlying, actual ownership or rights relationships;
- large cash deposits on account through automatic deposit machines which are thereafter immediately disposed of; and
- large loans which are repaid shortly after the loan has been granted where such has not been agreed upon granting of the loan.

Particular attention should be paid to the scrutiny of transactions which are connected with persons or undertakings in countries from which it is very difficult or not possible to obtain information regarding the customer or the customer's principals, or which are connected with persons or undertakings in countries on FATF's list of non-co-operative countries or territories.

**12 §** Measures and decisions in conjunction with an examination pursuant to section 11 shall be documented and signed by officials or decision-takers. The aforementioned shall also apply in conjunction with enquiries or when obtaining information from the customer.

### **Internal register**

**13 §** The undertaking shall maintain a central money laundering register for such personal information provided by the undertaking to the Financial Intelligence Unit pursuant to section 9, second paragraph of the Act on Money Laundering and section 8, second paragraph of the Act on Financing.

#### *General guidelines*

The undertaking should, in accordance with the provisions of FFFS 2005:1, possess an efficient information- and communications system for internal information.

In the event a register containing personal information is maintained by the using of automated processing of personal data in accordance with the Act on Money Laundering Registers (SFS 1999:163), such information as is registered should, in a suitable manner and to the extent necessary, be made available to officials handling customer matters who require such information.

### **Preservation of documents**

**14 §** Such documents or information which constitute documentation in conjunction with verification of identity of customers with business relationships with the undertaking such as agreements, receipts bearing the customer's signature, copies of identity documents and registration certificates or other authorisation documents with notations regarding verifications of identity carried out in respect of legal representatives or holders of powers of attorney shall be preserved for not less than five years following termination of the business relationship, however not for a period which is shorter than provided by Chapter 7, section 2 of the Act on Bookkeeping (SFS 1999:1078). The documents shall be archived in a manner and in a form which is permissible for accounting materials.

The aforementioned shall also apply to documents or information which constitute documentation in conjunction with verification of identity carried out in conjunction with such a transaction as referred to in section 4, second paragraph of the Act on Money Laundering and correspondingly in section 11, first paragraph of the Act on Financing, calculated from the date on which verification of identity was carried out.

#### *General guidelines*

The undertaking should possess a system and routines to ensure that such documents may be retrieved within a reasonable time.

## **Independent audit function**

**15 §** In the event the undertaking's independent audit function (internal audit) discovers circumstances which give reason to assume the existence of a transaction which constitutes money laundering or financing of particularly serious crimes, such shall be notified to the central functional manager or another person in the undertaking's senior management.

### *General guidelines*

The independent audit function should, within the scope of its audit of the internal controls, also prepare a specific audit programme in order to follow up the manner in which the undertaking applies the Act on Money Laundering, the Act on Financing and regulations and general guidelines relating to such Acts. The results of the audit should be reported in accordance with the internal rules applied by the undertaking and the central functional manager.

In a group of undertakings, a common system should be established to follow up the application of the Act on Money Laundering and Act on Financing or comparable legislation abroad.

Finansinspektionen should be immediately informed in the event an auditor undertakes such measures as referred to in Chapter 10, sections 39 and 40 of the Companies Act (SFS 1975:1385) in respect of undertakings under the supervision of Finansinspektionen due to suspected money-related receiving pursuant to Chapter 9, section 6 a of the Criminal Code (SFS 1962:700). The aforementioned shall apply regarding an undertaking subject to the supervision of Finansinspektionen where an auditor furnishes information to the Financial Intelligence Unit pursuant to section 9, second paragraph of the Act on Money Laundering.

## **Training**

**16 §** Each undertaking shall have a training programme regarding issues concerning money laundering or financing of particularly serious crimes.

All employees administering customer matters shall undergo such training. The training shall, where possible, be adapted to the needs of the employees in order to ensure that issues concerning money laundering or financing of particularly serious crimes are comprehensively elucidated.

In addition, employees shall be regularly informed in respect of amendments to rules regarding money laundering and financing of particularly serious crimes and the application thereof.

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These regulations and general guidelines shall enter into force on 1 July 2005, whereupon the following statutes shall be repealed:

1. Finansinspektionen's regulations and general guidelines governing measures against money laundering (FFFS 1999:8);
2. Finansinspektionen's regulations and general guidelines governing measures against financing of particularly serious crimes in certain circumstances (FFFS 2002:19).

INGRID BONDE

Thomas Grahm

*Appendix*

**Countries with provisions comparable to those applied within the EU/EEA**

1. Australia
2. Japan
3. Canada
4. China/Hong Kong
5. New Zealand
6. Switzerland
7. Singapore
8. Turkey
9. USA