FATF

9TH FOLLOW-UP REPORT

Mutual Evaluation of Finland

June 2013

FINANCIAL ACTION TASK FORCE

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

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ACRONYMS

AML/CFT	Anti-money laundering / Countering the financing of terrorism
CDD	Customer due diligence
DNFBP	Designated non-financial businesses and professions
EEA	European economic area
FIN-FSA	Financial Supervisory Authority
FIU	Financial Intelligence Unit
LC	Largely compliant
MER	Mutual evaluation report
ML	Money laundering
NBI	National Bureau of Investigation
NC	Non-compliant
NPB	National Police Board
OEM	Other Enforceable Means
PC	Partially compliant
PEP	Politically explosed person
R.	Recommendation
RBA	Risk-based approach
RSAA	Regional State Administrative Agency of Southern Finland
SR.	Special Recommendation
TF	Terrorist financing
WGEI	FATV Working Group on Evaluations and Implementation

MUTUAL EVALUATION OF FINLAND: 9TH FOLLOW-UP REPORT

Application to move from regular follow-up

Note by the Secretariat

I. INTRODUCTION

The third mutual evaluation report (MER) of Finland was adopted on 12 October 2007. At the same time, Finland was placed in a regular follow-up process[1]. Finland reported back to the FATF in October 2009 (first follow-up report), October 2010 (second follow-up report), February 2011 (third follow-up report), October 2011 (fourth follow-up report), February 2012 (fifth follow-up report), June 2012 (sixth follow-up report), and October 2012 (seventh follow-up report). In February 2013 (eighth follow-up report), Finland indicated that it would report to the Plenary again in June 2013 concerning the additional steps taken to address the deficiencies identified in the report and apply to be removed from regular follow-up at that time.

This paper is has been drafted in accordance with the procedure for removal from the regular follow-up, as agreed by the FATF plenary in October 2008 and subsequently amended[2]. It contains a detailed description and analysis of the actions taken by Finland in respect of the core and key Recommendations rated partially compliant (PC) or non-compliant (NC) in the mutual evaluation, as well as a description and analysis of the other Recommendations rated PC or NC, and for information a set of laws and other materials (included as Annexes). The procedure requires that a country "*has taken sufficient action to be considered for removal from the process – To have taken sufficient action in the opinion of the Plenary, it is necessary that the country has an effective AML/CFT system in force, under which the country has implemented the core[3] and key[4] Recommendations at a level essentially equivalent to a Compliant (C) or Largely Compliant (LC), taking into consideration that there would be no re-rating*"[5]. Finland was rated PC or NC on the following Recommendations:

Core Recommendations rated PC (no core recommendations were rated NC):
R.1, R.5
Key Recommendations rated PC (no key recommendations were rated NC)
R.23, R.35, SR.I, SR.III

1 www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Finland%20full.pdf

2 Third Round of AML/CFT Evaluations Processes and Procedures, par. 41 www.fatf-gafi.org/media/fatf/documents/process%20and%20procedures.pdf

3 The core Recommendations as defined in the FATF procedures are R.1, SR.II, R.5, R.10, R.13 and SR.IV.

4 The key Recommendations are R.3, R.4, R.26, R.23, R.35, R.36, R.40, SR.I, SR.III, and SR.V.

5 FATF Processes and Procedures par. 39 (c)

Other Recommendations rated PC

R.8, R.11, R.15, R.16, R.17, R.18, R.21, R.22, R.25, R.29, R.30, R.32, R.33, SR.VI, SR.VII, SR.VIII, SR.IX

Other Recommendations rated NC

R.6, R.7, R.9, R.12, R.24

As prescribed by the Mutual Evaluation procedures, Finland provided the Secretariat with a full report on its progress. The Secretariat has drafted a detailed analysis of the progress made for Recommendations 1, 5, 23 and 35, and Special Recommendations I, and III (see rating above), as well as an analysis of all the other Recommendations rated PC or NC. A draft analysis was provided to Finland (with a list of additional questions) for its review, and comments received. The final report was drafted taking into account some of the comments from Finland. During the process Finland provided the Secretariat with all information requested.

As a general note on all applications for removal from regular follow-up: the procedure is described as a *paper-based desk review* and by its nature is less detailed and thorough than a mutual evaluation report. The analysis focuses on the Recommendations that were rated PC/NC, which means that only a part of the AML/CFT system is reviewed. Such analysis essentially consists of looking into the main laws, regulations and other material to verify the technical compliance of domestic legislation with the FATF standards. In assessing whether sufficient progress had been made, effectiveness is taken into account to the extent possible in a paper-based desk review and primarily through a consideration of data provided by the country. It is also important to note that these conclusions do not prejudge the results of future assessments, as they are based on information which was not verified through an on-site process and was not, in every case, as comprehensive as would exist during a mutual evaluation.

II. MAIN CONCLUSIONS AND RECOMMENDATIONS TO THE PLENARY

CORE RECOMMENDATIONS

With regard to R.1, Finland has made clear progress with regard to three out of five deficiencies. Even though the scope of the two outstanding deficiencies is relatively minor, there appear to be no fundamental principles of domestic law preventing Finland to address them. Finland's level of compliance with R.1 is however essentially equivalent to LC given that only minor shortcomings remain with a large majority of the essential criteria being fully met. Since its mutual evaluation, Finland has amended its AML/CFT legislation with the aim to address the shortcomings with regard to R.5 identified in its MER. Given that almost all of the technical deficiencies are fully addressed, Finland's current level of compliance with R.5 is essentially equivalent to a level of LC.

KEY RECOMMENDATIONS

Finland has made significant progress with regard to all of the deficiencies in relation to R.23 identified in its MER and Finland's overall compliance with R.23 can be assessed at a level essentially equivalent to LC. With regard to R.35, the majority of the deficiencies in relation to R.35

are a spill-over from R.1 and Finland's level of compliance with R.1 is considered to be essentially equivalent to LC. In addition, the other deficiency in relation to R.35, namely beneficial ownership requirements in R.5, is largely addressed. On that basis, it can be concluded that Finland's level of compliance with R.35 is now essentially equivalent to LC. For SR. III, although Finland recently introduced the *Act on the Freezing of Funds with a view to Combating Terrorism, 2013*, several of its provisions do not comply with the FATF requirements. In addition, guidance provided to institutions concerning their obligations under freezing mechanisms needs to be further improved. As a result, Finland's overall level of compliance with SR.III is still at PC. With regard to SR.I, three out of the four deficiencies are (mostly) addressed. Important remaining deficiencies noted for SR.III (a high threshold for considering and giving effect to foreign freezing requests and exemption of freezing requirements for humanitarian and other needs) has an impact on Finland's compliance with SR.I. Overall, compliance with SR.I can be assessed at a level essentially equivalent to LC

OTHER RECOMMENDATIONS

Finland has made significant progress in relation to the other 22 Recommendations that were rated PC or NC. Finland has achieved a sufficient level of compliance with Recommendations 6, 7, 9, 11, 12, 15, 17, 18, 21, 24, 25, 29, 30, 32 and Special Recommendations VI, VII, IX. Finland has also made efforts to improve its compliance with Recommendations 8, 16, 22, 33 and Special Recommendation VIII although deficiencies remain and implementation of these recommendations has not yet reached a level equivalent to an LC rating.

CONCLUSIONS

Overall, Finland has reached a satisfactory level of compliance with all of the core Recommendations; and three of the four key Recommendations. It has not yet reached a satisfactory level of compliance with SR.III although it has taken concrete actions, including through legislation, with the aim to address the deficiencies identified in its 2007 MER.

The mutual evaluation follow-up procedures indicate that, for a country to have taken sufficient action to be considered for removal from the process, it must have an effective AML/CFT system in force, under which it has implemented all core and key Recommendations at a level essentially equivalent to C or LC, taking into account that there would be no re-rating. The Plenary does, however, retain some limited flexibility with regard to the key Recommendations if substantial progress has also been made on the overall set of Recommendations that have been rated PC or NC.

Since the adoption of its MER, Finland has made significant overall progress. In 2007, 28 Recommendations were assessed as PC or NC. To the extent that this can be judged in a paper-based review, which does not examine effectiveness, Finland has taken sufficient action to bring its compliance to a level essentially equivalent to LC for 22 of these 28 Recommendations (5 of the 6 core and key Recommendations rated PC, and 17 of the 22 other Recommendations). While Finland has made considerable efforts to strengthen its AML/CFT regime since 2007 across all areas of activity, it cannot be judged sufficiently compliant with Recommendations 8, 16, 22, 33 and Special Recommendation VIII. Their current level of compliance is equivalent to PC.

It is recommended that this would be an appropriate circumstance for the Plenary to exercise its flexibility and remove Finland from the regular follow-up process.

III. OVERVIEW OF FINLAND'S PROGRESS

A. OVERVIEW OF THE MAIN CHANGES SINCE THE ADOPTION OF THE MER

Since the adoption of its MER in 2007, Finland focused its attention on strengthening its AML/CFT legislative framework, with the adoption of amendments to the *Criminal Code*; issuing *Legislation for freezing of terrorist funds* to complement the relevant EU regulations and *Common Positions* that lay out the basic framework for freezing terrorist funds and assets and which are directly applicable in Finland; as well as amending its preventive AML/CFT legislation and issuing a related set of implementing preventive AML/CFT measures.

Finland also introduced several changes to its supervisory framework. The former Insurance and Financial Supervisory Authorities merged together to form a single Financial Supervisory Authority (FIN-FSA). The new FIN-FSA started its operations in 2009 in accordance with the new *Act on the Financial Supervisory Authority, 2008*. In addition, changes have also taken place in respect of the non-financial and DNBP sectors in Finland. The RSAA of Southern Finland (RSAA) has been assigned national AML/CFT functions by the *Government Decree on Regional State Administrative Agencies, 2009*, which makes it responsible for some of the registration and supervision tasks defined in the AML/CFT Act. Finally, the National Police Board (NPB) was established in 2010 and it supervises all gaming operators in mainland Finland. Gaming operators in the autonomous region of Åland are supervised by the Åland Government.

Finally, improvements have been made in the AML/CFT coordination and cooperation between the competent authorities. The inter-agency FATF steering group decided to set up a permanent FATF working group in 2011. The FATF working group consists of representatives from the Ministries of Finance; Interior; Justice; Employment and Economy; Social Affairs and Health; and Foreign Affairs, and the competent supervisory authorities, i.e. the FIN-FSA; the RSAA of Southern Finland; the NPB, as well as the FIU and Finnish Customs. Directed by the inter-agency FATF steering group, the working group prepares and coordinates AML/CFT matters, both nationally and internationally.

B. THE LEGAL AND REGULATORY FRAMEWORK

Since the adoption of the MER in 2007, Finland has completed key AML/CFT legislative steps:

- On 1 June 2011, the *Act amending sections 6 and 14 of Chapter 32 of the Criminal Code* entered into force. Subsection 1 of section 6 regarding money laundering was amended by adding possession among the modi operandi along with reception, use, conversion, conveying, transfer and transmitting. In addition, the following was added to the essential elements of the money laundering offence, along with the purpose of concealing or disguising the illegal origin of the property and assisting the offender: in order to obtain benefit for himself or for another. Through amendments to section 14 regarding corporate criminal liability, the scope of corporate criminal liability was extended to cover negligent money laundering.
- An amendment to *section 11(1) of Chapter 32 of the Criminal Code*, which previously prevented prosecution for self-laundering in all cases, came into

force on 1 May 2012 and now provides for criminalisation of self-laundering in cases of aggravated money laundering.

- The *Act amending section 15 of the Act on International Legal Assistance in Criminal Matters*, also entered into force on 1 June 2010. This amendment was made with the aim to ensure that all pre-trial investigative measures can be adopted in response to a request for international legal assistance concerning AML and CFT and to address the deficiencies in this regard identified in relation to R.36 and SR.V in Finland's MER.
- The *Act on the Freezing of Funds with a view to Combating Terrorism* was adopted by Parliament on 5 April 2013 and is scheduled to enter into force on 1 June 2013. This Act aims to address the deficiencies identified in relation to SR.III in the MER.
- The new *Act on Preventing and Clearing Money Laundering and Terrorist Financing (503/2008) – the AML/CFT Act, 2008* came into force on 1 August 2008 and repealed the former *AML/CFT Act, 2003* that was in force at the time of the mutual evaluation in 2007. Since August 2008, this Act was further amended ***by Acts 918/2008, 621/2009, 1428/2009, 303/2010, 1368/2010, 907/2011, 1497/2011.*** The amendments made to the *AML/CFT Act, 2008* include the extension of the scope of application of the Act (section 2) on the basis of changes in legislation regarding financial institutions, such as the *Act on Payment Services (209/2010)* and the amendment to the *Act on Payment Institutions (907/2011)*. In addition, section 18 of the Act was amended to take into account the implications of the new *Act on Strong Electronic Identification and Electronic Signatures (617/2009)*.
- On the basis of the AML/CFT Act, Finland issued the following four implementing Decrees and Decisions:
    - *Government Decree on Preventing and Clearing (Detecting) Money Laundering and Terrorist Financing (616/2008*), which came into force on 15 October 2008, includes the definition of PEPs and provides further guidance on the filing of STRs.
    - *Decision of the Ministry of the Interior of 30 March 2012*, which came into force on 13 April 2012, on equivalent non-EEA countries. The list of equivalent third countries is relevant for the application of the following provisions of the Act: section 8 (sub-sections 4 and 5 on the identification of the beneficial owner), section 11 (on the reliance on third parties) and section 13 (on simplified due diligence on certain authorities and financial institutions).
    - *Government Decision (1022/2010)*, which came into force on 25 November 2010, on countries and territories whose

legislation on the prevention and clearing of money laundering and terrorist financing do not meet the international obligations referred to in the AML/CFT Act, 2008.

- *Government Decree (1204/2011)*, which came into force on 15 December 2011, on simplified due diligence regarding certain leasing and hire purchase credit contracts.

- The Financial Supervisory Authority's (FIN-FSA) Standard 2.4 on Customer due diligence – Prevention of money laundering, terrorist financing and market abuse (hereafter referred to as *Standard 2.4 on CDD*), which came into force on 1 September 2010, provides regulation and guidelines for FIN-FSA supervised entities. This Standard qualifies as Other Enforceable Means (OEM) based on the analysis of similar Standards contained in paragraphs 358-360 of Finland's third MER.

IV. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE CORE RECOMMENDATIONS

RECOMMENDATION 1 – RATED PC

R1 (Deficiency 1): Not all physical elements (mere acquisition, possession and use of property) of the criminal offence of money laundering are covered

The *Act amending Chapter 32 – sections 6 and 14 of the Criminal Code* entered into force on 1 June 2011 and widened the scope of the ML offence. *Chapter 32 – section 6 of the Criminal Code (ML offence)* now also covers the *possession* of property.

In addition, the definition of the ML offence in *Chapter 32 – section 6 of the Criminal Code* was further amended as follows: "*in order to obtain benefit for himself or for another*". The Finnish authorities refer to this addition as an *alternative* element which would have a positive impact on the implementation of the ML offence. This addition does not conflict with the requirements of the *Palermo Convention* or the FATF Standards.

Art. 6.1(b)(i) of the Palermo Convention requires state parties to criminalise – subject to the basic concepts of its legal system - the *acquisition, possession or use* of property, knowing, at the time of receipt, that such property is the proceeds of crime. This specific provision does not require an intentional element while the ML provision in *Chapter 32 – section 6 of the Criminal Code* now covers the *acquisition, possession and use* of property when the perpetrator *intends* to conceal or obliterate the illegal origin of such proceeds or property or to assist the offender in evading the legal consequences of the offence or in order to obtain benefit for himself or for another. Finland also criminalised negligent money laundering in *Chapter 32 – section 9 of the Criminal Code*. In contrast to the basic ML offence in section 6, the negligent ML offence in section 9 does not contain any intentional element.

While progress has been made by adding *possession* to the ML offence, the offence does not yet cover the mere *acquisition, possession and use* of property. Consequently, the deficiency is not yet fully addressed.

R1 (Deficiency 2): It is not possible to prosecute for self-laundering and this is not due to any fundamental principle of Finnish law

An amendment to *section 11(1) of Chapter 32 of the Criminal Code*, which previously prevented prosecution for self-laundering in all cases, came into force on 1 May 2012. The provision in *section 11* currently reads: "*A person who is an accomplice in the offence through which the property was obtained or that produced the proceeds (predicate offence) shall not be sentenced according to section 7 of this Chapter (this section deals with aggravated money laundering) if, however, considering the continuity and premeditated nature of actions, the money laundering offence constitutes an essential and the most reprehensible component of the crime entity*".

Self-laundering is now criminalised in cases of aggravated money laundering only. This is inconsistent with c.1.6 of the Methodology which requires that the offence of money laundering should apply to persons who commit the predicate offence, unless there are fundamental principles of domestic law which would prevent this. The fact that the Finnish authorities criminalised self-laundering in circumstances where the conduct would be considered to constitute aggravated money laundering is an indication that there are no fundamental principles of domestic law which would prevent the criminalisation of self-laundering for all ML offences. Finland continues to defend its point of view that there are fundamental principles of domestic law that prevent it from fully criminalising self-laundering. After extensive discussions within the FATF's Working Group on Evaluations and Implementation (WGEI) in June 2012, the FATF concluded that such fundamental principles of domestic law do not exist. Finnish authorities further clarify that the courts may consider money laundering as an additional factor for increasing the sentence of a person, including in instances where this sentence is based on the predicate offence committed by that person. While Finland has made progress by criminalising self-laundering in cases of aggravated money laundering, the deficiency is not yet fully addressed.

R1 (Deficiency 3): It is not possible to prosecute for money laundering any person living in a joint household with the offender who only uses or consumes property obtained by the offender for ordinary needs

No action has been taken in view of addressing this deficiency. However, Finnish authorities have further clarified that the scope of application of this restrictive *Criminal Code* provision is very narrow, and the Supreme Court in a 2009 ruling (*KKO 2009:59*) interpreted the "ordinary needs" referred to in the provision in a very restricted manner. Finland also clarified that opinions of the Supreme Court strongly direct and factually bind the administration of justice in the lower court instances. Consequently, the scope of this outstanding deficiency is relatively narrow.

R1 (Deficiency 4): There is no offence of conspiracy available for the basic offence of money laundering and this is not due to any fundamental principles of Finnish law

This deficiency is not yet remedied because Finland remains of the view that there are fundamental principles of domestic law that prevent it from criminalising conspiracy in relation to basic ML cases. Consistent with the approach taken with regard to deficiency 2, in June 2012, the FATF came to the conclusion that such fundamental principles of domestic law do not exist. Conspiracy is

only criminalised in relation to cases of aggravated money laundering. The scope of this outstanding deficiency is relatively narrow.

R1 (Deficiency 5): The ML offence has not been effectively implemented as there have been very few convictions for money laundering, and the numbers appear to be decreasing since the latest amendments to the law were made

Since its mutual evaluation in 2007, Finland provided several updates of statistics which appear to indicate that the effectiveness of the AML regime has significantly improved since the mutual evaluation. This deficiency is addressed.

RECOMMENDATION 1, OVERALL CONCLUSION

Finland made clear progress with regard to three out of five deficiencies. The scope of the outstanding deficiencies is relatively minor. In June 2012, WGEI had an extensive discussion of Finland's level of compliance with Recommendation 1, including on possible fundamental principles of domestic law. WGEI did not consider that fundamental principles of domestic law prevent Finland from correcting the remaining deficiencies in relation to R.1. However, WGEI concluded that Finland's level of compliance with R.1 is essentially equivalent to LC given that only minor shortcomings remain with a large majority of the essential criteria being fully met.

RECOMMENDATION 5 – RATED PC

Introduction

The *AML/CFT Act, 2008*, as described in section III of this report, contains preventive AML/CFT measures and is supplemented by the a series of Government Decrees and Decisions, which constitute legally binding secondary legislation and apply to all parties subject to the Act (see paragraph 14 above).

The Financial Supervisory Authority's (FIN-FSA) Standard 2.4 on Customer due diligence – Prevention of money laundering, terrorist financing and market abuse (hereafter referred to as Standard 2.4 on CDD), which came into force on 1 September 2010, provides regulation and guidelines for FIN-FSA supervised entities. This Standard qualifies as Other Enforceable Means (OEM) based on the analysis of similar Standards contained in paragraphs 358-360 of Finland's third MER.

The FIU updated its revised *Best Practices in Preventing Money Laundering* in August 2012; however, the Best Practices are not enforceable and only qualify as guidance. The FIU also produced the study *Money Laundering Offences in Legal Praxis*, which is currently being updated. Both documents provide guidance to all reporting parties and are also used by the AML/CFT supervisors, including for issuing sector-specific guidance

The risk-based approach (RBA) is an important feature of the *AML/CFT Act, 2008*. Section 6 of this Act requires parties subject to the reporting obligation to have risk management procedures for money laundering and terrorist financing in place commensurate with the nature and the size of the business. The reporting parties need to conduct a risk assessment which identifies the risks of money laundering and terrorist financing in relation to their sector, products, services, technological

development, customers and their business and transactions. The reporting parties must be able to demonstrate to their supervisory authority that their methods for customer due diligence (CDD) and on-going monitoring under the Act are adequate in view of the risks of money laundering and terrorist financing. These requirements are introduced with the aim of ensuring efficient implementation of the provisions regarding enhanced and simplified CDD measures as set out in sections 12-20 of the *AML/CFT Act, 2008*. While FIN-FSA provides detailed guidance on the RBA and risk assessments for the entities under its supervision in its *Standard 2.4 on CDD* no such guidance is issued by the supervisory authority for consumer lending companies and money exchange service providers which are under the supervision of the Regional State Administrative Agency of Southern Finland (RSAA). In addition, Finland has not yet undertaken a national risk assessment that could provide a more general basis on which reporting entities could base themselves in the absence of any sector specific guidance.

Analysis of progress made

R5 (Deficiency 1): There are no requirements to identify the beneficial owners of legal persons

Section 5 of the AML/CFT Act, 2008 provides a definition for a beneficial owner as follows: "Beneficial owner means a natural person on whose behalf a transaction is being conducted or, if the customer is a legal person, the natural person who controls the customer." The definition further clarifies: "A natural person is deemed to exercise control when the person: 1) holds more than 25% of the voting rights attached to the shares or units and these voting rights are based on holding [ownership], membership, the articles of association, the partnership agreement or corresponding rules or some other agreement; or 2) has the right to appoint or dismiss the majority of members of the board of directors of a company or corporation or of a corresponding body or a body which has the similar right, and this right is based on the same facts as the voting rights under 1). The FATF Secretariat was initially of the view that the definition is silent with regard to the natural person who owns the legal person. However, Finnish authorities clarified that the unofficial translation was somehow misleading and therefore referred to the original version of the Act both in Finnish and Swedish that indeed clearly refers to ownership rather than holding in its section 5. In addition, Government Proposal 25/2008 to enact the AML/CFT Act, 2008 provides guidance for the interpretation of sections 5 and 8 of the Act and clarifies that the identification of beneficial owners requires understanding of the ownership and control structure of the customer.

Section 8 of the *AML/CFT Act, 2008* obliges reporting parties to identify the beneficial owners and, if necessary, verify their identity. Further clarification regarding the conditionality for the verification of the identity is provided in *Standard 2.4 on CDD*. Chapter 5(39) provides that the supervised entity should make a risk-based assessment of whether the beneficial owner's identity must be verified. This appears to imply a possible exemption of the verification obligation on a risk basis and would thus be inconsistent with the FATF standard which only allows for simplified or reduced measures on a risk basis. Finnish authorities further specified that the Government Proposal HE 25/2008 page 45 to adopt section 8(1) of the *AML/CFT Act, 2008* is not intended to provide for a full exemption from the requirement of verification based on the following text: "The verification of identity of the beneficial owner is required whenever there are any risks and the obliged party shall not establish the customer relationship without also verification of the identity of the beneficial owners. Section 6(2) of the AML/CFT Act, 2008 also requires the obliged party to refrain from establishing a

customer relationship or carrying out a transaction in case the obliged party is not able to identify and verify the identity of the beneficial owner as required by an assessment of the risks of money laundering and terrorist financing. The obliged party should also consider reporting an STR on the basis on section 23 or 24 of the AML Act.

In addition, sections 8(2)-(5) of the *AML/CFT Act, 2008* provide for exemptions of identification of the beneficial owner based on some of the provisions in the 3rd EU AML Directive. One of the exemptions from the obligation to identify the beneficial owner relates to companies listed on a regulated market of the European Union or equivalent third countries. In the case of listed companies on a recognised stock exchange, the FATF standards do not require identifying and verifying the identity of the shareholders of that public company (it is assumed that the information is publicly available). However, the exemption from all CDD for beneficial owners of pooled accounts held by legal professions is not consistent with the FATF standards which allows for reduced or simplified due diligence in these cases only. This is consistent with the approach taken in earlier FATF mutual evaluation reports and other FATF follow-up reports.

Finland has made important progress by introducing requirements for beneficial ownership of legal persons and the deficiency is therefore largely addressed.

R5 (Deficiency 2): There are no general requirements to understand the ownership or control structure of the customer, other than as part of enhanced due diligence

Finnish authorities indicate that the definition of beneficial owner in section 5 of the *AML/CFT Act, 2008* (see discussion with regard to progress in relation to *deficiency 1* above) is drafted in such a way that reporting parties are required to understand the ownership and control structure. In addition, Chapter 5(40) of *Standard 2.4 on CDD* states "*In order to be able to identify a beneficial owner, the supervised entity could, in addition to information obtained from the customer, determine the ownership and control structures of any customer that is a legal person.* It should be noted that the provision in *Standard 2.4 on CD*D does not constitute a mandatory requirement given the way it is drafted but it provides the necessary guidance in view of implementation.

Finnish authorities also refer to Section 9(1) of the *AML/CFT Act, 2008* regarding the obligation to obtain information on the customers' transactions, the nature and extent of the customers' business and the grounds for the use of a service or product as a relevant provision in view of understanding the ownership or control structure. In addition, Chapter 5(68) of *Standard 2.4 on CDD* provides the following clarification in that regard: "*In general, information on the beneficial owners of a legal person is not provided by the Trade Register or other public registers. In the course of determining who the beneficial owners are, the supervised entity may ask a representative of the legal person for information on the legal person's ownership and group structure and persons with a controlling interest."* Finnish authorities specify that reporting parties are expected to ask for information on a legal person's ownership and group structure and the persons with a controlling interest. Again, while the provision in *Standard 2.4 on CDD* does not constitute a mandatory requirement, it provides the necessary guidance in view of implementation.

Deficiency 2 is fully addressed.

R5 (Deficiency 3): The identification process to be conducted in relation to legal arrangements is unclear

Finnish authorities refer to Section 7 of the *AML/CFT Act, 2008* which deals with identifying the customer and verifying the customer's identity. They further clarify that the term *customer* refers to both natural and legal persons, including legal arrangements. Section 5 of the Act which provides some definitions for the interpretation and application of the Act does not include a definition of customer. Chapter 8 of *Standard 2.4 on CDD* contains a definition of customer that makes the distinction between natural and legal persons; however, the concept of legal persons is not further defined.

Finnish authorities explained that all legislation in Finland is based on a division between natural and legal persons. This division covers any legal arrangements and there is no difference in treatment between legal persons and other legal arrangements. The Finnish legal system does not allow for the creation of trusts and the legal concept of trust does not exist under Finnish law. Finland has not ratified the *1985 The Hague Convention on the Law Applicable to Trusts and on their Recognition*. The term "legal arrangement" is therefore not specifically mentioned in the provisions of the *AML/CFT Act, 2008* but the possibility of trusts as customers is explicitly addressed in the *Government Proposal HE 25/2008*, page 39 to adopt this Act. It was explicitly stated that although there exist no trusts in Finland, a person may act as a trustee. Therefore the obliged party must also identify the beneficiaries of trust-based arrangements.

Finnish authorities further specify that in the Finnish legal system courts of law mainly rely on strict interpretation of the provisions of law. In addition, other sources of law are also accepted, including preparatory work of legislation. The explanatory parts of Government proposals constitute an authoritative expression of the intention of the legislator and, particularly, together with concurrent opinions of the relevant Parliament committees; they constitute authoritative guidance for the interpretation of law. The relevance given to such preparatory work is highlighted by case law. In the case law of the Supreme Court of Finland, Government proposals are often referred to find support for the interpretation of law.

On the basis of the information set out above, deficiency 3 is fully addressed.

R5 (Deficiency 4): There is no requirement to conduct on-going due diligence on business relationships

In addition to the obligation to obtain information on customers' transactions, the nature and extent of the customers' business and the ground for the use of a service or product, Section 9 of the *AML/CFT Act, 2008* imposes requirements for on-going monitoring on the reporting parties. This obligation fully satisfies the requirements of c.5.7.1 regarding scrutiny of transactions as does *Standard 2.4 on CDD*, which explicitly deals with on-going monitoring arrangements in subsections 5.8(112)-(117).

With regard to the requirements in c.5.7.2 to ensure that documents, data or information collected under the CDD process are kept up-to-date, Finnish authorities refer to section 10 of the *AML/CFT Act, 2008* that deals with CDD data to be collected and related record-keeping requirements. To the extent the processing of personal data is not covered by section 10 of the

AML/CFT Act, 2008, the provisions of the *Personal Data Act* come into play since this Act qualifies as legislation of general application. Under the provisions of the *Personal Data Act*, anyone processing personal data is under an obligation to keep such data up-to-date. The lawfulness of the processing of personal data may be verified by the Office of the Data Protection Ombudsman which is an independent authority in charge of supervision of data protection issues. This office operates in connection with the Ministry of Justice.

The Personal Data Act is also explicitly referred to in sub-section 5.7(106) of *Standard 2.4 on CDD*, which provides that personal data necessary for compliance with CDD obligations should be handled according to section 8, subsection 1, point 4 of the *Personal Data Act*. According to the provision, appropriate retention, processing, secrecy and protection of personal data should be carefully planned and performed. Customers' personal data should regularly be updated. Finnish authorities added that the *Personal Data Act* applies to the processing or recording of any personal data, covering both Finnish and foreign customers' personal data provided that the controller is established in the territory of Finland or is otherwise subject to Finnish law (section 4).

Based on the information above, deficiency 4 is fully addressed.

R5 (Deficiency 5): There are no clear requirements for money remitters and foreign exchange companies to know the nature, scope and purpose of their customer relations and transactions

As indicated with regard to *deficiency 2*, Section 9 of the *AML/CFT Act, 2008* obliges reporting parties to obtain information on customers' transactions, the nature and extent of the customers' business and the ground for the use of a service or a product. These obligations apply to all reporting parties, including money remitters and foreign exchange service providers. This legal obligation is further supported by a specific requirement in subsection 5.4(73) of *Standard 2.4 on CDD*, which also applies to money remittance businesses since FIN-FSA became the financial supervisor for payment service providers, including money remittance businesses, in May 2010. Finnish authorities reported that the RSAA, the supervisor for reporting entities that only provide money exchange services, drafted a summary of the current AML/CFT obligations and distributed it to the entities it supervises and monitors. This summary would also refer to the *FIU's Best Practices* for further information on AML/CFT matters. This document does not qualify as OEM; however, the provisions in section 9 of the *AML/CFT Act, 2008* are sufficiently wide, and deficiency 5 is therefore fully addressed.

R5 (Deficiency 6): Some CDD exemptions are in place in the banking and insurance sectors

Finnish authorities report that exemptions from CDD requirements no longer exist but that instead, simplified CDD is allowed in certain cases. The basic concept for simplified CDD is provided for in section 12 of the *AML/CFT Act, 2008*: *"If the customer, product, service or transportation represents a low risk of money laundering or terrorist financing, parties subject to the reporting obligation do not have to take the measures laid down in sections 7* [Identifying the customer and verifying the customer's identity], *8* [Identifying the beneficial owner], *9(1)* [Obtain information on the customers' transactions, the nature and extent of the customers' business and the grounds for the use of a service or product] *and 10* [customer due diligence data and record keeping] *(simplified customer due diligence procedure). Customer relationships shall, however, be monitored in the manner*

referred to in section 9(2) [on-going monitoring] *in order to ensure that parties subject to the reporting obligation detect any exceptional or unusual patterns of transactions referred to in section 9(3)* [scrutiny of transactions]." Given the way section 12 is drafted, the general concept of simplified CDD is ambiguous. In fact, the text of section 12 could be interpreted as a complete exemption from the CDD requirements based on low risk of money laundering or terrorist financing. In addition, the concept of simplified CDD is not defined in the Act.

However, sub-section 5.6(98) of *Standard 2.4 on CDD* provides clarification regarding the application of section 12 of the Act: *"Application of section 12 of the AMLA requires that the Government issues a decree with more detailed information on customers, products, transactions and services representing a low money laundering and terrorist financing risk. As long as no such decree has been issued, the supervised entity cannot apply a simplified customer due diligence procedure at its own discretion as referred to in section 12."* Finnish authorities provided a copy of the recent Government Decree (1204/2011 that became effective on 15 December 2011) on simplified due diligence regarding certain leasing and hire purchase credit contracts for illustration and clarification purposes. In addition, sub-section 5.6(102) of *Standard 2.4 on CDD* states the following: *"The simplified procedure does not release the supervised entity from its customer due diligence obligations. The supervised entity should obtain sufficient information on the customer to be able to ensure that the customer or product is one of those referred to in paragraphs 99–101 above and to detect unusual patterns in the customer operations. In fact, the simplified procedure requires that the supervised entity at least identifies and verifies its customer (and customer representative, if necessary). Based on a risk-based assessment, the supervised entity may simplify its due diligence procedure by, for example, refraining from finding out about or verifying beneficial owners or the ownership structure."* and sub-section 5.6(103) continues: *"Nor does the simplified procedure release the supervised entity from its ongoing monitoring arrangements. The supervised entity should be able to detect, among other things, such changes in the customer's circumstances or operations that would render the customer unsuitable for simplified due diligence."*

While *Standard 2.4 on CDD*, which does not apply to consumer lending companies and money exchange service providers, provides the necessary clarification for the application of section 12 of the *AML/CFT Act, 2008*, it does not define the concept of simplified CDD and gives only one example of what simplified CDD could imply. Consequently, it is unclear for reporting parties, in particular for consumer lending companies and money exchange service providers, what to do when the risk of money laundering or terrorist financing is low.

Sections 13-16 of the *AML/CFT Act, 2008* provide for specific instances in which the reporting parties may apply simplified CDD and hence do not provide for an exemption of CDD, as suggested by section 12 of the Act. Section 13 refers to situations where the customer is a Finnish authority; a credit institution, financial institution, investment firm, payment institution, management company or insurance company in Finland or another EEA state; a credit institution, financial institution, investment firm, payment institution, management company or insurance company in an "equivalent" state; and a branch located in an EEA state of a credit institution, financial institution, investment firm, payment institution, management company or insurance company in an equivalent state. Section 14 provides for the possibility of simplified CDD in situations where the customer is a company whose securities are admitted to public trading in Finland, an EEA state or an equivalent state. Section 15 deals with certain products (certain insurance contracts and pension

funds) while section 16 provides for simplified CDD in relation to electronic money. The situations set out in sections 5 and 16 are subject to a variety of limits in terms of amount and are consistent with the clarification provided in INR5.

Despite the fact that Finland has an ambiguous requirement with regard to simplified CDD, as far as 3rd equivalence is concerned, Finland is in a better situation than many other EU countries. Finland takes the description of "equivalent" countries on a European level as a starting point; but explicitly requires reporting parties to make their own determination on the basis of risk. Therefore, there is no blanket automatic consideration of "equivalent" states applicable to EEA/FATF "equivalent" countries. This requirement, which is consistent with the risk-based approach defined by the FATF, as far as "equivalent" countries are concerned, is explicitly included in a Decision of the Ministry of the Interior of 30 March 2012 which came into force on 13 April 2012 and repealed the Decision of 11 February 2009.

In the case of listed companies on a recognised stock exchange, the FATF standards do not require identifying and verifying the identity of the shareholders of that public company (it is assumed that the information is publicly available) and simplified CDD in these circumstances is consistent with the FATF's requirements in this regard.

While the deficiency can be considered to be largely addressed, Finnish authorities should consider amending the language of section 12 of the *AML/CFT Act, 2008* to remove the ambiguity it currently creates.

R5 (Deficiency 7): The enhanced due diligence obligation is very narrow in scope; covering only NCCT listed countries

Section 17 of the *AML/CFT Act, 2008* provides for a general enhanced due diligence obligation and requires reporting parties to apply enhanced due diligence measures in situations where the customer, service, product or transaction represents a higher risk of money laundering or terrorist financing or where the customer is connected with a state whose system for preventing money laundering and terrorist financing does not meet the international obligations. In addition, to this general enhanced due diligence obligation, the *AML/CFT Act, 2008* also provides specific requirements for enhanced due diligence related to non-face-to-face identification (section 18), correspondent banking relationships (section 19) and politically exposed persons (section 20). As already referred to in the introduction to the section on Recommendation 5, the Finnish authorities further clarified that reporting parties are required to conduct their own risk assessment in view of demonstrating to their supervisory authority that their CDD measures are adequate in relation to the AML/CFT risks of their services, products and customers. Based on the general requirement, enhanced due diligence measures are required whenever there are increased AML/CFT risks. Consequently, this deficiency is fully addressed.

RECOMMENDATION 5, OVERALL CONCLUSION

Since its mutual evaluation, Finland has amended its AML/CFT legislation with the aim to address the shortcomings identified in its MER. Given that almost all deficiencies are fully addressed, Finland's current level of compliance with R.5 is essentially equivalent to a level of LC.

V. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE KEY RECOMMENDATIONS

RECOMMENDATION 23 –RATED PC

Introduction on financial sector supervision

Scope of the FIN-FSA supervision

Section 3 of the *FIN-FSA Act* designates FIN-FSA for supervising and monitoring the compliance of financial market participants with the laws and regulations applicable to them, including the laws and regulations for the prevention of money laundering and terrorist financing. In addition, section 31 of the *AML/CFT Act, 2008* identifies FIN-FSA as the competent authority for supervising the financial, securities and insurance sector entities as well as payment service providers. However, consumer lending companies and money exchange service providers are not supervised by FIN-FSA but by the RSAA. Moreover, FIN-FSA also participates in combating the criminal misuse of the financial system and participates in the cooperation with domestic and foreign authorities.

The *FIN-FSA Act* was recently amended, and the revised Act entered into force in January 2013. While the range of sanctioning and supervisory powers remains largely the same, the revised Act puts a particular emphasis on the effective use of these sanctioning powers by FIN-FSA as part of its supervisory work.

Domestically, FIN-FSA closely cooperates with the FIU, the relevant Ministries and other competent authorities whose tasks relate to AML/CFT issues, including the Ministry for Foreign Affairs which is the competent authority for the EU Sanctions regime; as well as the Ministry of Finance; the Ministry of the Interior and the Ministry of Justice which are competent for legislative questions. On a regular basis (at least twice a year), meetings are also arranged with the Federation of Finnish Financial Services (FFFS).

The table below gives an overview of the FIN-FSA supervised entities for AML/CFT purposes.

Table 1. **Overview of the FIN-FSA Supervised entities for AML/CFT Purposes (as at end 2012)**

Credit institutions	332
Payment institutions authorised in Finland	6
Registered Finnish payment service providers	14
Investment firms	55
Fund management companies	33
Stock-exchange clearing corporation	1
Central securities depository	1
Life insurance companies	13
Non -life insurance companies	24
Employee pension companies	7
Insurance Associations	64
Insurance brokers	72
Branches of foreign credit institutions and insurance companies in Finland	49
Branches and agents of foreign E-money and payment institutions	77
Total	**748**

The structure of the financial market has not changed since the adoption of the MER in 2007.

FIN-FSA regulation and guidance

FIN-FSA Standard 2.4 on Customer due diligence - Preventing Money Laundering and Terrorist Financing (*Standard 2.4 on CDD*) is applicable to all FIN-FSA supervised entities. FIN-FSA has also issued Regulation 6.1 for payment service providers which came into force on 1 June 2011 (available only in Finnish and Swedish). The FIN-FSA website provides guidance and information on AML/CFT compliance issues and also on the EU financial sanctions regulations.

As can be deduced from the table below, FIN-FSA continued to arrange training on AML/CFT compliance issues for supervised entities, FIN-FSA employees, other interest groups and self-regulatory organisations. FIN-FSA also continued to send out regular e-circulars (newsletters) to its supervised entities. These provide up-to-date information, e.g. on EU financial sanctions, FATF Public Statements and FATF publications and other issues at stake.

Table 2. **FIN-FSA ML/CFT-related training and circulars**

	2008	2009	2010	2011	2012
Numbers of FSA circulars (e-letters)	14	20	17	26	8
Numbers of training events	18	6	8	5	7

Scope of the supervision by the Regional State Administrative Agency of Southern Finland (RSAA)

Based on the *Act on Credit Institutions, 2007* and the *Act on Investment Firms, 2012*, the RSAA is the competent supervisor for businesses and professions providing currency exchange and other services relating to investment services and short-term consumer credit; leasing companies; companies providing hire purchase or factoring financing; and debt collection agencies. The RSAA's specific AML/CFT supervisory responsibility for these businesses and professions (and DNFBPs with the exception of casinos and lawyers) is set out in section 31 of the *AML/CFT Act, 2008*.

To supervise compliance with the provisions of the *AML/CFT Act, 2008* a relevant official of the RSAA has the right, in accordance with section 32 of the Act, to inspect the business and storage facilities of the reporting parties under its supervision. In that regard, entrepreneurs shall give the official access to the business and storage facilities managed by them for the purpose of conducting an inspection. An official conducting the inspection has the right to examine the books, recorded data and other documents which may be important for the supervision of compliance with the provisions of the Act and any provisions issued under it. The official conducting the inspection has the right to ask for oral explanations on the spot and record the answers. The police shall provide, where necessary, executive assistance in carrying out such an inspection. Moreover, to supervise compliance with the *Payer Information Regulation* (EC Regulation 1781/2006 on Information on the Payer Accompanying Funds), the business and storage facilities of reporting parties registered for money transmission, money remittance and currency exchange may be inspected.

R23 (Deficiency 1): The number of inspections specifically focussed on AML/CFT matters is very low

FIN-FSA conducts on-site inspections and other supervisory visits based on an annual plan which is based on risk analysis of markets and supervised institutions (the plan is reviewed twice a year). AML/CFT supervision is recognised as an essential part of the FIN-FSA's ongoing supervision. The supervision is targeted at a wide range of large and small supervised entities. Large entities are visited annually or bi-annually. Medium or small-sized institutions are visited regularly, either bi-annually or every third year, in connection with planned inspections or with supervisory review and risk assessment process.

Since 2008, when the *AML/CFT Act, 2008* came into effect, FIN-FSA has carried out inspections and supervisory visits to financial groups and other entities with the objective to ascertain adequate improvements in the AML/CFT procedures, as required by the Act. FIN-FSA has followed closely the entities' progress to review their CDD procedures; their on-going monitoring systems; internal guidance; training; and internal audit. Moreover, FIN-FSA carried out inspections in the following areas of relevance for AML/CFT issues: operational risks; internet banking services; and IT-security and systems. The AML/CFT supervisory visits focus on verifying compliance with the AML/CFT requirements, especially those related to the risk-based approach; on-going monitoring of transactions and customer relationships, including compliance with the international sanctions regime; the CDD process for high-risk customers; CDD for beneficial owners; and employee training programmes. Following on-site inspections, FIN-FSA sends inspection letters to the supervised entities and points to deficiencies and gives indications for corrective measures to be taken.

As part of off-site supervision, FIN-FSA looks into the supervised parties' internal processes and methods and requires the parties to give notification before introducing any new products or distribution channels. In its capacity as licensing authority, FIN-FSA also examines CDD procedures and evaluates whether these are sufficient for the prevention of ML and TF.

The following table gives an overview of AML/CFT on-site inspections and other AML/CFT supervisory visits conducted by FIN-FSA.

Table 3. **AML/CFT on-site inspections and supervisory visits by FIN-FSA**

Financial institution (FSA supervised)	2008	2009	2010	2011	2012
Credit institutions incl. branches of foreign credit institutions	14	10	34	20	26
Insurance companies, incl. branches of foreign insurance companies	1	1	3	7	4
Investment firms and mutual fund management companies	20	11	15	6	5
Payment institutions, registered payment services and money remittance agents	4	5	14	11	3

In 2012, the RSAA conducted a supervisory campaign for consumer lending companies not supervised by FIN-FSA. The focus of this campaign for 85 of the relevant entities was exclusively on AML/CFT matters. These 85 entities were chosen based on a risk assessment. The entities had to report on their compliance with the requirements in the *AML/CFT Act, 2008*. For 28 of these entities, the response to the survey was not satisfactory and therefore, in June 2012, the RSAA send out requests for further clarification. Finnish authorities report that the entities concerned responded promptly and that there is no further action required for the time being. Finnish authorities also report that the deficiencies identified related to record-keeping of CDD information; and protection and training of employees. In addition, a few deficiencies in relation to on-going monitoring of customer relationships and internal guidelines were also detected. Finnish authorities conclude that, in general, consumer lending companies comply with AML/CFT requirements. In 2013, the RSAA will pay particular attention to the entities with deficiencies.

Based on the information above, it can be concluded that this deficiency is addressed.

R23 (Deficiency 2): There is no relevant supervisor for the money exchange and remittance sectors

Section 31 of the *AML/CFT Act, 2008* gives an overview of the entities which are subject to supervision by FIN-FSA, on the one hand, and the RSAA, on the other hand. Payment service providers more generally and money remittance businesses in particular are supervised by FIN-FSA while the RSAA is the supervisory authority for entities and person providing money exchange services. In its input for this report, Finland gave a detailed overview of the powers both supervisory entities have to ensure compliance with the AML/CFT requirements. This deficiency is addressed.

R23 (Deficiency 3): There are no provisions to prevent criminals from holding a controlling interest in institutions operating in the money exchange or remittance sectors

The integrity of the parties offering money remittance and currency exchange services appears to be ensured at two phases: 1) at the time of registration of the service provider; and 2) afterwards, when monitoring their activities through the supervisory process.

FIN-FSA Standard 1.4 on the Assessment of Fitness and Propriety and *FIN-FSA Standard RA 1.4 on Reporting of Fitness and Propriety* are applicable to all FIN-FSA supervised entities, including registered payment service providers and money remittance businesses, and are aimed to ensure that authorisation or registration is granted on the condition that a supervised entity is managed with professional competence as well as in accordance with sound and prudent business principles throughout the supervised entity's lifespan. A "fit and proper" assessment is conducted whenever there are changes in ownership or when a new person is appointed to a position in which he/she is responsible for a supervised entity's management or a key business function. The supervised entities are also required to report any intended changes of ownership, directors and managers to FIN-FSA well in advance.

At the time of registration, the RSSA, which registers and supervises currency exchange service providers, compares the information regarding owners and beneficial owners with the criminal records and the register on fines (in accordance with section 27(2) of *the AML/CFT Act, 2008*). The prerequisites for registration must be fulfilled on a continuing basis and not just at the time of registration. Therefore, when changes occur with regard to owners and beneficial owners, the RSAA must immediately be notified of these changes (section 29(4) of the *AML/CFT Act, 2008*) and the RSAA will then again undertake the necessary checks. This deficiency is fully addressed technically. The assessment in this follow-up report does not allow for an analysis of effective implementation.

The Finnish authorities also refer to the *Act on the Ban on Engaging in Commercial Activities, 1985* as a further means for regulating the conduct and ensuring confidentiality, specifically for money remittance and currency exchange service providers, but also more generally for other business entities. Individuals can be subject to a ban on business operations if they have substantially neglected their statutory obligations or if they have committed a criminal act in the context of business activities that cannot be deemed minor. The court imposes a ban on business operations at the request of the public prosecutor. The ban generally varies from three to seven years, but a temporary ban may also be imposed as a pre-trial measure. Violation of a ban on business operations is punishable by a fine or imprisonment for a maximum of two years. Persons subject to a ban on business operations may not engage in commercial activities for which there is a legal book-keeping obligation, and they are prohibited from holding a controlling position such as acting as a board member, partner, CEO or any other comparable position. The ban on business operations can be applied in the ML/TF context and would prevent a person from holding a controlling interest in institutions operating in the money exchange or remittance sectors. In practice, the National Police Board (NPB), together with the National Bureau of Investigation (NBI), has intensified the oversight in respect of bans on business operations and ensure compliance with the bans imposed.

This deficiency is fully addressed technically. The assessment in this follow-up report does not allow for an analysis of effective implementation.

R23 (Deficiency 4): Off-site AML/CFT control is limited; it is based on periodic reports by institutions which, with the exception of the FSA's (the former banking sector supervisor) AML/CFT surveys, do not address requirements relating to AML/CFT

As explained in detail in relation to deficiency 1 above, the RSAA registers and supervises consumer lending companies which are not supervised by FIN-FSA.

RECOMMENDATION 23, OVERALL CONCLUSION

Finland has made significant progress with regard to all of the deficiencies in relation to R.23 identified in its MER. Due to the nature of the analysis conducted for a follow-up report in combination with the fact that the supervisory structure is relatively new, the effectiveness of the supervisory regime cannot be assessed. However, based on the results of the analysis presented above, it can be concluded that Finland's technical compliance with R.23 is now essentially at a level equivalent to LC.

SPECIAL RECOMMENDATION III – RATED PC

SRIII (Deficiency 1): Finland does not have a national mechanism to consider requests for freezing from other countries or to freeze the funds of EU internals

The Act on the Freezing of Funds with a view to Combating Terrorism, 2013 establishes a freezing mechanism which complements Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism. Section 3 of this Act specifically provides for the freezing of funds of:

- A natural or legal person that is referred to in Article 1 of Council Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and is not covered by Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism;
- A natural or legal person that is reasonably suspected, charged with or convicted of an act criminalised in Chapter 34a of the *Criminal Code* (Chapter 34a sets out the TF offence);
- A natural or legal person when a competent authority of another State has made an individualised and reasoned request for freezing the funds of this person, if authorities of that State have, on the basis of credible evidence, initiated pre-trial investigation concerning the natural or legal person in question or demanded punishment for the person for an act which, if committed in Finland, would be related to any terrorist offence under Chapter 34a of the Criminal Code, or if a court of law in that State has convicted the person of an act referred to above;

- A legal person when a natural person or legal person referred to in paragraphs 1–3 owns at least 50% of it alone or together with other natural or legal persons of this kind;
- A legal person in which a natural or legal person referred to in paragraphs 1–3 exercises the authority referred to in Chapter 1, section 5 of the Accounting Act, 1997 alone or together with other natural or legal persons of this kind; or
- A partnership when a natural or legal person referred to in paragraphs 1–3 is responsible for its obligations in full, as for their own debt.

Section 3 of the Act provides for a legal framework to consider requests for freezing from other countries and to freeze the funds of EU internals. However, the threshold to examine and give effect to foreign freezing requests, namely "having a pre-trial investigation initiated or demanded punishment in relation to the commission of a TF offence, goes beyond "whether reasonable grounds or a reasonable basis exists to initiate a freezing action" in c.III.3. In addition, the assessment of the provision in Chapter 34a of the Criminal Code resulted in the identification of the following shortcoming in Finland's TF offence: "Funding a terrorist or a terrorist organisation without a specific link to a terrorist act is not punishable in Finland". The limited scope of the TF offence has a clear spill-over on the freezing of terrorist assets (see also discussion in relation to deficiency 3 below).

Finnish authorities further clarify that the threshold issue was discussed at length both in the preparatory working group and in the relevant Parliamentary Committees. Experts heard during the Parliamentary proceedings voiced considerable concerns on the fact that the Act would even contemplate national freezing decisions to be based on requests by third states. The Law Committee of the Parliament decided not to propose removing the provision on the basis that the "conditions laid down are relatively strict" and the "relevant criteria have been strictly tied to the concept of terrorism as adopted in the Finnish legal system" (statement by the Law Committee, LaVL 16/2012).

Based on section 4 of the new legislation, the competent authority to order the freezing of funds under the provisions of the Act is the National Bureau of Investigation (NBI). The decisions on freezing will be published in the Official Journal and will be communicated to the person concerned without delay. Finnish authorities report that the NBI will also maintain a public list of the decisions on its website, to be updated regularly. The obligation to freeze funds, and the prohibition to make funds available, will come into effect at the time of the publication of the decision, and apply to all (natural and legal) persons within the Finnish jurisdiction.

While Finland made progress by issuing relevant legislation, section 3 of the relevant law creates several scope issues. As a result, this deficiency is only partially addressed.

SRIII (Deficiency 2): The definition of funds in the EU regulations does not explicitly cover funds owned 'directly or indirectly' by designated persons or those controlled directly or indirectly by designated persons

The *Act on the Freezing of Funds with a view to Combating Terrorism* contains no explicit definition of *funds*. According to the explanatory part of the Government proposal, this is due to the fact that this term is well-established in the Finnish legal system and therefore no definition is required: "A*ny assets or economic resources, whether tangible or intangible, movable or immovable, that have economic value"*. As to the scope of the freezing obligation, Section 5 of the Act provides that the "freezing of funds shall apply to all funds of the object of the decision", with certain exemptions such as necessary basic expenses (see discussion in relation to deficiency 6 below).

Section 3(3)-(5) of the Act require that a freezing decision be made with regard to any legal person that is owned or controlled by a designated person, or jointly owned or controlled by more than one designated persons. As a result, any funds owned or controlled indirectly through a legal person would be covered.

Situations in which a person is acting on behalf of or based on instructions from a designated person, entity or organisation -other than the situations set out in section 3(3)-(5)- and thus allows the latter to indirectly control their funds or economic resources does not seem to be covered by the Act. Finnish authorities explain that if it were established that an asset seemingly belonging to a third party is in fact owned by a designated person, that asset would also be frozen. In addition, if an asset is owned by a non-designated entity, it would be a criminal act to make such an asset available for the designated person directly or indirectly, for example by allowing it to exercise control over the asset. However, it is unclear on which provision of the law this reasoning is based.

The deficiency is mostly addressed.

SRIII (Deficiency 3): Finland does not have an established national procedure for the purpose of considering delisting requests

Sections 11 and 12 of the Act provide for a de-listing process with procedural guarantees for the listed person. Firstly, the NBI will review each decision every six months as well as in certain cases referred to in section 11(1)-(8) of the Act. The listed person may make a rectification request, as provided for in the *Administrative Procedures Act, 2003*, to the NBI. Any negative decision given to such a request may be appealed against to the Helsinki Administrative Court pursuant to the *Administrative Judicial Procedure Act, 1996*. That decision may be further appealed to the Supreme Administrative Court. Any freezing decision should be annulled with immediate effect if its causes have ceased to exist; if the person dies or ceases to exist; or if the authorities are otherwise satisfied that the person is no longer involved in terrorist activity.

This deficiency is addressed.

SRIII (Deficiency 4): Due to the limited nature of the terrorist financing offence, it is not clear how Finland would freeze funds or other assets where the suspect is an individual terrorist or involved in a terrorist organisation without a link to a specific terrorist act

At several occasions during the ME follow-up process, Finland expressed its fundamental disagreement with the FATF's assessment of its TF offence. It clarified its position as follows: "*Government Proposal No 43/2002 for accepting and approving the international Convention for the Suppression of the Financing of Terrorism and for an Act on the implementation of the provisions of a legislative nature of the Convention and for an Act amending Chapter 34 of the Criminal Code*, explicitly stated that no direct link to a specific terrorist act is required and that this follows from Article 2(3) of the said Convention (*Government Proposal No 43/2002, p. 15*). Furthermore, when the contents of the new TF offence were explained in the Government proposal, it was stated twice that no link to a specific terrorist act is required (Government Proposal No 43/2002, p. 28). The Finnish authorities further underline that the government proposals are used by courts when interpreting legislation and that it would be very difficult for a court to justify in its judgment a view opposite to the one explicitly provided in a government proposal.

After analysis of this Government Proposal, it appears that there seems to be some misunderstanding as to which criterion in the Methodology the deficiency identified in the MER refers to. Throughout the Government Proposal, there is a clear indication that the TF offence does not require that the funds were actually used to carry out a terrorist act or be linked to a specific terrorist act. This satisfies the requirement in c.II.1(c) and consequently, there was no corresponding deficiency identified in the MER. The finding in the MER relates however to the financing of a terrorist organisation or an individual terrorist *for any purpose* (c.II.1(a)(ii) and (iii)). The Government Proposal refers specifically and in several instances to *paragraph 3 of Art.2 of the TF Convention* and thus indirectly also to c.II.1(c). In addition and more importantly, the Government Proposal states: "*Financing of terrorism has in the Convention been defined as financing of offences that are considered to be terrorist by nature – and not financing of e.g. a terrorist group or a terrorist organisation – but any direct link between the financing act and a specific offence is not required*. The requirements of SR.II go beyond the requirements of the TF Convention, in particular with regard to the financing of a terrorist organisation or an individual terrorist. Moreover, in the section in relation to an Act for amending Chapter 34 of the Criminal Code, the Government Proposal states: "*For a financing act to constitute an offence does not, however, require that the funds were actually used to carry out such an offence*". This statement clearly refers to c.II.1(c).

This deficiency which is a spill-over from SR.II is not yet addressed.

SRIII (Deficiency 5): Finland has issued little specific and clear guidance to financial institutions and other persons or entities that may be holding targeted funds in Finland

As indicated in the discussions regarding R.21 and R.25 below, FIN-FSA's website provides guidance and information on the EU financial sanctions regulations in addition to AML/CFT compliance issues. On a regular basis, FIN-FSA issues its newsletter *Know your customer - prevent money laundering* for its supervised entities. It provides up-to-date information on current (EU) financial sanctions; FATF Public Statements and other related publications; and other relevant issues at

stake, such as upcoming regulatory development projects. Moreover, FIN-FSA's website provides guidance and information on AML/CFT compliance issues and on (EU) financial sanctions regulations. The Regional State Administrative Authority (RSAA) has instructed the currency exchange service providers under its supervision to subscribe to FIN-FSA's newsletter. Although those service providers have been alerted that they can have full access to FIN-FSA website and newsletter, the Regional State Administrative Agency and the Ministry of the Interior have initiated discussions within the national FATF working group to develop the dissemination of information on FATF Public Statements to supervisory authorities and entities subject to their supervision. This would most likely take place through the Internet and public communications or newsletters.

Finnish authorities report that they intend to issue the necessary guidance for the implementation of the *Act on the Freezing of Funds with a view to Combating Terrorism* and discussions for that purpose have already been initiated.

This deficiency is only partially addressed.

SRIII (Deficiency 6): There are no procedures for accessing funds/assets that are frozen and that are determined to be necessary on humanitarian grounds in a manner consistent with S/RES/1452(2002)

Section 5 of the *Act on the Freezing of Funds with a view to Combating Terrorism* provides for exemptions to the asset freeze in the following instances:

- Funds needed for covering food, housing and health care expenses or corresponding necessary expenses of a natural person who is the object of the decision or of the dependants of this person;
- Funds necessary for paying taxes, charges comparable to a tax, charges imposed by authorities or compulsory insurance premiums or expenses for managing the funds;
- Funds for paying damages or fulfilling an obligation which arose before the decision to freeze funds, provided that the recipient of the funds is not a designated person.

Finnish authorities report that particular care has been taken of ensuring that the fundamental rights of the designated person have been respected, as required by the Finnish Constitution and by international human rights laws. In addition and even more importantly, Finland underlines that these exemptions have been drafted closely in line with in the relevant EU legal instruments, in particular *Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism*. An essential distinction though is that the EU Regulation does not provide for any exemption but only identifies instances for authorising access to funds or other assets that were frozen. This provision goes against the spirit of S/RES/1452(2002) and is fully out of line with the requirements of SR.III.

Finnish authorities explain that the determination of which funds are not affected by the freezing measures remains solely with the competent authorities. It is only for the NBI, and for the enforcement office (see below), to specify which funds (e.g., which proportion of a monthly income) of the designated person are necessary for basic expenses. The purpose of the relevant provision in

section 5 ("the freezing of funds shall not apply to funds necessary for [basic needs]") is to indicate that the authorities do not enjoy a limitless discretion in determining which funds are to be left at the disposal of the designated person, but that in all cases the authorities must only ensure that the designated person will be able to fulfil his or her basic needs.

Section 5(2) of the Act clarifies that the NBI may already in its initial decision to freeze funds specify which particular funds are necessary for basic expenses. However, as the Government Proposal explains (p.28), the NBI would generally not have a full picture of the extent and nature of all assets of the designated person at the time of the initial decision. A full picture would be formed as a result of the implementation process in accordance with section 14 of the Act, which, by reference to the *Enforcement Code (705/2007)*, assigns the enforcement office with a duty to search for and list the funds and assets of the designated entity or person. Therefore, in most cases, the determination on which specific funds (for example, which proportion of the salary of the designated person) are necessary for basic expenses could be made, in an informed manner, only after necessary information was gathered by the enforcement office.

This deficiency is not addressed since it does not allow for freezing of terrorist funds or other assets without delay. To the contrary, the way this provision is drafted creates a new and even more substantial deficiency.

SPECIAL RECOMMENDATION III, OVERALL CONCLUSION

While Finland recently introduced the *Act on the Freezing of Funds with a view to Combating Terrorism, 2013*, several of its provisions do not comply with the FATF requirements. As a result, Finland's level of compliance with SR.III is still at PC.

RECOMMENDATION 35 – RATED PC

R35 (Deficiency 1): Some shortcomings exist in relation to implementation of Article 3(1) of the Vienna Convention and Article 6(1) of the Palermo Convention, namely the Finnish money laundering offence does not criminalise all possession or acquisition of the proceeds of crime

As explained above with regard to R.1, while progress has been made by adding *possession* to the ML offence in *Chapter 32 – section 6 of the Criminal Code*, the offence does not yet cover the mere *acquisition, possession and us*e of property. Consequently, the deficiency is not yet fully addressed.

R35 (Deficiency 2): Self-laundering is not an offence in Finland and this is not due to any fundamental principle of law

Self-laundering is now criminalised but only in cases of aggravated money laundering. Finland continues to defend its point of view that there are fundamental principles of domestic law that prevent it from fully criminalising self-laundering. After extensive discussions within the FATF's Working Group on Evaluations and Implementation (WGEI) in June 2012, the FATF concluded that such fundamental principles of domestic law are not present. While Finland made progress by criminalising self-laundering in cases of aggravated money laundering, the deficiency is not yet fully addressed.

R35 (Deficiency 3): The ancillary offence of conspiracy for the basic money laundering offence is not punishable and members of a joint household with the offender cannot be prosecuted if they only used or consumed the proceeds of crime for ordinary needs in the joint household

No action has been taken to address these deficiencies; Finland also continues to refer to fundamental principles of domestic law. As clarified in the analysis with regard to R.1, the scope of the second element referred to in deficiency 3 in relation to R.35 is relatively narrow.

R35 (Deficiency 4): The sanctions to for conspiracy to commit aggravated money laundering and for participation in a criminal organisation are not effective, proportionate and dissuasive

This deficiency is not yet addressed.

R35 (Deficiency 5): Article 18(1)(b) of the FT Convention is not fully implemented, in particular the requirement for measures to ascertain the identity of beneficial owners

As discussed above in relation to several deficiencies regarding R.5, Finland has taken measures to largely address this deficiency.

RECOMMENDATION 35, OVERALL CONCLUSION

The majority of the deficiencies in relation to R.35 are a spill-over from R.1. In June 2012, WGEI concluded that Finland's level of compliance with R.1 is essentially equivalent to LC given that only minor shortcomings remain with a large majority of the essential criteria being fully met. In addition, the other deficiency in relation to R.35, namely beneficial ownership requirements, is largely addressed. On that basis, it can be concluded that Finland's level of compliance with R.35 is now essentially equivalent to LC.

SPECIAL RECOMMENDATION I – RATED PC

SRI (Deficiency 1): Article 18(1)(b) of the FT Convention is not fully implemented, in particular the requirement for measures to ascertain the identity of beneficial owners

As discussed above in relation to several deficiencies regarding R.5, Finland has taken measures to largely address this deficiency.

SRI (Deficiency 2): Finland does not have a national mechanism to give effect to requests for freezing assets and designation from other jurisdictions and it does not have a de-listing process

The *Act on the Freezing of Funds with a view to Combating Terrorism, 2013* establishes a freezing mechanism which complements *Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism*. While it provides for a national mechanism to give effect to requests for freezing assets and designation from other jurisdictions, its provisions are not in line with the requirements under SR.III. As explained above in relation to SR.III, the Act establishes a de-listing process in line with the FATF requirements and this deficiency is addressed.

SRI (Deficiency 3): The definition of funds does not explicitly cover funds owned directly or indirectly by designated persons or those controlled directly or indirectly by designated persons

As explained above in relation to SR.III, this deficiency is mostly addressed.

SRI (Deficiency 4): There are no procedures for accessing funds/assets that are frozen and that are determined to be necessary on humanitarian grounds in a manner consistent with S/RES/1452(2002)

Section 5 of the *Act on the Freezing of Funds with a view to Combating Terrorism* provides for exemptions to the asset freeze to meet humanitarian and other needs instead of creating a procedure for accessing funds/assets that are frozen. This section creates a substantial deficiency.

SPECIAL RECOMMENDATION I, OVERALL CONCLUSION

Three out of the four deficiencies identified in relation to SR.III have been (mostly) addressed. As a result, Finland's current level of compliance with SR.I is essentially equivalent to LC.

VI. DEVELOPMENTS REGARDING THE OTHER RECOMMENDATIONS RATED PC OR NC: R6, R7, R8, R9, R11, R15, R17, R18, R21, R22, SRVI AND SRVII

RECOMMENDATION 6 – RATED NC

R6 (Deficiency): There are no CDD requirements with respect to politically exposed persons

Through section 20 of the *AML/CFT Act, 2008*, Finland has introduced the requirement for enhanced CDD requirements in respect of customers which are on the basis of risk-based procedures identified as politically exposed persons. Government Decision 616/2008 and *Standard 2.4 on CDD* define PEPs, their family members and close associates. The definition is incomplete insofar it does not cover important political party officials.

The requirements of section 20 cover many of the Methodology criteria in relation to R.6, except with regard to the following elements: 1) there is no requirement to determine whether the beneficial owner is a PEP; 2) there is no explicit requirement relating to customers (and beneficial owners) who are accepted and subsequently become a PEP; and 3) section 20(3) limits the scope of the PEP requirement to individuals who have not been in a politically-exposed position for one year or more. However, the FATF plenary has considered the one-year limit in the context of other EU member states' mutual evaluation reports, and has concluded that such a threshold is not a material deficiency when there is a general obligation to apply enhanced due diligence to customers (including PEPs) who still present a higher risk of ML or TF regardless of any timeframe. Section 20(2) of the Finnish *AML/CFT Act, 2008* provides for such an obligation.

RECOMMENDATION 6, OVERALL CONCLUSION

Finland has significantly improved its requirements with regard to PEPs and its overall level of compliance with R.6 is essentially equivalent to LC.

RECOMMENDATION 7 – RATED NC

R7 (Deficiency): There are no CDD requirements with respect to correspondent banking relationships

Section 19 of the *AML/CFT Act, 2008* lays down enhanced customer due diligence requirements in relation to correspondent banking. The provisions cover the Methodology criteria 7.1-7.3.

With regard to c.7.4, section 19(2) only refers to *"The contract shall explicitly lay out the CDD obligations to be fulfilled."* However, *Government Proposal 25/2008* to enact the *AML/CFT Act, 2008* provides guidance for the interpretation of section 19 of the Act and clarifies that assessments of the respondent's reputation; the quality of its supervision; AML/CFT measures, as well as approval by senior management are required. In addition, it points to the fact that the CDD obligations to be fulfilled (consistent with Chapter 2 of the *AML/CFT Act, 2008)* must be explicitly laid out in a contract.

As far as the requirements with regard to the maintenance of "payable-through accounts" (c.7.5) are concerned, Finnish authorities point to sub-section 5.5.3 in *Standard 2.4 on CDD* which clarifies the application of the *AML/CFT Act, 2008* in respect of correspondent banking or correspondent business relationships. The information to be obtained prior to establishing such a business relationship should include the respondent's authorisation, the supervision it is subject to; and whether it applies similar AML/CFT requirements as the supervised entity itself. It is further specified that the business relationship should also be monitored on a regular basis. Supervised parties are required to have internal instructions on obtaining sufficient information and documentation on the respondent; and on decision-making and enhanced CDD procedures for correspondent banking relationships. Finally, the supervised entities are required to ensure that a counterparty correspondent bank does not allow shell banks to use its accounts.

It should be noted; however, that the *AML/CFT Act, 2008* prescribes these specific measures only in the context of non-EEA respondent banks, on the basis that respondent institutions headquartered in the EEA are low risk, as specified in the 3rd EU AML Directive. This approach falls significantly short of the FATF standard, since the FATF has identified correspondent banking *per se* as a high-risk activity that requires enhanced due diligence measures in all cases. It does not provide for the application of a risk-based approach in this area, and so the question of whether EU equivalence is appropriate is irrelevant in the context of R.7. There is no recognition that intra-EU correspondent relationships should be treated as if they were domestic structures, thereby taking them outside the scope of R.7.

RECOMMENDATION 7, OVERALL CONCLUSION

While Finland has introduced requirements with regard to R.7 these requirements do not apply to intra-EU correspondent relationship. Consequently, Finland has not addressed all of the R.7 deficiencies to their full extent. Nevertheless, its current level of compliance with R.7 can be considered to be essentially equivalent to LC.

RECOMMENDATION 8 – RATED PC

R8 (Deficiency 1): There are no requirements for obliged parties to have measures in place for prevention of the misuse of technological developments in ML or TF

The more general provision regarding a risk-based assessment in section 6(3) of the *AML/CFT Act, 2008* requires reporting parties to have AML/CFT risk management procedures in place commensurate with the nature and the size of their business. It is further specified that when assessing the ML/TF risk, reporting parties shall take account of the ML/TF risks that are related to their sector, their products, their services, technological development, their customers and the customer's business and transactions. Finnish authorities also refer to *FIN-FSA Standard 4.4b* on Management of operational risks and indicate that it calls on FIN-FSA supervised entities to have systems in place in relation to the misuse of technological developments in ML or TF. However, further analysis of the information provided in *Standard 4.4b* shows that these are specific requirements on FIN-FSA supervised entities in relation to their information systems, including IT functions and services, and data security but these requirements do not relate to the prevention of the misuse of technological developments in ML or TF. While the wider requirements with regard to a risk-based assessment refers to technological development, there is no specific provision in the *AML/CFT Act, 2008* or in OEM which requires reporting parties to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in ML or TF schemes.

R8 (Deficiency 2): Limited provisions are in place with respect to the risks associated with non-face-to-face business relationships and transactions

Section 18 of the *AML/CFT Act, 2008* provides for enhanced customer due diligence related to non-face-to-face identification. Further guidance on the strengthened requirements for non-face-to-face identification and verification is also provided in *Standard 2.4 on CDD*. However, enhanced CDD requirements apply only to opening of non-face-to-face business relationships but not to transactions that do not involve the physical presence of the parties. In addition, the requirements for non-face-to-face customers both in law and OEM do not extend to when on-going due diligence needs to be conducted.

RECOMMENDATION 8, OVERALL CONCLUSION

While Finland has introduced some requirements with regard to R.8, the level of compliance with the FATF Standards is not yet equivalent to LC.

RECOMMENDATION 9 – RATED NC

R9 (Deficiency 1): In some situations third parties are relied upon to perform elements of CDD but this is not regulated

R9 (Deficiency 2): Financial institutions are not required to immediately obtain from the third party the necessary information concerning the CDD process

R9 (Deficiency 3): Insurance companies are not required to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD will be made available from the third party upon request without delay

R9 (Deficiency 4): Financial institutions are not required to satisfy themselves that the third party is regulated and supervised and has measures in place to comply with CDD requirements

R9 (Deficiency 5): There are no provisions to establish that the ultimate responsibility for customer identification remains with the financial institution relying on a third party

Sections 11(1)-(3) define the types of third parties upon whom reliance may be placed, based primarily on an equivalence test. These expressly include: 1) credit institutions, financial institutions, mutual fund management companies, insurance intermediaries, lawyers and auditors duly authorised or registered in a mandatory professional register in Finland or another EEA state; 2) a branch in an EEA state of a credit institution, financial institution, investment firm, management company for mutual funds or insurance company duly authorised in a state other than an EEA state to fulfil these obligations on their behalf; and 3) credit institutions, financial institutions, mutual fund management companies, insurance intermediaries, lawyers and auditors duly authorised or registered in a mandatory professional register in a state other than an EEA state, provided they are subject to CDD obligations "equivalent" to those laid down in the *AML/CFT Act, 2008* and supervised for compliance with such obligations. It should be noted that obligations to comply with c.9.4 of the Methodology (regulation, supervision and compliance with CDD requirements) are only imposed with regard to third parties established in "equivalent" countries and even not in relation to its branches in an EEA country. Based on section 11(3), money remittance businesses and currency exchange service providers are explicitly excluded as third parties on whom a reporting institution can rely for CDD purposes.

These categories of eligible third-party introducers are clearly defined by statute and there is no obligation for the reporting parties to undertake any qualitative assessment when relying on a third-party based in the EEA. This is neither appropriate to nor in conformity with the risk-based approach defined by the FATF.

In identifying those non-EEA third countries fulfilling the specified requirements, the authorities expect financial institutions to rely upon the EU's member states' equivalence list which is transposed in Finland through the *Decision of the Ministry of Interior of 30 March 2012*, as discussed above with regard to deficiency 6 in relation to R.5. Important to remind is that this Decision explicitly states that the list shall not, however, remove the obligations set out in sections 6 and 17 of the *AML/CFT Act, 2008*. Section 6 deals with the need for a risk-based assessment for CDD purposes (see the discussion of the RBA in the introduction to the section on R.5) while section 17 provides for enhanced CDD in higher risk situations. This explicit indication in the Decision of the Ministry of the Interior ensures consistency with the risk-based approach defined by the FATF.

Section 11(4) that requires reporting parties to ensure that all CDD data are available to them and that the bodies acting on their behalf submit the data to them on request are meant to meet the requirements of c.9.1 and 9.2. However, it should be noted that this section of the AML/CFT Act does not refer to the requirement that the requested information need to be submitted "without delay", as explicitly set out in c.9.2.

Finally, through sections 11(5)-(6), Finland aims to ensure that its reporting parties comply with the requirement in c.9.5, namely that the ultimate responsibility for customer identification and verification should remain with the financial institution relying on the third party.

RECOMMENDATION 9, OVERALL CONCLUSION

Finland has strengthened its requirements with regard to R.9 and its current level of compliance is essentially equivalent to LC.

RECOMMENDATION 11 – RATED PC

R11 (Deficiency 1): For institutions not supervised by the FSA, there is no requirement to keep records of findings of examinations of unusual transactions

R11 (Deficiency 2): Due to the lack of record-keeping requirements for institutions not supervised by the FSA, it is difficult to assess whether the obligation to examine the unusual transactions is in fact being observed

Section 9(3) of the *AML/CFT Act, 2008*, which applies to all reporting parties, obliges these parties to pay particular attention to transactions which are unusual in respect of their structure or extent or the size or office of the reporting parties. The same also applies if transactions have no apparent economic purpose or if they are inconsistent with the parties' experience or knowledge of the customers. If necessary, measures shall be taken to establish the source of funds that are involved in a transaction. Section 9(1) contains a general obligation to obtain information on customers' transactions, the nature and extend of the customers' business, and the ground for the use of a service or product. Section 10 of this Act contains obligations with regard to CDD and record-keeping. Section 10(10) explicitly states that the information necessary to fulfil the obligation in section 9(3) shall be kept in a secure manner for a period of five years following the end of the regular customer relationships. Based on section (10)9, the information collected with regard to the background and purpose of the transactions is subject to the same record-keeping requirements.

RECOMMENDATION 11, OVERALL CONCLUSION

With regard to R.11, Finland improved the provisions in its AML/CFT legislation, which is applicable to all reporting parties, and they fully satisfy the requirements of R.11.

RECOMMENDATION 12 – RATED NC

R12 (Deficiency 1): Trust and company service providers are not obliged parties

Based on section 2(1)-23 of the *AML/CFT Act, 2008,* trust and company service providers as referred to in Article 3(7) of the 3rd EU AML Directive 2005/60. However, as explained above in relation to R.5, the Finnish legal system does not allow for the creation of trusts and the legal concept of trust does not exist under Finnish law. Finland has not ratified the *1985 The Hague Convention on the Law Applicable to Trusts and on their Recognition*. The possibility of trusts as customers is explicitly addressed in the *Government Proposal HE 25/2008*, page 39 to adopt the AML/CFT Act. It was explicitly stated that although there exist no trusts in Finland, a person may act as a trustee. In that

case, the foreign trust is subject to the same AML/CFT requirements as other customers, including CDD and verification requirements and the related beneficial ownership requirements. Consequently, this deficiency is addressed.

R12 (Deficiency 2): Finland's shortcomings in implementation of Recommendations 5, 6 and 8-11 also apply to DNFBPs

As indicated in the analysis above in relation to R.5 and 6 and 8-11, Finland's level of compliance with regard to R.5, 6, 9 and 11 is now essentially equivalent to LC while the level of compliance with R.8 remains at PC.

Finland has made significant progress with regard to most of the deficiencies in relation to R.12 identified in its MER. Due to the nature of the analysis conducted for a follow-up report; the effectiveness of the implementation of the relevant requirements by the DNFBP sector cannot be assessed. However, it can be concluded that Finland has largely addressed the deficiency.

R12 (Deficiency 3): There is no indication that dealers in precious metals and precious stones are complying with their AML/CFT obligations

Based on section 2(1)-22 of the *AML/CFT Act, 2008*, businesses and professions dealing in goods are subject to the requirements in this Act in situations where the payments are made in cash in an amount of EUR 15 000 or more, regardless of whether the transaction is carried out in a single operation or several inter-connected operations. Dealers in precious metals and dealers in precious stones fall under this category of professions and need to comply with the CDD, record-keeping, and other obligations set out in the AML/CFT Act.

The FIU's Annual Reports, which are published on the FIU's website, provide information and statistics on suspicious transaction reporting. Given that the scope of the *AML/CFT Act, 2008* and that of the 3rd EU AML Directive also cover goods other than precious metals and stones, the FIU reports list the combined figures of STRs by dealers in precious stones and precious metals; works of arts; and vehicles. While car dealers submitted a relatively important number of STRs since they became subject to the reporting obligation in 2008, the number of STRs submitted by dealers in precious metals and precious stones only amounts to 7. Nevertheless, it provides an indication that there is some degree of compliance with the reporting obligation.

Finland did not provide any feedback regarding the results of the AML/CFT supervision for dealers in precious metals and stones. As a result, it is difficult to conclude that this deficiency is largely addressed.

R12 (Deficiency 4): There is a lack of clarity with respect to the AML/CFT obligations for gaming businesses in the Åland Islands

Section 2(1)-15 of the *AML/CFT Act, 2008* makes corporations running gaming activities referred to in the regional legislation of Åland (this is the *Åland Lotteries Act, 1966*), and entrepreneurs and corporations supplying registration and charges for participation in gaming activities in Åland subject to Finland's AML/CFT legislation. Finnish authorities report that the casino activities in the Åland Islands, both land-based and on-line, are exploited by the company "Casino PAF". The

obligations under the *AML/CFT Act, 2008* apply to Casino PAF but identification requirements only apply for individual or cumulative transactions above the threshold of EUR 3 000, except for suspicious transactions, what is consistent with the FATF standards. By including the gaming businesses in the Åland Islands in the scope of the AML/CFT legislation, Finland has addressed this deficiency.

RECOMMENDATION 12, OVERALL CONCLUSION

Finland has introduced the necessary technical requirements for the DNFPB sector with the aim to ensure compliance with international AML/CFT standards. As indicated above, Implementation of technical requirements by DNFBPs has proven to be a challenge during the 3rd round of FATF mutual evaluations. Due to the nature of the analysis conducted for a follow-up report; the effectiveness of the implementation of the relevant requirements, including by the DNFBP sector, cannot be assessed. However, it can be concluded that Finland's technical compliance with R.12 is now essentially at a level equivalent to LC.

RECOMMENDATION 15 -RATED PC

R15 (Deficiency 1): The FIU's Best Practices, which would satisfy many of the elements of Recommendation 15, are not binding

As indicated in the introduction to the discussion of Recommendation 5, the FIU published its revised *Best Practices for the prevention of money laundering and terrorist financing* in 2012; however, these Best Practices are not enforceable and only qualify as guidance.

R15 (Deficiency 2): There is no explicit requirement for money remittance and foreign exchange sectors to develop internal controls or independent audit to ensure compliance with the AML/CFT Act

Based on harmonised legislation in EU member states, the criteria for the authorisation of payment service institutions or registered payment service providers are equal to those of a credit institution or other authorised financial institutions. Finnish payment service providers, including money remittance businesses are authorised or registered and supervised by the FIN-FSA. The licensing process requires that the applicant submit comprehensive accounts on risk management (all risks areas); internal controls; internal audit functions; compliance issues; and AML/CFT systems and programmes. A payment service provider must have a licence when the average volume of payment transactions is more than EUR 3 million per month. Registration with FIN-FSA is however required when the average volume of payment transactions is less than EUR 3 million per month. In addition, if the intended payment services are offered in another EEA country, a full licence is required regardless of the volume of payment transactions.

During the authorisation and registration process, FIN-FSA examines, among other things, whether persons contributing to the provision of payment services or persons responsible for such services are fit and proper and have adequate education and professional expertise considering the type and scope of the intended services. In addition, it is examined whether service providers are able to demonstrate adequate internal controls and risk management systems. Comprehensive

documentation/guidelines approved by the high-level management are required. With regard to AML/CFT compliance, it is required that the applicant has an adequate documented CDD programme and can show adequate processes and internal controls systems. The applicant must demonstrate, inter alia, compliance with the AML/CFT Act and regulations by means of detailed internal guidelines on CDD measures; on-going monitoring and reporting obligations; an employee training programme; and the existence of a dedicated money laundering reporting officer. Prior to granting the licence, FIN- FSA carries out an on-site inspection to meet with the applicant and to verify the application; the intended business model; the risk management; the internal controls, the AML/CFT procedures; and compliance issues.

When the intended payment services are more limited and subject to registration only, the scope of evaluation of some risk areas is somewhat narrower. The criteria for registration are the following:

- business model (intended payment services);
- internal control and risk management issues;
- fitness and propriety of management and key persons; and
- evaluation of AML/CFT procedures and compliance issues.

Currency exchange service providers are subject to supervision by the RSAA but the RSAA has not yet issued binding guidelines for this sector. However, the RSAA published a brief notice for currency exchange providers on its website that refers the service providers to the *FIU Best Practices* for more information on how to implement their AML/CFT Act based obligations. While the deficiency appears to be addressed for the money remittance sector, this is not yet the case for the currency exchange sector because of the absence of an enforceable obligation.

R15 (Deficiency 3): There is no explicit requirement for non-FSA (former banking and securities supervisor) to have comprehensive training that focuses not only on internal procedures and regulatory requirements but also ML/FT typologies

The training requirement in section 34 the *AML/CFT Act, 2008* applies to all reporting parties, including the entities/persons which are supervised by the RSAA. This section requires reporting parties to have internal AML/CFT guidelines and a continuous training programme for their employees in place. As indicated above, implementation of this provision cannot be tested given the nature of the assessment for a follow-up report.

As discussed above in relation to R.23, in 2012, the RSAA conducted a supervisory campaign for consumer lending companies not supervised by FIN-FSA and this initiative also focused on training for employees. In that context, referral was also made to the FIU's study *Money Laundering Offences in Legal Praxis*, which is currently being updated and which qualifies as a typologies study.

Finland has made progress in addressing this deficiency.

R15 (Deficiency 4): Non-FSA supervised entities have no employee screening requirements

Finland reports that employee security screening in Finland is based on the provisions of the *Act on Background Checks, 2002*. For certain positions, particularly public functions, security screening is required. However, the Act also provides for a possibility for certain entities listed

therein to apply for a basic background check. According to the Finnish authorities this could cover non-FIN-FSA supervised entities. Under section 1(1) of this Act, a background check may be carried out on persons seeking an office or position, persons to be admitted to a position or training, or persons who are performing an office or position. Under section 4 of the Act, a basic background check may be applied for by:

1. a state agency and an independent state institution;
2. the office commission of the Parliament, the Parliamentary Ombudsman,
3. the state auditors and the State Audit Office;
4. a state enterprise;
5. a municipality and a federation of municipalities; and
6. a private corporation and foundation, whose seat, central administration or
7. main operative unit is located in Finland, and a foreign corporation or
8. foundation that has a registered branch in Finland.

It is unclear if and to what extent the *Act on Background Checks* is used for employee screening of consumer lending companies and money exchange service providers. This deficiency does not appear to be addressed.

R15 (Deficiency 5): There is no legal requirement for money remittance and foreign exchange sectors to have compliance officers

Standard 2.4 on CDD (sub-section 5.2 on Organisation of operations) lays down a requirement for all supervised entities, including payment service providers (and thus money remittance businesses), to appoint a money laundering compliance officer. Money remittance businesses are obliged to:

- Appoint a contact person responsible for the prevention of money laundering and terrorist financing. The position and duties of the supervised entity's contact person may vary according to the organisational structure of the entity.
- The contact person must be in an independent, preferably non-business position with the powers and capacity to act in such practical matters related to the prevention of money laundering and terrorist financing as require immediate action, such as reporting suspicious transactions or responding to enquiries from authorities.
- The contact information of the contact person should be submitted to the FIU.

It should be noted that *Standard 2.4 on CDD* does not cover the requirement for the AML/CFT compliance officer and appropriate staff to have timely access to customer identification and CDD information, transaction records, and other relevant information.

Finnish authorities report that foreign exchange service providers have no requirement by law to have compliance officers. Such a recommendation is part of the *FIU's Best Practices* that also applies

to money exchange companies but this document is only to be considered guidance and not an enforceable requirement. Consequently, this deficiency is only partially addressed.

RECOMMENDATION 15, OVERALL CONCLUSION

The deficiencies identified related mainly to money remittance businesses and currency exchange service providers. Since money remittance businesses became subject to FIN-FSA regulation and supervision, the deficiencies identified are mostly addressed in an adequate way. However, the deficiencies still seem to be applicable to the currency exchange service providers. All in all, Finland's current level of compliance with R.15 is essentially equivalent to LC.

RECOMMENDATION 16 – RATED PC

R.16 (Deficiency 1): Trust and company service providers are not obliged parties

The analysis with regard to deficiency 1 in relation to R.12 is equally applicable to this deficiency. The deficiency is fully addressed.

R.16 (Deficiencies 2 and 3): Finland's shortcomings in implementation of R.13 also apply to DNFPBs and there is no requirement to report transactions suspected of being related to terrorism other than those related to terrorist acts and no requirements to report transactions suspected of being related to terrorist organisations or to those who finance terrorism

The reporting requirement in section 23 of the *AML/CFT Act, 2008* refers to both suspicious transactions and suspicions of terrorist financing. Definitions section 5 in this Act does however not contain a definition of "suspicious transactions". The definition of "terrorist financing" refers to the TF offence in the Finnish *Criminal Code* which the FATF considers does not cover the financing of terrorist organisations and the individual terrorist (see also discussion of deficiency 4 in relation to SR.III above). Consequently, this deficiency is not addressed but given that the reporting requirements under both R.13 and SR.IV were rated LC, the scope of this outstanding deficiency is minor.

R.16 (Deficiency 4): DNFBPs are not required to have internal controls, compliance officers, independent audits for AML/CFT, on-going training or employee screening

As indicated in the introduction to the discussion of Recommendation 5, the FIU published its revised *Best Practices for the prevention of money laundering and terrorist financing* in 2012. The *FIU's Best Practices* would satisfy many of the elements of R.15 (and its implementation for purposes of satisfying the requirements of R.16) but these *FIU Best Practices* are not enforceable and only qualify as guidance.

As far as employee training is concerned, Finnish authorities point to the fact that the requirements regarding training contained in section 34 of the AML/CFT Act, 2008 equally apply to DNFBPs. Finnish authorities provided detailed information of conditions DNFBPs need to meet under the sector specific legislation, including for registration purposes; however, it cannot be concluded that these more general obligations satisfy the detailed requirements of R.15. Consequently, this deficiency is not yet addressed.

R.16 (Deficiency 5): There is a lack of clarity with respect to the AML/CFT obligations for gaming businesses in the Åland Islands and only one STR has been submitted from that sector to date

Finland reports that although STRs are being submitted by Casino PAF, the number of STRs from the land-based casino in the Åland Islands remains low. From 2008 to 2011, Casino PAF reported 23 STRs to the FIU. The relevant authorities in the Åland Islands explain that the limited number of STRs is due to the fact that gaming activities seldom exceed EUR 3 000.

As regards online gaming activities, Finnish authorities report that it is often difficult for Casino PAF to determine what constitutes suspicious behaviour. Therefore, Casino PAF cooperates with external game suppliers to obtain information on connections between on-line gamers and/or their money transfers related to the gaming activities. In addition, Finland reports that the Åland authorities and Casino PAF are working closely together with the FIU in view of further developing its reporting methods. However, cooperation initiatives have not yet resulted in any significant reporting of STRs. Consequently, based on the low number of STRs for both types of gaming activities, it can be concluded that this deficiency has not yet been addressed.

R.16 (Deficiency 6): Few STRs have been submitted by other DNFBPs, which calls into questions the effectiveness of R.13 in this sector

On average the combined numbers of STRs submitted by all DNFBPs amount to roughly 20 % of all reports (between 2008 and 2011). These figures include the STRs made by: real estate business and apartment rental agencies; the operators practising casino activities and other gaming operators; businesses or professions performing external accounting functions; businesses or professions carrying out auditing duties; lawyers; and dealers in precious stones or metals, works of art or vehicles.

Gaming operators (other than the one located in the Åland Islands) report clearly the largest number of STRs of the non-financial sector (on average 4 840 per year). In general, gaming is seen as offering significant opportunities for money laundering. An increased risk of money laundering has also been associated with cash payments. When counted under one category, dealers in precious stones or metals, works of art and vehicles submit the second most STRs, 33 per year on average, followed by auditors (average of 15 per year), real estate businesses and apartment rental agencies (average of 12 per year), and lawyers (average 9 per year). On the basis of these figures, it can be concluded that there is an indication of improvement with regard to this deficiency although it seems to be premature to state that the deficiency is addressed.

RECOMMENDATION 16, OVERALL CONCLUSION

While there is an indication of improvement of Finland's compliance with the requirements of R.16, its current level of compliance remains however at the level of PC given the number and scope of the outstanding deficiencies.

RECOMMENDATION 17 – RATED PC

R17 (Deficiency 1): Money remitters and foreign exchange offices are subject only to criminal sanctions for violations of AML/CFT obligations.

R17 (Deficiency 2): The scope of regulatory authorities' ability to sanction natural persons, such as directors or senior management of institutions, is unclear.

R.17 (Deficiency 3): The ISA has a relatively limited range of sanctions available to it.

Criminal sanctions

In criminal law and other legislation, criminal liability as a rule may be attributed only to natural persons. Legal persons may be subject to administrative sanctions and, in certain circumstances under the *Criminal Code*, to criminal corporate liability. The other applicable provisions concerning offences which relate to the actions of a legal person, particularly the provisions governing those acting on behalf of a legal person (*Criminal Code,* Chapter 5, section 8), and provisions which may involve legal persons e.g. the provisions on negligence (*Criminal Code*, Chapter 3, section 7), as well as general principles for the attribution of responsibility (duties, position etc) entail that "liability should be specified within the legal person".

In individual cases of money laundering, the person subject to sanctions is determined in accordance with the general principles of criminal justice. Accordingly, in the attribution of liability, attention must be paid at least to the party's position, and to the nature, scope and clarity of the duties and powers involved, as well as to the professional qualifications of the persons involved and their involvement in the initiation and continuation of the illegal situation. The attribution of criminal liability depends materially on how the responsibilities of the different parties involved are decided and must also be considered in respect of other offences relating to commercial activities. The foregoing specifically relates to the attribution of liability in a criminal case and consequently, executives of the legal person can be subject to criminal liability.

Administrative sanctions

Administrative sanctions may be imposed on both natural and legal persons. The criteria are based on the same principles as in the attribution of criminal liability. A sanction may also be imposed on an executive of the legal person.

The former supervisory authorities, the Financial Supervision Authority (FSA) and the Insurance Supervisory Authority (ISA) merged on 1 January 2009. As discussed above, the new Act on FIN-FSA was passed in 2009 and FIN-FSA's sanctioning powers now also apply equally to payment service providers and insurance-sector supervised entities in addition to the financial institutions.

Sections 38, 40 and 41 of the *FIN-FSA Act, 2009* specifically allow for imposing administrative sanctions on a natural person if he/she acts in violation of the provisions of a law or regulation which are personally binding on him/her. Administrative sanctions under this Act also include sanctions for breach or neglect of the provisions on CDD. FIN-FSA can thus impose administrative sanctions if a supervised entity or other financial market participant fails to comply with provisions governing financial markets, regulations issued there under, or with the terms of its authorisation or rules applicable to its operations. The applicable administrative sanctions include conditional fines, administrative fines, public reprimands, public warnings and penalty payments. The administrative

sanctions available to FIN-FSA in case of a breach of AML/CFT regulations include a conditional fine (section 38 of the Act), a public reprimand (section 40) and a public warning (section 41).

FIN-FSA may also prohibit, for up to five years, anyone from acting as a member or a deputy member of the board of directors, a managing director or a deputy managing director, or in any other senior management position of an authorised supervised entity, if such person has been involved, for instance, in money laundering. Under certain conditions, FIN-FSA may also withdraw an authorisation previously granted to a supervised entity or restrict a supervised entity's authorised business, or propose such withdrawal or restriction to the authority that has granted the authorisation (*FIN-FSA Act, 2009*, section 26, sub-section 2).

In addition to FIN-FSA, the consumer protection authorities are empowered to prohibit the provision of such payment services as are in conflict with the *Payment Services Act* or consumer protection legislation. The provisions on sanctions in the *Payment Institutions Act, 2010* include the criminalisation of the provision of payment and money remittance services without authorisation or registration. Section 48 of the *FIN-FSA Act, 2009* (on Prohibition of activity and other sanctions) allows for imposing sanctions on branches and agents of foreign payment service providers.

Section 33(1) of the *AML/CFT Act, 2008* provides that if bodies offering currency exchange services or trust and company services fail to comply with the obligation to register, or continue to conduct activities that were prohibited in conjunction with registration, or continue their activities after being removed from the register, the RSAA may prohibit them from continuing their activities. If the said service providers fail to notify changes to the information entered in the register, the RSAA may request rectification within a certain time period. Section 33(2) of the Act provides that the RSAA may impose a penalty payment to enforce a prohibition or request under this section. Provisions on imposing a penalty payment and ordering it to be paid are laid down in the *Penalty Payment Act, 1990* (*AML/CFT Act, 2008*, section 33).

Finland also refers to the *Act on the Ban on Engaging in Commercial Activities, 1985*–see also discussion of deficiency 3 in relation to R.23 above- as an enforcement mechanism for AML/CFT obligations. Such a ban can be imposed on natural persons if they have substantially neglected their statutory obligations in business or if they have committed a criminal act in the context of business activities that cannot be deemed minor. Such criminal acts also include money laundering. The number of people subjected to a business ban has grown throughout the years. At the end of 2010, a business ban was imposed on a total of 1 095 persons and for 327 of these persons, it was a completely new sanction. It remains however unclear in how many cases this business ban was imposed in the context of AML/CFT violations.

Based on the information mentioned above, deficiencies 1-3 are addressed.

Deficiency 4: Finnish regulatory authorities rarely apply their sanction powers and have only once applied them for matters relating to AML/CFT obligations.

The total numbers of sanctions issued by the FIN-FSA have increased in recent years. However, between 2008 and 201, no sanctions were issued in relation to breaches of the AML/CFT obligations. In accordance with the sanctions policy of FIN-FSA, the threshold for issuing sanctions should not be too high. In addition, in FIN-FSA's opinion sanctions should not be the

ultimate objective. If supervisory goals can be achieved by less stringent means and the sanction is not necessary for other reasons, the FIN-FSA usually chooses to employ more lenient supervisory measures. On the basis of this information, it can be concluded that deficiency 4 is not yet addressed.

RECOMMENDATION 17, OVERALL CONCLUSION

Three out of four deficiencies identified in the MER are addressed. However, based on the information regarding the application in practice of the sanctioning regime, the effectiveness is yet to be tested. By improving its sanctioning regime and broadening the scope of the entities under FIN-FSA supervision, Finland has reached a level of technical compliance essentially equivalent to LC.

RECOMMENDATION 18 – RATED PC

R18 (Deficiency 1): There is no provision prohibiting banks or other institutions from having correspondent relationships with shell banks

R18 (Deficiency 2): There is no provision requiring institutions to satisfy themselves that their accounts at respondent institutions do not allow indirect access by shell banks to those accounts

When drafting the amendments to the *AML/CFT Act, 2008*, Finnish authorities decided to delegate the implementation of R.18 to FIN-FSA. According to the Acts containing provisions with regard to various entities supervised by FIN-FSA, FIN-FSA has the power to issue binding regulations to its supervised entities on risk management and CDD measures. The prohibition for the FIN-FSA supervised entities to enter or maintain business relationships with shell banks is based on sub-section 5.5.4(92) of *Standard 2.4 on CDD*. Further binding regulations are included in sub-paragraph 5.5.3(89) of the same Standard, which states that FIN-FSA supervised entities should also ensure that their respondent banks do not allow shell banks to use their accounts. Finland also reported that according to the *Credit Institutions Act* and other financial sector legislation, Finland does not allow operations of shell banks in Finland.

RECOMMENDATION 18, OVERALL CONCLUSION

Via relevant provisions in *Standard 2.4 on CDD*, Finland has imposed additional requirements on reporting institutions in view of complying with all of the criteria of R.18 and the deficiencies identified in the MER are fully addressed.

RECOMMENDATION 21 – RATED PC

R21 (Deficiency 1): Due to the absence of a requirement set forth in writing the findings of examinations of unusual transactions, it is difficult to assess whether the obligation to examine the purpose of transactions with no apparent economic or visible lawful purpose involving countries or territories which do not or insufficiently apply the FATF Recommendation is in fact being observed

R21 (Deficiency 2): The only possible counter-measure is application of enhanced customer identification

R21 (Deficiency 3): There is no evidence that non-FSA supervised entities have mechanisms in place to receive notifications from a supervisory authority regarding countries or territories which do not or insufficiently apply the FATF Recommendations

Based on section 17 of the *AML/CFT Act, 2008*, reporting parties are obliged to apply enhanced CDD measures in situations where the customer, service, product or transaction represents a higher risk of money laundering or terrorist financing or where the customer or transaction is connected with a state whose system of preventing and clearing money laundering and terrorist financing does not meet the international obligations. This legal provision, which applies to all reporting institutions, satisfies the requirements of c.21.1. Further details in this regard are provided to FIN-FSA supervised entities via sub-sections 5.5.1(79)-(81) of *Standard 2.4 on CDD*.

FIN-FSA supervised entities are informed about information included in FATF Public Statements and the *compliance document "Improving Global AML/CFT Compliance: On-going Process"* either via a formal notification or via the FIN-FSA newsletter *Know your customer - prevent money-laundering*. These measures advise financial institutions of concerns about the weaknesses in the AML/CFT systems of other countries and comply with the requirement in c.21.1.1. However, it remains questionable if and to what extent non-FSA supervised entities, in particular money exchange service providers, receive advice in this regard. Since 2010, money transfer services are brought under the supervision of FIN-FSA, and therefore the scope of this potential deficiency is limited.

Based on sub-section 5.5(79) of *Standard 2.4 on CDD*, the enhanced due diligence obligation requires extended examination and documentation of the customer's operations and use of services. In on-going monitoring, particular account should be taken of customer relationships subject to enhanced customer due diligence. In addition, the measures set out with regard to unusual transactions (see R.11 above), in particular sections 9(3), 10(9) and 10(10) contain the necessary requirements to comply with c.21.2.

Finally, in addition to the concept of enhanced CDD, Finland has also introduced the enhanced reporting obligation in section 24 of the *AML/CFT Act, 2008* for customers who are connected with a state whose system of preventing and clearing money laundering and terrorism financing does not meet the international obligations and meets one or more of the five criteria set out in section 24(1). Finland has implemented this counter-measure in practice via *Government Decision 1022/2010* which lays down the enhanced CDD and reporting obligations for all reporting parties insofar transactions or persons having a connection with Iran or the Democratic People's Republic of North Korea are concerned.

RECOMMENDATION 21, OVERALL CONCLUSION

Finland has introduced in its *AML/CFT Act, 2008* specific measures to comply with the requirements of R.21 for all reporting parties and these are further supplemented by FIN-FSA's binding guidance in *Standard 2.4 on CDD*. On that basis, it can be concluded that the deficiencies identified in the MER

are mainly addressed and that Finland's current level of compliance the requirements of R.21 is essentially equivalent to LC.

RECOMMENDATION 22 – RATED PC

R22 (Deficiency 1): There are no relevant requirements for non-FSA supervised businesses

R22 (Deficiency 2): Banks and securities are only authorised, not required, to provide notice to the FSA or the FIU when their foreign branches or subsidiaries are prevented by local rules from observing AML/CFT measures

Based on section 21(1) of the *AML/CFT Act, 2008*, credit institutions, financial institutions, investment firms, payment institutions, management companies, insurance companies, insurance associations and insurance intermediaries need to comply with the CDD obligations of the Act in their foreign subsidiaries and branches, located in non-EEA states. In addition, these reporting parties are also obliged to ensure that the CDD obligations of the Act are complied with in companies located in non-EEA states where the reporting party holds more than 50% of the voting rights attached to the shares or units. However, there are no provisions explicitly or otherwise requiring financial institutions to pay particular attention to the principle of equivalency to Finnish standards in respect of subsidiary or branch operations in EEA member states that do not, or insufficiently, apply the FATF Recommendations. This derogation applicable to branches and subsidiaries located in EEA states with respect to the implementation of group-wide standards is significant. In its comments, Finland indicates that this provision is based on the 3rd EU AML Directive; however, the deficiency pointed out here is consistent with FATF mutual evaluations and follow-up reports of other EU member states.

In addition, it should be noted that the Act does not contain any obligation for financial institutions that if stricter measures apply in the third country in which any of the financial institutions referred to above is located, those stricter requirements shall be met in that country, consistent with c.22.1.2.

Section 21(2) provides that if the local legislation prevents compliance with the CDD obligations equal to the Finnish AML/CFT Act, the supervised entity must report it to the FIN-FSA.

An element that further weakens the R.22 provisions in section 21 of the *AML/CFT Act, 2008* is that AML/CFT measures, as referred to in the Methodology, are limited to CDD obligations only.

RECOMMENDATION 22, OVERALL CONCLUSION

Finland has introduced new measures in relation to R.22 requirements in its *AML/CFT Act, 2008*, which applies to all reporting parties with the aim to address the deficiencies identified in the MER. However, the new measures are formulated in such a way that they create scope issues and new deficiencies. As a result, Finland's compliance with R.22 is not yet equivalent to a level of LC.

RECOMMENDATION 24 – RATED NC

R24 (Deficiency 1): It is unclear what AML/CFT obligations and thus AML/CFT supervisory regime apply to Casino PAF on the Åland Islands

Section 2(1)-15 of the *AML/CFT Act, 2008* makes corporations running gaming activities referred to in the regional legislation of Åland (this is the *Åland Lotteries Act, 1966*), and entrepreneurs and corporations supplying registration and charges for participation in gaming activities in Åland subject to Finland's AML/CFT legislation. Finnish authorities report that the casino activities in the Åland Islands, both land-based and on-line, are exploited by the company "Casino PAF". The obligations under the *AML/CFT Act, 2008* apply to Casino PAF but, as indicated above with regard to R.12, identification requirements only apply for individual or cumulative transactions above the threshold of EUR 3 000, except for suspicious transactions. This is consistent with the FATF standards.

Section 31(1)-3b of the *AML/CFT Act, 2008* designates the Government of Åland as the competent supervisory for gaming operators referred to in section 2(1)-15 of the *AML/CFT Act, 2008* to ensure compliance with the provisions of the Act and any provisions issued under it. This deficiency is addressed technically.

R24 (Deficiency 2): Casinos are subject only to the general requirements in the AML/CFT Act – with no additional requirements or bindings standards in place to govern their conduct regarding AML issues

Based on sections 2(1)-14-15 of the *AML/CFT Act, 2008*, casino and gaming activities (both those subject to the *Lotteries Act, 2001* and those subject to the *Lotteries Act, 1966* (which only applies to casino and related activities in the Åland Islands) are fully covered by the Act. With regard to additional requirements or binding standards for AML/CFT purposes, Finnish authorities refer to the *Lotteries Act, 2001* (most recent amendments came into force in 2012) and the *Lotteries Act, 1966*. In addition, the Åland authorities are in the process of amending the *Lotteries Act, 1966*, with a view to respond to the changes that have taken place within the industry. As part of these amendments, explicit provisions for supervision of compliance with the FATF Recommendations will be introduced. While the current versions of these Acts contain sector-specific provisions which govern the exploitation of casino and gaming activities and it can be expected that, to some extent, they also contribute to combating money laundering and terrorist financing, it appears that there are no AML/CFT specific binding standards for the casino and gaming industry.

Finnish authorities indicate that supervisory inspections (in some instances with the participation of the FIU) which (partially) focus on AML/CFT issues have already taken place at the RAY Casino Helsinki. In addition to those supervisory inspections, there have been AML/CFT specific inspections at the RAY Casino and the gaming houses Veikkaus Oy and Fintoto Oy once a year. Additional AML/CFT specific inspections are scheduled to take place in May 2013. Finnish authorities also report that an AML/CFT supervision meeting on AML/CFT matters was held by the National Police Board (NPB) in the autumn of 2012, with participants from the three gambling operators, the FIU, the NPB and the Helsinki Police Department. Finnish authorities provided a copy of internal AML/CFT guidance issued by the RAY Casino as well as internal AML/CFT guidance

issued by Casino PAF which exploits casino and gaming activities in the Åland Islands. While Finnish authorities initiated actions to combat ML and TF in the casino and gaming industry, it appears that sector-specific AML/CFT additional requirements or binding standards are not yet in place. Consequently, deficiency 2 is only partially addressed.

R24 (Deficiency 3): It is unclear whether limited (criminal) sanctions can be applied to directors and management of all DNFBPs

Criminal sanctions in Finland are generally imposed on natural persons. While legal persons may also be subject to criminal sanctions, this measure is only taken in specific situations-mainly in connection with serious crimes, including money laundering. Based on section 5:8 of the *Criminal Code*, a natural person acting on behalf of a corporation, foundation or other legal person in an employment context may be sentenced for an offence committed in the operations of the legal person, even if that natural person does not meet the particular conditions for liability set out in the relevant provision of the *Criminal Code* criminalising the offence in question, provided that the legal person meets those conditions. Consequently, it can be concluded that criminal sanctions are available in respect of all DNFBPs, including their directors and management.

The AML/CFT Act, 2008 provides for administrative sanctions for violations of the CDD obligations in section 40 and the reporting obligations in section 42 of the Act. These administrative sanctions can be applied to all parties covered by the Act, including all DNFBPs as set out in section 2 of the Act. In addition, the registration violation provided for in section 41 is applicable to trust and company service providers (as well as businesses providing currency exchangers). The punishment for these violations is a fine, unless a more severe punishment is provided in other legislation.

Finally, as discussed in detail in relation to R.23 and R.17, the ban on business operations provided for in the *Act on the Ban on Engaging in Commercial Activities, 1985* constitutes another form of administrative sanctions which can be applied to natural persons, including directors and persons in management positions. Deficiency 3 can be considered to be addressed.

R24 (Deficiency 4): As SRO membership for accountants and lawyers is voluntary, parts of each sector receive no guidance and are completely unsupervised

Section 31 of the *AML/CFT Act, 2008* provides an overview of the competent authorities for AML/CFT supervision of all parties covered by the Act. Advocates subject to the *Advocates Act, 1958* are supervised for AML/CFT purposes by the Finnish Bar Association while accountants and auditors are supervised by the Auditing Board of the Finnish Chamber of Commerce; the Auditing Committees of the regional Chambers of Commerce; or the Board of Chartered Public Finance Auditing (depending on by which legislation their activities are governed). Finally, some of these professions (again depending on their governing legislation) are subject to supervision by the RSAA. The scope issue with regard to supervision seems to be addressed although the structure is quite difficult to understand.

As far as guidance is concerned, the Finnish Bar Association has issued the *Handbook on preventing money laundering and terrorist financing*, which explains the situations in which lawyers are subject to the AML/CFT Act and what AML/CFT obligations apply to them. In 2009, following the amendment of the *AML/CFT Act, 2008,* the Finnish Institute of Authorised Public Accountants, which

is an interest organisation for auditors, issued sector specific guidance for compliance with the Act to its members. Finally, the RSAA issued a general guidance document *Guidelines for the supervised entities* for all parties subject to its AML/CFT supervision. As a result, the guidance issue is substantially addressed.

R24 (Deficiency 5): Trust and company service providers (TCSPs) are not regulated or supervised in any way, and while trusts are not recognised in Finnish law, company service providers are operating

TCSPs are obligated parties under the *AML/CFT Act. 2008*. TCSPs must register with the RSAA before starting their operations. In addition, any changes in the registered information must be notified to the RSAA without delay. Provision of company services without registration is a punishable act. The obligation to register as a TCSP does not apply to advocates, auditors or their assistants. However, the AML/CFT supervision of advocates and auditors is explained in detail in relation to deficiency 4 above.

R24 (Deficiency 6): There is no supervisory authority for dealers in precious metals and stones

Section 31(1)-8 designates the RSAA as the supervisory authority for dealers in precious metals and stones. Consequently, this deficiency is addressed.

RECOMMENDATION 24, OVERALL CONCLUSION

Since its mutual evaluation in 2007, Finland has taken the necessary measures to ensure that all DNFBPs are subject to AML/CFT supervision. In addition, several of the competent AML/CFT supervisors have issued guidelines although it is not possible to determine to what extent these guidelines are enforceable. As a result, Finland's current level of technical compliance with R.24 is essentially equivalent to LC.

RECOMMENDATION 25 – RATED PC

R25 (Deficiencies 1-2-3): (1) Limited guidance has been issued specifically on AML/CFT matter and guidance does not comprehensively address all areas of the FATF Recommendations; (2) Some general feedback is provided to financial institutions and DNFBPs but does not include information on current techniques, methods and trends (typologies); (3) The FIU lacks the resources to provide the kind of individual feedback that a robust supervisory system could provide

FIU Finland

The Finnish authorities describe the *FIU Best Practices* as comprehensive guidelines in relation to various AML/CFT aspects developed on the basis of the FIU's expertise. While the FIU's guidance is directed at all AML/CFT obliged parties, some sector-specific guidance is issued by FIN-FSA, the RSAA, the National Police Board and the Finnish Bar Association. This sector-specific guidance is often based on the *FIU Best Practices*.

The *FIU Best Practices* go into detail with regard to the following issues: ML and TF offences; parties covered by the AML/CFT Act, 2008; obligations of the parties subject to the Act, including reporting; consequences of non-compliance with the provisions of the Act; and respective supervisory authorities, their duties as an AML/CFT supervisor, and their right to obtain information. As indicated above in relation to R.5, the *FIU Best Practices* have been updated in August 2012 and take all changes to date into account.

The FIU's other publication, *Money Laundering Offences in Legal Praxis,* contains information on the ML offence and related criminal legislation, as well as on current techniques and methods of money laundering. It attempts to cover all judgments and confiscation orders related to money laundering, but it also explains the different phases of the money laundering process; discusses the modus operandi of money laundering; problematic interpretation issues; as well as techniques and types of predicate offences. This publication, which is currently being updated, can be considered to constitute the most important part of the FIU's typologies.

In addition, the FIU has a public website providing guidance on suspicious transactions reporting. It is explained in which situations an STR must be submitted and it explains the protection against civil and criminal liability. The home page shows a list of the reporting parties, and provides links and instructions for different means for submitting STRs, including through electronic reporting.

FIN-FSA

Standard 2.4 on CDD applies to all entities supervised by the FIN-FSA (financial, securities and insurance sector, as well as payment service providers, including money remittance service providers). The *Standard 2.4 on CDD* contains binding regulations regarding CDD measures; other preventive measures under the *AML/CFT Act, 2008*; as well as prevention of market abuse. FIN-FSA also issued *Regulation 6.1 for the payment service providers*, which came into force on 1 June 2011.

On a regular basis, FIN-FSA issues its newsletter *Know your customer - prevent money laundering* for its supervised entities. It provides up-to-date information on current (EU) financial sanctions; FATF Public Statements and other related publications; and other relevant issues at stake, such as upcoming regulatory development projects. Moreover, FIN-FSA's website provides guidance and information on AML/CFT compliance issues and on (EU) financial sanctions regulations.

To complement its written guidance, FIN-FSA also arranges training on AML/CFT compliance issues for its supervised entities and FIN-FSA employees, but interested persons from self-regulatory organisations, police, the FIU, the Ministries of the Interior and Foreign Affairs can also take part in the training events.

Based on the information above, it can be concluded that deficiencies 1-3 are addressed.

R25 (Deficiency 4): No guidance has been issued which specifically addresses AML/CFT issues of relevance for the money exchange and remittance sector other than that which is provided by the FIU

Payment service providers, including money remittance businesses, are also supervised by FIN-FSA and the binding guidance (*Standard 2.4 on CDD*) and other FIN-FSA initiatives described above equally apply to these professions. In addition, *Standard 4.4b on Management of Operational Risk*

and *Standard 6.1 on Conduct of Payment Institutions and Persons Offering Payment Services without Authorisation* apply to the money remittance sector and payment service providers more generally. Payment services can only be provided with prior FIN-FSA authorisation or on the basis of other notification requirements to be fulfilled. With that in mind, FIN-FSA also issued guidelines for payment service providers which are not subject to prior authorisation, namely *Submitting Notification in Accordance with the Payment Institutions Act, with the Intention of Providing Payment Services without Authorisation*.

Money exchange service providers are supervised by the RSAA which publishes guidance via its website by providing links to relevant sites of the FIU and the FIN-FSA. The RSAA has produced separate guidance sites for the currency exchange and for TCSPs sectors (see deficiency 7 below). The guidelines for these two sectors cover: ML and TF STR reporting; CDD obligations, including identification of beneficial owners; evaluation of reliability, which is a condition for registration with the RSAA. The RSAA also directed currency exchange service providers to subscribe to the FIN-FSA's newsletter *Know your customer*.

This deficiency is fully addressed.

R25 (Deficiency 5-6-7): (5) No AML/CFT guidance is issued specifically for DNFBPs and only one publication (FIU Best Practices) has been issued as guidance on all obliged parties; (6) SRO best practices are not distributed to all in the accounting/legal sectors, as participation in SROs is voluntary; (7) TCSPs are not subject to any regulation or guidance dealers have no supervisor to provide them guidance other than the FIU Best Practices.

DNFBs in general

The RSAA has published a general guidance document *Guidelines for the supervised entities* directed at all parties under its supervision. Apart from the currency exchange sector (see above), all RSAA's supervised entities are DNFBPs. The guidelines cover the following areas 1) customer identification; 2) on-going monitoring of customer relationships; 3) STR reporting obligation; and 4) on-going employee training. The RSAA also directs its supervised entities to the *FIU Best Practises* as it considers that the information included in these *Best Practises* is also relevant for the sectors under its supervision.

Casinos

The National Police Board (NPB), the AML/CFT supervisor for casino and gaming activities other than those exploited by Casino PAF on the Åland Islands (these are the activities of the RAY Casino in Helsinki) has not yet produced its own guidelines. However, as part of its supervisory activities, the NPB worked with the RAY Casino to ensure that its internal guidelines are in line with its obligations under the AML/CFT Act, 2008. During on-site visits, supervisors from the NPB also brought the content of the *FIU Best Practices* and the FATF's *RBA Guidance for Casinos* and *Vulnerabilities of Casinos and Gaming Sector* to the attention of the relevant staff. On that basis, the RAY casino has issued internal instructions which have been approved by the NPB. These internal instructions cover the following topics: AML/CFT Act Provided Customer Identification in RAY's Gaming Halls and Restaurant Casino Games; Risk-based Assessment in RAY's Gaming Halls and Restaurant Casino Games; and Prevention of Money Laundering at RAY. The latter instructions

include guidelines for risk classification; verifying the identity of the customer; identifying PEPs; monitoring operations and training; secrecy; STR reporting; supervision; as well as the internal AML-related responsibilities and powers at RAY. As indicated above in relation to R.24, Casino PAF in the Åland Islands has issued its own internal AML/CFT guidelines: *Policy for Anti-Money Laundering and Anti-Terrorism Financing*. As mentioned above in relation to R.24-deficiency 3, the RAY Casino also issued corresponding internal guidelines.

Lawyers

The Finnish Bar Association produced a guidance document directed at practising lawyers: *Handbook on preventing money laundering and terrorism financing*. This guidance covers the main AML/CFT obligations of lawyers, in particular the situations in which they are subject to the *AML/CFT Act, 2008* and to the related reporting obligation. It explains: what constitutes money laundering and terrorist financing; professional secrecy; customer identification and third party customer identification; STR reporting and enhanced STR reporting; suspension and refusal of transactions; liability for damages; liability under criminal law; the obligation to establish the origin of funds; the functions of the FIU; and AML/CFT supervision by the Finnish Bar Association.

Trust and Company Service Providers (TCSPs)

As indicated above in relation to R.24, TCSPs are now registered with and supervised by the RSAA. The RSAA has issued guidance to TCSPs on its website (see deficiency 4 above). TCSPs also have access to the general *Guidelines for the Supervised Entities* issued by the RSAA as well as to the *Best Practices* by the FIU.

With the exception of the casino sector, competent DNFBP supervisors have issued AML/CFT guidance. As far as the casino sector is concerned, the competent supervisors have worked with the casinos to develop internal guidelines. On that basis, it can be concluded that deficiencies 5-7 are largely addressed.

RECOMMENDATION 25, OVERALL CONCLUSION

Since its mutual evaluation, Finland has made progress with regard to all seven deficiencies identified in relation to R.25. As a result, Finland's current level of compliance with R.25 is essentially equivalent to LC.

RECOMMENDATION 29 – RATED PC

R29 (Deficiency 1): The money remittance and currency exchange sectors are not adequately supervised for AML/CFT compliance by any supervisor, and are not subject to AML/CFT inspections

Based on section 31(1)-1, of the *AML/CFT Act, 2008*, payment service providers, including money remittance businesses, are currently supervised by FIN-FSA. Apart from the relevant provision in the AML/CFT Act, section 3(2)-5 of the *FIN-FSA Act* provides that FIN-FSA's supervisory duty also includes verification of compliance with AML/CFT provisions. Chapters 3 and 4 of the latter Act describe the supervisory powers and deal with administrative sanctions for non-compliance with

the Act. Money remittance businesses are also subject to FIN-FSA regulations and guidance, including *Standard 2.4 on CDD*.

Section 31(1)-7 of the *AML/CFT Act, 2008* designates the RSAA as the relevant supervisor in respect of parties referred to in section 2(1)-point 1, other than credit and financial institutions, and parties referred to in section 2(1)-3, other than investment firms. These include currency exchange service providers. Currency exchange service providers are required to register with the RSAA before starting their operations (section 27) and the RSAA shall also remove these entities from the register if they no longer meet the conditions for registration (section 30). The powers of the RSAA as a supervisor are discussed in relation to R.23 above. This deficiency is addressed.

R29 (Deficiency 2): The frequent use of the FSA (currently FIN-FSA) and ISA (currently also FIN-FSA) enforcement powers does not allow for meaningful assessment of their effectiveness

After the mutual evaluation in 2007, the FSA and the ISA have merged into FIN-FSA which now supervises the financial, securities and insurance sectors. The supervisory and sanctioning competences of FIN-FSA are similar for both the financial and insurance sectors. In accordance with the FIN-FSA Act, it may use a range of administrative sanctions including conditional imposition of a fine (section 33a); an administrative fine (section 38); a public warning (section 39); and penal payments (section 40). The FIN-FSA Act gives the following powers (rights) to FIN-FSA: the right to obtain and inspect information from supervised entities and other financial market participants (section 18); the right to obtain information from other persons (section 19); the right to obtain information from the register of fines and criminal records (section 20), the special right to information related to market abuse (section 21); the right to issue summons for hearing (section 22); the right to obtain information on an undertaking other than a supervised entity (section 23); the right of inspection (section 24); the right to withdraw a supervised entity's authorisation and order the termination of comparable business activities (section 26); the right to restrict a supervised entity's business activity (section 27) and to restrict management activities (section 28) for a specific period.

With regard to issuing sanctions, according to the FIN-FSA's sanctions policy, the threshold for issuing sanctions should not be too high nor should sanctions be the ultimate objective (on the condition that the same effect can be obtained through less stringent means such as advising and guiding). The revised *FIN-FSA Act*, which entered into force in January 2013, encourages the FIN-FSA to use its sanctioning powers more frequently (see also discussion with regard to R.23 above).

The nature of this review does not allow for an assessment of effectiveness of implementation, which deficiency 2 is mainly focused on. However, it should be recognised that Finland has taken important steps to significantly improve its supervisory work and related aspects and therefore, this deficiency can be considered to be addressed.

RECOMMENDATION 29, OVERALL CONCLUSION

Based on the analysis above, it can be concluded that Finland's current level of compliance with R.29 is essentially equivalent to LC.

RECOMMENDATION 30 – RATED PC

R30 (Deficiency 1): There is no AML/CFT supervisor for the money remittance and currency exchange sectors

This deficiency is addressed – see discussion regarding deficiency 1 in relation to R.29 above.

R30 (Deficiency 2): It is not clear to what extent all supervisory employees are subject to background checks for appropriate integrity and confidentiality controls

Finnish authorities report that the recruitment requirements for persons employed by the Finnish government authorities are quite rigorous and are often included in law, what generally increases the overall level of integrity. In addition, the Finnish Constitution contains the following general conditions for appointments of civil servants: proficiency, ability, and proven civil fitness. The general requirements for qualification for an office are contained in *Act on the State Officials*, *1994*, which applies to all government employees. In addition, there are also special requirements for the relevant position (office) to be filled and these are usually defined by Act or Decree (for example, degrees or amount of experience).

As explained in relation to R.15 (deficiency 4), the *Act on Background Checks, 2002* (177/2002) provides a possibility for state public authorities and independent state institutions (as well as certain private entities) to apply for background checks to be carried out on their personnel. The background checks can be based on information from the criminal records; the data system of the Police (containing information on, for instance, pending investigations); the data systems on pending or closed criminal prosecutions; the Register on Bans on Business Operations; and the Population Information System. The possibility for a background check on employees is widely used by Finnish public authorities; especially by those whose work or functions include handling of sensitive material, including AML/CFT related information. FIN-FSA; the Finnish Police, including the FIU (the Finnish FIU is a law enforcement FIU); and the Ministries systematically conduct background checks on their personnel – including those involved in AML matters – in view of ensuring their integrity before being recruited. Whether a basic or wider background check is carried out depends on the position and tasks of the employee in question. Also, the RSAA is currently conducting assessments into adopting the use of background checks in respect of employees with supervisory tasks of certain entrepreneurial entities.

Based on the information above, it can be concluded that this deficiency is addressed.

R30 (Deficiency 3 and 4): There is a need for more staff in the FIU, and in particular, persons who should focus on enhancing cooperation with institutions and persons currently not disclosing, to develop more detailed feedback, and to conduct ML/TF typologies development; and There is a need to raise the awareness of the pre-trial investigation and prosecuting authorities to ML and TF issues through more resources dedicated to producing guidance and typologies

There has been an overall reform of the administration of the Finnish Police in 2010, which also affected the National Bureau of Investigation (NBI) and the FIU. At the time of the mutual evaluation in 2007, the number of FIU staff was 29. In 2010, the FIU became part of the NBI Criminal

Intelligence Department, which functions as the main national centre for intelligence regarding organised and serious crime. At the same time, the economic crime intelligence unit was attached to the FIU, but its functions remain explicitly separated from the FIU's core functions, namely by keeping their own original tasks, such as ARO; Carin (Camden Asset Recovery Inter-Agency Network); STAR (Stolen Assets Recovery); tracing criminal assets; and coordinating of corruption intelligence and business prohibition. As a result, the total number of FIU staff as on 1 October 2012 is 35 persons.

The FIU cooperates on a continuous basis with AML/CFT supervisors and other competent authorities such as the prosecution service. The FIU is also an active provider of AML/CFT related training to all the stakeholders (designated supervisors, parties subject to the reporting obligation, prosecution service, and other officials as well as private entities involved in AML/CFT matters). Finnish authorities report that training sessions provide for an excellent forum for feedback and discussion. In addition, as explained above, the FIU continues to work on updating the *FIU Best Practices* and *Best Practices in Preventing Money Laundering* and *Money Laundering Offences in Legal Praxis* and these guidance documents are the result of close cooperation between the FIU and other stakeholders, including pre-trial investigation and prosecution services.

While the number of FIU staff has not significantly increased, the FIU structure was changed. Finnish authorities did not report on the scope and exact nature of these changes. This being said, the institutional changes seem to have provided for resources to focus the FIU's attention on areas of importance, as identified in the MER (see description in the deficiency above). On that basis, it can be concluded that deficiencies 3 and 4 have been addressed.

R30 (Deficiency 5): The current database of the FIU does not provide all functionality needed, particularly for analysis purposes and typologies development

The FIU has completed its project aimed at developing a new database and analysis tool and this system, GoAML, became operational on 1 January 2012. GoAML has been specifically designed for FIUs (by the UNODC-GPML) with the purpose of creating a system to serve AML work and financial analysis. Finnish authorities report that GoAML offers a wide range of possibilities for storing highly detailed transactional data. It also significantly facilitates the analysis of data; enables better follow-up of STRs received; facilitates the development of typologies (see also discussion in relation to R.25 above); and it allows for detailed statistics. To be able to fully use the possibilities offered by the system, the requirements for the quality of the data received are high, and these requirements are not yet fully met in Finland. The reason for this is that the FIU lacks the power to regulate the data format or contents of STRs. However, even with the current data format, the GoAML user interface alone allows for much more detailed data searches and queries in comparison with the previous data system. Apart from this important improvement, Finnish authorities also report that a new analysis data base (data warehouse) is currently being developed in order to enable the FIU to fully use all the functionalities of GoAML. Finland has taken significant measures to address this deficiency.

RECOMMENDATION 30, OVERALL CONCLUSION

Finland has taken important steps to address the deficiencies identified in relation to R.30 and the level of compliance of this Recommendation is now essentially equivalent to LC.

RECOMMENDATION 32 – RATED PC

R32 (Deficiency 1 and 2): No statistics on formal requests to/from the supervisory authorities R32 and No statistics are maintained on spontaneous referrals made by the FIU to foreign authorities

Finnish authorities report that formal requests for information internationally mainly take place at the level of the FIU and FIN-FSA. Both the FIU and FIN-FSA compile statistics regarding information exchange between them and foreign law enforcement agencies/FIUs (the Finnish FIU is a law enforcement type FIU) and supervisory authorities respectively. The FIU is also responsible for the cooperation and exchange of information with foreign public authorities and international organisations involved in preventing money laundering and terrorist financing more generally. The information exchange takes place based on the following legal provisions: section 35(1)-3 of the *AML/CFT Act, 2008* for the FIU and Chapter 6 of the *FIN-FSA Act* for FIN-FSA.

According to Finnish authorities, the FIU has been an active developer and promoter in the FIU.Net project, which provides a direct, encrypted on-line tool for the exchange of information between the FIUs of EU member states. In addition, the FIU has signed 24 bilateral Memorandums of Understanding (MOUs) with counterpart FIUs that need them based on their domestic legislation. The FIU also makes use of the Egmont Secure Web (ESW) system for the purposes of AML/CFT related information exchange.

The table below contains statistics regarding formal information requests by foreign authorities to/from FIN-FSA and the FIU respectively.

Table 4. **Statistics regarding formal information requests by foreign authorities**

	FIN-FSA - information requests		FIU - information requests	
Year	Outgoing	Incoming	Outgoing	Incoming
2008	5	4	189	67
2009	5	3	379	43
2010	5	8	312	96
2011	5	3	97	59
2012	4	4	143	73

It should be noted that the FIU statistics are not detailed enough to determine with which parties the FIU exchanged information, especially given the FIU's broad authority for AML/CFT information exchange. Since the first deficiency identified in the MER only related to FIN-FSA, it can be considered to be addressed. However, Finnish authorities are encouraged to keep more detailed statistics for information exchange at the FIU level.

Finnish authorities further clarify that the FIU engages in many forms of international cooperation, including spontaneous information exchange. While spontaneous referrals to foreign authorities are also recorded by the FIU, they were not included in statistics prior to the implementation of the new database tool "Go AML" in early 2012 (see deficiency 5 in relation to R.30 above). As a result, while Finnish authorities have taken steps to improve the quality of their statistics through the implementation of a new database and data management system, the second deficiency is not yet addressed.

R32 (Deficiency 3): The FIU only produces limited statistics and should also keep statistics about the follow-up of the STRs referred for pre-trial investigation

The FIU publishes its statistics in its Annual Reports and Finnish authorities indicate that they contain a range of information, including STRS received. While the FIU has no information on the number of STRs that result in a pre-trial investigation, the FIU keeps statistics regarding the number of STRs it discloses to pre-trial investigative authorities. This information is set out in the table below. In addition, the FIU also keeps information regarding the number of STRs leading to or being used in criminal investigations.

Table 5. **Number of STRs disclosed to pre-trial investigative authorities**

(Annual Report 2011: Figure 5 Information for 2012 will be provided later with the FIU Annual report, once translated.)	2007	2008	2009	2010	2011
Suspicious transaction Reports	17 370	22 752	27 781	21 454	28 364
Information disclosures for pre-trial investigation	2 548	1 700	2 702	3 636	2 709

Starting from 2012, the FIU keeps its statistics in a different format. Detailed statistics regarding the number of STRs received and disclosed can be found in Chapters 2 and 3 of the FIU's Annual Report 2012.

The FIU's Annual Report also contains numbers of the respective offences in information disclosures for pre-trial investigation (see table below). In the majority of the cases, the FIU's information disclosures to pre-trial investigative authorities relate to financial crime. On average, 8% of the information disclosed for pre-investigation relates to the money laundering offence. Again, the fact that the FIU discloses information for other purposes than combating money laundering can be explained by the fact that Finland has a law enforcement type FIU.

Table 6. **Offences identified in FIU disclosures to pre-investigative authorities**

	2009	2010	2011	2011 %	1994-2011	1994-2011 %
Money laundering	159	27	55	2 %	1 280	8.2 %
Financial crime	1 006	905	1 791	66.1 %	7 782	49.3 %
Narcotics offence	269	327	199	7.4 %	1 482	9.3 %
Other	1 268	2 377	664	24.5 %	5 244	33.2 %
Total	2 702	3 636	2 709	100 %	15 788	100 %

Deficiency 3 can be considered to be addressed.

R32 (Deficiency 4): The statistics to be developed should be used for the analysis of the performance of the FIU and should therefore be shared with partners on a national level

The FIU publishes a wide range of statistics on its website and, as explained above, it is in the process of further improving its statistics. Since the FIU is part of the National Bureau of Investigation (NBI) within the Finnish Police, its performance is assessed annually as part of its resource negotiations. Finnish authorities report that the FIU's cooperation with other domestic authorities, including investigative and prosecution authorities, is generally considered to be effective and working well. Finland did not provide further details to support this statement. Nevertheless, it appears that this deficiency is addressed.

R32 (Deficiency 5): No statistics are kept with regard to the informal (not on the basis of MLA) exchange of information between the Finnish LEA and foreign LEAs

With regard to this deficiency, Finnish authorities point to the information exchange by the FIU (which is a law enforcement type FIU) discussed in the context of deficiency 1. However, the deficiency identified at the time of the MER related to law enforcement agencies in charge of money laundering pre-trial and other investigations. It is not clear if and to what extent this kind of information exchange is also included in the FIU statistics. If it is included in the FIU statistics, then this reinforces the need for the Finnish authorities to focus their efforts on more detailed statistics. As a result, this deficiency is not yet addressed.

R32 (Deficiency 6): Statistics on ML/TF investigations and on property frozen, seized and confiscated are not comprehensive

Statistics on frozen, seized or confiscated property as well as statistics on pressed charges and decisions on non-prosecution in money laundering and terrorist financing cases are included in the tables below.

Table 7. **Frozen, seized and confiscated property in money laundering and terrorist financing cases**

	2008	2009	2010	2011	2012
Number of cases	43	11	28	10	14
Frozen funds (Euro)	6 197 957	1 816 772	2 888 228	560 806	9 797 820
Property recovered by the authorities by freezing	5 965 974	1 372 290	401 990	410 274	3 789 133

Table 8. **Judicial follow-up of money laundering cases per type of ML offence**

		2011	2012
Money laundering 32: 6(1)	Pressed charges	10	13
	Decisions of non-prosecution	8	4
Attempted ML 32: 6(2)	Pressed charges	2	-
	Decisions of non-prosecution	1	-
Aggravated ML 32: 7(1)	Pressed charges	23	27
	Decisions of non-prosecution	5	3
Attempt of aggravated ML 32: 7(2)	Pressed charges	-	-
	Decisions of non-prosecution	-	-
Conspiracy for the commission of aggravated ML 32: 8	Pressed charges	-	-
	Decisions of non-prosecution	-	-
Negligent ML 32: 9	Pressed charges	1	3
	Decisions of non-prosecution	-	-
ML violation 32:10	Pressed charges	-	-
	Decisions of non-prosecution	-	-

This deficiency is addressed.

R32 (Deficiency 7): The effectiveness of the preventative AML/CFT system is not reviewed

Finnish authorities provided an overview of indicators which can be combined to give a general impression of the effectiveness of the Finnish AML/CFT system: for example, the number of STRs; the number of money laundering convictions; the amount of property confiscated and the recovered proceeds of crime. This information is publicly available in the FIU's Annual Reports, the FIU's study on *Money Laundering Offences in Legal Praxis*, and other relevant central databases containing statistics (Statistics Finland). Statistics Finland is a public authority which has specifically been established for the purposes of collecting statistics, and it maintains, for example, the statistics on to criminal convictions and decisions on (non-) prosecution. The Annual Reports contain rather quantitative information while the *Money laundering offences* study provides information which is more qualitative in nature.

In addition, the FATF working group (Finland's national AML/CFT coordination mechanism) continuously reviews and assesses the functioning of the Finnish AML/CFT system. The working group is an inter-agency actor which includes the relevant public authorities from different sectors,

such as the relevant Ministries, the supervisory authorities, the FIU and other competent AML/CFT actors and meets several times a year (see also section III above).

Moreover, for the specific purpose of preventing AML and CFT, Finland has established separate programmes for combating economic crime and black economy as well as counter-terrorism. In January 2012, the Government adopted the sixth consecutive Action Plan for combating economic crime and black economy, which includes planned measures to foster information exchange between the domestic authorities in order to improve efforts to combat these phenomena and to better enable the authorities' use of AML information. In addition, the National counter-terrorism strategy was adopted in 2010. Even though these programmes do not solely focus on AML and CFT, they provide for a framework for on-going assessment of measures taken and systemic improvements. For example, the situational report on economic crimes in Finland, which is published four times a year, contains statistics on economic crimes in general, including information on investigations and proceeds of crimes.

This deficiency can be considered to be addressed.

RECOMMENDATION 32, OVERALL CONCLUSION

Since its mutual evaluation in 2007, Finland has taken many initiatives to improve its compliance with R.32 and the current level of compliance is now essentially equivalent to LC.

RECOMMENDATION 33 – RATED PC

R33 (Deficiency 1 and 2): There are no requirements for legal persons to keep or make available information on beneficial ownership or control, and There are limited requirements for legal persons to submit updated information to the trade register

Companies in Finland are formed pursuant to the *Limited Liability Companies Act, 2006*. There are two types of limited liability companies: private companies and public companies. Based on section 8(1) of the Act, both private and public companies are subject to mandatory registration with the National Board of Patents and Registration of Finland (NBPRF) within 3 months from the date of signing the articles of association. The names of the founding shareholders must be recorded in the articles of association and submitted to the NBPRF. While subsequent changes to the share ownerships do not need to be reported to the NBPRF, this information must be provided to the tax authority or be kept by the company or a custodian. However, there does not appear to be a requirement to record beneficial ownership information of founding shareholders.

Shares of companies may be issued either in book-entry form or in the form of share certificates. There are currently 168 companies in Finland with shares issued in book-entry form, of which 134 are publicly traded. All publicly traded companies must maintain their shares in book-entry form. There are also other reasons for companies to maintain shares in the book-entry system. For instance, by having shares electronically registered in the book-entry system, the company will have access to up-to-date shareholder information and allows an efficient management of ownership changes and dividend distributions.

In Finland, shares issued in book-entry form are maintained in a computerised shareholder register kept by the central securities depository (CSD). Euroclear Finland is the CSD of Finland and holds

the register for shares and debt securities traded in the Finnish financial markets. Pursuant to the *Limited Liability Companies Act, 2006*, the shareholder register maintained by the CSD must contain the name of the shareholder (or the nominee, in case of nominee ownership), the shareholder's (or nominee's) personal identity code, contact details, payment address, taxation information, the quantity of shares by share class and the account operator maintaining the book-entry account. The information required to be kept does not seem to extent to beneficial ownership information.

Section 2 of the *Partnership Act, 1988* indicates that a partnership needs to be entered in the Trade Register maintained by NBPRF and governed by the *Trade Register Act, 1979*. The *Trade Register Act* provides that where the partner is an individual, the name; address; identity number; date of birth and nationality have to be provided and where the partner is a legal person, the company's identification number needs to be submitted. These requirements do not focus on beneficial ownership information. As the partners are registered in the Trade Register, partnerships are required to notify the Trade Register if there are any changes to the composition of the partners of the partnership.

With regard to availability of beneficial ownership information, Finland refers to the CDD requirements, including detailed beneficial ownership requirements, as set out in relation to R.5 and R.12 above. The requirement to identify beneficial owners is based directly on the provisions of section 7 of the *AML/CFT Act, 2008*.

Finnish authorities also refer to requirements in tax legislation regarding availability of beneficial ownership information. Under section 7 of the *Act on Assessment Procedure, 1995*, all private and public companies are required to submit a tax return to the Finnish Tax Authority. Section 10 of the Act provides that the Tax Authority will publish precise information detailing the information that must be provided in the tax return by each type of taxpayers. The tax return for companies must include among other particulars, information on the names, business IDs or personal identity codes and the number of shares held by each shareholder which owns at least 10% of all shares of the company. The same information is also required to be provided in relation to every shareholder if the company has less than 10 shareholders. However, the requirements for tax purposes do not seem to extend to beneficial ownership information either.

Although there are transparency requirements for Finnish legal persons under the CDD requirements described in relation to R.5, information on the ultimate beneficial owners is not accessible and/or up-to-date in all cases. Apart from the progress made with regard to beneficial ownership requirements as part of the larger CDD requirements, Finnish authorities have not taken any other measures to address the two deficiencies regarding beneficial ownership information identified with regard to R.33.

R33 (Deficiency 3): Requirements that limited liability companies maintain share registers and shareholder registers are not supervised

The information provided by Finland confirms that there is no public authority in charge of supervision of share and shareholder registers kept by limited liability companies. Consequently, deficiency 3 remains unaddressed.

RECOMMENDATION 33, OVERALL CONCLUSION

Finland relies on strengthened beneficial ownership requirements as part of the general CDD requirements under R.5 and R.12 but it cannot be determined that information on the ultimate beneficial owners is accessible and/or up-to-date in all cases. Consequently, Finland's current level of compliance with R.33 is not yet equivalent to LC.

SPECIAL RECOMMENDATION VI – RATED PC

Deficiency 1: Remittance services are obliged parties under the AML/CFT Act and are thus subject to the same limitations in the scope of those obligations as the other obliged parties.

This deficiency is mostly addressed. See detailed discussion regarding relevant Recommendations above.

Deficiency 2: Remittance services are not required to develop internal controls (R.15).

This deficiency is addressed. See detailed discussion with regard to R.15 above.

Deficiency 3: There is a registration system but no supervision of this sector and therefore no inspections are conducted (R.23) of these businesses.

This deficiency is addressed. See detailed discussion with regard to the provisions of R.15 and R.23 above; insofar they apply to money remittance businesses.

Deficiency 4: Remittance services are subject only to criminal sanctions (R.17).

This deficiency is addressed. See detailed discussion with regard to administrative sanctions under R.17 above.

Deficiency 5: Effectiveness of the STR reporting obligation cannot be fully ascertained as there is no breakdown of STRs submitted by each money remittance business in Finland

Finland reports that this information is confidential. More generally, it should be noted that the scope for assessing effectiveness when analysing the information submitted is limited anyway.

SPECIAL RECOMMENDATION VI, OVERALL CONCLUSION

Given that with one exception all technical deficiencies are at least mostly addressed, Finland's current level of compliance with SR.VI is essentially equivalent to LC.

SPECIAL RECOMMENDATION VII - RATED PC

SRVII (Deficiency 1): The provisions relating to originator information for wire transfers within the EU (classified as domestic transfers) is not in compliance with the FATF requirements under SR.VII.

This deficiency is no longer relevant since the FATF decided at its June 2007 plenary meeting to further consider this subject and accepted a supranational approach in respect of the EU member

states (Methodology, update as of February 2009). *The Regulation (EC) No 1781/2006 on information on the payer accompanying transfers of funds* has been in force since 1 January 2007. The regulation implements SR.VII on an EU-wide basis and is directly applicable in all EU member states. According to that Regulation, transfers of funds within the European Union are treated as domestic payments where complete originator information is not always required. In respect of such "domestic"[6] payments, it is required that the account number of the payer or a unique identifier accompany transfers of funds, although complete information must also be made available to the payment service provider of the payee upon request.

SRVII Deficiency 2: There is no obligation in Finland for institutions to maintain address details, thus leading to incomplete identification procedures relating to wire transfers.

Regulation (EC) No 1781/2006, Article 4, specifies that complete information on the payer include the payer's name, address and account number and requires that the complete information accompanies the payment or is readily available for the payee's payment service provider. Article 5 of the Regulation requires that payment service providers ensure that transfers are accompanied by complete information on the payer, that the information is verified, and that records are kept for five years. With transfers of funds not made from an account, the payer information shall be verified where the amount, in single or connected transactions, exceeds EUR 1 000. With a transfer from an account, it is sufficient that the payer's identity has been verified and the information stored appropriately in connection with the opening of the account.

Address information is verified in Finland from the customer or from the Finnish Population Information System. It is a government-owned national IT register that contains basic information on Finnish citizens and foreign citizens residing permanently in Finland. Personal data recorded in the system include the name, personal identity code, address, citizenship and native language, family relations and date of birth and death. The Population Information System is the most used basic register in Finland. Registration of information is based on statutory notifications made by private individuals and public authorities. The information in the system is used throughout public information services and management, including in public administration, elections, taxation, judicial administration, research and statistics. Businesses and other private organisations may also get information from the system. Finnish authorities report that financial and insurance entities already updated for years their customers' address information directly from the Population Information System. It should be noted however that address details of foreign customers not residing in Finland are not included in this database and that there is no specific requirement in the *AML/CFT Act, 2008* or *Standard 2.4 on CDD* to request and maintain address information. Consequently, it remains unclear if the money remittance businesses fully comply with this requirement.

SRVII (Deficiency 3): There are no provisions on penalties applicable to infringements of the wire transfer requirements for the money remittance sector

For a detailed explanation on the applicable penalties, see the analysis regarding R.17 above.

[6] FATF SR.VII Interpretative Note, Definitions c) Domestic transfer also refers to transfers within the European Union.

The penalties available to FIN-FSA are also applicable in cases of infringements of the wire transfer requirements and these include a range of administrative sanctions. Those penalties are provided for in the *FIN-FSA Act, 2009* as well as in the *Act on Payment Institutions, 2010*. Based on the *FIN-FSA Act, 2009*, the supervisory authority may impose administrative sanctions if the payment service provider fails in its activities to comply with the provisions governing financial markets, or the regulations issued under those provisions, or fails to comply with the terms of its authorisation or the rules applicable to its operations. This deficiency is addressed.

SPECIAL RECOMMENDATION VII, OVERALL CONCLUSION

Based on the analysis above, Finland's current level of technical compliance with SR.VII is essentially equivalent to LC.

SPECIAL RECOMMENDATION VIII – RATED PC

SRVIII (Deficiency 1): There has been no review of the NPO sector and no identification of its vulnerabilities for terrorist financing

Prevention and countering of terrorism offences is the duty of the Finnish Security Intelligence Service (FSIS). The FSIS cooperates with other Finnish authorities, especially the National Bureau of Investigation (NBI), and in the field of counterterrorism, it also has international cooperation with other security services. The FSIS makes threat assessments on the terrorism situation in Finland and closely follows any possible changes to this situation.

The FSIS's threat-assessments form the basis for defining more extensive measures by the authorities in addition to situation-specific security measures. When assessing the threats and risks of terrorism, all relevant aspects of the society are considered and the sector-specific risks studied. Finnish authorities report that the threat assessments give due consideration to the NPO sector and related TF risks. The FSIS conducts threat-assessments on terrorism at regular intervals and forwards its assessment reports to other relevant bodies, including the FIU. The FIU then makes use of the findings of the assessment in its own activities, especially in the prevention and countering of terrorism financing.

In addition, from 2006 to 2008, the Finnish Tax Administration conducted a review of the associations' and foundations' activities, income and paid taxes. The project was set up for the purposes to clarify the state of play of oversight in the sector and to identify possible challenges and needs for improvement. Also, the project aimed at increasing knowledge on the sector, improving cooperation with the National Board of Patents and Registration of Finland (NBPRF) and studying the fulfilling of tax duties by the sector. Since the project was completed, regular inspections and counselling in taxation related matters for associations and foundations continues to be conducted by the Tax Administration. The targets for inspections are selected on a random basis as well as based on hints from other authorities and/or from the civil society.

While Finland considers the risks posed by NPOs for its TF threat assessments and reviews compliance of NPOs with fiscal obligations, it appears that no specific review of the NPO sector, as required by c.VIII.1, was carried out (for example, review of the adequacy of domestic laws and regulations that relate to NPOs; specific domestic reviews or timely access to information of the

activities, size and other relevant features of the NPO sector). As a result, this deficiency is not addressed.

SRVIII (Deficiency 2): No inspections are conducted of the NPO sector

Finland reports that the NPOs which are registered with the NBPRF are subject to annual accounting and auditing requirements under the law. As a result, any use of funds through bank accounts by these NPOs is subject to monitoring. In addition, any collection of funds requires a money collection permit, with a few strictly limited exceptions provided for by law (including, in particular, collection of funds for schools or hobbies or in public meetings held in closed premises). Only registered NPOs would be granted a money collection permit. Each NPO that has been issued such a permit, must submit a report to the issuer of the permit for approval, upon termination of the collection. The National Police Board (at that time, the Ministry of Interior) started at the beginning of 2009 to carry out inspections of money collections to ensure compliance with the *Money Collection Act* and the *Government Decree on Money Collections*. Those inspections are targeted at large-scale money collections. Furthermore, where the police observe unlawful money collections, such activities would be reported as a criminal offence. While Finland needs to be commended for this initiative, the inspections of the NPO sector focus only on those NPOs which were granted a money collection permit based on the provisions in the aforementioned Act and Government Decree. This kind of inspections does not comply with the detailed requirements of c.VIII.3 which requires countries to demonstrate that concrete steps have been taken to promote effective supervision or monitoring of those NPOs which account (1) for a significant portion of the financial resources under control of the sector; and (2) a substantial share of the sector's international activities. Consequently, it can be concluded that this deficiency has not yet been addressed either.

SRVIII (Deficiency 3): Information is only obtained on those NPOs which are registered and an unknown number of NPOs are not registered with authorities

Finnish authorities point to the fact that unregistered associations (or foundations) do not have legal personality and, consequently, cannot establish permanent customer relationships or otherwise own property, nor hold bank accounts. The authorities are of the view that unregistered NPOs would have a limited capacity to launder money or finance any activities in the name of such an NPO. They further clarify that individual persons who are members of unregistered NPOs would, as persons holding bank accounts, be subject to the CDD procedures of financial institutions. However, there are several studies, including on typologies, which describe how NPOs, especially unregistered ones, are exploited for terrorist financing. Based on the information provided by Finland, it appears that no action has been taken in view of addressing the deficiency identified in the MER.

SRVIII (Deficiency 4): The many authorities which have some information on NPOs do not share this information

In 2010, the Finish Ministry of Interior prepared a National Counter-Terrorism Strategy and, in that context, a broad-based counter-terrorism working group was set up. The working group is composed of representatives from a variety of public offices: the Prime Minister's Office, the

Ministries of Justice, Social Affairs and Health, Defence, Education and Culture, Transport and Communications, as well as Foreign Affairs; the Departments for Police, Rescue Services and Migration of the Ministry of the Interior, Office of the Prosecutor General, Finnish Immigration Service, Maintenance and Supply Security Centre, Radiation and Nuclear Safety Authority, National Bureau of Investigation, Finnish Security Intelligence Service, Helsinki Police Department, Customs, Defence Command (of the Finnish Defence Forces), Finnish Border Guard, and the National Police Board. The working group's tasks include, for example, coordinating cooperation between authorities for terrorism-related issues; and making use of expert networks of different authorities in combating terrorism. The group meets four to five times a year. Finnish authorities report that to allow the working group to conduct its work effectively and to maintain a high level of integrity, no documents are drafted prior or after the meetings, and no representatives of the non-profit/private sector take part in its work. However, the group interacts in two-ways: (1) the working group can obtain relevant information regarding the NPO sector from the respective authorities taking part in its work, and (2) information can be communicated to a given sector, if needed.

In June 2012, the Finnish Government adopted the third Internal Security Programme. The measures set out in this Programme are divided in seven topics including the prevention of violent extremism and the improvement of business security. The working group on preventing violent extremism published a 30-page leaflet (available on the internet) on the phenomenon and how it can be prevented. The working group decided to establish one national and four local cooperation networks which consist of all relevant actors from the NPO, public and private sectors for preparing preventive measures and spreading information and best practices. The networks started their work in 2012, and they are intended to be permanent cooperation mechanisms. To ensure the effective functioning of these mechanisms, a coordination working was set up.

Via the initiatives described above, Finland has addressed deficiency 4.

SRVIII (Deficiency 5): Authorities do not conduct outreach or provide guidance on terrorist financing to the NPO sector

In 2009, the NPB, in cooperation with other relevant actors, published the report *The Financing of Terrorism and Non-Profit Organisations*, which addresses the topic of terrorism funding through the NPO sector and is targeted at the different non-profit organisations and associations to increase their attention to this phenomenon in the course of their fund-raising activities. It also contains the contact details of relevant public authorities in these matters. In addition, the NPB has also published guidelines on how to apply for a money collection permit; what are the conditions for organising money collections; how to proceed with the rendering of accounts. Furthermore, the NBPRF provides guidelines regarding the associations and foundations registers on its website. It appears that Finland has taken several successful initiatives in view of addressing this deficiency.

SRVIII (Deficiency 6): The system for obtaining information on NPOs is weakened by the overall lack of measures in Finland to record and obtain information on beneficial ownership

The outcome of the discussion with regard to deficiency 1 in relation to R.33 above, is equally applicable to the NPO sector and it cannot be ensured that information on the ultimate beneficial owners in relation to NPOs is accessible and/or up-to-date in all cases

SPECIAL RECOMMENDATION VIII, OVERALL CONCLUSION

While Finland has taken action to address some of the deficiencies described above, its current level of compliance with SR.VIII is still at PC.

SPECIAL RECOMMENDATION IX – RATED PC

SRIX (Deficiency 1): Measures are very new, coming into force almost two months after the date of this assessment and thus it is too early to ascertain the effectiveness of this system

The *Act on the controls of cash entering or leaving the European Community* to complement the provisions of the *EU Council Regulation 1889/2005* came into force on 15 June 2007, six weeks after the mutual evaluation on-site visit. This justified the formulation of the following shortcoming: "*Measures are very new; entering into force almost two months after the date of the assessment and thus it is too early to ascertain the effectiveness of this system.*" Finland has now provided detailed statistics regarding the cash declarations and the related violations for the period 2007-2012.

Table 9. **Cash declarations and related violations**

	2007	2008	2009	2010	2011	2012
Cash declarations	162	260	181	189	341	404
Cases of infringements	4	16	4	15	16	37

The total amount of cash that was carried across borders and declared has significantly increased: the amount was EUR 7 516 431 in 2010; EUR 16 158 118 in 2011; and EUR 24 580 929 in 2012.

Finnish authorities also report that Customs make use of the EU's common warning systems, such as the Risk Information Form (RIF) and the Mutual Assistance Broker (MAB). These systems enable Customs to exchange information with other EU member states and to notify them of suspicious activities and related investigations. In addition, Finland reports that Customs cooperate with other authorities both in Finland and abroad. An example of domestic cooperation is the PCB cooperation (a coordinated approach by Police; Customs; and Border Guard – referred to as the PCB authorities). The initial PCB cooperation was already referred to in section 6.1 of the MER but was further intensified on the basis of the *Act on Cooperation between the Police, Customs and the Border Guard, 2009*, which entered into force on 1 January 2010. The current PCB cooperation is mainly focussed on criminal intelligence in connection with serious and cross-border crimes and also involves a mechanism to comply with the requirements of SR.IX. In addition, authorities underline that the cooperation between Customs and the FIU has been further strengthened via the cross border declaration system and that an automatic information exchange system to allow for the transfer of all data on cash declarations to the FIU is in place.

The international cooperation with regard to SR.IX is conducted both on a mutual basis and within the framework of the EU and its *Regulation (515/97) on Mutual Assistance*. In addition to information exchange on a case-by-case basis, information concerning persons carrying undeclared cash is exchanged with other countries. Finally, the EU FIUs have direct access to the MAB interface

(see above), which enables them to collect information regarding cash declarations in other EU member states.

Finally, Customs provided it officers with relevant training before the EU Regulation and the complementing national legislation came into force. General awareness raising has been accomplished through a joint publicity campaign with the EU and the cash declaration form is available on the Customs' public website. Based on the information set out in this paragraph and the paragraphs above, it can be concluded that since the adoption of its MER, Finland has addressed deficiency 1.

SRIX (Deficiency 2): The EU Regulation and relevant national legislation do not cover the transfer of cash or bearer negotiable instruments between Finland and another EU member state

The second deficiency related to the fact that the transfer of cash and bearer negotiable instruments between Finland and other EU member states is not covered by the EU Regulation or the complementing national legislation. Finnish authorities refer in this regard to the concept of the EU as a supranational jurisdiction. This being said, Finland reports that it is currently considering widening the scope of the obligation to declare cash transported over the border to include also internal borders of the EU. The question is included in the national 6th Action Plan to combat economic crime and black economy for the years 2012 to 2015. The management group for the fight against economic crimes, involved in the preparation and monitoring of the implementation of the Action Plan, consists of representatives from different ministries and agencies. A concrete timetable and details of the project are not yet known.

SPECIAL RECOMMENDATION IX, OVERALL CONCLUSION

Based on the information set out above, it can be concluded that Finland's current level of compliance with SR.IX is essentially equivalent to LC.

FATF Secretariat