Finantsinspektsioon

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DECISION OF THE MANAGEMENT BOARD

Tallinn 18 March 2020

Precept to Swedbank AS on a request to bring their practice into line with the legislation regulating the activity of credit institutions

1. FACTUAL CIRCUMSTANCES

1.1. General information and facts regarding the precept

1.1.1. Swedbank AS (registry code 10060701, address Liivalaia 8, Tallinn 15040; hereinafter *Swedbank)* is a credit institution that has a right to provide financial services in Estonia within the scope stated on the website of Finantsinspektsioon.

1.1.2. During the period from 1 January 2014 to 31 December 2018, Finantsinspektsioon has carried out 13 supervisory actions in Swedbank, 9 of them off-site inspections and 4 inquiries. Two of the four inquiries pertained to issues regarding services to non-residents (respective inquiries on 9 February 2015 and 31 August 2015) and two had to do with the measures Swedbank is taking towards clients who have higher than average risk of money laundering and terrorist financing (inquiries on 20 March 2017 and 24 October 2018, respectively). Two out of the nine off-site inspections pertained to questionnaires covering the entire banking market on the potential connection of banks with the Panama Papers, i.e. law firm Mossack Fonseca (inquiry on 12 April 2016), and the case of the so-called Russian Laundromat (inquiry on 5 April 2017).

After a longer supervisory dialogue containing several meetings between Finantsinspektsioon and Swedbank, discussing, *inter alia*, the above-mentioned inquiries, Swedbank gave the following reply on 12 April 2017 to Finantsinspektsioon's 20 March 2017 inquiry (the following text is a summary because the reply was given in English): starting from the beginning of 2016, Swedbank initiated a reviewing process of its non-local or non-resident clients. Based on a series of decisions taken since March 2016, the Management of Swedbank has restricted and reduced this business segment. The number of high-risk non-resident clients will be reduced from approximately 720 to 80 by the end of the second quarter of 2017 and the volume of deposits of these clients will be reduced from approximately 10% to 1%. Swedbank also confirmed that in addition to reducing the non-resident segment, the measures decided

Sakala 4, Tallinn
15030 Eesti / Estonia
T: +372 668 0500
E: info@fi.ee
www.fi.ee

by the Management Board include actions to improve the control measures for the prevention of money laundering.

According to the agreement reached at the 28 June 2017 meeting between Swedbank and Finantsinspektsioon, Swedbank submitted an addition on 11 July 2017 to its letter from 12 April 2017 in which it provided an overview of the developments related to the actions promised in the abovementioned letter (the following is, again, a summary since the reply was in English). *Inter alia*, Swedbank noted that the number of high-risk[1] non-resident clients was 82 by the end of the second quarter and the volume of their deposits has decreased from 10% to 0.18%. The number of high-risk non-resident clients will not rise over 100 according to Swedbank's confirmation, and they will be, for instance, foreign embassies, institutional investment funds, companies investing in Estonia or investors residing in Estonia who wish to invest abroad. Swedbank also gave an overview of seven courses of action concerning significant improvements to the organisational solution of the prevention of money laundering and terrorist financing, involving, *inter alia*, improvements to IT systems, significant relocation of functions within the structure, enhancement of trainings and courses, and transfer of decision-making on establishing business relationships to the management level. In conclusion, the bank noted that as a result of the steps taken, Swedbank has significantly reduced its risk appetite, become more competent, and now possesses improved processes. The bank will also continue to prioritise the work on the prevention of money laundering to maintain its low risk profile.

1.1.3. Finantsinspektsioon carried out an on-site inspection (hereinafter: on-site inspection) at Swedbank under the order No. 4.7-1.1/1246 of Member of the Management Board of Finantsinspektsioon from 12 March 2019 and 30 April 2019 order No. 4.7-1.1/1246-17. The on-site inspection took place from 1 April 2019 to 20 May 2019. Finantsinspektsioon prepared an on-site inspection report on the visit.

1.1.4. In its on-site inspection report, Finantsinspektsioon evaluated Swedbank's systems and controls for prevention of money laundering and terrorist financing and the actions of the Management Board as at 31 March 2019 and earlier. Finantsinspektsioon did not have a chance to verify the changes Swedbank made to its systems and controls after the on-site inspection period. Therefore, this precept is based only on what was established during the on-site inspection and refers to violations that were relevant mainly as at 31 March 2019.

1.1.5. It is not within the scope of Finantsinspektsioon to carry out criminal proceedings or to find out whether Swedbank or its employees have historically conducted crimes, including money laundering. Finantsinspektsioon is a body conducting extrajudicial proceedings of misdemeanours as established in the Money Laundering and Terrorist Financing Prevention Act (hereinafter: MLTFPA), which is why Finantsinspektsioon opened a misdemeanour procedure on Swedbank on 29 October 2019, but terminated it on 18 November 2019 in favour of criminal proceedings to ensure continuation of the criminal proceedings initiated by the Office of the Prosecutor General and to avoid the potential risk of double jeopardy.

1.1.6. It is also not within the limits of competence of Finantsinspektsioon to supervise the application of international financial sanctions. Finantsinspektsioon carries out the supervision on the performance of the requirements under MLTFPA and the legislation based on the MLTFPA by the credit and financial institutions it supervises under the Financial Supervision Authority Act (hereinafter: FSAA). Section 30 of the International Sanctions Act states that the Financial Intelligence Unit shall exercise state supervision over the application of financial sanctions. Based on the abovementioned, it is not within the scope of Finantsinspektsioon to assess the solutions and actions of Swedbank in implementing the financial sanctions. Therefore, this precept does not cover that aspect.

[1] High risk is defined by Swedbank itself. Throughout the years, the parent undertaking Swedbank AB and its Baltic subsidiaries have not used the similar approach to defining risk. During that time, the fundamental criteria of the definition have also been internally amended several times at least by Swedbank. Consequently, the number of high-risk clients throughout the years is not comparable with the respective data of Swedbank AB or its subsidiaries in the Baltics.

1.2. On-site inspection

1.2.1. The on-site inspection was carried out based on subsection 2 (1) of the FSAA, subsection 96 (1), subsections 100 (1) and (2), sections 101 and 101[1] of the Credit Institutions Act (hereinafter: CIA) and subsection 64 (2) of the MLTFPA.

1.2.2. Based on the information and documents provided during the on-site inspection, the persons carrying out the supervision proceedings analysed and assessed Swedbank's:

- organisational structure of the prevention of money laundering and terrorist financing and the compliance and continuity of its operations;
- actions of the Management Board and the employees in the field of prevention of money laundering and terrorist financing, including identifying the risks pertaining to prevention of money laundering and terrorist financing, and assessing, managing, and mitigating risks;
- implementation of diligence measures in establishing business relationships and providing services, and actions in case of a suspicion of money laundering or terrorist financing;
- actions of the contact person of the financial intelligence unit [i.e. money laundering reporting officer].

1.2.3. Pursuant to the provisions of subsection 101[1] (1) of the CIA, Finantsinspektsioon submitted an on-site inspection report to Swedbank with its 15 July 2019 letter No. 4.7-1.1/1246-35 for comments and objections.

1.2.4. In its 16 September 2019 letter No. A01.10-200-02/2165, Swedbank submitted its comments on the on-site inspection report. The comments have been added to the on-site inspection report under each observation of Finantsinspektsioon together with the explanations of Finantsinspektsioon as to why the respective comments have or have not been taken into consideration.

1.2.5. Pursuant to subsections 101[1] (3) and (5) of the CIA, Finantsinspektsioon reviewed Swedbank's explanations and delivered the final version of the on-site inspection report to Swedbank with its 19 November 2019 letter No. 4.7-1.1/1246-50.

1.2.6. In accordance with subsection 101[1] (4) of the CIA, Swedbank submitted a written dissenting opinion to the report with its 20 December 2019 letter No. A01.10-200-02/2958.

1.2.7. The assessments of Finantsinspektsioon in the on-site inspection report are based on the information provided by Swedbank, the views expressed by Swedbank's representatives during the on-site inspection, and the documents submitted. The compliance of the respective information and views was verified based on the legislation, but also on the provisions on the guidelines referred to in the on-site inspection report and in international legislation and other similar documents.

1.2.8. According to subsection 56 (1) of the Administrative Procedure Act (hereinafter: APA), written reasoning shall be provided for the issue of a written administrative act. The reasoning for the issue of an administrative act shall be included in the administrative act or in a document accessible by participants in proceedings and the administrative act shall contain a reference to the document. The on-site inspection report describes, opens and justifies thoroughly and in detail the large-scale and serious violations at Swedbank found by Finantsinspektsioon, the voluminous complete repetition of which in this precept is not reasonable. According to the second sentence of subsection 56 (1) of the APA, the on-site inspection report is a document accessible to Swedbank that contains reasoning for this precept. The parts of the on-site inspection report that can be viewed as reasoned parts of this precept according

to the second sentence of subsection 56 (1) of the APA, have been referred to in more detail in this precept.

2. LEGAL APPROACH

2.1. General grounds for the supervision of credit institutions by Finantsinspektsioon

2.1.1. According to subsection 2 (1) of the FSAA, for the purposes of the FSAA, state financial supervision means supervision over the subjects of state financial supervision and the activities provided for in FSAA, the CIA /.../, and legislation established on the basis thereof.

2.1.2. Subsection 3 (1) of the FSAA establishes that financial supervision is conducted in order to enhance the stability, reliability, transparency and efficiency of the financial sector, to reduce systemic risks and to promote prevention of the abuse of the financial sector for criminal purposes, with a view to protecting the interests of clients and investors by safeguarding their financial resources, and thereby supporting the stability of the Estonian monetary system. According to subsection 3 of the same section, financial supervision is conducted and financial crisis is resolved only in the public interest.

2.1.3. According to subsection 64 (2) of the MLTFPA, Finantsinspektsioon exercises supervision over compliance with MLTFPA and legislation adopted on the basis thereof by credit institutions and financial institutions that are subject to its supervision under the FSAA and in accordance with the legislation of the European Union. Finantsinspektsioon exercises supervision in accordance with the procedure provided for in the FSAA, taking account of the variations provided for in the MLTFPA.

2.1.4. According to the first sentence of subsection 5 (1) of the FSAA, Finantsinspektsioon shall operate pursuant to legislation and the internationally recognised principles relating to financial supervision and shall act openly and transparently and apply the principles of sound administration.

2.1.5. Subsection 5 (2) of the FSAA states that the frequency of supervisory activities of Finantsinspektsioon and the methodology applied shall take account of the size of the subject of financial supervision, the effect of its activity to the financial system as well as the type, extent and complexity of the activity, based on the principle of proportionality. Finantsinspektsioon shall take into account in the application of administrative coercion the nature, duration and repetition of risks and potential violation, the economic potential of a supervision subject, the amount of damage that has been incurred or may have been incurred and the potential effect on the stability of the financial system.

2.1.6. According to clause 6 (1) 2) of the FSAA, the functions of Finantsinspektsioon in fulfilling the objectives of financial supervision are to guide and direct subjects of financial supervision in order to ensure sound and prudent management. Clause 3 of the same subsection states that Finantsinspektsioon applies measures prescribed by legislation to protect the interests of clients and investors, clause 4 allows to apply administrative coercion on the bases, to the extent and pursuant to the procedure prescribed by Acts, clause 7 stipulates the right to perform the functions arising from, *inter alia*, the MLTFPA and legislation issued on the basis thereof, and clause 8 allows to perform other functions arising from law which are necessary to fulfil the objectives of financial supervision.

2.2. Grounds for issuing the precept

2.2.1. According to clause 18 (2) 4) of the FSAA, in issues relating to the conduct of financial supervision and resolution proceedings on the bases provided for in the Acts specified in subsection 2 (1) of the FSAA, the management board shall decide on the issue of precepts.

2.2.2. Subsection 55 (1) of the FSAA establishes that the management board shall adopt resolutions and issue precepts, and shall issue orders and general orders in the name of Finantsinspektsioon.

2.2.3. According to clause 103 (1) 1) of the CIA, Finantsinspektsioon shall have the right to issue a precept if upon the exercise of supervision, violations have been discovered of the CIA /.../ or of the acts[2] specified in section 2 or clause 6 (1) 7) of the FSAA or legislation issued on the basis thereof.

2.2.4. According to clause 103 (1) 2) of the CIA, Finantsinspektsioon shall have the right to issue a precept if there is a need to prevent the offences specified in clause 1) of the same section.

2.2.5. Clause 103 (1) 4) of the CIA states that Finantsinspektsioon shall have the right to issue a precept if it is necessary in order to defend the interests of the clients of the credit institutions or to guarantee the transparency of the financial sector.

2.2.6. Clause 104 (1) 8) of the CIA establishes that Finantsinspektsioon has the right /.../ to demand amendment of internal rules or rules of procedure of a credit institution.

2.2.7. According to clause 104 (1) 15) of the CIA, Finantsinspektsioon has the right to make other demands for compliance with legislation regulating the operation of a credit institution.

2.2.8. Clause 104 (1) 17) of the CIA, Finantsinspektsioon has the right to make a proposal to amend or supplement the organisational structure of a credit institution.

2.2.9. Clause 99 (1) 1) of the CIA establishes that for the purpose of performing supervision activities, Finantsinspektsioon shall have the right to require reports, free of charge information, documents and oral or written explanations concerning facts relevant to the exercise of supervision.

3. LEGAL MOTIVATION

Swedbank is a subsidiary of Swedbank AB; the latter deals with management and deciding on control systems

3.1. Swedbank is a subsidiary of Swedbank AB. Swedbank and Swedbank AB together with inter alia the Baltic subsidiaries of Swedbank AB make up Swedbank Group (hereinafter: Swedbank Group), in which Swedbank AB is a parent undertaking. Swedbank AB is a credit institution that has an activity licence in the Kingdom of Sweden, which is why both Swedbank AB and Swedbank Group are under consolidated supervision of the financial supervisory authority of the Kingdom of Sweden, i.e. Finansinspektionen.

Belonging under Swedbank Group means that all systems are built centrally and the main party responsible is the parent undertaking. Management also takes place at the level of the parent undertaking via matrix management. This was determined by Finantsinspektsioon during on-site inspection (Clause 1.2.4, p. 10 of the on-site inspection report)[3]. Based on the materials provided by Swedbank during on-site inspection, Finantsinspektsioon also established that group-wide functions include Group Security and Investigations combating money-laundering, Group Compliance, Group Risk, Group IT, Group Legal, and Group Internal Audit. The above means that all the systems for the prevention of money laundering and terrorist financing must be created centrally and a Group decision is needed to hire additional workforce to Group's functions. This, however, has meant that Swedbank has not always timely received the required systems and resources.

For instance, during on-site inspection, Finantsinspektsioon found (observation 2 of on-site inspection report, pp. 43–50) that Estonian Group Security and Investigations (hereinafter: GSI) had brought attention to the need for reviewing and increasing the resources in relation to performance of the GSI tasks on 25

[2] According to clause 6 (1) 7) of the FSAA, the functions of Finantsinspektsioon in fulfilling the objectives of financial supervision are to perform the functions arising from /.../ the MLTFPA /.../ and legislation issued on the basis thereof.

[3] Finantsinspektsioon deems the above-mentioned on-site inspection report an integral part of this precept, which is why it refers to a document accessible by participant in proceedings (in this case, Swedbank) under second sentence of subsection 56 (1) of the APA and the violations found during on-site inspection described in that document. Finantsinspektsioon will not repeat the information in this footnote in case of other references made to the on-site inspection report.

September 2018 at the latest. The escalation has taken place in accordance with the reporting lines in the CEO Office organisation and the Baltic Banking organisation. A positive reply and a mandate to hire 3 FTEs was received on 18 March 2019, that is, 7 days after Finantsinspektsioon's notification on starting its on-site inspection (sent on 12 March 2019). This meant an almost six-month reaction time to the resource need.

Developments of information technology systems related to prevention of money laundering and terrorist financing depended on Swedbank Group. For instance, Finantsinspektsioon found in on-site inspection (on-site inspection report observation No. 23, pp. 152–159) that by the time of initiation of the on-site inspection, Swedbank had developed or was additionally developing 17 monitoring scenarios, but these were either being tested or under development. However, a significant part of these new scenarios had been developed already in 2018, but had still not been put into operation by the time of the on-site inspection because it was directly dependent on the IT developments and their prioritisation by Swedbank Group. It is also important as to the IT resources that according to the observations during on-site inspection (on-site inspection report observation No. 16, pp. 132–135, observation No. 23, pp. 152–159 and observation No. 25, pp. 160–163), the monitoring solution was launched in Swedbank Estonia to a large extent, i.e. the system provided by an external service provider was put to use on 1 April 2018 (it is also confirmed by the minutes of the 17 April 2018 meeting of Swedbank's Management Board). Until then, Swedbank Estonia had analysed the transactions mainly with a tool that was largely based on manual work. According to the information received from Swedbank during on-site inspection, however, Swedbank AB fully transferred to the business relationship monitoring system provided by an external service provider already on 13 November 2015, that is, almost two and a half years earlier than it was done in Estonia. The initial plan of Swedbank AB according to a memorandum submitted to the Group Investment Committee on 21 February 2014 was to implement the external service provider's business relationship monitoring system by the beginning of Q2 of 2014 at the latest in Swedbank AB and in Q2 of 2015 at the latest, have it implemented in the Baltics as well.

Belonging to Swedbank Group has also meant that certain clients were simultaneously the clients both at Swedbank and Swedbank AB. This was also the case for a client group in Swedbank that was by far the biggest and most profitable (on-site inspection report observation No. 3, pp. 50–82). Namely, Swedbank had a high-risk client group until 2017 that carried out 58.4% of all incoming and outgoing payments of high-risk non-residents in 2007–2016, while in 2010–2016, the number was even higher, reaching 67.5% of all high-risk non-resident payments (on-site inspection report clause 2.5, pp. 31–32). The undertaking that had the most impact and the highest turnover in this client group was serviced also by Swedbank AB where the client's main client relationship manager was also located. Immediately before termination of business relationships, this client and all other undertakings belonging to the same group were marked as having unacceptable risk level in the internal documentation.

Finantsinspektsioon has found shortcomings in the operations of Swedbank AS during their on-site inspection

3.2. During the on-site inspection, Finantsinspektsioon also found that Swedbank's organisational solution on the prevention of money laundering and terrorist financing had material and systematic shortcomings and it was not in compliance with the type, scope and complexity of the economic activities of the credit institution. Swedbank also lacked appropriate systems and structural units. Swedbank's solutions for implementation of the obligations and objectives of the MLTFPA were not appropriate to mitigate the risks that Swedbank took with its business strategy in a significant extent. These systematic shortcomings that, in a certain extent, had already started in the past, have been described in a summarised manner in the on-site inspection report clauses 1.2.2.–1.2.3 (pp. 5–10) and 2.4–2.6 (pp. 28–33). During the on-site inspection, Finantsinspektsioon found that the High Risk Customer Acceptance Committee[4] did not care in the past about the contents of the data pertaining to a client, i.e., who the client was and what had been its operations, and if the client was even acceptable to Swedbank. Today, when Swedbank has retrospectively reviewed or is reviewing these client relationships, many of the business relationships concluded in the past are suspicious to Swedbank, which is why the business relationship has been terminated and, in some cases, the Financial Intelligence Unit has been notified (Clause 1.2.3, p. 6 of the on-site inspection report).

The volumes of business of Swedbank AS have reduced significantly; more than half of the payments made today are related to Latvia and Sweden

3.3. It is important to analyse the services provided by Swedbank and the related risks. The market share of Swedbank as at 31 December 2019 was 45.7% of deposits and 40.7% of loans (both market shares are calculated on solo basis and excluding the foreign branches of all the credit institutions). Swedbank's number of clients as at 31 December 2019 was approximately 1.29 million. Household[5] clients made EUR 4.2 million worth of foreign payments in 2019 with a total turnover of EUR 30.9 billion. In 2019, non-resident clients made 2.59% of payment transactions, in total making up 7.27% of the turnover of payment transactions.

In the period 2014 – 2018, 10 main origin countries of cross-border payments were as follows (share of all the incoming cross-border payments in brackets):[6] Republic of Latvia (16.6%); Kingdom of Sweden (14.7%); Russian Federation (10.9%); Federal Republic of Germany (7.6%); Republic of Lithuania (7.6%); Swiss Confederation (6.9%); Republic of Finland (5.4%); United Kingdom of Great Britain and Northern Ireland (4.9%); Kingdom of the Netherlands (3.2%) and Ukraine (2.8%).

10 main target countries of the cross-border payments made in the same period were: Republic of Latvia (18.0%); Kingdom of Sweden (15.9%); Russian Federation (14.4%); Republic of Lithuania (7.3%); Republic of Finland (5.9%); United Kingdom of Great Britain and Northern Ireland (5.6%); Federal Republic of Germany (4.7%); Swiss Confederation (4.4%); Kingdom of the Netherlands (2.3%) and the United States of America (2.2%).

[4] *[Footnote deleted, because the original text provided a translation into English].*

[5] All clients, excluding financial institutions, central bank, and the governmental sector.

[6] The following analysis has been made on the basis of the data of the private person clients whose account turnover exceeded EUR 100,000 per year and legal person clients with more than EUR 500,000 per year in the period of 2014 – 2018. The transaction turnover of these persons made up approximately 80% of all transactions in the stated period.

The largest change in cross-border payments has taken place regarding payments to and from Russia that made up 2.3% of the incoming and 2.8% of outgoing cross-border payments by 2018. This means that starting from 2014, the volume of payments with Russia has dropped by approximately seven times, that is, to 2.3% and to 2.8% accordingly. A significant increase can be seen in payment turnover on the direction of the Republic of Latvia and Kingdom of Sweden. Compared to 2014, the incoming cash flow had increased 2.8 times by 2018 in the case of the Republic of Latvia, and 3.6 times for the Kingdom of Sweden. At the same time, the outgoing cash flow had grown by 2.7 times in case of both the Republic of Latvia and the Kingdom of Sweden between 2014 and 2018. In total, the share of cross-border payments to and from the Republic of Latvia and the Kingdom of Sweden in 2018 made up more than half of all the cross-border payments.

Among other things, the above indicates the potential significance of any violation of the prevention of money laundering and terrorist financing requirements by such a large credit institution, potentially having an impact on the stability, reliability, and transparency of the entire financial sector. At that, it should be expected that an obliged entity that establishes business relationships with non-residents and/or has a large client base, has implemented high level solutions for the prevention of money laundering and terrorist financing and exercises extreme diligence in serving a large client base, also being able to be familiar with the circumstances on the target market while operating from distance, including the rules of business and the arising risks. Credit institutions that serve non-residents face a significantly bigger challenge in detecting the circumstances that would help to assess and determine, inter alia, the beneficial owner and find out information on the purpose and intended nature of the business relationship in order to prevent money laundering and terrorist financing. It is also important to create a relevant system for monitoring the business relationships which, in case of a distance-based business relationship, requires considerably more frequent and diligent monitoring, and due to such a large client base, requires due diligence both in developing the organisational solution and the risk-based structure of systems and controls.

3.4. Swedbank had not identified, assessed or analysed all the money laundering and terrorist financing risks related to its economic activities

3.4.1. One of the most important prerequisites of the prevention of money laundering and terrorist financing is for the obligated entity to identify, analyse the contents and volume, and finally understand the money laundering and terrorist financing risks related to its operations, including the services provided, clients, delivery channels and geographic risks. The obligated entity must be capable of developing an immediate organisational solution for the management of the above-mentioned risks. If the obligated entity fails to identify, assess or analyse the risks, the obligated entity is also not able to develop an immediate organisational solution.

3.4.2. Swedbank lacked the risk assessment related to money laundering and terrorist financing complying with the requirements

3.4.2.1. According to clause 55 (2) 3) of the CIA, the management board of a credit institution is required to identify and assess regularly all risks involved in the activities of the credit institution and ensure the monitoring and control of the extent of such risks. According to subsection 13 (1) of the MLTFPA, for the purpose of identification, assessment and analysis of risks of money laundering and terrorist financing related to their activities, obliged entities prepare a risk assessment, taking account of at least the following risk categories: 1) risks relating to customers; 2) risks relating to countries, geographic areas or jurisdictions; 3) risks relating to products, services or transactions; 4) risk relating to communication, mediation or products, services, transactions or delivery channels between the obliged entity and customers. Finantsinspektsioon has explained in Clause 3.3 of its advisory guidelines "Organisational solutions and preventive measures for credit and financial institutions to take against money laundering and terrorist financing"[7] (hereinafter: Advisory Guidelines) the obligations necessary for preparation of a risk assessment under clause 55

[7] The Advisory Guidelines entered into force with the 26 November 2018 decision No. 1.1-7/172 of the Management Board of Finantsinspektsioon.

(2) 3) of the CIA and subsection 13 (1) of the MLTFPA. In its on-site inspection report observation No. 11 (on-site inspection report observation pp. 117–120), Finantsinspektsioon has explained the content and meaning of the obligations discussed in the respective clauses of the above-mentioned Advisory Guidelines.

3.4.2.2. In its on-site inspection report observation No. 11 (pp. 117–120), Finantsinspektsioon has noted that Swedbank had not identified the risks relating specifically to its activities nor analysed their extent and impact. *Inter alia*, Finantsinspektsioon has stated in the observation No. 11, that i) Swedbank had not analysed the risks relating to the specific products provided by Swedbank (investment services, life insurance, loans, including leasing) and their volumes; ii) Swedbank's risk assessment did not reflect the main sources of risk and the most potential ways specifically Swedbank could be exploited; iii) Swedbank's actually relevant operational volumes had not been analysed (e.g., the impact of clients, i.e., their average deposits and volumes, investment product volumes, the actual origins of the wealth of clients, currency exchange transactions relating to payments, etc.); iv) Swedbank had not actually assessed the risk relating to terrorist financing; and v) it had not analysed what are the particular vulnerabilities of Swedbank, and which measures are taken to combat them.

3.4.2.3. Therefore, Swedbank violated subsection 13 (1) of the MLTFPA because despite the respective legislative requirement, Swedbank's risk assessment did not contain a due assessment for the purpose of identification, assessment and analysis of risks of money laundering and terrorist financing related to their activities due to the above-mentioned shortcomings. With that, the Management Board of Swedbank also violated clause 55 (2) 3) of the CIA since it had not identified and assessed all money laundering and terrorist financing risks involved in the activities of the credit institution.

3.4.2.4. Based on the aforementioned, Finantsinspektsioon issues a precept to Swedbank and sets an obligation stated in Clause 1.1.1 of the resolution of this precept.

3.4.3. <u>The management and employees of Swedbank had no overview of the risks threatening Swedbank</u>

3.4.3.1. According to clause 55 (2) 3) of the CIA, the management board of a credit institution is required to identify and assess regularly all risks involved in the activities of the credit institution and ensure the monitoring and control of the extent of such risks.

3.4.3.2. Finantsinspektsioon has found in its on-site inspection report observation No. 11 (pp. 117–120) that Swedbank's management and different structural units lacked a daily clear and easily accessible overview outside the risk assessment on the current extent and status of Swedbank's money laundering and terrorist financing risks. While the overview submitted to the Management Board was simplistic and failed to take into account the various products, services and their volumes (by the time of the on-site inspection, mainly contained an overview of deposits only) and the income earned, then, for instance, to the Group Compliance, GSI and Group Internal Audit departments/units, such risk indicators were not available at all. This made the work of both the management and the various departments/units regarding money laundering and terrorist financing complicated, not to say impossible, because they lacked an overview of which money laundering and terrorist financing risk should be managed daily and what is its extent.

3.4.3.3. Therefore, the Management Board of Swedbank violated clause 55 (2) 3) of the CIA, because regardless of the respective legal requirement, it had not identified and assessed all money laundering and terrorist financing risks involved in the activities of the credit institution nor ensured the monitoring and control of the extent of such risks.

3.4.3.4. Based on the aforementioned, Finantsinspektsioon issues a precept to Swedbank and sets an obligation stated in Clause 1.1.2 of the resolution of this precept.

3.4.4. Swedbank had not sufficiently analysed the money laundering and terrorist financing risks relating to clients of higher risk

3.4.4.1. According to clause 55 (2) 2) of the CIA, the management board is required to establish and regularly review risk taking, management, monitoring and risk management principles and procedures which comprise both the current and also potential risks. According to clause 55 (2) 3) of the CIA, the management board of a credit institution is required to identify and assess regularly all risks involved in the activities of the credit institution and ensure the monitoring and control of the extent of such risks.

3.4.4.2. Finantsinspektsioon has established in its on-site inspection report observation No. 9 (pp. 112–116) that Swedbank had not conclusively analysed the money laundering and terrorist financing risks relating to neither the already closed or the existing client relationships nor the services provided under such client relationships. Yet, understanding these risks is important for the development of Swedbank's current organisational solution. Among other things, Finantsinspektsioon has stated that i) Swedbank lacked full knowledge on whether, to what part and in which extent had Swedbank been exploited for suspicious and unusual transactions; ii) Swedbank had not compiled or attempted to compile a single analysis that would assess the actual connections of Swedbank and its clients' suspicious transactions in securities; and iii) Swedbank had not analysed the terminated business relationships to learn from the past and understand through which employees or other contractual partners did they mainly receive clients with whom they decided or are deciding to terminate a business relationship or whose operations included suspicious or unusual circumstances or transactions, and whether such people have failed to perform their professional duties or not performed their duties adequately.

3.4.4.3. Therefore, the Management Board of Swedbank violated clause 55 (2) 3) of the CIA, because regardless of the respective legal requirement, it had not identified and assessed all money laundering and terrorist financing risks involved. As such, the Management Board of Swedbank had also violated clause 55 (2) 2) of the CIA because it was unable to review risk taking, management, monitoring and risk management principles, including the organisational solution.

3.4.4.4. Based on the aforementioned, Finantsinspektsioon issues a precept to Swedbank and sets an obligation stated in Clause 1.1.3 of the resolution of this precept.

3.4.5. Swedbank lacked the definition of risk appetite that would comply with the legislation

3.4.5.1. According to clause 55 (2) 2^1) of the CIA, the management board is required to determine the risk tolerance of the credit institution for each relevant business line and unit. Clause 13 (3) 2) of the MLTFPA states that as a result of the risk assessment, the obliged entity establishes the risk appetite, including the volume and scope of products and services provided in the course of business activities. Requirements on risk appetite are set out in section 10 of the MLTFPA.

3.4.5.2. In its on-site inspection report observation No. 11 (pp. 117–120), Finantsinspektsioon has identified and in Clause 3.4.2 of this precept, also legally motivated the reasons why Swedbank's risk assessment did not comply with the law. Conclusively, Finantsinspektsioon has also stated in its observation No. 11 (pp. 117–120) that Swedbank's risk appetite had not been identified correctly, considering that the prerequisite for risk tolerance or risk appetite is a risk assessment that complies with the requirements.

3.4.5.3. Therefore, Swedbank violated clause 13 (3) 2) of the MLTFPA because regardless of the respective legal requirement, Swedbank had not identified its risk appetite due to shortcomings relating to the risk assessment. By that, the Management Board of Swedbank also violated clause 55 (2) 2^1) of the CIA by failing to determine the risk tolerance of the credit institution for each relevant business line and unit.

3.4.5.4. Based on the aforementioned, Finantsinspektsioon issues a precept to Swedbank and sets an obligation stated in Clause 1.1.4 of the resolution of this precept.

3.5. Swedbank's organisational solution had significant shortcomings

3.5.1. After identifying the risks to the obligated entity and determining the risk appetite, a suitable organisational solution needs to be developed in accordance with the size of the obligated entity and the type, extent, complexity of the activity and the services provided, incl. risk appetite and risks relating to the actions of the obligated entity. The management of the obligated entity is the carrier of the culture of performance of the requirements on prevention of money laundering and terrorist financing, ensuring that the management and employees of the obligated entity operate in an environment of being fully aware of the requirements on and obligations relating to prevention of money laundering and terrorist financing and these risk considerations are taken duly into consideration in the decision-making processes of the obligated entity. Without a suitable organisational solution, no obligated entity is able to implement due diligence measures and thus know the client, and therefore in overall be capable to effectively prevent money laundering and terrorist financing.

3.5.2. Swedbank lacked the internal control solution related to money laundering and terrorist financing complying with the requirements

3.5.2.1. According to subsections 59 (1) and (2) of the CIA, a credit institution must have a constantly functioning internal control system which shall be proportionate to the nature, extent and level of complexity of their activity, and which shall ensure the performance of the functions of risk management, adherence to the good practices of management of the association and internal audit. The internal control system of a credit institution shall cover all levels of management and operation of the credit institution in order to ensure the effective operation of the credit institution, the reliability of financial reporting and compliance with law, other legislation, documents approved by the directing bodies of the credit institution and the principles of sound banking management, and the adoption of resolutions based on reliable and relevant information.

3.5.2.2. The requirements to internal control have also been established in clauses 3.5.3 and 3.5.4 of the Advisory Guidelines, the Guidelines on internal governance under Directive 2013/36/EU of the European Banking Authority, the Financial Action Task Force's[8] guidelines "Risk-Based Approach Banking Sector" and in the Basel Committee[9] on Banking Supervision's guidelines "Compliance and the compliance function in banks", "Corporate governance principles for banks" and "Sound management of risks related to money laundering and financing of terrorism". In its on-site inspection report observation No. 1 (pp. 36–43), Finantsinspektsioon has explained the content and meaning of the obligations discussed in the guidelines above and the respective clauses of Finantsinspektsioon's Advisory Guidelines.

3.5.2.3. Finantsinspektsioon has established in its on-site inspection report observation No. 1 (pp. 36–43) that Swedbank's internal control system was not in compliance with the requirements necessary to effectively prevent money laundering and terrorist financing. Among other things, Finantsinspektsioon has identified that Swedbank's internal control system did not function as required because there was no structural unit in Swedbank's system that had a full overview of the systems for prevention of money laundering and terrorist financing and assessed whether Swedbank's systems were in compliance with the requirements of the MLTFPA, the Advisory Guidelines and international standards, including the requirements of the European Banking Authority, the Basel Committee on Banking Supervision, the Financial Action Task Force, etc. Swedbank's internal control system also never questioned the correctness and sufficiency of the systems. Neither did the management bodies of Swedbank (including the Supervisory Board and the Management Board).

[8] *[Footnote deleted, because the original text provided a translation into English].*

[9] *[Footnote deleted, because the original text provided a translation into English].*

3.5.2.4. Therefore, Swedbank violated subsections 59 (1) and (2) of the CIA because regardless of the respective legislative requirement, the internal control system was not functioning in Swedbank that would have ensured risk control and involved all the management and operating levels of Swedbank to ensure the bank's compliance with the laws and other legislation.

3.5.2.5. Based on the aforementioned, Finantsinspektsioon makes a precept to Swedbank and sets the obligation stated in clause 1.2.1 of the resolution of this precept.

3.5.3. Swedbank had not duly and clearly determined the departments and employees responsible for various obligations relating to prevention of money laundering and terrorist financing

3.5.3.1. According to clause 55 (2) 2) of the CIA, among other things, the management board is required to establish and regularly review risk taking, management, monitoring and risk management principles and procedures which comprise both the current and also potential risks.

3.5.3.2. Finantsinspektsioon has established in its on-site inspection report observations No. 1 (pp. 36–43) and 13 (pp. 122–127) that Swedbank's system for prevention of money laundering and terrorist financing was not uniform and different structural units worked independently of one another and without synergy. Among other things, Finantsinspektsioon has found that Swedbank had not assigned a person responsible for the performance of the requirements on prevention of money laundering and terrorist financing in all fields, there was no sense of ownership within and among the departments, and there was a lack of will and culture to take initiative in performing requirements.

3.5.3.3. Therefore, Swedbank's Management Board violated clause 55 (2) 2) of the MLTFPA because regardless of the respective legislative requirement, there were no sufficient requirements for risk taking, management, monitoring and risk management principles because no relevant structural units had been assigned to manage the risks of money laundering and terrorist financing.

3.5.3.4. Based on the aforementioned, Finantsinspektsioon makes a precept to Swedbank and sets the obligation stated in clause 1.2.2 of the resolution of this precept.

3.5.4. Swedbank's organisational solution did not take into account the internationally required principle of three lines of defence

3.5.4.1. According to clause 55 (2) 11) of the CIA, the management board is required to monitor that adequate separation of functions is guaranteed in all the activities of the credit institutions, and avoid the creation of conflict of interests. The requirements on the segregation of functions in the organisational structure on money laundering and terrorist financing have been set out in clauses 3.5.2, 3.5.3 and 3.5.4 of the Advisory Guidelines and the Basel Committee's guidelines "Sound management of risks related to money laundering and financing of terrorism". In its on-site inspection report observation No. 15 (pp. 130–132), Finantsinspektsioon has explained the content and meaning of the obligations discussed in the guidelines above and the respective clauses of Finantsinspektsioon's Advisory Guidelines.

3.5.4.2. Finantsinspektsioon has established in its on-site inspection report observation No. 15 (pp. 130–132) that Swedbank's organisational solution for prevention of money laundering and terrorist financing was not in compliance with the internationally acknowledged principle of three lines of defence. Among other things, Finantsinspektsioon has found that Swedbank's structural unit GSI's task was, in essence, simultaneously taking risks, thus being part of the first line of defence (regular monitoring of a business relationship) and risk management during one's operations, making it part of the second line of defence (analysis of suspicious and unusual transactions and reporting to the Financial Intelligence Unit). This way, the GSI performed the tasks of both the first and the second line of defence, and made certain that the risks it took itself would be managed properly,

while helping itself as a simultaneous risk holder to define the areas in which risk occurred. This brought on a material conflict of interests in the activities of GSI.

3.5.4.3. Therefore, the Management Board of Swedbank violated clause 55 (2) 11) of the CIA, because regardless of the legislative obligation, it failed to monitor that adequate separation of functions is guaranteed in all the activities of the credit institutions, and avoid a conflict of interests.

3.5.4.4. Based on the aforementioned, Finantsinspektsioon makes a precept to Swedbank and sets an obligation stated in clause 1.2.2 of the resolution of this precept.

3.5.5. Swedbank lacked a central unit/department to combat money laundering and terrorist financing

3.5.5.1. According to clause 55 (2) 2) of the CIA, the management board is required to establish and regularly review risk taking, management, monitoring and risk management principles and procedures which comprise both the current and also potential risks. According to clause 55 (2) 3) of the CIA, the management board of a credit institution is required to identify and assess regularly all risks involved in the activities of the credit institution and ensure the monitoring and control of the extent of such risks.

3.5.5.2. Finantsinspektsioon has noted in its on-site inspection report observations No. 9 (pp. 112–116) and 15 (pp. 130–132) that Swedbank did not have a structural unit with the task and all the necessary means for fighting financial crime and consistently carry out both regular and special analyses on the nature and extent of the risks that Swedbank has faced historically and is facing today. Swedbank had partially assigned this function to the GSI, but as it can be seen in clause 3.5.4 of this precept, GSI also performed other tasks of risk management, thus having a conflict of interests. Swedbank had not directed all the necessary information and know-how to a single independent structural unit that would not perform other tasks not belonging to it according to the risk management matrix.

3.5.5.3. Therefore, Swedbank's Management Board violated clauses 55 (2) 2) and 3) of the CIA because regardless of the respective legislative requirement, there were no sufficient requirements for risk taking, management, monitoring and risk management principles. The Management Board had also not identified and assessed all money laundering and terrorist financing risks involved in the activities of the credit institution nor ensured the monitoring and control of the extent of such risks.

3.5.5.4. Based on the aforementioned, Finantsinspektsioon makes a precept to Swedbank and sets the obligations stated in clauses 1.2.2–1.2.4 of the resolution of this precept.

3.5.6. Swedbank lacked the sufficient human resources for the performance of the tasks

3.5.6.1. According to clause 55 (2) 3^1) of the CIA, the management board of a credit institution is required to ensure the existence of /.../ members of staff /.../ for management of all the significant risks of the credit institution.

3.5.6.2. Finantsinspektsioon has established in its on-site inspection report observation No. 2 (pp. 43–50) that Swedbank had not allocated sufficient human resources necessary to manage the risks relating to money laundering and terrorist financing. Among other things, Finantsinspektsioon has found that the employees working at Swedbank on the prevention of money laundering and terrorist financing were constantly working overtime, indicating their overload or excessive number of tasks that was not in correlation with the respective human resources. In its observation No. 2 (pp. 43–50), Finantsinspektsioon had also noted that there were no sufficient means for allocating additional human resources to certain structural units. Finantsinspektsioon also found that it took Swedbank almost six months to gain additional resources into some of the group

functions and even that only after Finantsinspektsioon had notified of the start of its on-site inspection.

3.5.6.3. Therefore, the Management Board of Swedbank violated clause 55 (2) 3^1) of the CIA, because regardless of the respective legal requirement, it had not ensured the existence of adequate members of staff for management of the risks relating to money laundering and terrorist financing.

3.5.6.4. Based on the aforementioned, Finantsinspektsioon issues a precept to Swedbank and sets the obligations stated in clauses 1.2.5–1.2.6 of the resolution of this precept.

3.5.7. Swedbank's procedural rules lacked hierarchy, they were vague and difficult to read, their compliance with the valid legislation had not been checked and they lacked the scope involving Swedbank AS and its subsidiaries

3.5.7.1. According to subsection 63 (1) of the CIA, a credit institution shall establish internal rules and rules of procedure, which are adequate and proportional to the nature, extent and level of complexity of the operation of the credit institution, in order to regulate the activities of the managers and members of staff of the credit institution. According to subsection 14 (1) of the MLTFPA, the obliged person establishes rules of procedure that allow for effective mitigation and management of, inter alia, risks relating to money laundering and terrorist financing, which are identified in the risk assessment prepared in accordance with section 13 of the MLTFPA.

3.5.7.2. Finantsinspektsioon has established in its on-site inspection report observation No. 14 (pp. 127–130) that Swedbank's rules of procedure were not in compliance with the legislative requirements in several aspects. Among other things, Finantsinspektsioon has found that Swedbank's rules of procedure lacked a clear hierarchy, they were vague and difficult to read, they had no group-wide coverage of its subsidiaries and they did not meet the legal requirements; the rules of procedure had also not been reviewed in the light of the new MLTFPA that entered into force on 27 November 2017 and the new Advisory Guidelines. These issues in preparing rules of procedure had led to the situation in which Swedbank submitted 39 different rules of procedure to Finantsinspektsioon during on-site inspection. Some of them were the rules of Swedbank Group, some the ones of Swedbank Baltics, and sometimes they pertained to Swedbank in its entirety. These rules of procedure were not legible due to lack of hierarchy, a clear policy, and overall rules that provide general guidelines (why and what). Swedbank's rules of procedure also lacked a scope that involved other subsidiaries of the group that are, in turn, obligated entities within the meaning of the MLTFPA.

3.5.7.3. Therefore, Swedbank violated sentence 1 of subsection 14 (1) of the MLTFPA and subsection 63 (1) of the CIA because regardless of the respective legal requirement, Swedbank's rules of procedure did not enable to effectively mitigate and manage the risks relating to money laundering and terrorist financing identified during risk assessment. That is why they were not sufficient or proportional with the type, extent, and level of complexity of Swedbank's operations.

3.5.7.4. Based on the aforementioned, Finantsinspektsioon makes a precept to Swedbank and sets the obligations stated in clauses 1.2.7–1.2.8 of the resolution of this precept.

3.6. Swedbank's solutions for implementation of due diligence measures and knowing its clients were inadequate

3.6.1. After identification of risks and creation of an adequate organisational solution, it is important that the obligated entity takes preventive, i.e. due diligence measures. The latter is one of its main obligations in preventing money laundering and terrorist financing. The purpose of implementation of due diligence measures is mainly to prevent concealment, disguising, etc. of money derived from criminal activity in various stages of money laundering, and to prevent terrorist financing with funds derived both from illegal and legal sources. Therefore, one of the most important objectives of implementation of due diligence measures is to ensure the reliability and transparency of the Estonian business environment

and to prevent the use of Estonian financial system and economic space for money laundering and terrorist financing. If the obligated entity does not know its clients and fails to implement any due diligence measures, does not do it in sufficient extent or correctly, both money laundering and terrorist financing could take place.

3.6.2. There were significant shortcomings in the quality of data gathered in the course of Swedbank's due diligence measures or the data was not immediately accessible

3.6.2.1. According to clauses 20 (1) 1)–5) of the MLTFPA, the obliged entity shall apply the following due diligence measures: 1) identification of a customer or a person participating in an occasional transaction and verification of the submitted information based on information obtained from a reliable and independent source, including using means of electronic identification and of trust services for electronic transactions; 2) identification and verification of a customer or a person participating in an occasional transaction and their right of representation; 3) identification of the beneficial owner and, for the purpose of verifying their identity, taking measures to the extent that allows the obliged entity to make certain that it knows who the beneficial owner is, and understands the ownership and control structure of the customer or of the person participating in an occasional transaction; 4) understanding of business relationships, an occasional transaction or act and, where relevant, gathering information thereon; 5) gathering information on whether a person is a politically exposed person, their family member or a person known to be close associate. According to subsection 47 (1) of the MLTFPA, the obliged entity must retain /.../ the documents /.../ serving as the basis for the establishment of a business relationship no less than five years after termination of the business relationship. Subsection 47 (4) of the MLTFPA states that the obliged entity must retain the documents and data specified in subsections 47 (1)–(3) of the MLTFPA in a manner that allows for exhaustively and immediately replying to the enquiries of the Financial Intelligence Unit or, in accordance with legislation, those of other supervisory authorities, investigative bodies or courts, inter alia, regarding whether the obliged entity has or has had in the preceding five years a business relationship with the given person and what is or was the nature of the relationship.

3.6.2.2. Finantsinspektsioon has established in its on-site inspection report observations No. 20 (pp. 142–145) and 22 (pp. 147–149) that there were significant shortcomings in Swedbank's quality of basic data and the information was not exhaustively and immediately available. Among other things, Finantsinspektsioon found that Swedbank had stored a lot of data on paper only, which were available only physically and not immediately. Thus, Swedbank was unable to immediately submit data to Finantsinspektsioon on the beneficial owners that had the respective position before 2016. In addition, Swedbank lacked a clear procedure on how to enter client names into databases, which is why the names of clients, beneficial owners, and the representatives had different spellings in databases; the same client also had various residencies according to the databases.

3.6.2.3. Therefore, Swedbank violated subsection 47 (4) of the MLTFPA because regardless of the respective legal requirement, Swedbank had not retained the data in a manner that allowed to exhaustively and immediately reply to the enquiries of supervisory authorities, among others. Swedbank also violated the obligation established in subsection 47 (1) of the MLTFPA by not retaining the data gathered in the due diligence procedure in the establishment of a business relationship under the same principles.

3.6.2.4. Based on the aforementioned, Finantsinspektsioon makes a precept to Swedbank and sets the obligations stated in clauses 1.3.1–1.3.2 of the resolution of this precept.

3.6.3. Swedbank did not have the solution for identifying whether it has had previous suspicions of money laundering and terrorist financing regarding a person wishing to start a business relationship

3.6.3.1. According to clause 55 (2) 2) of the CIA, among other things, the management board is required to establish and regularly review risk taking, management, monitoring and risk management principles and procedures which comprise both the current and also potential risks.

3.6.3.2. Finantsinspektsioon has established in its on-site inspection report observation No. 20 (pp. 142–145) that Swedbank lacked substantive and effective measures to ensure that a legal person, its beneficial owner, representative, person with the same nominee director[10], person with the same business address, registration address or any other indicator, who has become a subject of termination of a business relationship due to compliance with the requirements on prevention of money laundering and terrorist financing or due to the need to reduce the risk appetite, would not become Swedbank's client again without Swedbank's knowledge. Swedbank had no information on the reasons why a business relationship had been terminated with the client. Swedbank also failed to enter all the persons and data linked to the client to a so-called forbidden list of persons or operations, and did not add any information as to why the person is in a corresponding list. If Swedbank has no substantial and efficient measures, there may occur a situation of Swedbank unknowingly gaining a client with whom a business relation had previously been terminated due to suspicion of money laundering or terrorist financing or due to changes in risk appetite. Not knowing such circumstances does not enable Swedbank to duly manage the risks of money laundering and terrorist financing in case of a new client relationship or to make a reasoned decision on whether to establish a business relationship or not.

3.6.3.3. Therefore, the Management Board of Swedbank violated clause 55 (2) 2) of the CIA, because regardless of the respective legal requirement, it did not establish risk taking, management, monitoring and risk management principles and procedures.

3.6.3.4. Based on the aforementioned, Finantsinspektsioon makes a precept to Swedbank and sets the obligations stated in clauses 1.3.3–1.3.4 of the resolution of this precept.

3.6.4. Swedbank's solution for determining a risk rating of a client in the commencement of a business relationship was flawed

3.6.4.1. According to subsection 20 (7) of the MLTFPA, upon assessment of specific risks related to a customer specified in subsection 20 (6), the obliged person determines, based on clause 14 (1) 2) of the MLTFPA, the risk profile of the customer or person participating in the transaction, taking account of the risk assessment drawn up on the basis of section 13 of the MLTFPA and at least the following factors: 1) information gathered by the obliged entity upon implementation of clause 4 of subsection 1 of this section; 2) the volume of the property deposited by the customer or the proprietary volume of the transaction or of transactions made in the course of a professional act; 3) the estimated duration of the business relationship.

3.6.4.2. Finantsinspektsioon has established in its on-site inspection report observation No. 21 (pp. 145–147) that Swedbank lacked an effective system for determining a client's risk rating in commencement of a business relationship. Among other things, Finantsinspektsioon found that the automatic system created by Swedbank for determining a client's risk rating was mainly aimed at assessing the risk rating of the client's transaction and thus, monitoring that transaction, not as much for determining the client's risk rating. In case of a high-risk client, enhanced due diligence measures was applied regarding the transaction, not the client as a whole. Therefore, the number of high-risk clients in Swedbank's system increased and decreased constantly.

3.6.4.3. With this, Swedbank violated clause 14 (1) 2) of the MLTFPA because regardless of the respective legislative requirement, Swedbank failed to determine clients' risk rating when commencing a business relationship.

[10] *[Footnote deleted, because the original text provided a translation into English].*

3.6.4.4. Based on the aforementioned, Finantsinspektsioon makes a precept to Swedbank and sets the obligation stated in clause 1.3.5 of the resolution of this precept.

3.6.5. Swedbank lacked the system for monitoring business relationships corresponding to the risks accompanying its activities

3.6.5.1. According to clause 20 (1) 6) of the MLTFPA, one of the measures applied by an obligated entity is monitoring of a business relationship. Subsection 23 (2) of the MLTFPA states that the monitoring of a business relationship must include at least the following: 1) checking of transactions made in a business relationship in order ensure that the transactions are in concert with the obliged entity's knowledge of the customer, its activities and risk profile; 2) regular updating of relevant documents, data or information gathered in the course of application of due diligence measures; 3) identifying the source and origin of the funds used in a transaction; 4) in economic or professional activities, paying more attention to transactions made in the business relationship, the activities of the customer and circumstances that refer to a criminal activity, money laundering or terrorist financing or that a likely to be linked with money laundering or terrorist financing, including to complex, high-value and unusual transactions and transaction patterns that do not have a reasonable or visible economic or lawful purpose or that are not characteristic of the given business specifics; 5) in economic or professional activities, paying more attention to the business relationship or transaction whereby the customer is from a high-risk third country or a country or territory specified in subsection 37 (4) of MLTFPA whereby the customer is a citizen of such country or whereby the customer's place of residence or seat or the seat of the payment service provider of the payee is in such country or territory.

3.6.5.2. Finantsinspektsioon has established in its on-site inspection report observation No. 23 (pp. 152–159) that Swedbank's system for monitoring business relationships had fundamental defects and did not correspond to Swedbank's size and the type, extent, complexity of the activity and the services provided, incl. risk appetite and risks relating to its actions. Among other things, Finantsinspektsioon found that Swedbank's i) monitoring scenarios were extremely inappropriate and simplistic, and were unable to identify suspicious and unusual transactions and transaction patterns; ii) these monitoring scenarios were not risk sensitive (i.e., did not take into account the client's specific risk factors), could not detect deviations in the information known on the client, did not comply with the risk factors that Swedbank was exposed to, did not cover all the services and products Swedbank provided (life insurance, security transactions, etc.), etc.; iii) the monitoring scenarios were not easily amendable, i.e., it was not possible to easily add new scenarios or change the existing ones; iv) the business relationship monitoring system was not in compliance with the principles of clause 4.4.2 of the advisory guidelines of Finantsinspektsioon; v) the business relationship monitoring system did not consider various typologies (including what is referred to in Annexes 1 and 2 to the Advisory Guidelines). However, Swedbank had to monitor the transactions carried out by approximately 1.37 million clients in their business relationships using a solution with such shortcomings (this was the number of clients as at 31 December 2018). Considering the shortcomings of the solution, Swedbank was unable to assess whether clients' transactions were in compliance with Swedbank's knowledge of the client, their operations and risk profile, nor identify suspicious or unusual transactions that could have been detected with a suitable solution.

3.6.5.3. Therefore, Swedbank violated clause 23 (2) 1) of the MLTFPA because regardless of the respective legislative requirements, the business relationship monitoring solution created by Swedbank did not enable to monitor the business relationship or check the transactions in the relationship to ensure that they were in compliance with Swedbank's knowledge of the client, their activities, and risk profile. Swedbank also violated clause 23 (2) 4) of the MLTFPA because the created solution for monitoring business relationships did not enable to pay more attention to transactions made in the business relationship, the activities of the customer and circumstances that could have referred to criminal activity, money laundering or terrorist financing or that were likely to be linked with money laundering or terrorist financing, including to complex, high-value and unusual

transactions and transaction patterns that did not have a reasonable or visible economic or lawful purpose or that were not characteristic of the given business specifics.

3.6.5.4. Based on the aforementioned, Finantsinspektsioon makes a precept to Swedbank and sets the obligation stated in clause 1.3.6 of the resolution of this precept.

3.6.6. Swedbank lacked an appropriate business continuity plan regarding monitoring of business relationships

3.6.6.1. According to subsection 82 (5) of the CIA, a credit institution shall develop a business continuity plan for all relevant business processes to ensure the restoration and continuity of economic activities. This business continuity plan needs to be regularly reviewed, tested and, if necessary, updated. Detailed requirements to business continuity have been established both in the Advisory Guidelines and in the advisory guidelines of Finantsinspektsioon, "Nõuded finantsjärelevalve subjekti talitluspidevuse protsessi korraldamisele" [i.e. "Requirements on the organisation of the business continuity process of a subject of financial supervision"]. In its on-site inspection report observation No. 16 (pp. 132–135), Finantsinspektsioon has explained the content and meaning of the obligations discussed in Finantsinspektsioon's Advisory Guidelines.

3.6.6.2. Finantsinspektsioon has found in its on-site inspection report observations No. 16 (pp. 132–135) that Swedbank's system for prevention of money laundering and terrorist financing had serious issues with business continuity with which Swedbank and its management had not dealt with systematically; the relevant systems had also not been audited. Among other things, Finantsinspektsioon noted that starting from its launch in April 2018[11], Swedbank's monitoring system had had two breakdowns and an "incident". In case of the latter, the incident detected in 2019, the system did not enable to monitor 6.9 million transactions over the course of almost a year, with a total value of EUR 6.09 billion. Swedbank had also not verified whether the business relationship monitoring system implemented was in compliance with the money laundering and terrorist financing risks that Swedbank faces or if the system was complete and performed all the intended functions.

3.6.6.3. Therefore, Swedbank violated subsection 82 (5) of the CIA because regardless of the respective legislative requirement, a business continuity plan cannot be sufficient to ensure business continuity if, starting from the launch of the system in April 2018, it had suffered 2 breakdowns and 1 incident. Swedbank had also failed to test and update its business continuity plans as required because otherwise, the incident detected in the beginning of 2019, where the business relationship monitoring system had not checked potential suspicions on money laundering and terrorist financing regarding 6.9 million transactions (in a total amount of EUR 6.09 billion) in the duration of an entire year, could not have occurred.

3.6.6.4. Based on the aforementioned, Finantsinspektsioon makes a precept to Swedbank and sets the obligations stated in clauses 1.3.6 and 1.3.7 of the resolution of this precept.

3.7. Swedbank failed to comply with its reporting obligation

3.7.1. A final important measure regarding money laundering and terrorist financing risks is to inform the competent national authorities of money laundering and terrorist financing risks and incidents. The purpose of notifying Finantsinspektsioon is, *inter alia*, to ensure that the financial supervisor is aware of the risks and problems regarding the obligated entity, so that the latter can prevent its misuse for criminal purposes to protect the financial system. The purpose of notifying the Financial Intelligence Unit is to enable the Financial Intelligence Unit to verify the suspicion of money laundering and terrorist financing and impose a suspension the use of funds, but also to disseminate the circumstances or the

[11] This is the same monitoring system that was described in clause 3.1 of this decision and has been used by Swedbank AB already since 2015.

respective transaction to law enforcement authorities for further inspection. If the obligated entity fails to comply with the reporting obligation, it may increase the risk that national measures to prevent money laundering and terrorist financing are not taken. It should be kept in mind that money laundering is combated both by preventive measures (due diligence measures referred to above) and by criminalising criminal acts and confiscating assets from criminals.

3.7.2. Swedbank failed to compile adequate operational risk reports

3.7.2.1. According to subsection 58[1] (2) of the CIA, the risk management function shall ensure that all the risks of the credit institution are identified, appropriately managed and reflected in the reports. Based on the provision delegating authority, section 91 of the CIA, the President of the Central Bank of Estonia enforced the 2 January 2014 regulation No. 2 "Establishment of reports on operational risk of credit institutions and consolidation groups of credit institutions", section 3 and subsection 6 (1) of which stipulate that a credit institution must submit a "Report on operational risk loss events and incidents" (hereinafter: Report on operational risk loss events and incidents), included in Appendix 2 to the regulation, to Finantsinspektsioon. In its on-site inspection report observation No. 7 (p. 109), Finantsinspektsioon has explained the content and meaning of the obligations discussed in the legislation referred to above.

3.7.2.2. Finantsinspektsioon has established in its on-site inspection report observation No. 7 (p. 109) that Swedbank had not conclusively and appropriately analysed and taken into account all the operational risk incidents arising from realisation of the risk of money laundering and terrorist financing when identifying, assessing, and verifying all the risks. By that, Swedbank had not submitted all the requested cases and incidents to Finantsinspektsioon.

3.7.2.3. Therefore, Swedbank violated subsection 58[1] (2) of the CIA and section 3 and subsection 6 (1) of the 2 January 2014 regulation No. 2 "Establishment of reports on operational risk of credit institutions and consolidation groups of credit institutions" of the President of the Central Bank of Estonia since it had not ensured regardless of the respective legislative requirements that all the money laundering and terrorist financing risks would be submitted in the report on operational risk loss events and incidents.

3.7.2.4. Based on the aforementioned, Finantsinspektsioon makes a precept to Swedbank and sets an obligation stated in clause 1.4.1 of the resolution of this precept.

3.7.3. Swedbank's solution for notifying the Financial Intelligence Unit did not enable proper notification

3.7.3.1. Subsection 49 (1) of the MLTFPA establishes that where the obliged entity identifies in economic or professional activities, a professional act or provision of a professional service an activity or facts whose characteristics refer to the use of criminal proceeds or terrorist financing or to the commission of related offences or an attempt thereof or with regard to which the obliged entity suspects or knows that it constitutes money laundering or terrorist financing or the commission of related offences, the obliged entity must report it to the Financial Intelligence Unit immediately, but not later than within two working days after identifying the activity or facts or after getting the suspicion.

3.7.3.2. Finantsinspektsioon has established in its on-site inspection report observation No. 31 (pp. 174–175) that the method used by Swedbank for notifying the Financial Intelligence Unit did not enable to accompany all the necessary information to the Financial Intelligence Unit. This, in turn, meant that the quality of the notification was significantly reduced when reporting, which did not allow the Financial Intelligence Unit to obtain full information for the performance of its statutory tasks.

3.7.3.3. Therefore, Swedbank violated subsection 49 (1) of the MLTFPA since it was unable to report to the Financial Intelligence Unit immediately, but not later than within two working days after identifying the activity or facts or after getting the suspicion.

3.7.3.4. Based on the aforementioned, Finantsinspektsioon makes a precept to Swedbank and sets the obligation stated in clause 1.4.2 of the resolution of this precept.

3.8. Reporting obligation of Swedbank

3.8.1. According to clause 99 (1) 1) of the CIA, for the purpose of performing supervision activities, Finantsinspektsioon shall have the right to require reports, free of charge information, documents and oral or written explanations concerning facts relevant to the exercise of supervision.

3.8.2. In order to assess the implementation of this precept, it is important to receive information from Swedbank on how the obligations arising from clause 1 of the resolution of this precept have been performed.

3.8.3. Based on the aforementioned, Finantsinspektsioon makes a precept to Swedbank and sets the obligations stated in clause 2 of the resolution of this precept.

4. DISCRETION AND PROPORTIONALITY

4.1. Pursuant to subsection 3 (1) of the FSAA, the objective of Finantsinspektsioon is to ensure the stability, reliability, transparency and efficiency of the financial sector, increase the effectiveness of the functioning of the system, reduce systemic risks and to promote prevention of the abuse of the financial sector for criminal purposes, with a view to protecting the interests of clients and investors by safeguarding their financial resources, and thereby supporting the stability of the Estonian monetary system.

4.2. According to subsection 3 (2) of the APA, administrative acts and measures shall be suitable, necessary and reasonable to the stated objectives [i.e. proportionate]. According to subsection 4 (1) of the APA, the right of discretion is an authorisation granted to an administrative authority by law to consider making a resolution or choose between different resolutions. The second subsection of this section states that the right of discretion shall be exercised in accordance with the limits of authorisation, the purpose of discretion and the general principles of justice, taking into account relevant facts and considering lawful interests.

4.3. Within the meaning of section 54 of the APA, an administrative act is lawful if it is issued by a competent administrative authority pursuant to legislation in force at the moment of the issue, is in accordance with the legislation in force, is proportional, does not abuse discretion, and is in compliance with the requirements for formal validity.

4.4. According to subsection 56 (3) of the APA, the reasoning for the issue of an administrative act issued on the basis of the right of discretion shall set out the considerations from which the administrative authority has proceeded upon issue of the administrative act.

4.5. During the on-site inspection, Finantsinspektsioon found that Swedbank's organisational solution on the prevention of money laundering and terrorist financing had material and systematic shortcomings and it was not in compliance with the type, scope and complexity of the economic activities of the credit institution. Swedbank also lacked appropriate systems and structural units. Swedbank's organisational solution for implementation of the obligations and objectives of the MLTFPA was not appropriate to mitigate the risks that Swedbank took with its business strategy in a significant extent (clause 1.2.4 of the on-site inspection report, pp. 10–15).

4.6. Therefore, the purpose of this precept is to end Swedbank's violations in its obligation to prevent money laundering and terrorist financing, and to prevent further violations. The stability, reliability and transparency of the financial sector, as well as the interests of clients and investors would certainly be damaged if Swedbank continued to take equivalent risks while continuing to use solutions for countering money laundering and terrorist financing, with had deficiencies referred to above.

4.7. With this precept, Finantsinspektsioon obliges Swedbank to take various measures in order to achieve the objective of this precept. Finantsinspektsioon has divided the obligations into four sub-measures (categories), taking into account their interdependence and their different purpose in fulfilling their obligations related to the prevention of money laundering and terrorist financing. In doing so, Finantsinspektsioon requires Swedbank to take steps to identify, assess and analyse the risks of money laundering and terrorist financing (clause 1.1 of the resolution), change its organisational solution (clause 1.2 of the resolution), apply due diligence measures (clause 1.3 of the resolution) and comply with its reporting obligations (clause 1.4 of the resolution). Finantsinspektsioon will assess the proportionality of these four measures. Special consideration has been given to the obligation set out in clause 2 of the resolution to submit interim reports and a final report on compliance with the precept, as well as the final deadline (8 months) within which the precept must be fully complied with.

4.8. Suitability of the precept measure

4.8.1. In assessing the suitability of the measures to be taken, account must be taken of whether the measure contributes to the achievement of the legal objective. In view of the purpose of the precept, the suitable means of achieving that aim must be sufficiently broad and must take into account the specific nature of Swedbank's activities.

4.8.2. Finantsinspektsioon has found in on-site inspection and noted in clause 3.4 of this precept the reasons why Swedbank had not identified, assessed or analysed all the money laundering and terrorist financing risks related to its economic activities. Finantsinspektsioon has also explained in clause 3.4.1 of this precept why it is only by identifying, assessing and analysing the risks of money laundering and terrorist financing that an appropriate organisational solution can be developed. Thus, in the context of this precept, establishing legality would mean that Swedbank would fulfil its obligations under clauses 55 (2) 2), 2^1 and 3 of the CIA and subsection 13 (1) and clause 13 (3) 2) of the MLTFPA, and identify, assess and analyse the money laundering and terrorist financing risks and then determine the appropriate risk appetite. Measures prescribed by this precept (clause 1.1 of the resolution) which in summary and by generalising oblige to revise and supplement the risk assessment (clause 1.1.1), to develop solutions for continuous assessment, measurement and monitoring of risk and make the results available to competent persons and structural units (clause 1.1.2), to analyse the risks associated with higher-risk business relationships established since 2007 (clause 1.1.3) and to set the risk appetite after risk assessment (clause 1.1.4), support the achievement of legality and the fulfilment of the objectives of the precept since they create a situation in which Swedbank as the obligated entity can knowingly plan its risk management.

Clause 3.5 of this precept states the reasons why Swedbank's organisational solution had material shortcomings. Finantsinspektsioon has also explained in clause 3.5.1 of this precept why it is so that only by having a suitable organisational solution can money laundering and terrorist financing be prevented effectively. Thus, in the context of this precept, establishing legality would mean that Swedbank would fulfil its obligations under clauses 55 (2) 2), 3), 3^1) and 11) of the CIA, subsections 59 (1) and (2) and subsection 63 (1) of the CIA and the first sentence of subsection 14 (1) of the MLTFPA, and create an organisational solution to effectively prevent money laundering and terrorist financing. The measures set out in this precept (clause 1.2 of the resolution), which in summary and by generalising oblige to ensure the existence of a structural unit that would have an overview of and would review and assess the compliance of money laundering and terrorist financing systems (1.2.1), establish clear areas of responsibility both on the management and organisational level, taking into consideration the separation of functions (clause 1.2.2), designate a unit for the fight against financial crime (clause 1.2.3), identify a structural unit with the necessary means to carry out routine and emergency analyses to assess the type and extent of the risks of money laundering and terrorist financing (clause 1.2.4), assign the necessary human resources to both the GSI and, where appropriate, other entities (clause 1.2.5), and change the rules of procedure so that they are clear and unambiguous, define principles for assessing, asking for and determining resource requirements, as well as provide uniform group-wide requirements to its subsidiaries (clauses 1.2.6–1.2.8), support the achievement of

legality and the fulfilment of the objectives of the precept since they ensure adequate management and mitigation of the risks taken by their activities.

Clause 3.6 of the precept states why Swedbank's solutions for implementation of due diligence measures and knowing its clients were inadequate. Finantsinspektsioon has also explained in clause 3.6.1 of this precept why it is only by applying due diligence measures and therefore knowing the clients is it possible to reduce the risk of Estonian financial system and economic space to be exploited for money laundering and terrorist financing. Thus, in the context of this precept, establishing legality would mean that Swedbank would fulfil its obligations under clause 55 (2) 2) and subsection 82 (5) of the CIA, clause 14 (1) 2), clauses 23 (2) 1) and 4), and subsections 47 (1) and (4) of the MLTFPA, and would create due solutions for applying due diligence measures and knowing its clients. The measures implemented under this precept (resolution clause 1.3), which in summary and by generalising oblige to change the rules of procedure for uniform record keeping of the data gathered during due diligence (clause 1.3.1), re-organise the data gathered during due diligence in the databases (clause 1.3.2), to maintain the reasons for terminating business relationships with the client and the relevant client information for effective risk management (clauses 1.3.3 and 1.3.4), establish clear rules for assigning risk ratings to clients and review existing client relationships based on these principles (clause 1.3.5), develop a business relationship monitoring system that corresponds to the size of Swedbank and the type, extent, and complexity of the activities and services provided (clause 1.3.6) and to improve and continually test the business continuity plans (clause 1.3.7), support the achievement of legality and the fulfilment of the objectives of the precept since it allows Swedbank to take risks that it is aware of and is able to manage systematically.

Clause 3.7 of the precept explains why Swedbank failed to comply with its reporting obligation. Finantsinspektsioon has also explained in clause 3.7.1 of this precept why it is only by performing the reporting obligation that money laundering and terrorist financing can be combated effectively also by the state as an important part in the fight against money laundering and terrorist financing. Thus, in the context of this precept, establishing legality would mean that Swedbank would fulfil its obligations under subsection 58^1 (2) of the CIA, section 3 and subsection 6 (1) of the 2 January 2014 regulation No. 2 "Establishment of reports on operational risk of credit institutions and consolidation groups of credit institutions" of the President of the Central Bank of Estonia and subsection 49 (1) of the MLTFPA, and perform its reporting obligation, after which the state can take respective measures to prevent money laundering and terrorist financing. The measures imposed by this precept (clause 1.4 of the resolution), which in summary and by generalising oblige to review operational risk and incident reporting procedures (clause 1.4.1) and to analyse how to improve the quality of reporting to the Financial Intelligence Unit (clause 1.4.2), support the achievement of legality and the fulfilment of the objectives of the precept since they help to ensure that the reporting obligation is duly fulfilled.

However, these obligations must be met together since eliminating only a few shortcomings does not ensure that the credit institution is fully capable of combating money laundering and terrorist financing. Consequently, the obligations set out in clauses 1.1, 1.2, 1.3 and 1.4 of the resolution contribute to the objective of this precept and are therefore suitable.

4.8.3. It is also important to set a deadline for eliminating the shortcomings and to report regularly on the steps taken (clauses 1 and 2 of the resolution), since a credit institution dealing indefinitely with shortcomings in prevention of money laundering and terrorist financing significantly increases its likelihood of being criminally exploited. At that, Finantsinspektsioon must retain the possibility to verify compliance with this precept. Based on the above, Finantsinspektsioon finds that the time taken to carry out the clauses of the resolution must be limited. Finantsinspektsioon is of the opinion that eight (8) months stipulated in this precept is a suitable period and contributes to the aim of this precept to ensure compliance with the requirements of Swedbank to the MLTFPA and to prevent further violations. For the above reasons, the obligation imposed on Swedbank to provide monthly overviews of the measures taken and to be taken, as well as the obligation to submit a final report on all the measures taken, together with the reasons why the precept is thus fulfilled, is lawful and suitable.

4.8.4. The measures chosen by the precept are therefore lawful and suitable for overcoming the above violations by Swedbank and preventing further violations, thus contributing to the objective of the precept. Currently, there is no reason to doubt that the precept would not contribute to the achievement of the objective, and the measures are therefore suitable.

4.9. Necessity of the precept measure

4.9.1. The appropriate measures taken are, collectively, necessary for the following reasons. Without identifying, assessing and analysing the risks of money laundering and terrorist financing, Swedbank is not in a position to develop an appropriate organisational solution to manage the risks to which it is exposed. Without an appropriate organisational solution, no obligated entity within the meaning of the MLTFPA can effectively prevent money laundering and terrorist financing. If the due diligence measures are not applied properly and adequately, the obligated entity is not able to know its clients and thus prevent the client or their transactions from being concealed, disguised, etc. at various stages of money laundering or terrorist financing from both illegal and legal funds. If the reporting obligation before the state is not fulfilled, this may increase the risk that national measures to prevent money laundering and terrorist financing will not be taken, criminals not be brought to justice, and organised crime assets not be confiscated. If Finantsinspektsioon would not issue this precept, there would still be a possibility that Swedbank would continue to operate while having the identified shortcomings in money laundering and terrorist financing prevention solutions.

4.9.2. Section 104 of the CIA stipulates several supervisory measures that Finantsinspektsioon has the right to use but does not deem necessary in this case. Compared to other measures provided for in section 104 of the CIA, Finantsinspektsioon has chosen the least burdensome effective measure towards Swedbank to achieve the objective of the precept. Among other things, Finantsinspektsioon could have prohibited Swedbank from making certain actions and transactions under clause 104 (1) 1) of the CIA, or restricted their volume until all the shortcomings identified in the on-site inspection report had been addressed, thereby mitigating the consequences that may arise if Swedbank operates inadequate systems and controls, and ensuring client protection. However, this is a significantly more burdensome measure than the prescriptive obligations to improve the system for identifying, assessing and analysing risks, to change the organisational solution, to apply due diligence in accordance with the law and to comply with the statutory reporting obligation.

4.9.3. In the opinion of Finantsinspektsioon, only complete inaction would be a milder measure than the ones taken under this precept. In this context and in general, when a precept is issued, it is also necessary to assess the size of Swedbank. Clause 3.3 of this precept describes the volume and significance of Swedbank's activities in the context of the Estonian financial market. The above illustrates the potential impact of failing to manage the risks accompanying Swedbank's operations. If Swedbank continued to prevent money laundering and terrorist financing with deficient solutions, it would increase the likelihood of being exploited for money laundering and terrorist financing. At the same time, on-site inspection identified material and systematic weaknesses in Swedbank's organisational solution to prevent money laundering and terrorist financing. Therefore, it is not possible to give no reaction at all to the current situation.

4.9.4. As stated in clause 4.8.2 of this precept, the first set of obligations to be imposed on Swedbank relates to steps for the identification, assessment and analysis of money laundering and terrorist financing risks. One of the most important prerequisites for combating money laundering and terrorist financing is the mapping of money laundering and terrorist financing risks of the obligated entity, i.e. Swedbank. By proactively identifying both lower and higher risk situations and threats, appropriate risk management systems can be developed within the organisation. Considering the material shortcomings in Swedbank's activities in identifying, assessing and analysing the risks identified in clause 3.4 of this precept, Finantsinspektsioon is of the opinion that the obligation imposed in clause 1.1 of the precept is the most lenient measure possible. It only obliges Swedbank to review and supplement its existing activities, and the legislation contains no corresponding lenient alternative.

The second category of obligations set for Swedbank relates to creating an appropriate organisational solution. Swedbank's organisational solution to money laundering and terrorism was characterised by material and systematic weaknesses and was not in correspondence with the nature, extent, and complexity of its economic activities. Swedbank also lacked appropriate systems and structural units. Swedbank's solutions for implementing the obligations and objectives set out in the MLTFPA were not appropriate to mitigate the significant risks that Swedbank took in its business strategy. Without an appropriate organisational solution, however, neither any obligated entity nor Swedbank can effectively prevent money laundering and terrorist financing. Considering the material shortcomings in Swedbank's organisational solution identified in clause 3.5 of this precept, Finantsinspektsioon is of the opinion that the obligation imposed in clause 1.2 of the precept resolution is the most lenient measure possible. It only obliges Swedbank to ensure the existence of relevant structural units, to determine the fields of responsibilities, to ensure that structural units have resources, to ensure segregation of functions and to avoid conflicts of interest, to allocate sufficient resources and to assess and amend the existing rules of procedures, and the legislation contains no corresponding lenient alternative.

The third category of obligations imposed on Swedbank relates to knowing the client and applying due diligence measures vis-à-vis clients. Application of the preventive or due diligence measures by the obligated entity, i.e. Swedbank, is one of its main obligations in preventing money laundering and terrorist financing. The purpose of implementation of due diligence measures is mainly to prevent concealment, disguising, etc. of money derived from criminal activity in various stages of money laundering, and to prevent terrorist financing with funds derived both from illegal and legal sources. Therefore, one of the main objectives is to ensure the reliability and transparency of the Estonian business environment and to prevent the use of Estonian financial system and economic space for money laundering and terrorist financing. If the obligated entity, i.e. Swedbank, does not know its clients and fails to implement any due diligence measures, does not do it in sufficient extent or correctly, both money laundering and terrorist financing could take place. Enforcement of due diligence measures ensures closer scrutiny of one's client, which contributes to the transparency of the national economy and the prevention of money laundering and terrorist financing. Considering the material shortcomings in Swedbank's activities in applying due diligence measures and knowing its clients identified in clause 3.6 of this precept, Finantsinspektsioon is of the opinion that the obligation imposed in clause 1.3 of the precept resolution is the most lenient measure possible. It only obliges Swedbank to assess its existing rules and activities and change them, if necessary, organise its databases, keep additional data, review its risks and systems, and the legislation contains no corresponding lenient alternative.

The fourth category of obligations imposed on Swedbank relates to compliance with the reporting obligation. The obligated entity, i.e. Swedbank, is responsible for informing the competent authorities of the state of the risks and incidents regarding money laundering and terrorist financing. The purpose of notifying Finantsinspektsioon is, *inter alia*, to ensure that the financial supervision is aware of the risks and problems regarding the obligated entity, i.e. Swedbank, so that the latter can prevent its misuse for criminal purposes to protect the financial system. The purpose of notifying the Financial Intelligence Unit is to enable the Financial Intelligence Unit to form their own suspicion of money laundering and to impose a suspension on use of funds, but also to forward the circumstances or the respective transaction to law enforcement authorities for further inspection. If the obligated entity, i.e. Swedbank, fails to comply with the reporting obligation, this may increase the risk that national measures to prevent money laundering and terrorist financing will not be taken. It should be kept in mind that money laundering is combated both by preventive measures and by criminalising criminal activity and confiscating assets from criminals. Considering the material shortcomings in Swedbank's activities in fulfilling its reporting obligation identified in clause 3.7 of this precept, Finantsinspektsioon is of the opinion that the obligation imposed in clause 1.4 of the precept resolution is the most lenient measure possible. It only obliges Swedbank to analyse its current practices and amend them, if necessary, and the legislation contains no corresponding lenient alternative.

The shortcomings of the four different categories above cannot be overcome with less than requiring Swedbank to carry out relevant risk assessments and to consistently monitor the amount of the risks identified, to change the organisational solution, to change its due diligence practice and its activities

regarding the reporting obligation. The only solution more lenient would be to not react to the situation at all, which is not possible due to reasons provided in clause 4.9.3. As a result, there is no less burdensome measure for achieving the aforementioned than to oblige Swedbank to take action.

4.9.5. There is a need for, and there is no lenient measure, but to also set a deadline for eliminating the deficiencies and set an obligation to report continuously on the steps taken, given that Finantsinspektsioon must keep the possibility to monitor the compliance with this provision (clauses 1 and 2 of the resolution). A credit institution dealing indefinitely with shortcomings in prevention of money laundering and terrorist financing significantly increases its likelihood of being criminally misused. An eight (8) month deadline for Swedbank to eliminate the shortcomings and an obligation to report on the steps taken is therefore necessary and protects the financial sector as described above. The deadline is long enough to provide Swedbank with sufficient time to address the shortcomings, since certain obligations set with the precept may take longer (risk assessment, understanding the historical risks, reviewing human resources situation, reviewing and implementing the monitoring scenarios, etc.). However, setting an even longer period would not allow the objectives of the precept to be achieved and would mean that Swedbank would be in the very long time without appropriate systems and exposed to the risk of money laundering and terrorist financing. In case of a longer term, it would also be necessary to restrict the provision of services by Swedbank in order to reduce the risk, but Finantsinspektsioon has currently opted out of this decision. Due to the above, the deadlines and obligation to report on the steps taken are also necessary, and there is no less burdensome alternative for Swedbank.

4.9.6. The measures outlined in the precept for overcoming, i.e. eliminating the identified violations and preventing further violations is the most lenient measure provided by law to Finantsinspektsioon, also taking into account the accompanying legal guarantees. Implementation of this precept may ensure that the implementation of the obligations imposed will fulfil the purpose set forth in this precept. It also gives Finantsinspektsioon the opportunity to monitor and enforce the obligations set.

4.9.7. Therefore, this precept is necessary and the objectives it pursues cannot be achieved by another, more lenient measure for Swedbank that would be at least as effective.

4.10. Reasonableness of the precept measure

4.10.1. A measure is reasonable if the means employed are proportionate to the aim pursued, that is, in all circumstances, not unreasonably burdensome for the recipient. The extent and intensity of interference with fundamental rights, on the one hand, and the importance of the objective, on the other, must be considered in deciding whether a measure is reasonable. In assessing reasonableness, the extent of the infringement must be considered.

4.10.2. In general in this case, one of the rights being weighed is the right of Swedbank, its shareholders and directors to operate in the financial market (freedom of enterprise) and to do so at their own discretion, subject to legal obligations. The other side is the public's expectation and the right to financial stability and good risk management, as well as the expectation and right to a financial market that operates in a fair, lawful and transparent manner. In the latter case, the credit institution fulfils its public obligations under the MLTFPA, which prevents the use of the financial system and economic space of the Republic of Estonia for money laundering and terrorist financing through preventive measures. Thus, the restriction on the freedom to conduct a business of one company must be assessed in the light of the objectives of this provision and the potential adverse consequences that Swedbank would have if its measures to prevent money laundering and terrorist financing would continue to be defective and effectively prevent money laundering and terrorist financing.

4.10.3. The four categories of measures imposed by the precept, described in general terms and summarised in paragraph 4.8.2 of this precept (clauses 1.1, 1.2, 1.3 and 1.4 of the resolution) are all individually reasonable, given the importance of the objective pursued by this precept. In a situation where supervisory measures are aimed at eliminating material and systematic breaches of regulatory

requirements by Swedbank and preventing further breaches, the precautionary protection of clients' interests and the soundness, stability and transparency of the financial market outweigh Swedbank's interest in providing services in violation of applicable standards. These four categories of measures are all inextricably linked, so shortcomings in the execution of one prevent due combating of money laundering and terrorist financing from early on. Assigned responsibilities for identifying, assessing and analysing risks (the first category of responsibilities) are needed to build an overall organisational solution. Obligations for developing an organisational solution (the second category of obligations) are a prerequisite for applying due diligence and knowing one's clients. The application of due diligence and knowing the clients (third category of obligations), in turn, is a prerequisite for effective prevention of money laundering and terrorist financing. And finally, compliance with the reporting obligations (fourth category of obligations) will ensure that national competent authorities can also enforce their obligations to prevent money laundering and terrorist financing.

4.10.4. Separately, Finantsinspektsioon assesses the reasonableness of the time limit for the elimination of identified shortcomings, considering that Finantsinspektsioon must also retain the possibility to verify compliance with this precept (clauses 1 and 2 of the resolution). Finantsinspektsioon gives Swedbank eight (8) months to eliminate the shortcomings and violations identified, inform Finantsinspektsioon of the actions taken and to provide evidence thereof. The purpose of setting the deadline is, on the one hand, to enable Swedbank to bring its activities into line with the law and, on the other hand, to do so in a sufficiently motivating time frame to prevent the non-compliant person from continuing to operate on the market. However, Finantsinspektsioon cannot check whether the precept has been complied with to the extent required and within the time limit prescribed by the precept unless Swedbank submits reviews on compliance to Finantsinspektsioon. Eight (8) months is sufficient time to evaluate its activities and bring them into line with current standards, but this period does not unduly delay the fulfilment of its obligations. This deadline gives Swedbank sufficient time to bring itself and its operations into compliance with the law. Swedbank's non-compliance with the law and violations of the law cannot be tolerated in the long term. Thus, setting an eight (8) month time limit contributes to achieving the objectives of the precept and allows all necessary actions to be taken. For the reasons set out above, both the time limit and the obligation to submit reports on compliance are reasonable.

4.10.5. In addition to the above, each of these four categories of measures and the timeframe for remedying the shortcomings are reasonable in the light of the following considerations to ensure the stability, reliability and transparency of the financial sector (*inter alia*, section 3 and subsection 5 (2) of the FSAA). This means that the following arguments for deciding whether this decision is reasonable apply to this decision as a whole, but are also individually applicable to each individual obligation imposed by the resolution of this precept.

4.10.6. Violations related to money laundering and terrorist financing have a huge impact on the financial sector as a whole, whether it is the loss of correspondent relationships, the negative impact on stock market prices of financial market participants and thus, *inter alia*, to investors, the negative impact on money prices on capital markets, etc. Moreover, since credit institutions play an extremely important role and have responsibility in preventing money laundering and terrorist financing through the provision or mediation of services, the significant negative impact on the integrity of the financial sector of a single financial market participant cannot be underestimated when it provides services via systems and solutions for prevention of money laundering and terrorist financing that contain material and systematic weaknesses.

4.10.7. Financial market players, due to the influence and importance of the financial market, are subject to increased due diligence and specific requirements that all financial market participants, including Swedbank, must meet at all times. We must also take into account the size of Swedbank, the impact of its operations on the financial system, and the nature, extent and complexity of its operations, as well as threats to the stability, reliability and transparency of the financial sector, client interests and investors. Section 3.3 of this precept describes the size of Swedbank's client base and the risks and threats to it. It also explains why Swedbank as an obligated entity should be expected to provide high-

quality solutions to prevent money laundering and terrorist financing and a high level of diligence in servicing its client base.

4.10.8. Finantsinspektsioon has identified material and systematic shortcomings in the organisational solution and operation of Swedbank, as well as breaches of imperative obligations that could undermine the stability, reliability, transparency and efficiency of the Estonian financial sector. Such a negative impact on the integrity and transparency of the Estonian financial system has already occurred through negative media coverage, first and foremost in 2019, but may continue to do so in the future if Finantsinspektsioon does not take decisive steps to overcome the violations and prevent further ones.

4.10.9. The financial market with clear rules and the law-abiding behaviour of financial market participants are in the interest of the entire Estonian economic space and society. Swedbank has an obligation at any time to comply with mandatory statutory requirements and the obligation to comply is not a surprise to a supervised entity. No financial operator with higher requirements and due diligence obligation can expect that its financial interests or rights to business freedom would outweigh its imperative requirements and the transparency of the Estonian financial sector and the protection of its financial system and economy against money laundering and terrorist financing. Therefore, the public's heightened expectation and interest in a credible, honest, lawful and transparent financial sector, which, among other things, hinders the use of the financial system and economic space of the Republic of Estonia for money laundering and terrorist financing, must prevail.

4.10.10. In view of the above, all the circumstances identified during the on-site inspection and stated in this precept, the objectives of the precept clearly outweigh Swedbank's infringed rights, i.e., they are not a disproportionately burdensome measure in relation to the objectives. For the same reasons, all the obligations imposed by the resolution of this precept, including the four categories of measures, are reasonable.

4.11. Thus, all measures imposed by the precept are considered, lawful, suitable, necessary, and reasonable to the achievement of the stated objective. If the precept is not complied with in whole or in part or the selected measures prove ineffective or inadequate or other additional circumstances become evident, Finantsinspektsioon may apply the additional measures specified in the CIA.

5. DISCLOSURE OF THE DECISION

5.1. According to the first sentence of subsection 54 (5) of the FSAA, Finantsinspektsioon has the right to disclose, in full or in part, a ruling made in a misdemeanour matter, an administrative act or an administrative contract if this is stipulated in an Act specified in subsection 2 (1) of the FSAA or if this is necessary for the protection of investors, clients of financial supervision subjects or the public or for ensuring the lawful or regular functioning of the financial market.

5.2. According to subsection 67 (3) of the MLTFPA, Finantsinspektsioon will publish on their websites the /.../ precept or decision to impose a penalty payment /.../ immediately after it has entered into force. At least the type and nature of the breach, the details of the person responsible for the breach and information on appealing against and annulment of the decision or precept will be given on the website. The entire information must remain available on the website for at least five years. According to subsection 67 (4) of the MLTFPA, upon assessment of the facts, Finantsinspektsioon has the right to postpone the publication of the final decision in a misdemeanour case or a relevant administrative decision or not to disclose the identity of the offender for the purpose of protection of personal data as long as at least one of the following criteria is met: 1) the publication of the data jeopardises the stability of financial markets or pending proceedings (clause 1); 2) the disclosure of the person responsible for the misdemeanour would be disproportionate to the imposed penalty (clause 2).

5.3. Concurrence of subsections 67 (3) and (4) indicate that in general, precepts by Finantsinspektsioon are public, unless a condition occurs for delaying the publication or not disclosing the decision.

5.4. In this case, the disclosure of the decision does not jeopardise any pending proceedings, and Finantsinspektsioon has no information that states otherwise. Precept is also not a punishment, which is why the condition of clause 67 (4) 2) of the MLTFPA is not fulfilled. Disclosure of the precept also does not endanger the stability of financial markets; on the contrary, it increases stability for the following reasons.

5.5. Full disclosure of the decision is necessary both to protect investors, clients of financial supervision subjects and the public, and to ensure the orderly and lawful functioning of the financial market.

5.6. Above all, effective and proportionate financial supervision is an important guarantee of the lawful and orderly functioning of the financial market, and the knowledge that significant offenses in the areas of money laundering and terrorist financing may lead to coercive measures by Finantsinspektsioon. In its activities, a financial market participant shall take into account that Finantsinspektsioon has the right and obligation to disclose the relevant decision pursuant to law in violation of the essential requirements established by legislation for the protection of the financial market and its clients. Disclosure of the decision in this case gives the public and other market participants a clear signal of the unacceptability of any breaches found and the high standards expected in the Estonian financial sector.

5.7. Financial supervision needs to be as transparent as possible in its activities, all the more so when a person with one of the largest market shares is subject to a large number of obligations under a precept. Full disclosure of the decision on the website contributes to the objectives and is therefore suitable. The law does not provide for another equally effective means of achieving the objectives, and is therefore necessary. The full disclosure of the decision is not, considering all circumstances, excessively intrusive to Swedbank's rights. The interests of Swedbank, on the one hand, and the interests of the public, clients, investors and other financial market participants about learning of the circumstances of the precept, on the other, must be weighed.

5.8. According to the law, Finantsinspektsioon carries out financial supervision only in the public interest. The decision in this case is due to Swedbank's shortcomings in the prevention of money laundering and terrorist financing, with negative consequences for the general public. Considering all circumstances, publishing the decision in its entirety is not unreasonably burdensome to Swedbank and is therefore reasonable.

5.9. Finantsinspektsioon performs its obligation under subsection 67 (3) of the MLTFPA and decides to publish the decision on its website in accordance with subsection 54 (5) of the FSAA.

6. HEARING THE OPINION AND OBJECTIONS OF THE CREDIT INSTITUTION

6.1. According to subsection 40 (1) of the APA, Swedbank has a right to submit its opinion and objections on the precept. The draft precept was submitted to Swedbank in the 28 January 2020 letter No. 4.7-1.1/1246-57 and in the 10 March 2020 letter No. 4.7-1.1/1246-65.

6.2. In the 12 February 2020 letter No. A01.10-200-02/375 (received on 25 February 2020),[12] Swedbank submitted its opinion and objections to Finantsinspektsioon's draft precept (hereinafter: 25 February 2020 comments). Swedbank further submitted its opinions and objections by 12 March 2020 letter No. A01.10-200-02/623 (hereinafter: 12 March 2020 comments).

6.3. Finantsinspektsioon has considered and assessed Swedbank's comments prior to issuing this precept. Briefly, and for ease of reference only, the relevant positions of Swedbank, as well as Finantsinspektsioon's summary reply to these submissions, are summarised as follows.

6.3.1. Bank's position:

[12] Taking subsection 20 (1) of the APA into consideration, according to which the language of administrative proceedings is Estonian, Swedbank submitted its opinion and objections in Estonian only on 25 February 2020, but the reference within the letter was still 12 February 2020 and the number of the letter was A01.10-200-02/375.

In the precept on the claims made, Swedbank refers to its previous comments submitted to Finantsinspektsioon on 16 September 2019 and 20 December 2019. At the same time, Swedbank emphasises its full cooperation and will to comply with the regulatory expectations of Finantsinspektsioon. (25.02.2020 comments, p. 1)

Reply of Finantsinspektsioon:

In a letter dated 16 September 2019, Swedbank submitted written comments on the draft on-site inspection report. In these explanations, Swedbank largely disagreed with the findings of Finantsinspektsioon's on-site inspection and the draft on-site inspection report. Finantsinspektsioon considered Swedbank's comments prior to the issuance of the final on-site inspection report and explained in its final report why Swedbank's written explanations cannot be mostly taken into account. In its dissenting opinion of 20 December 2019 to the final report of the on-site inspection, Swedbank again referred to the comments of 16 September 2019, which had already been addressed by Finantsinspektsioon in the final report of the on-site inspection. Finantsinspektsioon has also considered these disagreements to the on-site inspection report, including the references in the dissenting opinion to the letter of 16 September 2019, prior to making this precept.

6.3.2. Bank's position:

The conclusions made in the precept are dated 31 March 2019, almost one year after the precept was issued. The precept is worded in a way that does not take into account the passage of time and the measures taken by Swedbank over the past year. The current wording of the precept does not contain important information on the improvements made to the anti-money laundering controls, giving the impression that the circumstances have not changed since the precept was issued. At the same time, Swedbank considers that it has made significant progress in the meantime, which is explained both in writing and orally.

Swedbank considers that the lack of a clear specification of the timeline in the precept creates the misleading impression that Swedbank is still presenting a risk of money laundering to its partners, despite the fact that the findings are based on on-site inspections of more than a decade. Swedbank estimates that the current wording of the precept does not distinguish between, for example, the assessment of the circumstances of 2004 and 2017 or between March 2004 and March 2020 (the time of the precept).

As a result of the above, Swedbank also requests amendments to the wording of the precept and has proposed amendments to the wording of the precept. (25 February 2020 comments, pp. 1–5)

Reply of Finantsinspektsioon:

The estimates set out in the draft precept are based on what has been identified during the on-site inspection – they relate to irregularities identified in Swedbank's activities and in particular in its systems and controls as at 31 March 2019 and before that. However, this precept is based on these identified violations, but obliges Swedbank to make changes to those violations that were particularly relevant as at 31 March 2019. Finantsinspektsioon has already made this point in clause 1.1.4 of the precept (old reference 1.1.3). At the same time, Finantsinspektsioon has taken into account the comments of Swedbank and has used the past form of motivation as well as proportionality in order to avoid any doubt about the timing of the breaches. Finantsinspektsioon has also reworded the rest of the precept where appropriate.

Regarding the changes made by Swedbank to the controls and systems after the on-site inspection, Finantsinspektsioon has not had the opportunity to verify them and these are therefore not covered in this precept. It is the duty of Finantsinspektsioon first to legally end Swedbank's violations of its obligations to prevent money laundering and terrorist financing and prevent further violations. Only then can Finantsinspektsioon start verifying the actions taken following the on-site inspection.

Finantsinspektsioon has amended the precept in section 1.1.4 (old reference 1.1.3) and stated that it has not been able to verify the changes made after 31 March 2019.

6.3.3. Bank's position:

Swedbank has analysed the time needed to comply with the precept resolution measures and has concluded that additional time is needed to implement the measures in clauses 1.2.1 to 1.2.4 of the resolution in the organisation, i.e. the ones related to the organisational solution. This is due to the fact that Swedbank Group has already launched various internal management projects with the aim of finding a suitable and compliant solution for the whole group, which is due by the end of 2020. In order to avoid the risk of interruptions in reporting lines, competencies and information sharing, including resource and budget allocation issues within the group, it is necessary to allow the Bank an additional six (6) months to comply with the resolution measures 1.2.1 to 1.2.4. (25 February 2020 comments, p. 3)

The Bank will also need additional time to eliminate the shortcomings in clauses 1.3.2., 1.3.4. and 1.3.6, i.e. to address shortcomings related to due diligence. Swedbank justifies the need for the additional time of six (6) months for clauses 1.3.2 and 1.3.4 of the resolution with the need for manual work. However, clause 1.3.6 of the resolution on the implementation of an appropriate business relationship monitoring system, requires a prior risk analysis by the bank, after which the bank will be able to assess what should a long-term monitoring scenario plan be. (25 February 2020 comments, pp. 3–4)

Reply of Finantsinspektsioon:

Finantsinspektsioon has considered Swedbank's proposal for a final term of twelve months (12 months) to comply with paragraphs 1.2.1 to 1.2.4, 1.3.2, 1.3.4 and 1.3.6 of the resolution. Finantsinspektsioon does not fully agree with the comments submitted by Swedbank, but is prepared to extend the deadline for compliance with all paragraphs of the resolution to eight (8) months from the issue of the precept for the following reasons.

As Swedbank rightly points out in its comments, Finantsinspektsioon has identified shortcomings in Swedbank's systems and controls and in the activities of the Management Board as at 31 March 2019 and before that. Finantsinspektsioon submitted a draft on-site inspection report to Swedbank for submission of written comments on 15 July 2019 and a final report on 19 November 2019. This means that Swedbank has had time to remedy the shortcomings identified in the on-site inspection report at least from 15 July 2019, but from 19 November 2019 at the latest. Therefore, in practice, Swedbank has had a longer time to eliminate shortcomings than the initial six (6) months. At the same time, Finantsinspektsioon acknowledges that the fulfilment of the obligations set out in the resolution may take time, especially considering their connection with the Swedbank Group, and therefore sets a deadline of no more than eight (8) months. Finantsinspektsioon is not in a position to extend the deadline further for the reasons set out in the proportionality analysis of this precept. For the sake of readability, Finantsinspektsioon will not repeat them.

6.3.4. Bank's position:

The draft precept provides for a penalty payment of EUR 32,000 per day or, in case of subsequent infringement, EUR 100 000 per day. By law, the time limit for the voluntary execution of a precautionary order must enable the addressee of the coercive measure to comply. A reasonable time limit for voluntary execution shall be set for each penalty payment applied. The purpose of a penalty payment is to compel a person to change their behaviour by demanding money and to force them to perform the obligation imposed on them by a precept, not to punish a person for failure to comply with the precept. Also, Substitutive Enforcement and Penalty Payment Act, unlike a fine, does not have a punitive purpose, but is intended to induce a person to commit an act contained in a precept or to refrain from performing a prohibited act. Penalty payment is not a sanction but an impact instrument. Therefore, Swedbank asks

Finantsinspektsioon to consider omitting the automatic daily prediction of a penalty payment from a draft precept. (12 March 2020 comments)

Reply of Finantsinspektsioon:

Pursuant to subsection 2 (1) of the Substitutive Enforcement and Penalty Payment Act (hereinafter: SEPPA), a coercive measure is applied if a precept of an administrative authority is not complied with during the term indicated in a warning. Finantsinspektsioon issues a precept to Swedbank for a period of eight (8) months for amending its control systems. Only afterwards the penalty institute shall apply. In this draft precept, Finantsinspektsioon has explained why eight (8) months is a proportionate period for compliance with the obligations imposed in the resolution and, conversely, why it would not be acceptable for Swedbank to have a longer time to address its deficiencies, including the impact it may have. Finantsinspektsioon has considered the related circumstances before issuing a penalty payment warning.

Thus, all requirements specified by Swedbank in its comments and that are imposed by the CIA and the SEPPA are met, including a voluntary enforcement period (8 months) and if within eight (8) months Swedbank has failed to comply, the penalty payment is a means of changing behaviour, directed at enforcing a money order precept. Consequently, it also appears that the penalty payment warning issued by Finantsinspektsioon in the precept is not punitive in nature. Among other things, it is appropriate and appropriately weighted to impose a penalty payment for each breach of duty and for each day on which Swedbank fails to comply with the obligation set forth in paragraphs 1 or 2 of the resolution or its sub-paragraphs, improperly performs the obligation or, if it has due, fails to perform the obligation within the specified term.

6.3.5. Finantsinspektsioon has revised the precept also in some other parts, to a minor extent and not in a substantial or content-altering part.

7. RESOLUTION

On the basis of the foregoing and pursuant to clause 18 (2) 4), subsection 55 (1) of the FSAA and subsection 99 (1), clauses 103 (1) 1), 2) and 4) of the CIA and clauses 104 (1) 8), 15) and 17) of the CIA,

the Management Board of Finantsinspektsioon has decided to obligate Swedbank AS (registry code 10060701, address Liivalaia 8, Tallinn 15040):

1. within eight (8) months of the entry into force of this precept:

1.1. in relation to risk identification, assessment and analysis:

1.1.1. to review and update the risk assessment of money laundering and terrorist financing, taking into account the deficiencies identified in clause 3.4.2 of this precept;

1.1.2. to create a solution for assessing, measuring and constant monitoring of the nature of risks that provides clear risk markers on the risk of money laundering and terrorist financing to which Swedbank AS is exposed to, and to make this tool available to the Management Board of Swedbank AS and all the relevant structural units that have to identify, assess and analyse the risks of money laundering and terrorist financing in their everyday work, and have to manage those risks;

1.1.3. to carry out an analysis of the money laundering and terrorist financing risks associated with high-risk clients to whom services have been provided since 2007 and include in this analysis risk management measures in case risks are being identified;

1.1.4. to determine, after conducting the risk assessment specified in clause 1.1.1 of the resolution, the risk appetite of money laundering and terrorist financing, including on a qualitative and quantitative (quantifiable) level the risks of money laundering and terrorist financing, including those related to products, services, clients, delivery channels, geographical areas that Swedbank AS is willing to take or wishes to avoid in conducting business;

1.2. relating to the organisational solution:

1.2.1. to ensure the existence of a structural unit that has a complete overview and that assesses the compliance of Swedbank AS with its anti-money laundering and terrorist financing prevention systems;

1.2.2. to designate responsibilities for money laundering and terrorist financing prevention at the Management Board and organisation levels, and ensure that risk management functions are separated by three lines of defence principle, in particular that the risk taking and management functions are not structurally in the same place within the organisation;

1.2.3. to designate a unit in Swedbank AS for combating financial crime;

1.2.4. to designate a structural unit which is responsible for and has the necessary means to conduct regular and extraordinary analyses outside the risk assessment of Swedbank AS to assess the nature and extent of the historical and present risks facing Swedbank AS, in particular, relating to information received from the Financial Intelligence Unit, Finantsinspektsioon, law enforcement agencies, media monitoring and other similar sources;

1.2.5. to allocate sufficient human resources to manage the various risks of money laundering and terrorist financing prevention, both within the Group Security and Investigations unit and, as appropriate, all other units, including to the extent necessary to comply with the requirements of this precept and changing or supplementing the organisational solution thereof;

1.2.6. to determine in the rules of procedure how Swedbank AS will continuously assess the need for resources in the various units involved in the prevention of money laundering and terrorist financing and how additional resources will be requested and assigned in such units;

1.2.7. to lay down, in the rules of procedure, uniform group-wide requirements for combating money laundering and terrorist financing also in respect of Swedbank AS subsidiaries that are obliged entities within the meaning of the Money Laundering and Terrorist Financing Prevention Act;

1.2.8. to evaluate, systematise and modify the existing procedures for the prevention of money laundering and terrorist financing so that they would have a clear and unambiguous hierarchy;

1.3. as regards the application of due diligence measures:

1.3.1. to define in the rules of procedure how the client's names, including aliases and names written in another alphabet, and the client's residency are entered into databases, distinguishing between different sub-categories of residency, including tax residence, nationality and country of origin;

1.3.2. to organise the names and residences of clients in existing databases so that they are reproduced in all instances using the same spelling and under the same principles, and to take steps to ensure that all data subject to the record-keeping obligation are retained in a manner that ensures that it is fully and promptly transferred to the competent authorities;

1.3.3. to create technical solutions so that Swedbank AS will be able to obtain information from the internal databases exhaustively and without delay on the reasons for terminating business relations with the client and why transactions or operations with the client are prohibited;

1.3.4. to develop appropriate measures to ensure that a legal person, its beneficial owner, representative, person with the same nominee director, person with the same business address, registration address or any other indicator, who has become a subject of termination of a business relationship due to compliance with the requirements on prevention of money laundering and terrorist financing or due to implementing the risk appetite, would not become a client of Swedbank AS again without the knowledge of Swedbank AS;

1.3.5. to create a risk-sensitive solution to determine the risk level of clients when establishing a business relationship to decide on the application of enhanced due diligence measures, and assess the risk levels of clients in the current business relationship based on the risk-sensitive solution developed;

1.3.6. to assess whether the product offered to Swedbank AS for monitoring business relationships is commensurate with the size of Swedbank AS and the nature, extent, complexity, including risk appetite and risks accompanying the operations of Swedbank AS, and develop a system of monitoring business relationships that must ensure at least the following:

1.3.6.1. a high level of monitoring scenarios and an ability to identify suspicious and unusual transactions and transaction patterns;

1.3.6.2. specific risk factors and risk sensitivity related to the client and its partners, the service provided, geographic areas covered and sales channels are taken into account, including the risk of money laundering and terrorist financing;

1.3.6.3. detection of deviations between the known information on the client and their actual activities;

1.3.6.4. coverage of all services and products at risk of money laundering and terrorist financing provided by Swedbank AS or to which extent it provides services to its subsidiaries in the form of outsourcing;

1.3.6.5. easy adjustability of monitoring scenarios, including the ability to easily add new scenarios or modify existing ones without time constraints;

1.3.6.6. that would take into account the different typologies issued by international and national authorities in the field of money laundering and terrorism prevention;

1.3.7. to update and continuously test the business continuity plans related to solutions for prevention of money laundering and terrorist financing to ensure the continuity and, if necessary, quick recovery of IT solutions, and to constantly test these plans;

1.4. with regard to the reporting obligation:

1.4.1. to carry out an analysis and determine which operational risk cases arising from the materialisation of money laundering and terrorist financing risks are to be reported in the "Report on operational risk loss events and incidents", and supplement their respective rules of procedure;

1.4.2. to carry out an analysis and find a solution how to improve the quality of reporting to the Financial Intelligence Unit and ensure that all required information and documents can be

submitted to the Financial Intelligence Unit promptly, but no later than within two business days after suspicion of money laundering or terrorist financing.

2. To submit:

2.1. on the last Friday of every month following the month on which the precept was delivered, the changes made during the previous month and the changes planned for the following month;

2.2. with the first report referred to in clause 2.1, an action plan on compliance with all clauses of the precept, together with the corresponding deadlines;

2.3. no later than within eight (8) months after the entry into force of this precept, a final report on all measures taken, together with the reason why Swedbank AS considers that the precept resolution has been completed in all aspects.

3. To publish the decision in its entirety on the website of the Financial Supervision Authority.

The precept will enter into force upon notification thereof to Swedbank AS.

Copy of the decision will be delivered to Swedbank AS or its authorised representative in accordance with the procedure prescribed by law.

An appeal against this decision may be filed with the Tallinn Administrative Court pursuant to the procedure provided for in the Code of Administrative Court Procedure within 30 days as of the notification of the administrative act.

Warning to Swedbank AS on the imposition of a penalty payment

Pursuant to subsection 104^1 (1) of the CIA, Finantsinspektsioon may impose a penalty payment pursuant to the procedure provided for in SEPPA in the event of failure to comply with the precept or improper execution thereof or other administrative act issued on the basis of the CIA. Under the second subsection of the same section, the upper limit for a penalty payment in the case of a legal person in the event of non-compliance or improper performance is up to EUR 32,000 for the first occasion and up to EUR 100,000 in each subsequent occasion to enforce the performance of one and the same obligation but no more than for 10% of the net annual turnover of the whole legal person, including gross income which, in compliance with Regulation (EU) No. 575/2013 of the European Parliament and of the Council, consists of commissions and fees and interest and other similar income.

The imposition of a penalty payment is a discretionary decision of Finantsinspektsioon, in which case and to what extent Finantsinspektsioon considers it justified and necessary to impose a penalty payment in order to make a credit institution comply with the precept. The imposition of a penalty payment and its amounts is an appropriate measure as it contributes to the achievement of the objective of influencing the enforcement of a precept.

In imposing a penalty payment, increasing the stability, reliability and transparency of the financial sector and its operational effectiveness, reducing systemic risk and protecting the interests of clients and investors must be taken into account, as well as the increased public and client interest in mitigating the risks of this critical situation as much as possible. In addition, it should be borne in mind that the aim is to contribute to the objective of helping to prevent the misuse of the financial sector for criminal purposes. In this context, it should be kept in mind that as at 31 December 2019, Swedbank has a market share of 45.7% in deposits and 40.7% in loans (both market shares on a solo basis and excluding branches of other credit institutions in other countries). I.e., any kind of money laundering and failure of such a large credit institution to comply with the requirements for preventing terrorist financing has a significant impact on the stability, reliability and transparency of the financial sector. In view of this, it is important that the claim is motivated by appropriate and effective penalty payments. Therefore, the amount of the penalty payment cannot be less than the amount specified below. For the same

reasons, it is important to provide a penalty payment warning in the event of failure to comply with any of the obligations set out in the resolution.

In the event of failure to comply with each of the clauses in the precept resolution, the amount of the penalty payment shall increase in order to reduce the incentive to fail to comply with the precept. Pursuant to subsection 2 (2) of the SEPPA, coercive measures may be repeatedly applied until the aim pursued by the precept is achieved. The first amount of the penalty payment shall be the maximum amount of EUR 32,000, taking into account the size, vulnerability, etc. of Swedbank in respect of the first failure to comply. The objective is to ensure in accordance with the financial supervision objectives set out in subsection 3 (1) of the FSAA that on a financial market with high expectations, no market participant with that size that fails to comply with the legal requirements would provide its services, being largely exposed to money laundering and terrorist financing risks due to the volume of its services and the nature of its activities.

The amount of the penalty payment imposed shall be proportionate to the degree of infringement and shall not be excessive. A smaller amount of penalty payment cannot be considered sufficient in the circumstances of the case. Considering all the circumstances referred to above, the upper limit of the penalty payment of EUR 100,000 provided by law shall be considered sufficient for the second and each subsequent failure to comply.

The imposition of fines and the amounts thereof are necessary because the objective of ensuring compliance with the injunction cannot be achieved by another equally effective and efficient measure which would be less onerous for the addressee. In the opinion of Finantsinspektsioon, smaller amounts of penalty payment would not be an incentive for the recipient to enforce the precept. The power to impose and enforce a penalty payment is a lawful and legitimate measure by the legislator to compel a credit institution to comply fully with a precept. A valid precept of Finantsinspektsioon is mandatory for a credit institution pursuant to law. Therefore, Swedbank will not incur any obligation to pay a penalty payment in case of fulfilment of its legal obligations, therefore the implementation of the measure is dependent on Swedbank.

A valid precept is enforceable upon entry into force, regardless of the implementation or amount of the penalty payment. In view of the foregoing, the public interest in this case clearly outweighs any interference by Swedbank if Swedbank were not to comply fully with the precept. The imposition and amounts of the penalty payment as a measure are thus legal, justified, suitable, necessary and reasonable.

Hereby, Finantsinspektsioon issues a warning under subsections 104^1 (1) and (2) of the CIA and sections 7 and 10 of the SEPPA on imposing a penalty payment as follows:

If Swedbank AS fails to fulfil its obligation under clauses 1 or 2 or their sub-clauses of the resolution of this precept, performs the obligation unduly or fails to fulfil its obligation by the due date, a penalty payment of EUR 32,000 per day shall be imposed for each individual breach and for each of the subsequent same or similar violation, EUR 100,000 per day, but in total, no more than 10% of the total annual net turnover of Swedbank AS, including gross income, in accordance with Regulation (EU) No. 575/2013 of the European Parliament and of the Council, consisting of commissions and service fees, interests and other similar income.

Finantsinspektsioon has the right to reduce the first penalty payment, taking into consideration all the relevant circumstances.

In the event of failure to carry out the precept in due time, the penalty payment will be collected as prescribed in the Code of Enforcement Procedure.

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