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Sweden – Second Follow-up Report

1. Background

The paper contains an overview of the progress that Sweden has made in the area of AML/CFT to remedy the deficiencies that were identified in the third mutual evaluation report (quoted as the MER below).

In total, Sweden was rated partially compliant or non-compliant with 20 Recommendations in the MER that was adopted by the Plenary on 17 February 2006 and is now subject to a regular follow-up process. Since 2006, the Swedish Government has taken measures to gradually improve the national systems for prevention of money laundering and terrorism financing. As a result the Swedish FATF delegation intends to seek removal from the regular follow-up process at the FATF plenary in June 2009. An in depth report will be delivered in preparation of that Plenary.

The text below is therefore limited to the progress that has been made to remove deficiencies in the Swedish AML/CFT system in relation to those FATF Recommendations where Sweden was assessed as NC or PC in the MER. The summary of progress on each recommendation and special recommendation is preceded by a brief summary of factors underlying the ratings in the MER.

2. Implementation of the 3rd AML Directive

Since the time of the last report to the Plenary in February 2008, Sweden has introduced new legislation on measures against money laundering and terrorism financing which implements EU Directive 2005/60/EC (in this document referred to as “the 3rd AML Directive”). The government bill 2008/09:70 was handed over to the Parliament in November 2008, and the legislation will enter into force on 15 March 2009, according to

the timetable for adoption that has been communicated by the Swedish Parliament. The main piece of new legislation (hereafter referred to as the “New Act”) will apply to all the physical and legal persons subject to the provisions of the 3rd AML Directive, i.e. credit institutions, financial institutions, auditors, external accountants and tax advisors, notaries and other legal professionals, trust or company service providers, real estate agents, traders in goods when payments are made in cash above 15000 Euros and casinos.

3. Recommendations 6, 7, 24 and SR VII & IX – Sweden rated Non Compliant

Recommendation 6

MER: Sweden has not implemented any AML/CFT measures concerning the establishment of customer relationships with politically exposed persons.

In the New Act a politically exposed person is defined in accordance with the 3rd AML Directive. The institutions shall, in addition to performing normal due diligence measures, also enquire about the source of wealth, continue to apply additional due diligence measures during the relationship, as well as obtain management approval for the due diligence measures.

Institutions shall also have appropriate risk-based procedures in place to determine whether the customer is a politically exposed person.

Recommendation 7

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

The New Act contains new provisions on cross border correspondent banking relationships. A Swedish financial institution shall, in addition to normal due diligence, also undertake the following measures before starting a correspondent banking relationship with an institution outside the European Economic Area (EES):

- 1) gather sufficient information in order to ascertain the foreign institution’s business, reputation and the quality of supervision,
- 2) assess the foreign institution’s anti-money laundering and terrorist financing controls,
- 3) document the respective responsibilities of each institution to take control measures as well as document the measures,
- 4) obtain approval from senior management,
- 5) make sure that the foreign institution has verified the identity of, and performed on-going due diligence on the customers that have direct

access to accounts of the institution and is able to provide relevant customer identification data upon request from the Swedish institution.

Recommendation 24

MER: Several shortages in the legislation, lack of clear designation and empowerment of supervisory bodies, as well as lack of administrative sanctions. Several sub-categories of the DNFBP sector identified not to be under supervision.

The New Act, accompanied with other legislation, clearly designates those government bodies which are responsible for general supervision of groups of legal and physical persons, to which the 3rd AML Directive applies, to also be responsible for the AML/CFT supervision over these groups according to the new rules. These bodies are: 1) the Swedish Financial Supervisory Authority (hereafter referred to as Finansinspektionen), 2) the Supervisory Board of Public Accountants, 3) the Swedish Board of Supervision of Estate Agents and 4) The Gaming Board. The supervision of lawyers will be handled by the self regulatory body; the Swedish Bar Association. For those groups that were previously not under AML/CFT supervision the new legislation designates one of three County Administrative Boards of the three larger city regions in Sweden (Göteborg, Malmö and Stockholm) as the responsible supervisory authority. Those subject to the supervision of the County Administrative Boards are, inter alia, legal professionals who are not members of the Bar Association, accountants who are not registered by the Supervisory Board of Public Accountants, trust and company service providers, tax advisors and dealers in goods, who accept cash payments to the equivalent of 15000 Euro or more.

Each supervisory body mentioned above will be able to use those administrative sanctions with which it is already equipped for other compliance enforcement purposes also for the purpose of ensuring compliance with the New Act. An example would be that a real estate agent could have its licence revoked by the designated body if it was repeatedly suspected to fail to report or support money laundering activities. Furthermore, the Gaming Board will receive the mandate to perform on-site inspections through the New Act. Through legislation, which entered into force on the 1 April 2008, Finansinspektionen has the authority to conduct on-site inspections at registered companies, including e.g. money remittance companies.

In order to ensure coherent supervision (including the coherent application of administrative sanctions) between the governmental bodies responsible for AML/CFT supervision (including the Swedish Bar Association), a coordinating body will be founded. The coordinating body will have a co-located office together with Finansinspektionen, which has also been given the task to handle practical issues regarding

the setting up of the coordinating body and has been given additional financial resources specifically designated for this purpose in its budget for 2009. All supervisory authorities responsible for the operational AML/CFT supervision, for both the financial sector and DNFBPs, are obliged to cooperate on AML/CFT issues and actively participate in the coordinating activities carried out by the new body. The new body will ensure that recommendations, guidelines and regulations on the subject of AML/CFT issued by the operational supervisory bodies will be coherently drafted and implemented. It will also be responsible for AML/CFT information to the public, supporting the government in international AML/CFT activities, provide methodology guidance to the operational supervisory bodies, be the point of contact for the FIU towards the operational supervisory bodies and train the supervisory bodies and sector representatives. The coordinating body will be up and running during early 2009.

Special Recommendation VII

MER: Sweden has not implemented the wire transfer rules in SR VII.

The EU Regulation (EC) No 1781/2006 on information on the payer accompanying transfers of funds has been in force since 1 January 2007. The regulation implements SR VII on an EU-wide basis and are directly applicable in Sweden in accordance with the EU treaty.

Through additional legislation, which entered into force on the 1 April 2008, Finansinspektionen has the authority to conduct on-site inspections at registered companies, including money remittance companies and NPOs that are in the business of money remittance (see below under rec. 23 and SR VIII).

Special Recommendation IX

MER: No obligation to declare or disclose cash or bearer negotiable instruments while entering or leaving Swedish territory.

The EU Regulation (EC) No 1889/2005 on controls of cash entering or leaving the community entered into force on 15 July 2007. According to the regulation, there is an obligation to declare cash (including bearer-negotiable instruments) for any natural person entering or leaving the European Community and carrying cash of a value of EUR 10 000 or more. Also this regulation is directly applicable in Sweden (see above under SRVII).

During 2007 the Swedish Customs received 196 declarations and 1 control was carried out compared to 607 declarations and 4 controls

during 2008 (until November 2008). The information is continuously passed over to the FIU.

4. Recommendations 5, 12, 13, 16,18, 19, 21, 22, 23, 30, 32, 33 and SR III, VI & VIII – Sweden rated Partially Compliant

Recommendation 5

MER: Although Sweden has implemented customer identification obligations, it has not implemented full customer due diligence (CDD) requirements. The AML/CFT Act does not cover investment companies and certain credit card companies. Lack of evidence of effectiveness of the rules.

The New Act introduces customer due diligence and record-keeping requirements that fulfil the requirements in Recommendation 5. Apart from the number of ordinary situations that require CDD, there are also special circumstances that demand enhanced CDD. There is also requirement to conduct ongoing due diligence on the customer relationship and scrutinize the transactions undertaken throughout the course of the relationship. The New Act will furthermore be complemented by new secondary regulations from Finansinspektionen due in late spring 2009, further enhancing CDD requirements.

Finansinspektionen's review of the issue whether credit card companies should register with them (referred to in the Swedish follow-up report in 2008) concluded that, according to current regulations, independent credit card companies are obliged to register with the authority. The majority of Swedish credit card issuers form part of larger financial institutions or financial groups and are consequently already under supervision. For example, the American Express branch in Sweden, is one of the independent credit card companies which has registered. Investment companies will be covered by the AML/CFT legislation in the same way as other financial institutions.

Regarding Finansinspektionen's current guidance on KYC, and the issue of enforceability, the New Act will be complemented by secondary regulations issued by Finansinspektionen, which will be directly enforceable on all institutions under supervision.

During the past couple of years Finansinspektionen has increasingly used a more proactive supervisory approach and targeted a number of small companies. Several off-site and on-site inspections have been performed by Finansinspektionen since the evaluation. As a result there have been administrative sanctions imposed on institutions due to failure of

archiving of identification documents and for unclear identification routines. Since the last follow-up report another warning and fine has been imposed on a smaller bank due to weak AML routines.

Recommendation 12

MER: A number of deficiencies due to the fact that the scope of the DNFBPs that are subject to the AML Act is not adequate.

The customer due diligence and record-keeping requirements set out in the New Act apply to all the businesses and professions defined as DNFBPs in accordance with the 3rd AML Directive.

Recommendation 13

MER: The obligation to report STRs related to terrorist financing does not extend to investment funds and the AML/CFT obligation does not cover certain credit card companies. Lack of effective implementation.

The requirements set out in the New Act cover investment funds and credit card companies. Regarding filed STRs, the total amount of money that has been reported has increased during 2007. Finansinspektionen has communicated the importance of monitoring and reporting of STRs through numerous seminars and inspections and the total amount of filed STRs has increased considerably during 2008.

Recommendation 16

MER: Concerns about the scope of application of AML obligations and CFT obligations etc.

As mentioned above, the implementation of the 3rd AML Directive means that the New Act applies to all businesses and professions encompassed by the Directive. Consequently, the requirements set out in Recommendation 13 to 15 and 21 are applicable. STRs shall be filed promptly according to the New Act. The exception for advocates, associate lawyers at law firms and auditors mentioned in the MER does no longer exist in the New Act.

Recommendation 18

MER: No legally binding prohibition on financial institutions to enter or continue correspondent banking relationships with shell banks nor to ensure

that a correspondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.

The New Act defines shell banks in accordance with the 3rd AML Directive. Financial institutions shall refuse to enter into, or continue, a correspondent banking relationship with a shell bank and must not establish any relationships with foreign financial institutions that allow their accounts to be used by shell banks.

Recommendation 19

MER: Sweden has not adequately considered the feasibility and utility of implementing a system whereby financial institutions report all transactions in currency above a fixed threshold to a centralized agency with a computerized database.

The Swedish government offices have analyzed and considered the possibility of a national central agency that keeps a computerized database for transactions above a certain level. The issue was discussed both in the report of the Commission of Inquiry appointed by the Government “Implementation of the 3rd Money Laundering Directive” (SOU 2007:23) and in the preparatory work for the New Act. The conclusion is that because of issues related to personal integrity, doubts about the efficiency and cost related aspects, the Government does, for the moment, not recommend the installation of such a database.

Recommendation 21

MER: No measures to ensure that institutions are advised about concerns about weaknesses in the AML/CFT systems of other countries. The guidelines of Finansinspektionen are non binding in this matter.

Finansinspektionen continuously informs on e.g. regimes of sanctions, trends and tendencies, in a special section for AML/CFT issues on its web page, through special send-outs to sector associations and through seminars.

Recommendation 22

MER: For foreign branches and subsidiaries there are no obligation to follow Swedish AML/CFT rules (only an indirect obligation of common group policies), no demand for applying higher standards if located in countries which do not follow FATF recommendations, and no binding

obligation to inform Finansinspektionen about difficulties to apply AML/CFT measures due to local legislation.

Swedish Financial institutions shall, according to the New Act, ensure that the customer due diligence and file-keeping requirements are also applied to branch offices and majority owned subsidiaries located abroad, to the extent that local applicable laws and regulations permit. If the national laws in a foreign country prohibit such application, the institution shall take measures to effectively handle the risk of money laundering and terrorist financing, as well as notify Finansinspektionen in writing about these measures.

Recommendation 23

MER: Investment companies and certain credit card companies are not subject to AML/CFT provisions. No fit and proper test for licensed financial institutions or for registered financial institutions. Lack of supervisory effectiveness due to limited resources and focus solely on large institutions. The quality of supervision of the MVTs sector is not sufficient due to limited on-going monitoring powers for these entities.

Investment companies and credit card companies are covered by provisions on AML/CFT according to the New Act. The issue of fit and proper test is under review by a commission of inquiry, which will report at the end of April 2009 (the deadline has been extended from October 2008). Finansinspektionen has increasingly focused on smaller groups and companies under its supervision. Due to new rules which entered into force on the 1 April 2008 Finansinspektionen has the mandate to conduct on-site inspections on registered companies (see above under SR VII), among others within the MVTs sector. To date some 15 per cent of the money remittance companies registered with Finansinspektionen have been inspected on-site. The legislative framework for the MVTs sector is also subject to a review due to the EU Directive 2007/64/EC on payment services in the internal market. It is envisaged that these companies will also be subject to full AML/CFT supervision, once the provisions following from EU Directive 2007/64/EC are implemented in Swedish law.

Recommendation 30

MER: There is a need for more staff, in particular analysts, and improved tools and resources to enhance analysis within the FIU. The Police/Prosecution needs more education and training of law enforcement

authorities in ML/FT offences. Finansinspektionen needs more resources to supervise compliance with AML/CFT obligations.

FIU resources

Human resources

The number of staff working in the Swedish FIU has increased. Two investigators/analysts have been recruited. One of them is an Asset Tracer and Asset Investigator and the other recruitment is a Financial Investigator/Analyst within the field of money laundering.

Technical resources

Ongoing development of technical tools and databases for improved analysis of information connected to money laundering and financing of terrorism. The development concerns:

- Possibilities for web-reporting of suspicious transactions connected to money laundering and financing of terrorism.
- Possibilities to attach digital financial information e.g. statements of accounts to the web-reported STRs.
- Possibilities to analyse information from STRs and other crime, police intelligence and open sources in common databases (i2 tools as iBase and Analyst Notebook).
- Ongoing process to get connected to the FIU-NET and will be operational by January/February 2009.
- Ongoing development of the screening process of STRs. The first screening of natural or legal persons reported through the STR is done with the help of a digital tool, which collects information from crime, police intelligence and open sources. Based on the collected information a decision is made if a money laundering or financing of terrorism intelligence investigation is to be conducted by the FIU or not.

Analyst capabilities

When it comes to training of the FIU staff in order to improve their capabilities to analyse financial intelligence and normal amount of financial transactions, the staff already have or is about to take part in training of the theory and tools for intelligence analysis at tactical and operational level. Expert analysts of the National Criminal Police (NCP) are available for more complicated analysis and analysis of huge amount of transactions.

Police – improved knowledge of money laundering and financing of terrorism

Improved possibilities to trace, seize and confiscate proceeds and assets

Since July 2008 there are improved possibilities to trace, seize and confiscate proceeds of crime and criminal assets in Sweden. The FIU has conducted or will soon conduct several training activities concerning the new possibilities and tools.

The National Economic Crimes Bureau (EBM) has, in co-operation with the National Police Board, initiated nation-wide training seminars.

NCP Asset Tracing Group at the FIU (Competence and Resources)

Following from the NCP mission to combat proceeds of crime and criminal assets, NCP has established an Asset Tracing group at the FIU.

National ARO – Asset Recovery Office (Competence)

According to an EU-regulation every Member State has to establish National Asset Recovery Offices before 18 December 2008. In this respect the FIU and the National Economic Crimes Bureau have been appointed.

Regional Intelligence Centres (Competence and Resources)

To improve the co-operation between law enforcement authorities and other authorities involved in combating money laundering and financing of terrorism there is an ongoing process to establish seven regional intelligence centres in Sweden. The aim of the centres is to combat and reduce the possibilities of financing organised crime and the proceeds from it. Authorities involved in these centres are the County Police, the Customs, the Taxation Authorities, The Economic Crimes Bureau, The Social Security Agency, The Immigrations Agency, The Enforcement Agency and the Security Service.

Task Forces (Competence and Resources)

To enhance the possibilities to combat organised crime there is an ongoing process to improve the use of Task Forces with the mission to target persons connected to organised crime. One of the tools for the Task Forces is the improved possibility to trace, seize and confiscate proceeds of crime and criminal assets.

The Swedish Prosecution Service – improved knowledge of money laundering and financing of terrorism

Improved possibilities to trace, seize and confiscate proceeds and assets

In 2007, The Swedish National Economic Crimes Bureau (EBM), established a “proceeds-of-crime-unit” with the commission to work strategically and operational towards the aim to increase the possibility to trace, seize and confiscate or otherwise deprive the perpetrator the proceeds of a crime. The number of cases where the unit provides operational support has also increased.

The Swedish Prosecution Authority (former The National Public Prosecution Agency, (NPPA)) has increased it’s work in handling proceeds of crime and is also equipped with prosecutors specialized in this area.

Education and training

Education and training for prosecutors regarding ML and the seizure and confiscation of proceeds of crime, have developed with basic training as well as advanced training.

In order to update as many practitioners as possible on the new legislation, several seminars have been arranged by the NPPA and the EBM together with the Ministry of Justice. These seminars have also included methods on how to map criminals assets and methods for cooperation between crime fighting agencies. A number of training and education initiatives are also planned for 2009.

Recommendation 32

MER: A general lack of statistics regarding inter alia ML/FT investigations and prosecutions, frozen or seized assets, predicate offences, mutual legal assistance, requests to the FIU from foreign counterparts, as well as a general scarceness of data and lack of breakdown possibilities. Sweden has not reviewed the effectiveness of its AML/CFT systems.

In May 2008 the Government commissioned the National Council for Crime Prevention to analyse what changes are needed in the current statistical systems of the criminal justice authorities in order to improve the national statistics on money laundering and terrorist financing. A final report from the Council is due in early January 2009.

The FIU has received funds for technical development as described under rec. 30. It is planned to put the web-form into operation at the end of 2009. The web-solution will improve the statistics as it makes it easier for the FIU to breakdown the STRs and to separate the entities automatically in the statistics from Financial institutions and DNFBPs. The web-reporting tool will make the FIU more effective and create a better allocation of resources.

Improved screening of the STRs and improved analytical capabilities. The FIU has together with the NCP analyst section, developed a tool to handle different databases and also built up different intelligence databases for the analytical work on ML and FT cases.

The Swedish government has instructed the National Police Board, the Swedish Prosecution Authority (NPPA) and the National Economic Crimes Bureau (EBM) to take measures in order to enhance exchange of information between the different authorities and to simplify the comparison of statistics between the three authorities. This work will make it easier to gather statistical information concerning the ML/FT investigations and prosecutions.

By using the data system Cåbra (used by the NPPA and EBM) it is now possible to identify money receiving and petty money receiving offences in the system, which makes it easier to produce statistics regarding the number of investigations, prosecutions, suspects, use of coercive measures and confiscated amount, related to ML and FT. A development work on how to register actions in Cåbra related to ML-offences on mutual legal assistance and extradition requests relating to ML, has been started.

Finally, as described in previous reports from Sweden, there is also an ongoing joint project among Sweden's judicial agencies called STUK – structured information about crime. STUK is planned to be used by all judicial agencies by the year 2012.

Recommendation 33

MER: No legal requirement on information on beneficial ownership and the majority of foundations do not need to be registered.

There are already stringent rules concerning information on owners/members (inter alia beneficial owners) of legal persons in Swedish law. One possible measure, which would enhance efficiency even further regarding limited companies, would be to introduce a public electronic shareholder register. The issue remains on the agenda and will be considered in due time.

Regarding economic associations, the government has set up a commission of inquiry to review the legal conditions for such associations. The commission has a specific mandate to propose appropriate measures on account of the points brought forward by FATF.

The Government has in December 2008 put forward a government bill with a proposal on new rules in the Swedish Foundations Act, according to which all foundations must be registered with the County Administrative Board. The purpose of the proposal is to facilitate public supervision of all foundations and to prevent the misuse of foundations for criminal activities. The information to be provided upon registration includes, among other things, the name, personal identity number, address and phone number of the representative or administrator of the foundation.

SR III

MER: Sweden does not have a national mechanism to consider requests for freezing from other countries (outside the EU mechanism) or to freeze the funds of EU internals. Very little guidance has been issued to financial institutions and other persons/entities that may be holding targeted funds/assets.

As for the general issue of a national mechanism to consider requests for freezing from other countries, Sweden continues to be bound by EU legislation which, in essence, treats the EU as one jurisdiction. Sweden continues to maintain that designations from other jurisdictions should therefore be handled within the ordinary EU procedure and, if accepted, be implemented through common measures by the EU Member States. Regarding the freezing of assets of EU internals, the public consultation concerning the official inquiry report mentioned in the last follow-up report of February 2008 was completed last summer. Comments on the inquiry's proposals ranged from generally supportive to negative, at least in part, with some of them being conditioned on the outcome of the Kadi and Al Barakaat cases then before the European Court of Justice. The government is now analysing the comments received, taking into account also the intervening September judgment in those two cases. The plan is to present a bill to Parliament for the autumn session of 2009 containing legislative proposals based on the inquiry which will encompass the possibility of freezing the assets of EU internals. The legislative proposals will first be referred for review to The Council of Legislation, which is a mandatory step before going to Parliament. The referral is planned to take place before the Council's summer recess.

The EU Best Practices document, which contains specific, clear and detailed guidance on the interpretation of, inter alia, EU freezing measures and is available to the public and to financial institutions, was further updated in April 2008 on the interpretation of the term "making economic resources available", see paras 28 and 49 of the Best Practices (latest version to be found in document nr 8666/08). The government's sanctions website was further updated, including on international sanctions against terrorism.

Finansinspektionen has launched a special section on the authority's website to inform on AML/CFT matters. Finansinspektionen regularly updates information on the site concerning AML/CFT issues as well as on regimes of sanctions. The trade organizations are also informed. Meetings with the Swedish Banker's Association have been held for example in the case of the Iran sanctions. Numerous seminars have been held on AML/CFT issues, either arranged by Finansinspektionen itself

or in collaboration with other competent authorities. On Finansinspektionen's website there are direct linkages to EC sanctions and to the government's website.

SR VI

MER: No requirement for MVT service operators to maintain a list of agents with Finansinspektionen; Sweden should take measures to implement 5-7, SRVII etc. to the sector.

New rules for the sector, requiring that MVTs providers register with Finansinspektionen, and allowing Finansinspektionen to perform on-site inspections, entered into force on 1 April 2008. Furthermore, the scope of the New Act covers this group, ensuring implementation of relevant recommendations to the sector in accordance with the 3rd AML Directive. The issue of lists of agents can be dealt with in the context of Finansinspektionen's secondary regulations completing the New Act.

The legislative framework for the sector is subject to further review as a consequence of the EU Directive 2007/64/EC on payment services in the internal market.

SR VIII

MER: A review of the laws and regulations that relate to NPOs is not finished. A lack of measures to ensure that terrorist organisations cannot pose as legitimate NPOs, and to ensure that funds/assets collected by or transferred through NPOs are not diverted to terrorist organisations.

A review of the laws and regulations that relate to the abuse of NPOs for the financing of terrorism was finished and presented late summer 2008. Among the areas of improvement that have been found, the following could be mentioned:

- Designation of a government body responsible for increasing awareness and knowledge in the NPO sector about the risks of being abused for AML /CFT purposes
- Code of conduct, guidelines and checklists regarding AML/CFT prevention, as well as a continuous dialogue with the sector
- Development of methodology support to government bodies, municipalities, counties and self regulatory bodies

The feasibility to take measures to implement at least some of the above is currently being discussed within the Swedish government offices.

Due to new legislation Finansinspektionen, since 1 April 2008, has the authority to carry out on-site inspections with registered companies (see above under SR VII). These provisions are applicable also to NPOs which are in the business of money remittance. Consequently one subgroup in the NPO sector, which could be regarded as important following a risk-based approach is now subject to enhanced legislation.

Furthermore, due to a new legislative proposal, which was handed over to the Parliament in December 2008, foundations are placed under supervision by the County Administrative Boards, which will be obliged to ensure that foundations may not engage in criminal activity.

NPOs are not excluded from being scrutinised in the context of ordinary criminal procedures, such as police investigations, as the Police Authorities work in close cooperation with other agencies and authorities as described under R 30.