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Regulations on measures against money laundering and terrorist financing

Summary

Finansinspektionen is adopting new regulations on measures against money laundering and terrorist financing. Among other things, the regulations contain new requirements concerning undertakings' general risk assessment, identity checks, record keeping and information, functions for compliance and internal control, and the attributes of the whistle-blowing system that undertakings are required to have. Finansinspektionen also requires undertakings to provide the necessary information for the authority to be able to risk-classify bodies under its supervision.

The regulations are part of the implementation of the Fourth Money Laundering Directive, which is intended to prevent the use of the financial system for money laundering or terrorist financing[1]. Finansinspektionen is also applying consequential changes to a number of regulations.

The Fourth Money Laundering Directive will be implemented in Sweden mainly through the new Act (2017:630) on Measures against Money Laundering and Terrorist Financing, which enters into force on 1 August 2017. The Act covers both financial and non-financial undertakings under the supervision of several different supervisory authorities.

The new regulations apply to all financial undertakings that are covered by the new Act and are subject to supervision by Finansinspektionen. In January 2017, 2,332 financial undertakings licensed by or registered with Finansinspektionen were covered by the present Money Laundering Act.

These regulations will enter into force on 1 August 2017, and Finansinspektionen's Regulations and General Guidelines (FFFS 2009:1) on Measures against Money Laundering and Terrorist Financing will be repealed from that date.

[1] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

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1 Background

1.1 Objective of the regulations

Money laundering is an activity whereby the proceeds of crime are integrated into the legal economy. It is an international problem which poses a threat to society and to the financial system and the institutions within it. The same applies to the financing of terrorism, where even very small flows of money can have major consequences by contributing to serious crimes of violence.

Confidence in the financial system may be damaged and its institutions associated with illegal assets and money laundering or terrorist financing, which may in turn threaten long-term financial stability. Actions aimed at combatting these activities more effectively should therefore be seen as measures to safeguard both financial stability and public security. This has to be weighed against the need to allow legitimate economic activity to continue and for financial services to be available to individuals. In order to address and balance both of these aspects, a risk-based approach should form the basis for the regulations to be issued.

The European Parliament and the Council have adopted a Directive on measures to prevent the use of the financial system for purposes of money laundering and terrorist financing (the Fourth Money Laundering Directive – here, "the Directive"). The Directive is intended to update and align the rules to revised international standards from the Financial Actions Task Force (FATF)[2] and the review that has been carried out on the application of the Third Money Laundering Directive. The Directive replaces the earlier Directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing[3] (the Third Money Laundering Directive).

Sweden has been a member of the FATF since 1990; this is a cross-border body which draws up international standards for combatting money laundering, terrorist financing and the spread of weapons of mass destruction. The standards, which include both recommendations and interpretative notes, are intended to be implemented by the members in their respective legal systems. In the countries which are members of the EU, the FATF's standards are implemented in national law by transposing EU Directives based on the standards. The FATF regularly assesses its members to ensure that they are following the standards. The FATF began its assessment of Sweden in December 2015 and the evaluation report was published on 25 April this year.

[2] International standards on combating money laundering and the financing of terrorism and proliferation, the FATF Recommendations, February 2012.
[3] Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

The Directive increases some of the administrative requirements for combatting money laundering and terrorist financing, including the gaming sector and the thresholds for persons trading in valuable goods. Changes have also been made to the enhanced risk-based approach which arises out of the international standards, e.g. with the introduction of requirements for the Member States to carry out national risk assessments. For the same reason, the 'equivalence list' applied to third countries has been removed. The three supervisory authorities, the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) have been given extended powers under the new framework for combatting money laundering and terrorist financing.

The Government set out how the Directive should be transposed into Swedish law in Bill 2016/17:173 'Further measures against money laundering and terrorist financing' (here, "the Bill"), published on 20 April 2017. The Riksdag passed the Bill on 21 June 2017. The present Act (2009:62) on Measures against Money Laundering and Terrorist Financing (the present Money Laundering Act) will be repealed and replaced by a new Act, Act (2017:630) on Measures against Money Laundering and Terrorist Financing (the new Money Laundering Act). Several new rules have been introduced by the new Act, including the requirement for a general risk assessment by undertakings which explains more clearly the risk-based approach to be taken by the undertakings, and provisions on internal control. The new Act applies to both financial and non-financial undertakings under the supervision of several supervisory authorities.

Finansinspektionen's new regulations are aligned with the new Money Laundering Act and also implement parts of the Directive for those undertakings supervised by the authority.

The new regulations follow the structure of the new Act and so differ somewhat from the structure of the present regulations (Finansinspektionen's Regulations and General Guidelines (FFFS 2009:1) on Measures against Money Laundering and Terrorist Financing). The new regulations also contain some new provisions compared to the existing regulations. For example, they specify criteria for when an undertaking should install a specially appointed executive and an independent audit function. Another new feature is that undertakings have to provide periodic reporting of information to be used in Finansinspektionen's risk classification of undertakings under its supervision.

Member States must adopt and publish the acts and other statutes that are needed to implement the Fourth Money Laundering Directive by 26 June 2017. The new Money Laundering Act and the amendments to related business-related acts enter into force on 1 August 2017. Finansinspektionen's new regulations will enter into force on the same date.

1.2 Current and future rules

The Fourth Money Laundering Directive was adopted on 20 May 2015. It is based on the revised recommendations and interpretative notes adopted by the FATF in 2012. The key point of these recommendations and interpretative notes is that the system for combatting money laundering and terrorist financing should be effective. The Fourth Money Laundering Directive is flexible in the sense that framework legislation and detailed rules have been drawn up and adopted at different levels within the EU. The Commission, the EBA, ESMA and EIOPA will issue various legal acts to clarify and elaborate on the details of the rules, to make it easier for undertakings to follow them. The undertakings have had some opportunity to influence the wording of these legal acts, e.g. by submitting comments when the EBA, ESMA and EIOPA have circulated proposed technical standards and guidelines for consultation.

As explained above, the Fourth Money Laundering Directive will be implemented in Sweden mainly through the new Money Laundering Act which enters into force on 1 August 2017.

1.3 Alternative regulatory approaches

As explained in sections 1.1 and 1.4, the new regulations are part of the implementation of the Fourth Money Laundering Directive, and Finansinspektionen has been empowered to issue regulations to transpose some parts of the Directive. As binding regulations are necessary for the Directive to be deemed to be implemented in Swedish law, there is no alternative way for Finansinspektionen to regulate the issues addressed by the Directive.

1.4 Legal basis

The new Money Laundering Act states that the Government, or the authority appointed by the Government, will be authorised to issue regulations in a number of areas. These include the undertakings' general risk assessment, procedures, training to be provided etc., protection of employees and other representatives, identity checks, risk classification of customers, simplified customer due diligence measures, reporting to the Swedish Police, how information should be provided to the Swedish Police and the Swedish Security Service, systems for disclosure and for the record keeping and information, functions for compliance and internal control, a central point of contact, features of a special reporting system, and disclosures needed for the supervisory authority to risk-classify bodies under its supervision (Chapter 8 of the Money Laundering Act).

The Government has authorised Finansinspektionen to issue regulations in the areas mentioned above pursuant to Sections 18 and 19 of the Ordinance on Measures against Money Laundering and Terrorist Financing (2009:92) (the Money Laundering Ordinance).

1.5 Preparation of the matter

On 11 April 2017, Finansinspektionen circulated a draft of new regulations for consultation; these were based on the proposed new Money Laundering Act presented in the Government's Legislative Council note on 'Further measures against money laundering and terrorist financing'. The Bill was published on 20 April 2017, i.e. during the consultation period. Since the consultation, Finansinspektionen has amended the regulations and this decision memorandum to reflect the Bill. These changes are not explained separately in the decision memorandum.

Twelve of the consulting bodies submitted substantive comments on the draft that was circulated. Finansinspektionen has considered the comments submitted and sets out the principal comments on the draft and the authority's response to them in the relevant sections. Following the consultation process, Finansinspektionen has also made textual changes to the regulations.

2 Supporting arguments and considerations

In sections 2.1–2.11, Finansinspektionen discusses the new money laundering regulations and sets out the reasons for them. Section 2.12 covers the regulations that Finansinspektionen needs to amend to align them with the new rules. The new money laundering regulations replace the whole of the present regulations.

2.1 Scope and definitions

Finansinspektionen's position: The regulations apply to the undertakings that are subject to supervision by Finansinspektionen under the new Act. The definitions used in the Act are also used in the regulations.

Consultation memorandum: Contained a definition of 'advanced electronic signature' and a definition of 'employees'. Otherwise, the proposal had substantially the same content.

The consulting bodies: The *Swedish Bankers' Association* considers that the definition of advanced electronic signature in Chapter 1 Section 3 point 2 of the draft regulations can be removed. They also suggest that the definition of employees in point 4 of the same provision should be reworded to make it clearer who is covered by the term. The *Swedish Association of Insurance Intermediaries* asks for clarification of what is meant by 'other persons involved in its activities in a similar capacity' in the definition of employees in Chapter 1 Section 3 point 4 of the regulations.

Finansinspektionen's reasoning: As the *Swedish Bankers' Association* has pointed out, the term 'advanced electronic signature' is only used in Chapter 3 Section 5 of the draft regulations, where the term is also defined.

Finansinspektionen therefore agrees that the definition can be removed. The Bankers' Association has also suggested, together with the *Swedish Association of Insurance Intermediaries*, that the definition of 'employees' should be clarified. Finansinspektionen has decided after further consideration to remove the definition of 'employees' and instead state explicitly in the provisions which persons the provision applies to. This is the approach taken in the new Money Laundering Act. The Bill gives examples of the people who are included.[4]

2.2 Risk assessment and risk classification of the customer

2.2.1 Content and scope of the general risk assessment

Finansinspektionen's position: An undertaking's general risk assessment must be evaluated at least once a year, and when necessary updated. The general risk assessment should be updated before the undertaking offers new or significantly changed products etc.

Consultation memorandum: The proposal had the same content.

The consulting bodies: The *Swedish Bankers' Association, the Swedish Investment Fund Association, the Association of Swedish Finance Houses* and the *Swedish Savings Bank Association* consider that Finansinspektionen has no authority to specify a frequency for the assessment and the update to be made by economic operators, and believe that Chapter 2 Section 1 first paragraph of the regulations should be removed. The Swedish Bankers' Association, the Swedish Savings Bank Association and *Insurance Sweden* also believe that the requirement in the second paragraph that the undertaking should update its risk assessment before offering new services etc. is too far-reaching. The provision should rather allow the undertakings to evaluate and when necessary update their risk assessment when offering new or significantly modified product and services etc.

Finansinspektionen's reasoning: The money laundering rules provide that an undertaking should take measures to combat money laundering and terrorist financing which are proportionate to the risks to which the undertaking is exposed. This is normally expressed by saying that undertakings should apply a risk-based approach. Article 8(1) of the Fourth Money Laundering Directive states that undertakings should take appropriate steps to identify and assess the risks of money laundering and terrorist financing. In their assessment, undertakings should take into account risk factors relating to their customers, countries or geographic areas, products, services, transactions or delivery channels. These steps should be proportionate to the nature and size of the undertakings. Article 8(2) states that the risk assessment should be documented and kept up-to-date.

[4] Bill 2016/17:173, p. 219.

The provisions in Chapter 2 of the new Money Laundering Act describe how undertakings should proceed in order to assess the ways in which the products and services provided by their business could be used for money laundering and terrorist financing, and the risk of this happening (a general risk assessment). The purpose of the general risk assessment is that it should provide a basis for the undertaking's procedures, policies and other measures against money laundering and terrorist financing. These measures should thus be based on the undertaking's own assessment of how and to what extent its activities could be used for money laundering and terrorist financing.

Chapter 2 Section 1 of the new regulations states that the general risk assessment should be evaluated regularly, at least once a year, and updated when necessary. The risk assessment must also be updated before an undertaking offers new or significantly changed products or services, enters new markets or makes other changes affecting its activities. As the undertaking's risk assessment forms the basis for its procedures, policies and other measures against money laundering and terrorist financing, it is essential that this risk assessment should be up-to-date and reflect the undertaking's range of products and services etc. if it is to perform its function.

The provisions of the Act concerning the general risk assessment describe in detail what it should contain (Chapter 2 Sections 1 and 2 of the new Money Laundering Act). Finansinspektionen has therefore chosen only to require evaluation and updating of the general risk assessment.

Chapter 2 Section 2 of the new Money Laundering Act describes at a general level how the scope of the general risk assessment should be determined. The second paragraph states that the risk assessment should be documented and kept up-to-date. With the authority conferred by Section 18 point 2 of the Money Laundering Ordinance, Finansinspektionen will specify the scope and content of the general risk assessment. Some consulting bodies have commented that this authorisation does not empower Finansinspektionen to lay down a requirement for an annual update to the general risk assessment. However, Finansinspektionen believes that the power to issue provisions on the scope of the general risk assessment does allow it to issue regulations on the handling of the risk assessment and the associated process, and the frequency of evaluation and updating.

Nor does Finansinspektionen share the view of the consulting bodies that the requirement to update the risk assessment when introducing new products etc. is too far-reaching. It is very important for detecting and preventing risks of money laundering and terrorist financing that undertakings should review their risk assessment when launching new products or services etc., and also when they enter new markets.

2.2.2 Factors that could indicate a low or high risk, to be considered in the general risk assessment and risk classification of the customer

Finansinspektionen's position: The authority will wait to issue regulations on factors that could indicate a low or high risk.

Consultation memorandum: The proposal had the same content.

The consulting bodies: The *Swedish Savings Bank Association* has suggested that Finansinspektionen should not wait for the general risk factor guidelines from the EBA, ESMA and EIOPA, but define the substance of risk factors because they are essential to the interpretation and application of the regulations.

Finansinspektionen's reasoning: In their general risk assessment and risk classification of a customer, undertakings should take account of factors that could point to a low or high risk of money laundering and terrorist financing. The risk level that exists also has a bearing on the risk classification of the customer, when judging whether the undertaking should take simplified or enhanced customer due diligence measures. Annexes II and III to the Directive contain examples of factors and indications of potential lower and higher risk. Finansinspektionen has been authorised to issue regulations on factors that could point to a low or high risk of money laundering and terrorist financing.

The new Act contains a number of provisions on risk assessment of customers and provisions listing situations that could indicate a low or a high risk. These situations can be used in the risk classification of the customer and, together with the customer due diligence measures, form the basis for the overall assessment of the customer's risk profile.

The EBA, ESMA and EIOPA are currently producing common 'Risk factor guidelines', based on Articles 17 and 18(4) of the Directive. The guidelines are to be adopted no later than 26 June 2017. Once they enter into force, they will constitute general guidelines and so provide guidance to the undertakings that are required to apply the rules laid down in the Fourth Money Laundering Directive. According to Article 6 of the Directive, the Commission is also to draw up a report, to be published every two years, describing the areas of the internal market that are at greatest risk from money laundering and terrorist financing. Finansinspektionen has chosen not to issue any regulations in this area for the moment, as the work described above is ongoing in the EBA, ESMA and EIOPA. Regulations may however be needed at a later stage, if it should prove for example that the new Act, combined with the forthcoming general guidelines, needs to be supplemented or clarified. Finansinspektionen understands the desire of the *Swedish Savings Bank Association* that Finansinspektionen should issue regulations on risk factors, but considers that this is outweighed by the arguments for waiting.

Finansinspektionen has been authorised to request periodic information from the undertakings in order to risk-classify those that fall under the authority's supervision (see also section 2.10). When the reporting has started and Finansinspektionen has analysed the information received, there will be further

opportunity to review the need for regulations on factors that could point to a high or a low risk. Holding off on issuing regulations on risk factors will therefore give Finansinspektionen a better chance of defining risk factors adapted to the undertakings under its supervision.

2.2.3 Exceptions to the requirement for a documented risk assessment

Finansinspektionen's position: The authority will wait to issue regulations on exceptions to the requirement for a documented risk assessment.

Consultation memorandum: The proposal had the same content.

The consulting bodies: Support the proposal or have no objections to it.

Finansinspektionen's reasoning: Article 8(2) of the Directive provides for exceptions to the requirement for documented risk assessments. Finansinspektionen has been authorised to issue regulations on such exceptions (Section 18 point 2 of the Money Laundering Ordinance). The Bill states that the criteria for when it should be possible to make exceptions should be set very high. The fact that the risk assessment is not documented means in reality that the undertaking and competent authorities will still need to decide whether the undertaking's procedures are sufficient and appropriate. In accordance with the provisions of the Directive, the possibility of exceptions should be used when the risks of money laundering and terrorist financing are obvious and well-known.[5]

Finansinspektionen supervises some 2,300 undertakings of varying character. The undertakings supervised by Finansinspektionen are complex and by their nature particularly vulnerable to the risk of being used for money laundering and terrorist financing. Finansinspektionen has not identified any type of undertaking that obviously meets the stringent requirements set out by the Government in the Bill. For now, therefore, Finansinspektionen is not proposing any regulations on exceptions to the requirement for a written.

As mentioned earlier, Finansinspektionen emphasises that the scope of the general risk assessment should be determined by the size and type of undertaking and the risks of money laundering and terrorist financing in its activities. This means that a risk assessment for a business with a few uncomplicated products and services may be less extensive than for an undertaking with complex products and services, or a wide range.

2.3 Procedures and policies

2.3.1 Content and scope of internal and common procedures

[5] Bill 2016/17:173, p. 210.

Finansinspektionen's position: An undertaking's common procedures should cover the group's overarching procedures and policies for preventing money laundering and terrorist financing in its branches and subsidiaries. An undertaking's procedures for exchanging information should cover the ways in which information can be shared within the group.

Consultation memorandum: The proposal contained a provision to the effect that the information should be treated as confidential. Otherwise, the proposal had substantially the same content.

The consulting bodies: The *Swedish Bankers' Association* and the *Association of Swedish Finance Houses* consider that the word 'checks' should be removed from Chapter 2 Section 2 of the regulations, as this word is not included in the authorisation. The Association of Swedish Finance Houses also considers that the provision in Chapter 2 Section 3 is unclear with regard to the type of confidentiality that is meant, and requests a clarification. The Swedish Bankers' Association believes that Finansinspektionen's authorisation does not extend to specifying the frequency of evaluation and updating. *Insurance Sweden* believes that the procedures should also specify *when* the information may be shared.

Finansinspektionen's reasoning: Article 8(3)-(5) of the Fourth Money Laundering Directive contain relatively detailed requirements for the policies, controls and procedures that undertakings should have in place to mitigate and manage effectively the risks of money laundering and terrorist financing. Chapter 2 Sections 8 and 9 of the new Money Laundering Act state that an undertaking should have documented procedures and policies for customer due diligence, monitoring, reporting, record-keeping and handling of personal data.

The provision in Chapter 2 Section 9 of the new Money Laundering Act concerns common procedures and policies. If an undertaking is the parent company of a group or operates through branches, common procedures and policies should be defined for the branches or subsidiaries within the group. Information that should be exchanged, such as customer due diligence, account and transaction information, is anything with a bearing on the undertaking's ability to combat money laundering and terrorist financing. The provision is new compared to the present Act.

Chapter 2 Section 2 of the new regulations states that an undertaking's common procedures must cover the group's overarching procedures and policies for preventing money laundering and terrorist financing in its branches and subsidiaries. In stating that it is the overarching procedures that are meant, Finansinspektionen wishes to stress that the group-wide procedures and policies should be adopted alongside the undertaking's internal procedures and policies. This means that the individual economic operators do not need to have identical internal procedures in all areas. The individual undertaking should have internal procedures adapted to that particular company, because the risks of money laundering and terrorist financing may vary, e.g. between

subsidiaries with different types of operations within the same group and undertakings with branches operating in different countries. As suggested by the *Swedish Bankers' Association* and the *Association of Swedish Finance Houses*<, the word 'checks' has been removed.

The regulations also contain a provision on procedures for the exchange of information within a group (Chapter 2 Section 3). These procedures should cover the ways in which information concerning customer due diligence, account and transaction details and other relevant information in order to prevent money laundering and terrorist financing can be shared within the group. The proposal also contained a provision to the effect that information to be shared within a group should be treated as confidential and with respect for privacy. The Association of Swedish Finance Houses has asked for clarification of the type of confidentiality that is meant. The provision has been removed because the situation is already covered by the existing rules, which the Bill refers to.[6] Guidance is also given in the interpretative note to FATF Recommendation 18, which states that safeguards on the confidentiality of information should be in place. It should be noted that both Swedish and foreign rules have to be observed in cross-border operations. Insurance Sweden believes that the provision should also state *when* information may be shared. Information may be shared when this is justified by the risk of money laundering and terrorist financing, which is an assessment that the undertakings have to make. The regulations do not say any more about when this should happen.

The provision also specifies when the group-wide procedures should be evaluated and updated. Effective procedures for this exchange of information are crucial to fulfilling the purpose of the exchange, which is to combat money laundering and terrorist financing.

With regard to the objections raised by the Swedish Bankers' Association on the extent of its authority, Finansinspektionen takes the same view as in section 2.2.1.

2.4 The undertaking's employees and contractors

2.4.1 'Fit and proper' assessment

Finansinspektionen's position: An undertaking's procedures must ensure that employees, contractors and other persons involved in its activities in a similar capacity have a level of understanding of money laundering and terrorist financing commensurate with their duties and functions. The procedures should also include a description of how the undertaking in general ensures that a person is fit for the tasks he/she is expected to perform.

Consultation memorandum: The proposal had the same content.

[6] Bill 2016/17:173, p. 516.

The consulting bodies: The *Swedish Bankers' Association* considers that Chapter 2 Section 4 of the regulations should be removed, as Section 5 on training addresses the same subject. The *Association of Swedish Finance Houses* comments that the Act says nothing about knowledge and that suitability has nothing to do with knowledge. The Association also asks for guidance in the form of a job description, for example; otherwise, the section should be removed. The *Financial Sector Union of Sweden* welcomes the stipulation that undertakings should have procedures to ensure that their employees have sufficient knowledge, given the great responsibility placed on them under the money laundering rules.

Finansinspektionen's reasoning: Article 8(4)(a) of the Fourth Money Laundering Directive states that undertakings should have procedures for screening staff. According to the interpretative note to FATF Recommendation 18, undertakings should have procedures to ensure high standards when hiring employees.

There has been no similar provision in place before. According to Chapter 2 Section 13 of the new Money Laundering Act, undertakings should have procedures to ensure that employees, contractors and other persons involved in its activities in a similar capacity, whose duties play a part in preventing the business from being used for money laundering and terrorist financing, are 'fit and proper' for this task.

Finansinspektionen's regulations include a provision to the effect that an undertaking's procedures must ensure that employees, contractors and other persons dealing with matters involving money laundering and terrorist financing have a level of understanding of this area commensurate with their duties and functions (Chapter 2 Section 4 of the regulations).

Finansinspektionen does not share the view of the *Association of Swedish Finance Houses* that knowledge has nothing to do with suitability. On the contrary, the level of knowledge is an important element to be considered when assessing a person's suitability. However, it is not the only thing; there are many other factors that may be relevant. Finansinspektionen supervises a large number of undertakings (over 2,300), with widely differing operations. Within these undertakings, there are many varying functions handling different issues affecting measures against money laundering and terrorist financing, such as cashiers and staff within compliance functions. In view of this, Finansinspektionen believes that it is not possible to specify in any more detail the factors other than the level of knowledge to be used in the undertaking's 'fit and proper' assessment. This is something that the undertakings need to adapt to their different operations and their general risk assessment. On the other hand, the regulations do state that the undertaking should describe in its procedures how it tests a person's suitability. The undertakings have great freedom in making this assessment. Finansinspektionen does not share the view of the *Swedish Bankers' Association* that the provision should be

removed. The provision means that the employer must ensure that a person has a certain level of knowledge and is therefore 'fit and proper' for a given position or task. This is different from specifying that the undertaking has an obligation to train its staff on a regular basis.

As mentioned in section 2.1, the Bill gives examples of contractors and others involved in the business who are equivalent to employees when it comes to applying the provision.[7] As the same group of persons is mentioned in the provision in the regulations, Finansinspektionen does not propose to introduce a job description as requested by the Association of Swedish Finance Houses.

2.4.2 Training

Finansinspektionen's position: An undertaking's training according to Chapter 2 Section 14 of the new Money Laundering Act should be designed around the risks identified in the general risk assessment. The content and frequency of the training should be adapted to the tasks and functions of the staff. An undertaking must constantly brief its employees, contractors and other persons involved in its activities in a similar capacity on new trends, patterns and methods and other information relevant to the prevention of money laundering and terrorist financing.

Consultation memorandum: The proposal had the same content.

The consulting bodies: The *Swedish Investment Fund Association* believes that the provision should be worded more in line with the Directive, as the provision could now be interpreted to mean that staff training must always be organised internally**.** The *Financial Sector Union of Sweden* is pleased to note that the training should be customised to the function and the undertaking.

Finansinspektionen's reasoning: Chapter 2 Section 14 of the new Money Laundering Act, which is based on Article 46(1) of the Directive, states that undertakings must ensure that employees, contractors and other persons involved in its activities in a similar capacity, whose duties play a part in preventing the business from being used for money laundering and terrorist financing, should receive relevant training and information in order to meet the undertaking's obligations.

According to Chapter 2 Section 5 of the new regulations, the training that undertakings are to provide to these persons should be based around the risks identified in the general risk assessment, which forms the basis for all of the undertaking's measures against money laundering and terrorist financing. The same provision indicates that the content and regularity of the training should also be adapted to the relevant person's tasks and function. The undertaking should therefore customise the training measures both to the undertaking's

[7] Bill 2016/17:173, p. 219.

identified risks, type and size and also to the specific tasks performed by different people. If the undertaking's risk assessment is updated or changed, the training should be updated accordingly. The third paragraph of the provision specifies the type of information to be included in the communication and training measures. There is no requirement for the training to be organised internally, but the undertaking is responsible for ensuring that its employees receive training that meets the requirements in the provision. Finansinspektionen does not share the view of the *Swedish Investment Fund Association* that the provision needs to be reworded to make this clear.

Chapter 2 Section 6 of the new regulations also lays down requirements for the training to be documented, either electronically or in paper form. This means that it should be clear when the training took place, who took part and what it contained, which is relevant both to the undertaking and to the supervisory authority.

The requirement for training is not new, and the matter is already covered in the present regulations. Compared to before, the provision has been extended to include a documentation requirement and developed to include requirements for frequency and scope based on the employee's risk exposure.

2.4.3 Protection of employees and representatives

Finansinspektionen's position: An undertaking must identify and analyse the threats or hostile acts that could occur against its employees, contractors and other persons involved in its activities in a similar capacity. The undertaking must investigate any incidents and use this knowledge to update its procedures for e.g. customer due diligence and reporting.

Consultation memorandum: The proposal contained a reference to the new Money Laundering Act, which has now been replaced with the words 'employees, contractors and other persons involved in its activities in a similar capacity'.

The consulting bodies: The *Swedish Bankers' Association and the Swedish Savings Bank Association* believe that the reference to Chapter 2 Section 14 of the new Money Laundering Act should be deleted. The Swedish Savings Bank Association also feels that the word 'incidents' in Chapter 2 Section 7 of the draft regulations needs to be clarified.

Finansinspektionen's reasoning: If the system to combat money laundering and terrorist financing is to be effective, persons within the undertakings must not only have an understanding of the requirements laid down in the money laundering rules but must also be ready and willing to report suspicious activities and transactions. Article 38 of the Directive provides that undertakings must take steps to protect employees and other representatives of the undertaking from being exposed to threats or hostile action, and in

particular from adverse or discriminatory employment actions. This is extension of what was in place before.

According to Chapter 2 Section 15 of the new Money Laundering Act, undertakings should have procedures and take any other measures needed to protect their employees, contractors and other persons involved in their activities in a similar capacity against threats or hostile acts arising from their fulfilment of the undertaking's obligations under the Act.

The provision in Chapter 2 Section 7 of the new regulations supplements the provision in the Act and provides that an undertaking must identify and analyse the threats or hostile acts that could occur against its employees etc. where they are involved in customer due diligence measures, reviewing or reporting suspected money laundering or terrorist financing, or similar matters.

This matter is also covered in the present money laundering regulations. The new regulations also provide further guidance on the scope of the procedures and measures required from the undertakings. Persons dealing with money laundering and terrorist financing are an exposed group, with possible threats and risks coming from various directions, both outside and inside the undertaking. The undertakings need to identify and analyse anything that could affect their employees, contractors and other persons involved in their activities in a similar capacity. There could for example be threats from a customer in connection with a customer due diligence process or reporting of suspected abuse. These persons could also be hit with reprisals of various kinds from their own company. There may be opposing interests within the business, in which business deals are weighed against compliance. There are also situations where staff discover irregularities within their own organisation.

The first paragraph of the provision states that the undertaking should identify threats and risks. The second paragraph requires the undertaking to address actual situations that have arisen, investigate them and draw lessons from this. The *Swedish Savings Bank Association* has asked for the word 'incident' to be explained. The expression means that an event to do with threats and hostile acts against persons working within the undertaking has occurred. These events may be of various kinds, and Finansinspektionen does not find it appropriate for the regulations to specify in any more detail what sort of events they might be. The provision is closely related to the general risk assessment that the undertaking has to make and, if incidents do occur, it has to decide whether the general risk assessment needs to be modified in any way.

2.5 Measures for verifying identity

Article 13 of the Fourth Money Laundering Directive lays down requirements for customer due diligences measures that undertakings should take. These measures include both identifying and checking the customer and the beneficial owner, assessing the purpose and intended nature of the commercial relationship, and requirements for ongoing monitoring.

2.5.1 Measures for verifying the customer's identity

Finansinspektionen's position: Apart from identifying a customer in accordance with the provisions of the Act, an undertaking should also verify the identity of the natural or legal person or their representative by checking identity documents and other papers.

Consultation memorandum: The provisions in the proposal covered both identification and verification of identity. The provisions in Chapter 3 Sections 3 point 1 and 4 point 1 of the draft regulations did not allow for checks on the identify of the representative to be carried out remotely. Otherwise, the proposal had substantially the same content.

The consulting bodies: The *Swedish Bankers' Association, the Association of Swedish Finance Houses* and the *Swedish Investment Fund Association* point out that the terms 'identify' and 'verify identity' need to be clarified to prevent confusion.
The Association of Swedish Finance Houses considers that 'other identity document' in Chapter 3 Section 2 second paragraph needs to be clarified, as Nordic identity documents do not always contains details of citizenship. The Swedish Bankers' Association believes that Chapter 3 Section 2 third paragraph concerning identification in the absence of identity documents should be amended to make it clear that the undertaking can choose to refuse to enter into a particular transaction or commercial relationship.

With regard to Chapter 3 Sections 3 and 4 concerning representatives of natural persons, the Swedish Bankers' Association feels that the wording implies that the customer must be present even when the person is represented by someone else. The Association also considers that the passage in Chapter 3 Section 3(2) of the regulations, to the effect that the conditions on which this authority is based should be verified, should be removed. The *County Administrative Board of Skåne* welcomes the alternative measures for verifying administrators or trustees in Chapter 3 Section 4, but also seeks a solution to the problem for trustees opening accounts to safeguard the rights of an absent heir in a probate case.

The Swedish Bankers' Association believes that Chapter 3 Section 5 point c) is a tighter provision that the present requirement and should be removed. The Association also considers that details of the customer's address as per point a) are not necessary. *Insurance Sweden* considers that the words 'commercial relationship' should be deleted from the same provision. The Association of Swedish Finance Houses asks for clarification of how verification should be carried out.

The Association of Swedish Finance Houses asks for an example of the concept as in Chapter 3 Section 6. The Swedish Investment Fund Association believes that the requirement in Chapter 3 Section 7 second paragraph for a

confirmation to be sent to the registered address or for similar measures to be taken is inconsistent with the Directive and should be removed.

The Swedish Bankers' Association finds that the requirement to identify a legal person in Chapter 3 Sections 6 and 7 goes too far. They therefore request a change to say that the representative does not always need to present an identity document.

Finansinspektionen's reasoning: Both the FATF recommendations and the Directive distinguish between identification and verifying identity; this constitutes a clarification compared to the earlier Directive. This means that identification must take place before verification, and that verification must be done in a reliable way, through e.g. identity documents or register entries.

Chapter 3 Sections 4 and 5 of the new Money Laundering Act state that undertakings should identify customers and beneficial owners. The measures to be taken under the Act are considered to be consistent with the risk-based approach which runs through the whole of the Directive. A key aspect of the requirement to identify is to confirm the customer's name, which is a prerequisite for determining whether the customer is a person in a politically exposed position or may otherwise be identified as a high-risk customer. The requirement for verification may vary according to the circumstances in the specific case. The Act no longer allows for any general exceptions to the requirements for customer due diligence. As requested by several consulting bodies, Finansinspektionen has amended the provisions in the regulations to make it clear that the requirement for identification is laid down in the Act, while the regulations state how the person's identity should be verified.

The *Association of Swedish Finance Houses* requests clarification of the term 'other identity document' in Section 2 second paragraph when there are no details of citizenship. Finansinspektionen believes that an important part of the individual risk assessment is to confirm citizenship, so the regulations state that citizenship must be indicated in the identity documents presented. The provision also provides guidance on the other requirements to be satisfied by an identity document. If a natural person has no identity document, their identity should be verified against other reliable papers. These could for example be a combination of various acceptable documents and registers based on the undertaking's own established procedures and policies. The procedures might include the agreement drawn up together with industries and authorities on facilities for asylum seekers to gain access to bank accounts. Finansinspektionen does not share the view of the *Swedish Bankers' Association* that the word 'shall' makes it impossible for undertakings to refuse a transaction or commercial relationship when customer due diligence cannot be completed. This matter is covered in other parts of the new Act and the regulations, e.g. Chapter 3 Section 1 of the new Money Laundering Act.

Article 13 of the Directive also states that undertakings should verify that any person purporting to act on behalf of another customer is empowered to do so,

by way of a written authorisation or equivalent. Undertakings should also identify the representative and verify this person's identity. This means that the identity of both the representative/proxy and the company represented or granting the proxy should be verified against identity documents, register entries or other reliable sources.

In the case of a representative of a natural person who is not an administrator or trustee, an undertaking should not only verify the identity of the representative but also check their authority to represent the natural person and the conditions in which this authority is based. Apart from checking a power of attorney, this verification may also be carried out by checking a birth certificate showing parentage, or a similar document. The words 'at least checking a written power of attorney, birth certificate or equivalent document' allow the undertaking, in line with its risk-based approach, when necessary to obtain and verify identity documents for the natural person being represented. However, Finansinspektionen does not find it appropriate to specify in any more detail in the regulations which documents the representative's authority may be based on.

Finansinspektionen shares the view of the Swedish Bankers' Association that it should be possible to obtain information remotely even if the representative is a natural person. This possibility has therefore been added to the regulations.

In its contacts with the industry, Finansinspektionen has learnt that there have sometimes been problems for trustees and administrators to meet the banks' requirement for them to identify the person they are representing. For these situations, Finansinspektionen has therefore defined, in Chapter 3 Section 4, alternative measures for identification and verification. The letter of appointment on which the assignment is based could for example be a decision from the Chief Guardian Board or a court ruling. The administrator or trustee must be able to present this document when requested by the undertaking. According to the *County Administrative Board of Skåne*, contact with the undertakings often takes place remotely, so this possibility has also been added to the regulations. The request from the County Administrative Board of Skåne for an amendment to cover absent parties to an estate falls outside the money laundering rules, so the request cannot be met within this regulatory exercise.

Another problem with identification which Finansinspektionen has been alerted to by the industry is that the previous wording concerning remote identification of natural persons was found to be hard to interpret. Finansinspektionen has therefore clarified this provision in the new regulations. Where full electronic identification is not possible, a natural person can be identified remotely via the three steps in the regulations (Chapter 3 Section 5 point 2 a)-c). The requirements are cumulative, which means that all of them must be satisfied. The requirement in c) includes three options. The customer can send in a copy of an identity document or send the undertaking a confirmation of its address from the population register or equivalent. This latter means that, in countries where there is no population register, one can use a different registered address

than a population register address, such as a commercially reliable register of addresses. However, this assumes that a) and b) have been met.

The Swedish Bankers' Association considers that the address information in Section 5 point 2 a) of the regulations is not necessary for identification. Finansinspektionen does not share this view but believes that address details are part of verifying identity even remotely. The Bill also makes it clear that the address is an important parameter in this context.[8] The Swedish Bankers' Association has also suggested that point 2 c) should be deleted. Finansinspektionen believes that the provision should be retained, but in view of the comments from the Association, it has adjusted the wording slightly to allow the undertakings greater flexibility in their choice of suitable measures. As suggested by *Insurance Sweden*, the words 'commercial relationship' have been removed.

Many undertakings have misunderstood the provision on identifying physical persons remotely in the present money laundering regulations and taken it to mean that a physical copy of the identity document must always be obtained. Finansinspektionen wishes to clarify that there are cases in which a copy of the identity document may be relevant, such as where there is uncertainty as to the customer's identity when entering into a commercial relationship or in ongoing monitoring of this relationship, but this is not an absolute requirement.

The Swedish Bankers' Association has expressed a wish for the wording concerning identification of legal persons to be changed, in that the identity of the representative should not be via an identity document, as for a natural person, or for verification in their absence. Finansinspektionen believes that verification against the representative's identity documents cannot be an alternative measure, because it is very important to be able to reliably determine the identity of the representative.

The *Swedish Investment Fund Association* considers that the requirement in Chapter 3 Section 7 second paragraph for a confirmation to be sent to the registered address or for similar measures to be taken is inconsistent with the Directive and should be removed. Finansinspektionen believes that is authorisation allows it to stipulate that this measure should be included in the identity check. Moreover, the Money Laundering Directive is a 'minimal directive', which means that it is possible for the regulations to go further than the Directive itself.

2.5.2 Identifying and verifying the identity of a beneficial owner

Finansinspektionen's position: An undertaking must obtain reliable and sufficient information on the customer's beneficial owner by checking against public registers, relevant information from the customer or other information that the undertaking has received. If the beneficial owner cannot be determined

[8] Bill 2016/17:173, p. 523.

after such checks, the undertaking should verify the identity of a person who is the chairman of the board, the managing director or equivalent executive.

Consultation memorandum: The proposal had substantially the same content.

The consulting bodies: The *Swedish Bankers' Association* and the *Association of Swedish Finance Houses* question the need for Chapter 3 Section 10 of the regulations because it is clear from the forthcoming Act on Registering Beneficial Owners what is meant by a 'beneficial owner'.

Finansinspektionen's reasoning: Article 13 of the Directive lays down requirements to identify the beneficial owner and take reasonable measures to verify that person's identity. A beneficial owner is a natural person who ultimately owns or controls a legal entity, or a natural person for whose benefit someone else is acting. Undertakings must take reasonable steps to verify the identity of the beneficial owner; this requirement already exists in the current rules.

The requirement to identify and verify the identity of the beneficial owner in Chapter 3 Section 5 of the new Money Laundering Act is a clearer indication that undertakings should apply a risk-based approach than in earlier regulations. Undertakings should determine the extent of customer due diligence measures from an assessment of the risk in any given case.

According to Chapter 3 Section 8 of the new Money Laundering Act, if a beneficial owner of a legal entity cannot be determined, the person who is the chairman of the board, the managing director or other equivalent executive should be regarded as the beneficial owner. Chapter 3 Section 8 of the new money laundering regulations stipulates how the identity of this person should be verified.

Chapter 3 Section 8 of the new regulations states that the identity of the beneficial owner may be verified against external registers. The Directive requires all EU Member States to maintain a register of beneficial owners. In Sweden, this register will be managed by the Swedish Companies Registration Office. The risk-based approach means that undertakings cannot always rely on this register alone, but the scope of the measures will be determined by the risk of money laundering and terrorist financing.

2.6 Scope of measures for customer due diligence

2.6.1 Simplified measures for customer due diligence

Finansinspektionen's position: In the case of simplified measures for customer due diligence, the undertaking must determine and verify the customer's identity, but this and other customer due diligence measures may be limited in extent. Finansinspektionen will not be issuing any regulations on when simplified measures are permitted.

Consultation memorandum: The proposal had the same content.

Consulting bodies*:* The *Swedish Bankers' Association and the Swedish Savings Bank Association* are unclear about the situations in which simplified measures can be taken for both natural and legal persons. The *Association of Swedish Finance Houses* would like the regulations to provide more concrete details and examples of what the simplified measures entail in practice. The Swedish Bankers' Association also questions why details of the customer's address need to be obtained and considers that this requirement should be removed. The Association also suggests that point 2 in the respective provisions on simplified measures for natural and legal persons should be removed because the content is already laid down in law.

Finansinspektionen's reasoning: Finansinspektionen is empowered to state what is meant by simplified customer due diligence measures where the risk of money laundering is judged to be low, and to specify the situations in which simplified measures are permitted.

The Directive does not provide scope for completely excepting some undertakings from the obligation to take customer due diligence measures. Nor does Finansinspektionen believe that the new Money Laundering Act allows for a general exception in the regulations; rather, the assessment as to when simplified measures can be taken must be based on the circumstances in the specific case.

The *Swedish Bankers' Association* finds the proposal unclear on when simplified customer due diligence measures can be taken. Simplified customer due diligence measures can be applied where the risk of money laundering or terrorist financing is high. The Act gives examples of situations that could indicate a low risk of money laundering and terrorist financing (Chapter 2 Section 4), which could help to determine when the conditions are in place to apply simplified customer due diligence measures. As mentioned above, work is also in hand within the EBA, ESMA and EIOPA to produce guidelines in what constitutes low or high risk, which could assist in the assessment that undertakings have to make in this regard. Finansinspektionen believes that the guidance provided in this way is sufficient for now, so is not proposing any regulations on situations in which simplified measures are permitted.

Simplified measures mean that the identity must be determined and that other measures specified in the legislation must be taken, but to a limited extent. Several consulting bodies have stated that it is unclear what is meant by 'simplified measures' and asked for clarification. Finansinspektionen does not consider it possible as things stand to define what is meant by 'to a limited extent' in the case of simplified measures; rather, this should be determined case-by-case from the undertaking's general risk assessment. Some guidance can however be found in the passage in the Bill on the FATF's interpretative

notes.[9] As examples of simplified measures, this suggests that verification of the identity of the customer and the beneficial owner can take place after entering into the commercial relationship, that the frequency of updating customer identification data may be reduced, that the scope of the ongoing monitoring and auditing of transactions could be reduced, or that the assessment of the purpose and nature of a commercial relationship could be based on an assumption and not on information obtained from the customer. As the Act is applied over time, further examples of simplified customer due diligence measures may be developed. The provision may be amended at a later stage if it should prove for example that it needs to be supplemented or clarified.

The Bill also provides that the frequency and scope can be tied to an appropriate predefined number or amount, and assumes that the undertakings have a system to detect when the threshold has been reached. The extent of the measures taken or not taken should reflect the low risk that the undertakings have identified and documented. The Swedish Bankers' Association considers that point 2 in both Chapter 3 Sections 9 and 10 should be removed as it is already laid down in law. Finansinspektionen is empowered to state what is meant by 'simplified measures'. These points specify whet should be done to identify and verify the customer even with simplified measures. To clarify the provisions of the Act, the regulations also state that other measures laid down in law should be taken, but to a limited extent. The limited measures to be taken according to these points are part of the measures that undertakings are required to take together with the measures in point 1.

The Swedish Bankers' Association has also suggested that address details should be removed from the identification process. As Finansinspektionen has also stated in section 2.4.1, the address is an important element in checking identity, so the requirement has been retained.

The rules on measures for verifying identity are basically the same for legal and natural persons, but the methods of identification differ.

2.6.2 Enhanced customer due diligence measures where there is a high risk of money laundering and terrorist financing

Finansinspektionen's position: The authority will wait to issue regulations on what are considered to be enhanced customer due diligence measures and the situations in which such measures should be taken.

Consultation memorandum: The proposal had the same content.

The consulting bodies: Support the proposal or have no objections to it.

[9] Bill 2016/17:173, p. 264.

Finansinspektionen's reasoning: Finansinspektionen is empowered to issue regulations on what are considered to be enhanced customer due diligence measures and the situations in which such measures should be taken. According to the Directive, enhanced customer due diligence measures should be taken where the risk of money laundering or terrorist financing is high. Examples of situations that could indicate a high risk of money laundering and terrorist financing are given in Chapter 2 Section 5 of the new Money Laundering Act. As mentioned above, the EBA, ESMA and EIOPA are also drawing up joint guidelines to assist in this assessment. As with simplified measures, Finansinspektionen will wait to issue regulations on when enhanced customer due diligence measures should be taken. This provision of the Act and the future guidelines may however provide guidance on when the risk is so high that such measures should be taken.

Finansinspektionen will wait to issue regulations on what are considered to be enhanced customer due diligence measures, as the authority believes that this is adequately regulated in Chapter 3 Section 16 of the new Money Laundering Act. The assessment as to whether enhanced measures should be taken should be based on the undertaking's general risk assessment.

2.6.3 Connections to high-risk countries

Finansinspektionen's position: The authority will wait to issue regulations on enhanced measures for connections with high-risk countries.

Consultation memorandum: The proposal had the same content.

The consulting bodies: Support the proposal or have no objections to it.

Finansinspektionen's reasoning: Article 18 of the Directive states that enhanced measures should be taken when dealing with natural or legal persons established in high-risk third countries. Chapter 3 Section 17 of the new Money Laundering Act defines what is meant by a high-risk third country and states that enhanced measures should be taken in these cases. Finansinspektionen is empowered to issue regulations providing guidance on enhanced measures for customer due diligence in cases of high risk. Although it is able to issue regulations on this, Finansinspektionen has chosen to wait to exercise this authority as it considers that this is set out in detail in Chapter 3 Section 17 of the Act.

The Directive empowers the Commission to adopt delegated acts to supplement the Directive by identifying high-risk third countries with strategic deficiencies. The list is published on eur-lex.europa.eu and updated whenever countries comply or fail to comply with the rules.
The FATF also issues two statements three times a year with details of countries that do not meet the requirements. These can be found on its website at www.fatf-gafi.org. Finansinspektionen considers that the Commission's list

and the FATF's statements provide sufficient guidance for the present as to when enhanced measures should be taken.

2.7 Monitoring and reporting

2.7.1 System for disclosure

Finansinspektionen's position: An undertaking's system for disclosure should be electronic or manual. The system must be designed in such a way that the information can be provided in a digital, structured and editable format. The undertaking must also ensure that the information is provided in a secure manner and is treated as confidential.

Consultation memorandum: The proposal did not include any requirement for the system to be designed in such a way that the information can be provided in a digital, structured and editable format. The proposal contained a requirement for the system to be designed as instructed by the enquiring authority.

The consulting bodies: The *Swedish Bankers' Association* and the *Swedish Investment Fund Association* consider that Chapter 4 Section 1 of the regulations should state that it is the undertaking and not the system that has to ensure, for example, that the information is provided through secure channels. The associations also feel that the requirement that the information should be provided in the manner instructed by the enquiring authority is open and imprecise. Clarification is needed on what it means and entails for the undertakings in practice. *Insurance Sweden* considers that the passage on the way in which the information should be provided gives no more guidance than the provision in the Act and should be removed. The *Swedish Police* suggest that the regulations should state that the information should be provided in a format that is digital, structured and editable. The *Swedish Security Service* points out that disclosure through secure channels should not be confused with what is meant by 'secure' in public security legislation.

Finansinspektionen's reasoning: Article 42 of the Fourth Money Laundering Directive provides that Member States should require that undertakings have systems in place that enable them to respond fully and speedily to enquiries from their FIU or from other authorities as to whether they are maintaining or have maintained, during a five-year period prior to that enquiry, a business relationship with specified persons, and on the nature of that relationship. These enquiries should be answered through secure channels and in a way that ensures that they are treated as confidential.

Chapter 4 Section 7 of the new Money Laundering Act states that undertakings should have a system to provide quick and complete details of whether the undertaking has had a commercial relationship with a given person in the last five years and of the nature of the relationship. These enquiries often come from the Swedish Police, but other authorities may also be involved.

Based on the views expressed by the *Swedish Bankers' Association*, *the Swedish Investment Fund Association* and *Insurance Sweden*, Finansinspektionen has amended the provision to make it clearer, and hence also acted on the suggestion from the *Swedish Police*. Finansinspektionen believes that the requirement to have a system for disclosure covers several different areas. Among other things, it concerns the way in which the undertaking holds and organises the information, the need for someone to ensure that the information is provided, and the format in which the information is provided to the authority that requested it. The addition to the provision to the effect that it should be possible to supply the information in a digital, structured and editable format will enable more efficient and secure processing of the information by the authorities that request it. On the other hand, there are no requirements for the whole system to be electronic, so a small undertaking can gather information in e.g. a ring binder provided that the next step in the process still provides for disclosure in a digital, structured and editable format. The provision also contains a requirement for the undertaking to ensure that the information can be provided in a secure manner and treated as confidential.

2.8 Record keeping and information

Finansinspektionen's position: An undertaking must keep documents and information in a secure manner, either electronically or on paper. The undertaking must ensure that the documents and information are easy to access and identify. The undertaking must retain documents and information for ten years if these documents and information could point to money laundering or terrorist financing or otherwise indicate that assets have derived from criminal activity, the circumstances have been reported to the Swedish Police, and the undertaking has been notified of a longer record keeping period by the police or another authority.

Consultation memorandum: The proposal did not contain any requirement for information provided to the Swedish Police under Chapter 4 Section 6 of the new Money Laundering Act to be retained for ten years. Nor did the proposal contain a requirement for the undertaking to have been notified of the need for a longer record keeping period by an authority. Otherwise, the proposal had substantially the same content.

The consulting bodies: The *Swedish Bankers' Association* finds that the requirement in Chapter 5 Section 2 of the regulations, to the effect that some documents and information *shall* be retained for ten years, should be reworded to say that documents and information *may* be retained for yen years. The Association believes that the list of bullets in the provision should be seen as alternatives rather than cumulative. The obligation to retain documents should not include the reports sent to the Financial Intelligence Unit because these will already be held by an authority. The *Swedish Investment Fund Association* and the *Association of Swedish Finance Houses* believe that a requirement for an

extended record keeping period should only be considered when the Swedish Police or other authorities argue the need for a longer record keeping period. The Association of Swedish Finance Houses also believes that the provisions should be clarified to state that the possibility of a longer record keeping period than five years only applies to documents and information received after the new Money Laundering Act enters into force.

Finansinspektionen's reasoning: Article 40 of the Directive contains rules on the record keeping of documents and information to enable the Swedish Police or other authorities to prevent, detect and investigate possible money laundering or terrorist financing. The purpose of the rules is that the information should be retained for as long as appropriate, based on the objective. In some cases, the Directive says, it may also be relevant to retain documents for longer than five years, as also provided for in Chapter 5 Section 4 of the new Money Laundering Act.

According to the Directive, any such extension assumes that there has been a thorough assessment of whether such further extended record keeping is necessary and proportionate and whether it is necessary for the prevention, detection or investigation of money laundering or terrorist financing. Finansinspektionen considers that these conditions are present where the circumstances of a specific case have led to reporting of suspected money laundering or terrorist financing to the Swedish Police. The same applies to any information requested by the Swedish Police in order to investigate money laundering and terrorist financing in accordance with Chapter 4 Section 6 of the new Money Laundering Act.

The regulations set out how documents and information should be stored and that they should be easy to access and identify (Chapter 5 Sections 1 and 2). As both the *Swedish Investment Fund Association* and the *Association of Swedish Finance Houses* note, the Bill states that a requirement for an extended record keeping period should only be considered when the Swedish Police or other authorities argue the need for a longer record keeping period.[10]. Where the documents or information could also point to money laundering etc. and this suspicion has been reported, the undertaking should retain them for ten years. The conditions are cumulative, and not alternatives. A long record keeping period may be crucial for the investigating enforcement authorities to access the information and documents even when a longer time has elapsed.

The *Swedish Bankers' Association* has pointed out that Chapter 5 Section 4 of the new Money Laundering Act regulates when the economic operator *may* retain documents and information for longer than five years. They believe that the authorisation empowers Finansinspektionen to issue regulations laying down the conditions for extended record keeping, but that Chapter 5 Section 2 of the regulations should be worded to say that documents and information *may*, rather than *shall*, be retained for longer.

[10] Bill 2016/17:173, p. 545.

Finansinspektionen notes that the Bill[11] states that is not appropriate or practically feasible for the undertakings themselves to assess whether there is a need to retain the information for more than five years in every single case. It also provides that the conditions and forms for handling a longer record keeping period should be set out in statutes at a lower level than Acts, i.e. regulations. If the provision is taken to mean that, under certain conditions, undertakings may (rather than shall) retain documents and information for longer than five years, this will place the responsibility for the assessment with the undertakings. The legislature has expressly chosen to avoid this, which means that the provision should regulate the conditions under which an undertaking *shall* have a longer record keeping period than five years.

The Swedish Bankers' Association also believes that the documents that may reasonably need to be retained and which arise out of a risk-based assessment are the same documents and information used to report to the Swedish Police. The provision in Chapter 5 Section 2 of the regulations should not however include the report itself, the Association suggests, because this is already held by an authority. However, Finansinspektionen considers that, if the Swedish Police or another authority makes contact after a longer period, it could make it easier for the undertaking to have saved both the documentation and the report. It is also relevant to the undertaking's knowledge of its customers, its general risk assessment, transaction monitoring etc. to store this information.

The Association of Swedish Finance Houses states that they assume that the provision in Chapter 5 Section 2 of the regulations will apply to documents and information received after the new Money Laundering Act has entered into force, and would like this to be made clear in the regulations. This would mean that documents and information from before the entry into force of the Act would not be covered by the provision. The Bill[12] states that Chapter 5 Section 4 of the new Money Laundering Act is not covered by any special transitional rule and that the provision is intended to apply both to documents and information obtained before its entry into force and to those obtained afterwards. Having the provision in Chapter 5 Section 2 of the new regulations cover documents and information obtained before its entry into force and to those obtained afterwards is thus consistent with the intentions of the legislature. No transitional provision will therefore be introduced into the regulations.

2.9 Compliance and reporting of suspected violations

2.9.1 Special functions based on the size and nature of the undertaking

Finansinspektionen's position: An undertaking should always have an appointed officer for controlling and reporting obligations. When justified by its size and nature, the undertaking should also have a specially appointed

[11] Bill 2016/17:173, p. 317.
[12] Bill 2016/17:173, p. 317 ff.

executive and an independent audit function. In assessing whether it needs to have a specially appointed executive and an independent audit function, the undertaking should focus especially on its turnover, number of employees, number of establishments, the nature of its operations, the products and services provided, the complexity of its business and its general risk assessment.

Consultation memorandum: The proposal stated that an undertaking should have a specially appointed executive and an independent audit function if it had more than 50 employees. The provision on delegation was in another place in the regulations. The proposal also contained a provision to the effect that an appointed officer for controlling and reporting obligations should report directly to the managing director. The provision that an appointed office for controlling and reporting obligations should be organisationally separate from the functions and areas that he/she is to monitor and control was worded differently.

The consulting bodies: The *Association of Swedish Finance Houses, the Swedish Investment Fund Association, the Board of Swedish Industry and Commerce for Better Regulation, the Swedish Savings Bank Association and the Swedish Association of Insurance Intermediaries* believe that more weight should be given to the nature of the business than to the number of employees and that a proportionality assessment should be applied to the requirements to appoint and establish the three special functions. The *Swedish Bankers' Association* suggests that the requirement should be tied to Finansinspektionen's categorisation of economic operators or something similar.
Insurance Sweden and the Swedish Bankers' Association consider that the specially appointed executive should 'be responsible for' rather than 'carry out' a general risk assessment and keep it up to date. Several consulting bodies note that the preparatory work to the Act suggests that the rules should not prevent an economic operator from organising its own business in an effective and appropriate way, and therefore think it is important for the regulations to be worded accordingly. The Swedish Savings Bank Association, the Swedish Bankers' Association and Insurance Sweden favour greater flexibility as to where the different functions should be placed within the organisation.
The Swedish Bankers' Association feels that it should be made clearer that the possibility of delegation applies to all tasks or areas of responsibility. The Association therefore feels that the role of specially appointed executive should not be restricted in the manner suggested. The Association points out that the MD is responsible for both the first and second line of management in the company. The Association of Swedish Finance Houses, the Swedish Bankers' Association, the Swedish Savings Bank Association and Insurance Sweden point out that many economic operators already have to apply regulations with largely the same content concerning these functions, such as Finansinspektionen's Regulations and General Guidelines (FFFS 2014:1) regarding governance, risk management and control at credit institutions. The consulting bodies therefore feel that these economic operators should be

excepted from the areas covered by other similar regulations. The *Swedish Police* consider that Chapter 6 Section 5 point 4 should make it clear that the responsibility relates to the information provided at the request of the Swedish Police as in Chapter 4 Section 6 of the new Money Laundering Act. The Swedish Police also feel that it is important that the responsibility for compliance with the regulations relating to Chapter 4 Section 6 of the Act should be placed on a specific person and that this should be made clear.

The Swedish Bankers' Association believes that the requirement in Section 5 for the appointed officer for controlling and reporting obligations to 'report directly' to the managing director could result in the responsibility being vested in a person with a very wide remit, without the specialist expertise referred to in Section 7, for example. The Bankers' Association therefore suggests that Section 5 should be removed and that Section 6 could cover the requirements for reporting by this role.
The Swedish Savings Bank Association questions whether the very detailed and broad definition of the independent audit function falls within the area of money laundering and the powers granted to Finansinspektionen.

Finansinspektionen's reasoning: The Directive requires undertakings to have functions in place to assure compliance and internal control (Articles 8(4)(a) and (b), 33(2) and 46(4)). The Directive also specifies how the responsibility should be shared among the management of the undertaking. There are no equivalent provisions in the present Money Laundering Act. The new Money Laundering Act lays down requirements for undertakings to have special functions for internal control where this is justified by the size and nature of their operations. Finansinspektionen, and the other supervisory authorities referred to in the Act, is empowered to issue regulations on the criteria for determining when an undertaking has to establish the special functions and what requirements should be placed on the organisation, powers and independence of these functions.

The new Money Laundering Act covers a host of different undertakings varying in size and nature, and hence with differing levels of risk levels of being used for money laundering and terrorist financing. The undertakings which are supervised by Finansinspektionen, and are covered by the new money laundering regulations, engage in financial business and are often complex, which makes them particularly vulnerable to the risk of being used for money laundering and terrorist financing. Finansinspektionen's view is therefore that the functions described in this Chapter are essential functions that many undertakings supervised by Finansinspektionen need in order to handle the relevant risks. However, these functions may have different purposes, which means that the needs may vary even for the undertakings covered by the new money laundering regulations.

Several consulting bodies reacted to Finansinspektionen's suggestion that the specially appointed executive and the independent audit function should be appointed in undertakings with more than 50 employees. In response to the

comments from the consulting bodies, Finansinspektionen has amended the regulations so they now specify the criteria to be applied by an undertaking when assessing whether it needs to have these functions. This then clarifies the factors to be considered when the undertaking makes the assessment of the size and nature of its business referred to in Chapter 6 Section 2 first paragraph of the new Money Laundering Act. The criteria to be considered are the undertaking's turnover, number of employees, number of establishments, the nature of its operations, the products and services provided, the complexity of its business and its general risk assessment. The list indicates which particular criteria should be taken into account. However, it is not exhaustive, and other similar factors and situations may be relevant to the assessment.

It is important to stress that the provision on when these functions should be appointed only covers the question of establishing the functions and in no way relaxes the requirements placed on all undertakings by the money laundering rules. These requirements must always be satisfied even if the undertaking decides that it does not need a specially appointed executive or an independent audit function.

Finansinspektionen considers that the function of the appointed officer for controlling and reporting obligations should always be established in financial undertakings, unlike the specially appointed executive and the independent audit function. Given the risk exposure of the financial markets, Finansinspektionen believes that the tasks to be performed by the appointed officer for controlling and reporting obligations function are so crucial to combatting money laundering and terrorist financing that all undertakings should have this function. Finansinspektionen also believes that it is extremely important that the reporting to the Swedish Police, to be handled by the appointed officer for controlling and reporting obligations in accordance with Chapter 6 Section 2 second paragraph of the new Money Laundering Act, should always work and be guaranteed. Moreover, there are already requirements for an appointed officer for controlling and reporting obligations in the present money laundering regulations and in some financial business laws, such as those covering insurance companies etc., so this function is well established in these undertakings.

Specially appointed executive

According to Article 46(4) of the Directive, undertakings should identify the member of the management board who is responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with the Directive. The term 'member of the management board' used in the Directive is defined in the new Money Laundering Act as a member of the management team, the managing director or an equivalent executive rather than a member of the board, because the task is more operational than the normal duties of a board member.

Finansinspektionen uses the collective term ‘specially appointed executive’ to describe the person to be appointed. Finansinspektionen specifies the tasks to be performed by the specially appointed executive (Chapter 6 Sections 2–4 of the regulations). For example, the specially appointed executive should produce and update the undertaking’s general risk assessment, and maintain and update the undertaking’s internal and common procedures and policies. This person should also control and follow up to ensure that the undertaking is practising what has been decided with regard to measures, procedures and other actions. The main responsibility of the specially appointed executive is thus to carry out or arrange for the measures that are required.

Finansinspektionen stresses that the specially appointed executive should carry out the tasks set out above. *Insurance Sweden* and the *Swedish Bankers’ Association* consider that the specially appointed executive should be responsible for seeing that these tasks are performed rather than actually handling them personally. To make it clear that the function can delegate tasks to others, the delegation provision has been moved to a separate paragraph in Section 2. On the other hand, Finansinspektionen does not consider that the specially appointed executive should be able to delegate to anyone else the task of controlling and monitoring that the measures, procedures and other actions decided on by the undertaking are actually implemented in its activities. Nor does Finansinspektionen find it appropriate for the specially appointed executive to delegate the task of reporting to the managing director or the board of the undertaking. The fact that it is the specially appointed executive who reports to a higher level of management emphasises the importance of the work on measures against money laundering and terrorist financing within the business.

Appointed officer for controlling and reporting obligations

The new Money Laundering Act sets out the basis for the tasks of the compliance officer at management level, who is to be appointed by undertakings under Article 8(4)(a) of the Directive. Among other things, the Act states that this person should be appointed to control that the undertaking is meeting its obligations under the Act or any regulations issued pursuant to the Act. The function is referred to as the ‘appointed officer for controlling and reporting obligations’, which is a familiar term to undertakings supervised by Finansinspektionen as it is already used in the existing money laundering regulations. The Act also states that the appointed officer for controlling and reporting obligations is responsible for reporting to the Swedish Police (Chapter 6 Section 2 second paragraph).

In the regulations, Finansinspektionen sets out the tasks to be performed by the appointed officer for controlling and reporting obligations (Chapter 6 Sections 5–8 of the regulations). This person should e.g. control that the undertaking is meeting the requirements in the money laundering rules, give advice and support to the undertaking’s staff on rules relating to money laundering and terrorist financing, and handle reporting to the Financial

Intelligence Unit etc. Chapter 6 Section 9 of the regulations contains a provision covering the responsibility of an appointed officer for controlling and reporting obligations for reporting suspicions to the Financial Intelligence Unit in accordance with the new Money Laundering Act. This provision has been included in the regulations in order to provide an undertaking with a simple overview of the responsibilities of an appointed officer for controlling and reporting obligations.

The Swedish Bankers' Association and others have pointed out that the information matches the details that the compliance function should have according to Finansinspektionen's regulations and general guidelines (2014:1) on governance, risk management and control in credit institutions. Finansinspektionen wishes to clarify that the undertakings that are subject to these regulations are not required by the new money laundering regulations to establish a special function to be solely concerned with money laundering issues. These tasks can be handled within the functions that should already exist under e.g. Finansinspektionen's regulations and general guidelines on governance, risk management and control in credit institutions, provided that the requirements in the new money laundering regulations are met. That means that there must always be sufficient expertise in the money laundering area to be able to perform the qualified tasks to be handled by the appointed officer for controlling and reporting obligations according to Chapter 6 Section 5 of the new regulations.

Several consulting bodies have pointed out that the Act allows for some flexibility as to where in the organisation the appointed officer for controlling and reporting obligations should be located. Finansinspektionen agrees that the Directive does not specify exactly where in the organisation the appointed officer for controlling and reporting obligations should be located. The requirement that the function should be organisationally separate from the functions and areas that it is to monitor and control has therefore been removed.

Independent audit function

The Directive also requires undertakings to have an independent audit function to test the internal policies, controls and procedures referred to in Article 8(4)(a), where this is appropriate with regard to the size and nature of the business (Article 8(4)(b)).

There is already a requirement for e.g. banks, credit market undertakings and insurance companies to have an independent audit function in e.g. Finansinspektionen's regulations and general guidelines on governance, risk management and control in credit institutions. However, several types of institution covered by the money laundering rules were not previously required to have an independent audit function. It is therefore necessary for these undertakings that there should be regulations stipulating how an independent audit function should be organised, what powers this function should have, and

that it should be independent of the functions that it is to audit and the business to be audited.

In this context, the independent audit function should conduct its audit solely according to the criteria in the money laundering rules and the assessment of what constitutes a proper audit should be based on the needs of the undertaking in its own operations.

The regulations set out a number of tasks for the independent audit function (Chapter 6 Sections 10–12 of the regulations). Among other things, it should review and assess whether the undertaking's organisation, control processes, IT systems, models and procedures are appropriate and effective. The function should review and regularly assess whether the undertaking's internal controls are appropriate and effective.

Several consulting bodies have pointed out that the tasks of the independent audit function are the same as those that an independent audit function should perform under Finansinspektionen's regulations and general guidelines on governance, risk management and control in credit institutions. As with the specially appointed executive, Finansinspektionen would emphasise that the undertakings that are subject to the regulations or other similar rules requiring an independent audit function do not need to appoint a separate independent audit function specifically for money laundering issues. The undertakings are therefore free to organise their internal control in any way they like provided that the requirements in the new regulations, and other relevant rules, are satisfied. They must however ensure that there is sufficient expertise in the money laundering area to be able to perform the qualified tasks to be handled by an independent audit function officer according to Chapter 6 Section 10 of the new regulations.

2.9.2 Model risk management

Finansinspektionen's position: An undertaking's procedures must include a description of the underlying theory and the assumptions that have led to the design of a model. The procedures should also describe how the changes made to a model are to be documented. The undertaking should have procedures for validating the models.

Consultation memorandum: The proposal had substantially the same content.

The consulting bodies: The *Association of Swedish Finance Houses* feels that the regulations need to be clarified to give undertakings a better understanding of what model risk management entails. The parameters to be used in the validation should also be clarified. The *Swedish Investment Fund Association* finds that the proposal is very detailed and complex and makes any proportionate application impossible. The Swedish Investment Fund Association and the *Board of Swedish Industry and Commerce for Better Regulation* consider that Finansinspektionen should not introduce any new

requirements for validating a model or procedures for a validation process into the regulations. The *Swedish Bankers' Association* feels that is should be made clear that there is no need for any procedures for model risk management if an economic operator does not use a model for risk assessment, risk classification, monitoring or other activities. The Association finds that the requirement for documentation of the model risk management that it considers to follow from the regulations is not consistent with the powers given to Finansinspektionen. The text of the Act does not include any requirement for documentation. The Association also suggests that the requirement that the parameters used in the model should be 'correct and complete' should be altered to 'appropriate and relevant'.

Finansinspektionen's reasoning: According to Article 8(4)(a) of the Directive, model risk management practices belong to the category of policies, controls and procedures intended to ensure that undertakings have functions in place for compliance and internal control. The Directive does not define what is meant by models and model risk management. However, guidance is given in the Bill.[13] This describes a model risk as a risk of errors that can arise in the use of a given model. Models may be used to simplify and systematise a number of assessments that undertakings are required to make under the new Money Laundering Act. These could include the general risk assessment and their monitoring of transactions and activities. The purpose of model risk management is to quality-assure and improve the models used and to ensure that the models are not misused by customers who understand them and can adapt their behaviour to avoid a high risk classification, for example. The idea is to be able to detect possible shortcomings and improve the models.

The regulations contain a number of provisions on procedures for model risk management (Chapter 6 Sections 14–17 of the regulations). An undertaking's procedures must include a description of the underlying theory and the assumptions that have led to the design of the chosen model. Undertakings should also have procedures for validating the model, to ensure that it is fit for purpose. The *Swedish Bankers' Association* would like the regulations to make it clear that an economic operator who does not use risk models does not need procedures for model risk management either. As Chapter 6 Section 1 of the new Money Laundering Act states that procedures for model risk are only needed where such models are used, Finansinspektionen see no need for any clarification of this in the regulations. The Swedish Bankers' Association has also pointed out that it may be difficult to determine in a validation process that the parameters used in the model are correct and complete. The Association therefore feels that the requirement in the second paragraph should be changed to say that economic operators should control that the parameters are appropriate and relevant. Finansinspektionen does not share the view of the Swedish Bankers' Association, but stresses that the parameters entered into the model should be correct; on the other hand, the assumptions behind the parameters should be appropriate and relevant. Finansinspektionen has

[13] Bill 2016/17:173, p. 213.

amended the provision to make this clearer. The validation must be carried out before the model is used for the first time and also where substantial changes are made to a model. The Swedish Bankers' Association also commented on the provision that the procedures should describe how changes to the model should be documented. Finansinspektionen wishes to stress that the regulations do not contain any requirements for documentation but only state that undertakings should describe in their procedures how the changes made to a model are to be documented. However, Finansinspektionen believes that it should normally be appropriate for undertakings to document the changes made to a model because this will provide for traceability, which is itself important to the undertaking's own risk management.

2.9.3 Function for a central point of contact

Finansinspektionen's position: Finansinspektionen will wait to issue regulations on the function for a central point of contact.

Consultation memorandum: The proposal had the same content.

The consulting bodies: Support the proposal or have no objections to it.

Finansinspektionen's reasoning: Article 45(9) of the Directive provides that Member States may require electronic money issuers as defined in point (3) of Article 2 of Directive 2009/110/EC and payment service providers as defined in point (9) of Article 4 of Directive 2007/64/EC established on their territory in forms other than a branch, and whose head office is situated in another Member State, to appoint a central contact point in their territory. The central point of contact should be used by issuers of electronic money and payment providers to ensure that the rules on combatting money laundering and terrorist financing are being complied with and to facilitate supervision by the competent authorities, e.g. by providing the competent authorities with documents and information on request.

The EBA, ESMA and EIOPA are currently drawing up a joint proposal for technical standards for supervision of the criteria used to determine when it is appropriate to establish a central point of contact according to Article 45(9) and what functions this should have (Article 45(10)). The proposal for a technical standard has to be submitted to the Commission by 26 June 2017. The Commission decided three months ago to adopt the standard in the form of an EU Regulation. That means that these rules will not be in effect in Sweden when the new Money Laundering Act and the new regulations enter into force. Although it is able to issue regulations on a central point of contact, Finansinspektionen has chosen to wait to exercise this authority until the technical standards have entered into force.

Finansinspektionen may issue regulations on this at a later stage if it proves that the provisions in the Bill combined with the forthcoming EU Regulation need to be supplemented or clarified.

2.9.4 Characteristics of the whistle-blowing system

Finansinspektionen's position: An undertaking's reporting system for employees, contractors and other persons involved in its activities in a similar capacity must safeguard the undertaking's information against access by unauthorised persons, prevent the information being corrupted or destroyed, and ensure that the information is accessible when needed. It must be possible to provide this information anonymously.

Consultation memorandum: The proposal had the same content.

The consulting bodies: The *Financial Sector Union of Sweden* considers that, along with internal reporting, it is important to enable employees to report serious events to external bodies. The *Swedish Investment Fund Association* believes that the requirements urgently need to be harmonised with the requirements placed on whistle-blowing systems in other financial legislation.

Finansinspektionen's reasoning: According to Article 61(3) of the Directive, Member States must require undertakings to have in place appropriate procedures for their employees, or persons in a comparable position, to report breaches internally through a specific, independent and anonymous channel, proportionate to the nature and size of the undertaking.

Chapter 6 Section 4 of the new Money Laundering Act contains a provision with similar wording to the Directive. Chapter 6 Section 18 of the new regulations supplements this provision and stipulates, among other things, that an undertaking's reporting system must safeguard information against access by unauthorised persons, prevent the information being corrupted or destroyed, and ensure that the information is accessible when needed. The provision also states that the reporting system should ensure that the reports can be submitted anonymously, which is in line with the Directive. Finansinspektionen's provision lays down a minimum level for the design of the whistle-blowing system, which undertakings can adapt to their individual needs. For a smaller player, this could mean a mailbox; in other cases, a more advanced IT-based system.

The requirement for undertakings to introduce a whistle-blowing system is new and does not exist in the current rules. The whistle-blowing system is only concerned with reporting suspected breaches of the money laundering rules by the undertaking itself. The system is therefore meant to operate within the undertaking. This should not be confused with reporting suspicions to the Financial Intelligence Unit according to Chapter 4 Section 3 of the new Money Laundering Act, or the system for responding to enquiries on commercial relationships from the Financial Intelligence Unit under Chapter 4 Section 6 of the same Act.

The *Swedish Investment Fund Association* believes that the requirements urgently need to be harmonised with the requirements placed on whistle-blowing systems in other financial legislation. There are many other provisions stipulating that a mechanism should be set up for whistle-blowers, e.g. in the Capital Requirements Directive and the UCITS V Directive, MiFID II and MAR/MAD. This means that an undertaking supervised by Finansinspektionen is already required to have a system for whistle-blowers. It is outside the scope of this regulatory exercise to make an overarching comparison of all rules for whistle-blowing systems. However, the money laundering regulations will mean that all undertakings covered by these rules will be required to have such a system. In response to the comments from the *Financial Sector Union of Sweden*, Finansinspektionen would point out that the whistle-blowing system is designed to enable people inside the undertaking to report suspected breaches. This view matches the statement in the Bill to the effect that this concerns internal reporting.[14]

2.10 Periodic reporting and submission of information

Finansinspektionen's position: An undertaking must submit information to Finansinspektionen each year on its activities, customers and other matters, as specified in more detail on the authority's website. The information, which should relate to the balance-sheet date of 31 December, must reach Finansinspektionen no later than 31 March.

Consultation memorandum: The proposal had the same content.

The consulting bodies: The *Swedish Bankers' Association* has commented that the wording of the provision does not meet the requirement for legal certainty because it is not possible to foresee what information will have to be provided to Finansinspektionen. The wording also makes it impossible to judge the impact when it comes to expectations of system support, for example, and the costs of this. As it is very unclear what the reporting requirement will entail in practice, Finansinspektionen should defer the reporting requirement until it is clear what details are needed for Finansinspektionen to be able to assess the risk associated with economic operators under its supervision. The *Swedish Investment Fund Association* also finds that the provision gives limited guidance as to what the reporting should include. *Insurance Sweden* urges Finansinspektionen to publish details of the information to be reported as soon as possible, given that the latest date for the first reports is 31 March 2018. The *Association of Swedish Finance Houses* finds it unclear how the information should be reported. Finansinspektionen will already have access to some of the information, so it will be unnecessary and time-consuming to send it all over again. To facilitate reporting by the undertakings, this should be in a standardised format, e.g. using indicators.

[14] Bill 2016/17:173, p. 325.

Finansinspektionen's reasoning: Article 48(6) of the Fourth Money Laundering Directive stipulates that, where competent authorities apply a risk-based approach to supervision, they must have a clear understanding of the risks of money laundering and terrorist financing in Sweden. Competent authorities should access to all relevant information on the specific domestic and international risks associated with customers, products and services of the undertakings, both from on-site visits and from desk checks ('off-site'). In their supervisory activities, both on-site and desk checks, competent authorities should adapt the frequency and depth (intensity) to the risk profile of the economic operator/undertaking and to the risks of money laundering and terrorist financing in Sweden.

Article 48(7) also provides that the risk profile of the undertakings, including the risks of non-compliance, should be reviewed periodically. They should also be reviewed when there are major events or developments in their management and operations. In summary, the Directive lays down requirements that the competent authorities should have access to information to enable them to risk-classify the undertakings.

Finansinspektionen, in its role as the supervisory authority for financial undertakings, should have enhanced supervisory powers under Article 48(3). This is because financial institutions are among the businesses that are judged to run the greatest risk of money laundering and terrorist financing. The Government is particularly concerned that the authorities covered by Article 48(3) should be able to plan and prioritise their supervision with the aid of relevant and realistic risk profiles[15].

Finansinspektionen has been empowered to issue regulations on the requirement for undertakings under supervision by the authority to provide information, periodically or on request, on their activities, their customers and other matters needed for the supervisory authority to be able to assess the risk that could be associated with the undertakings under its supervision (Section 19 first paragraph of the Ordinance).

The Government emphasises in the Bill that the information requested by Finansinspektionen should be of benefit for the risk assessment and that the authority should be able to use the information in an appropriate way. The authority should be able to practise risk-based supervision.

The requirement for necessity means that Finansinspektionen should assess the relevance of the information that it requests from undertakings. In practice, this is a requirement for Finansinspektionen to make an assessment of the proportionality of its requests. The benefit has to be weighed against the costs and other inconvenience to the undertakings of producing and submitting the information.[16] In this connection, Finansinspektionen wishes to stress that the

[15] Bill 2016/17:173, p. 353 ff.
[16] Ibid, p. 355.

undertakings under its supervision are generally judged to run a higher risk of being used for money laundering and terrorist financing than other undertakings; among other things, this is reflected in the enhanced supervisory powers conferred on it under the Directive (see notes above on Article 48(3)).

The regulations mean that undertakings covered by Finansinspektionen's supervision with regard to money laundering have to report some information to the authority on an annual basis. The provision lists overall categories of information to be provided. These include details of the type of business the undertaking engages in, its risk assessment and procedures, customer due diligence, monitoring and reporting, compliance and staff training. These details could, for example, relate to the product range, customer categories and monitoring of compliance. The information will be analysed and used for Finansinspektionen's risk classification of the undertakings under its supervision. The risk classification enables Finansinspektionen to plan and prioritise its supervisory activities effectively, based on the risk of the undertakings and the various industries being used for money laundering and terrorist financing. According to Chapter 7 Section 2 of the regulations, the undertakings should submit information in accordance with the instructions provided on the authority's website, www.fi.se. This will specify the information to be provided in more detail.

Several consulting bodies have objected to the way in which the reporting is intended to be handled. However, the method of reporting, on web forms through the authority's website, is not new but is already used for several existing reports to Finansinspektionen. The reason why the regulations do not specify precisely the information to be reported is that the details requested may change over time. Finansinspektionen will regularly review indicators that could affect the undertakings' intrinsic risk of money laundering and terrorist financing. Finansinspektionen will also assess the effects of mitigating measures. The web form for reporting can and should be modified to reflect new knowledge. In short, it is not appropriate to specify these details in any more depth in regulations.

At the same time, Finansinspektionen understands that the undertakings need time to adapt to the way the web form will be laid out. The undertakings will be informed of the details to be reported to Finansinspektionen when the new regulations are published on the authority's website. Undertakings will have to report this information for the first time no later than 31 March 2018. The figures should be calculated or derived as of the balance-sheet date of 31 December 2017.

According to the regulations, undertakings will also have to provide information at the request of Finansinspektionen. This information will also from the basis for the authority's risk classification of undertakings, and the information requested must be needed for Finansinspektionen's supervisory activity. Finansinspektionen may for example request information pursuant to

this provision if a restricted segment is to be selected for a thematic or event-driven survey.

Finansinspektionen has a large number of objects under supervision which vary in both size and nature, which means that it is not possible to risk-classify all objects on the basis of ongoing supervision. That is why periodic reporting is a necessary condition for Finansinspektionen to be able to undertake an adequate risk classification. Many of the undertakings under supervision already report to Finansinspektionen under other regulations.

In section 3.3.2, Finansinspektionen has made an estimate of the administrative and other costs that the provisions in this Chapter could impose on the undertakings.

2.11 Amendments to related regulations

Finansinspektionen's position: References in related regulations and general guidelines will be replaced with references to the new Money Laundering Act and the new regulations.

Consultation memorandum: The proposal had the same content.

The consulting bodies: Support the proposals or have no objections to them.

Finansinspektionen's reasoning: There are references to the present Money Laundering Act and the present money laundering regulations in the following regulations:

Finansinspektionen's regulations and general guidelines (FFFS 2016:29) on housing loans;
Finansinspektionen's regulations and general guidelines (FFFS 2015:8) regarding insurance business;
Finansinspektionen's regulations and general guidelines (FFFS 2014:8) on certain consumer credit-related operations;
Finansinspektionen's regulations (FFFS 2013:10) regarding alternative investment fund managers;
Finansinspektionen's regulations and general guidelines (FFFS 2013:9) on investment funds, Finansinspektionen's regulations and general guidelines (FFFS 201149) regarding institutions for electronic money and registered issuers;
Finansinspektionen's regulations and general guidelines (2010:3) governing payment institutions and registered payment service providers; and
Finansinspektionen's regulations and general guidelines (FFFS 2005:11) regarding insurance mediation.

Finansinspektionen is replacing these references with references to the new Money Laundering Act and the new regulations. Amendments are also being made to Finansinspektionen's regulations on investment funds,

Finansinspektionen's regulations on alternative investment fund managers and Finansinspektionen's regulations and general guidelines on insurance mediation in a parallel regulatory project (FI Ref. 15-1725).

2.12 Entry into force

Finansinspektionen's position: The new regulations enter into force on 1 August 2017.

Consultation memorandum: The proposal stated that the regulations would enter into force 26 June 2017.

The consulting bodies: The *Swedish Bankers' Association* feels that Finansinspektionen should wait to introduce the reporting requirement in Chapter 7 of the regulations**.** The *Association of Swedish Finance Houses* considers that the entry into force of the regulations should be postponed to allow Finansinspektionen to take account of the EBA's forthcoming Risk Factor Guidelines before this date rather than amending the regulations at a later stage. It would be unfortunate if economic operators needed to modify their procedures after a short time. *Insurance Sweden* thinks that there should have been more time between circulating the draft regulations for consultation and the entry into force of the regulations.

Finansinspektionen's reasoning: The amendments to the regulations are mainly to align them with the new Act which enters into force on 1 August 2017. The Legislative Council note suggested that the Act should enter into force on 26 June 2017, but this date has now been changed, so Finansinspektionen's regulations will also enter into force on 1 August 2017. Finansinspektionen understands the objections from the consulting bodies to the date of entry into force and the short time between the date of the decision and the entry into force, but believes that the regulations and proposed consequential changes to related regulations should enter into force at the same time as the amendments to the Act. As the regulations are part of the implementation of the Fourth Money Laundering Directive, a later entry into force could also prompt the Commission to take action against Sweden.

3 Implications of the proposal

The *Swedish Better Regulation Council* has noted that the impact analysis meets the requirements in Sections 6 and 7 of the Ordinance (2007:1244) on impact analyses in the legislative process. On the other hand, the account of alternative solutions in case no regulation emerges, and the account of the impact on competition, are inadequate. In response to this, Finansinspektionen has amended the impact analysis to take account of the comments from the Swedish Better Regulation Council.

Several consulting bodies commented in the impact analysis. These comments may be summarised as follows. The impact analysis is inadequate; among other things, it is judged to be too general and not to take account of actual costs. Nor does it consider small enterprises. Several consulting bodies note the lack of impact analyses for some types of undertaking, such as insurance intermediaries, insurance companies and fund management companies. Another comment that has been made is that the overall regulatory burden on this sector from different regulations is heavy and that the impact and risks from this need to be considered.

Finansinspektionen understands the desire for a more comprehensive and in-depth analysis of the impact on undertakings covered by the money laundering rules. However, given the short time available to allow the regulations to enter into force at the same time as the Act, it has not been possible to carry out a more extensive impact analysis.

Finansinspektionen believes that it is mainly the amendments to the Act and not Finansinspektionen's new regulations that cause increased administrative and other costs to the undertakings, society, consumers and Finansinspektionen itself. This section discusses the impact of Finansinspektionen's regulations.

3.1 Implications for society and consumers

Money laundering is an activity whereby the proceeds of crime are integrated into the legal economy. It is an international problem which poses a threat to society and to the financial system and the institutions within it, and to society as a whole. There are no exact figures for the extent of money laundering in Sweden, but estimates suggest that it runs into many billions of kronor.

Another problem is the financing of terrorism, where even very small flows of money can have major consequences by contributing to serious crimes of violence. Recent events, such as the attacks in Paris, Nice and Brussels, show that the problem of terrorist activity, and hence the financing of this, is a very real one in Europe. Several reports produced by the Centre for Asymmetric Threat Studies confirm that terrorist attacks can be carried out even with limited access to financing.[17] Among other things, the reports show how trips to join terrorist organisations can be made with the aid of instant loans, student loans, cash withdrawals or several small payments into an account, or similar means.

Confidence in the financial system may be damaged and its institutions associated with illegal assets and money laundering or terrorist financing, which may in turn threaten long-term financial stability. As money laundering

[17] Reports 'Understanding terrorist finance - modus operandi and national CTF regimes' and 'Financial activities linked to persons from Sweden and Denmark who joined terrorist groups in Syria and Iraq during the period 2013-2016', both published by the Centre for Asymmetric Threat Studies (CATS).

and terrorist financing have potentially serious and widespread implications for society as a whole, Finansinspektionen believes that they should be classed as systemic threats. Actions aimed at combatting these activities more effectively should therefore be seen as measures to safeguard both financial stability and public security. This has to be weighed against the need to allow legitimate economic activity to continue and for financial services to be available to individuals. In order to address and balance both of these aspects, a risk-based approach should form the basis for the regulations to be issued.

Consumers are already required to provide information to undertakings under the money laundering rules. The new regulations do not place any further obligation on consumers to provide information. The increased regulatory burden on the undertakings, such as the requirement for periodic reporting, may however cause increased costs to the undertakings which could be passed on to consumers in the longer term. The new regulations may however make it easier for undertakings to follow the rules. This streamlining of the work on the regulations should hep to prevent the costs being passed on to consumers.

The new regulations clarify the requirements of the new Act and are expected to lead to more efficient handling of the money laundering rules.

3.2 Implications for undertakings

Both the rules as a whole and the new regulations place greater requirements on the undertakings. The changes affect most companies operating in the financial markets. The regulations are governed to a large extent by international standards and EU Directives. That means that the regulations are neutral when it comes to competition between Swedish undertakings and similar undertakings in other countries, inside and outside the EU. Finansinspektionen therefore thinks it unlikely that competitive conditions for the undertakings will be affected to any great extent. The undertakings covered by the regulations are however quite diverse and offer differing products and services. They are therefore differently placed in terms of adapting to the new regulations. This makes it hard to assess fully how competition will really be affected.

3.2.1 Undertakings affected

The regulations affect the same financial institutions that are covered by the new Act on Measures against Money Laundering and Terrorist Financing and are subject to supervision by Finansinspektionen. In January 2017, 2,332 financial undertakings licensed by or registered with Finansinspektionen were covered by the money laundering rules.

Institution type desc.	**Number**
Authorised AIF manager	60
Registered AIF manager	31

Reg. AIF manager (internal)	47
AP fund	2
Banking firm	40
Payment institution	29
Registered payment service provider	76
Sw. e-money institution	5
Financial institution	322
Swedish fund management company, foreign branch	2
Fund management company	40
Insurance mediation	1054
Deposit-taker	23
Consumer credit institution	75
Credit market firm	34
Member bank	2
Foreign inv. firm in the EEA with branches in SV	38
Small local insurance company	21
Payment institution, foreign agency	14
Sw. reg. issuer	1
Nationwide company, life insurance	30
Nationwide company, non-life insurance	43
Nationwide company, unit-linked	9
Large local insurance company	40
Savings bank	47
Branch of foreign AIF manager	4
Branch of foreign management company	17
Foreign bank	30
Foreign payment institution	20
Branch of foreign payment institution	13
Foreign e-money institution, agency	5
Branch of foreign insurance intermediary	13
Branch of foreign insurance company, life	4
Branch of foreign bank	27
Foreign credit market firm	2
Branch of foreign credit market firm	2
Investment firm	110
Total number of companies	**2,332**

As can be seen from the table above, Finansinspektionen's supervisory activity covers a wide range of undertakings, from major banks and insurance companies to small payment institutions and registered payment service providers (including bureaux de change). This makes it difficult to account for the impact of the new regulations on all types of undertaking, as these undertakings vary widely in terms of technical infrastructure, knowledge of the money laundering rules, and resources.

The table below shows types of undertaking, total numbers of undertakings and balance-sheet totals for 2015, where these details have been reported to Finansinspektionen. This forms the basis for Finansinspektionen's calculations for different types of undertaking.

Företagstyp	Totalt antal företag	Balansomslutning (miljoner kr)					
		0-2	2-20	20-100	100-1000	1000-	Uppgift saknas
Auktoriserad AIF-förvaltare	86	3	32	28	17	3	3
AP fond	1	0	0	0	0	1	0
Bankaktiebolag	39	0	0	0	1	37	1
Fondbolag	42	2	11	16	11	2	0
Kreditmarknadsbolag	35	0	0	0	7	28	0
Medlemsbank	2	0	0	0	1	1	0
Mindre lokala försäkringsbolag	22	2	8	2	0	0	10
Riksbolag, livförsäkringar	30	0	0	1	7	20	2
Riksbolag, skadecaptive	44	0	0	6	27	9	2
Riksbolag, skadeförsäkringar	43	1	0	2	21	19	0
Riksbolag, unit-linked	9	0	0	0	3	6	0
Större lokala försäkringsbolag	41	0	0	5	13	23	0
Sparbanker	47	0	0	1	4	42	0
Utländsk banks filial	28	1	4	5	4	13	1
Utländskt kreditmarknadsbolag	2	0	0	0	1	1	0
Värdepappersbolag	109	3	53	36	15	2	0
Totalt	**580**	**12**	**108**	**102**	**132**	**207**	**19**

3.3 Costs to the undertakings

We will now describe the cost impact on some example undertakings. Finansinspektionen has chosen only to describe the impact of the regulations that could impose a cost on the undertakings in addition to that which arises from the Act.

The costs that may be incurred by the undertakings are financial costs (e.g. taxes and charges), material costs (e.g. investments), and administrative costs (e.g. collection, storage and transfer of information). A large part of the regulations are simply clarifications of the Act, so they do not entail any additional costs to those caused by the Act.

Finansinspektionen has based its estimates on certain assumptions, which have been used to calculate the costs to the undertakings.

The Malin database maintained by the Swedish Agency for Economic and Regional Growth contains details of the administrative costs incurred by various players to set up new rules. The salary costs in these estimates are from 2006 and are judged to be out of date. Finansinspektionen has therefore produced updated templates for hourly costs. The following

cost information has been used by Finansinspektionen recently and is also used in the cost calculations in this impact analysis. The term ‘average internal salary cost’ includes salaries, holiday pay and social security contributions.

Average internal salary cost: SEK 1,300 per hour
Estimated consultancy cost: SEK 2,000 per hour
Annual working hours: 1,800 hours

Finansinspektionen bases the cost projections on various examples of undertakings for which the time spent to meet the requirement has been estimated. These are then set against the number of undertakings in the three different categories.

See example cost calculation in section 3.3.1 below.

3.3.1 Special functions for compliance etc.

The Act introduces increased requirements for compliance monitoring, in that persons with special responsibility for compliance have to be appointed (Chapter 6 Section 2). The functions to be established are a specially appointed executive, an appointed officer for controlling and reporting obligations and an independent audit function. These functions should be established where this is justified by the size and nature of the business; see also section 2.10.1. The regulations define factors that undertakings should consider when assessing the size and nature of their activities. However, Finansinspektionen considers that the function of the appointed officer for controlling and reporting obligations should always be established in financial undertakings, unlike the specially appointed executive and the independent audit function.

For the functions of specially appointed executive and independent audit function, Finansinspektionen has stipulated that they should be established where this is justified according to the criteria set out in Chapter 6 Section 1 of the regulations. These functions are new in the money laundering rules and will cause new costs to the undertakings.

For the appointed officer for controlling and reporting obligations, however, Finansinspektionen suggests that this function should be established in all undertakings. The requirement for this function to exist in all undertakings is already contained in earlier regulations. Some of the content of the requirements relating to this function has changed, but Finansinspektionen does not expect this to cause any increased costs to the undertakings.

In its calculations of the costs of the specially appointed executive and the independent audit function, Finansinspektionen has assumed that all undertakings will incur increased administrative costs. These costs will vary according to the size of the undertakings, as shown in the calculations below. The basis for the calculations is set out in Appendix 1. The function of the

appointed officer for controlling and reporting obligations does not introduce any increased costs, so this function is not included in the calculations.

The basis for calculation shown in Appendices 1 and 2 has not been affected by the final wording of the provisions relating to these functions, so it gives a correct picture of the impact on the undertakings.

Cost of the specially appointed executive

Example 1 Major bank
The administrative costs to a major bank related to the requirement for a specially appointed executive are estimated at SEK 2,340,000 per year, which is a recurring cost. Then there is the ongoing cost of training, at SEK 52,000 per year. The total annual costs to the major bank is thus estimated at SEK 2,392,000 per year.

Example 2 Investment firm
The administrative costs to an investment firm related to the requirement for a specially appointed executive are estimated at SEK 0 because the average investment firm has fewer than 50 employees.

Example 3 Registered payment service providers
The administrative costs to a registered payment service provider related to the requirement for a specially appointed executive are estimated at SEK 0 because the average registered payment service provider has fewer than 50 employees.

Cost of an independent audit function

Example 1 Major bank
The administrative costs to a major bank related to the requirement for an independent audit function are estimated at SEK 156,000 per year, which is a recurring cost.

Example 2 Investment firm
The administrative costs to an investment firm related to the requirement for an independent audit function are estimated at SEK 0 because the average investment firm has fewer than 50 employees.

Example 3 Registered payment service providers
The administrative costs to a registered payment service provider related to the requirement for an independent audit function are estimated at SEK 0 because the average registered payment service provider has fewer than 50 employees.

3.3.2 New reporting system

Finansinspektionen is issuing regulations on requirements for undertakings to provide information, periodically or on request, on their activities, their customers and other natters needed for the supervisory authority to be able to assess the risk that could be associated with the undertakings under its supervision.

A project is in progress within Finansinspektionen to design the new reporting system based on the new regulations. The information that the authority proposes to request includes the type of business that the undertaking has, the customer categories that it serves, the number of persons in politically exposed positions (PEPs) and the way in which compliance etc. is monitored. In the course of this work, Finansinspektionen has had discussions with a reference group on periodic reporting. The reference group was given high-level information on the future reporting requirement and invited to submit comments. Only a few comments have been received because the reference group found it hard to comments before the proposal was quite complete. In order to produce a cost estimate in spite of this, Finansinspektionen has also spoken to people in the industry working to produce reporting systems within the financial sector. This has allowed Finansinspektionen to make a rough estimate of the possible costs to the different undertakings.

Finansinspektionen assumes that most of the information to be reported is already available within the undertakings. The undertakings use this information to report to the board and management, for example, so they can take decisions and track developments and risks within the undertaking.

Some undertakings could incur an initial cost for setting up systems and maintaining information to be sent to Finansinspektionen. The requirement for reporting means that all undertakings need to review and potentially develop both their IT systems and their internal procedures to ensure that they can provide satisfactory reports to Finansinspektionen.

Finansinspektionen expects larger companies to have the capacity to produce systems for reporting at no great cost, as the authority assumes that they can use or enhance existing systems. Some of the requested information is already reported today, so Finansinspektionen has access to it already. Much of the information should also be available within the undertakings because of earlier legislation and regulations. Smaller undertakings may however need help from consultants to develop the reporting system. Here, the initial costs could be greater than for larger undertakings. In the long run, however, creating reporting systems could help the undertakings, both large and small, to gain a better overview of their risk exposure. The reporting should be produced by the method to be specified on Finansinspektionen’s website.

Apart from the initial costs of producing, modifying and introducing new systems, there may also be recurring costs in the form of maintenance and updating of the systems.

Staff will also be needed to handle the annual reporting arising out of the draft regulations.

The basis for the calculations is set out in Appendix 2.

Cost of periodic reporting

Example 1 Major bank
The administrative costs to a major bank related to the requirement for periodic reporting are estimated at SEK 104,000 per year, which is a recurring cost. The initial costs to a major bank of introducing periodic reporting are estimated at SEK 50,000.

Example 2 Investment firm
The administrative costs to an investment firm related to the requirement for periodic reporting are estimated at SEK 104,000 per year, which is a recurring cost. The initial costs to an investment firm of introducing periodic reporting are estimated at SEK 50,000.

Example 3 Registered payment service providers
The administrative costs to a registered payment service provider related to the requirement for periodic reporting are estimated at SEK 52,000 per year, which is a recurring cost. Finansinspektionen estimates that there could be a further consultancy cost of SEK 28,000 per year. The initial costs to a registered payment service provider of introducing periodic reporting are estimated at SEK 50,000.

3.3.3 Implications for small undertakings

Chapter 6 of the regulations lays down requirements for special functions that an undertaking has to appoint. The regulations define factors that undertakings should consider when assessing the size and nature of their activities. Finansinspektionen considers that the function of the appointed officer for controlling and reporting obligations should always be established in financial undertakings, unlike the specially appointed executive and the independent audit function.

For the functions of specially appointed executive and independent audit function, Finansinspektionen has stipulated that they should be established where this is justified according to the criteria set out in Chapter 6 Section 1 of the regulations. Finansinspektionen expects that many smaller undertakings will be covered by the requirements for a specially appointed executive and an independent audit function.

The requirement for periodic reporting could cause slightly higher costs to the small undertakings than to the larger ones if they do not currently have satisfactory systems to produce the desired information. There could be more manual work for these undertakings than for a larger one. On the other hand,

there is likely to be less information that needs to be produced and reported, assuming a more restricted product range and less complex customer structure. Both large and small undertakings often have external data providers for their IT systems. The smaller undertakings may have less developed reporting tools linked to their systems and will therefore have to request the information from the data provider, which will usually entail a cost in addition to the recurring cost of the system.

3.4 Implications for Finansinspektionen

Finansinspektionen is the authority that exercises supervision over the way in which financial institutions follow the money laundering rules. The regulations specify how the undertakings should meet the requirements laid down in the Money Laundering Act. The regulations imply increased supervisory work because Finansinspektionen has to control that the undertakings are complying with the new requirements. A major element of the supervision will then be to control that the undertakings set up internal procedures and policies based on the regulations and implement them in their operations. The undertakings' more risk-based approach entails a more individualised assessment of the undertakings, which calls for more resources and tools from FI to control that individual undertakings are meeting the requirements.

The requirement for periodic reporting, which gives Finansinspektionen greater opportunity for proactive and risk-based supervision, also entails a significant increase in the authority's workload and costs. Initial costs will be incurred to develop a system that can accept and process the requested information from the undertakings. This includes increased costs for several activities within Finansinspektionen and affects IT, administration and analysis, for example. Then there are increased recurring costs for analysing and monitoring the reported information, because the periodic reporting will provide Finansinspektionen with more extensive background material.

The new regulations are complex and have a major impact on the undertakings. Finansinspektionen believes that there is a need to inform the undertakings both initially ahead of the entry into force of the regulations, preferably via FI's knowledge seminar, the FI Forum and briefing films, then through regular communication efforts targeted at the undertakings. Finansinspektionen also expects to receive many questions about the rules, from undertakings, consumers, audit firms and legal advisers, as there will be a great need for guidance on the new rules.

Communication efforts will also be needed internally within Finansinspektionen to train the staff. Training is needed both in handling the reporting system and also for those departments that do not have such a good knowledge of the rules, including those dealing with licences and registration.

Bilaga 1 (not translated)

Beräkningsgrunder för kostnader för centrala funktioner med särskilt ansvar för regelefterlevnad

Exempel 1 Storbank

Administrativa kostnader för särskilt utsedd befattningshavare		
Genomsnittligt företag: 4 storbanker	Genomsnittlig omsättning: 1 690 miljarder kr Antal anställda: 34 500	Beräkningsgrunder: Utgår från statistik på Bankföreningens webbplats. Total balansomslutning i Sverige för 4 storbanker är 6 770 miljarder kr
Tid för att samla in uppgifter, analysera och rapportera	Timmar: 1800 timmar	
Genomsnittlig intern lönekostnad	Kronor per timme: 1 300 kr	
Frekvens: löpande	Engångskostnad: 0 kr Genomsnittlig löpande kostnad: 2 340 000 kr per år	Beräkningsformel: 1800 x 1300

Andra kostnader för särskilt utsedd befattningshavare		
Investeringar, t.ex. systemstöd	Engångskostnad: 0 kr Löpande: 0 kr	
Ökad personalstyrka	Engångskostnad: 0 kr Löpande: 0 kr	
Annat: utbildning	Engångskostnad: 0 kr Löpande: 52 000 - 100 000 kr	FI gör antagande att det krävs 40 timmars utbildning årligen. Kostnad för intern utbildning uppgår till 1 300 kr x 40 timmar vilket ger en kostnad på 52 000 kr. Vid behov av konsult för utbildning uppskattar FI kostnaden till 20 000 kr/dag. Kostnaden för detta kan därmed variera mellan 20 000 - 100 000 kr beroende på antal dagar.
Annat:	Engångskostnad: 0 kr Löpande: 0 kr	

Administrativa kostnader för oberoende granskningsfunktion		
Genomsnittligt företag: 4 storbanker	Genomsnittlig omsättning: 1 690 miljarder kr Antal anställda: 34 500	
Tid för att samla in uppgifter, analysera och rapportera	Timmar: 120 timmar	
Genomsnittlig intern lönekostnad	Kronor per timme: 1 300 kr	
Frekvens: löpande	Engångskostnad: 0 kr Genomsnittlig löpande kostnad:	Beräkningsformel: 120 x 1300

Andra kostnader för oberoende granskningsfunktion		
Investeringar, t.ex. systemstöd	Engångskostnad: 0 kr Löpande: 0 kr	
Ökad personalstyrka	Engångskostnad: 0 kr Löpande: 0 kr	
Annat: utbildning	Engångskostnad: 0 kr Löpande: 0 kr	
Annat:	Engångskostnad: 0 kr Löpande: 0 kr	

Exempel 2 Värdepappersbolag[18]

Administrativa kostnader för särskilt utsedd befattningshavare		
Genomsnittligt företag: 110 st värdepappersbolag	Genomsnittlig omsättning: 10 miljoner kr Beräknat totalt antal anställda i de 110 värdepappersbolagen: 1 650	Det genomsnittliga företaget har 15 anställda vilket innebär att dessa inte omfattas av lagens krav på särskild befattningshavare. De företag som har över 50 anställda omfatts.
Tid för att samla in uppgifter, analysera och rapportera	Timmar: 0	
Genomsnittlig intern lönekostnad	Kronor per timme: 1 300 kr	
Frekvens: löpande	Engångskostnad: 0 kr Löpande kostnad: 0 kr	

Administrativa kostnader för oberoende granskningsfunktion		
Genomsnittligt företag: 110 st värdepappersbolag	Genomsnittlig omsättning: 10 miljoner kr Beräknat totalt antal anställda i de 110 värdepappersbolagen: 1 650	Det genomsnittliga företaget har 15 anställda vilket innebär att dessa inte omfattas av lagens krav på oberoende granskningsfunktion. De företag som har över 50 anställda omfatts.
Tid för att samla in uppgifter, analysera och rapportera	Timmar: 0	
Genomsnittlig intern lönekostnad	Kronor per timme: 1 300 kr	
Frekvens: löpande	Engångskostnad: 0 kr Löpande kostnad: 0 kr	

[18] För denna företagskategori har Finansinspektionen inte uppgift om antal anställda varför en uppskattning har gjorts.

Exempel 3 Registrerade betaltjänstleverantörer

Administrativa kostnader för särskilt utsedd befattningshavare		
Genomsnittligt företag: 76 st Registrerade betaltjänstleverantörer	Genomsnittlig omsättning: 180 miljoner kr Beräknat totalt antal anställda i de 76 st Registrerade betaltjänstleverantörerna: 5 st	Den som omsätter betaltjänster för motsvarande mer än 3 miljoner euro per månad måste ha tillstånd för att få driva verksamheten och kallas i lagen för betalningsinstitut. Den som omsätter ett lägre belopp kan ansöka om att undantas från tillståndsplikt och kallas för registrerad betaltjänstleverantör. Beräknad genomsnittlig omsättning (3 milj Euro x 12 månader x 10 kr (uppskattad EUR-kurs) blir 360 miljoner kronor. Snitt blir 180 miljoner kr. Det genomsnittliga företaget har 15 anställda vilket innebär att dessa inte omfattas av lagens krav på särskilt utsedd befattningshavare. De företag som har över 50 anställda omfattas.
Tid för att samla in uppgifter, analysera och rapportera	Timmar: 0	
Genomsnittlig intern lönekostnad	Kronor per timme: 1 300 kr	
Frekvens: löpande	Engångskostnad: 0 kr Genomsnittlig löpande kostnad: 0 kr	

Administrativa kostnader för oberoende granskningsfunktion		
Genomsnittligt företag: 76 st Registrerade betaltjänstleverantörer	Genomsnittlig omsättning: 180 miljoner kr Beräknat totalt antal anställda i de 76 st Registrerade betaltjänstleverantörerna: 5 st	Den som omsätter betaltjänster för motsvarande mer än 3 miljoner euro per månad måste ha tillstånd för att få driva verksamheten och kallas i lagen för betalningsinstitut. Den som omsätter ett lägre belopp kan ansöka om att undantas från tillståndsplikt och kallas för registrerad betaltjänstleverantör. Beräknad genomsnittlig omsättning (3 milj Euro x 12 månader x 10 kr (uppskattad EUR-kurs) blir 360 miljoner kronor. Snitt blir 180 miljoner kr. Det genomsnittliga företaget har 15 anställda vilket innebär att dessa inte omfattas av lagens krav på oberoende granskningsfunktion. De företag som har över 50 anställda omfattas.
Tid för att samla in uppgifter, analysera och rapportera	Timmar: 0	
Genomsnittlig intern lönekostnad	Kronor per timme: 1 300	
Frekvens: löpande	Engångskostnad: 0 kr Löpande (antal gånger per år): 0 kr	

Bilaga 2 (not translated)

Beräkningsgrunder för kostnader för periodisk rapportering

Exempel 1 Storbank

Administrativa kostnader för periodisk rapportering		
Genomsnittligt företag: 4 storbanker	Genomsnittlig omsättning: 1 690 miljarder kr Antal anställda: 34 500	
Tid för att samla in uppgifter, analysera och rapportera	Timmar: 80 timmar	
Genomsnittlig intern lönekostnad	Kronor per timme: 1 300 kr	
Frekvens: löpande	Engångskostnad: 0 kr Genomsnittlig löpande kostnad: 104 000 kr per år	Beräkningsformel: 80 x 1300

Andra kostnader för periodisk rapportering		
Investeringar, t.ex. systemstöd	Engångskostnad: 0 - 50 000 kr Löpande: 0 kr	
Ökad personalstyrka	Engångskostnad: 0 kr Löpande: 0 kr	
Annat:	Engångskostnad: 0 kr Löpande: 0 kr	
Annat:	Engångskostnad: 0 kr Löpande: 0 kr	

Exempel 2 Värdepappersbolag

Administrativa kostnader för periodisk rapportering		
Genomsnittligt företag: 110 st värdepappersbolag	Genomsnittlig omsättning: 10 miljoner kr Beräknat totalt antal anställda i de 110 värdepappersbolagen: 1 650	
Tid för att samla in uppgifter, analysera och rapportera	Timmar: 80 timmar	
Genomsnittlig intern lönekostnad	Kronor per timme: 1 300 kr	
Frekvens: löpande	Engångskostnad: 0 kr Genomsnittlig löpande kostnad: 104 000 kr per år	Beräkningsformel: 80 x 1300

Andra kostnader för periodisk rapportering		
Investeringar, t.ex. systemstöd	Engångskostnad: 0 - 50 000 kr Löpande: 0 kr	
Ökad personalstyrka	Engångskostnad: 0 kr Löpande: 0 kr	
Annat:	Engångskostnad: 0 kr Löpande: 0 kr	
Annat:	Engångskostnad: 0 kr Löpande: 0 kr	

Exempel 3 Registrerade betaltjänstleverantörer

Administrativ kostnad för periodisk rapportering		
Genomsnittligt företag Antal: 76	Antagande snitt omsättning: 180 miljoner kr Antal anställda: 5 stycken (enl FI:s uppskattning).	
Tid för att samla in uppgifter, analysera och rapportera	Timmar: 40 timmar	
Genomsnittlig intern lönekostnad	Kronor per timme: 1 300 kr	
Frekvens: löpande	Engångskostnad: 0 kr Genomsnittlig löpande kostnad: 52 000 kr per år	Beräkningsformel: 40 x 1300

Andra kostnader för periodisk rapportering		
Investeringar, t.ex. systemstöd	Engångskostnad: 0 - 50 000 kr Löpande: 0 kr	
Ökad personalstyrka	Engångskostnad: 0 kr Löpande: 0 kr	
Annat: Konsultkostnad	Engångskostnad: 0 kr Genomsnittlig löpande: 28 000 kr	Kostnad för att anlita en konsult för att ta fram uppgifter för rapportering där dessa inte finns att tillgå internt är 700 kronor dyrare per timme jämfört med att en anställd utför arbetet.
Annat:	Engångskostnad: 0 kr Löpande: 0 kr	