

30 years of combating money laundering in Sweden and internationally – does the system function as intended?

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During the course of 2019–2020, the issue of combating money laundering and terrorist financing has featured prominently in the public debate in Sweden. Since 1990, the UN has required the criminalisation of money laundering, and Sweden and other countries have gradually built up a relatively complex but also relatively unknown framework to prevent criminal abuse of the financial system.

In this article I provide a brief history of efforts to combat money laundering and of how international agreement is reached in this context. After that, I describe in detail how the system for combating money laundering and terrorist financing functions in Sweden and I summarise how the effectiveness of the Swedish system has been assessed internationally. Finally, I comment briefly on the effects of recent years' publicity regarding Danske Bank and Swedbank in particular, discuss what results the system can produce and discuss how it could be improved.

1 From Al Capone to *Easy Money*, and why exactly is it called money laundering?

I often give talks on combating money laundering and terrorist financing, and I usually begin by describing what happened in Colombia between the late 1970s and early 1990s. At that time, Pablo Escobar had nearly taken over the Colombian state and had begun transporting large quantities of cocaine to the United States. The cocaine flows were of course of major concern to the American authorities. It was well known that the cocaine was transported north, but it was less well known what two flows were returning south: one consisted of arms and the other of money. The sale and export of weapons in the United States is a political issue in its own right, with its own inherent difficulties, but in the mid-1980s, American authorities began to wonder if they could do something about the flow of money. This money consisted of the profits from the cocaine sales that were returning to Escobar and others involved in the cocaine production.

Presented in October 1984, *The Cash Connection*, an interim report by a US public commission on organised crime, is in one way the starting point for the present system for combating money laundering and terrorist financing. The report concluded that at the time, provided that administrative requirements for record keeping and reporting transactions

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above certain amounts were met, a person laundering money through US banks could not be prosecuted for the money laundering alone.

Even if law enforcement authorities had not been particularly interested in this phenomenon, it was known that organised crime needed to launder its profits, i.e. create a seemingly legitimate explanation for where the money came from. An apocryphal story would have it that the term ‘money laundering’ comes from Chicago in the 1920s, where Al Capone and his cronies sold alcohol, which was prohibited at the time, and bought laundries. Then as now, the principle for cleaning dirty money is essentially simple: Say that the laundry has one hundred customers a day who all do laundry to the value of one dollar each. If, at the end of the day, two hundred imaginary customers who ‘pay’ with money earned from the alcohol sales are added to the books, two effects arise for the money launderer. On the one hand, taxes on the further ‘profit’ of two hundred dollars will need to be paid, unless avoidable through accounting tricks. But on the other hand, there is now a legitimate explanation for how the money was earned, and the money is now in the financial system ready to be freely used. The money has been laundered! In money laundering terminology, there are three main phases: *placement* (when the money is introduced into the financial system), *layering* (when the money is transferred to create confusion) and *integration* (when the money can finally be used).

The Swedish novel *Easy Money* describes a method of money laundering that follows the Capone model: Criminals buy video shops that in reality make around fifty thousand SEK per month, but on paper bring in three hundred thousand, which means that after deducting for overheads, around one hundred and fifty thousand SEK of drug money per month can be laundered (with a straw man as chairman of the board in order to hide who is controlling the company). But what do you do if you want to launder larger sums more securely? The main character in the book, JW, creates a number of companies in Sweden and on the Isle of Man, where it was possible, at least at the time the events in the book take place, to own companies and accompanying bank accounts secretly. JW claims that the companies are trading and marketing antique furniture and *places* cash in Swedish banks by convincing the staff behind the counter that trade in British antique furniture is a cash-intensive industry and that the money is payments. He can naturally produce the necessary fake invoices. Then the money is *layered* when it moves from the Swedish accounts to the anonymous accounts on the Isle of Man. Finally, the *integration* takes place when the companies on the Isle of Man ‘lend’ money to the Swedish companies, which inter alia buy a ‘company car’ for JW and pay him a large dividend so that he can buy an apartment. JW considers it all to be complicated, time-consuming and costly, but worth every penny. In the book, JW does not reach the big money before getting caught, but if he had been able to continue he would probably eventually have tried to safeguard his profits by investing in property in London or New York, which is usually considered an attractive investment for large-scale money launderers.¹

Something that has long been a good help to money launderers and other economic criminals is the relatively strong bank secrecy, i.e. the national regulation that prevents banks from disclosing information on their customers and their customers’ dealings without authorisation. The extent of bank secrecy varies from one country to another. Nonetheless, an international trend in recent decades has been for this type of provision to be relaxed to some extent to enable authorities to combat crime and prevent tax evasion. Banks and other participants in the financial system have also to a corresponding extent faced increasing demands from the authorities in this regard.² In 1984, when *The Cash Connection* was published and bank secrecy was stronger than it is today, there was in the United States an

1 This behaviour and the structures that enable it is described in the book *Moneyland*, pages 218–232.

2 Examples of this would be the international regimes FATCA and CRS, which enable the exchange of such information between tax authorities in different countries, but also purely national initiatives such as the Swedish public inquiry that will in 2020 propose more effective forms for information exchange between banks and authorities (see section 4.5).

obligation of a rather mechanical nature to report transactions over a certain amount, and an obligation to retain documents so that the authorities could conduct investigations at a later stage. If these obligations were met, no one could be prosecuted for money laundering as long as no other violation of a federal statute could be proven, even if an investigation using this information naturally could lead to charges for other crimes. Money laundering in itself was not criminalised. The commission therefore recommended new legislation to criminalise money laundering, which heralded the beginning of the development of the present system.

I would like to point out at the start of this article that money laundering is harmful not just because it enables criminal elements in society to make use of their profits, but also because it jeopardises the integrity of the financial system. Money launderers have an interest in undermining the system's protection mechanisms and abusing the participants in the system. Large-scale money laundering also gives rise to financial flows that in turn have other potentially negative effects.³ As we have seen in recent years, for instance in the case of Danske Bank, highly publicised money laundering scandals can have major effects, particularly on how the banks act and make business decisions, which may ultimately affect financial stability. This is a further reason for states to combat money laundering. A sustainable world requires a sustainable financial system that is resilient to abuse, and it has recently been made more clear that combating money laundering and terrorist financing is a sustainability issue, as the international community has made it a part of the 2030 Agenda for Sustainable Development adopted by UN member states in 2015.⁴

The proposal to criminalise money laundering became American law in 1986 – for the first time, the actual money laundering became a criminal offence. In connection, and as money laundering had been identified as a cross-border problem requiring a cross-border solution, American authorities began to take action at an international level so that other countries would do the same. In Sweden, for instance, money laundering was criminalised in 1991 through amendments to the existing provisions on receiving stolen goods. One way of making other countries criminalise money laundering was to go through the UN, whose narcotics trafficking convention which entered into force in 1990 *inter alia* requires ratifying states to criminalise money laundering resulting from narcotics crimes. Another way, which would come to have central importance in this context, was that the United States together with 15 other countries (including Sweden) formed the organisation FATF in 1989.

2 The FATF – ‘the most powerful organisation you have never heard of’

The FATF, which is an abbreviation for the Financial Action Task Force, has during its 30 years of operation become the central and in principle the only authoritative organisation in the field. If you have never heard of the FATF, you are certainly not alone. The FATF is not a treaty-based international organisation with legal personality, and it does not create binding international law. From its creation in 1989 until April 2019, the FATF was a task force working on temporary, regularly renewed mandates from ministers of member countries. Since April 2019, the FATF has an open-ended mandate. Those who are active in the field of combating money laundering and terrorist financing are usually familiar with the FATF, as the FATF's decisions and architecture form the basis for their operations, but beyond this

3 These other effects may, for instance, include direct losses for the treasury through tax evasion. But they may also create problems for the economy in other ways, for instance through large financial flows causing imbalances in the exchange rate, which affects companies with foreign trade. It could also mean that the country's financial sector gains a bad reputation, which could increase transaction costs and have a negative effect on correspondent bank relations with the country's banks.

4 Combating money laundering and terrorist financing is central to Sustainable Development Goal 16.4: ‘By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime.’ See <https://sustainabledevelopment.un.org/>.

world, the organisation is more or less unheard of. The FATF has a mandate to protect the international financial system and the economy as a whole from money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction, and it largely focuses on three different activities that I describe in the following sections.

2.1 Everything begins and ends with risk

The first thing the FATF does is to regularly gather the world's experts in the field to share information about the techniques used by criminals to abuse the financial system, which is necessary for the participants in the financial system to be aware of so that they know what risks they are exposed to. This information – which is a perishable product as the criminal techniques are constantly being refined – is communicated regularly in various types of publications issued by the FATF, most of which are available to the general public.

I will return to the concept of *risk* repeatedly in this article, as the system for combating money laundering and terrorist financing does not function if the actors in the financial system, such as banks, are not aware of the corresponding risks. The first thing you want to know when assessing your own risks is the *threats*: What crimes generate profits, and which criminals might be interested in laundering money or financing terrorism through my financial system, my government agency or my bank – and if so, how? After that, you need to investigate the *vulnerabilities*: Which protection mechanisms are missing, and which features of my financial system, my government agency or my bank (for instance, the products and services offered) could be abused? When you compile the threats and vulnerabilities, you obtain a picture of the *inherent risk*. From here, you (hopefully) take various types of structural risk-reduction measures to limit the inherent risk. After that, what remains to handle is the *residual risk*. On the basis of this residual risk, you take further measures to ensure that the available resources are spent where they will do the most good. This is the fundamental method for combating money laundering and terrorist financing based on risk. In section 3, I describe how this is done in practice in Sweden, and what requirements are placed on the various participants in the system – both in the public and private sectors – with regard to knowledge of their risks. When risk information is compiled, it is often communicated in the form of *typologies*, i.e. generalised descriptions of the different stages in a specific money laundering scheme, for instance.

During its 30 years of operation, the FATF has produced an impressive wealth of risk assessment reports that may be useful to public and private actors when assessing their own risks. Table 1 below illustrates the breadth of the analyses.

Table 1. Examples of risk assessment reports from the FATF

Title	Year
Financial Flows from Human Trafficking	2018
Financing of the Terrorist Organisation Islamic State in Iraq and the Levant	2015
Terrorist Financing in West Africa	2013
Specific Risk Factors in the Laundering of Proceeds of Corruption—Assistance to Reporting Institutions	2012
Money Laundering through the Football Sector	2009

Note. All the reports in the table are available on the FATF's website.
Source: FATF

Risk awareness must permeate the entire system from start to finish. It is not possible to handle your risks until you have identified them, and when you have handled them, new ones will arise. That is what I mean when I write that everything starts and ends with risk, and why it is logical to first describe the FATF as a risk assessment factory.

2.2 The FATF Standards – ‘recommendations’ or binding law?

When you know your risks, the next step is to create a system to manage them. This is the second activity that the FATF focuses on. In 1990, the FATF adopted its first set of recommendations for how member countries should legislate to prevent and combat money laundering, on the basis of the risks that were known then. The recommendations have since been subject to constant refinement, which I will not detail here except for two instances of major revisions: when they were expanded to cover terrorist financing in 2001, and to the financing of proliferation of weapons of mass destruction in 2012.⁵ At present, the FATF maintains 40 recommendations, with accompanying interpretive notes and a glossary, which can be divided up into seven themes as in Table 2 below.⁶

Table 2. Themes in the FATF’s recommendations

Theme	Recommendations
Risk assessment, policies and coordination	1–2
Money laundering and confiscation of the proceeds of crime	3–4
Terrorist financing and financing of proliferation of weapons of mass destruction	5–8
Preventive measures (for the private sector)	9–23
Transparency in beneficial ownership of legal persons and arrangements	24–25
Powers and responsibilities of competent authorities	26–35
International cooperation	36–40

Note. The recommendations in their entirety are available on the FATF’s website.
Source: FATF

The recommendations are instructions for how the member countries should structure their regulation. They cover, inter alia, national risk assessment and coordination of competent authorities; the design of criminal law provisions regarding money laundering and terrorist financing with the accompanying investigative powers for authorities; modalities for implementing the UN Security Council’s targeted financial sanctions; regulation of the fundraising organisations of the civil sector; regulation of the financial sector and other sectors where customers can conduct transactions (including virtual currencies); transparency regarding legal ownership and beneficial ownership of legal persons and arrangements; the powers of supervisory authorities; the powers of financial intelligence units; regulation of cross-border cash transportation; statistics; and international cooperation (including mutual legal assistance, extradition of suspects, freezing and the confiscation of funds). It should not come as a surprise to anyone that many countries find it a challenge to implement these recommendations. In section 3, I describe how they have been implemented in Sweden.

Are the FATF recommendations binding or not? Is this ‘hard law’ or ‘soft law’? I have already mentioned that the FATF does not create binding international law.⁷ Although the FATF’s mandate states that the members undertake to fully implement the FATF recommendations in their own legislation, this should be regarded as a political rather than a legal obligation. Moreover, the FATF only has 39 members, which means that large

⁵ By ‘major revisions,’ I mean comprehensive reviews of the recommendations in their entirety. Around ten further amendments to the recommendations have been made since 2012, but these have been on a smaller scale, most often limited to adjustments of one recommendation at a time.

⁶ The recommendations, their interpretive notes and the glossary together comprise *the FATF Standards*, which is a concept often used synonymously with the recommendations. To avoid confusion, I use the term *recommendations* in this article.

⁷ However, on several occasions, the UN Security Council, whose resolutions are binding international law, has urged UN members to implement the FATF recommendations, for example in resolution 2462 which references the FATF no less than 15 times.

areas of the world would not be covered, at least not on paper.⁸ The reason why the recommendations nevertheless are binding in practice is that the consequences for countries failing to implement them can be very serious. In the following section, I explain how such an invisible organisation can have such powerful means to ensure compliance with its own recommendations.

A final complicating factor in the question of the legal status of the recommendations is that the EU has implemented most of them by adopting several Directives and Regulations. This means that indirectly, the recommendations become internationally binding law for EU Member States and in certain cases also for the EEA members Iceland, Liechtenstein and Norway. In section 2.5 below, I describe this in somewhat greater detail.

2.3 The FATF's mutual evaluations, the global network and the feared lists

Any self-respecting international organisation that issues any form of standards that it expects its members to follow must have some way of checking that they actually do so. The FATF is no exception in this respect. What differentiates the FATF somewhat from many other organisations, however, is that countries that fail to follow the organisation's instructions may suffer comparatively far-reaching consequences. This is the third area of focus for the FATF.

Since 1989, the FATF's members have been subject to three rounds of *peer review*, in which members' experts have assessed each other's implementation of the recommendations. These three review rounds have been completed and the results are more or less a thing of the past given the passage of time. After the most recent comprehensive review of the FATF recommendations in 2012, the organisation set in motion a fourth round of *mutual evaluations* according to a similar model, in which members are assessed one by one during a period of approximately ten years, not just to see whether they have incorporated the FATF recommendations into their own legislation, but also to see whether their systems are effective in practice. These assessments are performed according to a detailed methodology which – just like the recommendations – has been negotiated among the members.

Even though the FATF only has 39 members, the recommendations essentially apply to all countries around the world. The way this is achieved is through the nine regional sub-organisations – the *FATF-style Regional Bodies*, or *FSRBs* – of which the very majority of all countries in the world are members.⁹ Being a member of an FSRB means making the same political commitment as FATF members do with regard to implementing the FATF recommendations, and it also means that the country will be subjected to an assessment according to the same methodology, but with no direct possibility to influence the design of either. During approximately the same period as the FATF assesses its own members, the FSRBs also assess theirs.

Why do countries wish to subject themselves to this significant restriction of their political room for manoeuvre? The answer lies in the consequences that may arise from not being a member of the FATF or of an FSRB. The same consequences may arise if a member is assessed and found wanting, either in relation to how it has implemented the FATF recommendations or in relation to the effectiveness of its system. I describe these consequences in the following.

⁸ The membership has increased from the original 16 member countries, but at a relatively slow pace. The present 39 members include two supranational bodies, namely the European Commission and the Gulf Cooperation Council.

⁹ In total, more than 200 jurisdictions are members of the FATF and/or one (or more) FSRBs. Sweden is a member of the FATF but no FSRB. Were Sweden to join one, it would be MONEYVAL, whose membership corresponds approximately to the member countries of the Council of Europe that are not members of the FATF (with the exception of Israel and Russia, which are members of both at the same time). Even if the status of a jurisdiction as a country, state or nation is disputed, e.g. for the Palestinian Authority, that is not an obstacle to membership of an FSRB. The Palestinian Authority is a member of MENAFATF, which counts most of the countries in the Middle East and North Africa among its members.

When a country is assessed, the assessors (a team of volunteer experts from member countries accompanied by experts from the FATF's or the relevant FSRB's secretariat) first perform a thorough technical review of the country's legislation to see how, and to what extent, the FATF recommendations have been implemented. For each recommendation, the country receives a grade on a four-point scale, on which the two highest grades in principle signify a pass and the two lowest a fail. An on-site visit then takes place, normally lasting for several weeks, during which the assessors examine the work of the country's authorities in detail and form an opinion of the system's effectiveness on the basis of eleven outcomes specified in the FATF's methodology. The point of an effectiveness assessment is to be able to answer the following question: Does the system work only on paper, or does it also work in reality? The eleven effectiveness outcomes are also graded on a four-point scale. For Sweden, whose mutual evaluation report was published in 2017 and is described in greater detail in section 4, the assessment process including preparations took about two and a half years from start to finish. Merely to enable the assessment of technical compliance, Swedish authorities wrote a 334-page document that was submitted to the FATF together with hundreds of translations of acts, ordinances, instructions, strategies, process descriptions, decisions, written communications, brochures and so on. In other words, substantial requirements are imposed on assessed countries which also carry the burden of explanation, meaning that they are assumed to be deficient in their implementation of the recommendations and in their effectiveness until they have proved the opposite.

Depending on the ratings received in their mutual evaluation, countries enter one into of three follow-up processes. Countries that have shown that they have both successfully implemented the majority, and in any case the most central, of the FATF recommendations and have received a sufficiently high effectiveness rating on a sufficient number of outcomes are placed in the FATF's *regular follow-up*. That means that the FATF will not exert a great deal of pressure on them going forward. Countries that do not manage this because of technical deficiencies, effectiveness deficiencies or both are placed in *enhanced follow-up*, which as a starting point entails a requirement for more frequent reporting back to the FATF and a clearer expectation of rapid reforms. Countries receiving sufficiently poor ratings are furthermore put under *observation by the FATF's International Cooperation Review Group or ICRG*, which means that very specific reforms must be implemented within approximately 18 months. The majority of countries placed under such observation since the fourth round of mutual evaluations commenced have not managed to implement reforms at the pace and to the extent required by the FATF and have therefore become the subject of measures from the FATF.

At this point, countries normally make a high-level political commitment to cooperate with the FATF in order to implement the required reforms, and the FATF then decides to put them on the so-called *grey list*.¹⁰ If they refuse to make such a political commitment or in some other way refuse to cooperate with the FATF, they are placed on the FATF's *black list*. Only Iran and North Korea have ever been placed on this list.¹¹ Being placed on the black list essentially means that it becomes much more difficult or impossible to carry out transactions

10 There are two further situations that may lead to a decision on grey listing: either that a country is not a member of the FATF nor of an FSRB, or that a number of FATF members as a group propose that a country be listed because of acute deficiencies in its system. Following the risk-based approach, the FATF also normally does not take an interest in very small countries whose financial systems are not large enough to play a significant role in the global context (the benchmark is currently the *broad money* measure of money supply, which in most countries equals cash plus other liquid assets such as short-term deposits, with a threshold of USD 5 billion).

11 Iran is a special case. As a result of the nuclear deal (JCPOA), between June 2016 and February 2020, Iran was blacklisted but with an asterisk, which meant that the country had been temporarily removed from the list in exchange for the implementation of the FATF recommendations pursuant to an action plan which had previously been agreed with the country. Iran completed many relevant reforms during the period, but did not manage to fulfil all its commitments, including the ratification of certain central international conventions in the area. The question was naturally made more complicated when the United States announced its withdrawal from the deal during the period. At the time of writing in April 2020, Iran is back on the black list without an asterisk. There is also an action plan for North Korea, which has however shown minimal interest in reforms in this area.

with the country.¹² Being placed on the grey list is more ambiguous, because even though it definitely does not mean a ban on transactions – at most, enhanced customer due diligence measures which I describe in section 3.1.3 could be contemplated – there have nonetheless in several cases arisen problems for certain countries where some banks have refused to carry out any transactions at all with the country as a result of its grey listing. But even if not, it gives rise to concrete economic effects in the countries, which is why they take the FATF so seriously. This is essentially why the FATF can be described as the most powerful organisation you have never heard of.¹³ The international community supports this model since there is a political interest in taking a firm stance against those who do not carry their weight – not least from the perspective that a chain is never stronger than its weakest link.

Table 3. Results for FATF members assessed since 2012 (as of April 2020) including follow-up reports

Regular follow-up	Enhanced follow-up	Not yet assessed
Greece	Australia	Argentina
Hong Kong	Austria	Brazil
Ireland	Belgium	France
Israel	Canada	Germany
Italy	China	India
Norway	Denmark	Japan
Portugal	Finland	Luxembourg
Russia	Iceland	Netherlands
Spain	Malaysia	New Zealand
Sweden	Mexico	South Africa
United Kingdom	Saudi Arabia	
	Singapore	
	South Korea	
	Switzerland	
	Turkey	
	United States	

Note. All completed mutual evaluation reports are available on the FATF's website. All the FSRBs' mutual evaluation reports (i.e. covering the majority of the world's countries) are also published on the FATF's website but not in this table because of space restrictions.

Source: FATF

Countries put on the FATF's grey list normally stay on it for one to two years. At the time of writing in April 2020, there are about a dozen countries on the list which I do not specify here as the information rapidly becomes obsolete.

¹² If a country is blacklisted, the FATF is probably not the only source of sanctions against the country, which makes it more difficult to identify the effect of the FATF's blacklisting in isolation. As regards e.g. North Korea, there are concurrent UN Security Council and EU sanctions, both of which make transactions with the country virtually impossible.

¹³ The FATF could also be described as one of the cheaper organisations you have never heard of. Compared to other international organisations, the secretariat is small and its expenses low. The FATF's budget for 2020 is just under EUR 12 million, of which Sweden is expected to pay around EUR 77,000.

2.4 The FATF's interaction with unilateral American sanctions and sanctions from the UN Security Council

Another reason why the FATF's measures have such an effect is that they do not exist in a vacuum. I will not discuss all other global sanction regimes in detail here, but two nonetheless deserve a mention.

First, measures from the FATF need to be seen in the light of unilateral American sanctions issued by US authorities. These sanctions are normally managed by the US *Office of Foreign Assets Control (OFAC)*, and often prohibit natural and legal US persons from doing business with a designated natural or legal person (in some cases also ships, institutions or even entire countries).¹⁴ OFAC's list of prohibited counterparties is long. What makes these sanctions so effective is that in certain cases, they are aimed at regulating operations conducted not just by natural and legal US persons, but also by natural and legal persons outside the jurisdiction of the United States. In other words, OFAC may decide that Americans must not do business with certain counterparties, nor with *those who do business with those counterparties*. In plain language, this gives everyone else in the world a clear choice: Either you can do business with the United States, or with the designated counterparties, but *not with both at the same time*. Especially for internationally active banks that need to be able to deal in US dollars, not complying with OFAC decisions is not an option, even though such sanctions, according to the EU, are in conflict with international law when they are applied outside US jurisdiction.

Second, the FATF's measures and recommendations also interplay with *targeted financial sanctions* issued by the UN Security Council.¹⁵ These sanctions are often aimed at individuals in leading positions in countries where abuse against the population has taken place, but also against suspected terrorists or their financiers and in certain cases against individuals, companies or ships suspected of being involved in the proliferation of weapons of mass destruction (or its financing). The sanctions essentially mean that funds in accounts belonging to a person subject to sanctions are frozen, and that no transactions may be made to or from that person, on whom a travel ban is also often imposed.¹⁶ The FATF has a special role in interpreting *how* countries should implement these targeted financial sanctions.

There are two reasons why I discuss these two sanction regimes in the FATF context. The first is that every individual sanction regime carries greater weight in interaction with others. The second is that the tools that countries place in the hands of their private sectors – and the corresponding demands that they impose – through the implementation of the FATF recommendations enable compliance with the sanction regimes to begin with. I describe these tools in detail in section 3 below.

2.5 Interaction between the FATF and the EU

As I mention in section 2.2 above, the FATF recommendations are generally incorporated into EU law. I will not provide a list of the rather large number of European legal instruments that contain different parts of the FATF recommendations, but I will focus on the *Fourth and Fifth Anti-Money Laundering Directives*, which contain the majority of the regulation in the administrative area.

¹⁴ OFAC has a history that stretches much further back in time than the FATF. The FATF was founded in 1989, but OFAC was formed in 1950 in its modern form, and its predecessor as early as in 1940, after Germany invaded Norway. According to OFAC itself, American sanctions have existed since the early 19th century, when the US Treasury issued sanctions against Great Britain following the harassment of American seamen.

¹⁵ Such targeted financial sanctions are generally implemented on the EU level. In some respects, the EU also goes further with its own sanctions using the same model. The EU's mechanism for the implementation of Security Council sanctions, which at best gives legal force to the sanctions two to three working days after they have been issued, has certain flaws and is the subject of criticism from the FATF. In the FATF's opinion, EU decisions take too long, in part because they need to be translated into all EU languages, and the EU has no regulation covering so-called EU-internal terrorists and terrorist organisations. Many EU Member States have therefore launched their own systems to complement the EU mechanism in this area.

¹⁶ There are of course exemptions so that designated individuals can pay for food, accommodation, any legal representation they may need, and so on.

For quite a long time, the EU had a relatively reactive relationship to the FATF recommendations, which were incorporated into EU law after the completion of negotiation within the FATF. As the 14 EU Member States, plus the European Commission, Norway and Iceland (the latter EEA countries are subject to large parts of EU law) constitute almost half of the FATF's membership, one might think that the relationship would be the opposite, i.e. that the EU institutions would make the decisions and then try to export it to the rest of the world via their substantial representation in the FATF.¹⁷

The *Fourth Anti-Money Laundering Directive*, published in June 2015 with a deadline for Member States to transpose it into their own law within two years, contains most parts of the FATF's revised recommendations from 2012 and goes further than them in certain limited respects, for example through the provision that all Member States should establish registers of beneficial owners (while the FATF only requires that the information be available, not necessarily in the form of a register).¹⁸ However, after the attacks in Paris and Brussels in 2015 and 2016 and the revelation of the Panama Papers in 2016, the Directive was again opened up for renegotiation during the summer of 2016, i.e. one year before the deadline for transposition in the Member States.¹⁹ That renegotiation produced the *Fifth Anti-Money Laundering Directive*, for which the majority of provisions should have been transposed by the Member States in January 2020.²⁰ What is special about the Fifth Anti-Money Laundering Directive is that in many respects, it goes beyond the FATF recommendations that were in force when the Directive was adopted – for example, the Directive requires Member States to regulate providers of virtual currencies.²¹ The FATF has subsequently followed the EU on this issue, has revised its recommendations and is since early 2020 assessing how the countries of the world have implemented these requirements.²² It is too early to say whether this model will become the norm for the future, but there is no doubt that such a norm would be in the EU's and thus also in Sweden's interest.

3 Sweden's system for combating money laundering and terrorist financing

The FATF recommendations have to a great extent been implemented in EU law, which in turn has been transposed into Swedish law. In this section, I describe how the Swedish system works.

The Swedish system for combating money laundering and terrorist financing is primarily regulated in the *Act on Measures against Money Laundering and Terrorist Financing (the AML/CFT Act)*, to which a large number of actors are subject. The regulatory framework not only imposes requirements on tens of thousands of private companies in a number of different industries, but also requires sixteen authorities and the Swedish Bar Association in various ways to monitor compliance and to use the information produced by the system.²³ For this to work, there is also a coordination function at the Swedish Police Authority. Figure 1 below illustrates the system's participants and their possibilities to share information among themselves.

17 The 14 EU Member States do not include the United Kingdom, which had just left the EU when this article was written in April 2020.

18 The Fourth Anti-Money Laundering Directive was transposed into Swedish law mainly through Government Bill 2016/17:173.

19 Such a model is not commonplace, as it makes it difficult for Member States to know exactly what they should transpose – legislating according to a moving target, so to speak, is a major challenge.

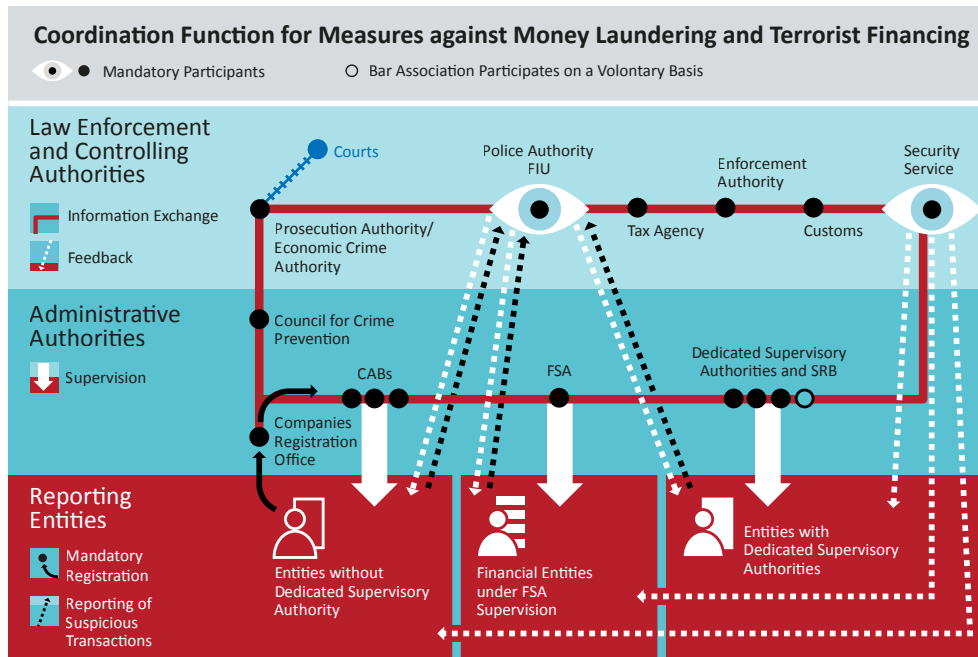
20 The Fifth Anti-Money Laundering Directive is technically an amendment to the Fourth Anti-Money Laundering Directive. It was transposed into Swedish law mainly through Government Bills 2018/19:150 and 2019/20:83.

21 In the meaning of the Directive, these are both exchange platforms and so-called hot wallets for virtual currencies, i.e. wallets managed by someone else who has access to the encryption keys required to carry out transactions.

22 The current FATF requirements in this area go somewhat further than the requirements in the Fifth Anti-Money Laundering Directive.

23 In this context, the Swedish Bar Association is a self-regulatory body (SRB). Technically, it is a private law association that has been assigned certain public authority tasks as regulated in the Swedish Code of Judicial Procedure. The Bar Association supervises lawyers and law firms in accordance with the AML/CFT Act.

Figure 1. Overview of Sweden's system for combating money laundering and terrorist financing



Source: Swedish Government Offices

3.1 Everything begins and ends with risk, part 2 – what private actors are covered by the regulatory framework and what it means

Perhaps what first comes to mind when imagining what private companies are covered by the regulatory framework for combating money laundering and terrorist financing is banks. In Figure 1 above, they can be found in the middle of the lower block together with all the other financial companies under the supervision of the Swedish Financial Supervisory Authority (FSA). It is perhaps less well known that a large number of other types of companies are also covered by the same regulatory framework.

In the bottom right-hand corner of Figure 1 above, there are a number of actors that can be described as gatekeepers to the financial system, such as lawyers, auditors, gambling companies and estate agents. All of these can perform transactions themselves or help their customers do so, and they all have their own supervisory authorities.²⁴ In the bottom left-hand corner of the figure, there are a number of more separate actors that have little in common apart from the fact that they too can perform transactions or help their customers do so. These include e.g. pawnbrokers, tax advisers, independent legal advisers, trust and company service providers, art dealers and anyone else who deals professionally in goods and accepts cash payments of the equivalent of EUR 5,000 or more. These actors must report to a register maintained by the Swedish Companies Registration Office, and are thereafter under the supervision of one of three specially designated County Administrative Boards.²⁵

In total, tens of thousands of companies in Sweden are covered by the AML/CFT Act. In terms of the Act, they are *reporting entities*, which in principle means that they must do two things: know their risks and know their customers. Based on this knowledge, they

²⁴ These are the Swedish Bar Association, the Swedish Inspectorate of Auditors, the Swedish Gambling Authority and the Swedish Estate Agents Inspectorate respectively.

²⁵ This separate register for combating money laundering should not be confused with the register of beneficial owners which I describe in more detail in section 3.2.2. The County Administrative Boards of Skåne, Stockholm and Västra Götaland share the supervision (on a geographical basis) for reporting entities in the register.

are required to act in a certain way. What applies to customer relationships also applies to those who are not customers but who wish to make occasional transactions over certain threshold values. It is a challenge for the vast majority of countries, Sweden included, to ensure that everyone subject to the regulatory framework understands what it means and acts accordingly.

3.1.1 Knowledge of risks

All reporting entities must assess the risks of money laundering and terrorist financing for each customer and for each product. In what way could the customer use the entity's services for this kind of criminality and how likely is it? And how likely is it that the product (for example a savings account) could be abused for the same purpose? In order to be able to assess their own risks, an entity must have a good knowledge of their operations (vulnerability) and of the development of the criminality around them (threats). As I have already described, there is plenty of information available from the FATF in terms of risks and risk assessment, and the same is true in the European and Swedish context, which I describe in more detail in section 3.2.1 below.²⁶ As neither the criminality nor the development of society as a whole stand still, knowledge of risks quickly becomes outdated and therefore needs to be continuously reviewed. The reporting entities' awareness of their own risks is essential to ensuring that the system for combating money laundering and terrorist financing works as intended.

3.1.2 Knowledge of customers

Just as reporting entities must know their risks, they must also know their customers – they have to know with whom they are doing business and why. *Customer due diligence (CDD)* is the most fundamental component in the regulatory framework for combating money laundering and terrorist financing, and it is difficult to implement for many countries.²⁷ On a schematic level, there are four measures that a reporting entity should take to know their customer:

Identify the customer and verify the customer's identity

Using Sweden's centralised population registration database, it is often very easy to verify a customer's identity after the customer has been identified (at any rate for customers registered as Swedish residents).²⁸ However, in many other contexts, both identification and verification can be a challenge. The reason for this requirement is of course that in general, no anonymous transactions are allowed.

Know and assess the nature and purpose of the business relationship

Just as reporting entities must know with *whom* they are doing business, they must also know *why* the customer wishes to establish a business relationship. For example, if a bank has a customer wishing to open a normal checking account, it may not be very difficult to identify the typical transaction behaviour for this client. However, if the customer instead is a major company with operations in many countries, it may be a challenge. The reason that the reporting entity must have this knowledge is that it must be possible to determine which type of financial behaviour can be expected from the customer and what would characterise divergent behaviour.

²⁶ The availability of an array of products from the FATF and others of course does not mean that reporting entities can just use these products without adapting them to their own risk picture and operations.

²⁷ The terms *Customer Due Diligence (CDD)* and *Know Your Customer (KYC)* are often used interchangeably.

²⁸ One challenge in the Swedish context, as pointed out in the 2019 national risk assessment for money laundering and terrorist financing, is the use of straw men and others' identities, which elevates the requirements on identity control for authorities and reporting entities.

Identify the customer's beneficial owner

If the customer is a natural person, it may be reasonable to expect that the customer is acting on their own behalf (assuming they are not acting as a straw man). However, if the customer is a legal person or arrangement, the question arises of who *controls* the customer.²⁹ It is not sufficient to merely find out who *owns* the customer – for example, the customer could be a company in Sweden owned by a foundation in another country, which in itself is not particularly interesting in this context – but the reporting entity must work upwards through the ownership structure to find out whether there is a person with a *controlling influence* in the customer. If there is such a person, that person is the customer's *beneficial owner*. There may not always be a beneficial owner. For example, in major exchange-traded companies, ownership is often so diversified that nobody has a controlling influence. On the other hand, it may then be that the CEO, for example, has such influence that this person could be considered an *alternative beneficial owner*. The reason for this requirement is once again that in general, no anonymous transactions are allowed. Hiding ownership or control of a legal person or arrangement via complicated ownership arrangements in principle corresponds with anonymity.³⁰

Keep the information up-to-date

It is not sufficient to conduct CDD measures when establishing a business relationship and then do nothing; rather, knowledge must be kept updated as the customer's circumstances change.

If the reporting entity cannot obtain sufficient information to manage the risks associated with the customer, it may neither establish a new customer relationship nor keep an existing customer. The reason for this is not surprising: If you do not know who the customer is, you cannot assess the risk, which means that you risk facilitating anonymous transactions.

3.1.3 What turns up when no stone is left unturned – enhanced due diligence and other measures

In the CDD process, the reporting entity may make many discoveries. In some cases, the information discovered may result in a need to conduct *enhanced due diligence (EDD) measures*.

The customer may for example be a *politically exposed person (PEP)*, which is a way for countries to designate individuals at a higher risk of corruption. These individuals usually have some form of political influence which, at least in theory, means that they can make decisions on public procurements and other kinds of government or international organisations' expenditure. Therefore, they could be exposed to or involved in money laundering schemes. Regulation of PEPs is one of the few parts of the system for combating money laundering and terrorist financing that is not risk-based; instead, the regulation is based on profession.³¹ If a person has a certain profession, they are politically exposed and thus by definition a high-risk customer requiring EDD measures. The Swedish AML/CFT Act includes a list of such professions.³² It also applies to close relations and known associates. A number of EDD measures may be taken; an investigation into the source of the funds of PEPs, for example, must be carried out.

29 In this context, the term legal arrangement refers to a trust or similar structure. I describe trusts in greater detail in Appendix A.

30 The law firm Mossack Fonseca in Panama made a business of services for anonymity through various types of ownership arrangements, which leaked and gave rise to the Panama Papers scandal in the spring of 2016.

31 A cynical way to explain this deviation from the otherwise thoroughly risk-based approach would be to suggest that high-risk countries would otherwise claim that they have no politically exposed persons at all.

32 This list (in Chapter 1, section 9) includes the following (somewhat abbreviated): heads of state or government, ministers, members of parliament, members of the board of a political party, supreme court judges, higher officials at audit authorities, members of the governing bodies of central banks, ambassadors, senior officers and members of the management of state-owned companies or international organisations.

The customer may for example also feature on one of the many *sanctions lists* (see section 2.4). Normally, a customer subject to sanctions – as long as it is not a case of mistaken identity (for example if the customer has the same name as another person who is subject to sanctions) – will not trigger EDD measures, but will instead trigger an immediate freeze of funds and, when appropriate, reporting to the relevant UN committees.

Even if the customer is not included on a sanctions list, the customer may be active in or have links to a *high-risk country*. This may either be a country listed by the FATF or a country in an equivalent list maintained by the European Commission. The reporting entity may also have other sources of information on the strength of different countries' systems for combating money laundering and terrorist financing, not least based on its own business operations. Regardless of the source of the information, the point is that transactions from high-risk countries cannot be assumed to have been covered by the same preventive system, so they must therefore be examined in greater detail.³³

Naturally, the above should not be seen as an exhaustive list of when EDD measures may need to be undertaken. Many other factors that come to light in the reporting entity's risk assessment or CDD process may lead to the determination that certain customers constitute a high risk of money laundering or terrorist financing.

If the reporting entity is a bank with correspondent bank relationships outside the EEA, these relationships should normally be considered high risk.³⁴ There is however no requirement to know your customer's customers; a thorough assessment of the correspondent or respondent bank's ability to manage its own risks, the quality of its procedures and checks, the reputation of its management and so on should be performed only on an aggregated basis.

3.1.4 Monitoring and reporting of suspicious transactions

Since reporting entities must know their risks and their customers, they are in a position to determine what is normal or at least not divergent financial behaviour for their customers. In some cases, it is easy to identify suspected money laundering or terrorist financing, and in other cases, it is more difficult, as made clear in the following two examples.

Example: obviously suspicious behaviour

A bank has a customer with a checking account. Every month, the customer receives a salary and has expenditures covering rent, food, entertainment and so on. Suddenly, a transfer arrives in the amount of millions of SEK from overseas that the customer on the following day sends on to other countries in different transactions.

Example: not obviously suspicious behaviour

A bank has customers that withdraw cash, rent cars, buy items in outdoors shops and take out short-term loans.

In the first example, something is obviously off in comparison to the customer's normal financial behaviour. In the second example, it is not as obvious, and everything that the customers do is in itself normal. But imagine that the bank during the spring of 2014 had a customer that did everything in the example. It is easy to build a story around how the customer first took out one or more short-term loans, bought outdoors equipment, rented a truck, withdrew cash – then took their truck, outdoors equipment and cash, drove to

³³ Business relationships with high-risk countries do not automatically have to lead to EDD measures, apart from relationships with countries that are on the European Commission's list, where there is an explicit requirement under EU law to do so.

³⁴ Technically, correspondent bank relationships are not considered high risk, but they are subject to a number of extra measures that are very similar to measures taken in relation to other high-risk relationships. The final result is more or less the same.

Syria and become a foreign terrorist fighter. The point is that behaviours that in isolation are normal, or fully legitimate, may nonetheless in combination give rise to suspicion in light of what is otherwise known about the development of criminality. Naturally, a prerequisite for such suspicion is good communication between reporting entities and public authorities, which are often the first to know about such phenomena.³⁵

When a reporting entity discovers behaviour that is inconsistent with what they know about the customer, the entity should ask questions or in other ways find out more information about the behaviour until they understand it. If, during the course of such controls, the entity has reasonable grounds to suspect money laundering, terrorist financing or that property otherwise stems from criminal activities, the transaction and other relevant circumstances should without delay be reported to the Financial Intelligence Unit (FIU), which is in the centre of Figure 1 above.³⁶ The reporting threshold is thus fairly low. The reporting entity does not need to be entirely certain of money laundering or another crime; suspicious transaction reports are also subject to strong confidentiality. Individuals who are mentioned in such reports must not be informed about it.

3.2 Enter the authorities

When a suspicious transaction report reaches the FIU, which is housed within the Swedish Police Authority, the FIU makes an initial assessment of the contents. The information in the report may be combined with other intelligence information available within the Police Authority in order to create a more complete picture of what has happened. In some cases, the information in the report is sufficient for the opening of a criminal investigation straight away, and in these cases, other sections of the police or prosecutors normally take over. But usually this is not so. The information is not lost, but remains with the FIU for some time until destroyed. Based on the content and main focus of the report, it is sent after initial processing by the FIU to the most relevant authority; for instance, terrorist financing to the Swedish Security Service and tax crime-related reports to the Swedish Tax Agency.

Both the FIU and the Security Service may request a reporting entity to provide them with information in connection with ongoing inquiries regardless of whether a report on a suspicious transaction has been filed. Such requests may also be sent to those who raise funds for charity or other purposes, or who have done so during the past five years. This is done at the intelligence stage, and the information is subject to the same confidentiality as the information reported in relation to suspicious transactions.³⁷ In recent years, a number of reforms have been made to automate and as far as possible avoid manual processing of this type of information exchange. There has also been a gradual increase in the types of entities covered by the regulatory framework and which must therefore provide the authorities with information.

3.2.1 The virtuous circle – the authorities' responsibility for coordination and dissemination of information

What is central to an effective system for combating money laundering and terrorist financing is a constant stream of refined information. In order for law enforcement authorities to be able to combat money laundering and terrorist financing, they need good intelligence information which often originates from reporting entities. If the reporting

³⁵ A further observation that may be made on the basis of these two examples is that whereas money laundering often involves large sums of money that the criminal wants to bring *into* the financial system to hide its *origins*, terrorist financing may involve the opposite: smaller sums of money destined to be taken *out of* the financial system to hide its *recipients*. Despite this difference, both phenomena can be detected using the same method.

³⁶ Such reports are often referred to as *STRs for Suspicious Transaction Reports* or *SARs for Suspicious Activity Reports*.

³⁷ In the Swedish context, there is a distinction between the intelligence and investigation stages. In the latter stage, it is of course also possible for a prosecutor or the leader of a criminal investigation to request the same type of information from a reporting entity to be used as evidence in court, unlike intelligence information which (at least unprocessed) does not leave the authorities.

entities in turn are to understand the patterns of criminality and know what to look for, they need feedback and guidance from the authorities. In the example with the not obviously suspicious behaviour above, I describe a situation where the reporting entities depend on such guidance to understand the context, distinguish known connections and ultimately provide the authorities with relevant information.

A number of different mechanisms for attaining this virtuous circle of information provision exist in Sweden. First, there are regular *national risk assessments*. In section 2.1, I describe the FATF's risk assessment products and the general risk assessment method. The FATF's risk assessments are supplemented with both supranational risk assessments from the European Commission every other year as well as with specific Swedish risk assessments. The first Swedish national risk assessment for money laundering was published in 2013. Since then, a number of different products with different focuses have been produced and published.³⁸ These help the reporting entities form an idea of what risks are relevant in Sweden. However, it is of course not sufficient for reporting entities to read the national risk assessment only and then claim that they understand all of their own risks.

Within the Police Authority, in the form of a permanent secretariat, there is a *coordination function for measures against money laundering and terrorist financing*. The coordination function is responsible for producing national risk assessments and for informing reporting entities to help them meet their obligations. It also works as a forum for exchange of information and dissemination of knowledge between supervisory authorities, and it finally also has a responsibility for compiling statistics in the field. As made clear in Figure 1 above, the coordination function brings together 17 different authorities with different types of responsibility.³⁹

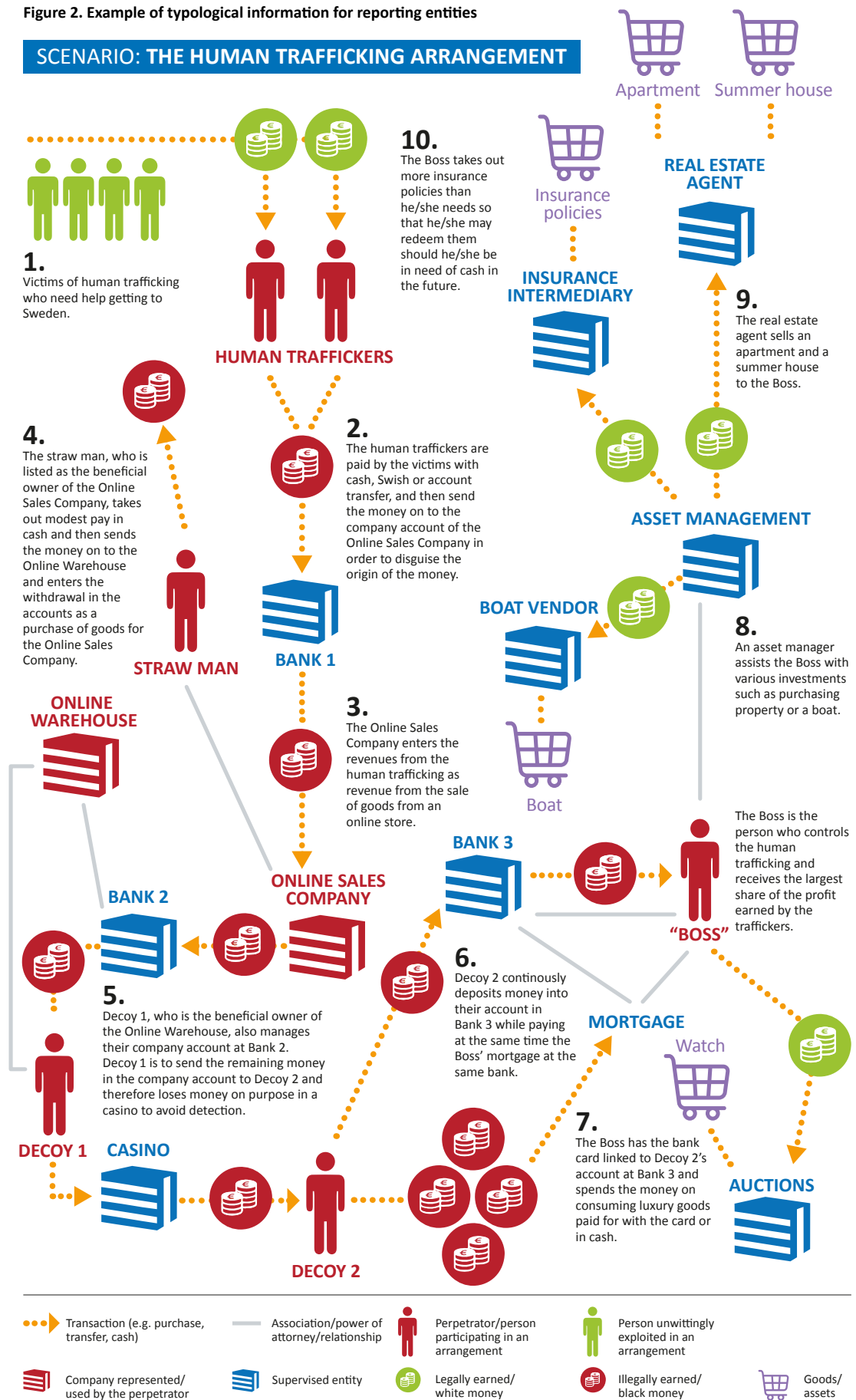
What does an *information campaign to reporting entities* look like? Figure 2 below is from the predecessor to the coordination function, which was housed within the FSA, and is an excerpt of an extensive material sent out to tens of thousands of reporting entities in several languages in January 2017. It is an example of typological information useful to reporting entities: a human trafficking scheme may look like the figure and give rise to similar financial flows. Based on this kind of typological information, reporting entities can calibrate their own systems for risk assessment, CDD and transaction monitoring, and the more they understand these kinds of schemes, the better the information that they report back to the authorities.

Reporting entities naturally want, in addition to national risk assessments, typological information and so on, *feedback on individual suspicious transaction reports* that they have sent to the FIU. The FIU has a considerable responsibility with regard to feedback and should provide it when possible, but there are many situations when feedback at an individual level is not possible.

³⁸ Risk assessments and other products are available on the government's website: see <https://www.government.se/amlcft>.

³⁹ Including the Bar Association (see footnote 23).

Figure 2. Example of typological information for reporting entities



Source: Swedish Financial Supervisory Authority

3.2.2 Which authorities do what?

The main dividing line with regards to the different authorities' tasks concerns whether or not they should focus on actual criminality in individual cases. Law enforcement, i.e. *investigating* suspected money laundering or terrorist financing, is the task of the authorities found at the top of Figure 1 above. In this context, these law enforcement authorities include the Swedish Tax Agency, whose tax crime investigation unit assists prosecutors in investigating suspected tax crimes and money laundering.

On the other hand, the supervisory authorities, which are administrative authorities and can be found in the middle of the figure, *control* in the first instance whether reporting entities comply with the requirements of the AML/CFT Act. Entities that comply with the law are also in a position to prevent money laundering and terrorist financing and to supply relevant information to the authorities, but to be able to comply with the law, the companies' management must take the question seriously and allocate sufficient resources. The supervisory authorities control (most often using a risk-based approach) that their respective objects of supervision comply with the law and that they have adequate systems in place. As part of supervision, the authorities may also, for instance, conduct on-site visits and carry out sample testing, which in some cases may provide an indication of suspected money laundering or terrorist financing in individual cases. If this happens, the supervisory authority, like the entities themselves, must report its suspicions to the FIU for further investigation. However, it is important to point out that it is not the task of the supervisory authorities to investigate actual money laundering or terrorist financing, just as it is not the FIU's responsibility to conduct supervision.⁴⁰ The large sanctions that have been issued against reporting entities by the supervisory authorities in recent years have been issued because the entities have not had adequate preventive systems, or because they have in some other way neglected their obligations under the AML/CFT Act.⁴¹

There are two further administrative authorities in the system that are not supervisory authorities, namely the Swedish National Council for Crime Prevention and the Swedish Companies Registration Office. The National Council for Crime Prevention mainly conducts criminological research and compiles related statistics, so its participation in the coordination function is self-evident. The Companies Registration Office, on the other hand, has a function that is perhaps less well-known in the system for combating money laundering and terrorist financing.

In section 3.1.2 above, I describe the four essential elements of customer due diligence, one of which is the identification of the customer's beneficial owner. Reporting entities may not enter into a customer relationship without that information. While it is often easy to find out who owns a legal entity on paper, for instance by initially consulting the Companies Registration Office's register of companies, it may be more difficult to determine the beneficial owner of the customer, i.e. who ultimately has a decisive influence in the customer, particularly if the ownership structure is constructed just in such a way as to hide the beneficial owner. Essentially, this is a question of transparency, and the Swedish system provides for three parallel requirements to facilitate the investigation into beneficial ownership.

The first requirement applies to all legal persons and to natural persons who manage trusts and other legal arrangements.⁴² These must know *their own* beneficial ownership. The second requirement applies to all reporting entities in the definition of the AML/CFT Act, which must know *their customers'* beneficial ownership. The third requirement applies to

40 The FIU should of course disseminate its analyses and other relevant information to the supervisory authorities to provide a better basis for risk assessment. The supervisory authorities should in turn provide feedback to the FIU on how the information has been used and with what results.

41 For instance, the FSA against Nordea and Handelsbanken in 2015, the Gambling Authority against Casino Cosmopol in 2018 and above all the FSA against Swedbank in 2020.

42 I describe trusts in greater detail in Appendix A.

the same actors covered by the first requirement, plus most non-profit organisations, and is an obligation to *register* their own beneficial ownership in the *Companies Registration Office's register of beneficial owners*.⁴³ Around 800,000 companies and associations in Sweden are subject to this obligation. The idea behind these three requirements is to make it more difficult for those who use companies as tools for crime, which is often a necessity in the money laundering context. Furthermore, as the register is public, journalists and civil society among others can use it. The authenticity of the information reported to the register is normally not subject to verification, but reporting entities that investigate their customers' beneficial ownership and discover that the data in the register is incorrect must report the discrepancy to the Companies Registration Office. Authorities should do the same when using the register, and whereas there is no such requirement for civil society in the broad sense, nothing prevents it from doing so.

4 Is Sweden's system effective?

It is always a challenge to compare different countries' systems with each other on a holistic level, and this also applies to the systems for combating money laundering and terrorist financing. However, it is not impossible. As I outline in section 2.3, Sweden's system has been assessed by the FATF in a way that can be compared with the rest of the world. In the following, I summarise the conclusions reached by the FATF and what has been done in Sweden since then.

The FATF's mutual evaluation of Sweden was published in April 2017. It contains a thorough review of how Swedish law corresponded to the FATF recommendations as of June 2016, and an analysis of the effectiveness of the relevant authorities at the same point in time when a number of assessors from different countries conducted an on-site visit. The analysis of effectiveness is based on eleven different outcomes that can be divided into three groups. The first group assesses whether there is an understanding of the risks in the system, and whether policy, coordination, cooperation between the authorities and international cooperation mitigate these risks. The second group is about whether proceeds of crime and funds in support of terrorism are prevented from entering the financial system, and whether such flows can be detected and reported by reporting entities if they nonetheless make their way in. The third group examines whether money laundering and terrorist financing is detected, disrupted and prosecuted, whether the proceeds of crime are confiscated, whether terrorists are deprived of funds and whether sanctions from the UN Security Council are implemented. If all of this functions as it should, then countries attain a level of protection for the financial system and for the economy as a whole from the threats of money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. This protection strengthens the integrity of the financial system and the safety of society in general.

The FATF's mutual evaluation of Sweden is a relatively substantial work of 218 pages. It should be read together with the first follow-up report published the year after the mutual evaluation. The follow-up report is much smaller in scale and is limited to technical issues – mainly a summary and analysis of the reforms implemented in Sweden between June 2016 and January 2018.

⁴³ The Companies Registration Office's register of beneficial owners is regulated in an act of its own which should be read in parallel with the AML/CFT Act. There is an exemption for non-profit organisations if registration would result in a person's political, cultural, religious or other similar views becoming known. In that case, the organisation should still register, but does not need to provide information on the beneficial owner.

Figure 3. The FATF's mutual evaluation report for Sweden (2017) and the first follow-up report (2018)



Source: FATF

4.1 The FATF's assessment: risk understanding, coordination and cooperation⁴⁴

On the whole, Sweden's risk understanding received approval from the FATF. At the time of the on-site visit, a number of different national risk assessment products had been produced, and the authorities had conducted their own more detailed analyses in several cases. The understanding of terrorist financing risks was considered somewhat better than the understanding of money laundering risks. On the other hand, Sweden was criticised for lacking formal coordination between all the relevant authorities, which was considered an obstacle to information sharing and joint priorities, and for deficiencies in statistics, particularly as regards confiscation of the proceeds of crime. With regard to Swedish authorities' cooperation with international counterparts, the assessors noted that there was little to criticise, and that Sweden could be regarded as a good example in this context.

4.1.1 Reforms implemented since the assessment

As I describe in section 3.2.1, the main criticism from the FATF, namely that there was no formal coordination between the authorities, has been remedied through the establishment of the coordination function at the Police Authority which is also responsible for annual national risk assessments. This is also described in the follow-up report.⁴⁵ However, the deficiencies in the statistics on confiscation of the proceeds of crime still remain.

4.2 The FATF's assessment: preventive measures, supervision and transparency⁴⁶

The FATF considered that the Swedish reporting entities largely fulfilled their obligations under the AML/CFT Act, and that larger entities had a better perception of risk, which is neither unusual nor surprising. The majority of suspicious transaction reports in Sweden

⁴⁴ These outcomes are discussed in chapters 1, 2 and 8 of the FATF's mutual evaluation of Sweden.

⁴⁵ See recommendation 2, p. 3.

⁴⁶ These outcomes are discussed in chapters 5–7 of the FATF's mutual evaluation of Sweden.

comes from the financial sector, which the FATF argued could indicate that the non-financial sectors were not always aware of their risks. The FATF also noted that larger banks, especially those that had been subjected to sanctions from the FSA, had become much better at complying with regulations.

With regard to the supervisory authorities' effectiveness, the assessors concluded that all of the relevant sectors were under supervision, but that not all of the supervisory authorities fully used a risk-based method in their supervision, partly because they did not receive sufficient information on risks from other authorities. The FSA's and the County Administrative Boards' risk models were assessed to have a higher quality, and the FSA's sanctions (which are made public) were considered to have contributed to an improvement in market behaviour. The FATF considered that the supervisory authorities, in particular the FSA, needed more resources and needed to issue more guidance.

With regard to transparency of beneficial ownership, the FATF considered that the fundamental transparency in the Swedish system is helpful, e.g. as most registers in Sweden are available to the public, but that it was not clear that information on beneficial ownership was available in all cases. Further, the assessors considered that there was insufficient awareness in the private sector of the risks of straw men, that sanctions for incorrect data in registers were not sufficiently dissuasive, and that it was a problem that some non-profit organisations and foundations did not need to register.

4.2.1 Reforms implemented since the assessment

Much has happened in these areas since the on-site visit in June 2016. The exchange of risk information between authorities has improved in several ways since the coordination function was established (for instance, the specific risk of straw men and misuse of identities was featured in the 2019 national risk assessment). In addition, several types of guidance have been issued (for instance, the product in Figure 2 above). Several supervisory authorities have in various instances received additional funding for their operations in this field since 2016, and new structures for cooperation have been created.⁴⁷ The level of transparency in the system has also improved considerably, not least through the register of beneficial owners I describe in section 3.2.2 and which is also described in the follow-up report.⁴⁸ During 2019–2020, the preventive elements of the regulatory framework and the private sector's observance of the same have received considerable attention in the media and in the general debate, which I return to in section 4.5 below.

4.3 The FATF's assessment: investigation, prosecution, confiscation of the proceeds of crime and sanctions⁴⁹

The FATF considered that the part of the Swedish system that deals with intelligence and law enforcement was largely adequate, but that there were some central deficiencies. Swedish authorities were considered to use financial intelligence in a way that enables robust investigations of money laundering and terrorist financing, although the FIU was criticised for deficiencies in operational and strategic analysis largely as a result of inadequate IT systems and deficiencies in communication with other authorities. The assessors considered that Swedish prosecutors proactively prosecute money laundering, and that law enforcement authorities have access to good tools to confiscate the proceeds of crime which they make use of, but do not follow up statistically in an adequate way.

47 For instance, the FSA received an additional SEK 10 million, the County Administrative Boards together received a total of SEK 12 million and the Tax Agency received an additional SEK 20 million (the latter to build a national system for information on accounts and safe deposit boxes, which is not in itself a supervisory measure but which will improve the effectiveness of the system) in the state budget for 2020.

48 See recommendations 24–25, pp. 6–7.

49 These outcomes are discussed in chapters 3–4 of the FATF's mutual evaluation of Sweden.

With regard to the prosecution of terrorist financing, the FATF observed that there were not very many convictions for this particular crime, but that Swedish authorities had in several cases used other methods to take action against this behaviour, such as prosecution for other crimes, and that the issue was taken seriously. At the time of the on-site visit, a criminal justice reform had just entered into force, enabling prosecution for terrorist financing without needing to show that the money had been used for a specific deed, which the assessors felt established a good basis for future prosecutions. With regard to the management of targeted financial sanctions from the UN Security Council against terrorists, Sweden was strongly criticised for the lack of a national system in place to complement the EU's implementation of these sanctions, as the EU's system is considered to implement the sanctions neither in full nor sufficiently quickly. The implementation of similar sanctions for the proliferation of weapons of mass destruction was however considered to function better, mainly because of a more active EU stance on this issue coupled with Sweden's robust export control system.

4.3.1 Reforms implemented since the assessment

Since the on-site visit, the FIU has launched a new IT system and improved its strategic analyses and its feedback to reporting entities in several ways. The deficiencies in statistics on confiscated proceeds of crime have not been remedied. With regard to the prosecution of terrorist financing, four individuals were sentenced for this crime in 2019, in line with the new legislation and the predictions of the assessors.⁵⁰ With regard to Sweden's inadequate implementation of the UN Security Council's targeted financial sanctions, a public inquiry was presented to the Minister for Foreign Affairs in August 2018 with proposals for how the issue could be resolved.⁵¹ The inquiry's proposals had at the time of writing of this article been sent for public consultation but had not yet led to a draft legislative proposal.

4.4 The FATF's overall assessment and rating

As I show in Table 3 above, Sweden is subject to the FATF's *regular follow-up* – the least onerous follow-up process – as Sweden has both managed to implement the FATF's recommendations in a satisfactory manner and has demonstrated adequate effectiveness in its system as a whole.⁵² To date, less than half of the FATF members that have been assessed have succeeded in this, and among the countries in the world that are not FATF members, the corresponding figure equates to roughly a tenth. Both on a holistic level and in a global comparison, it is therefore difficult to draw any conclusion other than that *Sweden's system for combating money laundering and terrorist financing is largely effective*, or in any case more effective than those of most other countries.

It can also be noted that Sweden has remedied most of the deficiencies pointed out by the FATF, with two important exceptions: the implementation of the UN Security Council's targeted financial sanctions against terrorists and the statistics on confiscated proceeds of crime.

It is not the case that an approval stamp on the implementation of the FATF recommendations means that no more money can be laundered nor terrorists financed through the Swedish financial system, but there is in this context no better provider of

50 Six individuals were prosecuted in the same case for terrorist financing; some of them also for other crimes. The case was appealed to the Court of Appeal and then to the Supreme Court, which did not take up the case.

51 See SOU 2018:27 *Ekonomiska sanktioner mot terrorism (State public inquiry on Economic sanctions against terrorism; a summary in English is available)*.

52 In technical terms, the results of the 2017 mutual evaluation placed Sweden in the FATF's *enhanced follow-up*, as the required effectiveness was present, but the technical implementation of the recommendations was inadequate. As an extensive reform then entered into force in August 2017, which included a new AML/CFT Act and the register of beneficial owners, Sweden could show that the recommendations had thus to a very large extent been implemented, which was also confirmed in Sweden's first follow-up report, published in July 2018. Sweden then entered into the FATF's *regular follow-up* (which is also why the first follow-up report is titled *1st enhanced follow-up report*). Sweden's *1st regular follow-up report* will be published later in 2020.

international standards accompanied by a factual, thorough and largely technical analysis. Of course, this does not mean that there is no room for improvement, or scope for future reforms, as I discuss in the following.

4.5 If Sweden's system is so effective, why is money still being laundered in Sweden, and what happened at Swedbank?

I began this article by describing how money laundering is in many cases a cross-border crime. The same applies, for obvious reasons, to terrorist financing. In a world where criminality moves and makes transactions across international borders – and where moreover journalism has created cross-border networks that shed light on it – the national authorities fall behind if they focus solely on what is happening within their respective borders.⁵³ The same applies to the management of banking groups if they allow their branches or subsidiaries in other countries to act without sufficient control.

In recent years, it has come to light in the media that Nordic banks in the Baltic region (primarily Danske Bank and Swedbank) have been used to launder large sums of money from Russia and other parts of the former Soviet Union. According to the media, this money laundering took place between around 2007 and 2015. At the time of the writing of this article in April 2020, the Swedish FSA's investigation into Swedbank had just concluded, and other authorities in Sweden and in other countries were investigating the same bank.⁵⁴ Regardless of the conclusions of the authorities now or in the future, it is easy to observe that the accusations of money laundering have had very strong effects on the banks. Danske Bank and Swedbank have had to replace large parts of their management and have seen their market capitalisations plummet.

What happened? The common denominator both in the media reporting and as is evident in the FSA's investigation is that the banks did not take their preventive responsibilities seriously enough, which enabled money launderers to make use of them. There have been typical signs of money laundering, such as opaque ownership structures, companies with no operations and transactions that did not correspond to what the banks knew about the customers. In the case of Danske Bank, employees of the bank allegedly also assisted in the actual money laundering. A bank that allows itself to be misused in this way becomes a valuable tool for money launderers. In the case of Swedbank, which in March 2020 received a warning and a sanction fee of four billion SEK from the FSA, it is very clear from the authority's investigation that the bank's management had been receiving information about deficiencies in its operations for a long time, but had not managed to correct them. The bank had insufficient control of the risks in its subsidiaries in the Baltics and thereby let itself be misused for money laundering. This is no way to run a bank! It is important to point out that if the banks had had adequate preventive systems in place, they would not have found themselves in this situation to start with – money launderers are constantly looking for new routes and making use of those that work for them.

Just as the banks may have had structural or other problems that prevented their management from realising the gravity of the situation, it is also possible to question the adequacy of the cross-border institutional framework as it was during 2007–2015. Sweden and all the three Baltic countries are members of the EU, which means that banks in all four countries in are principle subject to the same regulatory framework but are subject to the supervision of separate national authorities. It has become clear that those authorities must engage in much closer cooperation to be able to see and assess the risks of money laundering and terrorist financing in a banking group as a whole, rather than focusing on the parent company or subsidiary in their own country. Previously, that was not done to a

⁵³ One example is the *International Consortium of Investigative Journalists* which published the Panama Papers.

⁵⁴ SEB is also under investigation by the FSA, to be concluded in June 2020.

sufficient extent.⁵⁵ During 2019, initiatives have therefore been taken to create permanent structures for regional supervisory cooperation in the field; the Swedbank case is an example of how such close cooperation has produced results. Together with the legislative amendments that have entered into force in recent years and a much stronger focus on measures against money laundering and terrorist financing in the banking sector, the conditions for an effective preventive system are far better now than they were between 2007 and 2015. But is this sufficient? Probably not. Eventually, we can expect a centralisation of supervision in this area on the EU level.⁵⁶ It is in many ways a reasonable idea that financial companies which operate seamlessly in the single market and face cross-border threats should also be subject to supervision by a cross-border authority. The importance of this subject is underscored by the observation that no political party in the Swedish Riksdag – not even those that are normally sceptical of increased centralisation on the EU level – has expressed opposition in principle to this idea.

It is more difficult to centralise law enforcement authorities. There is a new European Public Prosecutor's Office in which Sweden has currently chosen not to participate, but it is difficult to imagine a sufficient amount of political will to centralise FIUs and police authorities within the EU. This makes it even more important that these authorities engage in effective international cooperation on this issue – which may be one among many other priorities a police authority is assigned by the government.

On the national level, despite Sweden's good rating from the FATF and the many legislative amendments that have come into force in recent years, there are reasons to believe that there is still room for improvement. In December 2019, the National Council for Crime Prevention published a report indicating that Swedish law enforcement authorities are good at prosecuting 'simple' money laundering from fraud, such as fake advertisements on websites, but that above all the Police Authority needs to review the envelope of its financial competence so that more complex cases can be investigated.⁵⁷ These cases currently account for a relatively small share of the prosecutions, which is unfortunate, as one of the purposes of the modern criminalisation of money laundering was to enable the prosecution of multi-criminals who have accumulated proceeds over time.

Another part of the Swedish system that will be subject to inquiry in 2020, together with the FSA's powers and the supervisory structure in general, is the modalities for exchanging information between banks and authorities.⁵⁸ There is reason to believe that a simpler and more in-depth exchange of information, which would in a way be a further relaxation of bank secrecy that the banking sector has itself repeatedly requested, would enable a better and more precise supply of information to law enforcement authorities, which might also create greater interest at the Police Authority to improve their financial competence as recommended by the National Council for Crime Prevention.⁵⁹

Despite the positive rating from the FATF, the Swedish system for combating money laundering and terrorist financing is far from perfect. This applies to all systems that have been given the green light from the FATF. There is a fundamental resilience in the form of

55 This observation is expressed for instance in the FSA's memorandum *Finansinspektionens work with anti-money laundering supervision* from 6 March 2019, which formed the basis for a hearing in the Riksdag Committee on Finance: see https://www.fi.se/globalassets/media/dokument/diverse/2019/pm_penningtvattillsyn_20190306_eng.pdf.

56 This aim was expressed for instance in the form of conclusions of the EU Ministers of Finance of 5 December 2019: see <https://www.consilium.europa.eu/en/press/press-releases/2019/12/05/money-laundering-council-sets-strategic-priorities-for-further-reforms/>.

57 See the Swedish National Council for Crime Prevention 2019:17 *Penningtvättsbrott – en uppföljning av lagens tillämpning (Money laundering offences – a follow-up of the application of the law)*; a summary in English is available. Despite this criticism, there were just over 1,000 legal proceedings for money laundering in 2018, which is a marked increase on the 200 in 2015.

58 See Committee Terms of Reference 2019:80 *Stärkta åtgärder mot penningtvätt och finansiering av terrorism (Reinforced measures against money laundering and terrorist financing)*.

59 One example of when the sector itself has expressed this need is the Swedish Bankers' Association's paper *Förslag om utökade möjligheter till informationsdelning i syfte att stärka arbetet mot penningtvätt och finansiering av terrorism (Proposal for increased possibilities for information sharing in order to strengthen the work against money laundering and terrorist financing)* from 29 October 2019: see <https://www.swedishbankers.se/media/4392/f191029f.pdf>.

a preventive system that has probably improved considerably during 2019–2020 in light of the debate in the media, events in the banking sector leading to action from authorities, state budget allocations to authorities and legislative amendments. Moreover, there is a law enforcement system that manages to investigate and prosecute both money laundering and terrorist financing. But just like JW in the novel *Easy Money*, inventive (or less inventive) criminals will still find ways to abuse the financial system in Sweden or internationally. Why, even though we have been trying for 30 years, have we not succeeded in putting a complete stop to money laundering?

5 A cat-and-mouse game with serious stakes – concluding discussion

In Government Bill 1990/91:127 on Sweden's accession to the UN narcotics trafficking convention, where the criminalisation of money laundering was first proposed in Sweden, you can read the following:⁶⁰

Experiences from several countries show that, alongside the illegal trade in narcotics, there exist wide-ranging activities exclusively aimed at converting the profits into 'clean' money. This so-called 'money laundering' is often carried out by individuals with no other connection to drugs-related crime. In some cases, these operations take a more-or-less corporate form. The organisations involved often have worldwide contact networks. By making various transactions, it is possible to move money through several countries, for example via shell companies in areas with a lack of sufficient controls. Naturally, such transactions make it difficult to trace the origin of the money. It happens that these organisations also conduct legal businesses on the side to which money can be moved, or provide business advice on appropriate ways to transfer money to legal operations. In some cases, money laundering itself has become a highly profitable business operation.

This high profitability provides the actual motor for the illegal management of narcotics. Effective efforts on the international level to prevent or hinder perpetrators from using their gains therefore forms one decisive precondition for successfully combating drugs-related crime. Helping conceal that assets were acquired by criminal means has the effect of promoting crime.

This description was valid 30 years ago and, unfortunately, remains valid today. There is no doubt that money laundering is a crime that is still committed using the same means and for the same interests as it was then. Anybody expecting that the system for combating money laundering and terrorist financing would completely put a stop to these crimes would have reason to be disappointed.

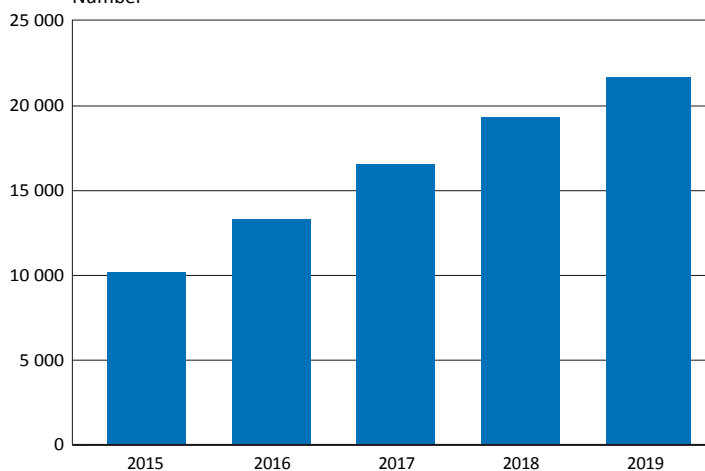
But that is also an excessively simplistic view of the matter. Just as we do not expect people to stop committing crimes because we have law enforcement authorities, we cannot expect a regulatory framework to make money laundering and terrorist financing impossible. As long as there are laws, people will break them. This does not mean that laws are unnecessary or useless. The more it costs to launder money, the less profitable it becomes to commit crimes.

The regulatory framework for combating money laundering and terrorist financing imposes stringent requirements on reporting entities, authorities, and bizarrely enough also on criminals – anybody attempting to launder money using the simple means that worked in 1991, for example by going to a bank with a large bag of banknotes in small denominations

⁶⁰ The bill was submitted to the Riksdag in March 1991. The quotation can be found on page 15.

with no reasonable explanation, would probably be refused, reported and possibly also prosecuted for it. As a consequence of the technological developments of recent years, most people who live in Sweden manage entirely without cash, which means that more and more transactions are traceable. This is a problem for criminals who need to be able to conduct anonymous transactions. As is made clear in Diagram 1 below, it is beyond doubt that the regulatory framework produces large amounts of financial intelligence. However, it is worth pointing out that a small number of actors (mainly banks) are responsible for the majority of suspicious transaction reports and that many reporting entities have never submitted such a report. The potential access to financial intelligence is therefore even greater. It is a very valuable source of information, particularly for those in the business of ensuring that crime does not pay.

Diagram 1. Suspicious transaction reports received by the FIU 2015–2019
Number



Source: Swedish Police Authority

The suspected money laundering in Nordic banks in the Baltics was, at least partly, of the nature I discuss in the introduction to this article, i.e. large-scale financial flows of a potentially systemic character with links to many people in many countries. Without the regulatory framework, it would have been much more difficult to discover financial flows of this kind and to react to them. In this respect, the framework is rather revolutionary in terms of what can be discovered, as was expressed concisely by the character Lester Freamon in the TV series *The Wire*.⁶¹

*You follow drugs, you get drug addicts and drug dealers. But you start to follow the money, and you don't know where the f*** it's gonna take you.*

In fact, the interesting question is not why the money was laundered through Nordic banks in particular. The answer is probably as I described in the previous section: *because it was possible*. If you follow Lester Freamon's instructions, you will instead ask yourself the question: *Where did the money go after it left the Baltics?* And, if it is no longer possible to launder equivalent amounts through Nordic banks in the Baltics, as the regulatory framework has been strengthened and the behaviour of the sector has changed, *how is this money being laundered today instead?*

The uncertainty and the surprises that can arise when you follow the money is also the reason why there may be resistance towards implementing the regulatory framework in countries with high levels of corruption. Just as there fundamentally exists a constant

⁶¹ Season 1, episode 9. First broadcast on HBO in August 2002.

cat-and-mouse game between ‘normal’ criminals and law enforcement, those who commit crimes using the state as their tool also have to get smart if they want to keep their gains. The difference is that the stakes are much higher for the latter. It is therefore just as revolutionary that many countries with high levels of corruption now in practice have no choice: Either they introduce acceptable regulation, or they become subject to the measures from the FATF that I describe in section 2.3. This means that corrupt leaders will find it more difficult to hide their own criminal financial flows, particularly when they leave the country. Recently, we have seen several examples of such people being held to account.⁶² From this perspective, it is difficult to see the regulatory framework as anything other than beneficial to the world.

A world-bettering regulatory framework requires the commitment of the countries that claim that they want to make the world a better place. It is therefore positive that Sweden on the whole has an acceptable and effective regulatory framework to combat money laundering and terrorist financing. On the other hand, it is difficult to explain why Sweden, which claims to put a great value on the UN system, has still not managed to implement the UN Security Council’s targeted financial sanctions in an acceptable manner. It is doubly hard to explain as this requirement has been in force since 2001 and as, during 2017–2018, Sweden held one of the Security Council’s 15 seats. Similarly, it is damaging for Sweden’s fight against money laundering in particular that the state conducts no comprehensive follow-up of how much of the proceeds of crime is confiscated every year, as this means that we are unable to measure our own effectiveness properly. Consequently, we are unable to prove that crime does not pay. The FATF has pointed out these two shortcomings, which should have led to a reaction. I hope that increased international and national pressure going forward can help the Swedish administration to carry out reforms in these two areas.

The regulatory framework for combating money laundering and terrorist financing does not only have positive consequences. One trend that has been observed, primarily among internationally active banks, is known as *de-risking* and means that the banks, referring to the regulatory framework, terminate their correspondent bank relationships with counterparties in poorer countries where there is insufficient regulation. This makes it more difficult for people in these countries to use the international financial system – or any financial system whatsoever – and the country’s economy suffers as a result. It is also negative for the regulatory framework itself, since more transactions are then made in cash or in other ways that cannot be traced. The FATF has been explicit as regards de-risking: Wholesale cancelling of correspondent bank relationships is not a consequence of the regulatory framework, which means that reporting entities should *identify and manage* the risks, rather than completely refuse them, which is a business decision that cannot be justified on the basis of regulatory requirements alone. This matter remains unresolved and illustrates one of the many complexities of the system. Another complex area on which legislators need to take a stance, and which can vary significantly from country to country, is the interplay with regulation on personal integrity and data protection. Unifying these two rapidly evolving issues with effective regulation for combating money laundering and terrorist financing is an important issue for the future.

In a world characterised by major technological, political and social change, it should come as no surprise that the regulatory framework for combating money laundering and terrorist financing is also developing rapidly. In Sweden, a comparatively very large number

62 One example would be the action brought against Malaysia’s former prime minister and others, where the underlying fraud and money laundering was primarily enabled by Goldman Sachs, as described in the book *Billion Dollar Whale*.

of legislative bills were submitted to the Riksdag in this area in 2019.⁶³ Political and media interest in this matter remains urgent, not least on the EU level, where we will probably initiate discussions on major structural reforms for an even more effective international cooperation in the near future.

I have written this article to present the system as it looks in early 2020. It is not inconceivable that large parts of this information will be obsolete in only a few years. What is certain, however, is that the regulatory framework itself is here to stay, and that after about 30 years, it is delivering results – perhaps not quite the results intended when it was imagined, but results that on the whole give us, or at least those of us who take an interest, the tools to follow the money, combat serious crime, build a sustainable financial system and make a difference.

63 On the administrative law side, during 2019, four bills were submitted to the Riksdag. In addition, a set of amendments to various laws from a bill submitted in 2018 and a set of amendments to ordinances entered into force, a draft legislative bill was presented to the Council on Legislation, two sets of material amendments to ordinances were issued and a public inquiry tasked with proposing further reforms was appointed. On the criminal law side, during 2019, two bills were submitted to the Riksdag. (The numbers of the administrative law bills are 2018/19:125, 2018/19:150, 2019/20:14 and 2019/20:55, and the criminal law bills are 2018/19:164 and 2019/20:36. Two further bills with minor, mainly non-material amendments to the administrative AML/CFT Act were also submitted to the Riksdag in 2019.)

References

If a reference is only available in Swedish, the original title will be followed by a translation into English. If a reference is available in English, only the English title will be used.

Books

Bullough, Oliver (2018) *Moneyland: Why Thieves & Crooks Now Rule the World & How to Take It Back*. Profile Books, London, 2018.

Lapidus, Jens (2006) *Easy Money*. Pantheon Books, New York, 2011.

Wright, Tom and Hope, Bradley (2018) *Billion Dollar Whale: The Man Who Fooled Wall Street, Hollywood, and the World*. Hachette Books, New York, 2018.

Public inquiries, committee terms of reference, Swedish government bills, Swedish laws, EU law

Committee terms of reference 2019:80 *Stärkta åtgärder mot penningtvätt och finansiering av terrorism (Reinforced measures against money laundering and terrorist financing)*. Stockholm, 2019.

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 (*Fourth Anti-Money Laundering Directive*). Official Journal of the European Union, 5 June 2015, L 141/73–117.

Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (*Fifth Anti-Money Laundering Directive*). Official Journal of the European Union, 19 June 2018, L 156/43–74.

European Commission (2020) *List of trusts and similar legal arrangements governed under the law of the Member States as notified to the Commission*. Official Journal of the European Union, 27 April 2020, C 136/5–6.

Lag (2014:307) om straff för penningtvättsbrott (*the Act on Penalties for Money Laundering Crimes*).

Lag (2017:630) om åtgärder mot penningtvätt och finansiering av terrorism (*the Act on Measures against Money Laundering and Terrorist Financing, or the AML/CFT Act*).

Lag (2017:631) om registrering av verkliga huvudmän (*the Act on Registration of Beneficial Owners*).

President's Commission on Organized Crime (1984) *The Cash Connection: Organized Crime, Financial Institutions, and Money Laundering*. Washington DC, 1984.

Proposition 1990/91:127 om Sveriges tillträde till FN:s narkotikabrottskonvention m.m. (Government Bill *i.a. on Sweden's accession to the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*).

Proposition 2016/17:173 *Ytterligare åtgärder mot penningtvätt och finansiering av terrorism (Government Bill Further measures against money laundering and terrorist financing)*.

Proposition 2018/19:150 *Skärpta åtgärder mot penningtvätt och finansiering av terrorism (Government Bill Enhanced measures against money laundering and terrorist financing)*.

Proposition 2019/20:83 *Ett nytt konto- och värdefackssystem (Government Bill A new system for accounts and safe deposit boxes)*.

SOU 2018:27 *Ekonomiska sanktioner mot terrorism (State public inquiry on Economic sanctions against terrorism; contains a summary in English)*. Stockholm, 2018.

International organisations including the FATF

FATF (2012–2019), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*. Paris, 2019.

FATF (2013–2019), *Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems*. Paris, 2019.

FATF (2017) *Anti-money laundering and counter-terrorist financing measures – Sweden, Fourth Round Mutual Evaluation Report*. Paris, 2017.

FATF (2018) *Anti-money laundering and counter-terrorist financing measures – Sweden, 1st Enhanced Follow-up Report & Technical Compliance Re-rating*. Paris, 2018.

FATF (2019) *Mandate, approved by the Ministers and Representatives of the Financial Action Task Force*. Washington DC, 2019.

FATF (2019) *Financial Action Task Force – 30 years*. Paris, 2019.

United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20 December 1988 (in force since 1990).

United Nations Security Council Resolution 2462, S/RES/2462 (2019), adopted on 28 March 2019.

Memoranda, investigations, press releases, decisions, statements of intent and so on

Council of the European Union (press release from 5 December 2019) *Money laundering: Council sets strategic priorities for further reforms*.

Swedish Bankers' Association (2019) *Förslag om utökade möjligheter till informationsdelning i syfte att stärka arbetet mot penningtvätt och finansiering av terrorism (Proposal for increased possibilities for information sharing in order to strengthen the work against money laundering and terrorist financing)*. Stockholm, 2019.

Swedish Companies Registration Office, Swedish National Council for Crime Prevention, Swedish Economic Crime Authority, Swedish Estate Agents Inspectorate, Swedish Financial Supervisory Authority, Swedish Enforcement Authority, Swedish Gambling Authority, Stockholm County Administrative Board, Västra Götaland County Administrative Board, Skåne County Administrative Board, Supervisory Board of Public Accountants, National Police Board, Swedish Tax Agency, Swedish Bar Association, Swedish Security Service, Swedish Customs and Swedish Prosecution Authority (2013) *Penningtvätt: en nationell riskbedömning (Money laundering: a national risk assessment)*.

Swedish Companies Registration Office, Swedish Estate Agents Inspectorate, Swedish Financial Supervisory Authority, Financial Intelligence Unit, Swedish Gambling Authority, Supervisory Board of Public Accountants, Swedish Bar Association, Swedish Security Service and County Administrative Boards of Skåne, Stockholm and Västra Götaland (2017) *Reporting suspected money laundering and terrorist financing*.

Swedish Financial Supervisory Authority (2015) *Decision on remark and administrative fine against Svenska Handelsbanken AB*. Ref.no. 13-1783.

Swedish Financial Supervisory Authority (2015) *Decision on warning and administrative fine against Nordea Bank AB*. Ref. no. 13-1784.

Swedish Financial Supervisory Authority (memorandum from 6 March 2019) *Finansinspektionen's work with anti-money laundering supervision*.

Swedish Financial Supervisory Authority (2020) *Decision on warning and sanction fee against Swedbank AB*. Ref. no. 18-21044/19-7504.

Swedish Gambling Authority (2018) *Beslut om sanktionsavgift mot Casino Cosmopol AB (decision on sanction fee against Casino Cosmopol AB)*. Ref. no. 18Li6391.

Swedish National Council for Crime Prevention 2019:17 *Money laundering offences: A follow-up of the application of the law*. Stockholm, 2019 (English summary published in 2020).

Swedish Police Authority (2019) *National Risk Assessment of Money Laundering and Terrorist Financing in Sweden 2019*.

Swedish Police Authority (2020) *FIU Sweden Annual Report 2019*.

Appendix A

What is a trust anyway? The Swedish *Nationalencyklopedin* encyclopaedia definition of ‘English concept of a right to property or entitlement held by a party (trustee) on behalf of another party’ demands a longer explanation to illustrate what kind of structures trusts are and why they are interesting in the money laundering context.

The best explanation of trusts I have ever heard goes back to England in the days of the Crusades. Imagine you are a prince with a castle who has raised an army to travel to the Holy Land in the hope of martyrdom. You leave your castle to your brother (because you are not planning on coming back again). But the crusade does not go quite as planned, you do not become a martyr and you come back again – but without access to your castle. Problem! By subsequent crusades, the crusaders had learnt of a legal arrangement under the Islamic legal system known as *waqf*, which may involve donating a building to be used for religious purposes along with instructions for how this is to proceed and how the building is to be managed. The English innovation that became the modern trust involved establishing a contract between three individuals – the crusader, the crusader’s brother and the crusader’s son – concerning the castle: The castle is transferred into the brother’s management but on behalf of the son, for example so that the son will take over the castle when he comes of age. This then allows departing on a crusade in the knowledge that no matter the outcome, things at home will be in order.

A modern trust works more or less as in the example. There are three (or more) parties: there is always a person who initially owns the property to be placed in trust (the *settlor*); a person who is to manage the property pursuant to certain contractual terms (the *trustee*); and a person on whose behalf the property is to be managed and/or into whose ownership the property is to be transferred if certain conditions are fulfilled (the *beneficiary*).

What is special about trusts and makes them into a money laundering risk is that when property is placed in trust, it becomes much harder to trace, and it may no longer be taken from the settlor, as this person no longer owns it. A trust is not a legal person and therefore does not normally turn up in registers. It is a *legal arrangement*, which can be likened to a contract between (at least) three parties. Far from all countries in the world recognise trusts, which can lead to a limited understanding of the function of trusts, their areas of use and their risks in the countries that do not recognise them.

There are no provisions in Swedish law enabling the creation of trusts. Nonetheless, trustees acting in Sweden (for example on behalf of an English trust) must register themselves in the Swedish Companies Registration Office’s register of beneficial owners and place themselves under the supervision of the County Administrative Boards for their business activities. The same applies to managers of other legal arrangements comparable to trusts.⁶⁴

⁶⁴ The European Commission keeps a list of the legal arrangements permitted by Member States: see https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2020.136.01.0005.01.ENG.