Finantsinspektsioon

DISCLAIMER: This document is an English translation of the precept made to AS SEB Pank. This document does not create independent rights nor obligations. It has no legal power and it does not change the original decision in Estonian by any means. In case of any discrepancy or doubts of discrepancy, one must follow the text and content of the precept in its original language, i.e. in Estonian.

DECISION OF THE MANAGEMENT BOARD

Tallinn 25.06.2020

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

1. FACTUAL CIRCUMSTANCES

1.1. General information and facts regarding the precept

1.1.1 AS SEB Pank (registry code 10004252, address Tornimäe 2, Tallinn 15010; hereinafter SEB) is a credit institution that has a right to provide financial services in Estonia within the scope stated on the website of Finantsinspektsioon.

1.1.2 Finantsinspektsioon has carried out an on-site inspection at SEB under Finantsinspektsioon Management Board Member's 7 June 2019 order No. 4.7-1.1/3707 (hereinafter: on-site inspection). The on-site inspection took place from 26 August 2019 to 27 September 2019. Finantsinspektsioon has prepared an on-site inspection report on the results of the inspection. The Management Board and employees of SEB were open and cooperative during the on-site inspection and expressed full willingness to completely eliminate all of the detected shortcomings.

1.1.3 In its on-site inspection report, Finantsinspektsioon evaluated SEB's systems and controls for prevention of money laundering and terrorist financing and the actions of the Management Board as at 25 August 2019 and earlier. Finantsinspektsioon did not have a chance to verify the possible changes SEB made to its systems and controls after the on-site inspection period. Therefore, this precept is based only on what was established during the on-site inspection and refers to violations that were relevant mainly as at 25 August 2019.

1.1.4 It is not within the limits of competence of Finantsinspektsioon to supervise international financial sanctions. Finantsinspektsioon carries out the supervision on the performance of the requirements under the Money Laundering and Terrorist Financing Prevention Act (hereinafter: MLTFPA) and the legislation based on the MLTFPA by the credit and financial institutions it supervises under the Financial Supervision Authority Act (hereinafter: FSAA). Section 30 of the International Sanctions Act states that

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

the Financial Intelligence Unit shall exercise state supervision over the application of financial sanctions. Based on the abovementioned, it is not within the scope of Finantsinspektsioon to assess the solutions and actions of SEB in implementing the financial sanctions. Therefore, this precept does not cover that aspect.

1.2 On-site inspection

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

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

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

1.2.3 Pursuant to the provisions of subsection 101^1 (1) of the CIA, Finantsinspektsioon submitted an on-site inspection report to SEB in its 27 November 2019 letter No. 4.7-1.1/3707-23 for comments and objections.

1.2.4 In its 20 December 2019 letter No. SEBEE/19/CR2722, SEB submitted its comments on the on-site inspection report. The comments have been added under each observation of Finantsinspektsioon together with the explanations of Finantsinspektsioon as to why the respective comments have or have not been taken into consideration.

1.2.5 Pursuant to subsections 101^1 (3) and (5) of the CIA, Finantsinspektsioon reviewed SEB's explanations and delivered the final version of the on-site inspection report to SEB in its 4 March 2020 letter No. 4.7-1.1/3707-29.

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

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

site inspection report that can be viewed as reasoned parts of this precept according to the second sentence of subsection 56 (1) of the APA, have been referred to in more detail in this precept.

2 LEGAL APPROACH

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

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

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

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

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

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

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

2.2 Grounds for issuing the precept

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

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

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

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

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

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

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

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

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

3. LEGAL MOTIVATION

3.1 SEB is a subsidiary of Skandinaviska Enskilda Banken AB (hereinafter: SEB AB) and belongs to SEB AB group. Belonging to this group means that all systems were built centrally. This was determined by Finantsinspektsioon during on-site inspection (Clause 1.2.4, p. 6 of the on-site inspection report).[2]

3.2 During the on-site inspection, Finantsinspektsioon found that SEB's organisational solution on the prevention of money laundering and terrorist financing had shortcomings and was not fully in compliance with the type, scope and complexity of the economic activities of the credit institution (Clause 1.2.4, pp. 6–9 of the on-site inspection report).

3.3 During the on-site inspection, Finantsinspektsioon assessed, among other things, SEB's business strategy (risk appetite) and its internal controls and systems that are used to manage the risks of money laundering and implement the due diligence obligation arising from the law. Sub-paragraphs (i), (ii) and (iii) of Chapter 2.3.4 of the on-site inspection act (pp. 26-35 of the on-site inspection report) show that SEB has a clear business strategy for serving non-residents, a prudent and decided risk appetite and controls and systems that reflect the above. SEB has also enforced and brought them to implementation. The on-site inspection showed that in the years under review, SEB's business strategy seemed to focus on a conservative approach, with the main goal being to reduce the risk level of the customer base and increase the number of customers with more lower-risk customers. Finantsinspektsioon found that the change in the business strategy (risk appetite) was generally reflected in SEB's actual activities and indicators. SEB's rather low risk appetite in serving non-residents is also reflected in operating volumes.

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

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

The market share of SEB as at 31 December 2019 was 22.4% of deposits and 27.6% of loans (both market shares are calculated on a solo basis and excluding the foreign branches of all the credit institutions). The number of customers as at 31 December 2019 was approx. 570,000, of which private persons (natural persons) made up approx. 88%. Household[3] customers made EUR 2.8 million worth of foreign payments in 2019, with a total turnover of EUR 23.6 billion. In 2019, non-resident customers made 3.48% of payment transactions, in total making up 15.59% of the turnover of outgoing payment transactions.

Despite SEB's rather conservative approach to developing its business strategy, it is also important to take into account the potential significance of any inadequate performance of the prevention of money laundering and terrorist financing requirements by such a large credit institution, potentially having an impact on the stability, reliability, and transparency of the entire financial sector. At that, it should be expected that an obliged entity that also establishes business relationships with non-residents and/or has a large customer base, has implemented high level solutions for the prevention of money laundering and terrorist financing and exercises extreme diligence in serving a large customer base, also being able to be familiar with the circumstances on the target market while operating from a distance, including the rules of business and the arising risks. Credit institutions that operate in this way face a significantly bigger challenge in detecting the circumstances that would help to assess and identify, inter alia, the beneficial owner and ascertain the purpose and nature of the business relationship in order to prevent money laundering and terrorist financing. It is also important to create a relevant system for monitoring the business relationships which, for instance, in case of a large customer base, requires considerable due diligence both in developing the organisational solution and the risk-based structure of systems and controls.

3.4. SEB's solutions for implementation of due diligence measures and getting to know the customers when establishing business relationships were inadequate

3.4.1. Application of the preventive or due diligence measures is one of the main obligations of the obliged entity in preventing money laundering and terrorist financing. The purpose of implementation of due diligence measures is mainly to prevent concealing and disguising, etc. of money derived from criminal activity in various stages of money laundering, and to prevent terrorist financing with funds derived both from illegal and legal sources. Therefore, implementation of due diligence measures is one of the most important objectives to ensure the reliability and transparency of the Estonian business environment and to prevent the use of the Estonian financial system and economic space for money laundering and terrorist financing. Due diligence measures are divided into responsibilities upon establishing business relationships and responsibilities in the course of business relationships. The application of due diligence measures upon establishing business relationships is based on the aim of knowing one's customer (the know-your-customer principle). The information obtained is the basis for subsequent monitoring of the business relationship. According to the MLTFPA, in order to comply with the know-your-customer principle, the obliged entity must collect data to compile a customer profile and understand the customer and the risks associated with the transactions they are expected to perform during the business relationship (risk profile). Due to the latter, the obliged entity has to attribute a risk rating to the customer. The extent of the application of due diligence measures depends on the level of risk associated with the customer. If the obliged entity does not know its customers and fails to implement any due diligence measures, does not do it to a sufficient extent or correctly, the obliged entity is unable to monitor transactions during the business relationship.

3.4.2. <u>SEB lacked sufficiently precise rules of procedure as to which case and to which extent information must be gathered on the objective and nature of a business relationship</u>

3.4.2.1. According to clause 20 (1) 4) of the MLTFPA, one of the measures to be applied is understanding of business relationships and, where relevant, gathering information thereon. According to subsection 20 (2) of the MLTFPA, upon implementation of clause 20 (1) 4 of the MLTFPA, the obliged entity must understand the purpose of the business relationship or the purpose of the occasional transaction,

[3] All customers, excluding financial institutions, the central bank, and the general government.

identifying, inter alia, the permanent seat, place of business or place of residence, profession or field of activity, main contracting partners, payment practices and, in the case of a legal person, also the experience of the customer or person participating in the occasional transaction. In clause 4.3.6 of the advisory guidelines "Organisational solutions and preventive measures for credit and financial institutions to take against money laundering and terrorist financing"[4], (hereinafter "Advisory Guidelines"), Finantsinspektsioon has explained the obligation assumed by clause 20 (1) 4) of the MLTFPA together with subsection (2) of the same section, incl. how to understand the term "where relevant" and what is meant by identifying the customer's profession or field of activity, main business partners, payment practices, and experience. In its on-site inspection report observation No. 4 (pp. 52–64), Finantsinspektsioon has explained the substance and meaning of the obligations discussed in the respective clauses of Finantsinspektsioon's Advisory Guidelines.

3.4.2.2. Finantsinspektsioon has established in observation 4 (pp. 52–64) of the on-site inspection report that SEB had failed to correctly identify the purpose and intended nature of the business relationship established with the customer. During the on-site inspection, Finantsinspektsioon inspected the due diligence measures applied to eleven resident legal entities and found non-compliance with the above-mentioned aspect in nine of them. Among other things, Finantsinspektsioon found that although this was a relevant situation within the meaning of the law, considering the risk profile assigned to the customers, SEB had not identified the fields of activity of its customers, their payment practices, experience in operating in the declared field, and their main business partners. For some customers, the customer data collected during the due diligence measures were not identified at all (field of activity of the above-mentioned customer, their payment practices, experience in operating in the indicated field of activity, etc.). Also, in some cases, the problem was the declarative nature of such customer data without SEB having verified it based on risk and made certain that the data submitted by the customer was firstly understandable to SEB, but also logical after risk-based verification of data. The collection of insufficient customer data and documents was due to the lack of sufficiently precise rules of procedure. In this way, SEB was unable to obtain the overview required by the MLTFPA of its customers and, in particular, higher-risk business relationships.

3.4.2.3. Thus, SEB has violated clause 20 (1) 4) and subsection 20 (2) of the MLTFPA by failing to correctly identify the purpose and nature of the business relationship regarding the customers checked during on-site inspection, including the customers' field of activity, payment practices, experience in the field declared, and main contracting partners.

3.4.2.4. Based on the aforementioned, Finantsinspektsioon issues a precept to SEB and sets the obligations stated in clause 1.1.1 of the resolution of this precept.

3.4.3. <u>SEB lacked a clearly defined procedures for risk-based verification of the data submitted by customers</u>

3.4.3.1. According to clauses 20 (1) 3) and 4) of the MLTFPA, the obliged entity applies the following due diligence measures: identification of the beneficial owner and, for the purpose of verifying their identity, taking measures to the extent that allows the obliged entity to make certain that it knows who the beneficial owner is, and understands the ownership and control structure of the customer or of the person participating in an occasional transaction (clause 3); understanding of business relationships, an occasional transaction or act and, where relevant, gathering information thereon (clause 4). According to subsection 20 (2) of the MLTFPA, upon implementation of clause 20 (1) 4 of the MLTFPA, the obliged entity must understand the purpose of the business relationship or the purpose of the occasional transaction, identifying, inter alia, the permanent seat, place of business or place of residence, field of activity, main contracting partners, payment practices and, in the case of a legal person, also the experience of the customer or person participating in the occasional transaction.

[4] The Advisory Guidelines were enforced by the 26 November 2018 decision No. 1.1-7/172 of the Management Board of Finantsinspektsioon.

3.4.3.2. Finantsinspektsioon has established, in observation 3 of the on-site inspection report (pp. 49– 51) and in the introductory part of the on-site inspection report observations (p. 41), that in establishing business relationships, SEB relied in most cases on the data provided by the customer and the data was not verified in all the cases in which it was necessary. Among other things, Finantsinspektsioon found that in establishing a business relationship, SEB relied on the information provided by a customer's representative (i) on the purpose and intended nature of the business relationship (field of activity, payment practices, experience and contracting partners) and (ii) regarding its beneficial owner. If, based on the data declared by the customer, the system automatically assigned them a medium risk level (AML II as used in SEB), SEB no longer verified the submitted data, i.e., whether the submitted data corresponded to the customer's ability or capabilities. Ultimately, this can mean that an incorrect risk level is assigned to the customer, which in turn leads to the wrong scope of due diligence being applied to the customer. At the same time, SEB's medium-risk customers made up 98% of its entire customer base. Therefore, Finantsinspektsioon found that SEB did not have a clearly defined procedure for a risk-based approach to verify the data provided by the customer, especially in situations where the customer's due diligence measures were gathered on the basis of the information provided by the customer themselves, and as a result, the customer was automatically assigned the medium level of risk. Relying mostly on the customer's data meant that SEB may have not always been able to correctly identify the customer's beneficial owner and the purpose and nature of the business relationship.

3.4.3.3. Therefore, SEB infringed clauses 20 (1) 3) and 4) and subsection 2) of the MLTFPA, since relying on the data provided by customers alone has not enabled it to correctly identify the beneficial owner of the customer and the purpose and nature of the business relationship.

3.4.3.4. Based on the aforementioned, Finantsinspektsioon issues a precept to SEB and sets the obligations stated in clause 1.1.2 of the resolution of this precept.

3.4.4. <u>The basic data gathered in applying due diligence measures at SEB was flawed</u>

3.4.4.1. According to clauses 20 (1) 1)–5) of the MLTFPA, the obliged entity shall apply the following due diligence measures: 1) identification of a customer and verification of the submitted information based on information obtained from a reliable and independent source; 2) identification and verification of a customer's representative and their right of representation; 3) identification of the beneficial owner and, for the purpose of verifying their identity, taking measures to the extent that allows the obliged entity to make certain that it knows who the beneficial owner is, and understands the ownership and control structure of the customer or of the person participating in an occasional transaction; 4) understanding of business relationships and, where relevant, gathering information thereon; 5) gathering information on whether a person is a politically exposed person, their family member or a person known to be close associate. According to subsection 47 (1) of the MLTFPA, the obliged entity must retain /.../ the documents /.../ serving as the basis for the establishment of a business relationship no less than five years after termination of the business relationship.

3.4.4.2. Finantsinspektsioon has established in observation 1 of the on-site inspection report (pp. 41–46) that SEB had shortcomings in the quality of the information collected during the application of due diligence measures. Among other things, Finantsinspektsioon found that: (i) the first and last names of both representatives and beneficial owners were in reverse order in some cases, and in a situation where the representative and beneficial owner were the same person, the name of the same person was spelled differently in different documents; (ii) in some cases in which a beneficial owner had a connection to several customers, the name of the same person was spelled differently (e.g., adjacent vowels were exchanged, sometimes a single consonant in the middle of a surname, sometimes a double vowel, etc.); (iii) some of the beneficial owners were missing a personal identification code, date of birth or other code issued by the state enabling personal identification; (iv) in some persons who were the beneficial owner for more than one customer, different residencies were assigned depending on the customer.

3.4.4.3. Therefore, SEB had violated the obligation established in subsection 47 (1) of the MLTFPA by not retaining the data gathered in the due diligence procedure in the establishment of a business relationship under the same principles.

3.4.4.4. Based on the aforementioned, Finantsinspektsioon issues a precept to SEB and sets the obligations stated in clause 1.1.3 of the resolution of this precept.

3.4.5. The deficient basic data gathered in applying due diligence measures at SEB did not enable to analyse the customer base and retrieve exhaustively and immediately data

3.4.5.1. According to subsection 47 (1) of the MLTFPA, the obliged entity must retain /.../ the documents /.../ serving as the basis for the establishment of a business relationship no less than five years after termination of the business relationship. Subsection 47 (4) of the MLTFPA states that the obliged entity must retain the documents and data specified in subsections 47 (1)–(3) of the MLTFPA in a manner that allows for exhaustively and immediately replying to the enquiries of the Financial Intelligence Unit or, in accordance with legislation, those of other supervisory authorities, investigative bodies or courts, inter alia, regarding whether the obliged entity has or has had in the preceding five years a business relationship with the given person and what is or was the nature of the relationship.

3.4.5.2. Finantsinspektsioon found in observation 1 (pp. 41–46) and observation 3 (pp. 49–51) of the on-site inspection report that due to deficiencies in the quality of the basic data, SEB's systems did not allow for the quick, easy and consistent analysis of the existing customer base and thus to provide exhaustive and immediate responses to inquiries by competent authorities. Among other things, Finantsinspektsioon established that SEB was not able to provide Finantsinspektsioon with information on whether SEB has or has had a business relationship with the person named in the request in the previous five years and what the nature of this relationship is or was. Such problems with the basic data meant that SEB was not able to monitor the business relationship correctly at a later stage, given that the purpose of business relationship monitoring is to compare reality with information known about the customer. The issues with the basic data also did not allow for an exhaustive and immediate response to inquiries from competent authorities. To overcome these shortcomings, SEB should organise its basic data.

3.4.5.3. Therefore, SEB had violated the obligation established in subsection 47 (1) of the MLTFPA by not retaining the data gathered in the due diligence procedure in the establishment of a business relationship under the same principles. Therefore, SEB has also violated subsection 47 (4) of the MLTFPA because it had not retained the data in a manner that allows it to exhaustively and immediately reply to the enquiries of supervisory authorities, among others.

3.4.5.4. Based on the aforementioned, Finantsinspektsioon issues a precept to SEB and sets the obligations stated in clause 1.3 of the resolution of this precept.

3.5. SEB's solutions for applying due diligence measures and monitoring customer transactions during the business relationship were not sufficient

3.5.1. In addition to knowing the customer when establishing a business relationship (see section 3.4.1 of this precept), the purpose of applying due diligence measures is to ensure that transactions carried out during a business relationship are in line with the obliged entity's knowledge of the customer, its activities and risk profile, i.e., are in compliance with the data collected during the know-your-customer principle. The obliged entity shall make a risk-based assessment and, where applicable, know for what purpose and in the context of which economic or legal relationship the customer transacts or receives funds in the course of the business relationship and knows that it corresponds to previously gathered information. If not knowing the customer in establishing a business relationship meant that it was impossible to monitor the business relationship, failure to monitor the business relationship reduces the likelihood that the obliged entity will be able to identify suspicious or unusual transactions, potentially leading to money laundering or terrorist financing.

3.5.2. SEB lacked sufficiently detailed principles regarding in which cases and to what extent to gather information during business relationship monitoring

3.5.2.1. In conjunction of clauses 20 (1) 6) and 23 (2) 1) of the MLTFPA, the obliged entity must constantly monitor the business relationship and control the transactions made (in the course of the business relationship) to ensure that they are in accordance with the obliged entity's knowledge of the customer, its activities and its risk profile. According to clause 23 (2) 4) of the MLTFPA, in economic or professional activities, the monitoring of a business relationship must include greater attention regarding transactions made in the business relationship, the activities of the customer and circumstances that refer to a criminal activity, money laundering or terrorist financing or that are likely to be linked to money laundering or terrorist financing, including to complex, high-value and unusual transactions and transaction patterns that do not have a reasonable or visible economic or lawful purpose or that are not characteristic of the given business specifics. Pursuant to subsection 23 (3) of the MLTFPA, upon performance of the duty provided for in clause 23 (2) 4), inter alia, the nature, reason and background of the transactions as well as other information that allows for understanding the substance of the transactions must be identified and special attention must be paid to these transactions. Finantsinspektsioon has also explained the purpose of monitoring a business relationship within the meaning of clause 20 (1) 6) and section 23 of the MLTFPA in clause 4.4.2 of its Advisory Guidelines. In its on-site inspection report observation No. 8 (pp. 72–79), Finantsinspektsioon has explained the substance and meaning of the obligations discussed in the respective clause of Finantsinspektsioon's Advisory Guidelines.

3.5.2.2. Finantsinspektsioon has established in observations 8–14 (pp. 72–112) of the on-site inspection report that SEB had not correctly monitored the business relationship. During the on-site inspection, Finantsinspektsioon inspected the due diligence measures applied to eleven resident legal persons and found in the case of nine of them that due to SEB's incorrect monitoring of business relationships, SEB could not have been certain that it knows the source and even more so the origin of the funds used in transactions described regarding the customers in question (observations 8–14). SEB had also not identified any transactions that were inconsistent with SEB's knowledge of the customer, its activities and risk profile, and had not determined the reasons for such discrepancy. SEB also failed to pay special attention to the transactions that would have required it under clause 23 (2) 4) of the MLTFPA and did not find out the nature, reason and background of the transactions, nor any other information to help understand the substance of the transactions.

3.5.2.3. Therefore, SEB infringed clause 20 (1) 6) and clauses 23 (2) 1), 3) and 4) of the MLTFPA, because it had failed to sufficiently monitor the business relationship of customers or control the transactions made under the business relationship to ensure that they are in compliance with SEB's knowledge of the customer, their activities and risk profile, nor correctly identified the source and origin of the funds used in transactions.

3.5.2.4. Based on the aforementioned, Finantsinspektsioon issues a precept to SEB and sets the obligations stated in clause 1.2.1 of the resolution of this precept.

3.5.3. SEB had not put in place sufficient rules of procedures on media monitoring

3.5.3.1. According to clause 20 (1) 6) of the MLTFPA, one of the measures applied by an obliged entity is monitoring of a business relationship. According to subsection 23 (2) of the MLTFPA, the monitoring of a business relationship must include at least the following: checking of transactions made in a business relationship in order ensure that the transactions are in concert with the obliged entity's knowledge of the customer, its activities and risk profile (clause 1); in economic or professional activities, paying more attention to transactions made in the business relationship, the activities of the customer and circumstances that refer to a criminal activity, money laundering or terrorist financing or that are likely to be linked with money laundering or terrorist financing, including to complex, high-value and unusual transactions and transaction patterns that do not have a reasonable or visible economic or lawful

purpose or that are not characteristic of the given business specifics (clause 4). Finantsinspektsioon has also explained the purpose of monitoring a business relationship within the meaning of clause 20 (1) 6) and section 23 of the MLTFPA in clause 4.4.2 of its Advisory Guidelines. In its on-site inspection report observation No. 5 (pp. 68–71), Finantsinspektsioon has explained the substance and meaning of the obligations discussed in the respective clause of Finantsinspektsioon's Advisory Guidelines.

3.5.3.2. Finantsinspektsioon has established in observation 7 (pp. 71–72) of the on-site inspection report that SEB did not have a sufficiently precise system in place to describe how SEB conducts analysis of data or persons related to money laundering or terrorist financing that has been published in national or foreign media, and compares it with its own customer portfolio. Among other things, Finantsinspektsioon found that in its rules of procedure, SEB had not appointed a department or employees whose tasks and area of responsibility include such media monitoring. However, this obligation is an important part of business relationship monitoring.

3.5.3.3. Therefore, SEB infringed the requirement established in clause 20 (1) 6) and clause 23 (2) 4) of the MLTFPA because the insufficient rules of procedure failed to ensure greater attention to transactions in the course of a business relationship, customer's activities and circumstances that, inter alia, refer to unusual transactions and transaction patterns.

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

3.5.4. <u>SEB lacked a sufficient system for monitoring business relationships corresponding to the risks accompanying its activities</u>

3.5.4.1. According to clause 20 (1) 6) of the MLTFPA, one of the measures applied by an obliged entity is monitoring of a business relationship. According to subsection 23 (2) of the MLTFPA, the monitoring of a business relationship must include at least the following: checking of transactions made in a business relationship in order ensure that the transactions are in concert with the obliged entity's knowledge of the customer, its activities and risk profile (clause 1); regular updating of relevant documents, data or information gathered in the course of application of due diligence measures (clause 2); identifying the source and origin of the funds used in a transaction (clause 3); in economic or professional activities, paying more attention to transactions made in the business relationship, the activities of the customer and circumstances that refer to a criminal activity, money laundering or terrorist financing or that are likely to be linked with money laundering or terrorist financing, including to complex, high-value and unusual transactions and transaction patterns that do not have a reasonable or visible economic or lawful purpose or that are not characteristic of the given business specifics (clause 4); in economic or professional activities, paying more attention to the business relationship or transaction whereby the customer is from a high-risk third country or a country or territory specified in subsection 37 (4) of the MLTFPA or whereby the customer is a citizen of such country or whereby the customer's place of residence or seat or the seat of the payment service provider of the payee is in such country or territory (clause 5). Finantsinspektsioon has also explained the purpose of monitoring a business relationship within the meaning of clause 20 (1) 6) and section 23 of the MLTFPA in clause 4.4.2 of its Advisory Guidelines. In its on-site inspection report observation No. 5 (pp. 68–71), Finantsinspektsioon has explained the substance and meaning of the obligations discussed in the respective clause of Finantsinspektsioon's Advisory Guidelines.

3.5.4.2. Finantsinspektsioon has established in observation 5 (pp. 68–71) of the on-site inspection report that SEB's business relationship monitoring system did not fully comply with the requirements of the law to properly monitor business relationships and identify the source and origin of funds used in transactions, including identifying transactions that indicate money laundering or terrorist financing, or unusual transactions. It also did not correspond to the size, nature, scope and level of complexity of the activities and services of SEB, including its risk appetite and risks related to SEB's activities. Among other things, Finantsinspektsioon found that (i) the monitoring scenarios used did not seem to take into account the risk indicators defined by SEB itself; (ii) they were not sufficient to identify patterns of suspicious

transactions which, taken individually, did not give rise to notification; (iii) these scenarios were unable to identify the risks related to all the services provided by SEB, including, for example, suspicious security transactions or indications of such transactions; (iv) the monitoring scenarios included restrictions that prevented the repeated displaying of a suspicious transaction notification if the same person repeatedly carried out a transaction that corresponds to the same risk indicators (i.e., even if SEB had once identified a suspicious transaction by a customer, it did not see the notification the next time and was unable to pay the necessary attention to such transactions).

3.5.4.3. Therefore, SEB infringed clause 20 (1) 6) and clauses 23 (2) 1), 3) and 4) of the MLTFPA, because the business relationship monitoring system established by SEB did not enable to sufficiently monitor the business relationship of customers or sufficiently control the transactions made in the business relationship to ensure that they are in compliance with SEB's knowledge of the customer, their activities and risk profile, nor correctly identify the source and origin of the funds used in transactions. SEB also violated clause 23 (2) 4) of the MLTFPA because the created solution for monitoring business relationships did not enable to pay sufficiently special attention to transactions made in the business relationship, the activities of the customer and circumstances that indicate complex and unusual transactions and transaction patterns that do not have a reasonable or visible economic or lawful purpose or that are not characteristic of the given business specifics.

3.5.4.4. Based on the aforementioned, Finantsinspektsioon issues a precept to SEB and sets the obligations stated in clause 1.4 of the resolution of this precept.

3.6. Reporting obligation of SEB

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

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

3.6.3. Based on the aforementioned, Finantsinspektsioon issues a precept to SEB and sets the obligations stated in the clause 2 of the resolution of this precept.

4. DISCRETION AND PROPORTIONALITY

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

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

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

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

4.5. During the on-site inspection, Finantsinspektsioon found that SEB's organisational solution on the prevention of money laundering and terrorist financing had shortcomings and it was not fully in compliance with the type, scope and complexity of the economic activities of the credit institution.

4.6. Therefore, the purpose of this precept is to direct SEB to correctly perform its obligations to prevent money laundering and terrorist financing and to prevent further violations. The stability, reliability and transparency of the financial sector, as well as the interests of customers and investors would undoubtedly be damaged if SEB continued to take equivalent risks while continuing to use its existing solutions for countering money laundering and terrorist financing. The broader objective of the precept is, thus, to ensure the performance of the objective described in subsection 3 (1) of the FSAA.

4.7. With this precept, Finantsinspektsioon obliges SEB to take various measures in order to achieve the objectives of the precept. Finantsinspektsioon has divided the obligations into three categories, taking into account their interdependence and their different purpose in fulfilling their obligations related to the prevention of money laundering and terrorist financing. By doing so, Finantsinspektsioon obliges SEB to take further steps to evaluate and adjust the existing rules of procedure (paragraphs 1.1 and 1.2 of the resolution), improve the quality of data collected during the implementation of due diligence measures (paragraph 1.3 of the resolution) and build a [more effective] business relationship monitoring system (paragraph 1.4 of the resolution). Finantsinspektsioon will now assess the proportionality of these measures. At that, special consideration has been given to the obligation set out in clause 2 of the resolution to submit interim reports and a final report on compliance with the precept, as well as the final deadline (6 months) within which the obligations set with the precept must be fully complied with.

4.8. Suitability of the precept measure

4.8.1. In assessing the suitability of the measures to be taken, account must be taken of whether the measure contributes to the achievement of the legal objective. In view of the purpose of the precept, the measure suitable for achieving the purpose must be sufficiently broad in scope and take into account the specifics of SEB's activities.

4.8.2. During the on-site inspection, Finantsinspektsioon identified and noted in clauses 3.4.2, 3.4.3, 3.4.4, 3.5.2 and 3.5.3 of this precept why deficiencies in SEB's activities in establishing (identifying the beneficial owner and the purpose and intended nature of the business relationship) and monitoring business relationships were relevant due to inadequate rules of procedure. In clauses 3.4.1 and 3.5.1 of this precept, Finantsinspektsioon has explained why deficiencies applying due diligence measures in the establishment of business relationships, i.e., implementing the know-your-customer principle, do not enable subsequent monitoring of business relationships and why violation of the business relationship monitoring obligation makes it impossible to identify transactions and other circumstances referring to money laundering and terrorist financing in the final stage. Deficiencies in the basic data, i.e., in due diligence measures applied in establishing business relationships, create problems in the entire anti-money laundering and counter-terrorist financing system, leading to potentially incorrect connections or failures to identify connections between existing customers and their transactions, and existing and new customers. If SEB does not know its customer, it will not be able to properly monitor the business relationship and identify transactions or activities suspected of money laundering or terrorist financing that are suspicious relating to that customer. However, breach of the business relationship monitoring obligation, i.e., not comparing the actual facts with the information known about the customer, not identifying the source and origin of the funds used in the transaction and not paying special attention to certain transactions, does not ultimately enable to identify transactions and circumstances indicating money laundering and terrorist financing. In the context of this precept, therefore, achieving a lawful situation would mean that SEB would have to comply with clauses 20 (1) 3), 4) and 6) of the MLTFPA, subsection 20 (2) of the MLTFPA, clauses 23 (2) 1), 3) and 4) and subsection

47 (1) of the MLTFPA. The measures imposed by this precept (clauses 1.1 and 1.2 of the resolution) that in summary and in general oblige to change the rules of procedure and establish a procedure on the extent and circumstances in which information on the customer's activities, payment practices, experience and business partners (clause 1.1.1) is to be gathered, who is liable for risk-based verification of due diligence measures upon establishing a business relationship (clause 1.1.2), how and what basis data is entered into databases (clause 1.1.3), to what extent and in which cases are measures to be taken to fulfil the obligation to monitor a business relationship to ensure that the customer's activities correspond to the bank's knowledge of the customer, their activities and risk profile (clause 1.2.1), and who is responsible for media monitoring and how is it organised (clause 1.2.2), support the restoration of lawful activities and fulfilment of the purpose set by the precept by ensuring that SEB as the obliged entity is able to get to know its customers sufficiently and monitor their business relationships.

Clause 3.4.5 of the precept explains why SEB was unable to analyse its customer base and submit the data to the competent authorities exhaustively and immediately, and how this was due to the poor quality of the data gathered during due diligence measures. Clause 3.4.1 of this precept also explains why shortcomings in the application of the due diligence measure, i.e., the know-your-customer principle, during the establishment of a business relationships does not allow for the later monitoring of the business relationship. In the context of this precept, therefore, achieving a lawful situation would mean that SEB would have to comply with subsections 47 (1) and (4) of the MLTFPA. The measures imposed by this precept (clause 1.3 of the resolution) which, in summary, obliges one to organise the data gathered in databases under due diligence measures, facilitate the resumption of legitimate activities and the performance of the purpose set out in the precept by creating a situation in which SEB is able to monitor business relationships on the basis of this data and provide data gathered in the course of applying due diligence measures exhaustively and without delay.

Clause 3.5.4 of this precept also states that the monitoring scenarios applied by SEB, i.e., the measures for monitoring business relationships, did not ensure the application of sufficient ongoing due diligence. Finantsinspektsioon has explained in clause 3.5.1 of this precept why deficiencies in the monitoring of business relationships does not enable the identification of transactions and other circumstances indicating money laundering and terrorist financing. In the context of this precept, therefore, achieving a lawful situation would mean that SEB would have to comply with clause 20 (1) 6) and clauses 23 (2) 1), 3) and 4) of the MLTFPA. The measures imposed by this precept (clause 1.4 of the resolution), which in summary and in general oblige SEB to review and change its automated business relationship monitoring solution, facilitate the restoration of lawful operations and the fulfilment of the purpose of the precept by ensuring that SEB is able to monitor its business relationships properly.

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

4.8.3. It is also important to set a deadline for eliminating the shortcomings and to report regularly on the steps taken (clauses 1 and 2 of the resolution), since a credit institution dealing indefinitely with shortcomings in the prevention of money laundering and terrorist financing significantly increases its likelihood of being criminally exploited. At that, Finantsinspektsioon must retain the possibility to verify compliance with this precept. Based on the above, Finantsinspektsioon finds that the time taken to carry out the clauses of the resolution must be limited. Finantsinspektsioon is of the opinion that six (6) months stipulated in this precept is a suitable period and contributes to the aim of this precept to ensure SEB's compliance with the requirements of the MLTFPA and to prevent further violations. For the above reasons, the obligation imposed on SEB to provide monthly overviews of the measures taken and to be taken, as well as the obligation to submit a final report on all the measures taken, together with the reasons why the precept is thus fulfilled, is lawful and suitable.

4.8.4. The measures chosen by the precept are therefore lawful and suitable for overcoming the above violations by SEB and preventing further violations, thus contributing to the objectives of the precept.

There is no reason to doubt that the precept would not contribute to the achievement of the objective and the measures are therefore suitable.

4.9. Necessity of the precept measure

4.9.1. Section 104 of the CIA stipulates several supervisory measures that Finantsinspektsioon has the right to use but does not deem necessary to apply in this case. Compared to other measures provided for in section 104 of the CIA, Finantsinspektsioon has chosen the least burdensome effective measure towards SEB to achieve the objectives of the precept. Among other things, Finantsinspektsioon could have prohibited SEB from making certain actions and transactions under clause 1 (1) 1) of the CIA, or restricted their volume until all the shortcomings identified in the on-site inspection report had been addressed, thereby mitigating the consequences that may arise if SEB operates inadequate systems and controls, and ensuring customer protection. The above, however, is a much more burdensome measure than the obligation to amend the rules of procedure in order to provide a clear framework for the application of due diligence measures in the establishment and monitoring of a business relationship, to organise the basic data, and to change the activities in business relationship monitoring.

4.9.2. In order to assess the necessity of the precept, it is also important to consider the size of SEB. Clause 3.3 of this precept describes the volume and significance of SEB's activities in the context of the Estonian financial market. The above illustrates the potential impact of failing to manage the risks accompanying SEB's operations. If SEB continued to prevent money laundering and terrorist financing with the current solutions that have deficiencies in the application of due diligence measures both in establishing and in monitoring a business relationship, it would increase the potential likelihood of the bank being used for money laundering and terrorist financing. Therefore, it is not possible to give no reaction at all to the current situation.

4.9.3. As stated in clause 4.8.2 of this precept, the first category of obligations imposed on SEB is related to the amendment of the rules of procedure to ensure and clearly define due diligence measures both in the establishment and monitoring of business relationships. Application of the preventive or due diligence measures by SEB is one of its main obligations in preventing money laundering and terrorist financing. The purpose of implementation of due diligence measures is mainly to prevent hiding, conversion, etc. of money derived from criminal activity in various stages of money laundering, and to prevent terrorist financing with funds derived both from illegal and legal sources. Therefore, one of the main objectives is to ensure the reliability and transparency of the Estonian business environment and to prevent the use of the Estonian financial system and economic space for money laundering and terrorist financing. If the obliged entity, i.e., SEB does not know its customers and fails to implement due diligence measures, does not do so to a sufficient extent or correctly, both money laundering and terrorist financing could take place. Enforcement of due diligence measures ensures closer scrutiny of the customer, which contributes to the transparency of the national economy and the prevention of money laundering and terrorist financing. Considering the material shortcomings in SEB's practices in applying due diligence measures and knowing its customers identified in clauses 3.4.2, 3.4.3, 3.4.4, 3.5.2 and 3.5.3 of this precept, Finantsinspektsioon is of the opinion that the obligation imposed in clauses 1.1 and 1.2 of the precept resolution is the most lenient measure possible. This only obliges SEB to re-evaluate its current rules and practices and make corresponding changes to the rules of procedure.

The second category of obligations imposed on SEB is related to improving data quality. There are shortcomings in the quality of SEB's basic data, i.e. the data gathered via due diligence measures and stored in databases. On the one hand, the problems in the basic data mean that SEB is unable to analyse its existing customer base quickly, easily and consistently and therefore cannot respond to inquiries from competent authorities exhaustively and without delay. On the other hand, it is more likely in the case of incomplete data that when applying due diligence measures when establishing business relationships or during business relationships, SEB may make incorrect connections or fail to identify the connections. This may mean being unable to establish a connection between existing customers and recent transactions, or between existing customers and customers with whom SEB has previously decided to terminate their business relationship. Therefore, even more importantly, the identified

deficiencies in the basic data mean that SEB may not be able to monitor the business relationship correctly, since the purpose of monitoring a business relationship is to compare actual facts with known information about the customer. Considering the material shortcomings in the quality of SEB's basic data explained in clause 3.4.5 of this precept, Finantsinspektsioon is of the opinion that the obligation imposed in clause 1.3 of the precept resolution is the most lenient measure possible. It only obliges SEB to organise the data related to the customer's name forms and residencies, therefore not covering all customer-related data positions that SEB stores about customers in databases.

The third category of obligations imposed on SEB is related to the review of automated IT solutions for business relationship monitoring and appropriate changes. The obligation to monitor business relationships is the most important of the applicable due diligence measures since it allows for the identification of the customer's activities and circumstances that indicate or may indicate money laundering or terrorist financing. In this context, it is important to look at the size of SEB's customer base with approximately 600,000 customers (see clause 3.3 of this precept) in which SEB has, inter alia, decided on an automated solution for monitoring business relationships. The above set sets significantly higher requirements for an IT -solution based on automated and monitoring scenarios to identify situations where money laundering and terrorist financing are suspected. Any monitoring of a business relationship, and in this case because an automated solution must include ways (scenarios) in which to identify transactions and transaction patterns that do not have a reasonable or visible economic purpose or that are not characteristic of the given business specifics. This is also set out in clause 23 (2) 4) of the MLTFPA. Due to the general principle of business relationship monitoring (clause 23 (2) 1) of the MLTFPA), a credit institution must also be able to compare the customer's actual behaviour with the knowledge learned about the customer in implementation of the due diligence measures. At the same time, the solutions used to monitor the business relationship (in this case an IT solution) must take into account the risks inherent in the credit institution's activities and cover all products and services, unless the credit institution has chosen a solution other than an automated IT solution. In order to be able to react quickly to changes in the behaviour of criminals, as evidenced by international typologies, it is important that such scenarios are easy to change in content and, if necessary, can be supplemented by additional scenarios. If the obliged entity (SEB) does not monitor its customers' operations in the course of a business relationship and fails to implement any due diligence measures, does not do so to a sufficient extent or correctly, both money laundering and terrorist financing could take place. Compliance with this requirement mainly contributes to the transparency of the country's economy and to the prevention of money laundering and terrorist financing. Considering the material shortcomings in SEB's activities in monitoring business activities via an automated solution, explained in clause 3.5.4 of this precept, Finantsinspektsioon is of the opinion that the obligation imposed in clause 1.4 of the precept resolution is the most lenient measure possible. It simply obliges SEB to review its automated business relationship monitoring solution and change it according to the bank's size and the nature, scale and complexity of the activities and services, including risk appetite and risks associated with SEB's activities.

The shortcomings in the above three different categories cannot be overcome with a lesser solution than obliging SEB to change the rules of procedure in the respective part, to improve the quality of the basic data and to review and change the business relationship monitoring solutions. In essence, there is no less burdensome measure for SEB than to oblige it to take the measures required in the precept.

4.9.4. There is a need for a currently missing more lenient measure for also setting a deadline for eliminating the deficiencies and setting an obligation to report continuously on the steps taken, given that Finantsinspektsioon must also retain the possibility to monitor compliance with this provision (clauses 1 and 2 of the resolution). A credit institution dealing indefinitely with material shortcomings in prevention of money laundering and terrorist financing considerably increases its likelihood of being criminally misused. A six (6) month deadline for SEB to eliminate the shortcomings and an obligation to report on the steps taken is therefore necessary and protects the financial sector as described above. The deadline is long enough to provide SEB with sufficient time to address the shortcomings, since certain obligations set with the precept may take longer (e.g., reviewing and implementing the monitoring scenarios and implementing new ones if necessary). However, setting an even longer period

would not allow the objectives of the precept to be achieved and would, in the very long term, means that SEB would be without appropriate systems and therefore potentially exposed to the risk of money laundering and terrorist financing. In case of a longer term, it would also be necessary to restrict the provision of services by SEB in order to reduce the risk, but Finantsinspektsioon has currently opted out of this decision. Due to the above, the deadlines are also necessary and there is no less burdensome alternative for SEB.

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

4.10. Reasonableness of the precept measure

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

4.10.2. In general, in the present case, one of the rights being weighed is the right of SEB, its shareholders and directors to operate in the financial market (freedom to conduct business) and to do so at their own discretion, subject to legal obligations. The other side is the public's expectation and the right to financial stability and good risk management, as well as the expectation and right to a financial market that operates in a fair, lawful and transparent manner. In the latter case, the credit institution fulfils its public obligations under the MLTFPA, which prevents the use of the financial system and economic space of the Republic of Estonia for money laundering and terrorist financing through preventive measures. Thus, the restriction on the freedom to conduct business for one company must be assessed in the light of the objectives of this provision and the potential adverse consequences that SEB would suffer if its measures to prevent money laundering and terrorist financing would continue to be defective and would not effectively prevent money laundering and terrorist financing.

4.10.3. The three categories of measures set out in the precept and generally and briefly described in clause 4.8.2 (clauses 1.1–1.2, 1.3 and 1.4 of the resolution) are all inextricably linked and aimed at improving the application of SEB's due diligence measures – for implementing the know-your-customer principle in establishing an business relationship and for comparing the actual activities of the customer with the information known about them during business relationship monitoring.

The first category of measures (clauses 1.1.1, 1.1.2, 1.1.3, 1.2.1 and 1.2.2 of the resolution, the substance of which is set out briefly and generally in clause 4.8.2 of this precept) is related to the review of due diligence practices and amending the respective rules of procedure. The purpose of applying due diligence measures is to know the customer and identify suspicious and unusual transactions, and thus, given the size and scope of SEB's activities, it contributes to the prevention of money laundering and terrorist financing and ultimately to the transparency of the country's economy. In the latter case, inter alia, so that it is not used for money laundering and terrorist financing purposes. Thus, SEB's freedom to conduct business is infringed in order to ensure the stability, reliability and transparency of the financial sector and to increase the efficiency of the sector, reduce systemic risks and prevent the financial sector from being exploited for criminal purposes. In view of the above, the first category of measures is not disproportionately burdensome and does not disproportionately infringe SEB's rights in view of the purposes of the precept.

The second category of obligations imposed on SEB (clause 1.3 of the resolution, the substance of which is set out in briefly and generally in clause 4.8.2 of this precept) is related to improvement of data quality. Deficiencies in the basic data identified by Finantsinspektsioon mean that SEB is not able to monitor its customers' business relationships correctly. The purpose of monitoring a business relationship is to compare actual facts with the information known about the customer, which, however, was deficient due to the data quality at SEB. The second category of measures set by

Finantsinspektsioon only obliges SEB to organise the data related to the customer's name forms and residencies, therefore not covering all customer-related data positions that SEB stores about customers in databases. Since the main purpose of this precept is to ensure the reliability and transparency of the Estonian business environment and to prevent the use of the Estonian financial system and economic space for money laundering and terrorist financing, the second category of measures imposed by Finantsinspektsioon cannot be disproportionately burdensome or infringe SEB's rights disproportionally.

The third category of obligations imposed on SEB (clause 1.4 of the resolution, the substance of which is briefly and generally summarised in clause 4.8.2 of this precept) is related to the review and, to the extent appropriate, modification of automated IT solutions for business relationship monitoring. SEB has rightly built its business relationship monitoring largely on this IT solution, which, given the size of the bank's customer base, should be able to identify, inter alia, suspicious and unusual transactions and transaction patterns, cover services provided and comply with the operational risks, and its scenarios should be easily modifiable (see further explanation of clause 4.9.3 of this precept). This category of measures also mainly contributes to the transparency of the country's economy and to the prevention of money laundering and terrorist financing. Namely, monitoring of business relations is one of the most important ways to detect indications of money laundering and terrorist financing. Thus, SEB's freedom to conduct business is infringed with the aim of ensuring the stability, reliability and transparency of the financial sector and increasing the efficiency of the sector, reducing systemic risks and preventing the financial sector from being exploited for criminal purposes, which is why the third category measures set by Finantsinspektsioon cannot be disproportionately burdensome or infringe SEB's rights disproportionally.

Consequently, all the categories of measures referred to above are individually moderate in the light of the abovementioned considerations and do not disproportionately infringe SEB's freedom to conduct business.

4.10.4. Separately, Finantsinspektsioon assesses the reasonableness of the time limit for the elimination of identified shortcomings and the obligation to submit reports on the performance of the measures, considering that Finantsinspektsioon must also retain the possibility to verify compliance with this precept (clauses 1 and 2 of the resolution). Finantsinspektsioon gives SEB six (6) months to eliminate the shortcomings and violations identified, inform Finantsinspektsioon of the actions taken and to provide evidence thereof. The purpose of setting the deadline is, on the one hand, to enable SEB to bring its activities into line with the law and, on the other hand, to do so in a sufficiently motivating time frame to prevent a situation in which a service is provided while not complying with all the requirements of prevention of money laundering. However, Finantsinspektsioon cannot check whether the precept has been complied with to the extent required and within the time limit prescribed by the precept unless SEB submits reviews on compliance to Finantsinspektsioon. Six months is sufficient time to evaluate its activities and bring them into line with current standards, but this period does not unduly delay the fulfilment of its obligations. This deadline gives SEB sufficient time to bring itself and its operations into compliance with the law. SEB's non-compliance with the law and violations of the law cannot be tolerated in the long term. Thus, setting a six (6) month time limit contributes to achieving the objectives of the precept and allows all necessary actions to be taken. For the reasons set out above, both the time limit and the obligation to submit reports on compliance are moderate.

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

4.10.6. Violations related to money laundering and terrorist financing have a huge impact on the financial sector as a whole, whether it is the loss of correspondent relationships, the negative impact on stock

market prices of financial market participants and, inter alia, investors, money prices on capital markets, etc. Moreover, since credit institutions play an extremely important role and have responsibility in preventing money laundering and terrorist financing through the provision or mediation of services, the significant negative impact on the integrity of the financial sector of a single financial market participant cannot be underestimated when it provides services via systems and solutions for prevention of money laundering and terrorist financing that contain material weaknesses.

4.10.7. Financial market players, due to the influence and importance of the financial market, are subject to increased due diligence and specific requirements that all financial market participants, including SEB, must meet at all times. One must also take into account the size of SEB, the impact of its operations on the financial system, and the nature, extent and complexity of its operations, as well as threats to the stability, reliability and transparency of the financial sector, customer interests and investors. Section 3.3 of this precept describes the size of SEB's customer base and the risks and threats to it. It also explains why SEB as an obliged entity should be expected to provide high-quality solutions to prevent money laundering and terrorist financing and a high level of diligence in servicing its customer base.

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

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

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

5. DISCLOSURE OF THE DECISION

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

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

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

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

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

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

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

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

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

6. HEARING THE OPINION AND OBJECTIONS OF THE CREDIT INSTITUTION

6.1. According to subsection 40 (1) of the APA, SEB has a right to submit its opinion and objections on the precept. The draft precept was submitted to SEB with a 4 March 4, 2020 letter No. 4.7-1.1/3707-30 and 13 March 2020 letter No. 4.7-1.1/3707-33. In its 25 March 2020 letter No. SEBEE/20/CR547, SEB submitted its opinion and objections to Finantsinspektsioon's draft precept (hereinafter: comments).

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

6.2.1. General observation on the prevention of money laundering and SEB's systems and processes

6.2.1.1. SEB's position:

SEB does not agree that the existing anti-money laundering and anti-terrorism systems, rules of procedure and processes are non-compliant with the law, but acknowledges that risk targeting could be improved to be more accurate and effective. The costs of preventing money laundering must be proportionate and the risks of money laundering cannot be fully mitigated. The field of prevention of money laundering is constantly evolving and SEB has implemented systems, processes and activities for prevention of money laundering in accordance with the applicable standards at all times, at least to the extent necessary to meet the requirements of the law and mandatory legislation. Modern measures cannot be considered retroactively mandatory for transactions and operations that took place in the past. No wording of the MLTFPA provides for retroactive application, but regulates only the existing and future relationships.

Reply of Finantsinspektsioon:

In its on-site inspection report, Finantsinspektsioon has evaluated SEB's systems and controls for prevention of money laundering and terrorist financing and the actions of the Management Board as at 25 August 2019 and earlier. Finantsinspektsioon has assessed the compliance of SEB's activities with the applicable law and identified violations thereof. MLTFPA which was valid on 25 August 2019, entered into force on 27 November 2017, i.e., the legal situation and the state's expectations regarding the behaviour of the obliged entity were known to SEB for more than 1.5 years. Although the field of prevention of money laundering and terrorist financing has developed, the principles and substantive law of the MLTFPA valid before 27 November 2017 have not changed compared to the wording of the MLTFPA which entered into force on 27 November 2017. The MLTFPA which entered into force on 27 November 2017, specified the substance of obligations that obliged entities had to perform. This is also stated by the legislator in the respective explanatory memorandum.

All obligations set out in the MLTFPA that was in force until 26 November 2017 are covered by the obligations set out in the MLTFPA valid from 27 November 2017. Thus, clauses 3.4.2.3, 3.4.3.3, 3.4.4.3, 3.4.5.3, 3.5.2.3, 3.5.3.3 ja 3.5.4.3 of this precept refer to the obligations established in clauses 20 (1) 3), 4) and 6), subsection 20 (2), clauses 23 (2) 1), 3), 4), and subsections 47 (1) and (4) of the MLTFPA, the violation of which Finantsinspektsioon has hereby based upon in imposing obligations on SEB, are covered by the relevant provisions of the MLTFPA that was valid until 26 November 2017 as follows: clauses 13 (1) 3), 4) and 5), and subsections 26 (1) and (3). The Act entered into force on 28 January 2008.

Also, section 100 of the MLTFPA that entered into force on 27 November 2017, obliged the obliged entities, including SEB, to apply, if necessary, within one year from the entry into force of the MLTFPA, i.e., no later than by 27 November 2018, the due diligence measures specified in chapter 3 of the MLTFPA on its existing customers, inter alia, clauses 20 (1) 3), 4) and 6) and subsection (2) and subsection 23 (2). In assessing the need for applying due diligence measures, the obliged entity had to take into account, inter alia, the importance and risk profile of the customer and the time that has elapsed since the previous application of due diligence measures or the scope of their application. According to the on-site inspection report, SEB had not done so due to deficiencies in the application of due diligence measures on customers.

Therefore, SEB had to know and fulfil the obligations, the non-fulfilment of which has been detected by Finantsinspektsioon in this precept long before 27 November 2017. SEB also had to

review and apply risk-based due diligence measures based on the specifications that entered into force on 27 November 2017, and at least on the customers viewed in the on-site inspection report by 27 November 2018, at the latest.

6.2.1.2. SEB's position:

SEB finds it to be an unfounded generalisation that SEB does not have rules of procedure, processes and principles due to which the bank's activities do not comply with the legislation. It is also difficult for SEB to agree with the conclusion that its systems pose a threat to SEB's operations and the financial system as a whole in terms of money laundering risks and considers that the wording of the precept is disproportionate. SEB has described its anti-money laundering systems and processes.

Reply of Finantsinspektsioon:

Although Finantsinspektsioon finds that the tone of the precept corresponds to the identified deficiency and its scope, it has reviewed the wording of the precept before issuing the final decision. SEB has also identified and published on its own website[5] that out of the transactions made between 2007 and 2018, EUR 14.6 billion worth of transactions performed by non-residents (with a total value of EUR 66.6 billion) were of low transparency.

6.2.2. Detailed objections to the statements of Finantsinspektsioon:

6.2.2.1. SEB's position:

SEB does not agree with the infringement described in observation 3 of the on-site inspection report and refers to the comments on observation 3 submitted for the draft on-site inspection report.

SEB does not agree with the infringement described in observation 4 of the on-site inspection report and describes the procedures for establishment of customer relationships, gathering and verifying of customer data, and the rules governing them at SEB. SEB finds that the existence and substance of the submitted guidelines demonstrate, contrary to Finantsinspektsioon's criticism, that SEB does not have rules of procedure regarding data collected from customers (nature and purpose of the business relationship) and Finantsinspektsioon's claim regarding a lack of rules of procedure is incomprehensible to SEB.

SEB does not agree with the infringement described in observations 8–14 of the on-site inspection report and states that it has not violated subsection 47 (4) of the MLTFPA. SEB does not agree with Finantsinspektsioon's treatment of infringement of clause 20 (1) 6) and clauses 23 (2) 1), 3) and 4) of the MLTFPA, and the conclusion of Finantsinspektsioon based on possible violations of the MLTFPA identified pertaining to nine customers of SEB. In SEB's view, generalisations on a case-by-case basis are not an appropriate way to evaluate a system as a whole.

SEB points out that achieving an ideal situation, in which there would be no erroneous reliance on data provided by the customer, requires complete control that does not support the risk-based approach. In the light of the individual cases in the sample, it cannot be concluded that SEB has no rules of procedure in place. In the case of the specific customers in question, SEB is not aware of any money laundering committed via the activities of these customers.

Reply of Finantsinspektsioon:

[5] Press release from 26 November 2019 by SEB AB. Available at: https://sebgroup.com/press/press-releases/2019/seb-publishes-historical-transactional-data-for-the-baltics.

SEB has also submitted its explanations to observations 3 and 4 in its comments to various observations of the on-site inspection draft report, and Finantsinspektsioon has also addressed them in the on-site inspection report and explained why SEB's activities are deficient. These have been discussed in detail in observations 3 and 4 of the on-site inspection report and are available to SEB.

In its comments on the draft on-site inspection report, SEB did not substantially disagree with the deficiencies identified in observations 9 to 14. Although SEB raised some objections, it also used expressions in its observations on specific customers such as "additional attention could have been paid", "persons related to a specific customer should have been more closely monitored", "we agree that the analysis of customer relationships and networks needs to be improved / … / ", etc. Regarding the sequence of unusual transactions and related customers described below, SEB replied in the comments to the on-site inspection report that "In the case of this customer, the bank repeatedly asked for clarifications on the customer's transactions and requested documents to verify the origin of funds. [Company A's] customer relationship was also terminated at that time. The bank could have been more effective in establishing relationships and identifying suspicious transactions in future customer relationships. We agree that the analysis of customer relationships and networks needs to be improved /… /. In respect of [Company B] and all other companies related to the same beneficial owner ([individual X]), the Bank has decided to terminate the customer relationship due to the non-compliance of the beneficial owner with the bank's strategy." In observations 8–14 of the report, Finantsinspektsioon has also thoroughly explained the nature of the obligations arising from law and SEB's violations in this regard. These justifications are also available to SEB.

In the opinion of Finantsinspektsioon, the customer portfolio sampeled during the on-site inspection provides a representative picture of the situation. Due to the risk of publishing the supervisory strategy, Finantsinspektsioon cannot disclose on what basis the random sample of the customers was prepared. At the same time, Finantsinspektsioon identified shortcomings in SEB's operations in several cases, which provides important information on the fact that SEB's anti-money laundering systems did not function.

In light of SEB's comments, SEB's reference – as if it is only possible to violate the due diligence measures provided by law if the customer commits money laundering – is incomprehensible. Finantsinspektsioon supervises compliance with the requirements of the MLTFPA and the legislation established on the basis thereof, incl. verifies whether, inter alia, the organisation and risk management of credit institutions have such processes and systems that comply with their business strategy and risk appetite. Therefore, the identification or non-identification of the composition of money laundering by the competent authorities does not change the deficiencies in SEB's systems and controls identified within the competence of Finantsinspektsioon.

Finantsinspektsioon has not blamed SEB for complete lack of rules of procedure, but for their inadequacy. Finantsinspektsioon has also amended this precept in the respective part so that it would be clearly understandable. Finantsinspektsioon has justified the need for amending the rules of procedure in this precept, and SEB's position that there are only two alternatives to the application of due diligence measures – insufficient control or complete control – shows that SEB's rules of procedure need to be made more risk-sensitive and the change is necessary.

6.2.2.2. SEB's position:

SEB does not agree with the infringement described in observation 1 of the on-site inspection report and states that it has not violated subsection 47 (1) of the MLTFPA. SEB acknowledges that there may have been deficiencies in the substance and quality of the data collected, but this does not constitute a violation of the requirements of section 47 of the MLTFPA because subsection 47 (1) of the MLTFPA does not contain such a requirement. Finantsinspektsioon has not substantiated the nature of the claimed violation of section 47 of the MLTFPA or referred to any specific document or

data collected in the course of applying due diligence measures that the bank has failed to keep for five years.

SEB does not agree with the infringement described in observations 1 and 3 of the on-site inspection report and states that it has not violated subsection 47 (4) of the MLTFPA. SEB does not understand the substance of the obligation to respond to competent authority's inquiries exhaustively and immediately. In case of insufficient basic information, it is not automatically a violation of subsection 47 (4) of the MLTFPA, because the obliged entity is not able to forward the documents immediately without defects. The purpose of subsection 47 (4) of the MLTFPA is not to ensure that the data collected during the implementation of due diligence measures are exhaustively correct, i.e., to assess the customer's risk profile with 100% confidence, but to ensure smooth co-operation between the obligor and supervisory authorities and to ensure that SEB would submit all the data and supporting documents collected in the course of the implementation of due diligence measures to Finantsinspektsioon immediately and exhaustively - in other words, all information and supporting documents stored in SEB databases.

SEB itself has identified deficiencies in data quality and has been constantly working to improve it.

Reply of Finantsinspektsioon:

Finantsinspektsioon has established the violation of subsections 47 (1) and (4) of the MLTFPA and other relevant provisions in observations 1 and 3 of the on-site inspection report. Finantsinspektsioon has assessed the compliance of SEB's activities with the applicable law and described the deficiencies identified in the framework of the inspection and assessed them in the on-site inspection report. These justifications are available to SEB.

SEB misinterprets subsection 47 (1) of the MLTFPA and erroneously finds that the purpose of this provision is to establish only the duration of data retention. Subsection 47 (1) of the MLTFPA also provides which data must be stored within the specified term and determines that this includes the data collected in the course of the application of due diligence measures. In a situation where, for example, the obliged entity identifies the person's name upon customer identification, but then stores the data incorrectly, including with a different name or incorrect name form, i.e., with typing errors, it cannot be said that the obliged entity has fulfilled the data retention obligation. If to claim that the obliged entity may retain any data because such a requirement does not arise from the legislation, then the meaning of data retention would be lost. Therefore, the law stipulates what the obliged entity must collect in the course of due diligence measures (subsection 20 (1) of the MLTFPA), that the collected data must be stored for up to five years after the termination of the business relationship (subsection 47 (1) of the MLTFPA) and that the obliged entity must be prepared to submit the data to competent authorities immediately (subsection 47 (4) of the MLTFPA). SEB did not store the data correctly and was not able to provide it to the competent authorities due to deficiencies in the basic data.

SEB correctly points out that its own audit has consistently identified deficiencies in the underlying data and SEB has begun to address them. However, the audits have continued to identify the same weaknesses even after the deadlines for elimination of shortcomings have expired. This shows that SEB's attention has long been drawn to shortcomings in data quality – at least since 2016 – but SEB has not been able to ensure data quality for a long time. This confirms the need to oblige SEB to deal with it and to give it a compulsory deadline.

6.2.2.3. SEB's position:

SEB does not agree with the infringement described in observation 7 of the on-site inspection report. While acknowledging that, in essence, business relationship monitoring can be even more effective via media monitoring, the legislation today does not require media monitoring.

Reply of Finantsinspektsioon:

Regardless of the fact that SEB does not see itself as having any obligation to perform media monitoring in order to prevent money laundering, systematic media monitoring is a common practice in the field for monitoring and organising business relationships. In observation 7 of the on-site inspection report and in its responses to SEB's comments, Finantsinspektsioon has pointed out why the ad hoc media monitoring system carried out by SEB is not sufficient to achieve the objective and why it can be qualified as violating the respective legal provisions. Systematic media monitoring is an important prerequisite for monitoring risk-based business relationships since it provides SEB with important knowledge about its customers, which should be used as a basis for planning and performing monitoring activities.

6.2.2.4. SEB's position:

SEB does not agree with the infringement described in observation 5 of the on-site inspection report. The legislation is not based on the assumption that monitoring scenarios as a part of business relationship monitoring should be as complex as possible, contrary to Finantsinspektsioon's accusation in clause 3.5.4.3 of the draft precept; according to appropriate interpretation, these scenarios must be targeted to respective deviations and risks and function adequately and without failures.

Taking into account all the analyses related to money laundering and terrorist financing prevention and sanction risk mitigation performed by the bank in 2019 (i.e., the "AML contacts" registered in the system), the share of suspicion detection based on monitoring scenarios made up 28% of all detected suspicious operations. This means that 72% of the analysis of detection of unusual and suspicious activities has started thanks to other tools.

Reply of Finantsinspektsioon:

Finantsinspektsioon has assessed the compliance of SEB's activities with the applicable law and described the deficiencies identified in the framework of the inspection and assessed them in the on-site inspection report, including in observation 5. These justifications are available to SEB.

The fact that only 28% of suspicions are identified through monitoring scenarios while having such a large customer base is the clearest indication of the nature of the problems in SEB's business relationship monitoring system, which is addressed in clause 1.4 of the resolution of this precept.

Clause 1.2.7 of this precept refers to the on-site inspection report as a document available to SEB as the addressee of the precept, which contains the justifications for this precept. Observation 5 of the on-site inspection report and the response of Finantsinspektsioon to SEB's comment on observation 5 have already described the identified deficiencies. The term "high level" used by Finantsinspektsioon refers to the simplicity of the existing systems, which by their nature are structured in such a way that they monitor the individual transactions of SEB customers, but are unable to take into account more complex and patterns of transactions. When taking the risk assessment criterion into account, it is again necessary to assess whether, for example, purely volume-based notifications correspond to modern typologies in Estonia, etc. Due to its competence and its role as a supervisor, Finantsinspektsioon cannot dictate in detail to SEB as a market participant which systems to use because this is a business decision and by doing so Finantsinspektsioon would assume the role of SEB's managers outside its competence. Finantsinspektsioon can only describe the identified deficiencies and direct SEB towards achieving a lawful situation.

6.2.2.5. SEB's position:

SEB does not agree with Finantsinspektsioon's approach to the need for a deadline. According to SEB, the bank has no material or systemic deficiencies in the prevention of money laundering and terrorist financing. The length of the deadline is also insufficient in practice, given the current uncertainty both in the financial sector and in the society as a whole. Given the resulting uncertainty about the future, including the impact on SEB's operations, SEB's proposal is to consider a 3-month buffer to enable stabilisation of the situation, and to extend the deadline set in the draft precept to nine (9) months.

Reply of Finantsinspektsioon:

Finantsinspektsioon has substantiated the suitability, necessity and reasonableness of the deadline prescribed for compliance with the precept in clause 4 of this precept. Finantsinspektsioon maintains its reasoning and will not repeat it here. The 6-month deadline for elimination of deficiencies from the entry into force of this precept is also reasonable because SEB had the opportunity to examine the deficiencies already from the delivery of the draft on-site inspection report, i.e., from 27 November 2019, and to start eliminating them. SEB has also confirmed that it has already started to take the respective steps independently. This should further reduce the time needed to comply with the valid law.

6.2.2.6. SEB's position:

SEB does not agree with the publication of the precept in its entirety on the website of Finantsinspektsioon. Considering that pursuant to subsections 54 (1) and (2) of the FSAA, proceedings conducted by Finantsinspektsioon are not public and precepts prepared in the course of financial supervision are confidential, in concurrence with subsections 67 (3), (4) and (5) of the MLTFPA it should be interpreted in a way that a precept made by Finantsinspektsioon under the procedure established by the MLTFPA is, as a rule, confidential and shall not be disclosed (particularly in its entirety). This is particularly the case in which the decision concerns minor measures of little or no public interest – i.e., the disclosure would be disproportionate and impracticable given the circumstances of the specific infringement. In SEB's opinion, SEB's activities comply with the legal requirements and the publication of the decision is disproportionate. A detailed description of the operation of SEB's various anti-money laundering systems and procedures is also a business secret of SEB and their disclosure in a precept and the publication of its reasons may be detrimental to prevention of money laundering because this information also becomes public to the parties who may potentially misuse the financial system.

Reply of Finantsinspektsioon:

Finantsinspektsioon has assessed the substance and proportionality of the disclosure obligation in clause 5 of this precept and, keeping with the above, will not repeat it here. Finantsinspektsioon has also explained in this precept why SEB's activities do not comply with the law, contrary to SEB's own views, and why there are material deficiencies in SEB's activities. Also, Finantsinspektsioon has not provided a detailed description of the operation of SEB's systems and processes in this precept.

7. RESOLUTION

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

the Management Board of Finantsinspektsioon has decided to obligate AS SEB Pank (registry code 10004252, address Tornimäe 2, Tallinn 15010):

1. within six (6) months of the entry into force of this precept:

1.1. to amend the rules of procedures regarding the measures to be taken in order to establish a business relationship, and lay down more detailed procedures:

1.1.1. on how to understand the purpose and intended nature of a business relationship when establishing a business relationship, including the conditions to which extent and in which case AS SEB Pank gathers information on the customer's field of activity, payment practices, experience and business partners;

1.1.2. including with the responsible structural units, on who and how in AS SEB Pank will verify during customer onboarding on a risk-sensitive basis the data submitted by customers to fulfil due diligence obligation;

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

1.2. to amend the rules of procedures regarding the measures to be taken during a business relationship, and lay down more detailed procedures:

1.2.1. on the measures to be taken in the course of a business relationship to ensure that the transactions performed by customers are in accordance with AS SEB Pank's knowledge of the customer, its activities and risk profile, including conditions, in the extent and in the case of which AS SEB Pank gathers information on the underlying documentation of the specific transactions;

1.2.2. on media monitoring of money laundering and terrorist financing risks;

1.3. to organise the names and residences of customers in existing databases so that they are reproduced in all instances using the same spelling and under the same principles, and to take steps to ensure that all data subject to the retention obligation are retained in a manner that ensures that it is exhaustively and immediately available to the competent authorities;

1.4. to develop a system for business relationship monitoring which must, at the minimum, ensure the following:

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

1.4.2. specific risk factors and risk sensitivities are taken into account, such as those related to the customers and its partners, the services provided, geographic areas covered and delivery channels used, including money laundering and terrorist financing risk;

1.4.3. detection of deviations between the known information on the customer and their actual activities;

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

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

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

2. To submit:

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

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

    2.3. no later than within six (6) months after the entry into force of this precept, a final report on all measures taken, together with the reason why SEB AS considers that the precept resolution has been completed in all aspects.

3. To publish the decision in its entirety on the website of Finantsinspektsioon.

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

A copy of the decision will be delivered to AS SEB Pank or its authorised representative in accordance with the procedure prescribed by law.

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

Warning to AS SEB Pank on the imposition of a penalty payment

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

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

In imposing a penalty payment, increasing the stability, reliability and transparency of the financial sector and its operational effectiveness, reducing systemic risk and protecting the interests of customers and investors must be taken into account, as well as the increased public and customer interest in mitigating the risks of this situation as much as possible. In addition, it should be borne in mind that the aim is to contribute to the objectives of helping to prevent the misuse of the financial sector for criminal purposes. It must be taken into account in this context that the market share of SEB as at 31 December 2019 was 22.4% of deposits and 27.6% of loans (both market shares are calculated on a solo basis and excluding the foreign branches of all the credit institutions). This means that any violation of the prevention of money laundering and terrorist financing requirements by such a large credit institution has a considerable impact on the stability, reliability, and transparency of the entire financial sector. In view of this, it is important that the claim is motivated by appropriate and effective penalty payments. Therefore, the amount of the penalty payment cannot be less than

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

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

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

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

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

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

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

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

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

Kilvar Kessler
Chairman of the Management Board