



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 8 August 2003

**at the request of Sveriges Riksbank on a draft law amending the Sveriges Riksbank Act
(CON/2003/15)**

1. On 9 July 2003, the European Central Bank (ECB) received a request from the Sveriges Riksbank for an opinion on a draft proposal to amend the Sveriges Riksbank Act (*lag (1988:1385) om Sveriges riksbank*, as amended) (the 'legislative proposal').
2. The ECB's competence to deliver an opinion is based on the second indent of Article 105(4) of the Treaty and the third indent of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the ECB by national authorities regarding draft legislative provisions¹ as the draft legislative proposal relates to Sveriges Riksbank. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the ECB, the Governing Council of the ECB has adopted this opinion.
3. The legislative proposal concerns a proposal from Sveriges Riksbank to the Swedish Parliament (*Sveriges riksdag*) to enact certain amendments to the Sveriges Riksbank Act (*lagen (1988:1385) om Sveriges Riksbank*). One part of the proposal is to give the Riksbank the right to issue regulations and fines with regard to the Swedish payment system. The existing competence of Sveriges Riksbank related to the promotion of a safe and efficient payment system (Chapter 1, Article 2 of the Riksbank Act) primarily aims at reducing systemic risk. This is achieved through the Riksbank's oversight of payment systems in general and the provision of settlement facilities in its national RTGS system, RIX. The existing statutory rules provide a legal basis for the Riksbank to issue regulations concerning the reporting obligations of institutions with regard to information that the Riksbank considers necessary to oversee the stability of the payment system (Chapter 6, Article 9 of the Riksbank Act). The existing legal provisions do not, however, extend generally to the Riksbank's competence to promote a safe and efficient payment system. According to the Riksbank's explanations in the legislative proposal, possible future developments with regard to RIX, including the possibility of involving external parties in the running of parts of the system, will require changes in the manner in which participants in RIX and other parties are regulated. Moreover, in the area of securities settlement, there is already, according to the legislative proposal, a need for increased cooperation between Sveriges Riksbank's payment system, RIX, and

¹ OJ L 189, 3.7.1998, p. 42.

the Swedish system for the settlement of securities transactions, the Securities Register Centre (*Värdepapperscentralen, VPC*). In addition, the legislative proposal includes, as part of the promotion of a safe and efficient payment system, a reference to the Riksbank's current task of providing banknotes and coins within Sweden (for which Sveriges Riksbank has a monopoly under Chapter 9, Article 13 of the Constitution Act (*regeringsformen*)). Also in this latter respect, the Riksbank notes that the envisaged changes to the Swedish arrangements for the handling of banknotes and coins, whereby third parties (not wholly owned by the Riksbank) will manage certain operational tasks, entail new control and regulation requirements.

4. In view of these considerations, the Riksbank proposes that Chapter 1, Article 2, of the Riksbank Act incorporate a general right for the Riksbank to issue regulations concerning its task of promoting a safe and efficient payment system. It is also proposed that a new Article 2(a) be added to Chapter 11 of the Riksbank Act specifying that the Riksbank may when necessary order or prohibit actions by third parties, in order to ensure compliance with regulations issued under Chapter 1, Article 2, of the Riksbank Act. Under this proposed provision, the Riksbank may order parties to act to ensure compliance with a regulation issued to promote the safety and efficiency of the payment system or, conversely, prohibit a certain action in breach of such a regulation. In each case, the Riksbank may prescribe that non-compliance with such orders will be punishable through the payment of a fine.
5. Article 105(2) of the Treaty and Article 3.1 of the Statute of the European System of Central Banks and of the European Central Bank (the Statute of the ESCB) include as a basic central bank task the promotion of the smooth operation of payment systems. For the national central banks of the Member States that have adopted the euro, which together with the ECB constitute the Eurosystem, these Articles provide a legal basis for the oversight of payment systems. In addition, the competence of the Eurosystem for the oversight of payment systems results from Article 22 of the Statute of the ESCB, which includes a reference to the ECB's regulatory power. According to Article 22 of the Statute of the ESCB, 'the ECB and national central banks may provide facilities, and the ECB may make regulations, to ensure efficient and sound clearing and payment systems within the Community and with other countries.' Article 34 of the Statute of the ESCB refers to the ECB's power to make regulations and states that such '[a] regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.'² Within the Eurosystem, oversight activities are generally performed at the level of the national central banks, in line with the common oversight policy defined for the Eurosystem by the Governing Council of the ECB. The aim of the oversight of clearing and payment systems is the maintenance of systemic stability, the promotion of efficiency and the safeguarding of the transmission channel for monetary policy. In particular, payment arrangements are of crucial importance for the conduct of monetary policy in both a strategic and operational sense. This approach excludes interference from any Community or national body, other than a central bank acting within the framework of

² Article 34.2, first paragraph, of the ESCB Statute.

the Eurosystem or the European System of Central Banks (ESCB), in the Eurosystem's oversight competence.

6. According to Chapter 1, Article 2, of the Sveriges Riksbank Act, it is a basic task of Sveriges Riksbank to promote a safe and efficient payment system. As explained in the legislative proposal, the aim of Sveriges Riksbank in performing this task is to reduce systemic risk. In this respect, Article 2 of Chapter 1 of the Sveriges Riksbank Act provides the legal basis for the Riksbank's payment systems oversight function. The ECB welcomes and supports Sveriges Riksbank's aim of further formalising its oversight function and clarifying and enhancing its regulatory powers in this field. This is particularly important since the present formulation of the statutory basis for the Riksbank to issue such regulations appears to limit their scope to specific reporting obligations of institutions. From the ECB's perspective, granting Sveriges Riksbank such extended regulatory powers will also facilitate the regulation of participants' and other parties' activities in the Swedish TARGET component RIX. This might prove particularly useful, and in some situations necessary, irrespective of Sweden's adoption of the euro and Sveriges Riksbank's integration into the Eurosystem, if in the future RIX were, for example, to involve external third parties in the running of parts of the system. The ECB understands that the Riksbank's payment systems oversight function also covers securities clearing and settlement systems. However, for the sake of clarity, it would be advisable to make an explicit reference in the Sveriges Riksbank Act to the Riksbank's securities clearing and settlement systems oversight function.
7. The proposed amendments will thus make it possible for Sveriges Riksbank to carry out one of its main tasks in a more effective manner. They will also bring the Sveriges Riksbank Act further in line with the Statute of the ESCB, in particular with the above-mentioned Article 22 of the Statute, which will facilitate Sveriges Riksbank's adherence to the Eurosystem oversight regime in the future. In this connection, one could mention that the ECB has so far not issued a regulation on the conduct of oversight under Article 22 of the Statute of the ESCB. The majority of national central banks carry out this function on the basis of their own statutes and/or organic laws without any additional explicit and detailed statutory provisions. The ECB would also point out the need to consider the consistency of any future regulation that Sveriges Riksbank may adopt under Chapter 1, Article 2, of the amended Sveriges Riksbank Act with the Eurosystem oversight policy. For central banks of Member States that have adopted the euro, such consistency is an important requirement.
8. When it comes to the handling of banknotes and coins, the legislative proposal indicates that Sveriges Riksbank intends to transfer the distribution and storage of cash recorded on the Riksbank's balance sheet to third parties in the private cash distribution sector, in order to improve the efficiency of cash handling. This implies giving greater responsibility to third parties for the tasks traditionally carried out by the Riksbank and their subsidiaries. In this respect, new regulatory needs arise as the Riksbank has to be able to influence the cash handling procedures and security standards. Moreover, conditions have to be laid down in order to exercise supervision of the third

parties that may be involved in the cash handling. From the ECB's point of view, the right to issue regulations and to stipulate penalties for non-compliance will enhance the power of the Riksbank to regulate and control third parties in view of their possible involvement in cash handling as a part of the ongoing structural change in this field. Against the above background related to the promotion of the smooth operation of the Swedish payment system, and taking into account Article 16 of the Statute of the ESCB, the ECB has no objections to the proposed amendments with regard to the handling of banknotes and coins.

9. Another aspect of the legislative proposal relates to Sveriges Riksbank's management of the Swedish gold and currency reserve. According to the existing provisions of the first paragraph of Article 7 of Chapter 7 of the Sveriges Riksbank Act, the 'Riksbank may, with or without interest compensation, receive deposits of currencies or gold from other sovereign states, intergovernmental bodies and Swedish and foreign banks.' The same provision also states that the 'Riksbank may make such deposits with Swedish and foreign banks.' The legislative proposal includes a suggestion to amend this provision in order to somewhat extend the range of possible counterparties for such deposits, without negatively affecting the high level of requirements regarding soundness and credit worthiness. In addition to the legal technical change with regard to the terminology for referring to foreign banks, the proposed changes would entail the addition of explicit references to the International Bank of Reconstruction and Development (IBRD), the Bank for International Settlements (BIS) and other central banks.
10. These suggestions for amendments of the legal provisions concerning the Riksbank's deposits in the form of currencies or gold are partly intended to represent a terminological adjustment without any substantive change compared to the current practice of Sveriges Riksbank and, in this respect, the ECB has no objections. To the extent that the legislative proposal entails an extension of the range of possible counterparties for deposits, such as for the IBRD, the ECB would agree with the proposal to add explicit references to the Riksbank Act clarifying who the Riksbank's potential counterparties are. As a general observation, the ECB notes and appreciates that the Riksbank applies, and will continue to apply, very high standards with regard to the soundness and credit worthiness of parties that are accepted as counterparties for its gold and currency deposits in any specific case.

11. The ECB confirms that it has no objection to the competent national authorities making this opinion publicly available at their discretion. This opinion will be published on the ECB's website six months after the date of its adoption.

Done at Frankfurt am Main on 8 August 2003.

Member of the Executive Board of the ECB

Member of the Executive Board of the ECB

[signed]

[signed]

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