



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

at the request of the Swedish Ministry of Finance under Article 109f (6) of the Treaty establishing the European Community (the “Treaty”) and Article 5.3 of the Statute of the EMI on a draft legislative proposal regarding the registration of financial instruments, replacing the Share Account Act (1998:987)

CON/98/26

1. The EMI has received a request from the Swedish Ministry of Finance dated 20 April 1998 for an opinion on a Government proposal as regards a legislative reform concerning the Swedish book entry system for dematerialised financial instruments (“Lagrådsremiss - Lag om kontoföring av finansiella instrument”) (the “legislative proposal”). The scope of the legislative proposal generally corresponds to the provisions of the present Share Account Act (“aktiekontolagen (1989:827); the “Share Account Act”).
2. In accordance with Article 109l (2) of the Treaty, the ECB has taken over the advisory functions of the EMI which has gone into liquidation upon the establishment of the ECB on 1 June 1998. The ECB’s competence to deliver an opinion is based on Article 1.1, fourth and fifth indents, of the Council Decision (93/717/EC) of 22 November 1993 on the consultation of the EMI by the authorities of the Member States on draft legislative provisions, as the legislative proposal contains provisions concerning the settlement of securities transactions where financial institutions participate and rules applicable thereto which may influence the stability of financial institutions and markets.
3. As part of the legislative proposal, the Swedish Government has submitted a proposed draft Act on Registration of Financial Instruments (the “New Act”), which is suggested to replace the present Share Account Act. In line with the Share Account Act, the New Act is based on a dematerialised system for registration of securities, although the New Act also provides a possibility for registration of foreign paper-based financial instruments. The objective is to keep the New Act generally applicable to cover registration of all types of financial instruments.

4. The ECB will not comment on all technical and organisational aspects of the legislative proposal, but it is noted that the monopoly for Värdepapperscentralen VPC AB (“VPC”) to register securities with legal effect will be abolished. Instead, companies that comply with the general conditions provided by the New Act can be authorised as central securities depositaries (“CSDs”). The New Act will also provide for a regime for cooperation and create a legal framework for the implementation of links between VPC or other Swedish CSDs and their correspondents in other countries. In addition, the ECB notes that other national central banks than Sveriges Riksbank, including the ECB, would be able to participate directly, without an intermediary, in the activities of VPC and other Swedish CSDs. Accordingly, the New Act will enable central banks of other countries to directly register ownership of financial instruments and collateral security arrangements in respect of such financial instruments, including pledges and liens. As a general principle and a precondition for such registrations, however, the CSD concerned will need to appoint the national central bank in question as a share account institution, which is an entity entitled by a CSD to effectuate registration measures in the securities register (“Share Account Institution”) (whereby the arrangement with Share Account Institutions can be compared to membership requirements in other securities settlement systems).
5. The ECB generally welcomes the legislative proposal and has no objections to the introduction of the new regime whereby the legal monopoly of VPC ceases in favour of a new system allowing authorised CSDs to keep registers of financial instruments, provided the requirements for authorisation of CSDs are adequate and, in this connection, the ECB notes the functions of the Swedish Financial Supervisory Authority (Chapter 2 of the New Act).
6. In comparison with the regulation of the Share Account Act, the ECB notes the more flexible regime of the New Act in relation to securities registration, which provides a greater scope for decentralised arrangements. To the extent that such an approach may promote developments towards increased efficiency and safety, and is subject to appropriate authorisation measures, the ECB would generally welcome the reform, including the option provided for CSDs in respect of the use of Share Account Institutions as well as the possibility for Sveriges Riksbank, and other national central banks, to act as Share Account Institutions where such are used.
7. The ECB also notes and approves of the widening of the scope of the New Act whereby the registration of foreign paper-based financial instruments will be allowed. Such a possibility may prove useful in relation to inter alia a future Swedish participation in EMU considering the ESCB’s envisaged requirements for the use of collateral and the possible issue of ESCB debt certificates for monetary policy purposes.

8. The ECB finds the rules of the New Act concerning the legal effect of registration to be generally clear and notes the principle whereby registration is the relevant act for a transfer of ownership of securities to become effective vis-a-vis third parties (Chapter 6 of the New Act; compare also the recently adopted EC Directive of the European Parliament and of the Council on Settlement Finality in Payment and Securities Settlement Systems and, in particular, Article 9.2 of the Directive). In this connection, the ECB also notes the legal provisions related to securities transactions involving insolvent parties contained in Section 4 of Chapter 6 of the New Act and understands these provisions to provide protection for a bona fide acquirer of securities from the point in time of registration.
9. Finally, the ECB appreciates that the legislative proposal will facilitate the creation of links between CSDs in different countries, which is an important aspect of the desired future infrastructure in relation to the cross-border use of securities.
10. The ECB has no objection to this opinion being made public.

10 June 1998