

## **OPINION OF THE EUROPEAN MONETARY INSTITUTE**

on a consultation from 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 as elaborated in the Council Decision of 22nd November 1993 (93/717/EC) on a draft proposal for the amendment of legislation concerning clearing and settlement operations.

### **CON/95/18**

1. The present consultation was initiated on 28th November 1995 by the Swedish Ministry of Finance which requested an opinion by the end of January 1996.
2. The EMI's competence to deliver an opinion is based on Article 1, section 1, fourth and fifth indents, of the Council Decision of 22nd November 1993 (93/717/EC) as the draft legislation concerns clearing and settlement operations, particularly in the field of payments and securities, and includes provisions aiming to enhance the stability of financial institutions and markets.
3. At present, statutory provisions on clearing operations in Sweden, as laid down in the Act governing Securities Exchanges and Clearing Operations, apply only to the clearing of options and futures. The above draft legislation aims at an extension of these provisions to other clearing operations and, in particular, at the introduction of compulsory authorisation for clearing operations involving equity, bonds, other financial instruments and payments including payments in foreign currencies. Such authorisation must be obtained from the Swedish Financial Supervisory Authority which, inter alia, assess the soundness of clearing and settlement systems, their capitalisation, the level of safety standards and the existence of risk management plans. The draft legislation also includes provisions on participation in clearing and settlement systems, the liability of its operators and adaptations of Swedish legislation as a result of the Investment Services Directive. The draft legislation is based on principles of free access, equal treatment and uniform application to operations of a similar kind, whilst it takes account of recent developments in the financial markets in areas such as netting.
4. The EMI welcomes the draft legislation as it enhances the soundness of clearing and settlement systems in Sweden and thus the stability of financial markets and institutions. The EMI supports in particular the attention which is paid in the draft legislation to matters such as compulsory authorisation by a public authority for the operation of and participation in clearing and settlement

systems, safety standards, a clear division of responsibilities and liabilities,

netting, uniform application of statutory provisions to clearing operations of a similar kind and principles of free access and equal treatment. The EMI, having reviewed the draft legislation itself, was not, however, in the position within the limited time available to assess the impact thereof on the various laws which the draft legislation aims to amend.

5. The EMI agrees that this opinion may be made public by the competent Swedish authorities at their discretion.

30th January 1996