



EUROPEAN MONETARY INSTITUTE

OPINION OF THE EUROPEAN MONETARY INSTITUTE

on a Consultation received from the Swedish Ministry of Finance under Article 109f(6) of the Treaty establishing the European Community and Article 5.3 of the Statute of the EMI on a Bill for new Swedish legislation concerning collateral when dealing in financial instruments and currencies (“Regeringens proposition 1996/97:42, Tilläggsäkerheter vid handel med finansiella instrument och valuta”).

CON/96/15

1. The present consultation was initiated by a letter from the Swedish Ministry of Finance dated 22 October 1996, enclosing a Government Bill for new Swedish legislation concerning collateral provided in relation to dealings in financial instruments and currencies (“Regeringens proposition 1996/97:42, Tilläggsäkerheter vid handel med finansiella instrument och valuta”) (“the Bill”). The Bill includes a comprehensive explanatory description of the proposed legislative amendments and appendices containing inter alia a compilation of views expressed by consulted parties. The Bill was presented by the Swedish Government to the Parliament on 10 October 1996.
2. The main content of the Bill is that it will not be possible under normal circumstances to set aside (“återvinna”) in accordance with Section 12, Chapter 4, of the Swedish Bankruptcy Act (“konkurslagen”) additional security (“tilläggsäkerhet”) which has been provided in connection with trading of financial instruments or currencies.
3. The EMI is competent to deliver an opinion on this consultation on the basis of Article 109f(6) of the Treaty, Article 5.3 of the EMI Statute and Article 1.1, fourth and fifth indents, of Council Decision 93/717/EC of 22 November 1993 since the Bill contains draft legislative provisions applicable to additional security provided for cross-border transactions during trading in financial instruments or currencies, including security provided through participation in clearing operations organised by a central bank or by a Swedish or foreign clearing organisation.

4. The Bill states that, if additional security is provided in relation to trading in financial instruments or currencies effected through participation in clearing operations organised by a central bank or by a Swedish or foreign clearing organisation, the security shall be protected from being set aside under Section 12, Chapter 4, of the Bankruptcy Act (“konkurslagen”), provided that the security has been given in accordance with the agreed rules for the clearing operations. The same shall apply if such additional security is provided directly between two parties in accordance with contractual conditions normally applicable to trade in financial instruments or currencies, provided the security has been given in accordance with the agreement. However, additional security may be set aside if it has not been provided without delay relative to a shortfall arising in the relevant security arrangement or if the security has been provided under circumstances whereby the measure cannot be considered to be ordinary. The Swedish Government proposes that provisions therefore are introduced in a new Section 2 of Chapter 5 of the Financial Instruments Trading Act (“lagen om handel med finansiella instrument” (1991:980) as reprinted).
5. The EMI notes the discussion in the Bill as to the appropriate manner in which the legislative amendment is to be effectuated. The EMI also notes the comments concerning the scope of the new legal provisions, whereby the suggested legislative amendment as presently drafted would cover and protect additional security provided not only when trading is taking place under the auspices of clearing organisations, but also as regards security provided in respect of OTC trading.
6. The EMI agrees that financial markets play an important role in the economy and welcomes legislative amendments which may enhance legal certainty which, in turn, contributes to the stability of financial institutions and markets. On the basis of the Bill, the EMI considers that the proposed new Section 2 of Chapter 5 of the Financial Instruments Trading Act would provide greater certainty in respect of collateral and security arrangements in the context of trading with financial instruments and currencies within, inter alia, clearing systems and, therefore, welcomes the proposed legal amendments.
7. The EMI has no objection to this opinion being made public.

20 November 1996