EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 4 December 2002

at the request of Sveriges Riksbank
on a draft proposal for a regulation on the obligation to report information to Sveriges Riksbank for its balance-of-payments statistics

(CON/2002/29)

1. On 5 November 2002, the European Central Bank (ECB) received a request from Sveriges Riksbank for an opinion on a draft proposal for a regulation entitled 'The Riksbank's regulation on the obligation to report information to the Riksbank for its balance-of-payments statistics (RBFS 2002:4)' (the 'draft regulation'). The ECB has also received a memorandum prepared by Sveriges Riksbank explaining the background to the proposal (the 'explanatory memorandum').

2. The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the third and fourth indents of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions[1] as the draft legislative proposal relates to Sveriges Riksbank and the collection of balance-of-payments statistics. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council of the ECB has adopted this opinion.

3. The draft regulation refers to a new survey-based system for the collection of data for balance-of-payments statistics that Sveriges Riksbank has decided to implement. The proposed new system is intended to replace the so-called BOK system for the reporting of individual foreign payments via Swedish banks for balance-of-payments purposes. The introduction of the new system is scheduled to take place on 1 January 2003. Since the consultation concerns an 'implementing' regulation to be issued by the Riksbank under the Sveriges Riksbank Act (1988:1385), the draft regulation should be read against the background of that Act. There has recently been a proposal to amend the Sveriges Riksbank Act to change the data collection system and to clarify the reporting requirements for balance-of-payments statistics and a reference is made to the ECB opinion in that matter (CON/2002/21).

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1 OJ L189, 3.7.1998, p. 42.

4. Under the present rules, the Riksbank collects the information needed for its balance-of-payments statistics on the basis of Chapter 6, Article 9 of the Sveriges Riksbank Act and the Riksbank's regulation on the obligation to report information to the Riksbank for its balance-of-payments statistics (1997:4). It is proposed in the explanatory memorandum that, for practical reasons, the existing regulation should be replaced by the proposed draft regulation (2002:4) in order to introduce the new survey-based system for collecting data, instead of making amendments to the existing regulation. Chapter 6, Article 9 of the Sveriges Riksbank Act will continue to apply, as amended.

5. The draft regulation is rather general in its formulations and it is suggested that some additional more specific rules might be useful. For instance, the draft regulation could contain provisions with more detailed practical specifications concerning the reporting framework, e.g. possible thresholds/sampling, accurate definitions of transactions/positions to be reported, detailed classifications, which information is to be provided at what frequency; and it could be specified where to find the reporting forms referred to in Article 13. The ECB is conscious that more detailed provisions may make the draft regulation less flexible and, as an alternative, such further rules could possibly be set out elsewhere and be referred to in Article 13 or in a new Article 14 of the draft regulation.

6. Moreover, compliance with internationally agreed standards for balance-of-payments statistics and international investment positions statistics could be further considered (see the IMF Balance of Payments Manual, fifth edition, (BPM5)). Although the ECB recognises that this topic can be addressed outside the draft regulation, some additional specifications in the draft regulation may nevertheless be useful in order to avoid inconsistencies. For instance, in Article 1 of the draft regulation, a 'foreign counterparty' is defined as '[a] legal person, physical person, authority, branch or international organisation with a foreign address'. This is not, however, completely consistent with the BPM5's residency criteria (e.g. the German Embassy in Stockholm does not have a foreign address but is nonetheless a 'foreign counterparty'; conversely, the Swedish Embassy in Berlin, although it has a foreign address, is not a 'foreign counterparty').

7. The draft regulation states that information for balance-of-payments statistics purposes needs to be reported on request. The recurring use of the locution 'on request' may however need a clarification. Depending on the data collection method, it appears that the reporting obligation for the economic agents involved may be ongoing rather than 'on request'. Furthermore, it is stated in the explanatory memorandum that it must be clear from the draft regulation that the reporting obligations only apply on the request of the Riksbank. However, it is not expressly stated in the draft regulation that the requests triggering an obligation to report will be made by the Riksbank. Rather, it is silent on who is to make such requests. The ECB believes that this point should be clarified.

8. The explanatory memorandum also states that rules must be laid down in the form of a regulation in order to enable the Riksbank to impose fines on institutions failing to fulfil their reporting

obligations. Sanctions in the form of fines should be available for the Riksbank in cases of wilful misreporting or failure to report. As such fines are provided for in Chapter 6, Article 9 of the Riksbank Act the ECB assumes that, in order to ensure their applicability with regard to the draft regulation, they do not need to be referred to also in the text of the draft regulation itself.

9. In addition, the ECB would like to make the following drafting comments. Firstly, the ECB notes that contrary to the proposed changes to the second paragraph of Chapter 6, Article 9 of the Sveriges Riksbank Act, there has been no addition of a reference to the international investment position statistics in the title of the draft regulation. Instead, these statistics are mentioned in Article 2 of the draft regulation. The ECB suggests that the fact that they come within the scope of the draft regulation could be made more explicit through a change of its title. Secondly, the ECB assumes that 'Swedish holdings' and 'foreign holdings' in Article 8 of the draft regulation refer to the residence of the holder, but would welcome clarification on this point. Finally, the ECB suggests that the meaning of the terms 'Swedish financial instruments' and 'held in custody abroad' in Article 9 could be clarified.

10. 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 4 December 2002.

The President of the ECB

[signed]

Willem F. DUISENBERG