EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 2 September 2002

at the request of the Swedish Ministry of Finance
on a draft legislative proposal establishing the National Audit, including proposed amendments to the Sveriges Riksbank Act (1988:1385)

(CON/2002/22)

1. On 4 July 2002, the European Central Bank (ECB) received a request from the Swedish Ministry of Finance for an opinion on a legislative proposal concerning the establishment of a national audit authority, the National Audit (*Riksrevisionen*), including proposed amendments to the Sveriges Riksbank Act (1988:1385) (the "legislative proposal").

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 indent 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 legislative proposal contains provisions concerning Sveriges Riksbank. 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 legislative proposal intends to replace the existing Parliamentary auditors with a single audit body under the Swedish Parliament (*riksdagen*), the National Audit, through the adoption of a proposed Act on the audit of State activities etc. (*förslag till lag om revision av statlig verksamhet m.m.)* (the "proposed Audit Act") and other legislative changes, including certain amendments to the Sveriges Riksbank Act (*förslag till lag om ändring i lagen (1988:1385) om Sveriges riksbank)*. The proposed Audit Act and the other legislative amendments are scheduled to enter into force on 1 July 2003.

4. The National Audit is intended to assume responsibility for the state's financial and performance auditing previously performed by the Office of the Parliamentary Auditors (*Riksdagens revisorer*)[2]. The tasks of the National Audit will comprise *inter alia* the annual

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1 OJ L 189, 3.7.1998, p. 42.

2 Through the repeal of the Act on the audit of the Parliament's administration and authorities (*förslag till lag om upphävande av lagen (1988:46) om revision av riksdagens förvaltning och riksdagens myndigheter m.m.*).

financial audits of the annual reports of Sveriges Riksbank[3]. This opinion only addresses the proposed audit arrangements for the Riksbank and does not extend to other general aspects of the legislative proposal.

5. The statement of reasons in the legislative proposal concerning the audit of Sveriges Riksbank considers the role of the National Audit in relation to Sveriges Riksbank[4]. A reference is made in this connection to Article 27 of the Statute of the European System of Central Banks and of the European Central Bank with regard to the auditing of the ECB and the national central banks (NCBs). Article 43.1 of the ESCB Statute clarifies that Article 27 does not apply to Member States with a derogation and, hence it does not apply yet to Sweden. This will, however, change once Sweden adopts the euro and Sveriges Riksbank becomes a fully integrated part of the Eurosystem, and it may therefore be useful to note the application of Article 27 to the current members of the Eurosystem.

6. One explicit change pursuant to Article 27 of the ESCB Statute once Sweden adopts the euro will be the manner in which external auditors are appointed for Sveriges Riksbank. The Governing Council of the ECB will recommend, for approval by the EU Council, the independent external auditors that will audit Sveriges Riksbank. Article 27 of the Statute of the ESCB does not contain detailed specifications with respect to the auditors that can be appointed to perform this function, but it requires such auditors to be independent and external. The practice established for the current members of the Eurosystem provides further guidance in this regard. In particular, the concepts of independence and externality require that the auditors be independent from and external to the ECB, the NCBs and the NCBs' respective shareholders. The existing independent external auditors appointed for the audit of national central banks under Article 27 are engaged on the basis of private contracts with the central bank concerned. Their opinions concern the true and fair presentation of the financial situation. Whilst the Swedish National Audit will be a public independent authority under the Parliament, charged with the review of the Annual Report of Sveriges Riksbank, the current external auditors of the participating NCBs and of the ECB appointed under Article 27 are private auditors or firms of auditors with a specific independent audit mandate given for a certain period of time as specified in the contracts. The legislative proposal clarifies that the National Audit is to be managed by three auditors appointed by the Swedish Parliament, who can each decide individually on audit plans and on the content and conclusions of reports on both financial and performance audits. It is not clear, however, whether the members of the National Audit will be required to be authorised, registered and certified as chartered or public accountants. Such

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3 Article 3 of the proposed Audit Act. According to Chapter 10, Article 3 of the current Sveriges Riksbank Act, the Riksbank's Annual Report consists of a profit and loss account, a balance sheet, an administration report and an account of foreign exchange and monetary policies and on how the Riksbank has promoted a safe and efficient payment system. Article 5 of the proposed Audit Act defines the focus and direction of the audit by the National Audit, with Article 5, third paragraph referring specifically to the audit report for the Riksbank.

4 Section 5.4.2 at pp. 69 - 71 of the legislative proposal.

qualifications have hitherto been a prerequisite for auditors proposed by the ECB to the Council under Article 27 of the ESCB Statute. In accordance with the application of Article 27 of the ESCB Statute with regard to the current members of the Eurosystem[5], another party than the Swedish National Audit would need to be appointed under Article 27 as external auditor for Sveriges Riksbank in the future. However, this would not exclude the National Audit from continuing to perform a control function on behalf of the Swedish Parliament, provided that the Riksbank's independence is not jeopardised. Indeed, similar public bodies exist in other Member States that have adopted the euro. In this context, it is noted that the ECB and several NCBs of the Eurosystem are subject to such additional 'external audits' outside the scope of Article 27 of the ESCB Statute. In the case of the ECB, this is performed by the European Court of Auditors, whereby the audit is specifically limited to the operational efficiency of the management of the ECB[6].

7. Section 5.8 of the legislative proposal addresses internal audit, including the internal audit of Sveriges Riksbank by its internal Audit Unit managed by the Riksbank's General Council. It proposes introducing a new Article 2a into Chapter 9 of the Sveriges Riksbank Act. According to this proposal, the activity of the internal Audit Unit will involve an independent audit of the Riksbank's internal management and controls and the fulfilment of financial reporting duties by the Riksbank[7]. The audit is to be conducted in accordance with generally accepted internal auditing standards. The second paragraph of the proposed new Article 2a provides that the Riksbank will decide on an audit plan for its operations after consulting the National Audit.

8. The current organisation of the internal audit function of Sveriges Riksbank is explained in the legislative proposal[8]. Two audit units currently perform the internal audit of the Riksbank. One audit unit performs a supervisory role over the Riksbank's Executive Board[9] on behalf of the Riksbank's General Council, mainly in the form of compliance checks. Furthermore, this unit also deals with certain other issues under the competence of the General Council, such as the discharge of duties by Executive Board members and proposals for distribution of profits. The other audit unit reports to the Riksbank's Executive Board and ascertains whether the Executive Board's decisions are being implemented effectively and efficiently. This latter audit unit also scrutinises those parts of the Riksbank's operations covered by the prohibition against

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5 Compare in particular the case of the Irish Comptroller and Auditor General. The Irish Comptroller and Auditor General was nominated for recommendation as external auditor for the Central Bank of Ireland before the start of Stage Three of EMU, but rejected as not being an independent external auditor within the meaning of Article 27 of the ESCB Statute.

6 Article 248 of the Treaty and Article 27.2 of the ESCB Statute.

7 It may incidentally be noted that the IIA standards determine the nature of internal audit work as follows: "The internal audit activity evaluates and contributes to the improvement of risk management, control and governance systems" (IIA standard 2100).

8 At pages 101 – 102.

9 The independent decision-making body of the Riksbank responsible for monetary policy, other ESCB-related matters and all other matters not to be decided by the Riksbank's General Council.

instructions on issues relating to monetary policy[10]. Moreover, the Executive Board's audit unit handles the audits related to the ESCB's audit plan as prepared by the ESCB's Internal Auditors Committee (IAC)[11].

9. In view of this organisational structure of the Riksbank's internal audit function, an important distinction is made under the present regime between the audit plan for the audit unit of the General Council of the Riksbank, on the one hand, and the audit plan for the audit unit of the Executive Board, on the other hand. The General Council approves the audit plan for the General Council's audit unit after consulting the Parliamentary Auditors. The audit plan for the Executive Board's internal auditing unit, which is determined to some extent by the IAC's audit plan, is instead approved by the Executive Board without consultation with the Parliamentary Auditors. In order to ensure the Riksbank's independence, this distinction needs to be maintained and, in case the proposed Article 2a is adopted, this should be made clear. In view of the apparent general application of the proposed Article 2a, such clarifications would seem necessary with regard to the division of responsibilities and tasks between the two existing audit units. It should also be clarified that the consultation process with the National Audit concerning audit plans would not apply to the audit unit of the Executive Board considering that this unit participates in audits undertaken at the level of the ESCB and under instruction from the ECB's Governing Council. Moreover, the amendments to the Riksbank Act should be general in nature and the Riksbank should be allowed to continue to define further details in its own internal working order.

10. In view of the current late stage in the legislative procedure, the ECB notes and appreciates that the Swedish Government will forward this opinion to the Parliament. The ECB has no objection to the competent national authorities making this opinion publicly available at their discretion.

Done at Frankfurt am Main on 2 September 2002.

The President of the ECB

[signed]

Willem F. DUISENBERG

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10 Compare Chapter 9, Article 12 of the Constitution Act (*regeringsformen*).

11 The IAC consists of audit representatives of each central bank of the ESCB and is established under the Governing Council of the ECB to perform audits of systems common to the ESCB/Eurosystem.