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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 9 October 2008

at the request of Sveriges Riksbank
on a draft Regulation on the redemption of banknotes and coins

(CON/2008/47)

Introduction and legal basis

On 21 August 2008 the European Central Bank (ECB) received a request from Sveriges Riksbank for an opinion on a draft Sveriges Riksbank Regulation on the redemption of banknotes and coins (hereinafter the 'draft regulation').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the second and third 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 law relates to means of payment and 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 has adopted this opinion.

1. Purpose of the draft regulation

The draft regulation will replace Sveriges Riksbank Regulation No RBFS 1993:5[2] which governs the redemption of, or compensation for, banknotes that have been damaged, mutilated or ceased to be legal tender, as well as the redemption of banknotes and coins that have been deliberately altered.

2. General observations

While Sweden is a Member State with a derogation within the meaning of Article 122 of the Treaty and the ECB requirements regarding the organisation of national cash cycles in Member States that have adopted the euro currently do not apply to Sveriges Riksbank, these requirements will apply to Sveriges Riksbank once Sweden adopts the euro and Sveriges Riksbank becomes a fully integrated member of the Eurosystem. As a general comment, the provisions of the draft regulation on redemption of banknotes and

1 OJ L 189, 3.7.1998, p. 42.

2 *Riksbankens tillkännagivande om tillämpade regler vid inlösen av skadade sedlar m.m.*, 21 October 1993, Riksbankens författningssamling.

coins differ to some extent from Eurosystem practices. Before Sweden adopts the euro[3], these provisions will have to be aligned with Eurosystem standards and, in particular, with Decision ECB/2003/4 of 20 March 2003 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes[4].

Under Article 106 of the Treaty, the ECB has the exclusive right to authorise the issue of banknotes within the Community, whereas coins are issued by Member States subject to the ECB's approval of the volume. Consequently, the Eurosystem's regulatory competence concerns only banknotes. In addition, in view of the accession of national central banks (NCBs) to the Eurosystem, the ECB supports a clear and consistent separation between national rules relating to banknotes and those relating to coins. Therefore, the ECB considers that the draft regulation would benefit from a consistent internal separation between rules concerning banknotes and those concerning coins. This would facilitate the legal convergence of the Swedish legislative framework, which is necessary for Sweden to become a full participant in economic and monetary union.

3. Specific observations

3.1 *Exchange of mutilated banknotes*

The ECB notes that the structure of § 1(1) and (2) of the draft regulation inverts the order of Articles 3(1) and (2) of Decision ECB/2003/4, whereby the surface percentages necessary for the exchange of euro banknotes are stated as a rule and doubts as to the applicant's legal title to the euro banknotes or as to the authenticity of the euro banknotes are listed as exceptions, with the applicant bearing the burden of proof. The ECB invites Sveriges Riksbank to consider using the ECB formulation for this part of the draft regulation.

The second paragraph of § 1 of the draft regulation provides that Sveriges Riksbank exchanges mutilated banknotes for their entire face value if at least two thirds of the original banknote is presented and with half that value if less than two thirds but more than one third of the original banknote is presented. Such rules differ from the ECB's rules for euro banknotes, which specify that a Eurosystem NCB may exchange a euro banknote for 100 % of its face value if more than 50 % of the euro banknote is presented, whether presented in one piece or not, or, alternatively, if 50 % or less of the euro banknote is presented and the applicant proves that the missing parts have been destroyed[5].

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3 See, in particular, ECB Opinion CON/2007/28 of 25 September 2007 at the request of the President of Narodowy Bank Polski on a draft ordinance on the method and procedure for counting, sorting, packaging and labelling packaging units of banknotes and coins, and in conducting activities related to the supply of banknotes and coins to banks and ECB Opinion CON/2008/26 of 16 June 2008 at the request of Narodowy Bank Polski on a draft ordinance amending the principles and procedure for replacing banknotes and coins which have ceased to be legal tender in Poland as a result of wear and tear or damage.

4 OJ L 78, 25.3.2003, p. 16.

5 Article 3(1) of Decision ECB/2003/4.

3.2 *No exchange of counterfeit banknotes or coins*

Under § 1 and § 3 of the draft regulation, it may be advisable to specify that Sveriges Riksbank will only replace genuine worn and damaged banknotes and coins.

3.3 *No mention of anti-theft devices*

The ECB also notes that the draft regulation lacks a procedure for banknotes presented to Sveriges Riksbank that are stained or otherwise damaged by activated anti-theft devices, such as under Article 3(2)(b) to (d) of Decision ECB/2003/4. The ECB invites Sveriges Riksbank to consider expressly mentioning such a procedure, due to the ever increasing use of anti-theft devices by credit institutions and other professional cash handlers to counter criminal activities.

4. Alignment with the ECB's framework for the detection of counterfeits and fitness sorting

The ECB invites Sveriges Riksbank to consider already aligning national rules, to the extent possible, with the respective transitional regime for the implementation of the ECB's *Framework for the detection of counterfeits and fitness sorting by credit institutions and other professional cash handlers*[6]. This would support the legal convergence of the Swedish legislative framework and facilitate Sweden's full participation in economic and monetary union.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 9 October 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET

6 Available on the ECB's website at www.ecb.europa.eu. Equivalent rules for euro coins are contained in the Commission's Recommendation of 27 May 2005 concerning authentication of euro coins and handling of euro coins unfit for circulation (COM(2005) 1540).