EUROPEAN CENTRAL BANK

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OPINION OF THE EUROPEAN CENTRAL BANK

of 20 April 2020

on reform of Sveriges Riksbank

(CON/2020/13)

Introduction and legal basis

On 10 December 2019, the European Central Bank (ECB) received a request from the Swedish Ministry of Finance for an opinion on a proposal for amendments to the Swedish Instrument of Government, which forms part of the Swedish Constitution[1], amendments to the Law on Parliament[2], a new Law on Sveriges Riksbank (hereinafter the 'draft law on Sveriges Riksbank'), amendments to the Law on exchange rate policy[3], and amendments to the draft Law on the National Debt Office's borrowing for the needs of Sveriges Riksbank[4] (hereinafter referred to collectively as the 'draft law'). The draft law is contained within a Swedish Government Official Report (2019:46 A new law on Sveriges Riksbank) (hereinafter the 'Report') by a Committee of Inquiry on Sveriges Riksbank (hereinafter the 'Committee').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union (hereinafter the 'Treaty') and the second, third, fourth, fifth and sixth indents of Article 2(1) of Council Decision 98/415/EC[5], as the draft law concerns means of payment, Sveriges Riksbank, the collection, compilation and distribution of monetary, financial and banking statistics, payment and settlement systems and rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. 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 law

1.1 As noted by the Committee in the Report, the Law on Sveriges Riksbank[6] entered into force in 1989. The Law was largely framed in the second half of the 1980s when the exchange rate was fixed in Sweden and the financial system had a completely different appearance. Since then there have been great changes in the economic policy landscape, including, for instance, changes to the Swedish exchange rate regime, the deregulation and internationalisation of

1 *Kungörelse (1974:152) om beslutad ny regeringsform.*

2 *Riksdagsordningen (2014:801)*.

3 *Lagen (1998:1404) om valutapolitik*.

4 *Förslag till lag om Riksgäldskontorets upplåning för Riksbankens behov*.

5 Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

6 *Lag (1988:1385) om Sveriges Riksbank*.

financial markets and Swedish membership of the Union. In the aftermath of the global financial crisis considerable changes have also been made to the international and European regulatory frameworks in order to promote financial stability. In Sweden, the *Finansinspektionen* (SFSA, Swedish Financial Supervisory Authority) has been given responsibility for macroprudential policies and the *Riksgäldskontoret* (NDO, Swedish National Debt Office) has been given responsibility for resolution. Moreover, as a result of technological development and digitalisation, extensive and rapid change has occurred in the payment market, which has affected Sveriges Riksbank's activities in the payment system. The conditions for Sveriges Riksbank's cash activities have also been affected by the rapid decrease in the use of cash in Sweden[7].

1.2 As a result of the institutional and economic changes that have taken place over the past 30 years, many parts of the Law on Sveriges Riksbank are, according to the Committee, outdated. According to the Committee, this, in turn, contributes to a lack of clarity regarding Sveriges Riksbank's responsibility in the area of financial stability, its objectives, tasks and powers in relation to monetary policy and its international activities, cash activities and responsibility to maintain preparedness for contingencies. There are also some unclear points concerning the powers and distribution of responsibility in the management of Sveriges Riksbank, both within the Executive Board and between the Executive Board and the Governing Council[8].

1.3 In the light of this new situation, the Committee was given the task of reviewing the monetary policy framework and the Law on Sveriges Riksbank. In the Report the Committee analyses, reviews and proposes amendments in the following areas: (1) the objectives of the monetary policy and the means by which it is carried out; (2) Sveriges Riksbank's responsibility regarding financial stability; (3) Sveriges Riksbank's institutional independence, organisation and role in international contexts; (4) democratic scrutiny of Sveriges Riksbank; and (5) cash activities and preparedness for contingencies in the payment system[9].

1.4 A significant change proposed in the draft law is that if Sveriges Riksbank decides on the formulation of a price stability objective, its Executive Board will submit a request to the Parliament for approval of this objective. If the Parliament does not approve the request, Sveriges Riksbank's immediately preceding decision on the formulation of the price stability objective will continue to apply[10]. According to the Committee, the price stability objective would, for this purpose, cover the target variable (inflation target, price level target or mean inflation), the target level (growth rate) and the price index[11]. Currently, Sveriges Riksbank can amend the specification of the price stability target without any requirement for approval from the Parliament.

1.5 A notable structural change proposed by the draft law is that in the draft law on Sveriges Riksbank there is a division between (1) Sveriges Riksbank's monetary policy objectives, tasks and powers, and (2) its financial stability objectives, tasks and powers. In this respect, the

7 See Chapter 6.3.8 of the Report.
8 See Chapter 13.1 and 13.4 and pp. 42-43 of the Report.
9 See Chapter 3.2 of the Report.
10 See the amendment introducing the new Chapter 11, Section 18a of the Law on Parliament.
11 See Chapter 15.2.4 of the Report.

monetary policy and financial stability objectives, tasks and powers are contained in separate chapters in the draft law on Sveriges Riksbank. The monetary policy chapter contains provisions relating to, inter alia, Sveriges Riksbank's main objective of maintaining price stability, and its exchange rate management, interest rate management and liquidity instruments, purchase and sale of financial instruments other than Swedish sovereign debt instruments and minimum reserve requirements. The financial stability chapter contains provisions relating, inter alia, to the following objectives, tasks and powers of Sveriges Riksbank: (1) the objective of contributing to the financial system's stability and effectiveness, including the public being able to make payments, without neglecting the price stability objective; (2) the provision of payment settlement systems, including related deposit-taking and the provision of credit in relation to its payment settlement system; (3) the oversight of financial infrastructures and the development of the payment market; (4) powers in relation to central counterparties in third countries; (5) support for the liquidity of the financial system, including general liquidity support, market-making, emergency liquidity assistance and special liquidity facilities; (6) monitoring of the financial system in general and preparing for crises; and (7) provision of information to and/or collaboration and consultation with the Swedish Government, the SFSA and the NDO with respect to these financial stability related activities and liquidity supporting measures[12].

1.6 According to the Committee, the main reason for this division between provisions concerning (1) monetary policy and price stability and (2) the financial system and financial stability is that Sveriges Riksbank has sole responsibility for monetary policy and the Union prohibition on seeking or taking instructions under Article 130 of the Treaty applies in this area. With respect to financial stability, however, responsibility is divided between several authorities, including the Government, the SFSA, which is responsible for macroprudential policies, and the NDO, which is responsible for resolution. The Committee emphasises that, despite the fact that Sveriges Riksbank shares some of its responsibility, e.g. in respect of financial stability, with others, it makes independent decisions on what actions to take and will be able to act swiftly on its own within all of the areas of its operations if the situation so requires. According to the Committee, this division between monetary policy and price stability and the financial system and financial stability is made despite the fact that the powers within the two areas partially overlap, e.g. when it comes to liquidity assistance. In such a situation, the main purpose of the credit is decisive as to whether the credit is a matter of monetary policy or financial stability. Since there is, according to the Committee, a connection between price stability and financial stability, situations where the main purpose of an operation is not obvious may arise. However, the Committee considers that this lack of clarity is offset by, inter alia, improving collaboration between Sveriges Riksbank, the Government and other authorities with respect to tasks outside the area of monetary policy[13].

1.7 It is also of note that Sveriges Riksbank's general authority under the Law on Sveriges Riksbank to decide on the implementation of the foreign exchange rate system decided on by the Government and to purchase and sell foreign reserves and issue its own debt instruments

12 See Chapters 2 and 3 of the draft law on Sveriges Riksbank.

13 See Chapter 25 of the Report.

denominated in foreign currency in pursuance of its foreign exchange policy is not confirmed in the draft law on Sveriges Riksbank[14]. Instead it provides that Sveriges Riksbank may conduct foreign currency interventions for a monetary policy purpose, taking into account which exchange rate system applies. In terms of Sveriges Riksbank's ability to build up its foreign reserves for this purpose, a specific set of provisions is introduced that authorise Sveriges Riksbank, subject to certain constraints, to build up foreign reserves either through borrowings from the NDO or through arrangements with foreign central banks. Borrowings from the NDO in excess of the 5% gross domestic product (GDP) cap would only be possible in exceptional circumstances, with an obligation to report the matter to the Parliament's Finance Committee. Insofar as arrangements with foreign central banks are reciprocal in nature and do not contribute to the stability of the financial system, the Parliament's approval would be required. Aside from borrowings from the NDO and arrangements with foreign central banks, Sveriges Riksbank's authority to independently buy foreign currency is confined to purchases made in order to finance its provision of general liquidity assistance, market-making and emergency liquidity assistance for financial stability purposes[15].

1.8 Finally, the draft law modifies substantial aspects of Sveriges Riksbank's equity and provisioning regime. According to the Committee, the draft law thereby aims to strengthen Sveriges Riksbank's financial resilience.

2. General observations

Sweden's status as a Member State with a derogation

2.1 The ECB would like to emphasise that, although Member States with a derogation, including Sweden, do not yet participate in the third stage of economic and monetary union, **they have a legal duty to adapt the statutes of their national central banks** (NCBs) **to ensure compatibility with the Treaty[16] and the Statute of the European System of Central Banks and of the European Central Bank** (hereinafter the 'Statute of the ESCB'). **Any legislative reform in any such Member State should aim to gradually achieve consistency with ESCB standards[17].**

2.2 The ECB has repeatedly pointed out in its convergence reports that Sweden needs to adapt its legislation governing Sveriges Riksbank to comply with Treaty requirements[18]. The ECB and its precursor, the European Monetary Institute (EMI), have issued several opinions in response to consultation requests from the Swedish authorities which have considered matters relating to the independence of Sveriges Riksbank[19].

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14 See Chapter 7, Sections 1-3 of the draft law on Sveriges Riksbank.

15 See Chapter 2, Section 3 and Section 4(3), and Chapter 10 of the draft law on Sveriges Riksbank. See also paragraphs 8.1.1 to 8.1.6.

16 See Article 131 of the Treaty.

17 See paragraph 3.4 of Opinion CON/2008/34. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

18 See, e.g., Convergence Report, May 2018, pp. 201-207.

19 See paragraphs 5, 6, 7 and 9 of Opinion CON/2005/54, paragraph 4 of Opinion CON/2008/34, paragraph 4 of

Sveriges Riksbank's independent design of its price stability objective

2.3 As regards the Parliament's right to approve or reject any decision taken by Sveriges Riksbank on the design of the price stability objective, **the ESCB's primary objective is to maintain price stability under Articles 127(1) and 282(2) of the Treaty and Article 2 of the Statute of the ESCB**. As previously noted by the ECB, central bank independence is not an end in itself, but is instrumental in achieving an objective that should be clearly defined and should prevail over any other objective. Functional independence requires each NCB's primary objective to be stated in a clear and legally certain way and to be fully in line with the primary objective of price stability established by the Treaty. It is served by providing the NCBs with the necessary means and instruments to achieve this objective independently of any other authority. **The Treaty's requirement of central bank independence reflects the generally held view that the primary objective of price stability is best served by a fully independent institution with a precise definition of its mandate[20].**

2.4 As regards timing, as previously noted by the ECB, the Treaty is not clear about when the NCBs of Member States with a derogation must comply with the primary objective of price stability set out in Articles 127(1) and 282(2) of the Treaty and Article 2 of the Statute of the ESCB. While Article 127(1) of the Treaty does not apply to Member States with a derogation (see Article 139(2)(c) of the Treaty), Article 2 of the Statute of the ESCB does apply to such Member States (see Article 42.1 of the Statute of the ESCB). **The ECB takes the view that the obligation of the NCBs to have price stability as their primary objective applies from 1 June 1998 in the case of Sweden.** This is based on the fact that one of the guiding principles of the Union, namely price stability (Article 119 of the Treaty), also applies to Member States with a derogation. It is also based on the Treaty objective that all Member States should strive for macroeconomic convergence, including price stability. This conclusion is also based on the underlying rationale of central bank independence, which is only justified if the overall objective of price stability has primacy[21].

2.5 Under Article 130 of the Treaty, when exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statute of the ESCB, neither an NCB nor any member of its decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. This obligation applies to all Member States. As far as central bank independence is concerned, national legislation in Member States with a derogation, such as Sweden, had to be adapted to comply with the relevant provisions of the Treaty and the Statute of the ESCB by the date of establishment of the ESCB on 1 June 1998. **The rights of third parties to approve, suspend, annul and defer an NCB's decisions are contrary to NCBs' institutional independence and incompatible with the Treaty and the Statute of the ESCB as far as ESCB-related tasks are concerned. The Parliament's right to approve or reject Sveriges Riksbank's decisions on**

Opinion CON/2013/53, paragraph 3 of Opinion CON/2017/17, and paragraphs 4 to 15 of EMI Opinion CON/1997/26.

20 See Convergence Report, May 2018, p. 20.

21 See Convergence Report, May 2018, p. 20.

the design of the price stability objective would therefore be inconsistent with Article 130 of the Treaty[22]. This decision should rather be taken by Sveriges Riksbank's Executive Board, as the decision-making body responsible for the formulation of Sveriges Riksbank's monetary policy.

Sveriges Riksbank's independent performance of its basic monetary policy and payment system tasks necessary for Sveriges Riksbank's ability to achieve its primary objective of price stability

2.6 Article 139(2)(c) of the Treaty stipulates, inter alia, that the basic tasks of the ESCB as listed in Article 127(2) of the Treaty, including the definition and implementation of the monetary policy of the Union and promoting the smooth operation of payment systems, shall not apply to Member States with a derogation, such as Sweden. In addition, in accordance with Article 42.2 of the Statute of the ESCB, the central banks of Member States with a derogation shall retain their powers in the field of monetary policy according to national law. Nevertheless, each Member State with a derogation is also obliged under Article 131 of the Treaty to ensure that its national legislation, including the statutes of its NCB, is compatible with the Treaties and the Statute of the ESCB, in view of the abrogation of the potential derogation and the adoption of the euro in those Member States in accordance with Article 140 of the Treaty. **Therefore, any legislative reform in Sweden should aim to gradually achieve legal convergence with, rather than divergence from, ESCB standards, in accordance with the convergence process obligations enshrined in the Treaty.**

2.7 **Against this background, the narrow conceptualisation of monetary policy and broad conceptualisation of financial stability under the draft law, combined with the prohibition on Sveriges Riksbank seeking and taking instructions applying only within the narrowly defined area of monetary policy, does not provide the legally required compatibility with the Treaties and the Statute of the ESCB.** Sveriges Riksbank needs to independently exercise all the basic monetary policy and payment system tasks that are necessary for a central bank to be able to achieve its primary objective of price stability established under the Treaties and the Statute of the ESCB. Under Article 127(2) of the Treaty the basic central banking tasks to be carried out through the ESCB, in order to achieve the primary objective of price stability, include, inter alia, defining and implementing the monetary policy of the Union and promoting the smooth operation of payment systems. Under Chapter IV of the Statute of the ESCB the monetary functions and operations of the ESCB include a variety of open market and credit operations, as well as providing facilities and making regulations to ensure efficient and sound clearing and payment systems within the Union and with third countries. The provision of liquidity is a monetary policy task at any central bank, including Sveriges Riksbank. Within the framework of the Eurosystem the provision of liquidity support is, with the exception of emergency liquidity assistance, considered to be part of the basic task of implementing monetary policy, and is subject to the prohibition on NCBs seeking or taking instructions. Sveriges Riksbank's provision of payment settlement systems and its oversight of financial market infrastructures and the

22 See Convergence Report, May 2018, pp. 20, 22.

payment market are also inextricably linked with its monetary policy tasks and price stability objective. Settlements in a central bank's payment system take place in central bank money, and the provision of intra-day credit in a central bank's payment system operations can spill over into overnight credit extended within the framework of the central bank's monetary policy operations. Disturbances affecting financial market infrastructures can have an impact on a central bank's price stability objective through several channels. For example, such disturbances can affect the liquidity position of credit institutions, potentially disrupting the smooth functioning of payment systems. This could lead to increased demand for central bank liquidity and possible challenges in implementing monetary policy. In addition, such disturbances can impair the functioning of financial market segments that are key to the transmission of monetary policy[23].

2.8 **The ability of an NCB of a Member State with a derogation to independently achieve its primary stability objective, as required under Articles 127 and 130 of the Treaty and Articles 2 and 7 of the Statute of the ESCB, would be jeopardised if that NCB's basic monetary policy and payment system tasks are not subject to the prohibition on seeking or taking instructions[24].**

2.9 **It is therefore suggested that the provisions relating to Sveriges Riksbank's operation and oversight of payment settlement systems, financial infrastructures and the payment market and the provision of liquidity support (with the exception of emergency liquidity assistance) should be removed from Chapter 3 of the draft law on Sveriges Riksbank regarding the financial system, and placed in a single chapter addressing monetary policy and payment systems. Furthermore, Sveriges Riksbank's responsibilities under the proposed amendments to the Instrument of Government, in respect of which Sveriges Riksbank may not seek or take instructions, should be aligned with the conception of basic central banking tasks under the Treaty[25].**

2.10 It may also be noted that the restriction on Sveriges Riksbank´s ability to purchase and sell financial instruments other than Swedish sovereign debt instruments constitutes a constraint in the context of the Statute of the ESCB that encroaches on Sveriges Riksbank's independent monetary policy under the Treaty[26].

Sveriges Riksbank's independent performance of its basic foreign exchange and foreign reserve management tasks

2.11 As noted by the ECB in a previous opinion addressed to the Swedish Ministry of Finance, the conduct of foreign exchange operations and the holding and management of foreign reserves in pursuance of a central bank's monetary, exchange rate and liquidity policies is a basic central bank function, both within the ESCB and internationally[27]. Two of the basic tasks to be carried out through the ESCB are the conduct of foreign exchange operations consistent with exchange rate

23 See Opinion CON/2017/39 (General observations).
24 See also paragraphs 7.2.1 to 7.2.3.
25 See also paragraphs 3.1 and 3.2.
26 See also paragraph 6.2.3.
27 See paragraph 3.4.1 of Opinion CON/2017/17.

policy, whose primary objective is price stability, and the holding and management of Member States' official foreign reserves. In order to achieve the ESCB's objectives and to carry out its tasks, the ECB and the NCBs may operate in the financial markets by buying and selling outright (spot and forward) or under repurchase agreement and by lending or borrowing claims and marketable instruments, whether in euro or other currencies, as well as precious metals. In order to ensure that their national legislation is compatible with the Treaties and the Statute of the ESCB, as required by Article 131 of the Treaty, the NCBs have to be allowed to acquire and sell (spot and forward) all types of foreign exchange assets, including securities and all other assets in the currency of any country or units of account and in whatever form held, and precious metals[28].

2.12 **As previously noted, central bank independence requirements under the Treaty and the Statute of the ESCB require that Sveriges Riksbank must be able to autonomously avail itself of sufficient financial resources to fulfil its monetary and foreign exchange policy mandates and finance its own operations.** A Member State may not put its NCB in a position where it has insufficient financial resources to carry out its monetary and exchange rate policy tasks, as well as its national tasks. **Sveriges Riksbank is best placed to independently assess what level of foreign reserves is necessary to enable it to perform its tasks. The ECB is particularly concerned that, under the draft law on Sveriges Riksbank, Sveriges Riksbank may only build up its foreign reserves for financial stability purposes. The constraints under the draft law on Sveriges Riksbank on Sveriges Riksbank's ability to increase its foreign reserves whenever necessary in pursuance of its independently formulated monetary, foreign exchange and liquidity policies clearly encroach on Sveriges Riksbank's independence under the Treaty and Statute of the ESCB in the performance of its basic monetary, foreign exchange and liquidity policies, jeopardising its capacity to achieve its Treaty-based primary objective of maintaining price stability[29].**

Sveriges Riksbank's financial independence and compliance with the prohibitions on monetary financing and privileged access under the Treaty

2.13 **In addition to the foregoing, certain other provisions in the draft law on Sveriges Riksbank undermine Sveriges Riksbank's financial independence or are incompatible with the prohibition of monetary financing under the Treaty.**

First, the ECB would welcome the introduction of an explicit reference to the possibility of Sveriges Riksbank submitting a request for the restoration of its capital, in line with its existing general right to submit such a request to the Parliament or the Government. Furthermore, the level at which Sveriges Riksbank should have the possibility to request the Parliament to restore its target equity level should be increased, in order to ensure that Sveriges Riksbank has sufficient funds at its disposal to be able to perform its tasks, consistent with its

28 See the second and third indents of Articles 127(2) of the Treaty; and the first and second indents of Article 18.1, and Articles 30 and 31 of the Statute of the ESCB.

29 See paragraphs 3.4.3 and 3.4.5 of Opinion CON/2017/17.

financial independence under the Treaty[30].

Second, Sveriges Riksbank may only grant credit to international financial institutions of which Sweden is a member to the extent compatible with the monetary financing prohibition under the Treaty[31].

Third, the restriction on Sveriges Riksbank's ability to purchase and sell financial instruments other than Swedish sovereign debt instruments appears to circumvent the prohibition of privileged access under Article 124 of the Treaty[32].

2.14 Finally, the ECB understands that since Sveriges Riksbank's annual accounts are audited, the possibility for the Parliament to set aside a decision of Sveriges Riksbank on the profit and loss account, the balance sheet and the profit for the year if the numbers are not calculated in accordance with the applicable law is rather theoretical in nature and the likelihood of such rejection occurring in practice is slim.

3. Specific observations on draft amendments to the Instrument of Government

3.1 *Purpose of the draft amendments to the Instrument of Government*

The draft law contains an amendment to the Instrument of Government, which forms part of the Constitution. The present Instrument of Government states that Sveriges Riksbank is responsible for monetary policy and that no public authority may determine how Sveriges Riksbank shall decide in matters regarding monetary policy[33]. According to the amended Instrument of Government Sveriges Riksbank is responsible for the following: (1) defining and implementing monetary policy; (2) conducting foreign currency interventions; (3) holding and managing foreign reserves; (4) promoting the smooth operation of payment systems within the framework of cooperation in the ESCB; and (5) collecting the statistical information needed for cooperation within the ESCB. The amended Instrument of Government also states that no public authority may determine how Sveriges Riksbank shall decide in matters for which it is responsible (as described above) and that Sveriges Riksbank may not seek or take instructions in these areas of responsibility from anyone[34].

3.2 *Specific observations*

3.2.1 The ambit of the tasks conferred upon NCBs by the Treaties and the Statute of the ESCB, in order to independently achieve their primary objective of price stability, is wider than that envisaged by the proposed amendments to the Instrument of Government. Article 139(2)(c) of the Treaty stipulates that the basic tasks of the ESCB as listed in Article 127(2) of the Treaty, including the definition and implementation of the monetary policy of the Union and promoting the smooth operation of payment systems, shall not apply to Member States with a derogation, such

30 See paragraphs 13.3.5 to 13.3.10.
31 See paragraphs 11.2.1 to 11.2.2.
32 See paragraph 6.2.4.
33 See Chapter 9, Section 13 of the Instrument of Government.
34 See the amendment to Chapter 9, Section 13 of the Instrument of Government. See also Chapter 28.3 of the Report.

as Sweden. Nevertheless, Member States with a derogation are obliged under Article 131 of the Treaty to ensure that their national legislation is compatible with the Treaties and the Statute of the ESCB of the ESCB, in view of the potential abrogation of the derogation and the adoption of the euro in those Member States. The NCBs of Member States with a derogation must also independently exercise all the basic monetary policy and payment system tasks that are necessary for a central bank to be able to achieve the primary objective of price stability established under the Treaties and the Statute of the ESCB. Against this background, the ECB refers to Chapter IV of the Statute of the ESCB on the monetary functions and operations of the ESCB, which include a variety of open market and credit operations, as well as the task of ensuring efficient and sound clearing and payment systems. Furthermore, under Article 128(1) of the Treaty the ECB has the exclusive right to authorise the issue of euro banknotes within the Union and the ECB and the NCBs may issue such banknotes[35]. It is not clear that all of these basic central banking tasks are covered by the list of Sveriges Riksbank's responsibilities under the proposed amendments to the Instrument of Government.

3.2.2 As noted in paragraph 1.5, many of Sveriges Riksbank's proposed powers in relation to liquidity support, including the provision of liquidity within Sveriges Riksbank's payment settlement system, general liquidity support, market-making, emergency liquidity assistance and special liquidity facilities, are classified under the draft law as falling within Sveriges Riksbank's objective of contributing to the financial system's stability and effectiveness. Within the framework of the ESCB the provision of liquidity is, with the exception of emergency liquidity assistance, considered to be part of the basic tasks of implementing monetary policy and promoting the smooth operation of payment systems, and is subject to the prohibition on NCBs seeking or taking instructions. In the case of emergency liquidity assistance, there are procedures in place to ensure consistency with monetary policy.

3.2.3 Similarly, Sveriges Riksbank's powers in relation to payment systems, monitoring financial infrastructures and developing the payment market, outside the narrow context of promoting the smooth operation of payment systems within the framework of ESCB cooperation, are classified under the draft law as falling within Sveriges Riksbank's objective of contributing to the financial system's stability and effectiveness, which includes the public being able to make payments. Within the framework of the ESCB these powers are considered to be part of the basic task of promoting the smooth operation of payment systems and the related task of ensuring efficient and sound clearing and payment systems, and are thus covered by the central bank independence protection under Article 130 of the Treaty and Article 7 of the Statute of the ESCB.

3.2.4 The ECB recommends that Sveriges Riksbank's responsibilities under the proposed amendments to the Instrument of Government, in respect of which no public authority may determine how Sveriges Riksbank shall decide and Sveriges Riksbank may not seek or take instructions, be aligned with the conception of basic central banking tasks under the Treaty.

35 Article 139(2)(g) of the Treaty also stipulates that Article 128 of the Treaty does not apply to Member States with a derogation.

4. Specific observations on draft amendments to the Law on Parliament and the draft law on Sveriges Riksbank's provisions regarding public information and reporting to the Parliament's Finance Committee

4.1 *Purpose of the draft amendments to the Law on Parliament and the provisions regarding public information and reporting to the Parliament's Finance Committee in the draft Law on Sveriges Riksbank*

4.1.1 A new provision is introduced into the Law on Parliament[36] stating that, with respect to the activities of Sveriges Riksbank, the *Finansutskottet* (Parliament's Committee on Finance) will also be responsible, alongside the *Riksrevisionen* (NAO, National Audit Office), for monitoring and evaluating Sveriges Riksbank's activities. As noted by the Committee[37], this provision will provide the Parliament with a right to hold Sveriges Riksbank accountable for its decisions and the achievement of its goals by making Sveriges Riksbank explain the reasons for its actions. The Parliament will regularly scrutinise and evaluate all the activities of Sveriges Riksbank with respect to the achievement of its objectives and efficiency. The Parliament will be entitled to demand both oral and written presentations from Sveriges Riksbank in relation to various questions. It will also be entitled to pose questions to individual members of the Executive Board regarding the reasons for their decisions.

4.1.2 As noted in paragraph 1.4, the draft amendments to the Law on Parliament propose that if Sveriges Riksbank should decide on the formulation of the price stability objective, its Executive Board will then submit a request to the Parliament for approval of the objective. If the request is not approved by the Parliament, Sveriges Riksbank's immediately preceding decision on the formulation of the price stability objective will continue to apply[38].

4.1.3 The draft amendments to the Law on Parliament provide that the Parliament's Committee on Finance may decide to launch a special investigation of circumstances that can form the basis for removing a member of Sveriges Riksbank's Executive Board from office[39]. This provision would supplement the existing provisions of the Instrument of Government, whereby Sveriges Riksbank's General Council has the right to remove a member of the Executive Board from their employment if they no longer fulfil the requirements laid down for the performance of their duties or are guilty of serious misconduct[40].

4.1.4 The draft law on Sveriges Riksbank requires Sveriges Riksbank to publish the minutes of monetary policy meetings and other meetings of its Executive Board and General Council. However, information covered by secrecy requirements under the Law on public access to information and secrecy[41] will not be published. The monetary policy meeting minutes must

36 See the amendment to Chapter 7, Section 9 of the Law on Parliament.
37 See Chapter 33.6.4 of the Report.
38 See the amendment introducing the new Chapter 11, Section 18a of the Law on Parliament.
39 See the amendment introducing the new Chapter 13, Section 25 of the Law on Parliament.
40 See Chapter 12, Sections 1 and 2 of the draft law on Sveriges Riksbank.
41 *Offentlighet och sekretesslagen (2009:400)*.

reflect the viewpoints presented at meetings. Sveriges Riksbank must also provide information about payment settlement systems, other aspects of the financial system, cash, crisis preparedness, and its international and other activities[42].

4.1.5 The draft law on Sveriges Riksbank also requires Sveriges Riksbank to regularly report to the Parliament's Finance Committee (including at the Committee's request) on a range of matters, including monetary policy, monetary policy strategy, Sveriges Riksbank's assessment of future price trends and other factors affecting price stability and the interests of the real economy, the cash handling situation in Sweden, Sveriges Riksbank's work regarding payment settlements, the financial system, crisis preparedness and Sveriges Riksbank's international activities[43].

4.1.6 The draft law on Sveriges Riksbank requires its General Council to submit annual financial statements to the Parliament and the NAO each year before 22 February[44]. Currently, the Law on Sveriges Riksbank provides that the annual report is presented by the Executive Board[45]. This amendment reflects the fact that under the draft law on Sveriges Riksbank it is the General Council that adopts Sveriges Riksbank's profit and loss account and balance sheet[46].

4.1.7 The draft law on Sveriges Riksbank requires Sveriges Riksbank to report annually to the Parliament on what measures it has taken based on the NAO's observations[47].

4.2 *Specific observations*

4.2.1 As regards the Parliament's Committee on Finance's democratic scrutiny of Sveriges Riksbank's achievement of objectives and efficiency, central bank independence under Article 130 of the Treaty and Article 7 of the Statute of the ESCB is fully compatible with holding NCBs accountable for their decisions, which is an important aspect of enhancing confidence in their independent status. This entails transparency and dialogue with third parties. Dialogue between an NCB and third parties, even when based on statutory obligations to provide information and exchange views, is compatible with central bank independence, provided that: (1) this does not result in interference with the independence of the members of the NCB's decision-making bodies; (2) the special status of Governors in their capacity as members of the ECB's decision-making bodies is fully respected; and (3) confidentiality requirements resulting from the Statute of the ESCB are observed [48].

4.2.2 As noted in paragraph 2.3, the Parliament's right to approve or reject Sveriges Riksbank's decisions on the design of the price stability objective would be inconsistent with Article 130 of the Treaty.

4.2.3 As regards the Parliament's Committee on Finance's power to launch special investigations of

42 See Chapter 12, Section 1 of the draft law on Sveriges Riksbank.
43 See Chapter 12, Sections 3-6 of the draft law on Sveriges Riksbank.
44 See Chapter 12, Section 7 of the Law on Sveriges Riksbank.
45 See Chapter 10, Section 3 of the Law on Sveriges Riksbank.
46 See Chapter 8, Section 4, second paragraph of the draft law on Sveriges Riksbank.
47 See Chapter 12, Section 10 of the Law on Sveriges Riksbank.
48 See Convergence Report, May 2018, p. 20, paragraph 2.2.3 of Opinion CON/2016/33 and paragraph 3.2.4 of Opinion CON/2016/52.

circumstances that can form the basis for removing a member of Sveriges Riksbank's Executive Board from office, the ECB understands that this constitutes a specific tool for the Parliament to assess whether grounds for relieving from office as referred to under Article 14.2 of the Statute of the ESCB can be established. The ECB would appreciate clarification that this specific tool is without prejudice to the personal independence of the member of Sveriges Riksbank's Executive Board.

4.2.4 As regards the NAO's audit of Sveriges Riksbank, as previously noted by the ECB, where an NCB's operations are subject to the control of a state audit office or similar body charged with controlling the use of public finances, the scope of the control should be: (1) clearly defined under the legal framework; (2) without prejudice to the activities of the NCB's independent external auditors; and, (3) in line with the principle of institutional independence, comply with the prohibition on giving instructions to an NCB and its decision-making bodies and not interfere with the NCB's ESCB-related tasks. The state audit should be done on a non-political, independent and purely professional basis. The access of a state audit office to an NCB's confidential information and documents must be limited to what is necessary for the performance of the statutory tasks of the body that receives the information and must be without prejudice to the ESCB's independence and the ESCB's confidentiality regime to which the members of NCBs' decision-making bodies and staff are subject. NCBs should ensure that such bodies protect the confidentiality of information and documents disclosed at a level corresponding to that applied by the NCBs[49].

5. Specific observations on the draft law on Sveriges Riksbank: general provisions

5.1 *Purpose of the draft general provisions in the draft law on Sveriges Riksbank*

5.1.1 The draft general provisions in the draft law on Sveriges Riksbank clarify that Sveriges Riksbank is a separate legal entity owned by the State. Furthermore, it is clarified that the State guarantees Sveriges Riksbank's obligations, and that Sveriges Riksbank manages its own assets and related income. It is also stated that Sveriges Riksbank is part of the ESCB and is one of the shareholders in the capital of the ECB, and shall participate in collaboration with other central banks within the ESCB. Sveriges Riksbank shall aim for a high level of efficiency and manage State funds prudently, and may only take a measure in accordance with the principle of proportionality. In order to be able to fulfil its tasks, Sveriges Riksbank shall follow general economic developments and developments in financial markets. It shall also identify the threats to sustainable development that affect the possibilities of attaining the objectives under the draft Law on Sveriges Riksbank. Sveriges Riksbank may also conduct research of importance for its ability to attain the objectives under the draft law on Sveriges Riksbank [50].

5.1.2 The general provisions in the draft law on Sveriges Riksbank [51] purport to reproduce the

49 See Convergence Report 2018, p. 24.

50 See Chapter 1, Sections 2, 3, 4, 5, 8 and 9 of the draft law on Sveriges Riksbank.

51 See Chapter 1, Sections 10 and 11. See also Chapter 13.7 and pp. 1772-1774 of the Report.

prohibition of monetary financing contained in Article 123 of the Treaty and Council Regulation (EC) No 3603/93[52].

5.2 *Specific observations*

5.2.1 The ECB welcomes the draft general provisions in the draft Law on Sveriges Riksbank clarifying Sveriges Riksbank's role within the ECB and the ESCB. The ECB also welcomes the clarifications that the State guarantees Sveriges Riksbank's obligations and that Sveriges Riksbank manages its own assets, which serve to underline its financial independence under Article 130 of the Treaty. Regarding Sveriges Riksbank's proposed duties to follow general economic developments, identify threats to sustainable development and conduct research, the ECB notes that these duties are linked to Sveriges Riksbank's ability to fulfil its tasks and attain its objectives under the draft Law on Sveriges Riksbank. The ECB understands that Sveriges Riksbank's role in this respect would not go beyond monitoring activities that result from or are linked, either directly or indirectly, to the discharge of its monetary policy and central banking mandate[53].

5.2.2 Regarding the proposed reproduction of the monetary financing prohibition, it is, in general, unnecessary to transpose Article 123 of the Treaty, supplemented by Regulation (EC) No 3603/93, into national legislation as they are both directly applicable. If, however, national legislative provisions mirror these directly applicable Union provisions, they may not narrow the scope of application of the monetary financing prohibition or extend the exemptions available under Union law[54]. For example, although the proposed reproduction of the monetary financing prohibition under the draft law on Sveriges Riksbank seems to have amended the existing Law on Sveriges Riksbank[55] to address previous comments made by the ECB[56], there is still a discrepancy between the wording of Article 123(2) of the Treaty and the relevant provisions of the draft law on Sveriges Riksbank[57]. The exemption from the monetary financing prohibition for publicly owned credit institutions set out in Article 123(2) of the Treaty is only stated to apply 'in the context of the supply of reserves by central banks', whereas this wording is absent from the draft law on Sveriges Riksbank, thus expanding this exemption beyond the particular context envisaged under the Treaty. In the event of a conflict between these provisions, the directly applicable Union provisions prevail.

6. Specific observations on the draft law on Sveriges Riksbank: provisions on monetary policy

6.1 *Purpose of the provisions on monetary policy in the draft law on Sveriges Riksbank*

52 See Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Article 104 and 104b(1) of the Treaty (OJ L 332, 31.12.1993, p. 1).

53 See paragraph 4.3 of Opinion CON/2012/105, paragraph 5.5 of Opinion CON/2013/90 and paragraph 5.5 of Opinion CON/2013/91.

54 See Convergence Report, May 2018, p. 30.

55 See Article 1(3) and (4) of the Law on Sveriges Riksbank.

56 See Convergence Report, May 2018, pp. 203-204.

57 See Chapter 1, Section 11 of the draft law on Sveriges Riksbank.

6.1.1 Under the provisions on monetary policy in the draft law on Sveriges Riksbank, Sveriges Riksbank's primary objective is to maintain price stability through sustainably low and stable inflation. Within the sphere of monetary policy, Sveriges Riksbank shall also contribute to a balanced development of production and employment without setting aside the price stability objective (upholding the interests of the real economy) [58]. The Law on Sveriges Riksbank contains no provision stating that Sveriges Riksbank shall take considerations relating to the real economy into account. According to the Committee[59], as long as the Swedish formulation of the interests of the real economy does not conflict with the corresponding requirements of Union law, it should be compatible with Union law to incorporate a provision that is worded differently from the rule under Union law. The formulation of the type of interests of the real economy that should be furthered by Sveriges Riksbank should be more concrete than, for example, supporting the economic policy of the Swedish Parliament, as this increases the clarity of Sveriges Riksbank's duty and facilitates assessment and accountability. The Committee considers that production and employment encapsulate what a central bank can chiefly influence in the real economy in order to improve the welfare of society, and notes that these are also terms are commonly used in other countries.

6.1.2 Under the draft law on Sveriges Riksbank, Sveriges Riksbank would be assigned a number of monetary policy powers, including interest rate management and liquidity instruments and minimum reserve requirements[60]. Sveriges Riksbank's interest rate management and liquidity instruments[61] include receiving deposits, providing credit in Swedish kronor or foreign currency against adequate collateral, entering into repurchase agreements and buying and selling Swedish sovereign debt instruments in the secondary market. Sveriges Riksbank may also buy and sell financial instruments, other than Swedish sovereign debt instruments, admitted to trading on a regulated market, but only if there are exceptional reasons for doing so. In the Law on Sveriges Riksbank no such distinction is drawn between Swedish sovereign debt instruments and other financial instruments.

6.1.3 Under the draft law on Sveriges Riksbank, Sveriges Riksbank must publish the conditions that are generally applicable to Sveriges Riksbank's deposit-taking, lending, repurchase agreements and the collateral that can be accepted in respect of its Swedish kronor credits. Furthermore, Sveriges Riksbank shall inform the public in an appropriate way about: (1) the price stability objective, the interests of the real economy and its monetary policy strategy; (2) monetary policy decisions taken, the reasons for them and dissenting opinions in the Executive Board; and (3) its assessment both of future price developments and of other circumstances that have a substantial impact on the design of monetary policy and the possibilities of attaining the price stability objective and the interests of the real economy. Sveriges Riksbank must also make public the minutes of the monetary policy meetings and other meetings of the Executive Board and General

58 See Chapter 2, Section 1 of the draft law on Sveriges Riksbank.

59 See Chapter 16.4 and 16.6 of the Report.

60 See Chapter 2, Sections 4-7 of the draft law on Sveriges Riksbank.

61 See Chapter 2, Section 4 of the draft law on Sveriges Riksbank.

Council. Minutes of the monetary policy meetings must reflect the standpoints put forward at the meetings, except that, under the Law on public access to information and secrecy[62], information covered by secrecy obligations shall not be made public[63].

6.1.4 Under the draft law on Sveriges Riksbank, Sveriges Riksbank shall inform the minister designated by the Government of the monetary policy decisions taken. This information shall be given as soon as possible after the decision and, if possible, before it is announced to the public. Sveriges Riksbank may also conduct a dialogue with the Government and other public authorities or organisations about questions that affect the design of monetary policy and the possibilities of attaining the price stability objective and the interests of the real economy.

6.2 *Specific observations*

6.2.1 Taking into account Article 131 of the Treaty, which obliges Member States with a derogation to ensure that their national legislation is compatible with the Treaties and the Statute of the ESCB in view of the potential abrogation of the derogation, the ECB welcomes that Sveriges Riksbank's primary monetary policy objective is stated in a clear and legally certain way that is in line with the ESCB's primary objective of maintaining price stability under Article 127(1) of the Treaty.

6.2.2 As previously noted by the ECB, the draft law on Sveriges Riksbank should also reflect the ESCB's secondary objective of supporting the general economic policies of the Union in line with Article 127(1) of the Treaty[64]. Although the ECB welcomes the proposed introduction of the interests of the real economy into the secondary monetary policy objective of Sveriges Riksbank in the draft law on Sveriges Riksbank (i.e. contribution to balanced development of production and employment), the ECB notes that this formulation is more limited than the objective of supporting the general economic policies in the Union as set out in Article 127(1) of the Treaty.

6.2.3 The first indent of Article 18.1 of the Statute of the ESCB provides that NCBs may, in order to achieve the objectives of the ESCB and to carry out its tasks, operate in the financial markets by buying and selling outright (spot and forward) or under repurchase agreement and by lending or borrowing claims and marketable instruments, whether in euro or other currencies. The restriction on Sveriges Riksbank's ability to purchase and sell financial instruments other than Swedish sovereign debt instruments constitutes a constraint in the context of Article 18 of the Statute of the ESCB, which allows the NCBs to buy and sell outright or under repurchase agreements and by lending or borrowing all manner of claims and marketable instruments, including instruments issued by sovereign and private issuers alike. In addition, and as previously mentioned by the ECB[65], NCBs shall be provided with the necessary means and instruments for achieving the primary objective of price stability independently of any other authority to meet the requirements in respect of functional independence.

6.2.4 Furthermore, the restriction on Sveriges Riksbank's ability to purchase and sell financial

62 *Offentlighet och sekretesslagen (2009:400)*.

63 See Chapter 2, Sections 8-9 and Chapter 12, Section 1 of the draft law on Sveriges Riksbank.

64 See Convergence Report, May 2018, p. 204.

65 See Convergence Report, May 2018, p. 20.

instruments other than Swedish sovereign debt instruments raises the question of compliance with Article 124 of the Treaty, which applies to Member States with a derogation, such as Sweden. Article 124 of the Treaty prohibits any measure, not based on prudential considerations, establishing privileged access by, inter alia, central governments to financial institutions. Under Article 1(1) of Council Regulation (EC) No 3604/93[66] privileged access is understood as any law, regulation or other binding legal instrument adopted in the exercise of public authority which, inter alia, obliges financial institutions to acquire or to hold liabilities of, inter alia, central governments, or confers financial advantages that do not comply with the principles of a market economy, in order to encourage those institutions to acquire or hold such liabilities. Thus, as public authorities, NCBs may not take measures granting privileged access to financial institutions by the public sector if such measures are not based on prudential considerations[67]. Furthermore, in accordance with Article 3(2) and recital 10 of Regulation (EC) No 3604/93, rules on the mobilisation or pledging of debt instruments enacted by the NCBs must not be used as a means of circumventing the prohibition on privileged access. Member States' legislation in this area may not establish such privileged access. Article 2 of Regulation (EC) No 3604/93 defines 'prudential considerations' as those which underlie national laws, regulations or administrative actions based on, or consistent with, Union law and designed to promote the soundness of financial institutions so as to strengthen the stability of the financial system as a whole and the protection of the customers of those institutions. According to the Committee the purchase and sale of private securities can directly affect asset prices and loan terms, and entails much greater financial risk-taking for Sveriges Riksbank and for public finances[68]. As the Committee's concerns do not seem to be motivated by prudential considerations within the meaning of Article 124 of the Treaty, the restriction on Sveriges Riksbank's ability to purchase and sell financial instruments other than Swedish sovereign debt instruments appears to circumvent the prohibition on privileged access under Article 124 of the Treaty.

6.2.5 The ECB generally welcomes the provisions designed to contribute to Sveriges Riksbank's transparency.

6.2.6 Under the existing Law on Sveriges Riksbank, the minister appointed by the Government is required to be informed prior to Sveriges Riksbank making a monetary policy decision of major importance[69]. As previously noted by the ECB[70], this requirement could potentially breach the prohibition on giving instructions to the NCBs pursuant to Article 130 of the Treaty and Article 7 of the Statute of the ESCB, and should therefore be adapted accordingly. By adapting this provision so that information may only be furnished to the minister before it is announced to the public if this is possible, the draft law on Sveriges Riksbank will ensure that the Government may continue to be kept informed of monetary policy decisions without constraining Sveriges Riksbank's

66 See Council Regulation (EC) No 3604/93 of 13 December 1993 specifying definitions for the application of the prohibition of privileged access referred to in Article 104a of the Treaty (OJ L 332, 31.12.1993, p. 4).

67 See Convergence Report, May 2018, pp. 35-36.

68 See Chapter 18.11.3 of the Report.

69 See Chapter 6, Section 3 of the Law on Sveriges Riksbank.

70 See, e.g., Convergence Report, May 2018, p. 202.

independence. As previously noted[71], dialogue between an NCB and third parties, even when based on statutory obligations to provide information and exchange views, is compatible with central bank independence provided that: (1) this does not result in interference with the independence of the members of the NCB's decision-making bodies; (2) the special status of Governors in their capacity as members of the ECB's decision-making bodies is fully respected; and (3) confidentiality requirements resulting from the Statute of the ESCB are observed.

7. Specific observations on the draft law on Sveriges Riksbank: provisions on the financial system

7.1 *Purpose of the provisions on the financial system in the draft law on Sveriges Riksbank*

7.1.1 The draft law on Sveriges Riksbank provides that the objective of Sveriges Riksbank's activities regarding the financial system shall be to contribute to the financial system's stability and efficiency, including the public being able to make payments, without setting aside Sveriges Riksbank's price stability objective[72]. According to the Committee, this objective does not exist in the Law on Sveriges Riksbank but has been considered to be part of Sveriges Riksbank's task of promoting a safe and efficient payment system[73].

7.1.2 To achieve its financial stability objective Sveriges Riksbank is given a number of tasks related to the operation and oversight of payment systems, financial infrastructures and the payment market under the draft law on Sveriges Riksbank[74], which the Committee views as largely a codification of the activities currently conducted by Sveriges Riksbank with respect to financial stability: (1) to provide a payment settlement system and issue regulations thereon, deciding which financial companies and public authorities may be participants in this system, taking deposits, charging fees and extending credit in connection with this system, and taking account of the principles of open access and neutrality; (2) to collaborate in payment settlements and participate in payment or settlement systems; (3) to conduct oversight of central counterparties, other clearing organisations, financial market settlement systems, central securities depositories, trade repositories, and operations conducted by other legal persons of particular importance for the financial infrastructure in Sweden; (4) to adopt relevant requirements in relation to a central counterparty established in a third country; and (5) to follow the development of the payments market.

7.1.3 As part of its financial stability objective the draft law on Sveriges Riksbank also gives Sveriges Riksbank the task of assessing whether the financial system is stable and efficient and working to identify vulnerabilities and risks in the financial system that may lead to serious disturbances or significant efficiency losses. If Sveriges Riksbank concludes that another authority needs to take measures to reduce the risk of serious financial disturbances in the Swedish economy, it is to

71 See, e.g., Convergence Report, May 2018, pp. 22-23.
72 See Chapter 3, Section 1 of the draft law on Sveriges Riksbank.
73 See Chapter 20.8.6 of the Report.
74 See Chapter 3, Sections 2, 5, 8, 9 and 20 of the draft law on Sveriges Riksbank.

alert the authority in question and other interested parties[75].

7.1.4 Under the draft law on Sveriges Riksbank[76], Sveriges Riksbank may also decide to provide liquidity support pursuant to its financial stability objective.

First, Sveriges Riksbank is given the power to provide general liquidity support in the form of collateralised credit extensions or repurchase agreements in Swedish kronor or foreign currencies to/with Swedish financial firms, foreign firms operating in Sweden through branches and central counterparties, if this is needed to counter a serious disturbance in the financial system in Sweden.

Second, Sveriges Riksbank may also buy and sell financial instruments at predetermined prices, in a similar manner to a market maker, in order to temporarily support the functioning of system-critical financial markets if this is needed to counter a serious disturbance in the financial system in Sweden and if there are exceptional reasons for doing so.

Third, regarding emergency liquidity assistance, Sveriges Riksbank may, in order to support liquidity, extend collateralised credits in Swedish kronor or foreign currency to a going-concern firm that has temporary liquidity problems if this is needed to counter a serious disturbance in the financial system in Sweden and if there are exceptional reasons for doing so. Sveriges Riksbank must inform the minister designated by the Government before deciding to provide any emergency liquidity assistance.

Fourth, Sveriges Riksbank may, after consulting the SFSA, also offer special liquidity facilities which may be included in the calculation of the liquidity coverage requirement under Commission Delegated Regulation (EU) 2015/61[77].

Sveriges Riksbank is also required to plan and make preparations to establish good capability to counter serious disturbances in the Swedish financial system. As part of this, it must identify liquidity support measures that may be used to counteract such disturbances.

Sveriges Riksbank must make public the facilities it intends to offer and the specific conditions applicable to them, unless it is inappropriate to do so having regard to the stability and efficiency of the financial system.

Sveriges Riksbank must provide the Swedish Government, the SFSA and the NDO with information about liquidity-supporting measures undertaken that the agency in question requires for its activities.

Sveriges Riksbank is also authorised to issue regulations on the terms for its general liquidity support, market-making and special liquidity facilities.

7.1.5 The draft law on Sveriges Riksbank clarifies that Sveriges Riksbank may also take part in resolution colleges and participate in other crisis preparation work organised by bodies in

75 See Chapter 3, Section 4 of the draft law on Sveriges Riksbank.

76 See Chapter 3, Sections 6, 7, 11-14, 17, 18 and 20 of the draft law on Sveriges Riksbank.

77 Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 11, 17.1.2015, p. 1).

Sweden or abroad[78].

7.1.6 The draft law on Sveriges Riksbank requires Sveriges Riksbank to collaborate with the SFSA and NDO in order to contribute to the stability and effectiveness of the financial system[79]. Sveriges Riksbank must consult with the SFSA and the NDO on important matters that are linked to the stability and efficiency of the financial system and/or that affect their respective supervisory and resolution activities, providing the authority concerned with the information it needs. No consultation needs to take place if there are exceptional reasons, but in such a case Sveriges Riksbank must inform the SFSA or the NDO of the matter.

7.1.7 The draft law on Sveriges Riksbank requires Sveriges Riksbank to immediately inform the relevant authorities within the European Economic Area (EEA) with responsibility for group-based supervision if it learns of a critical situation that has arisen in Sweden and which may jeopardise liquidity in the financial markets or the stability of the financial system within an EEA state[80].

7.2 *Specific observations*

7.2.1 Article 139(2)(c) of the Treaty stipulates that the basic tasks of the ESCB as listed in Article 127(2) of the Treaty, including the financial stability mandate referred to in Article 127(5) of the Treaty, shall not apply to Member States with a derogation, such as Sweden. Nevertheless, Member States with a derogation are obliged under Article 131 of the Treaty to ensure that its national legislation is compatible with the Treaties and the Statute of the ESCB, in view of the abrogation of the derogation and the potential adoption of the euro in those Member States. Against this background, the broad conceptualisation of financial stability and the narrow conceptualisation of monetary policy under the draft law on Sveriges Riksbank, combined with the prohibition on Sveriges Riksbank seeking and taking instructions only applying within the narrowly defined area of monetary policy, does not provide the legally required compatibility with the Treaties and the Statute of the ESCB (see paragraph 2.7).

7.2.2 In addition to the ESCB's basic tasks under Article 127(2) of the Treaty, Article 127(5) of the Treaty provides that the ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system. Article 25.1 of the Statute of the ESCB, under which the ECB may offer advice to and be consulted on the scope and implementation of Union legislation relating to the prudential supervision of credit institutions and to the stability of the financial system, is contained within Chapter V (entitled 'Prudential Supervision') of the Statute of the ESCB. The close links under Union law between financial stability and prudential supervision are also reflected in the provisions of Council Regulation (EU) No 1024/2013[81].

7.2.3 From a material perspective, the provision of liquidity is a monetary policy task at any central

78 See Chapter 3, Section 7 of the draft law on Sveriges Riksbank.

79 See Chapter 3, Sections 15 and 16 of the draft law on Sveriges Riksbank.

80 See Chapter 3, Section 19 of the draft law on Sveriges Riksbank.

81 See Article 1(1) and recitals 2, 5, 6, 13, 16, 27, 30, 42, 44, 55, 56 and 65 of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

bank, including Sveriges Riksbank. For example, in implementing its monetary policy, the Eurosystem employs the following monetary policy tools: it conducts open market operations, offers standing facilities and requires credit institutions to hold minimum reserves on accounts with the Eurosystem. The set of instruments at the Eurosystem's disposal for conducting open market operations aim to ensure the orderly functioning of the money market and to help banks meet their liquidity needs in a smooth and well-organised manner. Within the Eurosystem the main responsibility for the provision of emergency liquidity assistance lies at national level, with the NCBs concerned. In order to ensure that emergency liquidity assistance operations do not interfere with the Eurosystem's single monetary policy, the ECB would have to be informed or consulted in order to allow for a smooth sterilisation of any undesired liquidity effects and an assessment of any systemic implications[82].

7.2.4 The requirement that Sveriges Riksbank must inform the Swedish Cabinet Minister before Sveriges Riksbank approves any emergency liquidity assistance should not be understood as undermining the requirement that the assistance be granted by Sveriges Riksbank independently and at its full discretion. Furthermore, the ECB notes that an NCB within the ESCB is required to have sufficient financial resources not only to perform its ESCB-related tasks but also its national tasks, including the provision of ELA[83].

7.2.5 The ECB notes that Sveriges Riksbank would not be obliged to make public the financial stability liquidity facilities it intends to offer, and the specific conditions applicable to them, where it is inappropriate to do so having regard to the stability and efficiency of the financial system. The degree of *ex ante* transparency in this respect is a policy issue which Sveriges Riksbank's Executive Board is best positioned to decide on.

7.2.6 The clarification that operations conducted by other legal persons 'of particular importance for the financial infrastructure in Sweden' should be included under Sveriges Riksbank's oversight (see paragraph 7.1.1) is to be welcomed, considering the increasing use and importance of services such as Swish, a mobile payment service, and BankID, an electronic authentication service, on the Swedish market.

8. Specific observations on draft amendments to the Law on exchange rate policy and the draft law on Sveriges Riksbank's provisions on exchange rate management and foreign reserves

8.1 *Purpose of the draft amendments to the Law on exchange rate policy and the draft law on Sveriges Riksbank's provisions on exchange rate management and foreign reserves*

8.1.1 The Law on exchange rate policy provides that the Government shall decide on the exchange rate system for the Swedish krona in relation to foreign currencies. The draft law amends the Law

82 See paragraph 3.1 of the ECB/Eurosystem Agreement on emergency liquidity assistance (17 May 2017), available on the ECB's website at www.ecb.europa.eu.

83 See paragraph 2.6 of Opinion CON/2020/11 and paragraph 2.5 of CON/2016/55.

on exchange rate policy[84] by adding that, where applicable, the Government shall also decide on the central exchange rate and bandwidth, that Sveriges Riksbank may request the Government to set a central exchange rate or bandwidth and that the Government will consult with Sveriges Riksbank before it sets a central exchange rate or bandwidth. It is further stated that decisions by the Government as set out above must be consistent with the price stability objective set out in the draft law on Sveriges Riksbank[85].

8.1.2 The draft law on Sveriges Riksbank provides that if the Government has decided on an exchange rate target under the Law on exchange rate policy, Sveriges Riksbank will apply that target without prejudice to the price stability objective. Sveriges Riksbank may conduct foreign currency interventions for a monetary policy purpose and these must be carried out taking into account which exchange rate system applies. However, Sveriges Riksbank may only issue and trade in its own debt instruments in Swedish kronor[86]. It is thus clarified that, in line with the Committee's interpretation of the present situation, Sveriges Riksbank is not allowed to issue debt instruments in foreign currency[87].

8.1.3 The task of Sveriges Riksbank to hold and manage foreign reserves is expressly included in the amended Instrument of Government as one of Sveriges Riksbank's responsibilities, with respect to which no authority may stipulate how Sveriges Riksbank must decide, and Sveriges Riksbank may neither request nor receive instructions[88]. The draft law on Sveriges Riksbank sets out the objectives of this task, providing that Sveriges Riksbank holds and manages the foreign reserves and its other assets to enable it to fulfil its tasks and generate sufficient yield to finance its activities. The principles governing asset management are that Sveriges Riksbank's assets will be managed taking into account Sveriges Riksbank's status as a central bank, in accordance with a low-risk strategy, taking into account the various purposes for which the assets are held. In the management of assets, special consideration will be given to how sustainable growth can be promoted without compromising the abovementioned objectives and principles[89]. As noted by the Committee, Sveriges Riksbank's asset management provides a means for it to fulfil its other tasks (e.g. concerning monetary policy and the financial system) and is not an objective in itself. From a risk management perspective, the performance of these monetary and other tasks takes precedence over the prescribed level of risk[90].

8.1.4 The draft law on Sveriges Riksbank provides that Sveriges Riksbank may decide to borrow foreign currency from the NDO to reinforce its foreign currency reserve. Sveriges Riksbank will fully reimburse the State's borrowing costs, and repay loans to the NDO when there is no longer a need for them. Sveriges Riksbank will consult the NDO before deciding to borrow and may

84 Proposed law amending *Lagen (1998:1404) om valutapolitik*, p. 221.

85 See Chapter 2, Section 1, first paragraph of the draft law on Sveriges Riksbank.

86 See Chapter 2, Sections 3 and 4, third paragraph and Chapter 10, Section 5, second paragraph of the draft law on Sveriges Riksbank.

87 See Chapter 18.2.1 and Chapter 30.4 of the Report.

88 See the amendment to Chapter 9, Section 13 of the Instrument of Government.

89 See Chapter 9, Sections 1-3 of the draft law on Sveriges Riksbank.

90 See Report, p. 1835.

borrow foreign currency that, including previous borrowing, corresponds to, at most, 5% of Sweden's GDP for the previous year in order to reinforce foreign currency reserves in advance. If there are exceptional reasons for doing so, Sveriges Riksbank may decide to temporarily borrow foreign currency for advance reinforcement of the foreign reserves beyond the 5% GDP limit. Sveriges Riksbank must explain the reasons for such advance reinforcement of the foreign reserves to the Parliament's Committee on Finance as soon as possible[91]. According to the Committee, exceptional reasons justifying such additional borrowing refer to clear signs of elevated concern in the financial markets, an increased risk of Swedish banks potentially being exposed to serious liquidity stress in foreign currency or other circumstances that make further enforcement of the foreign reserves clearly necessary to counteract a serious disturbance in the Swedish financial system[92]. If Sveriges Riksbank's total outstanding foreign currency loans from the NDO on 1 January 2023 exceed the 5% GDP limit and the conditions for borrowing beyond the 5% GDP limit are not met, Sveriges Riksbank must repay the loans as they fall due until the loan balance falls within the 5% GDP cap[93].

8.1.5 The draft law on Sveriges Riksbank provides that Sveriges Riksbank may also decide to borrow foreign currency to replenish the foreign reserves if they have been used in Sveriges Riksbank's provision of general liquidity assistance, market-making and emergency liquidity assistance. The portion of the foreign reserves that has not been funded with loans from the NDO will be replenished up to its previous level with the borrowed funds. The 5% GDP limit does not apply in the event of such a replenishment.

8.1.6 The draft law on Sveriges Riksbank provides that Sveriges Riksbank may also buy foreign currency in order to be able to finance its provision of general liquidity assistance, market-making and emergency liquidity assistance for financial stability purposes, either immediately or at a later date. Foreign currency that has been bought for this purpose may be sold if appropriate[94].

8.2 *Specific observations*

8.2.1 As previously noted by the ECB, it is relatively unusual within the ESCB for an NCB to strengthen its foreign reserve assets by borrowing from its national debt office or government. Insofar as such borrowings are financed by debt issuances in the international capital markets by the NDO, on behalf of the State, the ECB fully understands the Government's desire to impose limitations on Sveriges Riksbank's ability to increase its foreign reserves by these particular means. It would not seem realistic for Sveriges Riksbank to rely exclusively on the NDO to meet its foreign currency needs in a financial crisis situation, taking account of the availability and cost of funding in such situations, as well as the time period within which the NDO would be able to borrow the necessary amounts of foreign currency on the market[95]. Thus, Sveriges Riskbank needs to be able to increase its foreign reserves in any way it considers necessary in pursuance of its

91 See Chapter 10, Sections 1-3 of the draft law on Sveriges Riksbank.
92 See Report, pp. 1840-1841.
93 See Chapter 13, Section 8, point 10 of the draft law on Sveriges Riksbank.
94 See Chapter 10, Section 5, first paragraph of the draft law on Sveriges Riksbank.
95 See paragraph 3.4.5 of Opinion CON/2017/17.

independently formulated monetary, foreign exchange and liquidity policies.

8.2.2 So far as arrangements with foreign central banks are concerned, as previously noted by the ECB, the provision of euro liquidity pursuant to currency swap arrangements between Sveriges Riksbank and the ECB is not available on an unconditional basis[96].

8.2.3 As previously noted by the ECB, central bank independence requirements under Article 130 of the Treaty and Article 7 of the Statute of the ESCB require that Sveriges Riksbank must be able to autonomously avail itself of sufficient financial resources to fulfil its monetary and foreign exchange policy mandates and finance its own operations. A Member State may not put its NCB in a position where it has insufficient financial resources to carry out its monetary and exchange rate policy tasks, as well as its national tasks. Sveriges Riksbank is best placed to independently assess what level of foreign reserves is necessary to enable it to perform its tasks. The ECB is particularly concerned that, under the draft law on Sveriges Riksbank, Sveriges Riksbank may only build up its foreign reserves for financial stability purposes. The constraints under the draft law on Sveriges Riksbank on Sveriges Riksbank's ability to increase its foreign reserves whenever necessary, through appropriate means, in pursuit of its independently formulated monetary, foreign exchange and liquidity policies clearly encroach on Sveriges Riksbank's independence under the Treaty and Statute of the ESCB in the performance of its basic monetary, foreign exchange and liquidity policies[97].

8.2.4 Consistent with previous observations made by the ECB regarding the powers of the Swedish Government and Sveriges Riksbank in the area of exchange rate policy[98], the draft amendments to the Law on exchange rate policy and the draft law on Sveriges Riksbank's provisions on exchange rate management and foreign reserves do not recognise the Council's and the ECB's powers in the area of exchange rate policy and the management of foreign reserves in the event of the abrogation of Sweden's derogation.

8.2.5 The ECB notes that the draft amendments to the Law on exchange rate policy would provide a legal basis for any possible future decision by Sweden to enter the exchange rate mechanism in Stage Three of Economic and Monetary Union (ERM II)[99].

9. Specific observations on the draft law on Sveriges Riksbank: provisions on cash

9.1 *Purpose of the provisions on cash in the draft law on Sveriges Riksbank*

9.1.1 According to the Committee, Sweden is probably the country in the world where the use of cash has decreased the fastest during the last decade and where the proportion of cash payments in comparison with electronic payments is the lowest[100]. However, according to the Committee, cash still has a special position as it is the only means of payment that can be used to settle a

96 See paragraph 3.4.4 of Opinion CON/2017/17.

97 See paragraphs 3.4.3 and 3.4.5 of Opinion CON/2017/17.

98 See, e.g., Convergence Report, May 2018, p. 206.

99 See Resolution of the European Council on the establishment of an exchange-rate mechanism in the third stage of economic and monetary union Amsterdam, 16 June 1997 (OJ C 236, 2.8.1997, p. 5).

100 See Report, p. 1579.

debt immediately and finally without intermediaries. It is the physical form of cash that allows this as there is no need for accounts or clearing. It is also easier to use cash than some electronic means of payment, particularly for the disabled. Cash may be the only means of payment available to people who have no access to bank services. The physical form of cash means it can also be transported and kept in many different places and can be used even when there is no electricity or access to electronic communication. These characteristics and its high level of protection against counterfeiting give cash some advantages over electronic means of payment from a contingency planning point of view. The fact that cash is not traceable, in other words a cash payment is anonymous and cannot be traced to a particular person, is, according to the Committee, an advantage from the privacy and data protection perspectives. Finally, the Committee states that the possibility to convert private bank money (claims on a bank) into risk-free central bank money with legal tender status (at present cash) can be important for confidence in the monetary system as a whole. At present, however, it is not clear who is responsible for ensuring that cash management and the related cash infrastructure is functioning properly in Sweden. There is no authority with specific overall responsibility for cash management. Sveriges Riksbank's responsibility for the various parts of the cash chain under the Law on Sveriges Riksbank has been interpreted in different ways over the years. The Committee therefore believes that responsibilities for the cash chain should be clarified and defined in law[101].

9.1.2 Against this backdrop and for the purpose of strengthening the position of cash as a means of payment and store of value accessible for all groups of the population, and emphasising that the State should work to ensure continued access to cash services so that the public's and society's need for cash are met[102], the draft law on Sveriges Riksbank provides that the objective of Sveriges Riksbank's activities concerning cash is to contribute to the availability of cash to a satisfactory extent throughout Sweden[103]. According to the Committee, the word 'contribute' was chosen in order to clarify that, in addition to Sveriges Riksbank, other actors, such as banks and the State[104], also affect the availability of cash in society[105], even though Sveriges Riksbank, by issuing and redeeming banknotes and coins, is the first and last component in the cash chain[106]. To 'contribute' means that Sveriges Riksbank, when performing its tasks regarding cash, needs to analyse and take into account how cash handling and access to cash is affected and how Sveriges Riksbank contributes to the maintenance of the cash chain in the whole of Sweden[107]. According to the Committee[108], the objective of Sveriges Riksbank's activities concerning cash is closely connected to the proposed legislation on the requirements for certain credit institutions to provide cash services to an adequate extent in the whole of Sweden, on which the ECB issued

101 See Chapter 34.1, 34.4.1 and 34.4.4 of the Report.
102 See Chapter 34.1 and 34.3 (in particular pp. 1543-1544) of the Report.
103 See Chapter 4, Section 1 of the draft law on Sveriges Riksbank.
104 See Report, p. 1545.
105 See Report, p. 1769.
106 See Report, p. 1546.
107 See Report, p. 1524.
108 See Report, pp. 1543-1544.

an own-initiative opinion on 26 November 2019[109].

9.1.3 According to the Law on Sveriges Riksbank[110], banknotes and coins issued by Sveriges Riksbank are legal tender. This has been interpreted in court practice as being mandatory in most legal relationships governed predominantly by public law (e.g. legal relationships concerning medical care)[111]. The draft law on Sveriges Riksbank[112] provides that everyone has the right to discharge an obligation by paying with banknotes and coins issued by Sveriges Riksbank (legal tender), unless otherwise provided by another statute or by the terms of a contract.

9.1.4 In addition, under the draft law on Sveriges Riksbank, Sveriges Riksbank is, as is currently the case[113], responsible for issuing and redeeming banknotes and coins in kronor that have legal tender status, but will be assigned overall responsibility for cash handling. Furthermore, Sveriges Riksbank may, as is currently the case[114], redeem banknotes and coins that have ceased to be legal tender. The draft law clarifies that Sveriges Riksbank is responsible for running depots, which are physical locations for the storage, release and delivery of cash. Unless otherwise decided by the Parliament, there must be at least five depots in Sweden at which companies approved by Sveriges Riksbank may collect and deliver banknotes of all denominations. At least two of these depots must be in northern parts of Sweden. Sveriges Riksbank may carry out these activities through outsourcing in collaboration with another entity[115]. Although cash handling is currently performed by a private company, as agent and on behalf of Sveriges Riksbank, and the depots are run by private actors that have entered into cash supply agreements with Sveriges Riksbank, it is still Sveriges Riksbank that is currently responsible for ensuring that their performance is in line with the objective set out in the draft law on Sveriges Riksbank[116]. Sveriges Riksbank may also issue emergency currency in a heightened state of emergency[117].

9.1.5 Sveriges Riksbank may only issue or circulate electronic money under the Law on electronic money[118], which implements Directive 2009/110/EC of the European Parliament and of the Council[119], or otherwise provide means of payment intended for the public other than banknotes and coins or emergency currency if the Parliament has approved this[120].

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109 See Opinion CON/2019/41.

110 See Chapter 5, Section 1 of the Law on Sverige Riksbank.

111 See Report, p. 1582.

112 See Chapter 4, Section 15 of the draft Law on Sverige Riksbank.

113 See Chapter 5, Section 3 of the Law on Sveriges Riksbank.

114 See Chapter 5, Section 4 of the Law on Sveriges Riksbank.

115 See Chapter 4, Sections 3-7 and 15 of the draft law on Sveriges Riksbank.

116 See p. 1547 and Chapter 34.4.3 of the Report and Section 29 of *Riksbankens föreskrifter om kontantförsörjning (RBFS 2013:2)* (Sveriges Riksbank's provisions on cash supply).

117 See Chapter 4, Sections 3-6, 10 and 15 of the draft law on Sveriges Riksbank.

118 See Chapter 4, Section 11 of the draft law on Sveriges Riksbank.

119 Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

120 See Chapter 4, Section 11 of the draft law on Sveriges Riksbank.

9.2 *Specific observations*

9.2.1 As previously noted by the ECB[121], although electronic payment instruments are increasingly used as the preferred method of payment in Sweden, and the use of cash is declining, cash in general is still an established means of payment providing for immediate settlement of debts and direct control over the payer's spending. Furthermore, the ability to pay in cash remains particularly important for certain groups in society that, for various legitimate reasons, prefer to use cash rather than other means of payment, or who are unable to use digital technology. Additionally, cash payments facilitate the inclusion of the entire population in the economy by allowing it to settle any kind of financial transaction in this way[122]. Furthermore, the number of krona banknotes in circulation in Sweden has increased since 2017 and while the rate of identity theft and card fraud continues to rise with the increasing number of transactions, it is still among the lowest in Europe[123]. The ECB notes that cash could play an important role in the event of a disturbance in the payment systems, even though cash machines and other service points may also be affected as these are dependent on interaction with the account holding institutions.

9.2.2 Notwithstanding that the ECB holds a positive view of further innovation and development in the field of electronic payment instruments, the ECB also welcomes the objective of the draft law on Sveriges Riksbank's provisions on cash to facilitate the continued use of cash in Swedish society by ensuring an adequate level of access to cash services throughout Sweden[124]. However, the draft law on Sveriges Riksbank seems to undermine the legal tender status of kronor banknotes and coins in Sweden. As noted in paragraph 9.1.3, the provisions in the Law on Sveriges Riksbank regarding the status of banknotes and coins as legal tender have been interpreted in court practice as being mandatory in most legal relationships governed predominantly by public law, e.g. legal relationships concerning medical care. However, the Committee is of the opinion that the draft law on Sveriges Riksbank should allow freedom of contract even in legal relationships governed predominantly by public law[125]. Consistent with this, the draft law on Sveriges Riksbank seems to impair the status of banknotes and coins as legal tender in comparison with what is currently the situation. It seems inconsistent to seek to ensure that, on the one hand, cash is available to a satisfactory extent throughout Sweden, and, on the other hand, to undermine the legal tender status of cash by weakening the right to pay with banknotes and coins in a public law context. It is therefore strongly suggested, at a minimum, to preserve the existing legal tender status of cash in Sweden.

9.2.3 The ECB considers it important that all Member States, including non-euro area Member States, take appropriate measures to ensure that credit institutions and branches operating within their

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121 See paragraph 2.1 of Opinion CON/2019/41.

122 *Prop. 2019/20:23 om skyldighet för kreditinstitut att tillhandahålla kontanttjänster* (Legislative proposal (2019/20:23) on the requirement for credit institutions to provide cash services), p. 31. See Opinions CON/2017/8, CON 2017/40 and CON/2019/4.

123 See Sveriges Riksbank's report *Payments in Sweden* of 7 November 2019, p. 24, available at https://www.riksbank.se/payments-in-sweden-2019, and Sveriges Riksbank's statistics on notes and coins, available at https://www.riksbank.se/en-gb/statistics/payments-notes-and-coins/notes-and-coins/.

124 See paragraph 2.2 of Opinion CON/2019/41.

125 See Report, p. 1582.

territories provide adequate access to cash services, in order to facilitate the continued use of cash[126].

9.2.4 With reference to paragraph 9.1.5, the ECB understands that the provision in the draft law on Sveriges Riksbank regarding Sveriges Riksbank issuing or circulating electronic money or otherwise providing means of payment intended for the public other than banknotes and coins or emergency currency, establishes a duty for Sveriges Riksbank to seek the Parliament's approval before issuing (1) electronic money within the meaning of Directive 2009/110/EC, and (2) any form of central bank digital currency.

9.2.5 Regarding electronic money, under Article 1(1)(d) of Directive 2009/110/EC Member States are required to recognise NCBs of the ESCB, including Sveriges Riksbank, as eligible issuers of electronic money, provided that, in issuing electronic money, the latter are not acting in their capacity as monetary or other public authorities. To the extent that, as an issuer of electronic money, Sveriges Riksbank would not be acting in its capacity as Sweden's monetary authority, it would seem that Sveriges Riksbank would not be required under the Directive to seek the consent of the Parliament for its possible issuance of electronic money.

9.2.6 Regarding Sveriges Riksbank's possible future issuance of means of payment intended for the public other than banknotes and coins, the ECB notes that discussions regarding the possible issuance of central bank digital currency are ongoing. Insofar as these discussions might evolve in a direction whereby central bank digital currency is equated with cash, and insofar as Sveriges Riksbank is responsible for issuing cash in Sweden by issuing and redeeming banknotes and coins denominated in kronor, the legislator may wish to consider whether the consent of the Parliament for Sveriges Riksbank's possible issuance of central bank digital currency would necessarily be required in all circumstances. This is especially the case so long as central bank digital currency does not enjoy legal tender status in Sweden, and would merely be offered as an alternative to krona banknotes and coins, without affecting access to cash and deposit facilities for the general public and businesses. That said, it is appreciated that these discussions are still ongoing, and that it may therefore be necessary to revisit these issues as discussions unfold.

10. Specific observations on the draft law on Sveriges Riksbank: provisions on crises and heightened states of emergency

10.1 *Purpose of the provisions on crisis and heightened states of emergency in the draft law on Sveriges Riksbank*

10.1.1 The draft law on Sveriges Riksbank provides[127] that the objective of Sveriges Riksbank's activities regarding crisis and heightened states of emergency are to enable the public to make necessary payments (which, according to the Committee, including payments for, e.g., food, accommodation, medicine and fuel[128]) during peacetime crises and heightened states of

126 See paragraph 2.3 of Opinion CON/2019/41.

127 See Chapter 5, Section 1 of the draft law on Sveriges Riksbank.

128 See Report, p. 1803.

emergency, to ensure that Sveriges Riksbank has a good capability to handle its tasks even under these circumstances and to limit vulnerability concerning payments.

10.1.2 Under the draft law on Sveriges Riksbank, Sveriges Riksbank will be responsible for planning for peacetime crisis situations and heightened states of emergency as regards its own activity. Sveriges Riksbank will also have a planning and control responsibility in relation to legal entities and economic operators within the domain of cash handling services and the performance of electronic payments. Sveriges Riksbank is required to plan and undertake preparations to handle peacetime crises, and in a heightened state of emergency to first focus on tasks that are significant for defence purposes. Sveriges Riksbank must ensure that the relevant personnel both at Sveriges Riksbank and at relevant legal entities and economic operators undergo the necessary training and exercises[129].

10.1.3 Neither the General Council nor the Executive Board of Sveriges Riksbank may meet in an area occupied by a foreign power. Provision is also made for the wartime deployment of the personnel of Sveriges Riksbank and relevant legal entities and economic operators[130].

10.1.4 Sveriges Riksbank is required to consult the SFSA on its activity regarding crises and heightened states of emergency, and to keep the Swedish Government and the NDO informed in the event of a heightened state of emergency or of serious disruptions to payments during peacetime crisis situations. In a heightened state of emergency Sveriges Riksbank must provide the Swedish armed forces with the documents necessary for the armed forces to be able to keep the Swedish Government informed[131].

10.2 *Specific observations*

10.2.1 It should be clarified that Sveriges Riksbank will achieve its objectives relating to its activities concerning crises and heightened states of emergency without neglecting its main objective of maintaining price stability.

10.2.2 The ECB notes that, in adopting the euro, a Member State irreversibly transfers to the Union monetary policy, payment system and other powers enumerated in the Treaty and the Statute of the ESCB with regard to ESCB tasks[132]. In these fields certain policymaking and legislative powers, including contingency planning with respect to the continued performance of these tasks, belong exclusively, under Articles 8 and 12 of the Statute of the ESCB, to the decision-making bodies of the ECB[133]. As previously noted by the ECB, pursuant to the principle of sincere cooperation under Article 4(3) of the Treaty on European Union, these Member States should refrain from taking any measures that could jeopardise the ECB's or the ESCB's objectives[134]. Article 347 of the Treaty envisages that a Member State may be called upon to take action in the

129 See Chapter 5, Sections 2-9, 15 and 16 of the draft law on Sveriges Riksbank.

130 See Chapter 5, Sections 10-13 of the draft law on Sveriges Riksbank.

131 See Chapter 5, Sections 17-19 of the draft law on Sveriges Riksbank.

132 See Article 3(1)(c) of the Treaty.

133 See paragraph 9 of Opinion CON/2002/27, paragraph 8 of Opinion CON/2006/6, paragraph 2.1 of Opinion CON/2014/24, and paragraph 2.1 of Opinion CON/2020/2.

134 See paragraph 2.1 of Opinion CON/2018/46 and paragraph 2.1 of Opinion CON/2020/2.

event of serious internal disturbances affecting the maintenance of law and order, war, serious international tension constituting a threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security. Accordingly, in the event of emergency conditions under Article 347, national authorities may be justified in exercising, on a temporary basis, powers that fall within the exclusive competence of the ESCB[135]. Any reliance on Article 347 of the Treaty must take place strictly under conditions laid down in the Treaty itself, as interpreted by the Court of Justice of the European Union (CJEU)[136].

10.3 *New task of Sveriges Riksbank*

10.3.1 Responsibility for planning for peacetime crisis situations and heightened states of emergency as regards its own activities is not a new task of Sveriges Riksbank[137]. However, the draft law on Sveriges Riksbank also tasks it with planning and control responsibility in relation to legal entities and economic operators within the domain of cash handling services and the performance of electronic payments (the 'crisis preparedness task for cash handling and electronic payment services'), which does not exist in the Law on Sveriges Riksbank. Currently, Sveriges Riksbank is only responsible for crisis preparedness as concerns its own activities, and not in respect of any financial companies[138].

10.3.2 The ECB underlines that a proposed conferral of new tasks on an NCB in the ESCB must be assessed against the prohibition on monetary financing under Article 123 of the Treaty[139]. For the purposes of that prohibition, Article 1(1)(b)(ii) of Regulation (EC) No 3603/93 defines 'other type of credit facility', inter alia, as 'any financing of the public sector's obligations vis-à-vis third parties'.

10.3.3 The monetary financing prohibition aims to encourage the Member States to follow a sound budgetary policy and not to allow the monetary financing of public deficits or privileged access by public authorities to the financial markets to lead to excessively high levels of debt or excessive Member State deficits[140]. Therefore, the task of financing measures, which are normally the responsibility of the Member States, and which are financed from their budgetary sources rather

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135 See paragraph 2.2 of Opinion CON/2014/24 and paragraph 2.2 of Opinion CON/2020/2.

136 See judgment of the Court of Justice of 19 December 1968, *Salgoil v Ministero del commercio con l'esturo*, C-13/68, ECLI:EU:C:1968:54; judgment of the Court of Justice of 5 May 1981, *Commission v UK*, C-804/79, ECLI:EU:C:1981:93; paragraph 13 of Opinion CON/2006/6; paragraph 2.3 of Opinion CON/2020/2; Gilsdorfer and Brandtner, 'Vorbem. zu den Artikeln 296 bis 298 EG', No 3-5, in Bardenhewer-Rating, Grill, Jakob and Woelker (eds.), *EG- und EU-Kommentar*, 6th ed. (2004), p. 1534; Zilioli, C., 'National Emergency Powers and Exclusive Community Competences – A Crack in the Dam?' Legal Aspects of the European System of Central Banks, ECB, 2005, pp. 115-133, at pp. 131-132.

137 See Chapter 9, Section 7 of the Law on Sveriges Riksbank and Chapter 35.3.3 of the Report. Sveriges Riksbank will also voluntarily coordinate the planning initiated together with the other involved authorities within the financial services sector regarding the reinforcement of the total defence capacity in Sweden, see https://www.riksbank.se/en-gb/payments--cash/payments-in-sweden/payments-in-sweden-2019/the-riksbank-is-adapting-to-the-digital-world/strengthened-preparedness-in-the-financial-sector/swedens-total-defence-has-been-resumed/, as well as participate in a total defence exercise during 2020, https://www.riksbank.se/en-gb/payments--cash/payments-in-sweden/payments-in-sweden-2019/the-riksbank-is-adapting-to-the-digital-world/strengthened-preparedness-in-the-financial-sector/the-riksbank-to-participate-in-total-defence-exercise-2020/.

138 See Report, p. 1598.

139 See paragraph 3.1.4 of Opinion CON/2020/2.

140 See, to that effect, judgments of the Court of Justice of 1 October 2015, *Bara and Others*, C-201/14, EU:C:2015:658, paragraph 22, and of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 100.

than by the NCBs, must not be entrusted to NCBs. To decide what constitutes financing of the public sector's obligations vis-à-vis third parties, which can be translated as the provision of central bank financing outside the scope of central bank tasks, it is necessary to carry out, on a case-by-case basis, an assessment of whether the task to be undertaken by an NCB is a central bank task or a government task, i.e. a task within the responsibility of the Member States. In other words, adequate safeguards must be in place to ensure that circumventions of the objective of the monetary financing prohibition of maintaining a sound budgetary policy of Member States do not take place[141].

10.3.4 As part of its discretion in the exercise of its duty, on the basis of Article 271(d) of the Treaty and Article 35.6 of the Statute of the ESCB, to ensure that NCBs honour the obligations laid down by the Treaty, the Governing Council has endorsed safeguards of that kind in the form of criteria for determining what may be seen as falling within the scope of a public sector obligation within the meaning of Article 1(1)(b)(ii) of Regulation (EC) No 3603/93 or, in other words, what constitutes a government task. These are as set out below[142].

First, central bank tasks relate, in particular, to tasks conferred upon the ECB and the NCBs under the Treaty and the Statute of the ESCB. These tasks are mainly defined in Article 127(2), (5) and (6) and Article 128(1) of the Treaty, as well as Article 22 and Article 25.1 of the Statute of the ESCB.

Second, as Article 14.4 of the Statute of the ESCB allows NCBs to perform other functions, new tasks, i.e. tasks that are not related to tasks that have been conferred upon the ECB and the NCBs, are not precluded per se. However, new tasks that are undertaken by an NCB and which are atypical of NCB tasks or which are clearly discharged on behalf of, and in the exclusive interest of, the government or of other public sector entities should be considered government tasks.

Third, an important criterion for qualifying a new task as atypical of an NCB task or as being clearly discharged on behalf of and in the exclusive interest of the government or other public sector entities is the impact of the task on the institutional, financial and personal independence of that NCB.

In particular, the following aspects should be taken into account:

(1) Whether the performance of the new task creates conflicts of interest with existing central bank tasks which are not adequately addressed and does not necessarily complement those tasks. If a conflict of interest arises between existing and new tasks, sufficient safeguards to mitigate that conflict should be in place. The complementarity between a new task and the existing central bank tasks should not be interpreted broadly, so as to lead to the creation of an indefinite chain of ancillary tasks. Such complementarity should be examined in relation to the financing of those tasks.

(2) Whether without new financial resources the performance of the new task is

141 See paragraph 3.1.5 of Opinion CON/2020/2.

142 See paragraph 3.1.6 of Opinion CON/2020/2.

disproportionately burdensome in view of the NCB's financial or organisational capacity, and may have a negative impact on its capacity to properly perform existing central bank tasks.

(3) Whether performance of the new task fits into the institutional set-up of the NCB in the light of central bank independence and accountability considerations.

(4) Whether the performance of the new task harbours substantial financial risks.

(5) Whether performance of the new task exposes the members of the NCB decision-making bodies to political risks which are disproportionate and may also have an impact on their personal independence and, in particular, on the guarantee of term of office set out in Article 14.2 of the Statute of the ESCB.

10.3.5 Based on the criteria set out above, the following paragraphs assess whether Sveriges Riksbank's new task is in line with the prohibition of monetary financing.

Tasks related to those conferred upon the ECB and NCBs by the Treaty and the Statute of the ESCB

The ECB understands that the crisis preparedness task for cash handling and electronic payment services is closely linked to the central banking tasks of issuing banknotes under Article 128(1) of the Treaty and promoting the smooth operation of payment systems under the second indent of Article 127(2) of the Treaty. Sveriges Riksbank's crisis preparedness task for cash handling and electronic payment services is therefore related to the tasks conferred upon the ECB and NCBs by the Treaty and the Statute of the ESCB.

Task which are atypical of NCB tasks

As the crisis preparedness task for cash handling and electronic payment services is closely linked to the central banking tasks set out above, it is not to be considered a task that is atypical of NCB tasks.

Tasks clearly discharged on behalf of and in the exclusive interest of the Government

As the performance of Sveriges Riksbank's crisis preparedness task for cash handling and electronic payment services is closely linked to the performance of its central banking tasks, the crisis preparedness task for cash handling and electronic payment services cannot be considered to be discharged on behalf of or in the exclusive interest of the Government.

Extent to which performance of the new task creates conflicts of interest with existing central bank tasks

The performance of the crisis preparedness task for cash handling and electronic payment services would be unlikely to give rise to any conflicts of interests with Sveriges Riksbank's existing central bank tasks. Rather, it could be seen as complementing the performance of some of those tasks.

Extent to which performance of the new task is disproportionate to Sveriges Riksbank's financial or organisational capacity

As previously noted by the ECB[143], the principle of financial independence requires that Member States may not put their NCBs in a position where they have insufficient resources to carry out both their ESCB-related tasks and their national tasks, from an operational and financial perspective. Furthermore, when allocating specific new tasks to NCBs, each NCB concerned should have sufficient financial and human resources at its disposal to ensure that the tasks can be carried out without impacting on the NCB's financial or operational capacity to perform its ESCB tasks. In order to ensure that Sveriges Riksbank's capacity to perform its ESCB-related tasks is not impaired, Sveriges Riksbank must, therefore, be in a position to avail itself of the necessary resources to carry out its duties under the draft law on Sveriges Riksbank. According to the Committee[144], the effects of Sveriges Riksbank's greater responsibility for preparedness regarding payments during crises and in wartime, i.e. the crisis preparedness task for cash handling and electronic payment services, on the overall public sector finances amounts to roughly 15 to 20 full-time employees (amounting to increased costs of approximately SEK 19 to 25 million per year) as from 2023, and means that significantly more resources will be required in this area in a few years' time. It is suggested that these estimates be evaluated by Sveriges Riksbank.

Extent to which performance of the new task fits into the institutional set-up of Sveriges Riksbank, in the light of central bank independence and accountability considerations

The ECB considers that the crisis preparedness task for cash handling and electronic payment services is unlikely to be in conflict with the institutional set-up of Sveriges Riksbank as Sveriges Riksbank is already responsible for issuing banknotes and promoting the smooth operation of payment systems, to which this crisis preparedness task is closely linked.

Extent to which the performance of tasks harbours substantial financial risks

The ECB understands that the general principles on State liability are applicable to Sveriges Riksbank, in its capacity as a public authority under the Swedish Parliament. In this respect, under the Law on tort liability the State or a municipality shall compensate[145]: (1) personal injury, property loss and pure economic loss caused through wrongful or negligent exercise of public authority[146] within operations for whose performance the State or a municipality is responsible; (2) pure economic loss caused by a public authority, through the commission of a wrong or through negligence, providing incorrect information or advice, if there are special reasons considering the circumstances[147]; (3) personal injury, property loss, pure economic loss, loss other than that set out under (2) above, if arising due to the victim's rights in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms being

143 See, e.g., paragraph 4.6 of Opinion CON/2018/21.

144 See Chapter 38.4.3 and p. 1745 of the Report.

145 *Skadeståndslagen (1972:207)*, Chapter 3, Sections 2-4.

146 I.e. decisions and actions which constitutes expressions of society's power to decide over its citizens' rights and obligations or otherwise grant benefits only a public authority may grant.

147 In accordance with Chapter 3, Section 3 of the Law on tort liability, in determining whether there are special reasons considering the circumstances, especially the nature of the information or advice, the connection between the information and advice and the relevant public authority's areas of operations and the circumstances at hand when the information or advice was offered shall be taken into account.

infringed by the State or a municipality; and (4) other intangible loss caused by such infringement. In each specific case the relevant public authority must pay compensation in respect of any loss or damage caused by it[148]. Thus, the ECB understands that Sveriges Riksbank will harbour substantial financial risks to the extent that it is liable for the performance of all its tasks, including, in this particular context, the crisis preparedness task for cash handling and electronic payment services.

Extent to which the performance of the new task exposes members of the decision-making bodies of Sveriges Riksbank to disproportionate political risks and impacts on their personal independence

The ECB does not consider that the crisis preparedness task for cash handling and electronic payment services would expose the members of the decision-making bodies of Sveriges Riksbank to disproportionate political risks or that it would impact on their personal independence.

Conclusion

The ECB considers that, given the link to the ESCB tasks of issuing banknotes and promoting the smooth operations of payment systems, the crisis preparedness task for cash handling and electronic payment services is a central banking task. As such, its financing by Sveriges Riksbank is in compliance with the prohibition of monetary financing under Article 123 of the Treaty.

11. Specific observations on the draft law on Sveriges Riksbank: provisions on international activities

11.1 *Purpose of the provisions on international activities in the draft law on Sveriges Riksbank*

11.1.1 The draft law on Sveriges Riksbank clarifies that Sveriges Riksbank may act as a liaison body in relation to international financial institutions of which Sweden is a member. Sveriges Riksbank may grant credit to international financial institutions of which Sweden is a member and make agreements on long-term international financial commitments, if the Parliament so approves[149].

11.1.2 Sveriges Riksbank must ensure that the Government regularly receives information about events of significance to the international work in which Sveriges Riksbank participates. In respect of decisions on important matters of principle in international contexts that are linked to the activities of other public authorities, Sveriges Riksbank must consult with such other authorities. Sveriges Riksbank shall base its international work on statements that the Parliament or the Government has made about Sweden's general stance[150]. As statements about Sweden's general stance are meant to affect the society at large and not constitute instructions to specific authorities or concern a certain negotiation or international organisation, the intention of this obligation of Sveriges Riksbank is that it is to operate, on a general level, in the same direction as the State at

148 *Förordning (1975:1345) med instruktion för Justitiekanslern*, Section 2a.

149 See Chapter 6, Sections 1 and 2 of the draft law on Sveriges Riksbank.

150 See Chapter 6, Sections 11-13 of the draft law on Sveriges Riksbank.

large[151]. If Sveriges Riksbank chooses to not pursue a position which is in line with the general stance of Sweden, Sveriges Riksbank should be able to explain to the Parliament's Committee on Finance the circumstances leading to this position[152].

11.1.3 Regarding the financing of the International Monetary Fund (IMF) in particular, the draft law on Sveriges Riksbank provides that[153] Sveriges Riksbank may be a financial counterparty to the IMF. Sveriges Riksbank may make capital contributions from its own funds to the IMF, if the Parliament approves this. Sveriges Riksbank may acquire the special drawing rights resulting from Sweden's participation in the IMF and must fulfil the obligations resulting from Sweden's participation in this system. Sveriges Riksbank may decide to provide credits or other funding of the IMF's activities if the funding has been approved by the Parliament. Regarding the financing of the IMF's activities for low income countries, Sveriges Riksbank may decide to provide credits or other financing when informed by the Government that the Parliament has approved this. This provision is new, as at present it is Sveriges Riksbank that submits a petition to the Parliament to be allowed to participate as concerns both the IMF's financing directed towards low income States and other financings. According to the Committee, Swedish standpoints in the IMF should be developed in cooperation between the Government and Sveriges Riksbank, as they are at present. However, since it is Sweden, as a country, that is a member of the IMF, the Committee's assessment is that, ultimately, it is the Government that decides what position Sweden should adopt. The exception to this is in matters concerning monetary policy or other ESCB-related questions[154].

11.1.4 In connection with the transfer of funds from Sveriges Riksbank to the IMF when making capital contributions from its own funds to the IMF or providing credits or other funding of the IMF's activities, Sveriges Riksbank must borrow a corresponding sum from the NDO, and will remunerate the NDO at the interest rate corresponding to the interest payment received by Sveriges Riksbank from the IMF. Capital amounts that Sveriges Riksbank receives back from the IMF must be returned to the NDO[155].

11.2 *Specific observations*

11.2.1 The tasks performed by Sveriges Riksbank must comply with the monetary financing prohibition under Article 123 of the Treaty. As previously noted by the ECB, national legislation providing for the financing by an NCB of a Member State's financial commitments to international financial institutions other than the IMF in the capacities provided for in Regulation (EC) No 3603/93 is incompatible with the monetary financing prohibition[156]. As previously noted by the EMI, the Swedish Government's assumption of all responsibilities resulting from Sweden's membership in the International Bank for Reconstruction and Development (the World Bank) was necessary to

151 See Chapter 26.9.5 of the Report.
152 See Chapter 26.9.5 of the Report.
153 See Chapter 6, Sections 3-8 of the draft law on Sveriges Riksbank.
154 See Chapter 27.9.2 of the Report.
155 See Chapter 6, Sections 7 and 8 of the draft law on Sveriges Riksbank.
156 See Convergence Report, May 2018.

ensure that Sveriges Riksbank's statute was compatible with the prohibition of central bank financing of public sector obligations vis-à-vis third parties specified in Article 1(1)(b)(ii) of Regulation (EC) No 3603/93[157]. Against this backdrop, it is suggested to clarify that Sveriges Riksbank may only grant credit to international financial institutions of which Sweden is a member and make agreements on long-term international financial commitments to the extent compatible with the monetary financing prohibition under Article 123 of the Treaty.

11.2.2 Regarding Sveriges Riksbank's financing of Sweden's obligations vis-à-vis the IMF, this is subject to an exemption from the monetary financing prohibition laid down in Regulation (EC) No 3603/93. In particular, Article 7 of Regulation (EC) No 3603/93 provides that the financing by NCBs of obligations falling upon the public sector in relation to the IMF are not regarded as a credit facility within the meaning of Article 123 of the Treaty. Recital 14 of Regulation (EC) No 3603/93 clarifies the rationale behind this exemption, stating that it is appropriate to authorise the financing by the central banks of obligations falling upon the public sector in relation to the IMF because such financing 'results in foreign claims which have all the characteristics of reserve assets'. The exemption laid down in Article 7 of Regulation (EC) No 3603/93 must be interpreted in line with this rationale. IMF-related financings that do not result in claims that have the characteristics of reserve assets within the meaning of recital 14 of Regulation (EU) No 3603/93 are therefore a form of monetary financing prohibited by Article 123(1) of the Treaty[158]. Reserve assets have been defined for this purpose as those external assets that are readily available to and controlled by monetary authorities for meeting balance of payments financing needs, for interventions in exchange markets to affect the currency exchange rate, and for other related purposes, such as maintaining confidence in the currency and the economy, and serving as a basis for foreign borrowing. Under this definition, reserve assets must be foreign currency assets and, other than gold bullion, must be claims on non-residents[159]. Against this backdrop, the ECB recommends clarifying that Sveriges Riksbank's financing of Sweden's obligation in relation to the IMF is subject to compliance with the monetary financing prohibition under Article 123 of the Treaty.

11.2.3 Regarding Sveriges Riksbank's obligation to base its international work on statements made by the Government or the Parliament about Sweden's general stance described in paragraph 11.1.2, the ECB emphasises that, in accordance with Article 130 of the Treaty, an NCB must not be limited in terms of its ability to perform its ESCB-related tasks independently. The abovementioned obligation of Sveriges Riksbank entails a risk of the Parliament influencing Sveriges Riksbank in a way that is not compatible with Article 130 of the Treaty. Therefore, the ECB suggests setting out the obligation in the draft law on Sveriges Riksbank without prejudice to Sveriges Riksbank's independence under the Treaty.

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157 See paragraph 4 of Opinion CON/1995/8.

158 See paragraphs 2.1 and 2.2 of Opinion CON/2016/21.

159 See paragraph 3.2 of Opinion CON/2017/4 (citing International Monetary Fund, Balance of Payments and International Investment Position Manual (Sixth ed., 2009), pp. 111-18).

12. Specific observations on the draft law on Sveriges Riksbank: other provisions regarding reporting, statistics and the provision of benchmarks

12.1 *Purpose of the provisions regarding reporting, statistics and the provision of benchmarks in the draft law on Sveriges Riksbank*

12.1.1 The draft law on Sveriges Riksbank[160] provides that, at the request of Sveriges Riksbank, financial companies that conduct operations in Sweden are obliged to provide it with the information necessary to enable it to fulfil its tasks under the draft law on Sveriges Riksbank. This means that the group of companies obliged to report information to Sveriges Riksbank has been expanded slightly compared with the present regulations to enable Sveriges Riksbank to carry out all its tasks under the draft law on Sveriges Riksbank.

12.1.2 The draft law on Sveriges Riksbank[161] provides that Sveriges Riksbank is responsible for producing and publishing balance-of-payment statistics, statistics on the international investment position and financial market statistics. An express provision is introduced concerning the right of Sveriges Riksbank to produce and disseminate statistical information required for collaboration in the ESCB, the Bank for International Settlements (BIS), the IMF or other international organisations.

12.1.3 The draft law on Sveriges Riksbank[162] provides that Sveriges Riksbank may provide and publish interest rate benchmarks and other benchmarks referred to in Regulation (EU) 2016/1011 of the European Parliament and of the Council[163].

12.2 *Specific observations*

12.2.1 Interest rate benchmarks are important for the functioning of financial markets and the transmission of monetary policy[164]. The ECB understands that the Stockholm Interbank Offered Rate (STIBOR) has, up until now, been provided by the Swedish STIBOR banks, and that Financial Benchmarks Sweden AB, a Swedish subsidiary of the Swedish Banking Association, has been responsible for administering STIBOR, whilst Nasdaq Stockholm AB is responsible for publishing STIBOR every business day at 11:00. The ECB notes that the common framework to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and financial contracts under Regulation (EU) 2016/1011 does not apply to central banks[165], as central banks already apply principles, standards and procedures which ensure that they exercise their activities with integrity and in an independent manner[166]. Accordingly, if Sveriges Riksbank were to decide to provide and publish reference interest rates and other benchmarks under the

160 See Chapter 7, Section 1 of the draft law on Sveriges Riksbank. See also Chapter 36.1.2 of the Report.

161 See Chapter 7, Section 5 of the draft law on Sveriges Riksbank. See also Chapter 36.1.3 of the Report.

162 Chapter 7, Section 6 of the draft law on Sveriges Riksbank. See also Chapter 36.3 of the Report.

163 Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2017/14/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

164 See recital 1 of Guideline (EU) 2019/1265 on the euro short-term rate (€STR) (ECB/2019/19) (OJ L 199, 26.7.2019, p. 8).

165 Article 2(2)(a) of Regulation (EU) 2016/1011.

166 Recital 14 of Regulation (EU) 2016/1011.

draft law on Sveriges Riksbank, it would have full discretion to develop the methodology for determining the new benchmark so as to ensure its accuracy, integrity and reliability. When central banks provide benchmarks, it is their responsibility to establish appropriate internal procedures in order to ensure the accuracy, integrity, reliability and independence of those benchmarks, taking into account international best practice where relevant and appropriate[167].

12.2.2 The draft law on Sveriges Riksbank does not confer any new tasks on Sveriges Riksbank as concerns the provision and publication of reference interest rates and other benchmarks. The ECB understands that, pursuant to the Law on interest[168], Sveriges Riksbank is currently obliged to publish a reference rate every six months, which is used for calculating interest on arrears. The draft law on Sveriges Riksbank merely opens up the possibility that Sveriges Riksbank may also provide and publish reference interest rates and other benchmarks referred to in Regulation (EU) 2016/1011. Based on this, the ECB understands that the possibility for Sveriges Riksbank to provide and publish reference interest rates and other benchmarks referred to in Regulation (EU) 2016/1011 would not confer a new task on it. Therefore, the issue of assessing whether the conferral of new tasks on an NCB complies with the prohibition of monetary financing does not arise in the case at hand.

13. Observations on the draft law on Sveriges Riksbank: provisions regarding Sveriges Riksbank's budget, accounting and equity

13.1 *Purpose of the provisions on Sveriges Riksbank's budget, accounting and equity in the draft law on Sveriges Riksbank*

13.1.1 The draft law on Sveriges Riksbank's provisions regarding Sveriges Riksbank's budget, accounting and equity regime apply as of the financial year 2023[169].

13.1.2 The draft law on Sveriges Riksbank provides that, each year before the end of December, Sveriges Riksbank's Executive Board will adopt a budget for Sveriges Riksbank's activities during the following financial year. The Executive Board shall submit the budget to the Parliament's Committee on Finance, the NAO and Sveriges Riksbank's General Council for information purposes[170].

13.1.3 The draft law on Sveriges Riksbank further provides that Sveriges Riksbank is obliged to maintain accounting records and to draw up its annual financial statements in accordance with generally accepted accounting principles. In this context, Sveriges Riksbank will continue to follow Guideline (EU) 2016/2249 of the European Central Bank (ECB/2016/34)[171] to the extent that it

167 See paragraph 3.4 of Opinion CON/2019/18; Board of the International Organization of Securities Commissions (OICU-IOSCO), Principles for Financial Benchmarks (July 2013), available at www.iosco.org.

168 *Räntelag (1975:635*).

169 See Chapter 13, Section 8(7) of the draft law on Sveriges Riksbank. In this context, it should be noted that Sveriges Riksbank's rules for annual accounts refer to Guideline (EU) 2016/2249 (ECB/2016/34). See Annual Report for Sveriges Riksbank 2019, p. 71.

170 See Chapter 8, Section 1 of the draft law on Sveriges Riksbank.

171 Guideline (EU) 2016/2249 of 3 November 2016 on the legal framework for accounting and financial reporting in the European System of Central Banks (ECB/2016/34) (OJ L 347, 20.12.2016, p. 3).

applies to Sveriges Riksbank, and it will substantiate any deviations from it[172].

13.1.4 The draft law on Sveriges Riksbank also provides that Sveriges Riksbank may establish financial provisions to a reasonable extent in accordance with Guideline (EU) 2016/2249 (ECB/2016/34)[173]. The Committee states that in order not to risk the purpose of a statutory profit allocation rule being undermined, one might conceive of a system in which all or certain financial provisions are aggregated with equity and the result for the year and defined as distributable capital[174]. Thus, the scenario in which Sveriges Riksbank sets aside funds in order that the equity be kept under the target level and thus prevents a distribution of profits taking place could be avoided. However, including financial provisions in distributable capital would, according to the Committee, risk confounding the purpose of the provisions themselves and make the profit allocation rule more opaque. As long as the guidelines that Sveriges Riksbank applies to financial provisions are clear and transparent, the risk of the proposed profit allocation rule being undermined is, according to the Committee, probably low.

13.1.5 The annual report shall contain a profit and loss account, a balance sheet and a directors' report. Sveriges Riksbank's General Council will adopt the profit and loss account and the balance sheet. The directors' report drawn up by Sveriges Riksbank's Executive Board will contain an account of the monetary policy conducted and of Sveriges Riksbank´s other activities. In the annual report, the Executive Board will make an assessment whether the internal controls at Sveriges Riksbank are satisfactory[175].

13.1.6 The Law on Sveriges Riksbank[176] provides that Sveriges Riksbank will have capital in an amount of one billion kronor (SEK), a reserve fund of SEK 500 million and a contingency fund[177]. Each year, Sveriges Riksbank's General Council makes proposals to the Parliament and the NAO on the allocation of Sveriges Riksbank's profit. Sveriges Riksbank's profit and loss account and balance sheet are approved by the Parliament, which also determines the allocation of Sveriges Riksbank's profit[178].

13.1.7 The draft law on Sveriges Riksbank provides that Sveriges Riksbank's equity will consist of capital, a reserve fund and retained profits. Funds in revaluation accounts, as referred to in Guideline (EU) 2016/2249 (ECB/2016/34), are not included in equity. Sveriges Riksbank's equity shall initially be SEK 60 billion upon the new draft law on Sveriges Riksbank entering into effect (referred to as the 'target equity'). At the same time, the Parliament may decide on a higher target

172 See Chapter 8, Section 2 of the draft law on Sveriges Riksbank.

173 See Chapter 8, Section 10 of the draft law on Sveriges Riksbank.

174 See Chapter 29.6.5 of the Report.

175 See Chapter 8, Section 4 of the draft law on Sveriges Riksbank.

176 See Chapter 10, Section 1 of the Law on Sveriges Riksbank.

177 Sveriges Riksbank's balance sheet also includes, within the 'reserves' item, a balancing fund. See Annual Report for Sveriges Riksbank 2019, p. 94.

178 Guidelines have been drawn up by the General Council of Sveriges Riksbank on how its profit is to be allocated. They provide that Sveriges Riksbank should pay 80% of its profit to the State, after adjustment for exchange rate and gold valuation effects and based on a five-year average, with the remaining 20% to be used to increase its own capital. See Sveriges Riksbank's submission to the Parliament, Proposal for the allocation of Sveriges Riksbank's profits for the financial year 2016, p.4, and the General Council's Annual Report 2016, available at www.riksbank.se. However, as these guidelines are not legally binding, there is no statutory provision limiting the amount of profit that may be paid out.

equity. The amount corresponding to two thirds of target equity is described as the base level of equity. The target equity will be adjusted annually in accordance with the percentage change in the Swedish consumer price index published by Statistics Sweden (the 'CPI adjustment'), except that if the change is less than zero (i.e. in the event of deflation), no recalculation needs to be done[179].

13.1.8 Based on the draft law on Sveriges Riksbank, at the end of the financial year 2023 the capital will amount to SEK 40 billion and the reserve fund to zero. The proportion of Sveriges Riksbank's equity exceeding SEK 40 billion at that time will be included in retained profits. Furthermore, if Sveriges Riksbank's equity for the financial year 2023 exceeds the target level of SEK 60 billion, the excess amount is to be included in retained profits.

13.1.9 The draft law on Sveriges Riksbank provides that if Sveriges Riksbank's annual accounts show a profit, a transfer must be made to the reserve fund. This transfer may not exceed an amount corresponding to the change in the base level of equity, as adjusted pursuant to the CPI adjustment. Any excess funds will be transferred to retained profits. If, after such transfers to the reserve fund and retained profits, Sveriges Riksbank's equity exceeds the target equity (SEK 60 billion, subject to the CPI adjustment, if applicable), the excess profit is to be distributed to the State. Whenever the reserve fund exceeds SEK 5 billion, Sveriges Riksbank must transfer these funds to capital[180].

13.1.10 The draft law on Sveriges Riksbank also provides that if Sveriges Riksbank's annual accounts show a loss, this loss will in the first instance be covered by retained profits, then by the reserve fund and, as a last resort, by the capital. If, after covering for losses, retained profits are greater than zero, an amount may be transferred from retained profits to the reserve fund that corresponds to no more than the change in the base level of equity pursuant to the CPI adjustment. If the capital has been used to cover losses, the profits of future years will in the first instance be used to restore the capital to its level prior to incurring losses. Excess funds may be transferred to the reserve fund until Sveriges Riksbank's equity amounts to the base level set out above (SEK 40 billion, subject to the CPI adjustment, if applicable)[181].

13.1.11 As set out in the Law on Sveriges Riksbank, Sveriges Riksbank's General Council makes proposals to the Parliament and the NAO on the allocation of Sveriges Riksbank's profit, and Sveriges Riksbank's profit and loss account and balance sheet are approved by the Parliament, which also determines the allocation of Sveriges Riksbank's profit[182]. The draft law on Sveriges Riksbank stipulates that, following the Executive Board's approval, the General Council may decide on the distribution of funds from retained profits, following the appropriation of profit as set out above. The General Council will also decide on the profit and loss for the year. The Parliament will decide either to approve or to set aside the General Council's decision concerning the profit and loss account, the balance sheet and the profit or loss for the year. Thus, the

179 See Chapter 8, Sections 6-9 and Chapter 13, Sections 8 and 9 of the draft law on Sveriges Riksbank.
180 See Chapter 8, Section 11 of the draft law on Sveriges Riksbank.
181 See Chapter 8, Section 12 of the draft law on Sveriges Riksbank.
182 See Chapter 10, Sections 3 and 4 of the Law on Sveriges Riksbank.

General Council's decision does not become definitive until approved by the Parliament. However, the General Council's decision can only be set aside if the numbers are not calculated in accordance with applicable law. If the decision is set aside, the General Council makes a new decision. Any profit allocation to the Swedish State budget is to be made no later than one week after the Parliament's decision[183].

13.1.12 The draft law on Sveriges Riksbank provides that if losses result in the level of Sveriges Riksbank's equity being less than one third of the target level set out above (i.e. less than SEK 20 billion, subject to the CPI adjustment, if applicable), Sveriges Riksbank must submit a request to the Parliament for the level of the base equity to be restored, unless unrealised gains on the balance sheet mean that restoring equity is not justified. The request may be for a higher amount if this is required to secure Sveriges Riksbank's capability to be self-financing in the long term, but is not to exceed the amount that brings equity to its target level after restoration[184]. In general terms, if Sveriges Riksbank's activities give rise to a question of statutory amendment or any other measure on the part of the State, Sveriges Riksbank may make a proposal concerning the matter to the Parliament or the Government[185].

13.2 *General observations*

13.2.1 The ECB has repeatedly pointed out in its convergence reports that Sweden needs to adapt its legislation governing Sveriges Riksbank to comply with Treaty requirements relating to financial independence and the distribution of profits[186]. Furthermore, the ECB and, earlier, the EMI have issued several opinions addressing matters relating to Sveriges Riksbank's financial independence in response to consultation requests from the Swedish Ministry of Finance and the Parliament[187].

13.2.2 The overall independence of an NCB, as required under Article 130 of the Treaty and Article 7 of the Statute of the ESCB, would be jeopardised if it could not autonomously avail itself of sufficient financial resources to fulfil its mandate, i.e. to perform the ESCB-related tasks required of it under the Treaty and the Statute of the ESCB. The principle of financial independence also implies that an NCB must have sufficient means to perform not only its ESCB-related tasks but also its own national tasks, e.g. financing its administration and own operations. Therefore, a Member State may not put its NCB in a position where it has insufficient financial resources and inadequate net equity to carry out its tasks. For all these reasons, financial independence implies that an NCB should always be sufficiently capitalised. Financial independence requires that in performing its tasks an NCB can independently assess the risks involved and has the power to decide on any necessary precautions to take. An NCB is best placed to make these assessments and needs to

183 See Chapter 8, Sections 4, 11 and 14 and Chapter 12, Section 9 of the draft law on Sveriges Riksbank.
184 See Chapter 8, Section 13 of the draft law on Sveriges Riksbank.
185 See Chapter 11, Section 27 of the draft law on Sveriges Riksbank.
186 See, e.g., Convergence Report, May 2018, p. 203; paragraph 2.2 of Opinion CON/2017/17.
187 See Opinions CON/2005/54, CON/2008/34, CON/2013/53 and CON/2017/17, and EMI Opinion CON/1997/26.

have the necessary tools to evaluate the relevant circumstances and to make forecasts[188].

13.2.3 The ECB takes particular note that Sveriges Riksbank faces a number of financial risks, including the relatively large size of the banking sector in Sweden, Sveriges Riksbank's significant holdings of low interest-bearing government bonds, and the anticipated decline in Sveriges Riksbank's seigniorage income due, inter alia, to a possible decrease in banknote usage in Sweden. Regarding the relatively large size of the Swedish banking sector, the Swedish banking system's total balance sheet amounted to SEK 14,724 billion in January 2020[189], which is approximately three times Sweden's GDP[190]. Sweden's large cross-border banking sector has considerable commitments in foreign currencies[191]. This entails significant risks to financial stability both in Sweden, as well as potentially for other countries in the Nordic-Baltic region, where Swedish banking groups have substantial market presence. In this respect it would be advisable, from a financial stability perspective, to carefully consider Sveriges Riksbank's day-to-day and exceptional spending needs given Sveriges Riksbank's tasks, including its tasks in exceptional circumstances, with the aim of supporting liquidity, to grant credit or provide guarantees on special terms to banking institutions and Swedish companies, subject to the supervision of the SFSA. It is therefore critical to ensure that Sveriges Riksbank has sufficient capital and foreign reserves to conduct its functions, and that it remains in a position to ensure the required existence of financial buffers, to preserve an appropriate level of own funds and reserves[192].

13.3 *Specific observations*

Level of Sveriges Riksbank's equity capital

13.3.1 Pursuant to the draft law on Sveriges Riksbank[193], Sveriges Riksbank has its own funds that are kept separate from the Treasury. Furthermore, the Government's budget has no special appropriations item for Sveriges Riksbank. The cost of Sveriges Riksbank's operations are instead covered by its own revenues, e.g. from the return it receives from investing the capital allocated to it. Therefore, it is important that Sveriges Riksbank's equity is able to generate sufficient return to cover costs and accrued losses in its operations.

13.3.2 The ECB notes the existence of a statutory ceiling on the level of targeted equity that may be held by Sveriges Riksbank. In carrying out their tasks NCBs should assess the risks involved and have the power to independently decide on the necessary precautions to take. Consequently, NCBs should be given the ability to safeguard the real value of their capital and assets by being

188 See Convergence Report, May 2018, p. 27; paragraph 2.2 of Opinion CON/2009/53, paragraph 2.4.2 of Opinion CON/2009/83, paragraph 3.3 of Opinion CON/2014/24, paragraph 2.2 of Opinion CON/2014/27, paragraph 3.1.1 of Opinion CON/2014/56 and paragraph 2.3 of Opinion CON/2017/17.

189 See Statistics Sweden's Financial Markets Statistics, January 2020.

190 See Statistics Sweden, https://www.scb.se/en/finding-statistics/statistics-by-subject-area/national-accounts/national-accounts/national-accounts-quarterly-and-annual-estimates/.

191 See Sveriges Riksbank, Financial Stability Report 2019:2, https://www.riksbank.se/globalassets/media/rapporter/fsr/engelska/2019/191120/financial-stability-report-2019_2.pdf, pp. 15-16.

192 See paragraphs 2.3 and 2.4 of Opinion CON/2017/17.

193 See Chapter 1, Section 2 of the draft law on Sveriges Riksbank.

free to independently create adequate financial buffers.[194]

13.3.3 Furthermore, the ECB understands that if Sveriges Riksbank's equity exceeds SEK 60 billion at the end of the financial year 2023, the excess amount will not be allocated to the State, but instead transferred to retained profits and remain under this item, unless needed for subsequent loss coverage, or unless the General Council, following consent from the Executive Board, decides differently.[195]

Allocation of Sveriges Riksbank's profits and losses

13.3.4 Detailed legal regulations on profit allocation are a positive development as they bring not only transparency and predictability to the treatment of profits and the timing of payments to the Treasury, but also legally bind the Government and the Parliament. In this respect, the ECB welcomes that profits may be distributed to the Treasury only after any accumulated losses from previous years have been covered and financial buffers deemed necessary to safeguard the real value of the NCB's capital and assets have been created.

13.3.5 The ECB has repeatedly pointed out[196] that the current arrangements regarding the Parliament's approval of the allocation of Sveriges Riksbank's profits are incompatible with the requirement of central bank independence under the Treaty and the Statute of the ESCB. Against this backdrop, the ECB notes that the Parliament's formal role in approving Sveriges Riksbank's profit and loss account and balance sheet and in determining the allocation of its profit is significantly reduced under the draft law on Sveriges Riksbank. In particular, the General Council's decision concerning the profit and loss account, the balance sheet and the profit or loss for the year can only be set aside if the numbers are not calculated in accordance with applicable law. The ECB understands that since this condition should be evident from the NAO's audit report, the setting aside by the Parliament of the General Council's decision concerning the profit and loss account and the balance sheet for the year is an unlikely event. Any other more extensive role for the Parliament in this respect would be incompatible with the requirement of central bank independence under the Treaty and the Statute of the ESCB.

Financial provisions

13.3.6 As regards financial provisions or buffers, NCBs must be free to independently create financial provisions to safeguard the real value of their capital and assets. Member States may not hamper NCBs' ability to build up their reserve capital to the level necessary for a member of the ESCB to fulfil its tasks[197]. In this regard, the ECB welcomes that under the draft law on Sveriges Riksbank, Sveriges Riksbank may establish financial provisions to a reasonable extent in accordance with Guideline (EU) 2016/2249 (ECB/2016/34), Article 8 of which provides that an NCB may establish a provision for financial risks in its balance sheet and is to decide on the size and use

194 See paragraph 3.1.9 of Opinion CON/2018/23 and paragraph 3.1 of Opinion CON/2013/96.

195 See Chapter 13, Section 8(9) and Chapter 8, Section 14 of the draft law on Sveriges Riksbank and pp. 1709-1710 and Chapter 29.6.5 of the Report.

196 See, e.g., Convergence Report 2018, p. 203.

197 See Convergence Report 2018, p. 28; paragraph 3.3 of Opinion CON/2009/26, paragraph 3.2 of Opinion CON/2009/53 and paragraph 2.1 of Opinion CON/2012/69.

of the provision on the basis of a reasoned estimate of the NCB's risk exposure. At the same time, the ECB notes that operational risks are outside the scope of such provisions.

13.3.7 Furthermore, the ECB understands that the Committee possibly intends (see paragraph 13.1.4) that Sveriges Riksbank may not use financial provisions to circumvent the framework for target equity and profit distribution to the State, although the risk of such circumvention is low as long as the guidelines that Sveriges Riksbank applies to financial provisions are clear and transparent. This, in turn, could be interpreted as relating to the requirement that Sveriges Riksbank may establish financial provisions to a 'reasonable extent' in accordance with Guideline (EU) 2016/2249 (ECB/2016/34). As Guideline (EU) 2016/2249 (ECB/2016/34) already requires clear and transparent motivation of any financial provision[198], the requirement on the 'reasonable extent' could be considered redundant, also taking into account the principle of proportionality set out in the draft law on Sveriges Riksbank[199].

Request for recapitalisation of Sveriges Riksbank

13.3.8 The ECB has a number of specific concerns regarding the provisions of the draft law on Sveriges Riksbank concerning requests by Sveriges Riksbank for recapitalisation following losses.

13.3.9 The ECB understands that, under the provisions of the Law on Sveriges Riksbank[200] and the Law on Parliament[201], Sveriges Riksbank has an unrestricted right to make proposals to the Parliament or the Government with respect to the restoration of Sveriges Riksbank's capital. The ECB understands that the draft law on Sveriges Riksbank should not be understood as implying that Sveriges Riksbank will only be entitled to submit a request to the Parliament for the level of its equity to be restored up to a sum necessary to ensure the base level if Sveriges Riksbank's equity has fallen below a certain level (i.e. when the equity is less than the initial level of SEK 20 billion, as adjusted by the CPI adjustment, if any). In this respect, the ECB understands that Sveriges Riksbank would be able to make a proposal to the Parliament or the Government if Sveriges Riksbank's activities give rise to a question of statutory amendment or any other measure on the part of the State, which implies that Sveriges Riksbank may request a recapitalisation at any point in time, even if the reported equity is more than one third of the target level. However, for the avoidance of doubt, the ECB would welcome the introduction of an explicit reference to the possibility of Sveriges Riksbank submitting a request for the restoration of its capital, consistent with its existing general right to submit such a request to the Parliament or the Government. It is a crucial element of Sveriges Riksbank's financial independence that it has sufficient funds at its disposal to be able to perform its tasks, including ESCB-related and national tasks.

13.3.10 Furthermore, the draft law on Sveriges Riksbank neither obliges the State to provide capital after Sveriges Riksbank has submitted a request to have its base level equity restored nor specifies

198 See Article 8 of Guideline 2016/2249 (ECB/2016/34).
199 See Chapter 1, Section 5 of the draft Law on Sveriges Riksbank.
200 See Chapter 4, Section 1 of the Law on Sveriges Riksbank.
201 See Chapter 9, Section 17 of the Law on Parliament, 2014.

the time period within which the State should respond to Sveriges Riksbank's request[202].

13.3.11 Lastly, according to the Committee, in its request for recapitalisation Sveriges Riksbank must take into account whether there are significant amounts on the revaluation accounts and assess whether a lower increase of capital than that required for it to reach the base equity level would suffice[203]. The ECB notes that funds in revaluation accounts as referred to in Guideline (EU) 2016/2249 (ECB/2016/34) are not included in Sveriges Riksbank's equity under the draft law on Sveriges Riksbank, which could raise an issue of consistency. Furthermore, the amounts in the revaluation accounts may be volatile, and it accordingly seems inappropriate to consider them when assessing Sveriges Riksbank's long-term financing ability.

13.3.12 In the light of the foregoing, the ECB reiterates the importance of ensuring that Sveriges Riksbank's financial independence is safeguarded. Sveriges Riksbank should not be put in a position where it has insufficient financial resources and inadequate net equity to carry out its tasks[204].

14. Specific observations on the draft law on Sveriges Riksbank: provisions on organisation and management

14.1 *Purpose of the provisions on Sveriges Riksbank's organisation and management in the draft law on Sveriges Riksbank*

14.1.1 In accordance with the existing provisions of the Instrument of Government, Sveriges Riksbank has a General Council of 11 members, who are appointed by the Parliament. Sveriges Riksbank is run by an Executive Board, which is appointed by the General Council. The General Council may relieve from office a member of the Executive Board only if the member no longer fulfils the requirements laid down for the performance of his or her duties or is guilty of serious misconduct[205]. Under the draft law on Sveriges Riksbank a decision to relieve from office a member of the Executive Board requires at least eight of the General Council members to be in favour of the decision. The General Council will supervise the work of the Executive Board and Sveriges Riksbank's other activity. The General Council will keep the Parliament's Finance Committee informed of relatively significant matters, and report its observations to the Finance Committee regularly and at the Committee's request. The General Council's audit function will review the work of the Executive Board[206].

14.1.2 In addition to the appointment of the members of the Executive Board, the draft law on Sveriges Riksbank provides that the General Council decides on the following matters: (1) appointment of the Governor from among the members of the Executive Board; (2) determining the order in which the Deputy Governors serve in place of the Governor if he or she resigns, is relieved from

202 See paragraph 3.3.6 of Opinion CON/2007/14.
203 See Report, p. 1274.
204 See paragraph 3.3.7 of Opinion CON/2007/14.
205 See Chapter 9, Section 13, fourth paragraph of the Instrument of Government.
206 See Chapter 11, Sections 6 and 7 of the draft law on Sveriges Riksbank.

office or cannot participate due to illness or other comparable circumstance; (3) deciding on the remuneration and terms of employment of members of the Executive Board; (4) granting approval for a former member of the Executive Board becoming, within one year after the end of his or her term of office, a member of the executive board of a bank or firm supervised by the SFSA, or holding other employment or office that disqualifies him or her from being a member of the Executive Board; (5) approval of Sveriges Riksbank's profit and loss statement and balance sheet; (6) after approval of the Executive Board, approving distributions from the profit and loss account; (7) deciding on the motifs used in the design of notes and coins issued by Sveriges Riksbank; and (8) stakeholder responses within the scope of its responsibility [207].

14.1.3 The draft law on Sveriges Riksbank provides that the Executive Board consists of five members appointed for a period of five or six years. In comparison with the Law on Sveriges Riksbank, this means a reduction of the number of members from six to five, but the Executive Board may comprise five or six members up to 31 December 2028. A member may only be reappointed once, but this restriction only applies to reappointments made after 31 December 2022. However, a person who has previously been a Deputy Governor of Sveriges Riksbank may be appointed as Governor for one or two terms of office. The Governor chairs the Executive Board, and the other members are Deputy Governors. When recruiting, the General Council must ensure that, taken together, the Governor and Deputy Governors have appropriate competence and expertise in all areas of Sveriges Riksbank's activities. The candidate profile for the Governor must include a requirement for good leadership skills. A member of the Executive Board may not be a member of the Parliament, a Government minister, employed at the Government offices or at the central level of a political party, a member or alternate member of the board of directors of a bank or other company subject to supervision by the SFSA, or hold any other employment or assignment that makes him unsuitable as a member of the Executive Board, or be a bankrupt or prohibited from trading [208].

14.1.4 The draft law on Sveriges Riksbank provides that the Executive Board is responsible for the activities of Sveriges Riksbank and will ensure that they are conducted efficiently and in accordance with the law and the obligations following from Sweden's membership of the Union, that they are reported in a reliable and fair manner and that Sveriges Riksbank manages public funds well. Matters other than those to be decided by the Executive Board may be decided by the Governor, or, unless otherwise decided by the Executive Board, by a person designated by the Governor [209].

14.1.5 The Chair and Vice Chair of the General Council have the right to be present at meetings of the Executive Board with the right to speak but without the right to make proposals and vote [210].

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207 See Chapter 9, Section 13, paragraphs 3 and 4 of the Instrument of Government; Chapter 8, Section 4, second paragraph and Section 14 and Chapter 11, Sections 8-10, Section 11, second paragraph and Sections 14-18 of the draft law on Sveriges Riksbank.

208 See Chapter 11, Sections 12, 14, 15 and 17 and Chapter 13, Section 8, points 5 and 6 of the draft law on Sveriges Riksbank.

209 See Chapter 11, Sections 19 and 20 of the draft law on Sveriges Riksbank.

210 See Chapter 11, Section 21, second paragraph of the draft law on Sveriges Riksbank.

14.1.6 The draft law on Sveriges Riksbank provides that members of the Executive Board may neither seek nor take instructions when fulfilling their duties concerning the responsibility referred to in Chapter 9, Section 13, first paragraph of the Instrument of Government. These duties comprise the following: (1) defining and implementing monetary policy; (2) conducting foreign currency interventions; (3) holding and managing foreign currency reserves; (4) promoting the smooth operation of payment systems within the framework of cooperation in the ESCB; and (5) collecting the statistical information needed for cooperation within the ESCB[211].

14.1.7 The draft law on Sveriges Riksbank contains provisions requiring the members of the General Council and the Executive Board to make written disclosures to the Parliament regarding their ongoing holdings of financial instruments and/or other investments (e.g., commercial properties) and financial interests (e.g. payments, pension benefits) having an aggregate market value of SEK 500,000 or more, as well as loans and other liabilities aggregating SEK 500,000 or more. Sveriges Riksbank may also require designated employees and contractors to make written disclosures to Sveriges Riksbank regarding their ongoing holdings of financial instruments[212].

14.1.8 The draft law on Sveriges Riksbank provides that legal action against a decision by the General Council on the relieving from office of a member of the Executive Board shall be brought within two months from service of the decision. If legal action is not brought within this period, the party in question loses his or her right to bring legal action. In addition, it is provided that Sveriges Riksbank may bring an action before the CJEU, and that the members of the Executive Board other than the Governor may bring legal action before the Swedish Supreme Court, which may declare a decision on relieving from office invalid[213].

14.2 *Specific observations*

Role of Sveriges Riksbank's Executive Board

14.2.1 The ECB notes that the members of Sveriges Riksbank's Executive Board may not request or receive instructions from anyone when they are fulfilling duties concerning Sveriges Riksbank's responsibility under the Instrument of Government for monetary policy, foreign currency interventions, foreign currency reserves, the smooth operation of payment systems within the framework of cooperation in the ESCB and the collection of the statistical information needed for cooperation within the ESCB[214]. As noted in paragraphs 3.2.1 and 3.2.4, the ECB suggests that Sveriges Riksbank's responsibilities under the proposed amendments to the Instrument of Government, in respect of which Sveriges Riksbank may not seek or take instructions, should be aligned with the concept of central banking tasks under the Treaty. Within the framework of the Eurosystem the provision of liquidity is, with the exception of emergency liquidity assistance, considered to be part of the basic tasks of implementing monetary policy and promoting the

211 See Chapter 9, Section 13, paragraph 1 of the Instrument of Government; and Chapter 11, Section 26 of the draft law on Sveriges Riksbank.

212 See Chapter 11, Sections 31-34 of the draft law on Sveriges Riksbank.

213 See Chapter 13, Section 5 of the draft law on Sveriges Riksbank.

214 See Chapter 9, Section 13, paragraph 1 of the Instrument of Government; Chapter 11, Section 26 of the draft law on Sveriges Riksbank.

smooth operation of payment systems, and is subject to the prohibition on NCBs seeking or taking instructions. Similarly, within the framework of the ESCB Sveriges Riksbank's powers in relation to payment systems, monitoring financial infrastructures and developing the payment market are considered to be part of the basic task of promoting the smooth operation of payment systems and the related task of ensuring efficient and sound clearing and payment systems, and are thus covered by the central bank independence protection under Article 130 of the Treaty and Article 7 of the Statute of the ESCB.

14.2.2 The ECB welcomes the five or six-year terms of office of the members of the Executive Board. This is consistent with the first paragraph of Article 14.2 of the Statute of the ESCB, which provides that NCB statutes must, in particular, provide that the term of office of an NCB Governor be no less than five years. Applying the same rules in respect of the security of tenure and grounds for relieving from office of Governors will also safeguard the personal independence of other members of the decision-making bodies of NCBs involved in the performance of ESCB-related tasks[215].

14.2.3 As regards legal action against a decision by Sveriges Riksbank's General Council on the relieving from office of a member of Sveriges Riksbank's Executive Board, the second paragraph of Article 14.2 of the Statute of the ESCB provides that a decision to relieve a Governor from office may be referred to the CJEU by the Governor concerned or the ECB's Governing Council on grounds of infringement of the Treaties or of any rule of law relating to their application. Such proceedings shall be instituted within two months of the publication of the decision or of its notification to the plaintiff or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be. As mentioned in paragraph 14.2.2, applying the same rules in respect of security of tenure and in respect of grounds for relieving from office of Governors will also safeguard the personal independence of other members of the decision-making bodies of NCBs involved in the performance of ESCB-related tasks. Against this backdrop, the ECB welcomes that the members of the Executive Board other than the Governor may bring an action before the Swedish Supreme Court in respect of a decision to relieve them from office. It should be clarified that action in respect of relieving from office by the Governor and the members of the Executive Board needs to be brought within two months of the publication or notification of the relieving from office decision, which may not necessarily be the same time as the date of issuance of that decision. It should also be clarified that there is no provision under the Treaty for Sveriges Riksbank to institute such proceedings.

Role of Sveriges Riksbank's General Council

14.2.4 Pursuant to Article 130 of the Treaty, when exercising the powers and carrying out the tasks and duties conferred on it by the Treaty and the Statute of the ESCB, neither an NCB, nor any member of its decision-making bodies, may seek or take instructions from, inter alia, any government of a Member State 'or from any other body', which includes a statutory body such as

215 See paragraph 2.2 of Opinion CON/2019/24, paragraph 2.2 of Opinion CON/2019/19, paragraph 7 of Opinion CON/2004/35, paragraph 8 of Opinion CON/2005/26, paragraph 2.6 of Opinion CON/2006/32, paragraph 3.7 of Opinion CON/2006/44, and paragraph 2.3 of Opinion CON/2007/6.

the Supervisory Board. The ECB understands that the Executive Board of Sveriges Riksbank is exclusively responsible for the performance of ESCB-related tasks[216], and therefore qualifies as a decision-making body of Sveriges Riksbank within the meaning of Article 130 of the Treaty. The ECB notes that the members of the Executive Board may not request or receive instructions from anyone when carrying out duties concerning Sveriges Riksbank's responsibility under the proposed amendments to the Instrument of Government for monetary policy, foreign currency interventions, foreign currency reserves, the smooth operation of payment systems within the framework of cooperation in the ESCB and the collection of the statistical information needed for cooperation within the ESCB[217]. Sveriges Riksbank's responsibilities under the proposed amendments to the Instrument of Government, in respect of which the Executive Board of Sveriges Riksbank shall decide and may not seek or take instructions from the General Council, should be aligned with the concept of central banking tasks under the Treaty. As previously noted, within the framework of the Eurosystem the provision of liquidity is, with the exception of emergency liquidity assistance, considered to be part of the basic tasks of implementing monetary policy and promoting the smooth operation of payment systems, and is subject to the prohibition on NCBs seeking or taking instructions. Similarly, within the framework of the ESCB Sveriges Riksbank's powers in relation to payment systems, monitoring financial infrastructures and developing the payment market are considered to be part of the basic task of promoting the smooth operation of payment systems and the related task of ensuring efficient and sound clearing and payment systems, and are thus covered by the central bank independence protection under Article 130 of the Treaty and Article 7 of the Statute of the ESCB. Provided this point is clarified, the ECB understands that the General Council would not intervene in the performance of ESCB-related tasks, nor in the decisions concerning those tasks, and that it therefore would not be considered to be a decision-making body within the meaning of Article 130 of the Treaty and Article 7 of the Statute of the ESCB. Therefore, having regard both to the structure of the General Council, as a constituent part of Sveriges Riksbank, and to its tasks, the General Council may not seek to influence the Executive Board in its capacity as Sveriges Riksbank's decision-making body responsible for the performance of Sveriges Riksbank's ESCB-related tasks[218].

14.2.5 Regarding the General Council's competence to approve Sveriges Riksbank's profit and loss statement and balance sheet, the ECB has noted that the annual accounts should be adopted by the NCB's decision-making bodies, assisted by independent accountants, and may be subject to ex post approval by third parties (e.g. the Government or the Parliament)[219]. This requirement would be materially satisfied by an arrangement whereby the profit and loss statement and balance sheet are submitted by Sveriges Riksbank's Executive Board to the General Council for

216 See Chapter 11, Section 19 of the draft law on Sveriges Riksbank.

217 See Chapter 9, Section 13, paragraph 1 of the Instrument of Government; and Chapter 11, Section 26 of the draft law on Sveriges Riksbank.

218 See paragraph 6 of Opinion CON/2002/16, paragraph 2.3 of Opinion CON/2019/12 and paragraph 2.1 of Opinion CON/2020/7.

219 See Convergence Report, May 2018, p. 27.

approval[220]. In order to properly reflect the Executive Board's exclusively responsibility for the performance of Sveriges Riksbank's ESCB-related tasks, it would be advisable to clarify that the General Council will approve Sveriges Riksbank's profit and loss statement and balance sheet on the proposal of the Executive Board.

14.2.6 Regarding the General Council's competence to approve distributions from the profit and loss account, after the approval of the Executive Board, decisions on the allocation of profits should be taken by the NCB's decision-making bodies on professional grounds, and should not be subject to the discretion of third parties unless there is an express safeguard clause stating that this is without prejudice to the financial means necessary for carrying out the NCB's ESCB-related tasks as well as national tasks[221]. This requirement is satisfied as the distributions from the profit and loss account are first approved by the Executive Board, which, as already noted, is exclusively responsible for the performance of Sveriges Riksbank's ESCB-related tasks.

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

Done at Frankfurt am Main, 20 April 2020.

[signed]

The President of the ECB

Christine LAGARDE

220 See paragraph 2.7 of Opinion CON/2019/12 and paragraph 2.5 of Opinion CON/2020/7.

221 See Convergence Report (May 2018), p. 27. See also paragraph 2.6 of Opinion CON/2019/12 and paragraph 2.6 of Opinion CON/2020/7.