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EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 12 December 2005

at the request of the Swedish Parliament
on a draft law amending the Sveriges Riksbank Act by introducing certain provisions from the State Budget Act

(CON/2005/54)

1. On 12 September 2005 the European Central Bank (ECB) received a request from Sveriges riksdag (the Swedish Parliament, hereinafter the 'Riksdag') for an opinion on a draft law amending the Sveriges Riksbank Act (1988:1385) (hereinafter the 'draft law').

2. The ECB's competence to deliver an opinion is based on the third indent of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions[1], as the draft law contains provisions concerning the Swedish national central bank (NCB). 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.

3. The draft law is one of several legislative proposals which aim to introduce certain provisions from the State Budget Act (1996:1059) into the legislation governing authorities under the Riksdag's authority. This opinion only concerns the draft law amending the Sveriges Riksbank Act and the ECB is not commenting on the other legislative proposals.

4. The ECB welcomes the fact that the draft law's proposed amendments to the Sveriges Riksbank Act (hereinafter the 'Riksbank Act') aim to ensure good economic and budgetary administration within Sveriges Riksbank. The draft law contains certain elements which need to be carefully considered against the requirements of central bank independence, as laid down in Article 108 of the Treaty establishing the European Community and Article 7 of the Statute of the European System of Central Banks and of the European Central Bank. It is recalled that Article 108 of the Treaty also applies to the NCBs of the Member States that have not yet adopted the euro and that the European Monetary Institute (EMI) established a list of features of central bank independence in 1997 (including institutional, personal and financial independence), which were subsequently affirmed by the ECB[2].

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1 OJ L 189, 3.7.1998, p. 42.

2 The concept of central bank independence has been described in detail in the EMI's, and subsequently the ECB's Convergence Reports (all available on the ECB's website at www.ecb.int). See, for example: European Monetary

5. Under the draft law's proposal to amend Article 2 of Chapter 8 of the Riksbank Act, Sveriges Riksbank must obtain the Riksdag's consent prior to acquiring shares in companies and limited partnerships and similar rights, or assuming obligations linked to such rights, if the acquisition or assumption of obligations does not fall within Sveriges Riksbank's tasks as a central bank. The explanatory memorandum to the draft law states[3] that the term 'tasks as a central bank' should be interpreted narrowly and that in the event of doubt Sveriges Riksbank should request the Riksdag's consent. The ECB is of the view that the wording 'tasks as a central bank' must comprise all tasks relating to the European System of Central Banks (ESCB) so as to be compatible with Article 108 of the Treaty. In order to avoid any misunderstanding, the legislative proposal should be clarified on this point.

6. Similarly, the draft law inserts a new Article 2a into Chapter 8 of the Riksbank Act, stating that Sveriges Riksbank may sell shares in companies and limited partnerships and similar rights, but that the Riksdag's prior consent is required if this sale means that the State's ownership is reduced in companies where the State has at least 50 % of the voting rights or if the sale is of significant public economic interest. The ECB notes that this new provision does not refer to 'tasks as a central bank', which could be interpreted as meaning that the Riksdag's consent in accordance with this provision would be needed for sales both within and outside the scope of Sveriges Riksbank's tasks as a central bank. Accordingly, a provision similar to the one in Article 2 of Chapter 8 excluding ESCB-related tasks from the application of the requirement for the Riksdag's prior consent should therefore be inserted in the new Article 2a in Chapter 8 of the Riksbank Act as well. Moreover, the ECB considers that the formulation 'significant public economic interest' is too wide and leaves excessive room for discretion in its application, which could hamper Sveriges Riksbank's ability to independently carry out its tasks as a central bank. In view thereof, the proposed wording of the new Article 2a of Chapter 8 of the Riksbank Act, concerning the obligation on Sveriges Riksbank to seek the Riksdag's consent, would be incompatible with Sveriges Riksbank's independence and Article 108 of the Treaty.

7. The draft law's amendment to Article 4 of Chapter 8 of the Riksbank Act states that Sveriges Riksbank must obtain the Riksdag's consent prior to acquiring[4] or selling real property intended for the activities conducted by Sveriges Riksbank, or in which it takes part, if the value exceeds SEK 20 million. The reasoning behind this provision is unclear and if it is implemented as presently worded, it could affect Sveriges Riksbank's institutional and financial independence. An NCB's overall independence is jeopardised if it cannot autonomously avail itself of sufficient financial resources to fulfil its mandate (i.e. to perform its tasks as an NCB). Imposing such an obligation on Sveriges Riksbank could affect Sveriges Riksbank's financial independence, as the

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Institute, 'Progress Towards Convergence 1996', pp. 100-103; European Monetary Institute, 'Convergence Report: Report required by Article 109j of the Treaty establishing the European Community', 1998, pp. 291-295; and European Central Bank, 'Convergence Report 2004', pp. 25-30.

3 At Section 11.2.

4 Unless the purpose is to protect a monetary claim.

conduct of its activities would be dependent on a third party's consent. This would be incompatible with Article 108 of the Treaty. The draft law should therefore explicitly state that acquisitions and sales of real property that Sveriges Riksbank makes in order to independently fulfil its ESCB-related tasks are excluded from the requirement to obtain the Riksdag's prior consent. In this connection, the ECB would also like to draw attention to another outstanding matter relating to financial independence requiring legislative change, as recalled in the ECB's Convergence Report 2004, namely the need to introduce statutory provisions in Swedish legislation concerning the distribution of Sveriges Riksbank's profits[5].

8. The ECB welcomes the draft law's proposed amendment to Article 3 of Chapter 10 of the Riksbank Act, whereby Sveriges Riksbank undertakes to apply sound accounting principles to the obligation to keep accounts, thereby applying relevant provisions of Guideline ECB/2002/10 of 5 December 2002 on the legal framework for accounting and financial reporting in the European System of Central Banks[6]. In this connection, the ECB would also like to mention the statistical reporting requirements contained in Regulation ECB/2001/13 of 22 November 2001 concerning the consolidated balance sheet of the monetary financial institutions sector[7], which will apply to Sveriges Riksbank as a monetary financial institution and a member of the Eurosystem upon Sweden's adoption of the euro.

9. The new Article 5 of Chapter 10 of the Riksbank Act provides that Sveriges Riksbank will report annually to the Riksdag with regard to measures it has taken or intends to take in the light of comments received from the Swedish National Audit Office. An express statutory obligation for an NCB to consult third parties *ex ante* with regard to its ESCB-related tasks provides such third parties with a formal mechanism to influence the final decision, and is therefore incompatible with the Treaty and the Statute. The ECB therefore emphasises that the reporting requirement in the new Article 5 of Chapter 10 of the Riksbank Act must be for information purposes only and must not imply an obligation to consult the Riksdag *ex ante*.

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

Done at Frankfurt am Main, 12 December 2005.

[signed]

The President of the ECB

Jean-Claude TRICHET

5 European Central Bank, Convergence Report 2004, p. 236.

6 OJ L 58, 3.3.2003, p. 1.

7 OJ L 333, 17.12.2001, p. 1. Regulation as last amended by Regulation ECB/2004/21 (OJ L 371, 18.12.2004, p. 42).