



OPINION OF THE EUROPEAN CENTRAL BANK

of 24 July 2013

on the financial independence of Sveriges Riksbank

(CON/2013/53)

Introduction and legal basis

On 22 April 2013, the European Central Bank (ECB) received a request from the Swedish Ministry of Finance for an opinion on a proposals from the Commission of inquiry into the financial independence of Sveriges Riksbank (SOU 2013:9) (hereinafter the ‘report’).

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 and the third indent of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions¹, as the report and its proposals relate to rules applicable to Sveriges Riksbank. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. Background

- 1.1 The ECB has repeatedly pointed out in its Convergence Reports that Sweden needs to adapt its legislation governing Sveriges Riksbank in order to comply with Treaty requirements related to, *inter alia*, financial independence and profit distribution. In March 2008, the ECB received a request from the Swedish Ministry of Finance for an opinion on a report entitled ‘The Riksbank’s financial independence’ (SOU 2007:51). One of the main goals of that report was to propose legal changes necessary to address the shortcomings identified by the ECB. The report set out two alternative proposals for amendments to the Law on Sveriges Riksbank regarding changes to Sveriges Riksbank’s capital structure and profit distribution.
- 1.2 On 4 August 2008, the ECB issued Opinion CON/2008/34² where, *inter alia*, it underlined that Member States with a derogation who do not yet participate in economic and monetary union have a legal duty to adapt the statutes of their national central banks (NCBs) to ensure compatibility with the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ‘Statute of the ESCB’). It also concluded that any legislative reform should

¹ OJ L 189, 3.7.1998, p. 42.

² All opinions are published on the ECB’s website at www.ecb.europa.eu.

aim to gradually achieve consistency with Eurosystem standards and that neither of the two alternatives presented were sufficient to ensure Sveriges Riksbank's financial independence.

2. The 2013 proposals from the Commission of inquiry

2.1 Due to the financial crisis none of the proposals contained in SOU 2007:51 were implemented; instead the experiences of the crisis provided a reason to examine the same issues afresh.

Consequently, on 13 October 2011 the Swedish Government instructed the Commission of inquiry to investigate how the experiences of the financial crisis have influenced views of Sveriges Riksbank's balance sheet (Dir 2011:89).

In the brief to the Commission of inquiry the Government instructed it specifically to determine:

- (a) how large Sveriges Riksbank's foreign reserves should be and how those reserves should be financed;
- (b) the best method for coordination between Sveriges Riksbank and the Swedish National Debt Office;
- (c) the procedure to be carried out when borrowing for foreign reserves, taking account of the overall aim to guarantee effective borrowing by Sweden and safeguard public finances, as well as ensure financial stability and protect Sveriges Riksbank's independence;
- (d) what the appropriate amount for Sveriges Riksbank's own capital should be.

2.2 The Commission of inquiry issued the report in January 2013. Therefore, this is the second ECB consultation on similar issues and has to be read in conjunction with Opinion CON/2008/34. The report contains a number of proposals on which the ECB provides its opinion:

- (a) Sveriges Riksbank's interest free capital should be SEK 75 billion, including SEK 30 billion in equity capital. The capital is to be protected against inflation and restored after losses;
- (b) Sveriges Riksbank should be given the right to increase its foreign currency reserves so that its borrowed and interest-free capital can reach SEK 200 billion;
- (c) In the event that Sveriges Riksbank used its reserves for emergency liquidity assistance, it should be given the right to restore its foreign currency reserves by borrowing to the required extent, without limits;
- (d) Sveriges Riksbank should be given the right to finance its lending in foreign currency by borrowing to the extent required, without limits. This would ensure a sufficient supply of emergency liquidity to banks in distress when financial stability is threatened;
- (e) The costs of the borrowed part of the foreign currency reserves should be covered by fees on banks. The proposal suggests that banks lending and borrowing in foreign currency should

be required to take part in a mandatory insurance scheme that guarantees emergency liquidity assistance in foreign currency;

- (f) The currency risk arising from holding foreign currency reserves should be eliminated by transferring it to the Swedish National Debt Office. With regard to the amount of Sveriges Riksbank's equity capital proposed by the Commission of inquiry, the report points out that the proposed amount is based on the assumption that any foreign currency risk as a result of holding the currency reserves has been hedged;
- (g) With these proposals less capital will be tied up in the Sveriges Riksbank, resulting in social economic gains. Transferring the foreign currency risk to the Swedish National Debt Office would result in a decreased need for equity capital at Sveriges Riksbank. The report argues that due to the end of Sveriges Riksbank's borrowing in foreign currency, its balance sheet would be reduced by SEK 90-215 billion. If foreign currency borrowings came to SEK 90 billion in 'normal times', the savings would be between SEK 180 and 270 million per year.

3. General observations

The ECB underlines that all observations made in Opinion CON/2008/34 are still valid.

- 3.1 In Chapter 10 of the report, entitled 'Consequences of the commission of inquiry's draft bill' it is noted that as a result of the proposed legal changes, Sveriges Riksbank's share capital and reserves would be considerably reduced, which would open up the possibility for SEK 73 billion to be transferred from Sveriges Riksbank to the Government by way of a special distribution. It explicitly states that government debt will fall by SEK 73 billion, or approximately 2% of GDP, as a result of the reduction in share capital and reserves. It further specifies that the capital held by Sveriges Riksbank would be released and could be used to amortise government debt.
- 3.2 Under Article 130 of the Treaty and Article 7 of the Statute of the ESCB, central banks are independent, which also includes financial independence, and points out the general principle of monetary financing prohibition, which states that no profit distribution should be effected outside the regular profit distribution scheme. These concerns will be addressed below.
- 3.3 The monetary financing prohibition is laid down in Article 123(1) of the Treaty, which prohibits overdraft facilities or any other type of credit facility with the ECB or the NCBs of Member States in favour of Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States, and the purchase directly from these public sector entities by the ECB or NCBs of debt instruments. The precise scope of application of the monetary financing prohibition is further clarified by Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for

the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty³, which makes it clear that the prohibition includes any financing of the public sector's obligations vis-à-vis third parties.

- 3.4 The distribution of central bank profits that have not been fully realised, accounted for and audited does not comply with the monetary financing prohibition.

To comply with the monetary financing prohibition, the amount distributed to the State budget pursuant to the applicable profit distribution rules cannot be paid, even partially, from the NCB's reserve capital. Therefore, profit distribution rules should leave the NCB's reserve capital unaffected. Moreover, when NCB assets are transferred to the State, they must be remunerated at market value and the transfer should take place at the same time as the remuneration⁴.

- 3.5 Further, a Member State may not impose reductions of capital on an NCB without the *ex ante* agreement of the NCB's decision-making bodies, which must aim to ensure that it retains sufficient financial independence to fulfil its mandate under Article 127(2) of the Treaty and the Statute of the ESCB as a member of the ESCB. For the same reason, any amendment to the profit distribution rules of an NCB should only be initiated and decided in cooperation with the NCB, which is best placed to assess its required level of reserve capital⁵. 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 also not hamper NCBs from building up their reserve capital to a level which is necessary for a member of the ESCB to fulfil its tasks⁶.
- 3.6 Sweden is a Member State with a derogation and must therefore comply with all adaptation requirements under Article 131 of the Treaty. The ECB notes that the Treaty has obliged Sweden to adopt national legislation for integration into the Eurosystem since 1 June 1998. All legislative action taken by the Swedish authorities in regard to legislation concerning Sveriges Riksbank should bring the legislation in line with the Treaty requirements.

4. Specific observations

Below are observations on the specific draft amendments proposed to the Sveriges Riksbank Act (1988:1385).

4.1 *Amendments proposed to Chapter 10, Article 1*

- 4.1.1 Article 1 states that Sveriges Riksbank's financial independence will be guaranteed by the fact that it has been granted the right to issue notes and coins and furthermore, that it has its share capital and reserves.

³ OJ L 332, 31.12.1993, p. 1. Articles 104 and 104b(1) of the Treaty establishing the European Community are now Articles 123 and 125(1) of the Treaty on the Functioning of the European Union.

⁴ Opinions CON/2011/91 and CON/2011/99.

⁵ Opinion CON/2009/83 and Opinion CON/2009/53.

⁶ Opinion CON/2009/26.

4.1.2 The ECB notes that the right to issue banknotes and coins is not in itself a guarantee of financial independence. The article does not take into account obligations of an NCB under Article 128(1) of the Treaty and Article 16 of the Statute of the ESCB, and as such is not compliant with Sweden's obligations under the Treaties.

4.1.3 The ECB would also like to point out, as already mentioned in Opinion CON/2008/34, that banknotes in circulation should not be viewed as cost-free capital. This view is not supported by the Treaty, which does not state that euro banknotes are conceptually equivalent to cost-free capital owned by any individual NCB.

4.2 *Amendments proposed to Chapter 10, Articles 2, 3 and 4*

4.2.1 Article 2 states that if Sveriges Riksbank's cost-free capital falls below the target level, the bank will receive a capital contribution. According to the proposals from the Commission of inquiry, the total interest free capital is composed of: (a) bills and coins in circulation; and (b) equity capital. The latter will come to a total of SEK 30 billion. Losses smaller than SEK 10 billion are to be compensated by withholding profits until the equity capital is restored. Larger losses will require the restoration of equity capital by injecting new equity capital. The ECB notes that if a third party has the power to determine or influence the restoration of Sveriges Riksbank's equity capital, it would be incompatible with financial independence.

4.2.2 The ECB has stated in its Convergence Reports that with regard to profit allocation, an NCB's statute may prescribe how its profits are to be allocated. In the absence of such provisions, 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 independence necessary for carrying out the NCB's ESCB-related tasks as well as national tasks. This means that such decisions with regard to the profit allocation of Sveriges Riksbank should be made by the Executive Board.

4.2.3 Profits may be distributed to the State budget only after any accumulated losses from previous years have been covered and financial provisions deemed necessary to safeguard the real value of the NCB's capital and assets have been created. Temporary or ad hoc legislative measures amounting to instructions to the NCBs in relation to the distribution of their profits are not allowed. Against this background, the ECB notes that the profit distribution scheme for Sveriges Riksbank has not been improved, as the proposed Article 10(6), as well as the proposed Article 10(7), continue to give a decisive role to the Swedish Parliament as well as the National Audit Office.

4.2.4 Concerning the powers of the Swedish Parliament and National Audit Office, it is incompatible with financial independence, if a third party has the power to determine or influence Sveriges Riksbank's budget, unless the law provides a safeguard clause so that such a power is without prejudice to the financial means necessary for carrying out Sveriges Riksbank's ESCB and national-related tasks.

4.3 *Amendments proposed to Chapter 10, Article 6*

4.3.1 Sveriges Riksbank's accounts should be drawn up either in accordance with general accounting rules or in accordance with rules specified by Sveriges Riksbank's Executive Board. If, instead, such rules are specified by third parties, these accounting rules must at least take into account what the NCB's independent decision-making bodies have proposed. The annual accounts should be adopted by Sveriges Riksbank's Executive Board, assisted by independent accountants, and may be subject to *ex post* approval by third parties, e.g. the government or parliament. Sveriges Riksbank's Executive Board should be able to decide on the calculation of the profits independently and professionally.

4.3.2 ECB legal instruments on accounting do not yet apply to Sveriges Riksbank pursuant to Article 139 of the Treaty and Article 42 of the Statute of the ESCB. However, Sveriges Riksbank should be equipped with the power to adopt its own accounting guidelines, which take inspiration from the ECB Guidelines, until the day when Sweden's derogation will be abrogated.

4.4 *Amendments proposed to Chapter 12, Articles 1 to 3*

4.4.1 According to the report, one of Sveriges Riksbank's tasks is to provide emergency liquidity assistance in foreign currency to Swedish banks and other financial institutions. In order to fulfil this task, Sveriges Riksbank is to be given the right to increase its foreign currency reserves when needed, so that the total of interest-free and borrowed capital may reach up to SEK 200 billion. This limit is to be indexed to the GDP in current prices.

4.4.2 The proposed amendments restrict Sveriges Riksbank's right to independently decide to strengthen the foreign currency reserve. Sveriges Riksbank's Executive Board must have the right to instruct the Swedish National Debt Office to borrow whatever amount it considers necessary.

4.4.3 The proposed amendments lack clarity and entail the risk to be non-compliant with the basic tasks of the ESCB, such as conducting foreign exchange operations, and holding and managing the official foreign reserves of the Member States.

4.4.4 If an NCB is made subject to a National Debt Office control on managing its foreign reserves, it would undermine the second and third indents of Article 127(2) of the Treaty, second and third indents of Article 3.1 of the Statute of the ESCB, as well as Articles 23, 30 and 31 of the Statute of the ESCB. Although Member States with a derogation are exempt from the above Articles as set forth in Article 139 of the Treaty and Article 42.1 of the Statute of the ESCB, as required by Article 131 of the Treaty, they have a legal duty to adapt the statutes of their NCBs to ensure compatibility with the Treaty and the Statute of the ESCB in respect of Eurosystem-related tasks'.⁷

4.4.5 If decisions of Sveriges Riksbank are made dependant on the decisions of a national parliament, this is undermining Article 130 of the Treaty and Article 7 of the Statute of the ESCB.

⁷ Convergence Report June 2013, p. 41.

ECB-PUBLIC

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

Done at Frankfurt am Main, 24 July 2013.

[signed]

The President of the ECB

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