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Annex 1 to the consultation response of the Executive Board of the Riksbank: A new Sveriges Riksbank Act, SOU 2019:46

Detailed comments on the legislative proposal

As explained in the consultation response, the Riksbank advocates more principled legislation that stipulates all the different objectives of its activities and specifies a number of tools for fulfilling these objectives. Such legislation would be briefer, simpler and probably have greater durability.

If the Government nevertheless chooses to continue in the way proposed by the Inquiry, there are a number of detailed comments in this annex. Wherever possible, the Riksbank suggests concrete amendments to the legislative proposals. In some cases, however, more extensive redrafting is required; for example, we find in places that legislative proposals in different chapters need to be merged. In such cases, the Riksbank provides comments on the amendments that are desirable, although it is not possible in this consultation response to provide a comprehensive legislative proposal.

The issue that infuses much of what is expressed in the annex is the Inquiry's position that the monetary policy powers in the ESCB Statute are largely not applicable to Member States with a derogation. The Inquiry therefore finds that Sweden is not obliged to define monetary policy as the sum of the powers that the ECB and the central banks of the eurozone may exercise pursuant to the ESCB Statute. According to the Inquiry, it is therefore possible to adjust the demarcation between monetary policy and financial stability according to the conditions and the allocation of responsibilities in place in Sweden (p. 546 f.).

The need for the division into two chapters, Chapter 2 and Chapter 3, that the Inquiry proposes, seemingly boils down to the interpretation that the ban on instructions makes it impossible for the Riksbank to cooperate with the Ministry of Finance, Finansinspektionen and the National Debt Office, and that there is therefore a need to

narrow down the monetary policy field in favour of an equivalent broadening of the financial stability field (p. 860).

The stance of the Inquiry is also reflected in how the Inquiry has devised the Riksbank's position in Chapter 9, Article 13 of the Instrument of Government. The Inquiry's proposal aims to address the criticism of the Commission, which is that the ban on instructions in the Instrument of Government and the Sveriges Riksbank Act should, for the sake of clarity, explicitly include all ESCB-related tasks. However, the Inquiry has not cited the ESCB-related tasks as they are set out in the Treaty (Article 127 of TFEU).

The Riksbank finds the said approach to be wrong. The reasons for this will be discussed primarily in the comments to Chapter 9, Article 13 of the Instrument of Government, but the issue is also discussed in several other places in the annex.

Proposed act amending the Instrument of Government

Legislative proposal Chapter 9, Article 13

Article 13 The Riksbank is the central bank of the Realm and an authority under the Riksdag. The Riksbank is responsible for
1. defining and implementing monetary policy
2. conducting currency interventions
3. holding and managing the foreign reserves
4. promoting the smooth operation of payment systems ~~within the framework of cooperation in the European System of Central Banks~~,
and
5. collecting the statistical information needed for the cooperation within the European System of Central Banks.
No public authority may determine how the Riksbank shall decide in matters for which it is responsible under the first paragraph. The Riksbank may not seek or take instructions in these areas of responsibility from anyone.

Comments on the legislative proposal

First paragraph
The Inquiry's proposal aims to address the criticism of the Commission, which is that the ban on instructions in the Instrument of Government and the Sveriges Riksbank Act should, for the sake of clarity, explicitly include all ESCB-related tasks. The fact of this being the case today is set out by the preparatory works for the provision (1997/98:41 p. 76).

According to the Inquiry's proposal, this ambiguity must be redressed by means of amending Chapter 9, Article 13 such that the ESCB-related tasks are set forth in the provision. However, the proposal cites the ESCB-related tasks in a way that is not consistent with the Treaty (Article 127 of TFEU). The purpose is to limit the scope of the ban on instructions to enable a consultation obligation for the Riksbank.

The Riksbank finds that the said approach is wrong for the following three reasons.

First, the ECB and the Commission do not find that the ban on instructions prevents a dialogue between a national central bank and other bodies regarding, for example, monetary policy. This also applies to a formalised dialogue; that is to say, a statutory obligation to provide information and exchange opinions (p. 430-431). Consultation is an obligation for an authority to afford another authority the opportunity to express its opinion prior to a decision. Because the Riksbank – like other authorities – is to make independent decisions, neither cooperation nor consultation however mean that consensus is essentially needed (p. 860 and 1084 f.). The scope of the ban on instructions thus does not need to be adapted for this reason.

Second, the Inquiry's proposal involves a curtailment of the independence that the Riksbank enjoys today.

According to the proposed provision, no authority may decide how the Riksbank shall decide in matters pertaining to devising and implementing monetary policy, conducting currency interventions and holding and managing the currency reserve. This is consistent with what is currently the case.

As regards the task of promoting the smooth operation of payment systems, the Inquiry proposes however that the ban on instructions shall only apply within the framework of cooperation in the European System of Central Banks. This is a curtailment of the Riksbank's independence because the preparatory works clearly set out that the ban on instructions covers all monetary policy decisions, but also tasks beyond the field of monetary policy which, according to the Treaty, *are incumbent upon* the ESCB.

Whether or not the task is performed within the ESCB has no significance under prevailing law. The decisive factor is whether the task is one that is incumbent upon the ESCB. The tasks incumbent upon the ESCB are set out by the Treaty.

Third, it is not possible to devise the ban on instructions on the basis of an ESCB-related task being performed within the framework of cooperation within the ESCB, or outside of this framework. This is expounded on below.

The Inquiry proposes that the Riksbank's activity relating to payment systems, including the RIX system, generally falls outside of the independence regulated by the constitution (the Inquiry p. 1763). The reason for this appears to be that, according to the Inquiry, there is reason for the Riksbank to cooperate with other authorities, primarily Finansinspektionen, when it comes to excluding participants and the circle of participants in the RIX system, because those issues are closely linked to stability in the financial system (the Inquiry, inter alia p. 924).

The Inquiry finds that the activity in the ESCB as regards payment systems primarily concerns the application of EU regulations governing settlement and activity within the General Council of the ECB. In such activity, the ban on instructions shall thus apply.

The Riksbank finds that it is not possible to draw a clear demarcation between factors that can be attributed to ESCB activity, and pure domestic activity as regards payment systems for settlements. As an example, it can be said that, already today, the RIX system is covered by a notification procedure to ESMA according to Section 9 of the Settlement of Obligations in the Financial Market Act (1999:1309). Furthermore, the Inquiry proposes that the circle of participants be governed by Section 8 of the same Act (Chapter 3, Section 2). The Settlement Act implements the so-called Finality Directive (98/26/EC).

The Riksbank also intends to share a technical platform with the Eurosystem for settlement of so-called TIPS (TARGET Instant Payment Settlement) which is part of Target2. The Inquiry has addressed that matter in detail in connection with the

proposed Chapter 3, Section 6 which, according to the Inquiry, enables joining the TIPS platform.

Through the cited circumstances, the Riksbank's RIX activity is, or will be, closely linked to EU law and the ESCB. The proposed division of activity will therefore not work in practice.

In terms of the Riksbank's payment system operations, the link to monetary policy must also be clarified. The Riksbank's independence in the matter of monetary policy is regulated specifically today in Chapter 9, Article 13 of the Instrument of Government. The intention is to provide the Riksbank with similar autonomy in conducting monetary policy as courts have in the application of the law, and as administrative authorities have in the exercise of public authority and applying laws. It is also set forth in the preparatory works that the provision also intends to include the so-called ban on instructions, which is laid down in Article 130 of the Treaty on the Functioning of the European Union (TFEU), which is linked to Article 127, which regulates the tasks of the ESCB. One of these is to promote the smooth operation of payment systems. The preparatory works clearly set forth that the ban on instructions applies to that task (prop. 1997/98:40 p. 76-77).

In its capacity of an administrative authority, the Riksbank enjoys an independent position under Chapter 12, Article 2 of the Instrument of Government, but that position is linked to the exercise of public duty or application of laws. In the opinion of the Inquiry, the design of the terms for the RIX system is to be considered as actual action (the Inquiry p. 524) – that is to say, neither exercise of public authority nor application of laws.

The Inquiry's proposal thus implies that the Riksbank does not have any constitutional autonomy or independence in terms of the RIX system. This is not an appropriate order on the following grounds.

The RIX system is a consequence of the Riksbank's task of providing final means of payment; that is to say banknotes and coins, as well as deposits from financial agents. The RIX system enables, for example, deposits and other monetary policy measures, such as stabilising the value of the means of payment, and acting as a lender of last resort (see inter alia the Inquiry p. 244).

A natural consequence of providing a final means of payment is that a central bank maintains a central system for the settlement of payments. This system constitutes the hub in the payment system and helps attain the objective of high, stable and sustainable economic growth and employment. The central payment system is an integral part of the central bank's operational framework for the implementation of monetary policy and must work both in normal times and in times of crisis. A task of the Riksbank in normal times is thus to continually ensure that operational disruptions are avoided because they can have serious implications for the economy (the Inquiry p. 255).

Today, the Riksbank's task of providing systems for the settlement of payments and otherwise participating in the settlement of payments is regulated in Chapter 6, Section

7 of the Sveriges Riksbank Act. Many of the monetary policy powers that the Riksbank has at its disposal today under Chapter 6 Section 5 (and which it is proposed to have in the future according to the Inquiry proposal Chapter 2, Section 4) are, as described above, exercised through the RIX system and thus form part of the operational framework for the implementation of monetary policy. Matters regarding the operation, function, participation, availability, etc. of the system have direct implications for monetary policy, as those matters constitute the conditions for how, when, where and in what way, and in relation to whom, monetary policy measures shall be carried out. The interpretation that has existed to date has thus been that such matters fall within the sphere of monetary policy and hence also the ban on instructions.

The Inquiry also finds that such matters are incumbent upon the Riksbank to decide (the Inquiry p. 922), but nevertheless proposes that the Riksbank should not have any constitutional autonomy in its capacity of owner and operator of the system. The reason for this mainly appears to be that, according to the Inquiry, there is reason for the Riksbank to cooperate with other authorities, primarily Finansinspektionen, in terms of excluding participants and the circle of participants in the RIX system, because those issues are closely linked to stability in the financial system (the Inquiry inter alia p. 924 and 1763).

The Riksbank finds however that the view of the Inquiry in this issue is wide of the mark and that its proposal is too far-reaching.

The effect, and dialogue, which the Inquiry wishes to achieve can take place even if the instruction ban applies to the Riksbank's work with the central payment system (see the Inquiry proposal for Chapter 2, Section 11). There is nothing to prevent the Riksbank from having a dialogue with Finansinspektionen on the matter of RIX participants. This appears to be a highly legitimate measure as the participants are under Finansinspektionen's supervision as a main rule.

The Riksbank therefore finds that, if operation of the central payment system falls outside of constitutionally protected autonomy, the Riksbank's autonomy in monetary policy will consequently be undermined. The Riksbank would therefore have weaker autonomy than the ECB and the national central banks included in the Eurosystem. This is also highly inappropriate given the developments taking place towards central banks within the EU increasingly sharing platforms for payment systems.

The Riksbank therefore proposes that the ban on instructions be applied to the task of promoting the smooth operation of payment systems without requirements for the task to take place within the ESCB. In the preparatory works, it can be clarified that the task refers to the central payment system.

This brings consequential amendments, amongst others that Chapter 3, Section 2 and 3 be transferred to Chapter 2.

Second paragraph

The proposal for Chapter 9, Article 13, second paragraph of the Instrument of Government is an expression of the ban on instructions from the TFEU that refers to the

ECB and the national central banks (Art. 130). The provision of the Instrument of Government stipulates that no authority may decide how the Riksbank shall decide in certain given issues. Even though the General Council is, in some respects, part of the Riksbank, the ban on instructions means that neither does the General Council have the right to give instructions to the Executive Board. This should be explicitly set forth in the provision of the Instrument of Government. Such clarification does not cause any change to how the General Council has viewed its role since the provision was given its present wording in 1999.

Proposed Sveriges Riksbank Act

Chapter 1. The content of the Act and general provisions

General provisions on the Riksbank's activities – Chapter 1, Sections 4–11

Efficiency and prudent use of state funds

Legislative proposal Chapter 1, Section 4

Section 4 The Riksbank shall aim for high efficiency and manage state funds prudently.

Comments on the legislative proposal

Chapter 9 sets out that the Riksbank shall identify the threats to sustainable development that affect the conditions for fulfilling the objectives under this Act. The introduction should therefore be considered of a possibility for the Riksbank, in its operations, to take account of the threats identified, cf. that which is presented in Section 9 below.

Proportionality

Legislative proposal Chapter 1, Section 5

Section 5 The Riksbank may only take a measure under the provisions of this Act that does not constitute an intervention in an individual case if
~~1. the measure can be assumed to lead to the intended result,~~
~~2. the measure is not more far-reaching than is needed, and~~
~~3. the intended result is in reasonable proportion to the costs and risks that the measure leads to for the Riksbank's and the state's finances.~~
the measure, in its content and form, does not exceed what is necessary to fulfil the objectives of this Act.

Comments on the legislative proposal

The Riksbank of course supports the view that the Riksbank's measures, which do not constitute the exercise of public authority under the Administrative Procedure Act, should be proportionate. This ought already to follow from, inter alia, Chapter 1, Article 9 of the Instrument of Government. The Inquiry's design of a proportionality rule diverges however from what is generally accepted in the EU – see for example Article 5.4 of the Treaty on the European Union. As the Riksbank operates in a context of EU law, either by direct application of EU law, or by being bound by such law in actual

action, it is inappropriate for there to be two different types of proportionality assessments for the Riksbank – one domestic and one for EU law.

The Riksbank therefore proposes that the provision be rewritten to make it consistent with the accepted design of the principle of proportionality. In the preparatory works, how the principle should be applied, and the factors governing that application, could be elucidated.

Monitoring and research

Legislative proposal Chapter 1, Section 9

> **Section 9** In order to be able to fulfil its tasks the Riksbank shall follow general economic developments and the developments in financial markets. The Riksbank shall also identify the threats to sustainable development that affect the possibilities of attaining the objectives under this Act.
> The Riksbank may also conduct, and contribute financially to, research of importance for its ability to attain the objectives under this Act.

Comments on the legislative proposal

The Riksbank supports the proposal in Section 9, for sustainability to be part of policy analysis, but also sees that the matter of sustainability is also relevant to the operations. According to Section 4, the Riksbank must be able to conduct the operations efficiently, for instance by being given the possibility to take account of sustainability in an effective manner, for example through climate compensation if so deemed effective. The legislative proposal for Section 4 should remove any obstacles to such measures.

Today, the Riksbank contributes to financing the Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel, and also takes part in the investigative work of external organisations and other central banks both in Sweden and abroad. The Riksbank wishes to obtain support from the legal framework enabling it to continue contributing to research-based external activities where such participation is motivated.

Chapter 2. Monetary policy

Objective: Price stability and consideration of the real economy

Legislative proposal Chapter 2, Section 1

> **Section 1** The Riksbank's primary objective is to maintain price stability through sustainably low and stable inflation (the price stability objective). The Riksbank decides on the design of the price stability objective. Supplementary Provision 9.17.4, second paragraph, and Chapter 11, Section 18 a of the Riksdag Act contains further provisions on such decisions.
> The Riksbank shall also, without prejudice to the price stability objective, contribute to balanced development of production and employment (consideration of the real economy).

Comments on the legislative proposal

The Riksbank has no objections to these proposals.

The proposals to amend the Riksdag Act entail the Riksbank deciding on how the price stability objective is to be specified, and the Riksbank will subsequently make a submission to the Riksdag for approval. If it is not approved, the immediately preceding decision applies. This is essentially a good system that ought to provide clear political support for the monetary policy regime. The consistency of the proposal with the ban on instructions laid down in EU law needs to be investigated however.

Comments on the legislative commentary

The legislative commentary sets out that the price stability objective is consistent with an inflation target, price level target or average inflation target. This is a change compared with the legislative history of the current Sveriges Riksbank Act, where a price level target is explicitly ruled out. The Riksbank supports such an amendment, as such alternatives to inflation targets are currently being considered by other central banks (for example the Federal Reserve).

In addition, it is set forth that the Riksbank shall not consider so-called financial imbalances beyond their effect on inflation and the real economy. Financial stability shall thus not be a separate objective for monetary policy. The Riksbank's view is however that financial instability always has implications for inflation and the real economy, e.g. in that financial instability affects the monetary policy transmission mechanism. The Riksbank's interpretation of the proposed act is thus that taking financial stability into consideration in monetary policy decisions might be justified.

Tasks – Chapter 2, Sections 2–3

Monetary policy

Legislative proposal Chapter 2, Section 2

> **Section 2** The Riksbank's task of conducting monetary policy means that it shall take measures under the provisions of this Chapter in order to attain the objective and the consideration of the real economy stated in Section 1.

Comments on the legislative proposal

The legislative proposals in Chapters 2 and 3 mean that the liquidity tools for monetary policy and financial stability are divided up, which creates ambiguity and difficulties in applying the Act. "Providing credit in Swedish kronor" for monetary policy purposes (see Chapter 2, Section 4) is essentially the same thing as the "general liquidity support" provided with a view to stabilising the financial system (see Chapter 3, Section 11). The Riksbank therefore finds that the powers in the provisions should be integrated. The reason for this is that it will in practice be difficult to use two separate tools that are so close to each other and that may both be used against market disturbances (see the consultation response, Section 1 for the Riksbank's views on the problem concerning setting boundaries). Another problem caused by this division is that completely different rules of EU law are needed for the different tools. If the tool is denoted as a financial stability tool, EU approval will be required, which is not needed if they are denoted as monetary policy tools. See also comments on Chapter 3, Section 11.

An additional problem (which is emphasised in the consultation response) is that lending is classed as monetary policy in "limited disturbance" on the interbank market, but as financial stability if there is "significant disturbance" on financial markets. However, assessing what constitutes "limited disturbance" and "significant disturbance" is difficult, and the demarcation in the proposed act entails that the Riksbank may not grant credit or enter repurchase agreements for monetary policy purposes if there is significant disturbance, which is a considerable limitation. In addition, it is more probable that the real economy and inflation will be affected in the event of "significant disturbance" on financial markets, and therefore that monetary policy needs to be adapted.

A consequence of the division made of the tools is that the ban on instructions in Article 130 of TFEU, and Article 7 of the ESCB Statute, respectively, does not apply to general liquidity support as it is distinguished from monetary policy. The Riksbank therefore questions whether such a narrower definition of monetary policy in Sweden is consistent with EU law. There is reason to assume, on good grounds, that the term "monetary policy", and the tasks included in the term according to Article 127 of the Treaty, have a fixed core that Member States with a derogation cannot curtail. If this were possible, Member States could undermine the independence of their central banks by introducing excessively narrow definitions of the term and tasks.

The Riksbank also questions how this stands in relation to the convergence criterion (criteria) that is in place/incumbent upon countries with a derogation, as the proposed act entails the introduction of a distinction between Swedish law and how general liquidity support is devised in the euro area.

A problem related to the proposed act is that the primary purpose of a certain measure determines whether that measure should be classified as monetary policy or financial stability. It is often difficult to determine what the primary purpose of a measure is, as measures in a crisis situation commonly have both purposes. Even if, in certain situations, it were possible to determine the primary purpose, the proposal of the Inquiry is nevertheless problematic. A measure that has the primary purpose of financial stability, but which also has a monetary policy purpose, could not, in that case, be taken independently by the Riksbank. This would lead to a narrower definition of monetary policy than in EU law, which ought not to be consistent with rules of EU law. In situations that require measures for monetary policy purposes, it must be possible for such measures to be decided independently by the Riksbank.

See more in the comments to Chapter 3, Section 11 below.

Exchange-rate management

Legislative proposal Chapter 2, Section 3

> **Section 3** If the Government has decided on an exchange rate target under the Exchange-rate Policy Act (1998:1404), the Riksbank shall apply that target without prejudice to the price stability objective.
> When currency interventions referred to Section 4, third paragraph, are implemented, account shall be taken of what exchange-rate system applies.

Comments on the legislative commentary

It is stated in the legislative commentary that, because the Government's decisions are to be made with due consideration for the price stability objective, any exchange-rate target would be an intermediary target for attaining price stability.

Furthermore, it is expressed that the Riksbank shall not carry out currency interventions to such an extent or in such a way that, in practice, it becomes a matter of a regime with a fixed or otherwise targeted exchange rate, when the Government has decided that the exchange rate shall be floating. This means that a limit for the exchange rate, as has been introduced in Switzerland and the Czech Republic, is not consistent with the proposed act. While this does entail a limitation compared with other central banks, it does not mark any change compared with the present Act.

Powers – Chapter 2, Sections 4–7

Interest-rate management and liquidity instruments

Legislative proposal Chapter 2, Section 4

> **Section 4** In relation to financial companies, the Riksbank may, both in Swedish kronor and in foreign currency,
> 1. receive deposits,
> 2. provide credit ~~in Swedish kronor and foreign currency~~ against adequate collateral,
> 3. enter into repurchase agreements,
> 4. buy and sell Swedish sovereign debt instruments in the secondary market.
>
> The Riksbank shall determine key interest rates regarding the transactions stated in the first paragraph, points 1–3. The Riksbank may carry out currency interventions and buy, sell and mediate currency and rights and obligations linked to such assets, and issue and trade its own debt instruments in both Swedish kronor and in foreign currency.

Comments on the legislative proposal

The legislative proposal does not allow the Riksbank to issue and trade its own debt instruments in foreign currency, only in Swedish kronor. This poses a limitation compared with current law and a limitation of the monetary policy toolkit (see comments on the legislative proposal, Chapter 10 Section 1).

In the legislative proposal it is stated that the Riksbank may carry out currency interventions. It is stated in the legislative commentary that the Riksbank may carry out currency interventions for monetary policy purposes in order to influence the exchange rate within the context of the prevailing exchange-rate regime. However, the legislative proposal does not allow the Riksbank to carry out currency transactions for the purpose of influencing the liquidity position of the banking system in Swedish kronor in relation to the Riksbank, or to carry out currency transactions that involve Swedish kronor without having an ambition to influence the exchange rate. The proposal thus presents a limitation compared to the current Act under which the Riksbank may buy and sell currency in order to influence, in its daily liquidity management, the liquidity position of the banking system in Swedish kronor in relation to the Riksbank, without affecting the exchange rate. The ability to use the foreign exchange market, in addition to instruments in domestic currency only, is a standard instrument for many central banks, and at times they are the most effective instruments for the Riksbank's daily liquidity management and implementation of monetary policy.[1] The proposal poses a limitation

[1] An example of an instance that motivates the Riksbank being active in the currency market, without having an ambition to influence the exchange rate, is the ability to manage EU payments in Swedish kronor. The receiving central bank obtains Swedish kronor that it wishes to exchange for foreign currency (EUR). The Riksbank can, in order to avoid unnecessary volatility in the exchange rate, offer the foreign central bank the

compared to the current Act which, within the field of monetary policy, allows the Riksbank to buy and sell currency. The proposal regarding the Riksbank's "Interest-rate management and liquidity instruments" therefore needs to be supplemented by a possibility for the Riksbank to "conduct foreign exchange transactions" with a view to influencing or managing the liquidity position of the banking system in Swedish kronor in relation to the Riksbank. This then means that the Riksbank, also going forward, will be able to supply and drain liquidity in domestic currency and carry out foreign exchange transactions with a view to curbing short-term volatility in the exchange rate.[2]

Furthermore, the proposed legislative amendment is intended to make it clear that only the financial companies that fulfil the conditions may, for example, be provided with credit. The Swedish National Swedish Pension Funds (the AP Funds) are, according to Chapter 1, Section 12, defined as financial companies, although according to Chapter 1, Section 1, first paragraph of the National Pension Funds Act (2000:192), they are public authorities. By writing and giving the impression, in the Sveriges Riksbank Act, that we can provide credit to authorities may contravene the prohibition of monetary financing stipulated in Article 123 of the Treaty on the Functioning of the European Union. The Riksbank is aware that there has been no substantive change as regards the provisions in the new Sveriges Riksbank Act. The Swedish National Pension Funds (the AP Funds) are defined today as financial institutions according to Chapter 6, Section 1, second paragraph of the Sveriges Riksbank Act (1988:1385) (the current Act). The difference from the new Sveriges Riksbank Act is that, in Chapter 6, Section 5 of the current Sveriges Riksbank Act, there is no defined circle to which credit may be provided.

Comments on the legislative commentary

The legislative commentary clarifies that "buying sovereign debt instruments in the secondary market is generally consistent with the provisions on monetary financing". This is a good clarification compared with the current legislation, which makes it easier to justify buying government bonds in future.

However, it is written that "the Riksbank however needs to also give consideration to case law of the European Court of Justice regarding the conditions for buying sovereign debt instruments." It is unclear exactly what the Inquiry means by this, although more information is provided in the report text (see below).

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possibility of exchanging Swedish kronor for the foreign currency. The Riksbank can then, over an extended period, buy back the foreign currency (EUR in this case) on the market in order to avoid short-term higher volatility in the exchange rate.

[2] According to current legislation, the Riksbank can, as needed, use currency transactions, including currency swaps, as an effective tool for managing the liquidity position of the banking system in SEK in relation to the Riksbank. These need to be included in the Riksbank's toolbox so that it can manage unforeseen liquidity shocks in the liquidity position of the banking system in relation to the Riksbank effectively. Examples of unforeseen liquidity shocks are changes in the demand of the general public for banknotes and coins, or the deposits of foreign central banks into correspondence accounts in Swedish kronor at the Riksbank. In 2008, the Riksbank also carried out currency transactions in order to avoid the banking system swinging between deficit and surplus in relation to the Riksbank. Unforeseen liquidity shocks are expected to be a growing feature ahead, due to factors such as the CCP deposit facility, e-krona and instant payments.

Comments on the considerations in the report text

In Section 18.5.4, p. 793–794, it says: "The principle of proportionality set out by EU law means that the ECB may not buy too large a share of the government bonds of the euro area… In the decision tried in the case [the Weiss ruling], a limitation applied insofar that the central banks of the Eurosystem may not hold more than 33 per cent of an individual issue with respect to bonds issued by the government of a Member State, or 33 per cent of outstanding debt instruments issued by these authorities... the limitations on holdings that applied to the Eurosystem sufficed for it to be considered that there was no conflict with Article 123. For the Riksbank, there is reason to take this case law into account. The Riksbank should thus avoid buying too large a share of an individual loan [consisting of] Swedish sovereign debt instruments or holding too high a share of the total volume of outstanding sovereign debt instruments." This could be interpreted such that the Inquiry would not accept purchases of bonds as large as those that the Riksbank has carried out in the past few years, and that this would thus entail a sharp limitation on the monetary policy toolkit, which the Riksbank does not support.

In Section 18.11.1, p. 820, it says: "Furthermore, the committee is of the opinion that the credits should not be conditional when it comes to the type of loan financial companies provide… there are examples of central banks having offered credits conditional upon the counterparties expanding their lending for certain specific purposes. This means that lending is devised in such a way that the monetary policy counterparties are given an incentive, in turn, to offer credits or take other measures that benefit credit and resource allocation in one or several sectors over others. This is not the task of a central bank." The report text thus excludes measures that resemble the Bank of England's "funding for lending" or the ECB's TLTRO programme. The Riksbank has previously considered similar measures, and has recently carried out such lending to secure the supply of credit to non-financial companies, and in particular small and medium-size enterprises. This too thus entails a clear limitation compared with the current legislation, and is not supported by the Riksbank.

Purchase and sale of financial instruments other than Swedish sovereign debt instruments

Legislative proposal Chapter 2, Section 5

> **Section 5** ~~If there are exceptional reasons,~~ The Riksbank may also buy and sell financial instruments other than Swedish sovereign debt instruments referred to in Section 4, first paragraph, point 4~~, provided that they are admitted to trading on a regulated market~~.

Comments on the legislative proposal

The proposal that the Riksbank may only buy financial instruments other than sovereign debt instruments on exceptional grounds is a limitation compared with today, and is probably not consistent with EU law.

It is not specified, in the legislative proposal or in the legislative commentary, exactly what is meant by "exceptional grounds". However, this is done in the report text (see below). Why there is a requirement for the financial instruments other than Swedish sovereign debt instruments that the Riksbank may buy and sell to be admitted to trading on a regulated market is not motivated in the legislative proposal, the legislative commentary or in the report text. A requirement that the debt instruments must be admitted to trading on a regulated market should not be introduced because it involves too large a limitation on the type of debt instrument that the Riksbank may buy or sell for monetary policy purposes – for example, this could mean that the Riksbank may not buy or sell corporate bonds.

Similar powers are proposed to apply within financial stability, which leads to demarcation problems. See more under Chapter 3, Section 12.

Comments on the considerations in the report text

In Section 18.11.3, p. 827-828, it says: "What constitutes exceptional grounds can vary depending on the situation at hand. The committee however wishes to emphasise that both changes to key interest rates and government bond purchases are generally preferable to buying private assets. Furthermore, it is generally not appropriate to buy private assets in the case of limited deviations from the inflation target… buying private assets should only be done if the outcome stands in reasonable proportion to how the measure is expected to affect risks to the Riksbank's and the state's finances… the measure shall be devised such that credit and resource allocation is affected as little as possible… One reason for the committee's stance is that the lower bound to the policy rate might pose limitations in the future too, and that the volume of Swedish government bonds is limited and could be even smaller in future… On the whole, it is not improbable that, in future, a situation may arise in which the key interest rate cannot be cut further and in which purchasing government bonds is not an appropriate measure due to limited supply. Purchasing private debt instruments could, in such circumstances, help to maintain credibility in the Riksbank's ability to take responsibility for reaching the inflation target." The wordings thus mean that consideration for the real economy does not suffice to buy private debt instruments; rather, inflation needs to diverge substantially from the target, and the credibility of the inflation target needs to be under threat. In such a situation, the Inquiry finds that the Riksbank should, in the first instance, cut the repo rate and buy government bonds, and buying private debt instruments should be considered only afterwards. The Riksbank does not support limiting flexibility in monetary policy by ranking the tools. Which measures are most appropriate depend on the state of the economy and the type of shock it is suffering. The Riksbank finds for example that consideration for the real economy could justify purchasing private debt instruments, cf. monetary policy decision of 19 March 2020.

Chapter 3. The financial system

Tasks – Chapter 3, Sections 2–7

Payment settlement systems – Chapter 3, Sections 2 and 3

The question of where the task of providing a payment settlement system belongs has been discussed before, for instance under the commentary on Chapter 9, Article 13 of the Instrument of Government. The Riksbank finds that the tasks fall within the ESCB-related task of promoting smooth operation of the payment system, for which reason the task belongs to the area covered by the ban on instructions. For this reason, the provisions in Chapter 3, Sections 2 and 3 should be moved to Chapter 2. This does not cause any need for consequential amendments to Chapter 3 as regards terminology in the Riksbank's opinion. Chapter 3 is about the financial system and stability in that system. Payment systems are indeed part of the financial system, but payment systems owned or operated by the Riksbank fall within the field of monetary policy under current law (read more in the commentary on Chapter 9, Section 13). Such systems are integrated with the task of providing a final means of payment (central bank money). Payment systems that do not provide a final means of payment naturally fall outside of the ban on instructions.

Oversight of the financial system in general

Legislative proposal Chapter 3, Section 4

> **Section 4** The Riksbank shall assess whether the financial system is stable and efficient and work to identify vulnerabilities and risks ~~in the financial system~~ that ~~may lead to~~ either could cause serious disturbances or significant efficiency losses in the financial system or lead to financial imbalances. The Riksbank shall report its assessments with respect to vulnerabilities and risks.
>
> If the Riksbank deems that measures are required by some authority other than the Riksbank to reduce ~~the risk of~~ vulnerabilities and risks as in the first paragraph ~~serious financial disturbances in the Swedish economy~~, the Riksbank shall draw the attention of the authority and other bodies to this.

Comments on the legislative proposal

The proposed amendments in this provision are motivated by the following. First, the Riksbank should have a clear and broad task to identify and assess vulnerabilities and risks that could threaten stability and efficiency in the financial system or lead to financial imbalances. Second, the Riksbank should have a statutory obligation to report its assessments with respect to vulnerabilities and risks. Third, it should be possible to determine what the Riksbank's oversight task in this area covers directly from this provision. With the current writings of the provision, a number of terms and divisions are introduced that oblige the reader to take parallel account of both other parts of the

Act and other legislative commentaries in order to understand the task, and yet its scope is still unclear. This is unfortunate.

One problem is that the description of the vulnerabilities and risks which the Riksbank shall seek to identify (as in the first paragraph) is unnecessarily limited ("in the financial system"). It is for example unclear whether the Riksbank is also expected to seek to identify vulnerabilities and risks associated with financial imbalances, such as the high indebtedness of households. In light of the Inquiry's proposal that the Riksbank, as part of monetary policy, should take financial imbalances into consideration, this paragraph regarding oversight should also give the Riksbank the explicit task of seeking to identify vulnerabilities and risks associated with such imbalances as well. In order to clarify the scope of the oversight task in the provision, it is therefore proposed that the Riksbank be tasked with seeking to identify vulnerabilities and risks which could *either* cause serious disturbances or significant efficiency losses in the financial system *or* lead to financial imbalances. Both types of vulnerabilities and risks can lead to major economic costs and also affect the real economy and monetary policy.

Furthermore, it should be clear that the vulnerabilities and risks of which the Riksbank is expected to inform other authorities (as in the second paragraph) are the same vulnerabilities and risks which the Riksbank shall seek to identify (as in the first paragraph). Such is not the case in the proposed provision, as the vulnerabilities and risks mentioned in the second paragraph are broader than those mentioned in the first paragraph. Even taking account of the legislative commentary on this provision and of the provision regarding international monitoring and research, Chapter 1, Section 9, to which the legislative commentary on this provision refers, it is unclear which type of vulnerabilities and risks are covered by the Riksbank's oversight task. A natural way of avoiding this problem would be to make reference, in the second paragraph, to the vulnerabilities and risks described in the first paragraph, which creates a natural logic in the structure of the provision and also makes the Act much simpler and clearer. Such a reference however requires the description of the task in the first paragraph to be broadened, and the Riksbank to be tasked with identifying and assessing vulnerabilities and risks that could threaten stability and efficiency in the financial system or lead to financial imbalances (see proposal above).

Another problem in the committee's proposal is that it is unclear what is meant by "*risk of serious financial disturbances in the Swedish economy*" in the second paragraph of the provision. In the legislative commentary, it is stated that the expression refers to "risks *in* the financial system and financial risks *outside of* the financial system". This explanation does not stipulate that these risks need to be "serious" in order for the requirement to be applied, which is not consistent with what is written in either the first or second paragraph of the provision. This problem too could be avoided if the provision were reworded according to the Riksbank's proposal.

Finally, the Riksbank finds it crucial for the Sveriges Riksbank Act to stipulate that the Riksbank shall report its assessments of risks and vulnerabilities. In the new Sveriges Riksbank Act, clear reporting requirements are proposed, regarding both monetary

policy and cash management. The committee states that the forms for information to the general public and Reports to the Riksdag are codified in law largely in accordance with the practice developed by the Riksbank. The Riksbank has been issuing a report on financial stability for just over 20 years. It would therefore be reasonable to introduce a reporting requirement in this area too. A reporting requirement of this type of analysis would also be natural in light of the great weight which the committee, just like the Riksbank, puts on reporting and transparency. Now, it is set forth only in the legislative commentary that the Riksbank *may* report the observations the Riksbank makes on the state of the financial system. An explicit requirement should either be written into this provision or into Chapter 12, while at the same time putting a reference in this provision to the provision in Chapter 12 (in the same way as for monetary policy and cash management). The text of the Act in Chapter 12 could for example read as follows: "The Riksbank shall regularly, and at least once a year, report to the Riksdag Committee on Finance its assessments of vulnerabilities and risks that could either cause serious disturbances or significant efficiency losses in the financial system, or lead to financial imbalances." Such a requirement is also highly consistent with the Riksbank's participation in the annual hearings of the Riksdag Committee on Finance regarding financial stability.

The proposed amendments described above regarding Chapter 3, Section 4 aim to enable determining from the provision that the Riksbank has a clear and broad oversight responsibility in this field, and to lay down in law that the Riksbank shall report its assessments of vulnerabilities and risks.

Comments on the legislative proposal and the considerations in the report text

TIBER-SE

The Riksbank would like, in the text of the Act and in the government bill, the introduction of a text that enables the Riksbank to continue working with TIBER-SE, a framework aimed at strengthening the resilience of financial companies to cyber attacks, as part of the oversight of the financial system in general. The background is that the Riksbank is working on introducing TIBER-SE. The framework was originally prepared by the European Central bank (ECB) as TIBER-EU (Threat Intelligence-based Ethical Red Teaming). TIBER-SE is the Swedish implementation of TIBER-EU. The framework prescribes that if the jurisdiction decides to implement TIBER-EU, a formal decision by the board of an authority, and preferably by a central bank in that case, is required. That authority will then be the "lead authority" responsible for implementation and coordination of the framework. In December 2019, the Executive Board of the Riksbank decided on implementing TIBER-SE. One way of improving the resilience of financial companies is to perform tests that simulate a cyber attack. The Riksbank is responsible for the framework and has a role in devising the tests, but does not carry them out itself. The financial companies to be included in TIBER-SE are those that are critical to the Swedish financial system and thus do not only include financial infrastructure.

Affiliation with TIBER-SE is voluntary for financial companies, but once they have joined participation is binding. The Riksbank has identified cyber threats as one of the greatest risks to financial stability and works with cyber risks and TIBER-SE as part of the task to promote a safe and efficient payment system. Work on TIBER-SE cannot really be categorised as oversight of financial infrastructure *today*, because it also includes other financial companies. The Riksbank wishes to continue working with TIBER-SE, for instance as part of its oversight of the financial system in general. This is one example of limitations on the Riksbank's activities introduced as a consequence of the high degree of detail in the proposal for a new Sveriges Riksbank Act. First, the Act should be worded more generally so as to reduce the risk of this type of limitation. Second, the Riksbank desires a statement in the preparatory works that enables this work. The Riksbank can, if needed, provide further information and/or a proposal for the text.

Oversight of the financial infrastructure and the development of the payments market

Legislative proposal Chapter 3, Section 5

> **Section 5** The Riksbank shall conduct oversight of central counterparties, other clearing organisations, systems under the Act on Systems for Settlement of Obligations on the Financial Market (1999:1309), central securities depositories and trade repositories ~~and~~ which are systemically important and hence important to financial stability in Sweden. The Riksbank may also oversee operations conducted by other legal persons of particular importance for the financial infrastructure in Sweden. As part of its oversight, the Riksbank shall have the right to require systemically important companies under its oversight to be participants in the Riksbank's payment settlement system. The Riksbank shall also be able to require a central counterparty to hold a deposit account with the Riksbank.
> The Riksbank shall follow the development of the payments market.

Comments on the legislative proposal

The Riksbank's oversight is risk-based, which means that the selection of the financial infrastructure overseen is according to the following six criteria that shall demonstrate systemic importance.

1. the number and value of the transactions handled by the system
2. the system's market shares
3. the markets on which the system is active
4. the available alternatives that could be used at short notice
5. links with other institutions and financial institutions
6. the system's significance to the implementation of monetary policy.

Not all criteria need to be met for a financial infrastructure to be subject to the Riksbank's oversight; fulfilling one of the criteria may suffice. Given the role held by the Riksbank in oversight and which is also described in the report text, the Riksbank is only

interested in overseeing financial infrastructure that is systemically important and hence important to financial stability in Sweden. As an example, it can be mentioned that if several clearing organisations were to establish themselves in Sweden but only a handful were considered systemically important, the Riksbank only wants to be able to oversee the latter and not all of them.

In terms of the legal persons that are of particular importance to the financial infrastructure in Sweden, the Riksbank wishes to be able to primarily obtain information from such persons. The Riksbank finds it very important and appreciates the possibility of also being able to oversee legal persons that are of particular importance to the financial infrastructure, if the need arises or if they play a crucial role for the financial infrastructure in Sweden, but wishes to be able to choose in this matter and not for it to be a mandatory feature. Being subject to the Riksbank's oversight means having to live up to CPMI-IOSCO's Principles for Financial Market Infrastructures (PFMI) which are aimed at payment systems, clearing organisations, central counterparties, central securities depositories and trade repositories. The principles cannot be applied in their entirety to all legal persons that may become subject to oversight, for example the Swedish Bankers' Association in its capacity of owner of Dataclearing. For such legal persons, the Riksbank needs to have another approach in its oversight and decide which principles might be relevant in that particular case. It could for instance be a matter of internal governance and control and operational risk.

According to PFMI, the financial infrastructure shall preferably settle its payments in central bank money – that is to say, in an account provided by the central bank. This is the safest way of settling payments, because it is considered that a central bank cannot default, unlike a commercial bank. For this reason, the Riksbank wishes to set a requirement for companies that operate systemically important financial infrastructure to participate in the Riksbank's payment settlement system in order to execute payments in central bank money.

The Riksbank has, according to the EU regulation on OTC derivatives, central counterparties and trade repositories (EMIR), the possibility of setting requirements for central counterparties from a third country. One of these requirements is that they must open a deposit account at the Riksbank. As a measure to minimise risk, the Riksbank wishes to be able to set similar requirements for the central counterparties that it overseas pursuant to this provision.

Comments on the legislative commentary

According to the legislative commentary, the systems as are referred to in the Systems for Settlement of Obligations in the Financial Market Act (1999:1309) include both notified and unnotified settlement systems. Because "notified settlement system" is a term defined in the Act, the legislative commentary should, in terms of unnotified settlement systems, refer to the term of the Act, that is to say *equivalent* settlement systems.

The Riksbank's crisis preparation work

Legislative proposal Chapter 3, Section 7

> **Section 7** The Riksbank shall plan and make preparations to establish good capability to counter serious disturbances in the financial system in Sweden. As a step towards this, the Riksbank shall identify liquidity support measures that can be used to counter such disturbances. ~~The Riksbank shall make public what facilities the Riksbank intends to offer and the specific conditions for them, unless it is inappropriate to do so having regard to the stability or efficiency of the financial system.~~
> The Riksbank may participate in resolution colleges and take part in other crisis preparation work organised by other bodies in Sweden or abroad.

Comments on the legislative proposal

The Riksbank is largely positive on the proposal regarding the Riksbank's crisis preparation work. The Riksbank does not find however that it shall, by law, be incumbent upon the Riksbank to publicly disclose in advance which facilities it will provide and the detailed terms thereof, even if a possibility is introduced to refrain from so doing with reference to the stability or efficiency of the financial system.

The view of the degree of advance openness a central bank should have regarding various liquidity support measures varies widely between different central banks. This is because the issue is a complex one. Central banks must, on the one hand, avoid excessive risk-taking among the banks in normal times, known as *moral hazard*, which could be the case if the banks feel overly safe in the knowledge that they will always be rescued by the central bank. On the other hand, there is a desire to avoid a situation in which banks that are in real need of liquidity support refrain from or wait too long to seek support in order to avoid being *stigmatised* for doing so – that is to say, other agents withdraw their funding to the bank when it becomes known that it has received such support, thus exacerbating the situation. It is important to parry conflicting effects, and in particular to ensure that liquidity support reaches the companies that need it the most, without risk-taking among the banks increasing in a way that is far too costly for the economy. To achieve this, complex considerations are needed as a rule, both in devising the terms for liquidity support and as regards the degree of transparency surrounding them. In the Riksbank's opinion, it is inappropriate to introduce into legislation a basic rule entailing that the Riksbank must publicly disclose facilities and the detailed terms thereof, because this is fundamentally a matter of policy analysis, decisions about which should be incumbent upon the Executive Board of the Riksbank, and the facilities need to be devised on a case-by-case basis.

As emphasised in the introduction to Section 22.7 of the report regarding general liquidity support, it is important that the Riksbank has flexible tools that are adaptable

to the situation that has emerged.[3] This makes it both difficult and less appropriate to introduce requirements for publicly disclosing the detailed terms for certain types of measures. If however the Riksbank decides to establish insurance-like liquidity facilities, for example the special facilities described in Section 22.8 of the report, affiliated companies will of course know the detailed terms, because they will have either been agreed in contracts or laid down in regulations. If a contractual solution is chosen, it is probable that the Riksbank will also make the terms available not only to the participants but also to a broader general public, even though this in itself would not affect predictability for the participating companies. If the regulation version is chosen, the terms will be publicly disclosed anyway.

Already today, the Riksbank reports to some extent the principles and criteria it takes into consideration when deciding on emergency liquidity assistance.[4] However, it is not possible to publicly disclose in advance the detailed terms of specific emergency liquidity assistance for an individual institution. Besides fulfilling the criteria on, for example, viability and systemic importance, consideration must of course be given to the situation at hand, including the collateral which the institution can pledge in exchange for the emergency liquidity assistance, which can vary greatly from company to company. Emergency liquidity assistance must also be approved by the ECB and may also require the approval of the European Commission.

Another aspect to consider is that the term "facilities", which is used in the proposed act, is not further defined in the report, which means that the measures actually covered by the requirement are unclear.[5]

In light of the above, the Riksbank finds that it is not appropriate to introduce into legislation requirements for the Riksbank to publicly disclose which facilities it will provide to counteract serious disturbances in the financial system in Sweden, and the detailed terms of such facilities. This gives rise to a presumption of a high degree of transparency surrounding the Riksbank's planning for crisis situations (which is further reinforced in the report text (see below)), even if a possibility is introduced to refrain from public disclosure with reference to the stability and efficiency of the financial

[3] On p. 958 of the report, it is pointed out that the Riksbank's liquidity support measures are required to be adaptable to the type of disturbances at hand, that the Riksbank may need to take measures that are seldom employed and the effects of which cannot be predicted exactly, and that the Riksbank may need to test out new measures to obtain the desired result. This explicit need for flexibility is supported by experience from the 2008–10 financial crisis, when for instance the terms of the Riksbank's credit offerings, for example interest rate, maturities, collateral requirements and circle of counterparties, needed to be subsequently changed as the situation evolved.

[4] Policy for pricing of emergency liquidity assistance, the Riksbank, 6 March 2019, https://www.riksbank.se/globalassets/media/dagordningar--protokoll/protokollsbilagor/direktionen/2019/policy-for-prissattning-av-sarskilt-likviditetstod.pdf

[5] "Facility" often refers to an arrangement established in advance, in which affiliated companies can, on their own initiative, obtain access to central bank liquidity on predetermined terms. This differs from a "facility" from the open market operations carried out on the Riksbank's initiative during the 2008–10 financial crisis. Then, the Riksbank offered credits through auctions, in which the terms – for example interest rate, maturities and collateral requirements as well as the circle of counterparties – in each auction was adapted to the current situation.

system. Once the measures have been implemented, it is however generally natural to publicly disclose information about this (provided that there are no confidentiality aspects to consider).

Comments on the legislative commentary

According to the legislative commentary, the obligation to publicly disclose facilities and the detailed terms thereof, as proposed in the third sentence, would apply "both to the Riksbank's general facilities and its emergency liquidity assistance". The Riksbank observes that the term "general facilities" is not defined and not used elsewhere in the report. Otherwise, please refer to the comments in the previous point.

Comments on the considerations in the report text

Section 24.3 of the report text states that it should "*be possible, with respect to general support measures, to specify in advance the detailed conditions... for at least some facilities*."

With reference to the comments on the legislative proposal above, the Riksbank wishes to emphasise that, for certain general measures, it is not appropriate to specify the terms in advance as such measures are intended to be adaptable to the specific situation. However, the terms of insurance-like facilities are always known in advance, at least to the participating companies.

Powers regarding liquidity support – Chapter 3, Sections 11–14

General liquidity support

Legislative proposal Chapter 3, Section 11

> **Section 11** If needed to counter a serious disturbance in the financial system in Sweden, the Riksbank may,
>
> > 1. provide credit in Swedish kronor or foreign currency in return for adequate collateral to Swedish companies that are subject to the supervision of the Financial Supervisory Authority, equivalent foreign companies that conduct operations in Sweden via branches and central counterparties, or
> > 2. enter into repurchase agreements with such companies referred to in point 1.

Comments on the legislative proposal

It is positive that the Riksbank is given a statutory power to provide credit or enter into repurchase agreements to counteract serious disturbances in the financial system. The new type of general liquidity support in the proposed act however lacks any equivalent in the EU (i.e. general liquidity support that is separate from monetary policy) and the

Riksbank therefore finds that these powers should not be legislated in a separate provision but integrated with the monetary policy tools which, in the proposed act, are found in Chapter 2, Section 4. The reason for this is that, in practice, it will be difficult to use two separate tools that are so close to each other and that may both be used against market disturbances. (See also the Riksbank's comments on the demarcation problem under Chapter 2, Section 2).

Another problem arising as a consequence of this division of the liquidity tools for monetary policy and financial stability (i.e. the proposed Chapter 2, Section 4, and Chapter 3, Section 11) is that completely different rules of EU law are needed (rules corresponding to monetary policy, and parts of the emergency liquidity assistance regulations) for the tools, which means that an appropriate adjustment of the tool to be used, depending on whether the disturbances in the financial system change, cannot be done. In terms of relevant EU law for general liquidity support, no further detail is given in the Inquiry of which rules the Riksbank needs to observe, and this also impedes application of the tools because the rules of EU law to which reference is made in the report are aimed at emergency liquidity assistance for individual institutions (see more below under "Comments on the considerations in the report text").

Comments on the legislative commentary

See more below under "Comments on the considerations in the report text".

Comments on the considerations in the report text

Absence of any equivalent

As described above, the new type of general liquidity support that is decoupled from monetary policy lacks any equivalent within the EU. The Inquiry points out however that many other central banks have been given mandates to provide general liquidity support aimed at financial stability, but the Inquiry does not provide any examples of EU countries where the central bank has been assigned these powers *outside of* the monetary policy framework. These comparisons are thus not relevant for the tools proposed in the Inquiry, which are only linked to financial stability.

The Riksbank's autonomy and independence

In addition to the proposed act entailing that the ban on instructions would not be applicable to the new liquidity tool (see the Riksbank's comments on this in the sections on Chapter 9, Article 13 of the Instrument of Government and Chapter 2, Section 2), the Riksbank highlights that the Inquiry (Section 12.4) states that the committee judges that the provision regarding the autonomy of authorities in Chapter 12, Article 2 of the Instrument of Government would not be applicable with respect to general liquidity support. The committee motivates this opinion by expressing that general liquidity support refers to "*actual action*" by the Riksbank and is thus not "*application of law*" in

the way needed for the provision regarding the independence of the administration in Chapter 12, Article 2 of the Instrument of Government to be applicable.[6]

The Riksbank finds however that this conclusion is not correct because application of the provision on general liquidity support means that the Riksbank must assess whether the criteria set out in the Act are fulfilled or not. This concerns for example whether there is a serious disturbance in the financial system in Sweden, collateral requirements and relevant provisions in EU law regarding state aid and the prohibition of monetary financing (including the solvency of the company), see more below. Also, there are individual counterparties in cases where general liquidity support is provided. In light of this, the Riksbank's decisions on general liquidity support constitute "*application of law*" in the way required for them to be covered by the provision regarding the independence of the administration in Chapter 12, Article 2 of the Instrument of Government.

Demarcation problems

General liquidity support in Chapter 3, Section 11 (which shall be provided to counteract a serious disturbance in the financial system) furthermore presents a problem of demarcation in relation to equivalent liquidity tools found in Chapter 2, Section 4, where liquidity support may be provided for monetary policy purposes that can also be given to counteract disturbances. To further distinguish the measures, the Inquiry states that support for monetary policy purposes shall be provided to counteract "*limited disturbance*" on the interbank market, while "general liquidity support" for financial stability purposes shall be used to counteract "*significant disturbance*" on the financial markets (p. 940–941). In practice, this will be very difficult to apply because the overlaps are so vast. For example, "significant disturbance" on financial markets has tremendous potential to affect not only financial stability but also inflation and the real economy. Also, judging what constitutes "limited disturbance" and "significant disturbance" is difficult and crisis situations unfold quickly. Drafting a decision may commence in a situation of "limited disturbance", which then quickly turns into "significant disturbance". It could take time to prepare appropriate measures and the framework now proposed with a demarcation between the tools could lead to unnecessary long drafting times, which risks giving disturbances in the market time to worsen before measures can be taken. There is thus a risk that dividing up these powers will cause significant problems in terms of demarcation and ambiguities surrounding application, and the Riksbank, for this reason too, therefore objects to the proposed division.

Which EU rules apply?

In the Inquiry, Chapter 22, reference is made to Section 23.5 on legal conditions for emergency liquidity assistance in terms of which EU law must be observed when the Riksbank is to provide general liquidity support. Further detail is however not provided on which rules of EU law apply and affect the design and implementation of general

[6] Some examples of "actual action" mentioned in the preparatory works are operation of railways, building roads and the operational activity of the police (see Government Bill 1973:90 p. 238). "Application of law" refers not only to cases in which a certain law of the Riksdag is applied, but also cases in which it is a matter of applying implementation provisions of the Act which the Government may have issued under Chapter 8, Section 13 of the ministry proposal (Government Bill 1973:90 p. 398).

liquidity support, beyond having to observe the state aid rules and the prohibition of monetary financing. The Inquiry sets out that whether a measure is consistent with EU law depends on the Act combined with the more detailed terms decided by the Riksbank for the measure (p. 944). The Riksbank also notes that, in some places in Chapter 22, it is set out that equivalent requirements shall apply as in general facilities motivated by monetary policy. For the monetary policy facilities however, the requirements of EU law valid for general liquidity support do not apply. The text is therefore inconsistent in its comparison of general facilities used for monetary policy purposes and financial stability purposes. In the latter case, it is also not made clear which provisions actually apply.

A consequence of decoupling the new tools from monetary policy is that the European Commission, pursuant to Article 8 of the TFEU (i.e. the state aid rules), must approve the support in advance. The more detailed criteria for the Commission's discretionary assessment (Banking Communication 2013) are however not adapted to this new general liquidity support, which lacks any equivalent in the EU. In the Banking Communication, two cases are described in which central banks may provide support without it being considered state aid under the state aid rules of EU law. One is "*the ordinary activities of central banks related to monetary policy*". The second is "*Dedicated support to a specific credit institution (commonly referred to as 'emergency liquidity assistance'*)". Emergency liquidity assistance can constitute state aid if the terms set out by the Banking Communication are not fulfilled (see reasons 62–64).

In this context, it must be underscored that the European Commission has judged that monetary policy activity, such as operations on the open market and standing facilities, are not covered by the state aid rules (reason 62). From this judgement, the conclusion can be drawn that the generality of the measures, and the policy instruments used to carry them out, have a bearing on whether it is a matter of monetary policy. Decoupling general measures, as the Inquiry does, that are conducted through the central payment system – which is an integral part of the central bank's operational framework for the implementation of monetary policy – from the field of monetary policy can therefore be called into question purely on grounds of principle. The factors to which the European Commission would attach importance for the type of general liquidity support proposed by the Inquiry, and how it would be handled, are thus highly unclear.

In light of the fact that the type of general liquidity support proposed in the new Sveriges Riksbank Act lacks any equivalent in the EU (since it has been decoupled from monetary policy), it is unclear which EU law would be applied to all the general liquidity tools. The applicable EU law also affects how the tools can be used, the assessment of solvency, collateral requirements, interest to be charged, applied guarantees, maturity and design of the terms and conditions. Furthermore, the support must have the approval of the European Commission in advance and the ECB in advance or annually retroactively.

<u>Financial position of the recipient</u>

The Inquiry sets out that the measures taken by the Riksbank may only be made for the purpose of liquidity support and not be given to improve the solvency of the company

(p. 950). Furthermore, it says the following: *"The underlying uncertainty about whether the party in need of liquidity support outside of the monetary policy framework is financially sound and may thus obtain support is generally lower in general liquidity support than in emergency liquidity assistance. In order to demonstrate that the method for assessing a company's financial position differs between general liquidity support and emergency liquidity assistance, the committee does not propose any explicit viability requirement as far as general liquidity support is concerned. This is consistent with what applies for monetary policy counterparties. The Riksbank must however take account of the state aid rules and the prohibition of monetary financing"* (p. 960-961).

In light of the fact that the Riksbank must take account of the state aid rules and the prohibition of monetary financing, there appears to be a requirement regarding the solvency (but not a viability requirement) for the recipient in the case of general liquidity support. The Riksbank questions however how this assessment shall be made in more detail as there is no such requirement today because equivalent tools in current law may only be used for the purpose of monetary policy.

Difficulty in changing liquidity tools

The financial disturbances that liquidity support measures are designed to counteract can quickly change in nature, which means that the aim of the measures – and hence which one of the proposed liquidity tools should be used – changes. Demarcating the tool to be applied, i.e. if there is "*limited disturbance*" or "*significant disturbance*", as set out in Chapter 25, assumes that the state of the market is constant – which is rarely correct.

As it takes (at least) a number of days to prepare a facility for monetary policy purposes and even longer for financial stability purposes (as consultation is needed with other authorities and the advance approval of the European Commission), it is not possible to simply adjust which tool is to be used if the judgement of the state of the market changes. This could lead to protracted drafting times, which would risk giving disturbances in the market time to worsen before measures could be taken. Because of this, the division of tools in the proposed act is not applicable and appropriate in practical terms.

Market maker of last resort

Legislative proposal Chapter 3, Section 12

> **Section 12** The Riksbank may, in a way similar to a market maker, buy and sell financial instruments at predetermined prices, in order to temporarily support the functioning of systemically important financial markets, if:
>
> 1. needed to counter a serious disturbance in the financial system in Sweden, and
> 2. there are exceptional reasons.

Comments on the legislative proposal

The Riksbank is positive on the proposed provision regarding powers to buy and sell financial instruments to support the functioning of systemically important financial markets. The powers should however not be stipulated in law in a separate provision, but integrated with the provisions for monetary policy found in the Inquiry's proposal for Chapter 2, Section 5 of the Sveriges Riksbank Act. This is essential considering that measures of the type concerned could have significant effects on the objectives of both monetary policy and financial stability, and that demarcation could be problematic in the same way as the Riksbank describes above with respect to general liquidity support. It also appears unclear which EU law is applicable to this tool when it is decoupled from monetary policy.

Comments on the legislative commentary

See more below under "Comments on the considerations in the report text".

Comments on the considerations in the report text

The Riksbank observes that similar powers as are in Chapter 3, Section 12 of the proposed act are proposed to apply in Chapter 2, Section 5 within the monetary policy toolkit. With reference to what the Riksbank expresses above under Chapter 3, Section 11 regarding the problem in demarcation and ambiguities in applicable EU law, the Riksbank proposes here too that the powers proposed for the Riksbank's possibilities to act as market maker be integrated with the provisions for monetary policy found in the Inquiry's proposal for the Sveriges Riksbank Act Chapter 2, Section 5.

Emergency liquidity assistance

Legislative proposal Chapter 3, Section 13

> **Section 13** The Riksbank may, for liquidity support purposes, provide credit in Swedish kronor or foreign currency in return for collateral and on other special terms to a company that is viable but has temporary liquidity problems, if:
>
> 1. needed to counter a serious disturbance in the financial system in Sweden, or
> 2. there are exceptional reasons.
>
> Such a credit may only be granted to Swedish companies subject to the supervision of the Financial Supervisory Authority, to equivalent foreign companies domiciled in the EU, to equivalent foreign companies that conduct operations in Sweden via a branch or to central counterparties.

Comments on the legislative proposal

The text of the Act should stipulate that this support can be granted on special terms (besides the collateral requirement) as the Riksbank, under EU law, shall charge a penal interest rate, limit maturity, etc. There may in some cases also be grounds for the Riksbank to require a limitation on how the funds may be used or to impose reporting requirements. This is set out in the legislative commentary, but if it is not written into

the legislative proposal, there would be no explicit support from the legal framework for terms of this kind.

As regards the circle of counterparties, the Riksbank finds flexibility important. It is therefore appropriate to broaden the circle of counterparties further, so that the Riksbank is enabled to also grant credit to "equivalent foreign companies" without a requirement to conduct these operations via a branch. Developments in the field of payments are rapid and there is great pressure on further integrating the EU countries within the bounds of the Capital Markets Union and the Banking Union. Even if Sweden does not join the Banking Union, these developments will have implications for Sweden. As certain types of institutions have the right to operate across borders within the EU, these may, over the internet, approach the Swedish market and Swedish households without having a branch in Sweden. Such institutions do not exist to any considerable extent today, but the prospect of them emerging in the coming decades cannot be ruled out. In light hereof, this provision risks having a short shelf life, which is not desirable. Of course, it is primarily the central bank of the home country that is responsible for such an institution, but it may nevertheless be in the interest of Sweden to support such an institution and it is unfortunate and unnecessary to limit by law the foreign circle of counterparties solely to institutions that conduct operations via branches in Sweden.

Comments on the legislative commentary

The legislative commentary sets out that the Riksbank may set special terms for emergency liquidity assistance:

"The criteria in the paragraph are addressed in detail in Section 23.7. As described therein, the Riksbank may provide this credit on terms (collateral, interest, maturity, etc.) that are different from other credit provided by the Riksbank. The terms of this credit may thus differ from those that apply to, for instance, an intraday credit or general liquidity support."

While it is good that this is clarified in the legislative commentary, it would be even more transparent if it were also set out in the section of the law that this credit may be provided "on special terms" (not only as regards the collateral requirement), as proposed above.

Comments on the considerations in the report text

Section 23.7, Which criteria must be met for the Riksbank to grant emergency liquidity assistance?, p. 1016–1043

The Riksbank finds it important for the justifications and descriptions found in this section to be contained, in purely general terms, in the government bill and not excessively abridged (with a handful of exceptions, see comments below). The Riksbank finds that these descriptions are helpful in the interpretation of the judgements that the Riksbank shall make in potential emergency liquidity assistance, which has been a shortcoming in the previous Act.

Section 23.7.4, Pricing, p. 1025, last paragraph

The Riksbank does not support the following assessment in the report text: “The Riksbank should not however through pricing impose requirements that entail dual regulation in relation to Finansinspektionen’s tasks, see Section 20.8.2.”.

The Riksbank finds it unclear what is meant. One interpretation is that the text relates to the Riksbank’s decision in the spring of 2019 to establish a policy for pricing emergency liquidity assistance. It is the Riksdag and Finansinspektionen that regulate the banks, and the Riksbank agrees that it would be inappropriate for the requirements of the Riksbank to contravene those of other authorities. The Riksbank however finds it natural that it is the Riksbank that stipulates the terms applying to any lending from the Riksbank. The Riksbank should also have the possibility of devising agreements and engagements in a way that reduces the risk of moral hazard and stigma. The Riksbank finds it difficult to see that the pricing policy established by the Riksbank for emergency liquidity assistance is in conflict with Finansinspektionen’s requirements. According to the Riksbank’s policy, the price of emergency liquidity assistance for an institution will depend on factors such as the size of the liquidity buffers held by the company. Sizeable self-insurance is hence a factor that gives a lower price for any assistance. This is in line with how pricing for different types of insurance is usually devised. It is Finansinspektionen’s minimum requirement that constitutes the regulations and which is hence binding for the banks. However, the banks are free to have liquidity ratios anywhere above Finansinspektionen’s minimum requirement. Finally, it can be pointed out that the matter of whether the central bank charges a penal interest rate to the recipient of the assistance for the assistance it received is part of the assessment of whether or not the assistance constitutes state aid (the Banking Communication, reason 62). A penal interest rate can be seen as pricing of the assistance, and the price shall be high enough for the assistance not to be considered a financial benefit. If the Riksbank cannot price the assistance, problems with the state aid provisions thus arise. The Riksbank thus does not support the Inquiry’s assessment.

Section 23.7.5, Circle of counterparties, p. 1026–1027

The Riksbank notes that the listed circle of counterparties is not entirely consistent with prevailing law. For example, securities depositories are no longer included in the definition of clearing organisations and should be listed as a separate category of companies. Similarly, the category clearing house should be removed, as the definition by law is clearing organisation and that is already mentioned in the list. For this reason, it should be ensured that all types of institution contained in the circle of counterparties are included.

Section 23.7.6, Assessment of a company’s viability, p. 1038, second paragraph

The Riksbank supports the following assessment of the Inquiry, because it clarifies the conditions for the Riksbank’s decision-making in relation to other authorities’ judgements and decisions, a factor that is particularly relevant in a situation of emergency liquidity assistance.

"The Riksbank shall independently decide whether the company is viable, and whether the conditions for granting emergency liquidity assistance are fulfilled."

Section 23.8.6, The financial position of the assistance recipient, p. 1057
The Riksbank supports the following assessment, which is crucial because it clarifies previously unclear issues and considerations that need to be made in the event of emergency liquidity assistance in resolution.

"In line with what the Government ascertained in the preparatory works for the Resolution Act, the committee finds that a company that has been put into resolution is by definition not viable at the time of the resolution decision." […] "Like the Government (see Section 23.8.3), the committee furthermore finds that a decision on resolution can immediately change the future outlook for the company. This does not occur automatically however but depends on factors such as choice of resolution tools and how they are employed." […] "The committee therefore determines that the circumstance alone of the National Debt Office having decided to put a company into resolution does not suffice for the company to be considered viable. Instead, the matter depends on which resolution measures are decided. It is therefore important that the National Debt Office, ahead of the Riksbank's decision, provides the Riksbank with all relevant information held by the authority."

Information to the Government and other parties

Legislative proposal Chapter 3, Section 17

> **Section 17** Before the Riksbank decides to provide credit under Section 13, the Riksbank shall inform the minister designated by the Government.

Comments on the considerations in the report text

The text regarding the scope of the Riksbank's information obligation in relation to the Government is not entirely consistently expressed in the report. In Section 24.4.1, Grounds for the committee's proposals, p. 1090, third paragraph, it is clearly set forth that it is a matter of *an information obligation* and not a consultation requirement. "The committee does not propose that an obligation for the Riksbank to consult with the Government be introduced. This however does not prevent the Riksbank from having an ongoing dialogue with the Government or the Government Offices on these matters." In Section 23.7.8, Background, p. 1043, last paragraph, the committee states that the Riksbank, if possible, *should* provide information in such ample time as to provide scope for *dialogue*: "Given the significance that emergency liquidity assistance can have for financial stability and other opposing interests, the Riksbank should however be obliged to inform the Government before a decision on emergency liquidity assistance is made. Information should, if possible, be provided in such ample time as to provide scope for holding a dialogue." The Riksbank finds the way in which dialogue (for which the Riksbank should provide scope) differs from consultation (for which there is no requirement) unclear. The Riksbank finds that it should be clarified that the

requirements for the Riksbank should only concern an information obligation in this case.

Chapter 4. Cash and other means of payment

Since the chapter also contains provisions on means of payment other than cash, this should be stated in the heading.

Objective

Legislative proposal Chapter 4, Section 1

> **Section 1** The objective of the Riksbank's activities under this Chapter is to contribute to the availability of cash to a satisfactory extent throughout Sweden.
>
> Chapter 9 of the Payment Services Act (2010:751) contains provisions about requirements for credit institutions to provide cash services.

Comments on the legislative proposal

The objective should be reworded because the chapter also concerns means of payment other than cash.

Tasks – Chapter 4, Sections 3-6

Depot operations

Legislative proposal Chapter 4, Section 4

> Section 4 The Riksbank is responsible for depot operations being conducted. Depot operations mean the operation of depots, i.e. physical locations for storage and for release and delivery of cash.
>
> ~~Unless otherwise decided by the Riksdag, there shall be at least five depots in Sweden at which the companies decided by the Riksbank can collect and deliver banknotes of all denominations. At least one of these depots shall be in the County of Norrbotten or the County of Västerbotten. At least one of these depots shall be in the County of Jämtland or the County of Västernorrland.~~

Comments on the legislative proposal

It is reasonable that the Riksbank be given clear responsibility for the presence of cash depots in the country, and that there is flexibility for how the Riksbank may perform the task. It is however not appropriate to legislate on the number of depots and where they must be located. The proposal counteracts the flexibility needed for the Riksbank to seek to ensure that cash management is as effective as possible within the bounds of the Riksbank's task of contributing to the availability of cash throughout Sweden. The Riksbank therefore proposes that the second paragraph of the section be deleted.

If the second paragraph is not deleted, the following should be considered:

- In the text of the Act and in the legislative commentary, it is stated that that the Riksdag can make special decisions on the number of depots. It is unclear whether this also concerns the location of the depots. Neither is it stipulated what the process for such decisions would be. This should be developed in both the legislative commentary and in the body text.
- The Inquiry has not taken account of the Riksbank's operations in Broby. The Riksbank finds that these operations too should be included in the assessment of how many depots there should be.

Powers – Chapter 4, Sections 7-13

Redemption of banknotes and coins

Legislative proposal Chapter 4, Section 7

> **Section 7** The Riksbank may redeem banknotes and coins that are damaged or worn.
>
> If there are special reasons, the Riksbank may redeem banknotes and coins that have ceased to be legal tender.
>
> The Riksbank may redeem commemorative and jubilee coins.

Comments on the legislative proposal

The text of the Act should also refer to commemorative and jubilee coins. It should be possible for the Riksbank to redeem commemorative and jubilee coins even if they have not ceased to be legal tender as they are, in practice, not accepted by market participants.

Compensation for interest expenses

Legislative proposal Chapter 4, Section 9

> **Section 9** The Riksbank may pay compensation for interest expenses give an interest-free credit to companies that have separated and stored banknotes and coins according to the Riksbank's instructions regarding operations referred to in Section 4..

Comments on legislative proposals and considerations in the report text

In the text of the Act, it says that the Riksbank may pay compensation or issue interest-free credit. It should be clarified that the Riksbank may pay compensation for interest expenses or provide interest-free credit. Furthermore, it should be set forth that the Riksbank may issue regulations not only as regards compensation for interest expenses but also as regards interest-free credit (see Chapter 4, Section 17).

Other means of payment for the public

Legislative proposal Chapter 4, Section 11

> **Section 11** The Riksbank may only issue or circulate electronic money under the Electronic Money Act (2011:755) or provide means of payment intended for the public other than those following from the provisions of Section 3, first paragraph, and of Section 10, first paragraph, points 1 and 2, when consent has been given by the Riksdag. The consent from the Riksdag may be general, limited to elevated preparedness under Section 10 or subject to some other condition.

Comments on the legislative proposal

The Riksbank finds that the requirements regarding the Riksdag's approval in order for the Riksbank to be able to provide electronic money and e-kronor and the possibilities of conditioning such an approval should be checked against EU law.

In the Riksbank's opinion, a clearer distinction should be made in the provision between electronic money according to the Electronic Money Act, and digital central bank money which has characteristics equalling a currency – that is to say, money that is valid for a certain geographic area (currency area), and which has certain characteristics regulated by public law, for instance status as legal tender. Now, the two types of money are put on a par with each other, which gives rise to a number of ambiguities.

Is the provision in accordance with the ban on instructions and the Electronic Money Directive (2009/110/EC)? Article 1 sets out that the Directive lays down the rules for the pursuit of the activity of issuing electronic money to which end the Member States shall recognise central banks as issuers of electronic money. It can be questioned whether the Riksbank's right as issuer according to the Directive can be subject to the Riksdag's approval.

In the case of EU law allowing a requirement for the Riksdag's approval, there is however a need to clarify the process for the Riksdag's approval in both the legislative commentary and the body text and consider requisite amendments to the Electronic Money Act.

Fees

Legislative proposal Chapter 4, Section 12

> **Section 12** The Riksbank may charge fees from anyone who collects or submits cash at the bank. The fees may be differentiated geographically.

Comments on the legislative commentary

In the legislative commentary and the body text, it should be clarified that the Riksbank also has the possibility of charging fees in redemption operations.

Comments on the considerations in the report text

See Section 34.4.2, p. 1559, last paragraph:

The Riksbank opposes the Inquiry's proposal that the Riksbank shall monitor to ensure that any fee reductions are forwarded into the retail channel.

"… one way for the state to support the cash chain is to seek to attain pricing in the wholesale channel that leads to lower costs for e.g. commerce. That way, the conditions for certain traders opting to continue to offer cash payments improve. *The Riksbank should monitor to ensure that any price reductions in the wholesale channel for returning and collecting cash are, as far as possible, transferred through the retail channel onto end users so that traders and small banks with cash management also encounter lower prices for cash. The aim of any price reductions at the depots is to underpin the cash chain in its entirety, and not to subsidise the operations of the banks, Bankomat AB or cash-in-transit services."*

According to the committee, the state shall, through the Riksbank, support the cash chain by seeking to attain pricing in the wholesale channel that leads to lower costs for e.g. commerce. The stated purpose of this is to underpin the whole of cash management by reducing the costs of commerce and hence helping to reduce the number of traders that opt to go cash-free. According to the report, the Riksbank should also monitor to ensure that any price reductions in the wholesale channel for returning and collecting cash are, as far as possible, transferred through the retail channel onto end users so that traders and small banks with cash management encounter lower prices for cash. The Inquiry has not analysed in more detail how and which tools the Riksbank needs to enable it to influence other participants in the cash management chain in such a way that it leads to lower prices for end customers.

In light hereof it is difficult to understand how the Riksbank – through compensating the banks, which is to lead to reduced prices in the wholesale channel for returning and collecting cash – will be able to ensure that such reductions are forwarded through the retail channel onto end users so that traders and small banks encounter lower prices for cash management. There is a risk that such a proposal will instead only benefit larger banks and other credit institutions. In the Riksbank's understanding, it is not the task of the Riksbank to subsidise cash management costs for large banks and other credit institutions. If the state wishes to achieve lower costs for cash management for other participants in the cash management chain, the state could instead take measures other than reducing costs for large credit institutions. For example, the state could intervene with supportive initiatives or financial grants through the work with core payment services that the Post and Telecom Authority and the County Administrative Boards are tasked to perform. The Riksbank therefore opposes the rationale of the Inquiry that the Riksbank shall seek to attain lower costs in, for example, the retail channel by reducing costs in the wholesale channel.

Besides, the Riksbank is not given any tools for influencing and following up on pricing in relation to end customers, and for sanctioning the institutions that do not transfer cost

reductions to an equivalent extent onto end users. It is not appropriate to place such responsibility upon the Riksbank solely through statements in the preparatory works.

Termination of operations

Legislative proposal Chapter 4, Section 13

> **Section 13** The Riksbank may decide that a ~~financial~~ company that conducts operations of importance for the access to cash is obliged to notify the Riksbank a certain period of time before the termination of operations.

Comments on the legislative proposal

According to the text of the Act, it is only financial companies that are obliged to inform the Riksbank with a certain period of notice prior to activity ending. "Financial companies" refers to companies under the supervision of Finansinspektionen, equivalent foreign companies, the Swedish National Pension Funds (the AP funds) and the Swedish Ships' Mortgage Bank (Svenska Skeppshypotekskassan). The limitation to companies that are under Finansinspektionen's supervision presents a hypothetical possibility of there being companies that have cash management of significance to access to cash, but on which such an obligation cannot be imposed. This could for example apply to companies that provide services that only consist of professional, physical transport and related management of cash, see Chapter 1, Section 6 of the Payment Services Act (2010:751), and services that only enable withdrawing cash using an ATM, see Chapter 1, Section 6b of the Payment Services Act.

To future-proof the Riksbank's possibilities of monitoring and analysis to ensure that cash management functions in Sweden and, if needed, to assume a coordinating role in cash management, the obligation should apply to all companies that conduct operations of importance for the access to cash in Sweden.

Legal tender – Chapter 4, Sections 15 and 16

Banknotes and coins

Legislative proposal Chapter 4, Section 15

> **Section 15** Everyone has the right to discharge an obligation by paying with banknotes and coins issued by the Riksbank (legal tender), unless otherwise provided by another statute or by terms of a contract.

Comments on the considerations in the report text

<u>The obligations of the private sector to accept cash: See Section 34.7.4, p. 1582, first paragraph</u>:
"The provision regarding legal tender in the new Sveriges Riksbank Act is proposed to be non-compulsory, which means that contractual conditions with a different content take

precedence. This is in line with prevailing case law in conditions governed by private law. Contractual conditions that apply in relation to a consumer shall however be reasonable. If a trader, in relation to consumers, applies contractual conditions that are unreasonable, the trader may be banned from using them (Chapter 3, first paragraph of the Consumer Contracts Act [1994:1512]). The consequences in terms of civil law of unreasonable contractual conditions as in the sense referred to in Section 36, first paragraph of the Contracts Act (1915:218), are that the condition may be modified or disregarded. On the whole, these provisions entail that primarily a trader in relation to consumers needs to weigh the reasons that a consumer could have for paying in cash against any drawbacks and costs that this causes to the trader for managing cash payments. If the drawbacks and costs are negligible for example, it could thus be unreasonable to refuse accepting cash payments from consumers who have strong reasons for paying in cash. This could for instance be the case if a person who, by reason of a variation in ability finds it difficult to use electronic payment means, wishes to pay a small sum in cash for food."

The Riksbank finds that the question as to whether or not a circumstance in which a trader refuses to accept cash could constitute an unreasonable contractual condition is unclear. It could be claimed that no contract is in place at the time of the trader refusing cash payment. The refusal itself can hence not be seen as a condition of a contract. The issue has not yet been tried by the Swedish Consumer Agency. Because the provision is non-compulsory, it could, notwithstanding the previous question, be queried as to whether refusing to accept cash could constitute an unreasonable contractual condition. This is because a trader is not obliged to enter a contract because freedom of contract applies.

According to the Riksbank, there is reason to consider introducing consumer protection rules regarding a ban on discrimination against cash, at least in certain areas that are of great importance to consumers, for instance the food retail trade, petrol stations and pharmacies.

<u>The obligations of the public sector to accept cash: See Section 34.7.4, p. 1582, last paragraph:</u>
The Inquiry states that: "The new Sveriges Riksbank Act should allow freedom of contract also in conditions governed by public law."

The Inquiry therefore proposes that freedom of contract should not only apply in conditions governed by private law, but also in conditions governed by public law. According to the Inquiry, mandatory regulations to pay in cash for tasks governed by public law and publicly financed services should instead be assessed and regulated sector-wise.

The Riksbank opposes the Inquiry's proposal and assessment. The ability to pay in cash may not be curtailed in relation to current law. It is therefore crucial that the obligations of the public sector to accept cash is not limited in any way other than by provisions of the law, such as when paying taxes. The Riksbank therefore finds that freedom of

contract should not apply to operations governed by public law. The main rule should be that the public sector shall accept cash.

Elevated preparedness

Legislative proposal Chapter 4, Section 16

> **Section 16** In the event of elevated preparedness, everyone has the right to discharge an obligation by paying with banknotes and coins issued by the Riksbank and emergency money referred to in Section 10 (legal tender), unless otherwise provided by another statute.
> ~~Terms of a contract that restrict the right referred to in the first paragraph in relation to a consumer are of no legal effect.~~
> A trader may not refuse the wish of a consumer to pay in cash.

Comments on the considerations in the report text

With respect to the term "legal tender" it is set forth in the text of the Act that contractual conditions that curtail the right of a consumer to pay in cash (as in the first paragraph) are ineffectual.

If a trader refuses to enter an agreement, it can however be questioned as to whether it is a matter of a contractual condition because a contract will de facto not come into place (see comments above under Chapter 4, Section 15). The provision should therefore be reworded so that it clearly stipulates that a trader may not refuse the wish of a consumer to pay in cash.

Furthermore, the obligations to accept cash during elevated preparedness only apply in relation to consumers. To the understanding of the Riksbank, the obligation to accept cash should not only apply in conditions governed by civil law, but also in conditions governed by public law. The obligation to accept cash during elevated preparedness should therefore apply to legal persons that accept payments from consumers and from other natural persons.

The Riksbank also notes that the Inquiry has not proposed any *sanctions* for traders in breach of the provision. The Norwegian Ministry of Justice is currently working on reviewing its Financial Contracts Act ("finansavtaleloven"), which stipulates that traders are obliged to accept cash from consumers.[7] The Riksbank calls for this important matter to be analysed as regards Sweden too. If traders can breach the provision without any consequences, the provision risks being ineffectual.

[7] Cf. Proposed act in Norway proposing the introduction of fines and prison sentences of up to three months: https://www.stortinget.no/globalassets/pdf/innstillinger/stortinget/2019-2020/inns-201920-025l.pdf and https://www.stortinget.no/globalassets/pdf/innstillinger/stortinget/2019-2020/inns-201920-025l-vedlegg.pdf

Regulations

Legislative proposal Chapter 4, Section 17

Section 17 The Riksbank may issue regulations concerning:

1. the design of banknotes and coins and the conditions for redeeming them,
2. depot operations,
3. compensation for interest expenses and interest-free credit,
4. such fees referred to in Section 12, and
5. the obligation under Section 13 to notify the Riksbank a certain time before the termination of operations.

Comments on legislative proposals

According to Chapter 4, Section 9, the Riksbank may pay compensation or provide interest-free credit. The Riksbank finds that it should be able to issue regulations not only on compensation for interest expenses, but also on interest-free credit.

Chapter 5. Crisis preparedness and elevated preparedness

Overall comments

Overall perspective regarding responsibility for preparedness in the financial sector

The Riksbank supports the proposal to provide the Riksbank with extended responsibility for preparedness with respect to electronic payments and cash management. The Riksbank sees a need for the ongoing Civil Defence Inquiry (Ju 2018:05)[8] to take account of the proposal of the Riksbank Committee in its work. This is important to ensure a functioning comprehensive structure for how the financial sector is to work with preparations for peacetime crisis situations and elevated preparedness, and how the sector should be led in an acute situation. If the two inquiries put forth separate proposals without an overall perspective, there is a high risk of ambiguous areas of responsibility within the financial sector.

Use of consistent terminology

Because the legislative proposals in Chapter 5 entail a completely new area of responsibility for the Riksbank, it is important that terminology and descriptions are clear and consistent. Terminology regarding work areas (crisis preparedness and total defence) and situation descriptions (peacetime crisis situations and elevated preparedness) are mixed up in a way that causes ambiguity.

The Riksbank therefore proposes that the new overarching responsibility be termed "responsibility for preparedness" (instead of "responsibility for crisis preparedness and elevated preparedness") and that the responsibility entails the Riksbank being given a number of new tasks aimed at ensuring that electronic payments and cash management shall be maintained in "peacetime crisis situations and during elevated preparedness". The Riksbank proposes that these terms be used throughout in legislative proposal, legislative commentary and in the body text of the government bill in order to ensure clarity. This means a suggestion to change the heading for the legislative proposals in Chapter 5 to "Preparedness".

Legal persons and traders

Throughout, the term *legal person* is used for agents that conduct electronic payments and the term *trader* for agents in cash management.

The reasons for using in some cases the term *legal person* and in other cases the term *trader* should be illuminated in the preparatory works.

[8] The Inquiry shall analyse and submit proposals for, among other things, a structure of central government authorities divided into sectors and sector-specific authorities. A report is to be presented by 1 March 2021 at the latest.

Report text Chapter 35

Throughout, there is a need for consequential amendments in Chapter 35 of the report text and in the summary of the final report based on the views expressed in this annex with respect to legislative proposal Sections 1–19 and related legislative commentaries.

Objectives

Legislative proposal Chapter 5, Section 1

> **Section 1** The objectives of the activities of the Riksbank under this Chapter are to
>
> 1. enable the public to make necessary payments even during peacetime crises and during elevated preparedness,
> 2. limit vulnerability concerning payments, and
> 3. ensure that the Riksbank has good capability to handle its tasks even under the conditions referred to in point 1.

Comments on the legislative commentary

In order to have more consistent use of terminology (according to the rationale in the overall comment "*Use of consistent terminology*") it is proposed that the first sentence in the first paragraph be changed to "*In the section, the objectives are stipulated for the activities of the Riksbank during peacetime crisis situations and during elevated preparedness*".

Task – Chapter 5, Sections 2–4

Scope

Legislative proposal Chapter 5, Section 2

> **Section 2** The Riksbank shall be responsible for planning for peacetime crises and elevated preparedness regarding its own activities.
>
> The Riksbank shall also have a planning and control responsibility in relation to legal persons referred to in Section 3 and traders in cash management referred to in Section 4.

Comments on the legislative commentary

In order to have more consistent use of terminology (according to the rationale in the overall comment "*Use of consistent terminology*") it is proposed that the first sentence in the first paragraph be changed to "*The section concerns the scope of the Riksbank's task of being responsible for planning, i.e. planning for peacetime crisis situations and elevated preparedness*".

Requirements applying the Riksbank – Chapter 5, Sections 5–9

Preparations for peacetime crisis situations

Legislative proposal Chapter 5, Section 5

> **Section 5** The Riksbank shall plan and undertake preparations to prevent vulnerabilities, withstand threats and risks and establish capability to manage a peacetime crisis situation ~~crises, prevent vulnerabilities and withstand threats and risks~~ in order to achieve the objectives referred to in Section 1. When required, the Riksbank shall also prepare alternative solutions in relation to the systems and procedures normally used.
>
> In a crisis the Riksbank shall take the measures needed to manage the consequences of the crisis. However, the Riksbank shall not take over the responsibility for conducting any operations from another party.

Comments on the legislative proposal

The heading for Section 5 is proposed to be reworded to "*Preparations for peacetime crisis situations*" to make it more consistent in use of terminology and in relation to the heading for Section 6.

To obtain a more logical order (prevent, withstand, manage), changes to the first sentence are suggested.

Comments on the legislative commentary

In the first sentence in the second paragraph, the following change to the word order is proposed to obtain a more logical order (prevent, withstand, manage): "*The first paragraph applies to planning and preparations to prevent vulnerabilities, withstand threats and risks and establish capability to manage a peacetime crisis situation in order to achieve the objectives referred to in Section 1*".

~~Total defence's demands and continuity~~ Preparations for elevated preparedness

Legislative proposal Chapter 5, Section 6

> **Section 6** The Riksbank shall adhere to the demands made by total defence. The Riksbank's shall primarily focus its activities during elevated preparedness on tasks that are of importance for the total defence. Other activities shall be performed to the extent possible.

Comments on the legislative proposal

The heading for Section 6 is proposed to be reworded to "*Preparations for elevated preparedness*" to make it more consistent in use of terminology and in relation to the heading for Section 5.

Comments on the legislative commentary

To make it more consistent in the use of terminology, it is proposed that the first paragraph be changed to "*The section concerns the Riksbank's relationship with total defence otherwise and requirements for maintaining the activities of the Riksbank during elevated preparedness*".

~~Wartime organisation and peacetime command function~~ Command function and wartime organisation

Legislative proposal Chapter 5, Section 9

> **Section 9** ~~During peacetime the Riksbank shall plan for a wartime organisation during elevated preparedness.~~ In the event of disturbances regarding the execution of payments referred to in Section 1, point 1, that arise during peacetime crises, the Riksbank shall, when required, be able to immediately set up a command function for coordination and information. The Riksbank shall, during peacetime, plan to be able, during elevated preparedness, to switch to a wartime organisation. The Riksbank's wartime organisation shall include a command function to lead the relevant activities at the legal persons referred to in Sections 3 and 4.

Comments on the legislative proposal

The heading is proposed to be changed to "*Command function and wartime organisation*" in order to reflect that the paragraph concerns the Riksbank's command function, in both peacetime crisis situations and during elevated preparedness, as well as the Riksbank's wartime organisation.

It is proposed that the order of the sentences be changed to give a more logical sequence, as the wartime organisation is based on crisis preparedness. Finally, an addendum is proposed (based on the legislative commentary) to clarify that the Riksbank's command function shall also be present during elevated preparedness, and in that case included in the Riksbank's wartime organisation.

Measures ahead of and during elevated preparedness – Chapter 5, Sections 10–14

Wartime posting of personnel of certain legal persons and traders

Legislative proposal Chapter 5, Section 12

> **Section 12** The legal persons referred to in Section 3 and traders conducting operations referred to in Section 4 that the Riksbank designates may decide to assign personnel employed by them ~~their contractors~~ and the personnel of their contractors who are not claimed by some other part of the total defence to a wartime posting.
>
> The first paragraph also applies to security companies that guard banknotes or coins in connection with transports under Section 1, first paragraph, point 3 of the Security Companies Act (1974:191).

Comments on the legislative proposal

In order to clarify that contractors cannot be assigned wartime postings (with the exception of cases where the contractor is a natural person), but only the staff of contractors, the following rewording of the first sentence is proposed: *"The legal persons and traders referred to in Sections 3 and 4, which are determined by the Riksbank, may decide to assign personnel employed by them and the personnel of their contractors who are not claimed by some other part of the total defence to a wartime posting".*

Comments on the legislative commentary

In order to clarify that it is persons and not actors that are given wartime postings, it is proposed that the third paragraph be changed to: "*The actors designated by the Riksbank shall subsequently assess the question of wartime posting of relevant personnel, provided that it is a matter of persons not claimed by some other part of the total defence*." The first sentence in the fifth paragraph is proposed to be reworded to make it clearer: "*According to the second paragraph, decisions on wartime postings may also be made, according to the conditions set forth in the first paragraph, with respect to relevant personnel at security companies that guard banknotes or coins in connection with transports under Section 1, first paragraph, point 3 of the Security Companies Act (1974:191)*".

Requirements for a decision on wartime posting

Legislative proposal Chapter 5, Section 13

> **Section 13** The provisions of Section 12 apply, provided that the legal person or trader is obliged to continue their operations in war and during risk of war, under Section 15, point 3, by agreement or on some other grounds.
>
> A decision on wartime posting of personnel referred to in Section 12 may be made to the extent needed for the purpose of attaining the objectives referred to in Section 1. ~~to enable payment transactions under Chapter 1, Section 2, point 3 of the Payment Services Act (2010:751) and payments by means of payment under Chapter 4 to be performed even in the event of elevated preparedness.~~

Comments on the legislative proposal

The last paragraph is proposed to be reworded with reference to the objectives in Section 1: *"A decision on wartime posting of personnel referred to in Section 12 may be made to the extent needed for the purpose of attaining the objectives referred to in Section 1."*

Requirements for certain legal persons and traders

Legislative proposal Chapter 5, Section 15

> **Section 15** The legal persons and traders referred to in Sections 3 and 4 shall
>
> 1. participate in the Riksbank's planning for peacetime crises and elevated preparedness in order to ensure that payment transactions under Chapter 1, Section 2, point 3, of the Payment Services Act (2010:751) and payments by means of payment under Chapter 4 of this Act can be executed even in peacetime crises and in the event of elevated preparedness.
> 2. participate in the Riksbank's work on the risk and vulnerability analyses referred to in Section 7,
> 3. continue the operations referred to in Section 3, first paragraph, and Section 4 in war and during risk of war, unless otherwise decided by the Riksbank,
> 4. ensure that the personnel concerned are given the training and exercises regarding the relevant operations needed to enable the personnel to carry out their tasks in connection with peacetime crises and in the event of elevated preparedness, and
> 5. make the personnel concerned available for the joint training and exercise activities decided by the Riksbank.

Comments on legislative proposals and considerations in the report text

In Chapter 5, Section 15, requirements are imposed regarding certain legal persons and traders. The Riksbank notes that the Inquiry has not proposed any provisions on penalties or other sanctions for traders in breach of the provision in Chapter 5, Section

15. According to the considerations (p. 1633), Finansinspektionen may decide on sanctions with regard to financial companies under Finansinspektionen's supervision if such companies are deficient in their compliance with regulations issued by the Riksbank. However, this only applies to companies under Finansinspektionen's supervision. If such traders as are covered by the provision, but which are not under Finansinspektionen's supervision, breach the obligations without there being any consequences, there is a risk that the provision will be ineffectual. The Riksbank therefore finds it important that any possibilities of sanctions be analysed and that a position be taken on this issue.

Regulations

Legislative proposal Chapter 5, Section 16

Section 16 After giving the Financial Supervisory Authority and the Swedish Post and Telecom Agency the opportunity to state an opinion, the Riksbank may issue regulations on:

1. activities under Section 15,
2. what kinds of legal persons are of particular importance for the execution of payment transactions in Sweden under Section 3, first paragraph,
3. what kinds of traders providing services for withdrawals and deposits of cash are of particular importance for the execution of payments by banknotes and coins under Section 4, point 3, and
4. what measures the legal persons and traders referred to in Sections 3 and 4 shall take to manage vulnerabilities and risks other than those referred to in
   a) the Protective Security Act (2018:585),
   b) the Act on information security for critical and digital services (2018:1174),
   c) the Act on protective security in the Riksdag and its authorities (2019:109),
   d) regulations issued pursuant to the acts stated in a)–c), or
   e) statutes concerning the Financial Supervisory Authority's responsibilities as a supervisory authority and an authority with special responsibility ~~for~~ during peacetime crisis situations ~~crisis preparedness~~ and elevated preparedness.

Comments on the legislative proposal

In order to be more consistent in use of terminology (according to the rationale in the overall comment "*Use of consistent terminology*"), it is proposed that point 4 e) be changed to "*statutes concerning the Financial Supervisory Authority's responsibilities as a supervisory authority and an authority with special responsibility during peacetime crisis situations and elevated preparedness*".

Comments on the legislative commentary

In order to have more consistent use of terminology (according to the rationale in the overall comment "*Use of consistent terminology*") it is proposed that the second

sentence of the seventh paragraph be changed to "*This right to adopt regulations is a core component of the Riksbank's responsibility for preparedness*".

Consultation and information – Chapter 5, Sections 17–19

Information to the Government etc.

Legislative proposal Chapter 5, Section 18

> **Section 18** In the event of elevated preparedness and in the event of serious disturbances to the execution of payments referred to in Section 1 point 1 in peacetime crisis situations, the Riksbank shall keep the Government and the National Debt Office informed about developments and about measures taken and planned.

Comments on the legislative commentary

The legislative commentary should make it clear that it is the Riksbank that judges when a disturbance is so serious that the information obligation to the Government and the National Debt Office enters into force.

Chapter 6. International activities

Financing of the activities of the International Monetary Fund – Chapter 6, Sections 3–8

Legislative proposal Chapter 6, Section 6

Section 6 The Riksbank may decide to provide credits or other funding of the activities of the International Monetary Fund if the funding has been approved by the Riksdag.

Regarding the financing of the International Monetary Fund's activities for Low Income Countries, the Riksbank may decide to provide credits or other financing, when the Riksbank has been informed by the Government that the Riksdag has approved this.

Comments on the legislative proposal

The Riksbank supports the proposal that the Riksbank's participation in financing the activities of the IMF aimed at low-income countries shall go via the Government. These issues touch on aid policy and a clarification of the responsibility has thus been requested by both the Riksbank and the Riksdag.

Comments on the legislative commentary

The legislative commentary sets out that the Riksbank's participation in financing the activities of the IMF aimed at low-income countries should go via the Government, but also that "Such a matter is initiated by the Riksbank making a submission to the Government". It is important to *keep* this wording because it secures the Riksbank's control over its balance sheet ("is initiated by the Riksbank"). In general, it is good that the Government's involvement/consensus in matters regarding aid-related issues are clarified, as the Government has the overarching responsibility for Swedish aid policy and through this proposal, an active measure is required from the Government by means of it submitting a request to the Riksdag.

Comments on the legislative proposals in Chapter 6, Sections 7 and 8

The Riksbank finds that the new order proposed to finance IMF transactions – that is to say, that the Riksbank shall borrow from the National Debt Office in order to finance IMF transactions and then repay to the National Debt Office the amounts repaid by the IMF – is not well founded and should not be implemented. The proposed order does not enhance the efficiency of central government administration, but rather causes more bureaucracy and administration for both the Riksbank and the National Debt Office. Neither does the proposed order fulfil the Inquiry's aim to eliminate the element of uncertainty that the IMF commitments have caused for the currency reserve. The Riksbank shall, in accordance with the IMF regulations[9], keep Sweden's SDR allocation in

[9] IMF regulations Article XIII, section 2, Article XV, section 1 and Article XIX, section 2,4,5.

its currency reserve. If the IMF wishes to exchange SDR for e.g. USD or EUR, this affects, as also noted by the Inquiry, *liquidity* in the Riksbank's currency reserves (even if the size of the currency reserves is not affected). Furthermore, the proposal impedes interpretation of the Sveriges Riksbank Act, for instance as regards what applies to paying in the capital contribution; it says in Section 4 that the Riksbank "may, out of its own resources, inject capital contribution" but then in Section 7 that the Riksbank shall borrow the equivalent amount from the National Debt Office.

In the case of the Government nevertheless wishing to change the financing of the Riksbank's IMF transactions in accordance with the proposal of the Inquiry, the Riksbank wishes to express the following regarding the Inquiry proposals Chapter 6, Sections 7 and 8.

Legislative proposal Chapter 6, Section 7

> **Section 7** In conjunction with transfer of funds from the Riksbank to the International Monetary Fund when making a transaction pursuant to Sections 4 or 6, the Riksbank shall borrow a corresponding sum from the National Debt Office.
>
> The Riksbank shall pay compensation to The National Debt Office corresponding to the interest payment received by the Riksbank from the International Monetary Fund. The Act on the National Debt Office's borrowing for the needs of the Riksbank (2021:000) contains further provisions on borrowing.

Comments on the legislative commentary

In the legislative commentary it also says that: "Section 7. … The Riksbank, in conjunction with its transfer of funds pursuant to Section 4 or 6 to the International Monetary Fund, shall borrow equivalent amounts from the National Debt Office. The wording "in conjunction with" means that the Riksbank does not need to approach the National Debt Office in direct connection with each transaction with the International Monetary Fund, but that it can rather choose to bundle transactions together over a certain period."

The Riksbank finds that "in conjunction with", and this entire clarification in the legislative commentary, are important to *keep* because it would, in operational terms, be (even more) complicated – and there would sometimes not be sufficient time – to provide financing on a transaction-by-transaction basis via the National Debt Office.

Legislative proposal Chapter 6, Section 8

> **Section 8** The Riksbank shall return the capital amount that the Riksbank receives from the International Monetary Fund and that is attributable to amounts that have been financed via borrowing from the National Debt Office to the National Debt Office.

Comments on the legislative proposal

It should be made clear, without in parallel having to consult and attempt to interpret the legislative commentary, that the capital amounts from the IMF that the Riksbank shall return to the National Debt Office only concern the amounts that have been financed via borrowing from the National Debt Office. The capital amounts deriving from other prior financing of the activities of the IMF, for example when the IMF sells gold and capital, which are returned to the Member States (or are requested by the IMF to be remitted for various purposes), shall thus not be returned.

Comments on the legislative commentary

In the legislative commentary it says that: "Section 8. This section regulates the Riksbank's repayment of loans from the National Debt Office pursuant to Section 7. (…) The provision is only applicable to repayments that are made with respect to such transactions that occur after the entry into force of the Act, see point 11 in the transition regulations."

The Riksbank finds that it should be *clarified* exactly what is meant by "repayments that are made with respect to such transactions that occur after the entry into force of the Act". Does this refer to transactions from the IMF that take place after the entry into force of the Act, or transactions that derive from Sweden after the entry into force of the Act (and which are then repaid at an even later stage)?

Comments on the considerations in the report text

Section 27.2, p. 1193

The proposed text of the Act in Section 4 is unchanged compared with the present Act, but is now more difficult to interpret because in the report it says that "In conjunction with the Riksbank transferring capital contribution or funds to finance the activities of the International Monetary Fund (as above), the Riksbank shall borrow equivalent amounts from the National Debt Office." Part of the capital contribution is paid in initially in Swedish kronor (75 per cent) and the remainder (25 per cent) in foreign currency. It is unclear whether the financing of the National Debt Office only applies to the part in foreign currency, or also the part in Swedish kronor, or whether the word "activities" should be interpreted such that the initial capital contribution payment is not included, but is to be financed by the Riksbank. The latter would entail an impact on the currency reserves, which the proposal of the committee otherwise aims to avoid.

Section 27.2, p. 1191

The Riksbank does not support the following opinion and also wishes to point out that the matter is not regulated in the Sveriges Riksbank Act: "The Minister of Finance should be appointed governor in the IMF's Board of Governors." The role of the Governor of the Riksbank as governor has been established through a Government decision and is not an aspect that is specifically regulated in the Sveriges Riksbank Act. It is the Government that has chosen the current order, which has been in place without any problems since 1951, and there is no reason for this Inquiry to seek to micromanage the allocation of responsibility between the parties. The role of governor is furthermore

primarily a formal position which is logical to tie in with the role of a contact authority, because the formal communication from the IMF is usually sent to the governor.

Section 27.2, p. 1192

The Riksbank concurs with the committee's assessment that the present order for cooperation between the Government and the Riksbank works well and therefore does *not* support the following clarification: "In the event of any disunity between representatives of the Ministry of Finance and the Riksbank regarding the position that Sweden should represent, it is therefore the opinion of the committee that it is the Government that ultimately decides, insofar that it is not a case of monetary policy or other ESCB-related matters." This risks diminishing the vitality of discussions and having a negative impact on cooperation between the parties, which works very well indeed today.

Deposits in foreign currency or gold, and participation in international payments

Legislative proposal Chapter 6, Section 9

> **Section 9** The Riksbank may, with or without interest compensation, receive deposits in foreign currency or gold from, and make such deposits with, banks, foreign banking companies, central banks, credit market companies, foreign credit institutions, the Bank for International Settlements (BIS) and the International Bank for Reconstruction and Development (IBRD). The Riksbank may also receive such deposits from other sovereign states and intergovernmental bodies.
>
> The Riksbank may participate in payment settlement from or to other central banks and intergovernmental bodies. The Riksbank may charge fees for such services.
>
> The Riksbank may also reach agreements with respect to obligations and rights linked to the stated deposits and payments referred to in the first and second paragraph.

Comments on the legislative proposal

The text of the Act in this section is very important to *keep* because it constitutes the only legal basis that the Riksbank is given in the legislative proposal for deposits in foreign currency or gold and participation in international payments. Without this section, the Riksbank would not be able, for example, to conduct correspondent banking activities, which are an essential part of the infrastructure used by central banks in the management of gold and currency reserves and addressing financial crises through, for instance, loans within the scope of currency repurchase agreements.

Comments on the legislative commentary

In the second and third paragraphs of the legislative commentary, the Inquiry uses the term "borrowing" despite this term not appearing in related legislative proposals or

considerations in the report text. Neither is the term used in the government bill to which the Inquiry refers at the end of the third paragraph. Instead, in all of these texts the more correct term “deposits” appears. This is because deposits, within the scope of money remittance, cannot be regarded as borrowing. This is also the reason why the Riksbank’s powers with respect to borrowing for monetary policy purposes or in payment settlement are addressed separately in other parts of the legislative proposal.

In order to avoid erroneous interpretations of the purpose of the transactions referred to in this section, and adapt the wording to the legislative proposal and considerations, the legislative commentary should be adjusted as follows:

> It follows from *the first paragraph* that the Riksbank may accept deposits ~~borrowing~~ from and make equivalent deposits with other central banks. Such a possibility might for example be needed in connection with the Riksbank entering into currency repurchase agreements. Furthermore, it follows from the provision that the Riksbank may accept deposits from the BIS (Bank for International Settlements), the IRBD (International Bank for Reconstruction and Development) and intergovernmental bodies. This enables the Riksbank to accept deposits from, for instance, the IMF and certain foreign investment banks.
>
> The Riksbank may also accept ~~borrowing and make~~ deposits ~~with~~ from and make equivalent deposits with banks, foreign banking companies, credit market companies and foreign credit institutions. The terms have the same meaning as in the Banking and Financing Business Act (2004:297). This is consistent with the wording to date (Government Bill 2003/04:99 p. 61).

Consequently, the wording in the delimitation of the Inquiry’s considerations regarding the Riksbank’s participation in international contexts (see the last-but-one paragraph in Section 26.9.1) needs also to be adjusted:

> Financial agreements entered by the Riksbank concerning, for example, credits, currency repurchase agreements, ~~borrowing~~ deposits in foreign currency or gold and management of gold, also fall outside of the international cooperation in the sense referred to here (see Section 26.9.6).

Comments on the considerations in the report text

The considerations in the report text are appropriately worded and it is essential that the text be retained.

Other international activities – Chapter 6, Sections 10–14

Legislative proposal Chapter 6, Section 12

> **Section 12** In the case of decisions on important matters of principle in international contexts that are linked to the activities of another public authority, the Riksbank shall consult with the authority concerned.

Comments on the considerations in the report text

Section 26.9.4 ends with the statement (p. 1161–1162) that "If another authority bears the primary responsibility for a certain matter, the Riksbank should however give special consideration thereto when acting in international contexts. The threshold for the Riksbank to convey diverging opinions on important matters shall therefore be high. Similarly, another authority should give special consideration when the Riksbank bears the primary responsibility." The Riksbank finds that wording on consultation aimed at achieving consensus in important issues of principle should suffice. It could be reworded as: "Swedish authorities should, when they together participate in an international forum, endeavour to achieve joint positions in important issues of principle." Neither cooperation nor consultation essentially require consensus and the Riksbank should therefore (like other authorities and in the same way as under prevailing law) be able to make independent decisions in the matters that are subject to cooperation or consultation.

Legislative proposal Chapter 6, Section 14 (proposal for a new provision)

> **Section 14** The Riksbank may, after receiving the approval of the Riksdag, finance the activities of international bodies if such activities are connected to the Riksbank's activities.

Comments on the legislative proposal

Developments in technical financial innovations are rapid and the payments market in Sweden is undergoing substantial change. The Riksbank is following developments closely and is working actively – both nationally and internationally – to develop and adapt its activities to the new technical solutions. The Bank for International Settlements, BIS, has recently started to set up innovation hubs in a handful of countries to deepen efforts on analysing technical financial innovations. The Riksbank would welcome BIS establishing a northern European innovation hub in Sweden. However, in order for the hub to be located in Sweden, the Riksbank has to undertake to partially finance the activities. For this reason, in March 2020, the Riksbank submitted a proposal for a legislative amendment enabling the Riksbank, after the Riksdag's approval, to finance the activities of international organisations if they are linked to the activities of the Riksbank (Petition to the Swedish Riksdag 2019/20:RB3, Proposal to amend the Sveriges Riksbank Act (1988:1385) to support cooperation with international bodies).

If the Riksdag approves the Riksbank's proposal, it is crucial that the new provision is also introduced into the new Sveriges Riksbank Act.

Chapter 7. Other provisions about the activities of the Riksbank

Reporting obligations

Legislative proposal Chapter 7, Section 2

Section 2 In addition to what is stated in Section 1, the following legal and natural persons shall also provide the Riksbank with the information necessary to enable the bank to fulfil certain tasks under this Act:

1. Swedish issuers of securities, with regards to the activities of the Riksbank under Chapters 2 and 3,
2. participants in the Riksbank's payment settlement system, legal persons that have qualifying holdings in these participants and companies to which participants have outsourced operations, with regards to the activities of the Riksbank under Chapter 3,
3. legal persons that are subject to oversight or legal persons that are of particular importance to the financial infrastructure but which are not subject to oversight under Chapter 3, Section 5, and companies to which such legal persons have outsourced operations,
4. legal persons and traders referred to in Chapter 5, Sections 3 and 4, with regards to the activities of the Riksbank under Chapters 4 and 5, and
5. anyone who has performed a transaction with a foreign counterparty or who has held assets and liabilities with a foreign connection, whether on behalf of another party or on their own account, with regards to the Riksbank's balance of payments statistics and international investment position statistics under Section 5.

Comments on the legislative proposal

As the Riksbank has expressed in comments on Chapter 3, Section 5 of the new Sveriges Riksbank Act, oversight of financial infrastructure is based on systemic importance. The Riksbank wants to have an option in terms of oversight of legal persons that are of particular importance to the financial infrastructure in Sweden. However, the Riksbank wishes, in any circumstances, to be able to obtain information both from the financial infrastructure it oversees and from the legal person that is of particular importance to the financial infrastructure, irrespective of whether the latter category is subject to oversight or not. For this reason, obtaining information should not be linked to oversight, but have a broader design.

The Riksbank finds that an additional point should be added stating that the Riksbank has a right to collect statistical data from other government authorities. Or, that it should be discussed in the considerations why it is not possible to introduce such wording into the Act.

Comments on the considerations in the report text

It would be good if the question regarding disclosure obligations for public administration were discussed.

Chapter 8. Budget, accounting and equity

Content of the annual report

Legislative proposal Chapter 8, Section 4

> **Section 4** The annual report shall contain a profit and loss account, a balance sheet and a directors' report. The Executive Board ~~General Council~~ adopts the annual report ~~profit and loss account and balance sheet. The General Council also decides under Sections 11 and 12 on the profit or loss for the year.~~ The directors' report ~~is drawn up by the Executive Board.~~ It shall contain an account of the monetary policy conducted and of the Riksbank's other activities. In the annual report, the Executive Board shall make an assessment of whether the internal control at the Riksbank is satisfactory. The Executive Board decides, under Section 8, on the appropriation of profit for the year. The General Council adopts the Executive Board's decision regarding the annual report and the appropriation of profit for the year.

Comments on the legislative proposal

According to the committee's proposal, the General Council shall decide on the Riksbank's profit and loss account and balance sheet, while the Executive Board shall draw up the administration report and assess whether the internal control is satisfactory. Dividing up decision-making responsibilities for different parts of the annual report into two different decision-making bodies is highly problematic in principle and risks causing difficulty in terms of accountability. All the different parts of the annual report are intertwined. The directors' report is part of the annual report, which supplements the profit and loss account and balance sheet by describing important events during the financial year in words and not just numbers. The statement of assurance on the internal control is a statement which, amongst other things, aims to further clarify the responsibility for the content of the annual report being correct, including the profit and loss account and balance sheet. There are thus real practical problems with the committee's proposal for split responsibility for different parts of the annual report. The committee has not explicitly discussed the matter of the relationship and allocation of responsibilities between the General Council and Executive Board, or whether the General Council is to be considered part of the Riksbank or not. The proposed act (Chapter 11, Section 19) sets forth however that the Executive Board is responsible for operations, including the reliable and fair reporting thereof. It is in the various parts of the annual report that this responsibility is reported most clearly. The annual report is a description and compilation operations conducted during the year, which is within the Executive Board's field of responsibility. The proposal that the General Council shall adopt the profit and loss account and balance sheet is thus inconsistent with how responsibility for operations is expressed in other provisions in the proposed text of the Act. If the General Council is to adopt the profit and loss account and balance sheet, this means that responsibility for operations will ultimately be transferred from the Executive Board to the General Council, which has probably not

been the intention. Because the General Council is not covered by the personal independence that applies to Executive Board members, the General Council must be considered a political body. The General Council adopting the profit and loss account and balance sheet is thus also considered to be inconsistent with the requirement of EU law for an independent central bank.

It should therefore be clarified that it is the Executive Board of the Riksbank that decides on everything pertaining to operations, and that the implication of the approval of the General Council of the profit and loss account and balance sheet does not entail a review of the Executive Board's operational financial responsibility.

The Riksbank can accept that part of the proposal if it is clarified that the Executive Board decides on the entire annual report including the Riksbank's profit and loss account and balance sheet, as well as the appropriation of profit for the year, and that the General Council then adopts these decisions in a formal sense. This also has a bearing on the provision regarding financial risk provisions, Chapter 8, Section 10, as well as the proposed text of the Act in Chapter 12, Sections 9 and 7, see below.

Furthermore, in the legislative proposal it should say that the General Council adopts "Appropriation of profit" instead of "Result for the year" as result for the year follows from the annual report.

Equity, financial provisions and allocation of profit – Chapter 8, Sections 6–10

The Riksbank rejects the proposal for Chapter 8, Sections 6–9 and 11–13 and proposes that the present order for the Riksbank equity and profit allocation be applied. The profit allocation model applied today should be set out in law with some slight adjustments. With reference thereto, the Riksbank proposes that Chapter 8, Sections 6–10 be given the following content and that remaining sections be taken out.

Structure

Legislative proposal Chapter 8, Section 6

> **Section 6** The Riksbank's equity shall consist of capital amounting to SEK xx billion, a reserve fund amounting to SEK xx billion, and retained profits.

Comments on the legislative proposal

The Riksbank is keen to contribute to devising and determining the size of these reserves.

Financial provisions

Legislative proposal Chapter 8, Section 7

> **Section 7** The Executive Board of the Riksbank may ~~to a reasonable extent~~ make financial provisions in accordance with the European Central Bank's Guideline on the legal framework for accounting and financial reporting within the European System of Central Banks.

Comments on the legislative proposal

The Inquiry's proposal for Chapter 8, Section 10 should become Chapter 8, Section 7 with the amendment that "to a reasonable extent" be removed from the provision because, on the one hand, the general principle of proportionality according to Chapter 1, Section 5 applies and, on the other, the ESCB accounting guidelines stipulate which type of risk provisions are permitted. It should be clarified that it is the Executive Board that decides on provisions.

Appropriation of profit

Legislative proposal Chapter 8, Section 8

> **Section 8** If the Riksbank's profit and loss account shows a profit, it shall be transferred to retained profits.
>
> If the average of the Riksbank's reported profit for the past five years is positive, 80 per cent of this amount shall be distributed to the state from retained profits.
>
> The Executive Board shall determine the need for equity and risk provisions, with justifications that are consistent with the principle of proportionality. If the need for equity exceeds current equity, after the transfer of any new profits, the Executive Board can decide on a lower dividend for the state.

Comments on the legislative proposal

The current profit allocation model, with certain modifications, should be confirmed in law as Chapter 8, Section 8.

With the Inquiry's proposal, there is a risk that there may be individual large dividends, which are then followed by longer periods of no dividends. To reduce variations in dividends to the state, the Riksbank proposes that the dividend principle, like the current dividend principle of the General Council, should be based on an average of profits in the past five years.

With the dividend principle used by the General Council currently, a profit measure is observed in which unrealised price gains are included, which diverges from the reported profit of the adopted profit and loss account. In order to prevent the Riksbank from distributing unrealised gains from assets held, for example, for monetary policy

purposes, it is most reasonable to use the reported profit of the profit and loss account, from which unrealised gains are excluded (and transferred to revaluation accounts).

The Riksbank advocates a solution in which the Riksbank's need for equity is not laid out in law at a target level, but which is instead decided by the Executive Board. If the Executive Board decides to change the need for equity, this must be justified in line with the principle of proportionality in Chapter 1, Section 5. In a situation where the need for equity is greater than the sum of reported equity and profit according to the profit and loss account, the Executive Board may decide to reduce the dividend to the state. That way, the Executive Board has a possibility of deciding on increasing equity by all or part of the profit, beyond what the usual dividend principle would entail. See below in this annex, and in the main text of the consultation response for motivation of why the Riksbank rejects the Inquiry's idea of a target level set out in law (the Inquiry's text of the Act, Chapter 8, Sections 6–9).

Restoration of equity

Legislative proposal Chapter 8, Section 9

> The Riksbank may submit a request to the Riksdag for an equity contribution. The request shall be motivated based on the need for equity that the Executive Board shall determine under Chapter 8, Section 8.

Comments on the legislative proposal

The Riksbank advocates an order for capital contribution that entitles the Executive Board to request a capital contribution when it so judges appropriate, without this being dependent on a certain level of reported equity.

Distribution of funds from retained profits

Legislative proposal Chapter 8, Section 10

> **Section 14** The Executive Board decides on distribution of funds from retained profits. The General Council adopts the Executive Board's decision.

Comments on the legislative proposal

The Inquiry's Chapter 8, Section 14 is inserted here with the amendment that the General Council only adopts the Executive Board's decision.

Should the Government not find grounds to amend the proposal in line with the Riksbank's suggestion above, the

Riksbank wishes to express the following regarding the Inquiry's proposal for Chapter 8, Sections 6–13.

Equity – Chapter 8, Sections 6–9

Target level and base level

Legislative proposal Chapter 8, Section 7

The Riksbank's equity shall at most amount to its target level. The Executive Board of the Riksbank decides on the target level for the Riksbank's equity. ~~The target level shall be SEK 60 billion adjusted for the development of prices in the way stated in Section 9. However, the Riksdag may decide on a higher target level.~~

~~The amount that corresponds to two-thirds of target equity is the base level of equity.~~

Size of the capital and reserve fund

Legislative proposal Chapter 8, Section 8

The capital shall initially be two thirds of the target level and the reserve fund shall be SEK zero. The size of the capital and the reserve fund are changed according to Sections 11 and 12.

Adjustment for the development of prices

Legislative proposal Chapter 8, Section 9

~~The target level shall be inflation-proofed by recalculating the target level each year in accordance with the change in the consumer price index published by Statistics Sweden. If the change is less than zero, no recalculation shall be carried out.~~

Comments on the legislative proposal (Chapter 8, Sections 7–9)

As set forth in the main text of the consultation response, (point 2.1), the Riksbank does not support the Inquiry's proposal for a new profit allocation model and target level for the Riksbank's equity. The proposed model does not serve the purpose of ensuring the Riksbank's financial independence, as sufficient earnings for the Riksbank cannot be attained if interest rates remain at the current low levels or the volume of cash continues to decline at the same rate as in the past ten years. This poses too high a risk of the Riksbank needing large capital contributions from the state. EU law requires a central bank to have sufficient financial resources to be able to perform its tasks independently. In addition, a target level for equity set out in law, which is governed by the Riksdag, and which may only be increased for the purpose of improving self-

financing, is not sufficiently flexible. The need for equity varies and depends on which measures the Riksbank may need to take to perform its task. The Riksbank therefore needs to have more flexible influence over the development of equity, by means of the Executive Board having the possibility of making exceptions from the profit allocation rule and the possibility, when it so deems appropriate, to decide to request more capital from the state.

The basis of the Inquiry's proposal is that the net interest income of the Riksbank shall be sufficient to cover running expenses. To create conditions for such net interest income, the Riksbank shall have interest-free capital consisting of the outstanding amount of cash and equity. How much equity is needed to cover costs depends on variables such as the volume of banknotes and the real interest rate; that is to say, the difference between the nominal interest rate and inflation. The Inquiry has, in its calculations, concluded that the Riksbank's equity shall amount to its target level of SEK 60 billion in order to secure the Riksbank's long-term earning capacity. The committee's calculations and assessment of an appropriate target level for the Riksbank's equity is based on conditions applying in 2018, with the volume of banknotes and coins equalling SEK 60 billion and an assessment of a long-term real interest rate of 1 per cent. This target level however entails excessively narrow margins for negative scenarios as regards the Riksbank's capacity for self-financing, primarily with reduced seigniorage and persistently low interest rate levels.

The Inquiry indeed gives the Riksbank the right to request an increase to the target level for equity in order to adjust to changes in, for example, the volume of banknotes, The Riksbank must, in that case, retain earnings to reach the new target level. However, if earnings are already low due to low interest rates or a reduced volume of banknotes and coins, the Riksbank has limited possibilities of retaining earnings in order to increase equity towards a target level, and sooner or later it will be forced to request recapitalisation. Requesting an increase to target equity to adjust for changes in for example the volume of banknotes is therefore not an effective solution for the reduced earnings.

In order to illustrate the implications that the proposal of the Inquiry could have for the Riksbank's balance sheet and earnings, the Riksbank has performed its own calculations. The calculations are based on a main scenario that is founded on the long-term forecasts from December 2019 of the National Institute of Economic Research (NIER), and a stress test that illustrates the uncertainty in developments and hence the risks to which the Riksbank is exposed.

In NIER's main scenario, monetary policy is gradually normalised and interest rates increase towards 3 per cent over a period of around seven years. At the same time, the exchange rate gradually appreciates by just over 10 per cent in NIER's main scenario. Today's balance sheet entails that the Riksbank has locked in relatively low interest rates through purchases of Swedish government bonds. As the repo rate increases, the Riksbank's funding cost increases, leading to weak net interest income over the coming years. In such a main scenario, the Riksbank's balance sheet is expected, in 5–10 years,

to converge towards the bounds established by the Inquiry's proposal with respect to target equity. In this scenario, the Riksbank's ability to finance its operations via interest-free capital, in the form of a combination of equity and seigniorage, will be adequate and the Riksbank will on average make a profit of around SEK 2–3 billion each year, which can be distributed to the state. This means that, in the main scenario, the Riksbank's assets generate higher yield than needed to finance operating costs.

At the same time, NIER's forecast means that the Riksbank's buffers besides equity, in the form of the unrealised gains that are currently entered in revaluation accounts for bonds and currency, will decline down to zero, just a couple of years after the new regulations are to come into force. On the whole, NIER's main scenario means that the funds currently in the revaluation accounts, apart from for gold, are expected to drop towards zero. The revaluation accounts can thus not be seen as a long-term buffer for future financial risks, which is problematic in the new proposal. The Inquiry's report claims that the Riksbank's capital is sufficiently high, with reference to the fact that there are at present substantial revaluation accounts, but it has not considered that this is because interest rates are unusually low and exchange rates unusually weak currently.

To illustrate the uncertainty in the developments and hence the risks to which the Riksbank is exposed, the Riksbank has performed several stress tests showing how the exchange rate and changes in interest rates affect the risk of recapitalisation. In these stress tests, we proceed on the basis of today's balance sheet and use an empirical macro model to simulate 10,000 alternative macroeconomic developments that exhibit covariance between different macroeconomic variables that are based on historical patterns. Then, we count how many of these 10,000 cases in which at least one recapitalisation will occur during a given period of time, which gives us a calculated probability of recapitalisation. In the simulations, recapitalisation occurs according to the rule proposed by the Inquiry; that is to say, when the Riksbank's equity decreases to one third of the target level for equity. One of these stress tests, in which we assume a shrinking balance sheet in the next ten years, a volume of cash that increases with inflation, and long-term nominal interest rates in line with the assumptions of the Inquiry, shows an approximate 30 per cent probability of at least one recapitalisation in the first 10 years after the new framework has entered into force. The greater the appreciation of the krona, and the larger the interest rate increases that occur, the more the risk of recapitalisation increases. See Annex 2 for more information on these calculations and sensitivity analyses.

At the same time, the Riksbank faces a situation in which long-term earnings capacity will be weak if interest rates remain at the current low levels, especially if the volume of cash continues to decrease at the same rate as in the past 10 years. This is not something that an increase to the target level could resolve, because profits in that situation are too small to build up equity within a reasonable amount of time. If interest rate levels nevertheless increase to what the Inquiry assumes are the long-term levels, the Riksbank would in that case instead make losses that would reduce the revaluation accounts to zero (apart from for gold). In such a situation, the Riksbank's buffers against further losses are small, making the probability of recapitalisation far too high to ensure

sufficient financial independence. On the whole, this means that the Inquiry's proposal does not ensure financial independence.

The Riksbank therefore advocates the Riksbank being enabled to use alternative earning possibilities, such as minimum reserve requirements, to secure long-term earning capacity if important sources of income such as seigniorage decrease sharply due to reduced demand for banknotes and coins.

Given that the Riksbank's buffer against losses risks being far too small, it will be important for the Executive Board to be able to adjust the need for equity quickly. When feasible and needed, it shall be possible to withhold profit to build up equity. It will be of particular importance because the need for capital buffer varies with the measures that the Riksbank might take in future. The current coronavirus crisis has for example already prompted decisions on measures that could lead to an expansion in the Riksbank's balance sheet and increase the financial risks that the Riksbank faces. In order to give the Executive Board greater flexibility regarding the need for equity linked to the policy task, it is inappropriate to stipulate a target level for equity in law. An increase to the target level that has to be decided by the Riksdag, and that can only be motivated on earning-related grounds, is inconsistent with the flexibility required to judge the need for equity.

With reference to the above and the main text of the consultation response, point 2.1, the Riksbank proposes amendments to the text of the Act as above.

Comments on the considerations in the report text

See Section 29.5.3, p. 1250–1251:

With respect to the target level for the Riksbank's equity, the calculations of the need for interest-free capital are conditioned by today's levels of banknotes and coins, equity and also an assumption of a long-term real interest rate of one percentage point. In order for the financial independence to be robust and for it to instil confidence, calculations are needed that are based on assumptions in which these variables are less favourable than today. In the Inquiry, there is no analysis of the consequences that a reduction in the volume of banknotes or the real interest rate in the long term could have on the Riksbank's capacity for self-financing. Demand for banknotes and coins has declined sharply in the past few years. If demand for banknotes and coins falls drastically, the Riksbank's earnings would decline, having a negative impact on the Riksbank's capacity for self-financing. In Kjellberg and Vestin (2019) it says for example that a reduction in the volume of banknotes could require as much as three times more in increased equity for the Riksbank to have unchanged financial strength in terms of average result.

The real interest rate has been negative in the past eight years. Market prices of inflation-indexed bonds suggest that the market still expects real interest rates to be very low for a long time (see also Holston et al, 2017) for a discussion on the long-term value of the real interest rate). If the real interest rate is permanently negative, equity

will make a negative contribution to real earnings of the Riksbank, which causes the financing model of the Inquiry to fail.

Given the low cash volume level in Sweden (see Kjellberg and Vestin, 2019) and the low interest rate levels, there thus needs to be an opening for other earning alternatives on offer to the Riksbank. This should be set out in the government bill and the text of the Act.

Financial provisions

Legislative proposal Chapter 8, Section 10

> The Executive Board of the Riksbank may ~~to a reasonable extent~~ make financial provisions in accordance with the European Central Bank's Guideline on the legal framework for accounting and financial reporting within the European System of Central Banks.

Comments on the legislative proposal

According to Chapter 8, Section 4 of the proposal for the Sveriges Riksbank Act, it is incumbent upon the General Council to decide on the Riksbank's profit and loss account and balance sheet. The Riksbank is of the opinion that this order is not consistent with the provisions of EU law regarding financially independent central banks. The question as to which decision-making body – General Council or Executive Board – decides on the Riksbank's profit and loss account and balance sheet, also has implications in terms of financial provisions. Such provisions may, according to Chapter 8, Section 10 of the proposal for the Sveriges Riksbank Act, be made, to a reasonable extent, according to the ECB Guideline on accounting and financial reporting. It is indeed not stipulated by the proposed act that it is incumbent upon the General Council to make such provisions. Even so, it would be a matter for the General Council to assess in connection with the General Council deciding on the Riksbank's profit and loss account and balance sheet. The General Council would in that case also be the body deciding on the financial provisions. Because the General Council is not covered by the personal independence that applies to Executive Board members, the General Council must be considered a political body. Because the Executive Board thus lacks the possibility of deciding on financial provisions, which is instead done through the General Council's decision on the profit and loss account and balance sheet, it will in practice be the General Council that also determines the size of the profit allocation; a factor that is in conflict with the provisions of EU law regarding a financially independent central bank. The Riksbank therefore rejects that part of the proposal and advocates that the Executive Board decide on the Riksbank's profit and loss account and balance sheet in line with what the ECB has expressed in its convergence reports, and decide on financial risk provisions.

The wording "to a reasonable extent" in the first sentence should be deleted because it creates ambiguity as to whether or not the Riksbank may make provisions in accordance with the Guideline of the European Central Bank. Whether or not a provision is reasonable is already set out by the ECB Guidelines, which require the provisions to be

motivated according to certain criteria. At the same time, the principle of proportionality means that the Executive Board of the Riksbank needs to ensure that their decisions regarding the size of financial risk provisions is in proportion to the purpose of the measure.

In addition, there are strong grounds for why the decision on financial risk provisions should be made without any particular restrictions, beyond the ECB Guidelines and the principle of proportionality, in order for the Executive Board of the Riksbank to be able to independently maintain a reasonable risk buffer on top of the target level for equity.

It is noteworthy that financial risk provisions that follow the ECB Guidelines cannot necessarily cover all of the Riksbank's loss risks. This is an important reason as to why the Riksbank also advocates the possibility of motivating the equity need based on the risk buffer need, irrespective of whether the need is set out in law as a target level or if it will be a decision for the Executive Board.

Profit or loss for the year – Chapter 8, Sections 11 and 12

Appropriation of profits

Legislative proposal Chapter 8, Section 11

> If the Riksbank's profit and loss account shows a profit, a provision shall be made to the reserve fund unless otherwise provided by Section 12, third paragraph.
>
> The provision shall not exceed an amount that corresponds to the change in the target level ~~base level~~ of equity. The remaining funds shall be transferred to retained profits.
>
> ~~If the Riksbank's equity exceeds the target level after the provision to the reserve fund and the transfer to retained profits, the remaining profit shall be distributed to the state. When the reserve fund exceeds SEK 5 billion, the Riksbank shall transfer these funds to capital through a bonus issue~~
>
> If the Riksbank's equity, excluding any surplus equity, after making the provision to the reserve fund and the transfer to retained profits, exceeds its target level, the surplus profits for the year shall be distributed as a dividend to the state. When the reserve fund amounts to more than SEK 5 billion, the Riksbank shall transfer all funds in the reserve fund to capital.

Comments on the legislative proposal

In the second paragraph, the wording "…surplus profits shall be issued as a dividend to the state" is ambiguous in terms of the profits concerned (profit for the year or retained profits). Here, the legislative text should set out that it refers to profit for the year.

Comments on the considerations in the report text

See Section 29.6.5:

The section describing what is to be issued as dividend is, just like the proposed text of the Act, ambiguous in terms of which profits can be distributed (profit for the year or retained profits). This affects how the Act is to be interpreted when the legislation is introduced, if equity exceeds the target level (surplus equity), which is clearly described in Section 37.3.2. By means of making a clearer reference in Section 29.6.5 to the transition regulations entailing that if equity exceeds the target level for the 2023 financial year in connection with the entry into force of the new Act, it is proposed that this surplus capital be retained by the Riksbank and allocated to retained profits. The wording of the legislative text in Chapter 8, Section 7, first paragraph should also be adjusted in light of this.

Loss coverage

Legislative proposal Chapter 8, Section 12

> If the Riksbank's profit and loss account shows a loss, this shall be covered by retained profits in the first place and then by the reserve fund and in the last instance by capital.
>
> If retained profits are greater than zero after loss coverage has been carried out, an amount no greater than the change in the target level ~~base level~~ of equity may be transferred from the retained profits to the reserve fund.
>
> If the capital has been used to cover losses, profits in coming years shall be used in the first place to restore capital to its level before a loss arose. The remaining funds may be transferred to the reserve fund until equity reaches the recalculated target level.

Restoration of equity

Legislative proposal Chapter 8, Section 13

> The Riksbank has the right to submit a request to the Riksdag for a capital contribution. ~~If the reported equity is less than one third of the target level, the Riksbank shall make a submission to the Riksdag for restoration of its equity.~~
>
> The Riksbank's submission for restoration shall be for at maximum an amount that restores equity to ~~its base level, unless unrealised profits on the balance sheet provide reason for not restoring equity or for restoring it at a lower level. If required to secure the Riksbank's capability to be self-financing in the long-term, the request may be for a higher amount, but not for more than the amount that brings equity to its target level after restoration~~ its target level.

Comments on the legislative proposal

The text of the Act should explicitly state that the Riksbank, pursuant to EU law, always has the right, when the Riksbank judges so appropriate, to submit a request to the Riksdag for an increase in equity and a capital contribution.

As stated in the consultation response, the Riksbank finds that the various sublevels for the Riksbank's capital should be abolished so that recapitalisation is made to a target level on the occasions when the Riksbank needs a capital contribution.

Furthermore, the Riksbank finds that unrealised gains should not be considered when restoring equity. Unrealised gains cannot be seen as a permanent buffer. Current unrealised gains total SEK 82 billion. Out of this, just over half, SEK 46 billion, is attributable to the gold holding, which cannot be used to compensate for losses in other assets. Current unrealised price effects are at SEK 22 billion and these will disappear as bonds mature. Unrealised gains can thus not be considered a long-term buffer.

Comments on the considerations in the report text

See Section 29.9.6:

An overall comment is that no further details are provided either in the text of the Act or in the report text as to how this section squares with the Riksbank having a permanent right to submit a request for a capital contribution if deemed justified. The section and the report text are very explicit regarding the levels and definitions of equity to be considered in a capital contribution, but at the same time, the Riksbank has the right to make that assessment independently.

Chapter 9. Asset management

Objectives of asset management

Legislative proposal Chapter 9, Section 1

The Riksbank holds the foreign reserves referred to in Chapter 9, Article 13 first paragraph of the Instrument of Government and its other assets to

1. in the first instance, ~~it shall~~ enable it to fulfil its tasks and
2. in the second instance, generate sufficient yield to finance its activities.

Chapter 10 contains further provisions on the foreign reserves.

Comments on the legislative proposal

This is a new provision that clarifies the objectives of the Riksbank's asset management. In the provision, asset management is equated to two objectives. This means that the Riksbank, in its asset management, shall have the objective of both fulfilling its tasks and generating sufficient yield to finance its activities. There are however situations in which these two objectives for asset management conflict with each other.

In the legislative proposal, it should instead be set out that the Riksbank holds and manages the foreign reserves and other assets, in the first instance, to be able to fulfil its tasks and, in the second instance, to generate yield to finance its activities. This is important for several reasons:

- There may be situations in which the Riksbank, in its policy task, employs measures, such as purchasing government bonds, that could lead to losses for the Riksbank if the measure serves its purpose.
- In the legislative commentaries to Section 2, it says that the Riksbank's tasks (conducting monetary policy and financial stability) take precedence over asset management. It is reasonable for the same rationale to be reflected in the objectives of asset management.
- In order for the Riksbank may fulfil its tasks, the assets shall be managed at low risk. This is set out in the Inquiry's proposal, see legislative commentaries on principles for asset management (Section 2). This principle, for assets to be managed at low risk, limits how high a yield the Riksbank's assets under management may generate.

Chapter 10. Foreign reserves and currency repurchase agreements

Legislative proposal Chapter 10, Section 1a (New provision)

> It is incumbent upon the Riksbank to hold foreign reserves in the form of assets in foreign currency, foreign receivables and gold. The Riksbank may, for its management of the foreign reserves, buy, sell and mediate foreign currency, foreign government securities, other easily tradeable debt instruments in foreign currency and gold, as well as rights and obligations linked to the aforementioned assets.

Comments on the legislative proposal

The Inquiry's proposal lacks provisions stipulating that the Riksbank shall hold foreign reserves and have powers to manage them (see the Inquiry's proposal for Chapter 9, Section 13). Therefore, an introductory provision should be inserted into Chapter 10 that gives the Riksbank this task and the powers needed to perform it.

Borrowing for the foreign reserves – Chapter 10, Sections 1–4

Borrowing from the National Debt Office

Legislative proposal Chapter 10, Section 1

> **Section 1** The Riksbank decides under Sections 2–4 on borrowing foreign currency for the foreign reserves. The borrowing shall be conducted from the National Debt Office. The Riksbank shall pay full compensation for the state's borrowing costs. The Act on the National Debt Office's borrowing for the needs of the Riksbank (2021:000) contains further provisions on borrowing.
>
> The Riksbank shall repay loans referred to in the first paragraph to National Debt Office when there is no longer a need for them.
>
> The Riksbank shall consult with the National Debt Office before it decides on borrowing referred to in the first paragraph or repayment referred to in the second paragraph. If the National Debt Office cannot fulfil the Riksbank's need for borrowing, the Riksbank may decide on borrowing foreign currency in its own name in order to fulfil its statutory tasks.

Comments on the legislative proposal

The Riksbank supports the confirmation in law of the right to borrowing from the National Debt Office. However, the Riksbank does not have the right to issue and trade in its own debt instruments in foreign currency according to the legislative proposal, which poses a limitation compared to current law. The obligation for borrowing to go via the National Debt Office is normally an effective order. However, the Riksbank prefers

an order entailing stipulation in law that the Riksbank has a right to issue its own debt instruments in foreign currency and borrow from the National Debt Office. In such an order, the National Debt Office shall have the possibility, within the bounds of its mandate, to balance the Riksbank's need for foreign reserves with other needs of the public sector via the state budget. In cases where, after such balancing, it is concluded that the borrowing cannot be made through the National Debt Office, the Riksbank should have other possibilities of bolstering the foreign reserves, for example by means of the Riksbank itself buying foreign currency in exchange for payment in Swedish kronor, or borrowing foreign currency in its own name. Such an order also fulfils the purpose of the independence of authorities.

The right to issue its own debt instruments in foreign currency is primarily important to ensure the Riksbank's financial independence in that the Riksbank should have sufficient funds at its disposal to perform its tasks without being governed by appropriations from the Riksdag or Government. The financial independence shall ensure that the Riksbank has both sufficient equity and sufficiently large foreign reserves to perform the ESCB-related tasks. In order for the concept of financial independence to be meaningful, it must be incumbent upon the national central bank to determine whether the foreign reserves are sufficiently large for the tasks ahead of the central bank. Furthermore, the financial independence requires the national central bank to have adequate tools to ensure this independence and, if the Riksbank were stripped of the ability to issue debt instruments in foreign currency, there would consequently be a limitation to the monetary policy toolkit. This right to issue own debt instruments in foreign currency to finance the foreign reserves is also common among central banks in order to emphasise that the central bank has control over its entire balance sheet. The right to issue own debt instruments in foreign currency is therefore necessary for the Riksbank to be considered as financially independent according to EU law. The Riksbank finds that removing such a possibility is not consistent with EU law.

Comments on the legislative commentary

Section 1, first paragraph, first sentence. The Riksbank shares the Inquiry's conclusion that an appropriate size of the foreign reserves should be judged by the Executive Board (see report text p. 1330). In the legislative commentary, it should be clearly set out that it is the Executive Board of the Riksbank that decides on the size of the foreign reserves and how they shall be funded irrespective of the statutory task for which the Riksbank intends to use the foreign reserves. Decisions on foreign reserves, their management, their funding and use belong, under EU legislation, to the core tasks of a central bank, and should thus not be regulated in detail.

Section 1, first paragraph, second sentence. In the legislative commentary, it is stated that the Riksbank may not itself raise loans from any party other than the National Debt Office or issue debt instruments in foreign currency to fund the foreign reserves. The legislative commentary should set forth that the Riksbank has the possibility of issuing debt instruments in foreign currency on the same grounds as expressed in the consultation response and in comments on the legislative proposal. Having the right to

bolster the foreign reserves through borrowing for the purpose of monetary policy and foreign exchange policy in its own name is, in the Riksbank's opinion, necessary to enable the bank to be considered financially independent in accordance with EU law.

Section 1, second paragraph. A clarification on what is meant by "when there are no longer grounds for the borrowing" is needed. This is important because the wording is only aimed at the need to stand prepared to provide liquidity support. The foreign reserves are central both to monetary policy and for contributing to safeguarding financial stability. The term "grounds for borrowing" needs to be broadened so that the Riksbank shall have the possibility to independently decide on repayment for other reasons too, such as that a different order is considered more appropriate or cost efficient from a socioeconomic perspective.

Section 1, third paragraph. According to the final paragraph in the legislative commentary, arguments are set forth for why consultation shall occur upon the repayment of loans. The example consists of "the need for effective liquidity management to avoid surplus liquidity". When the Riksbank repays a loan to the National Debt Office, they in turn repay the loan that they have raised. Hence, the liquidity of the National Debt Office is not affected when the Riksbank repays a loan. Because the rationale regarding surplus liquidity is an erroneous motive for consultation, the first sentence in the last paragraph should be deleted

Comments on the considerations in the report text

See comments on the legislative proposal and the legislative commentary regarding why the Riksbank has a different opinion regarding the possibility of own borrowing in foreign currency compared with the considerations expressed in the report text.

In Section 30.2.1 (p. 1279), it is stated that there are at least three reasons as to why the Riksbank has foreign reserves; i) liquidity support, ii) interventions, and iii) international commitments – primarily the IMF. Furthermore, it is stated in the report text that the Bonde Inquiry did not predict that the foreign reserves would be needed for lending to banks and not only for conducting monetary policy. In the report text, liquidity support is now stated to be the only reason for why the Riksbank may have pre-funded foreign reserves. This conclusion is erroneous as it should be possible to pre-fund the foreign reserves to enable the Riksbank to manage all of its statutory tasks.

Advance borrowing

Legislative proposal Chapter 10, Section 2

> **Section 2** The Riksbank may decide to borrow foreign currency that, including previous borrowing, corresponds to at most 5 percent of the gross national product of Sweden for the previous year in order to reinforce the foreign reserves in advance.

Comments on the legislative proposal

The legislative proposal entails a limited possibility for the Riksbank to borrow foreign currency via the National Debt Office. The Riksbank does not object in principle to there being limitations, provided that the Riksbank has other possibilities for strengthening the foreign reserves if needed. Such a possibility could for example be the Riksbank's right to issue its own debt instruments in foreign currency in order to strengthen the foreign reserves according to the comments on the legislative proposal, Chapter 10, Section 1.

Comments on the legislative commentary

The legislative commentary sets out that the scope to borrow, at 5 per cent of GDP, also applies when refinancing loans previously raised. The legislative commentary should be adjusted so that the cap on the loan does not cover loan refinancing, but only applies when raising new loans, which means that maturing loans may always be refinanced. The scope to borrow is limited in Swedish kronor while the Riksbank's policy need consists of foreign currency and is the same expressed in for example dollars, irrespective of the exchange rate. This could potentially pose a problem. In times of financial unease, it is probable that the krona will weaken, which could mean that the Riksbank might not be able to fully refinance maturing loans. In that case, the Riksbank's preparedness would decline, while the probability of needing to give liquidity support has increased at the same time.

If the cap on the loan is also to apply in loan refinancing, the sentence "A maturing loan may thus not be renewed if this would mean exceeding the scope to borrow, for example due to…" needs to be changed to stipulate that the loan may be refinanced up to the loan cap. This can be done by adding "fully" and another sentence stating how much may be refinanced; that is to say, "A maturing loan may thus not be fully renewed if this would mean exceeding the scope to borrow, for example due to… Refinancing may in such cases only occur to amounts accommodated within the scope to borrow".

Further advance borrowing

Legislative proposal Chapter 10, Section 3

> **Section 3** ~~If there are exceptional reasons, T~~he Riksbank may decide to temporarily borrow foreign currency for advance reinforcement of the foreign reserves, in addition to what follows from Section 2.
>
> The Riksbank shall explain the reasons for the advance reinforcement of the foreign reserves to the Riksdag Committee on Finance as soon as possible.

Comments on the legislative proposal

Foreign reserves can prevent a financial crisis by means of instilling confidence in the Riksbank's possibilities of acting in a crisis. The need for foreign reserves may however change over time, for instance depending on the progression of the size of the financial system and its dependence on foreign funding. The Riksbank therefore supports the

proposal for the ability to borrow in excess of 5 per cent of GDP in order to strengthen the foreign reserves in advance. The Riksbank also supports the Riksbank presenting the reasons for such reinforcement to the Riksdag Committee on Finance.

In the legislative proposal, it is stated that the Riksbank may temporarily borrow foreign currency exceeding 5 per cent of GDP if exceptional reasons exist. The requirement regarding exceptional reasons is however difficult to distinguish from the requirements imposed on the proportionality assessment that the Inquiry has proposed, and which the Executive Board of the Riksbank supports in the consultation response. According to the principle of proportionality, the Riksbank must make a trade-off whereby the drawbacks of the measure in question may not be disproportionate to the sought objective of the measure. This means that the proportionality assessment requirement will set clear limits with respect to the Riksbank's mandate to temporarily strengthen the foreign reserves. The term "exceptional reasons" is therefore not necessary and can thus be deleted.

Restoration of the foreign reserves

Legislative proposal Chapter 10, Section 4

> **Section 4** The Riksbank may decide to borrow foreign currency to restore the foreign reserves, if they have been used ~~for measures~~ to perform the Riksbank's statutory tasks. ~~according to Chapter 3, Sections 11–13.~~ The part of the foreign reserves that has not been funded by loans under Section 2 or 3 shall be restored to its previous level by these loans.
>
> The provisions on advance borrowing in Sections 2 and 3 shall not apply to restoration of the foreign reserves.

Comments on the legislative proposal

The legislative proposal sets out that the Riksbank may only decide on restoring the foreign reserves if they have been used for liquidity support in foreign currency for the purpose of avoiding serious disturbances in the financial system pursuant to Chapter 3, Sections 11–13. This means that the Riksbank is not given the possibility of restoring the foreign reserves with borrowing from the National Debt Office in cases where the foreign reserves have been used for other purposes, such as liquidity support in foreign currency for monetary policy purposes or for intervention on the currency market. The proposal is thus not consistent with the tasks for which the foreign reserves may be used besides the stipulations of Chapter 3, Sections 11–13. The legislative proposal thus entails a limitation for the Riksbank to restore the foreign reserves to the level that the Riksbank, at the time concerned, deems necessary to enable the Riksbank to fulfil all its tasks. Liquidity measures in a financial crisis are often aimed at both attaining price stability and contributing to a stable and effective financial system, and it can be difficult to state a primary purpose. In light of this demarcation problem, it is inappropriate to earmark part of the foreign reserves only for one of the statutory tasks (see also the Riksbank's comments on the demarcation problem under Chapter 2, Section 2 and the

Riksbank's consultation response). Therefore, the reference to Chapter 3, Sections 11–13 should be removed in the legislative proposal and it should instead say that the Riksbank may borrow foreign currency for the purpose of restoring the foreign reserves after they have been used to perform the Riksbank's statutory tasks.

Comments on the legislative commentary

According to the current wording in the legislative commentary, the possibility of restoring the foreign reserves is only covered when they have been used for liquidity support in foreign currency under Chapter 3, Sections 11–13. The proposal of the Inquiry entails a limitation for the Riksbank to restore the foreign reserves to the level that the Riksbank deems necessary in order to fulfil its tasks. It should therefore be clarified in the legislative commentary that the foreign reserves may also be restored after they have been used for other purposes, such as if the foreign reserves have been used for liquidity support in foreign currency for monetary policy purposes or for currency interventions.

Foreign currency trading

Legislative proposal Chapter 10, Section 5

> **Section 5** The Riksbank may buy foreign currency in order to be able to finance measures, ~~under Chapter 3, Sections 11–13~~ either immediately or at a later date, to perform the Riksbank's tasks pursuant to this Act. Foreign currency that has been bought for ~~this~~ these purposes may be sold if this is appropriate.
>
> Chapter 2, Section 4, third paragraph contains provisions on currency interventions for monetary policy purposes.

Comments on the legislative proposal

The legislative proposal entails that the Riksbank has a possibility of strengthening the foreign reserves by purchasing foreign currency only to enable it to provide liquidity support in foreign currency for financial stability purposes as it only refers to Chapter 3, Sections 11–13. The legislative proposal therefore limits the Riksbank's possibility of strengthening the foreign reserves by purchasing foreign currency in order to enable it to issue loans in foreign currency for monetary policy purposes or for carrying out currency interventions. In our view, it is not appropriate for the Act to limit the Riksbank's possibility of buying foreign currency by earmarking the pre-financed part of the foreign reserves only for one of the statutory tasks. Neither is it clear whether the proposed act enables the Riksbank to perform other currency operations, for example EU payments in Swedish kronor, that are needed to conduct its activities (see the comments on the legislative proposal, Chapter 2, Section 4).

The legislative text should instead state that the Riksbank may purchase foreign currency for the purpose of enabling it, immediately or at a later stage, to finance measures to perform the Riksbank's tasks pursuant to this Act. Foreign currency that has been purchased for these purposes may be sold if appropriate. Hence, the reference to

Chapter 3, Sections 11–13 should be removed from the proposed act. Chapter 2, Section 4, third paragraph provides provisions on currency interventions carried out for monetary policy purposes. These provisions however do not regulate trade in foreign currency and the purpose it serves is therefore unclear in relation to the first paragraph.

Comments on the legislative commentary

In the legislative commentary, it says that the Act stipulates that the Riksbank may buy foreign currency to fund certain lending. It also says that, under the provision, the Riksbank may sell Swedish kronor to finance reinforcement of the foreign reserves. The legislative commentary should also reflect permission for the Riksbank to trade in foreign currency for other purposes too.

Comments on the considerations in the report text

See Section 30.7

In the report text, it says that the Riksbank shall be permitted to buy foreign currency that is directly aimed at increasing the foreign reserves and hence provide scope for lending in foreign currency. Here, the text should be broadened to allow the Riksbank to trade in foreign currency also for other purposes such as currency interventions, asset management and swaps.

Currency repurchase agreements and similar agreements – Chapter 10, Sections 6–8

To satisfy the Riksbank's need of foreign currency

Legislative proposal Chapter 10, Section 6

> **Section 6** In order to fund its activities under this Act, the Riksbank may obtain credit in foreign currencies from, or enter into a currency repurchase agreement or other similar agreements with, another central bank. Such agreements may also be concluded with the Bank for International Settlements.

To satisfy another central bank's need of currency

Legislative proposal Chapter 10, Section 7

> **Section 7** In order to satisfy another central bank's need of currency, the Riksbank may grant credit to, or enter into a currency repurchase agreement or other similar agreements with, another central bank, if the Riksbank assesses that:
>
> 1. it ~~clearly~~ improves the ability of the Riksbank ~~for the Riksbank to achieve the goal~~ to contribute to ~~a stable and effective financial system~~ stability and efficiency in the international financial system, or

2. in cases other than those referred to in point 1, there are reasons for such an agreement and it is linked to the activities of the Riksbank as a central bank and the agreement has been approved by the Riksdag.

Comments on the legislative proposal (Chapter 10, Sections 6 and 7)

The provision in Section 7, point 1 needs to be adjusted as marked above in order to broaden its scope in a way that maintains the Riksbank's possibility of entering this type of agreement also in cases where so motivated by consideration for the efficiency and stability of the international financial system, and not only in relation to the Swedish financial system. This adjustment is prompted partly because repurchase agreements can be seen as a type of insurance solution between central banks (although the agreements are non-binding), and partly because there are often confidentiality aspects to consider when signing this type of agreement (see comments on considerations in the report text below for more detailed argumentation).

The provision in Section 7, point 2 needs supplementing according to the changes marked above in order to clarify that a decision to enter a currency repurchase agreement in the cases covered by this provision may not conflict with the prohibition of monetary financing of the TFEU (see also comments on the legislative commentary below).

Comments on the legislative commentary (Chapter 10, Sections 6 and 7)

With reference to the proposed changes in the legislative proposal (see points 1 and 2 above), and in light of the comments on the considerations in the report text, the Riksbank proposes that the legislative commentary on the provisions in Section 7 be changed in accordance with the suggestion below.

There is a provision in the section stating that the Riksbank may issue credit, enter currency repurchase agreements and other similar agreements in order to satisfy another central bank's need of currency. The provision corresponds partly to Chapter 7, Section 4, first paragraph of the Act from 1988.

The section regulates two different situations as the Riksbank may enter such agreements to satisfy another central bank's need of foreign currency. Judging which situation exists is done when the first agreement (the framework agreement) is entered, not in each individual transaction. However, the individual transactions must of course fall within the scope of the framework agreement.

An agreement may, under point 1, be entered if it improves the Riksbank's ability to contribute to stability and efficiency in the international financial system. In such a situation, the Riksdag's approval is not needed. It is the Riksbank that assesses whether it has this ability. The assessment must always be motivated based on an analysis of situations in which a transaction within the bounds of the agreement is requested, both when the crisis is imminent and when short-term grounds are absent. After having entered a currency repurchase agreement, the Riksbank shall, on the Riksdag's request, always be able to account for its assessment of the reasons for entering such an

agreement, provided this can be done with due consideration for applicable confidentiality provisions.

An agreement may, according to point 2, be entered if the Riksbank finds that there are grounds for entering the agreement other than it improving the Riksbank's ability to contribute to stability and efficiency in the international financial system, and the Riksdag has approved it. Another condition for the ability to enter such an agreement is that the agreement is linked to the activities of the Riksbank as a central bank. In the absence of such a link, the agreement may be in conflict with the TFEU prohibition of monetary financing. Furthermore, it is not intended for the Riksdag's approval to be granted in each individual transaction; rather, it is the framework agreement that requires approval.

Comments on the considerations in the report text (regarding Chapter 10, Sections 6 and 7)

The Riksbank takes a positive view to the proposal to confirm also in the new Sveriges Riksbank Act the possibility of entering currency repurchase agreements and similar agreements with other central banks. The proposal for provisions in Chapter 10, Section 6 also coincides well with the needs identified by the Riksbank for regulation with respect to the conditions for entering such agreements in order to satisfy the Riksbank's need of foreign currency.

The motivation for the proposed provisions regarding the Riksbank's possibility of entering currency repurchase agreements, etc. to satisfy another central bank's need of currency is however worded such that it de facto narrows down the interpretation of the provision in Chapter 10, Section 7, point 1 to agreements that may only be entered with a limited circle of central banks when the crisis is imminent. Hence, the proposal counteracts the purpose of this type of agreement. Agreements to lend currency to another central bank using currency repurchase operations are not only used as a tool to support the lending central bank's work on managing imminent problems in its national financial system. They are also part of the international central bank cooperation in which a central bank's support for other central banks' needs of currency at one time increases the central bank's chances of obtaining equivalent support at the same time or later on. This type of reciprocity is of particular importance for Sweden, which is a small, open economy with a large financial sector. By disregarding this, there is a risk that the legislative proposal will make it difficult for the Riksbank to enter currency repurchase agreements in situations when they could be crucial to the ability to manage a financial crisis in Sweden.

Because timing is often decisive for crisis measures to be effective, standing cooperation with currency repurchase agreements has now been established between a number of central banks. There may thus be reason for the participation of the Riksbank in such cooperation going forward. This means that the Riksbank might need to enter a currency repurchase agreement with another central bank that needs to obtain currency before there are clear signs of the Swedish financial system heading for a crisis. In particular situations, it could be a matter of an agreement with the central bank in a small country

whose financial system does not feature significantly in the international financial system, but that could nevertheless develop in such a way that risks causing substantial fluctuations in systemically important currencies, with significant implications for economic development in many larger countries and, ultimately, in Sweden.

By entering currency repurchase agreements to satisfy another central bank's need of currency, the Riksbank can also improve its future possibility of accessing a selection of currencies broader than what is, at a given time, considered to be of direct significance to the Riksbank's ability to fulfil its objectives. By entering this type of agreement with central banks in a somewhat more diversified group of countries, whose financial sector is affected by disturbances different to that in Sweden, the Riksbank could also improve the probability of obtaining foreign currency loans when needed. These types of agreements have an insurance-like structure and cover less predictable needs for crisis management, even though the possibility of drawing on a currency repurchase agreement entered in advance cannot be guaranteed.

A decision to enter a currency repurchase agreement to contribute to the Riksbank's objective fulfilment must be made based on an analysis of the situations in which a transaction could be requested within the bounds of the agreement. This applies both when the crisis is imminent and when short-term grounds are absent. The considerations that need to be made in this context are, by nature, often very sensitive and may not be publicly disclosed because this could have negative implications both for stability in the financial system and Sweden's relations with other countries. However, neither would it be appropriate to publicly disclose, during ongoing negotiations, the Riksbank's preparation for a decision on currency repurchase agreements for more long-term stability purposes, because this might be difficult for the other central bank to accept, and also there would be a risk of such disclosure causing moral-hazard behaviour among financial agents. If the Sveriges Riksbank Act were to contain a provision entailing that another central bank's request for a currency repurchase agreement with the Riksbank would risk requiring submission to public review by the Riksdag, the Riksbank would probably not receive this type of request. Consequently, this provision would, in principle, never be needed. This would in turn have considerable negative implications for the Riksbank's possibilities of obtaining currency repurchase agreements to fund its operations according to the proposed provision in Chapter 10, Section 6, as such a format would be asymmetrical to the disadvantage of the Riksbank and would impede the Riksbank's participation in reciprocal international cooperation. However, there is nothing to prevent the Riksbank, after having entered a currency repurchase agreement, to present to the Riksdag Committee on Finance, on the Riksdag's request, the reasons for entering the agreement, provided that such an account can be delivered in a way consistent with applicable confidentiality provisions.

In light hereof, it is appropriate for the Riksbank to be given powers, without requiring the Riksdag's approval, to enter currency repurchase agreements for the purpose of satisfying other central banks' needs of currency when, at the same time, this improves the Riksbank's ability to contribute to stability and efficiency in the international

financial system. These powers replace the requirement regarding monetary policy purposes according to current law.

The considerations used to justify the proposed provision in Chapter 10, Section 7 need, in the Riksbank's opinion, to be adjusted and supplemented in line with the rationale above.

However, at the same time the Riksbank shares the opinion of the Riksbank Committee that the requirement for an approval does not afford the Riksdag any possibility of instructing the Riksbank to enter a currency repurchase agreement or similar agreement with another central bank. The Riksbank also shares the view of the Riksbank Committee that, where the Government and the Riksdag are concerned, there are other tools at their disposal if there is reason to assist another country that finds itself in an economic or financial crisis. The Riksbank also makes the same assessment as regards the parts of the considerations setting out that (1) neither is it intended that that the Riksdag's approval be granted in each individual transaction; rather, it is the first agreement (the framework agreement) that requires approval, and that (2) renewal of a currency repurchase agreement would require approval unless otherwise stipulated by the Riksdag's initial approval.

The Riksbank finds it important that the rationale above be contained in the government bill.

Chapter 11. Organisation and management

General Council's control function

Legislative proposal Chapter 11, Section 7

> **Section 7** The General Council shall follow the work of the Executive Board and the other activities of the Riksbank. The General Council shall keep the Riksdag Committee on Finance informed about matters of substantial importance. The General Council shall regularly report its observations to the Riksdag Committee on Finance and at the request of that Committee.
>
> The audit function governed by the General Council shall review the work of the Executive Board.

Comments on the legislative proposal

It is good that the General Council's control function is laid out in law. Together with Sections 8–10, there is a complete list of the decisions made by the General Council. See however comments on Chapter 8, Sections 4 and 14.

Comments on the legislative commentary

The General Council's information to the Riksdag Committee on Finance is discussed. It is good that this task is clarified. But, the examples given – for example that the General Council shall inform the Riksdag Committee on Finance of changes regarding how the price stability objective is applied – should be deleted in favour of more general wording.

The reference to sections in the report seems wrong. Now, it says 33.6.7; this is probably supposed to be 33.6.8. It should be noted in the legislative commentary that the General Council is part of the Riksbank. However, the General Council is not such a decision-making body as is referred to in EU law in terms of determining which decision-making body is entitled to decide on matters covered by the ban on instructions.

Comments on the considerations in the report text

See Section 33.6.8, p. 1522–25

On the whole, the new proposed act entails many different review and audit layers. The report does not include a discussion on the importance of efficiency and the risk of double work.

Chapter 36 of the report. Other legislative matters

See Section 36.1.3 Statistics.

Independence of the central bank p. 1658

Earlier in this report (Section 28.2) the committee proposes that there be a ban on instructions in the Riksbank's collection of the statistical data needed within the European System of Central Banks (Chapter 9, Article 13, first paragraph, point 5 of the Instrument of Government). This independence applies irrespective of the activity in which the data is collected, for example financial stability or monetary policy. *Most of the Riksbank's data collection however refers to its national tasks and is not covered by the aforementioned ban on instructions* (our italics). When the Riksbank collects data to devise and implement monetary policy, the ban on instructions however applies under Chapter 9, Article 13, first paragraph, point 1 of the Instrument of Government.

The Riksbank finds it erroneous to say that: *Most of the Riksbank's data collection however refers to its national tasks and is not covered by the aforementioned ban on instructions.*

It says that most of the Riksbank's data collection refers to its national tasks. It is difficult to understand the extensive data collection to which this refers. There is no data collection at the Riksbank that is greater and more extensive than the statutory areas Financial Market Statistics and Balance of Payments Statistics. The obligations to collect data in both of these fields is however stipulated by different sets of EU regulations (cf. Council Regulation (EC) 2533/98, preamble p. 17, Regulation (EU) 1072/2013, and Regulation (EU) 555/2012). It is therefore incorrect to write: *Most of the Riksbank's data collection however refers to its national tasks.* The Riksbank finds a fairer description to be: "A small proportion of the Riksbank's data collection refers to its national tasks……".

Chapter 37 of the report. Entry into force and transition regulations

Powers regarding central counterparties in third countries – Chapter 3, Section 10

A condition for systemically important central counterparties (CCPs) from a third country, known as tier 2 CCPs, to be recognised and hence permitted to operate in the EU, is that they meet certain requirements from the central banks within the EU whose currency they clear. This is stipulated by Article 25.2b (b) of EMIR, as well as the requirements that the Riksbank may impose. As the Riksbank shall confirm in writing to the European Securities and Markets Authority (ESMA) that the CCP is following its requirements, this in turn requires the Riksbank to have received confirmation thereof from the CCP concerned. Most of the requirements, such as submitting information to the Riksbank, are directly stipulated by EMIR which, in its capacity of a regulation, has direct effect. However, a requirement necessitates the Riksbank to have the power in its national framework for imposing it. It is a matter of the possibility to impose requirements in exceptional situations in order, within the bounds of the Riksbank's power, to address temporary systemically important liquidity risks that affect the transmission of monetary policy transmission or the smooth operation of payment systems. The Riksbank does not have any such power today. Given that EMIR came into force already on 1 January 2020, and Brexit at the end of the same month but with full effect at the end of the year, it would have been useful for the Riksbank to have that power already now. There is a timing mismatch between Brexit and the entry into force of the new Sveriges Riksbank Act on 1 January 2023. CCPs from third countries and in particular from the United Kingdom will apply to ESMA to operate in the EU long before 2023, which means that the Riksbank cannot impose all of the requirements listed in EMIR on them. This entails a lag of around two to three years and cannot be considered satisfactory considering that LCH Ltd. in the United Kingdom clears around 90 per cent of all interest-rate swaps denominated in SEK. The provision in Article 25.2b (b), seventh paragraph of EMIR regarding setting requirements after the CCP has been recognised to operate in the EU, is interpreted by the Riksbank such that this can occur if for example setting requirements is necessitated in exceptional situations; this however requires the Riksbank to have requested the ability to impose such requirements on the CCP concerned already when it became recognised in the EU. If the Riksbank has not obtained this power at the time of recognition of the CCP in the EU, there is in other words a risk of the Riksbank losing the possibility of imposing certain types of requirements on the CCP. The Riksbank therefore suggests that entry into force of this provision occurs as quickly as possible and preferably through amending the current Sveriges Riksbank Act.

Commemorative and jubilee coins – Chapter 4

The report does not contain any transition regulations for commemorative and jubilee coins. Also, there is no analysis of whether transition regulations are needed. The legislator needs to analyse the matter and take an active stance so that there are for instance no doubts as to whether or not commemorative or jubilee coins are legal tender.

Crisis preparedness – Chapter 5

The committee proposes that the legislation on crisis preparedness should start to apply on 1 January 2023. This is late. It means for example that the Riksbank cannot assign wartime postings to personnel before that time. It also means that the Riksbank cannot issue regulations or call for the companies concerned to take crisis preparedness and total defence measures before that time. Since some of these measures can, besides, take several years to introduce, it will take even more time before they are in place. This part of the legislation should therefore come into force earlier. It is therefore proposed that the legislative proposals in Chapter 5 come into effect no later than 1 July 2021.

Chapter 38 of the report. Consequences of the committee's proposals

Depot operations and overall responsibility for cash management – Chapter 4.

According to the proposed act, the Riksbank will be responsible for *the running of depot operations*, and have an *overall responsibility for cash management*. The Riksbank notes that it is a matter of two new tasks within the Riksbank's field of activity. In addition, cash management is a sector that is operating on a sagging market as cash usage declines. It is therefore probable that the costs of these new branches of activity will be high and that, over time, they could be much higher than is currently predictable.

Other legislative proposals

Proposed Act on the National Debt Office's Borrowing for the Needs of the Riksbank Act

Legislative proposal Section 1

Section 1 The National Debt Office is to raise loans for the state to meet the Riksbank's need for

1. foreign reserves under Chapter 10, Sections 1–4 of the Sveriges Riksbank Act (2021:000), and
2. loans for the Riksbank's transfer of funds to the International Monetary Fund under Chapter 6, Section 7 of the Sveriges Riksbank Act.

The National Debt Office shall recover full compensation for the state's borrowing costs to meet the Riksbank's need for foreign reserves in accordance with the first paragraph, point 1. For loans to the Riksbank under the first paragraph, point 2, the National Debt Office shall recover compensation corresponding to the interest received by the Riksbank from the International Monetary Fund.

Comments on legislative proposals

The comments expressed above regarding Chapter 10 and Chapter 6 of the proposed Sveriges Riksbank Act also apply to the proposed Borrowing Act.

Proposal to amend the Debt Instrument Act (1936:81)

Legislative proposal Section 22 and Section 31

Section 22 A conveyance of *a* transferable debt instrument *is not valid* in relation to the conveyor's creditors *unless* the party to which the transfer *has* been made has taken the document into *its* possession.

If a bank, *a* credit market company or *an* investment company *sells or pledges a* transferable debt instrument, the sale *or pledge is valid* in relation to the bank's, the credit market company's or the investment company's creditors, *even if* the debt instrument *remains in* custody with the bank, company or firm *or any other party on its behalf*.

If someone sells or pledges a transferable debt instrument to the Riksbank, the sale or pledge is valid in relation to the latter's creditors, even if the debt instrument remains in custody with the latter or any other party on its behalf.

Section 31 *If a party conveys a* non-transferable debt instrument, the conveyance *is not valid* in relation to *the conveyor's* creditors, *unless* the debtor

has been informed of the measure by the conveyor or the party to which conveyance *has* been made. If the conveyance *consists of* a gift, *the special stipulations* that are *prescribed regarding gifts* apply to the effect thereof.

If *a* non-transferable debt instrument *has been conveyed* to *multiple parties*, an earlier conveyance *takes precedence over a conveyance that has taken place* later. *However, a conveyance that occurs later takes precedence over an earlier one, if the debtor is informed of the later conveyance first* and the acquirer was in good faith at that time.

If someone *has* discharged an action *subject to an accounting obligation*, and such discharge covers *receivables that have arisen in the action, the first paragraph does not apply.*

Neither does the first paragraph apply when ~~a bank, a credit market company or an investment company~~ someone *pledges receivables to the Riksbank* for the Riksbank.

Comments on the legislative proposal

The Riksbank welcomes the proposed amendments to the above provisions in the Debt Instrument Act, but finds that the proposed exemptions should apply to all types of institution that can be counterparties of the Riksbank (for example mortgage institutions and consumer credit institutions), and third parties that pledge collateral as security for the debt of a recipient of emergency liquidity assistance (for instance a wholly owned subsidiary). The Riksbank therefore proposes a new third paragraph in Section 22 that only covers the Riksbank, and an adjustment to Section 31, third paragraph, see above.

The Riksbank also presumes that a review of other provisions in the Debt Instrument Act has been performed in order to rule out the need to make any consequential amendments thereto ensuing from the proposed adjustments.

In addition, the Riksbank would like to express that its wish to be granted a general right of priority, which is laid down in law and which applies through both bankruptcy and resolution proceedings, is still maintained. The Riksbank expounded on its view on this matter in its consultation response to the report of the Riksdag Committee on Finance "Resolution – a new method for managing distressed banks" (SOU 2014:52).[10]

[10] SOU 2014:52: Resolution – A new method for managing distressed banks (see Section 3, p. 6–7),http://archive.riksbank.se/Documents/Remisser/2014/remiss_banker%20i%20kris_141030.pdf

Proposal to repeal the Time Extension for Taking up the Protest of a Bill, etc. in War and Danger of War Act (1940:79)

Legislative proposal

It is hereby prescribed that the Time Extension for Taking up the Protest of a Bill, etc. in War and Danger of War Act (1940:79) be repealed at the end of 2022.

Comments on the legislative proposal

Provisions regarding the protest of a bill are set out in the Bill of Exchange Act (1932:130). The Swedish Bill of Exchange Act rests, in a way similar to legislation in other EU Member States, on the Geneva Convention from 7 June 1930 regarding uniform law for bills of exchange.

The report does not set out whether the Time Extension for Taking up the Protest of a Bill, etc. in War and Danger of War Act (1940:79) also rests on an obligation that follows from the Geneva Convention. The question should be analysed before repealing the Act is proposed.

Furthermore, the Inquiry expresses that the need to extend the period of time for the protest a bill appears to be "particularly limited". The Riksbank notes that an Inquiry on the need is absent and thus finds that there is reason to analyse whether the need to extend the period of time for the protest of a bill should also include peacetime crisis situations. As a suggestion, the Act could be given a similar peacetime scope as the Regulation of Currency and Credit Act (1992:1602).

Proposal for an act amending the Granting of Forbearance in the Payment of Debt, etc. Act (1940:300) (the Moratorium Act)

Comments on the legislative proposal

The Riksbank notes that the Granting of Forbearance in the Payment of Debt, etc. Act (1940:300) (the Moratorium Act) does not include peacetime crises. In the Riksbank's view, there is a need to analyse and decide on whether the Act should also apply in *peacetime crises* and not just in war and danger of war, etc.
As a suggestion, the Act could be given a similar peacetime scope as the Regulation of Currency and Credit Act (1992:1602).

Proposal for an act amending the Payment System under War Conditions Act (1957:684)

Legislative proposal Section 2

Section 2 *If* Sweden is at war *or*
in danger of war, or if there are such extraordinary circumstances as are caused by war or danger of war in which Sweden has found itself, the Government may, after having afforded the Riksbank the opportunity to comment, issue regulations that shall apply instead of
1. the Sveriges Riksbank Act (2021:000) and other laws governing the Riksbank's operations,
2. the Banking and Financing Business Act (2004:297), and
3. the Payment Services Act (2010:751)

Comments on the legislative proposal

The Riksbank opposes the Inquiry's proposal as it entails a considerable expansion of the Government's current possibilities to issue regulations on the *issuance of banknotes and coins and banking business*, and *publication of the Riksbank's accounts*. The proposal entails that the Government is enabled to issue regulations that are to apply instead of, inter alia, the Sveriges Riksbank Act and other laws governing the Riksbank's operations.

The Instrument of Government, 15:6, opens up for the Government, in war or danger of war or extraordinary circumstances caused by war or danger of war, under authorisation laid down in law, through an ordinance, to issue such regulations on a certain subject which, under the constitution, shall otherwise be issued through legislation. However, any law with such an authorisation shall set forth in detail the circumstances in which such an authorisation may be exercised.

To the understanding of the Riksbank, the proposed act does not contain any stipulations regarding the circumstances in which such an authorisation may be exercised. Neither is the proposal consistent with the Instrument of Government, 9:13, which is also an implementation of the ban on instructions of EU law, in which it is set forth that no authority may determine how the Riksbank shall decide in matters pertaining to monetary policy. Finally, it should be noted that the Riksbank has other constitutional tasks in Chapter 9, Article 14 of the Instrument of Government that will apply even if the Government issues an ordinance that shall apply instead of the Sveriges Riksbank Act.

Proposal for an act amending the Public Access to Information and Secrecy Act (2009:400)

Legislative proposal Chapter 15, Section 2

Secrecy applies to information referable to the following operations, unless it is clear that the information can be divulged without an increase in vulnerability with respect to payments or transactions in financial instruments:

1. systems for securities settlement at a central securities depository (CSD) in accordance with the Central Securities Depositories and Accounting of Financial Instruments Act (1998:1479) and Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.
2. settlement systems according to the Systems for Settlement of Obligations in the Financial Market Act (1999:1309) and the Riksbank's systems for payment settlement according to the Sveriges Riksbank Act (2021:000).
3. general payment systems according to the Banking and Financing Business Act (2004:297),
4. payment systems according to the Payment Services Act (2010:751),
5. systems comparable therewith, and
6. the state payment model at the National Debt Office.

The same applies to reserve procedures as regards the operations as referred to in the first paragraph and procedures for managing such state payment orders as are referred to in Section 4 of the Riksbank and the Payment Market under War Conditions Act (1957:684).

Information contained in an official document is subject to secrecy for a maximum of 20 years.

Comments on legislative proposals

The Riksbank communicates its analysis of safety and efficiency in the financial market infrastructure not only in a direct dialogue with the financial market infrastructure companies it oversees and other market participants, but also through public statements, speeches and publications. In addition, the Riksbank reports the results of its work and its view of important issues in the "Financial Stability Report" (FSR). The Riksbank's communication also aims to prompt change in the financial market infrastructure and is thus also a working method for the Riksbank. The communication naturally takes account of the secrecy provision in Chapter 30, Section 4 of the Public Access to Information and Secrecy Act. With the insertion of this new provision, which is not particularly clear, severe demarcation problems can arise, as it will probably be very difficult in many cases to judge whether divulging information de facto increases vulnerability with respect to payments or transactions in financial instruments. A market infrastructure company under oversight can always claim that, even if information is public, the way in which it is conveyed can for example increase vulnerability with

respect to payments or transactions in financial instruments. The Riksbank's working method and possibility of public communication will thus be heavily curtailed.

Demarcation problems could also arise between this provision and the provision in Chapter 30, Section 4, in which secrecy applies to business and operating conditions, if it can be assumed that a company would incur a loss if the information were divulged. This provision which stipulates secrecy appears to apply to the operations as a whole, and the question arises as to when information may actually be made public according to Chapter 30, Section 4 or if it even can at all.

In light of the above, the Riksbank wishes the provision to be given clear content with criteria for when secrecy is considered to exist. There may never be any doubt about when information may be divulged and when it may not. In addition thereto, it is unclear to the Riksbank why a distinction must be made between settlement systems for securities according to point 1 and settlement systems according to point 2, as the latter also includes systems according to point 1. The Riksbank's system for payment settlement is also a settlement system and thus does not require a separate mention.

Proposal for an act amending the Database for the Oversight and Supervision of the Financial Markets Act (2014:484)

Legislative proposal

It is hereby prescribed that Sections 2 and 3 of the Database for the Oversight and Supervision of the Financial Markets Act (2014:484) be given the following wording.

Current wording	*Proposed wording*
Section 2	
Data may be processed in the database for compilation and analysis of information needed in	
1. the Riksbank's task of *promoting* a *safe* and efficient *payment system*,	1. the Riksbank's operations *regarding the financial system according to Chapter 3 of the Sveriges Riksbank Act (2021:000)*,
2. Finansinspektionen's activities for supervising financial markets and companies, and	
3. The activities of the Riksbank, Finansinspektionen and Statistics Sweden for producing statistics.	
Section 3[11]	
In the database, such data may be processed as has been collected under	
1. *Chapter 6, Section 9, first and second paragraphs* of the Sveriges Riksbank Act (1988:1385),	1. Chapter 6, Section 9, first and second paragraphs of the Sveriges Riksbank Act (1988:1385) and *Chapter 7, Section 1 and*

[11] Latest wording (2018:1229).

Section 2, points 1–4, and Section 3 of the Sveriges Riksbank Act (2021:000),

Comments on the legislative proposal

The provision in Section 3 of the Act (2014:484) regarding which data may be collected for the database must retain a reference to the former Sveriges Riksbank Act (1988:1385) so that data collected pursuant to that Act may remain in the database. Otherwise, there is a very high risk that the proposal of the report would mean that historical data that has been collected pursuant to Chapter 6, Section 9, first and second paragraphs of the Sveriges Riksbank Act (1988:1385) may no longer be contained in the database. This would be a cause for great concern because this data is highly important to the purposes set out in Section 2 of the Act (2014:484). The proposal is thus to refer both to the former (current) Sveriges Riksbank Act and retain the wording on the new Act.