

## Does cash have any future as legal tender?

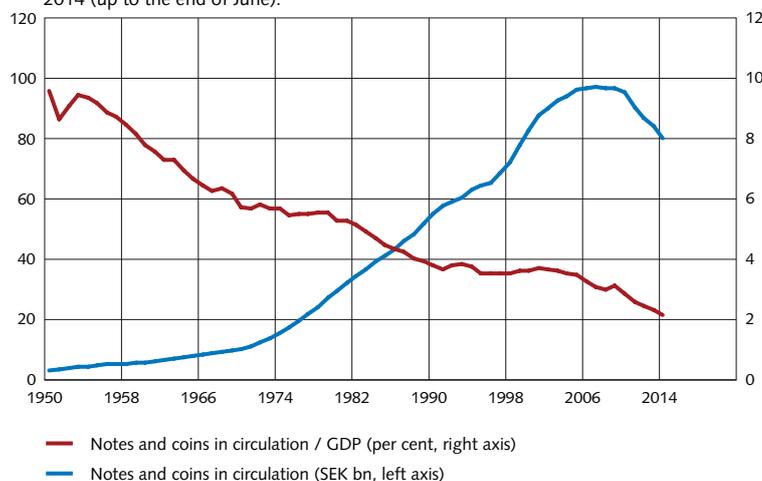
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### Use of cash declining in Sweden

The long-term trend is that cash is being used less and less in Sweden. At a rough estimate, around one quarter of payments at points of sale are made in cash.<sup>2</sup> As recently as 2012, this figure was one third.<sup>3</sup> If one looks at the value of the payments, the percentage of cash payments made today should be much lower, perhaps around 10 per cent, as cash is mostly used for payments of smaller amounts.<sup>4</sup> Although the Riksbank's own surveys indicate that the number of cash payments is declining, it is difficult to be sure that this is the case. However, there is no doubt that the importance of cash has declined in relation to that of card payments. One sign of this is a long-term trend where the value of the banknotes and coins in circulation is declining as a percentage of GDP. Something that is unique to Sweden is that the value of the cash in circulation has also been declining in absolute figures for the past couple of years, which is mainly because the number of 1,000-krona banknotes in circulation is falling.

**Chart 1.** Average annual value of banknotes and coins in circulation in absolute value (left axis, SEK billions) and in relation to GDP (right axis, per cent) between 1950 and 2014 (up to the end of June).



Source: Sveriges Riksbank

There are numerous indications that this development will continue.<sup>5</sup> One reason is that new payment services, primarily mobile payments, are becoming established on the market and some of them compete with cash. Another reason is that the propensity to use cash is greater among older generations than among younger ones, who will gradually take over. A further reason is that banks and shops are increasingly

1. The authors would like to thank all those at the Riksbank who have contributed to the discussions we have had.

2. Points of sale refers to shops, restaurants and so on, where payments are made directly on site to the seller at the time of purchase.

3. See Chapter 1, Sveriges Riksbank (2013). The corresponding share in 2010 was 35-40 per cent.

4. There is insufficient data on the number of payments made in cash in Sweden and their total value. The data given here are estimates based on the Riksbank's unpublished surveys and interviews. For an outline of the situation in a number of other countries, see Bagnall, et al. (2014).

5. See the conclusions in Sveriges Riksbank (2013).

People in Sweden are used to being able to use cash for payments between individuals and at a point of sale, such as a shop or a restaurant. However, the use of cash is relatively low in Sweden in relation to most other countries and its use is constantly declining. At the same time, cash holds a special legal status as legal tender according to the Sveriges Riksbank Act. In practice, this status means that a person making a payment has the right to pay in cash unless otherwise agreed. However, increasingly often businesses do not want to accept payments in cash. The general public, on the other hand, appears to consider it a right to pay in cash, a view which is not supported by the law. This discrepancy is likely to increase in the future, as it can be assumed that fewer points of sale will accept or handle cash. This Economic Commentary discusses the above problem and proposes that the abolishment of the unique status of cash as legal tender should be investigated.

connecting cash with costs and risks and thus promoting other forms of payment. The retail trade is also becoming more international and web-based and in these contexts, cash is rarely an alternative.

## Cash is legal tender

The Sveriges Riksbank Act states that banknotes and coins issued by the Riksbank are *legal tender*, which means that "everyone is obliged to accept banknotes and coins as payment".<sup>6</sup> The status as legal tender in the Sveriges Riksbank Act concerns only the *method of payment*.<sup>7</sup> This concept can be traced in Swedish legislation for more than one hundred and fifty years back in time and the reason may have been that there has historically been a need to distinguish the means of payment issued by the Government or the Riksbank from competing means of payment issued by other governments and banks at the time. Awarding a means of payment the status of legal tender could also be a way of introducing a new means of payment and ensuring that it gains acceptance and becomes established on the market.<sup>8</sup> When a means of payment is generally accepted, the transaction costs are low, partly because one rarely or never needs to negotiate how payment will be made. Low transaction costs are in turn beneficial for the functioning of the economy and ultimately the welfare of the citizens.

However, neither the text of the act nor the preliminary works to the act contain any arguments as to why cash has the status of legal tender. Nor is it specified how far the obligation to accept banknotes and coins as payment extends. It is clear, however, that other means of payment than cash are not regarded as illegal.

Although the starting point in the Sveriges Riksbank Act is that each individual is obliged to accept banknotes and coins as payment, there are in practice a number of exemptions from this obligation.<sup>9</sup> The exemptions with the largest practical significance are those made through agreements and contracts. In Sweden, the starting point is that the freedom of contract entails that each party has the right to agree on how the buyer of a particular product or service shall pay for it. Such agreements can be very easily entered into. In practice, it is sufficient for a businessman to notify the customer that he is not prepared to accept cash as payment for his goods or services.

The status of cash as legal tender thus has greatest significance in the cases where no contracts or agreements have been made on the method of payment and when the payment is made at a later date. In these situations, a payment with legal tender means that the debt has been serviced, even if the recipient at the time of payment has objections against the method of payment and thus the recipient cannot claim that the payer has not fulfilled his side of the agreement. The status of legal tender thus mainly has the task of clarifying the legal conditions applying to the parties.

When it comes to public authorities that offer certain services, such as medical care, the possibility to waive cash payments has been tested in court in recent years, and then assessed to be somewhat more limited than within the private business sector.<sup>10</sup> The courts appear to consider that authorities that have an obligation by law to provide certain important services in society do not have the same possibility to waive the obligation to accept payment in cash. For instance, the courts have taken as a starting point the statements in the preliminary work to the Sveriges Riksbank Act. However, the question has not been tried by a higher instance, and it is difficult to assess, on the basis of these legal cases, how far public authorities' obligation to accept cash actually extends.

6. Government Bill 1986/87:143, p. 64.

7. The status of legal tender should not be confused with the Riksbank's monopoly on issuing banknotes and coins, that is, its sole right to do so. Nor should it be confused with what applies as Sweden's currency. The Sveriges Riksbank Act states that the monetary unit in Sweden is called the krona and that this is divided into one hundred öre.

8. One recent example is when the euro was established and euro banknotes and coins replaced national banknotes and coins as legal tender.

9. There are exemptions as a result of laws, agreements and trade customs. For example, the law states that tax payments cannot be made in cash.

10. Svea Court of Appeal's decision on 11 March 2011 in case OA 1269-11, the Administrative Court of Appeal in Sundsvall's judgment on 5 June 2013 in case no. 852-12 and the Administrative Court of Appeal in Jönköping's judgment on 23 April 2014 in case no. 3636-13.

## The general public's view on the status of cash

We therefore have a situation in Sweden whereby cash has the status of legal tender, at the same time as this status has little significance, both in practice and in legal terms. There are regular reports in the media about households and smaller companies experiencing difficulties in using cash. A large majority of the general public also appears to perceive the possibility to pay in cash as a right. Additionally, there is widespread opinion that a cashless society would primarily be a disadvantage to the poorer elements of society.<sup>11</sup> The Riksbank is increasingly receiving questions from the general public and companies regarding the status of cash as legal tender and the possibility for points of sale to “refuse” to accept cash. Moreover, there is interest from several members of the Swedish parliament who have presented motions on various aspects of cash usage.<sup>12</sup> This situation appear to be fairly specific for Sweden, despite most western countries having similar regulations, namely that it can usually be agreed to waive the use of cash as a means of payment. The fact that there is very little debate on this subject in other countries is probably because cash is still used to a greater extent and thus questioned less than it is in Sweden.

The general public thus appears to regard it as a right to be able to pay in cash to a much greater extent than is supported by the Sveriges Riksbank Act. This discrepancy between the way the status of legal tender is perceived and its actual meaning is likely to increase in future, as it may be assumed that fewer points of sale will want to accept or handle cash.<sup>13</sup> We therefore consider that something should be done to reduce this difference.

Below we discuss two main alternatives that show how this discrepancy can be counteracted by changing the legal status of cash

- The first alternative is to make the status of cash as legal tender more binding so that the recipient of a payment is actually obliged to accept cash.
- The second alternative is to abolish the status of cash as legal tender. This would in practice clarify the current legal situation, where there is rarely an actual obligation to accept cash.

The Riksbank's mandate regarding payments is to promote a safe and efficient payment system. With regard to the role of cash as legal tender, this means that the Riksbank safeguards the functioning of the retail payments market. In practice, it means that any problems regarding cash must be so large and affect so many people that the functioning of the market is adversely affected before the Riksbank takes action/intervenes.<sup>14</sup> The Sveriges Riksbank Act does not give the Riksbank any mandate regarding consumer protection or protection of any specially-vulnerable groups. This responsibility lies with other authorities.<sup>15</sup> Our discussion of the two alternatives below is therefore based on the functioning of the retail payments market and the effects on the economy as a whole.

### Alternative 1: The effects of a binding obligation to accept cash

One alternative is to strengthen the status of cash as legal tender to entail a binding obligation for the retail trade and services sector to accept cash. This would mean that the actual status of cash was more in line with the way it is perceived, namely as an obligation to accept cash and a right to pay in cash. If one is to justify such a binding obligation, one must be sure that the advantages of such regulation would outweigh the disadvantages.

11. See Arvidsson (2013).

12. The Committee on Finance in the Swedish Parliament opposed in report number 2013/2014:FiU22 a total of eight motions from the general private members' motions period in autumn 2013 that dealt with cash management. On 2 April 2014, the Swedish parliament rejected the motions.

13. When fewer and fewer payments are made in cash, the businessman's income from cash sales also declines. As cash is linked to specific costs, like other means of payment, it at some point becomes more financially viable for the businessman to stop accepting cash. It is therefore very likely that cash will in future become less viable as a means of payment if the trend of lower cash usage continues.

14. The Riksbank also has the task of supplying Sweden with banknotes and coins. However this is not linked to the role of cash as legal tender, which only applies to the time of payment. The task of supplying cash is therefore not discussed in this commentary.

15. For a description of the roles of various authorities with regard to payments, see Sveriges Riksbank (2013).

For those groups who want to pay in cash or who are forced to use cash for other reasons, a binding obligation would be positive, as it would ensure that they could use cash everywhere, even in the future. This in turn would give them access to goods and services. With regard to those who have access to other means of payment, but for some reason prefer to pay in cash, the positive socio-economic effects would be slight, as they do not risk being excluded from the goods or services markets. On the other hand, there may be groups that for some physical, technical or legal reason are prevented from paying by any other means than in cash. It is mainly these groups that would experience the positive socio-economic effects.

However, only a few are forced to pay in cash because they do not have access to other payment services.<sup>16</sup> In Sweden, people have a right to open a bank account and Finansinspektionen (the Swedish financial supervisory authority) recommends that the banks attach additional services, such as a debit card or credit transfer service, to the account.<sup>17</sup> It is thus relatively few and relatively small groups that are prevented from using other means of payment than cash, which means that the effects on the economy as a whole of a binding obligation to accept payment in cash would be minor. In addition, an EU Directive was adopted in 2014 that gives all EU citizens the right to open a bank account with basic features.<sup>18</sup> Basic features include, for instance, cash withdrawals, credit transfers and payment transactions using debit cards. When the directive is implemented in Swedish law, all individuals should thus have access to cash, credit transfers and debit cards. Such a solution has the potential, at least in legal terms, to ensure that all citizens have access to basic payment services. To summarise, the positive socio-economic effect of a stronger obligation to accept and handle cash would be relatively small.

An obvious disadvantage with legislating in favour of a binding obligation to accept cash is that it entails a lock-in effect into a payment standard that the market appears to be slowly abandoning. The retail payments market, like most other markets, is experiencing technological advances and a need for new methods of payment arises and the need for the old ones perhaps declines. A transition to other payment services that can contribute to an efficient and safe payment system thus risks being slowed down if there is a binding obligation to accept cash.

Another disadvantage is that the costs linked to cash can be expected to increase. The Riksbank's own studies show that the cost to society for using cash is around SEK nine billion a year.<sup>19</sup> Market participants, including households, have costs for both their own cash handling and for other methods of payment and ought to be able to make their own decisions on which method of payment is most cost-effective for them. One problem here is that households, unlike the retail trade, rarely face transaction fees or withdrawal fees, that is, one side of the market does not have a functioning price mechanism that can help steer the market towards the most cost-effective choice of payment method in every situation.<sup>20</sup> From a socio-economic perspective, payment by debit card appears to be cheaper than using cash for payments in excess of SEK 20. An extended obligation to accept and handle cash, combined with a lock-in effect that delays a transition to more cost-effective means of payment could therefore entail substantial costs to society, particularly over a longer period of time. It should be added that cash has been abolished in some branches for working environment reasons, including buses in the Stockholm local transport system. Therefore, a reintroduction of cash could have a negative impact on the working environment in some sectors. It is also possible that the current infrastructure would not be able to manage an increased number of daily takings, as the number of bank branches with cash management is declining.

16. It is only in exceptional cases that consumers receive income in the form of cash or prepaid cards. Therefore, the use of cash in practice presupposes that the consumer has a bank account from which to withdraw cash. The banks also allow children aged 8-10, sometimes there is no lower age limit, to have debit cards if their parents will allow this.

17. In the Riksbank's own interview survey held in September 2014, 96 per cent of respondents said they had access to cash and 99 per cent that they had access to bank or credit cards. No respondent said that they had access to neither. This is in line with the findings of McKinsey (2009), that the percentage of adults over the age of 15 in Sweden in possession of a bank account is 99 per cent.

18. Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features.

19. See Segendorf and Jansson (2012a) and (2012b). The total cost covers both fixed costs for manufacturing, storage, various types of machinery and equipment and so on, as well as variable costs related to the actual physical management of cash among all the parties involved.

20. See Guibourg and Segendorf (2007). This reference describes the situation in 2002, but the basics remain the same.

The Riksbank's interview surveys show that households perceive both cash payments and electronic payments to be secure, with a small advantage for cash. The infrastructure required for ATMs and for electronic payments as a whole has good scope in Sweden, although in some places it might be considered insufficient. With regard to the perceived and actual security when using cash and electronic payments, it is difficult to point to any advantage for either means of payment. The picture is more fragmented with regard to the retail trade, depending on the type of operation, its size, the type of card used, how the daily takings can be deposited and so on.

One conclusion of the discussion is that a generally-binding obligation for everyone to accept cash payment probably would not promote a safe and efficient payment system. If the Government wishes to take care of special groups, it is probably more appropriate to legislate on an obligation in specific situations so that the socio-economic gains one wishes to make are at the lowest possible cost. A legislation process offers the opportunity to take into account different social interests and weigh these against one another. It is therefore reasonable that a binding obligation to accept cash is only introduced for certain specific operations and that the obligation is introduced by law, and not as has recently been the case for public authorities, through court practice. It should be added that the Swedish Post and Telecom Authority, together with the County Administrative Boards, has been tasked with promoting regional support and development measures to ensure that all members of society have access to basic payment services.<sup>21</sup>

## Alternative 2: Effects of abolishing the legal tender status

Abolishing the status of cash as legal tender would have two advantages. Firstly, the legislation would better reflect the reality. Today there is already essentially the freedom of contract and there is thus in practice no binding obligation to accept cash. When the parties agree that payment should be made in cash, cash could of course still be used, as now. We therefore assess that losing the status of legal tender would only have a very minor effect on the retail payments market, at least in the short term. Secondly, the legislation would no longer, as a result of lack of clarity, prevent market participants from gradually adapting to the market and optimising their costs for payments. This is a more long-term effect. The groups that are unable or unwilling to use other methods of payment than cash may be negatively affected, however, as it is possible that abolishing the status of legal tender would hasten developments towards a cashless society. Those affected most would be the groups that do not have access to other methods of payment than cash. As discussed above, however, these groups are small and can probably be better helped through targeted measures. Another probable consequence could be that the public authorities would be considered to have full freedom to choose which method of payment they wish to accept, taking into account the costs and risks. If this is not a desirable effect, the legislator has the possibility to regulate which methods of payment a public authority should accept.

Abolishing the status of cash as legal tender could, however, be harmful to the functioning of the payments market. This is if Sweden were thus to lack a payments standard that has broad acceptance and the retail payments market were to become too fragmented. However, we assess that the absence of legal tender would have little or no effect on the efficiency and fragmentation of the payments market since the market has established several smoothly-functioning payments standards.

## Some questions require investigation before abolishing the status of cash as legal tender

As we mentioned at the start, the status of legal tender currently has the function of clarifying how a payment shall be made (a debt serviced) in the cases where the parties have not concluded an agreement on this. If the concept is removed from

<sup>21</sup> This work is presented in County Administrative Boards (2013).

Swedish legislation entirely, there is some risk that if there is no agreement, discussions might arise as to how a payment should be made, or there may be uncertainty over whether a payment has been made so that the debt is finally settled. Such uncertainty benefits neither the payer nor the payee, and nor does it benefit the functioning of the payments market.

At the same time, one must take into account the fact that the retail payments market is a market that is changing and developing quickly.<sup>22</sup> Firstly, new methods of payment arise, such as via mobile phones. Secondly, the payment needs and behaviour of both consumers and companies alter, for instance through e-commerce. Thirdly, new agents become established on the retail payments market. Often, these are not banks but payment institutions or institutions for electronic money. A regulation on what means of payment should be used when nothing has been agreed on would risk becoming outdated as the market develops new methods of payment. In practice, it is probably relatively rare that it is unclear from the situation or custom how a payment should be made, even if no special agreement is reached on this.

Given the objective, to promote a safe and efficient payment system, a number of questions need to be investigated before the unique status of cash as legal tender is abolished. Firstly, the legislator must investigate whether there are any areas or situations where it is always necessary to pay in cash. This question is intimately linked to which groups in society, despite the legal right to hold a bank account, are unable or does not have the right to do so.<sup>23</sup> Secondly, there must be an inquiry into whether new regulation is required for payments when there is no agreement, so that it is made clear when a debt is finally settled.

If such a regulation is considered necessary, one possible starting point would be that payments that are not made in cash are almost always electronic and that such payments are almost always based on some form of underlying structure of accounts between which payments are made.<sup>24</sup> In a situation where the parties have not agreed on how a payment should be made, crediting the recipient's account in the right currency could mean that the debt is finally settled. A regulation should under all circumstances be as technology neutral as possible, so it can continue to apply to future methods of payment and thus one should not state specifically how the crediting of the account should be initiated. For the recipient of the payment, it should not make any difference whether the paying party uses a debit card, credit transfer, direct debit, cheque or some other method; the important thing is that the payee has the payment in his account. For further technology neutrality and to avoid discrimination against cash payments, one should consider also allowing payments in cash to mean that a debt has been finally settled.

## In the long run, it is reasonable that the unique status of cash as legal tender should cease

It is very likely that the use of cash will continue to decline in Sweden. This development probably means that it will become increasingly difficult to gain access to and pay in cash. At the same time, our payment behaviour and payment needs are changing, and new payment services are being developed. An obvious disadvantage with legislating in favour of a binding obligation to accept cash is that it entails a lock-in effect into a payment standard that the market appears to be slowly abandoning. The groups that are not able to manage other methods of payment than cash are probably very small and can be best helped through targeted measures. Given this, our assessment is that measures to strengthen the status of cash as legal tender would not benefit the development of a safe and efficient payments system.

Abolishing the status of cash as legal tender should not affect the current situation

22. See Sveriges Riksbank (2013) for a description of these changes and potential effects.

23. As mentioned above, the Swedish Post and Telecom Authority has been tasked by the Government with working to ensure that every member of society has access to basic payment services and should within the scope of this continue working to ensure that all groups in society have the possibility to use other means of payment than cash in the future. It is likely that measures in the form of both better technical infrastructure (telecommunications network, broadband, etc.) and easier-to-use methods of payment as well as information/education will be needed.

24. Cheques are not electronic, but are based on bank accounts. In a way, one can also say that the virtual currency Bitcoin is also based on an underlying account structure – what is known as the block chain, see Segendorf (2014).



in practice, as the current obligation to accept cash is not binding. In Sweden, there are several efficiently-functioning payments standards and the risk of an adverse fragmentation of the payments market is thus slight. It would also promote a safe and efficient payments system if the legislation was made more neutral with regard to the method of payment and if cash were in this respect placed on a par with other methods of payment. The risk of being locked in to certain, perhaps more costly, methods of payment would also be reduced with neutral legislation that enables market participants to adapt to the methods of payment that are most effective for them.

As cash is nevertheless still common, there is no immediate need to abolish its unique status as legal tender. However, it would be wise if the legislator begins to investigate now whether a new and technology neutral regulation is needed to determine the method of payment when there are no agreements on this and if there are situations in which it will continue to be necessary to pay in cash. It is also important that there is continued support for the groups that for some reason risk not having access to future electronic payment services. With good forward planning, we can create the right conditions to produce a regulatory framework that is adapted to the future retail payments market.



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