

From conflict to consensus in Sweden

How the divergence on housing policy between Sweden and the European Union was resolved

Swedish housing policy has traditionally differed from the policy pursued in most other European countries and was put to the test after Sweden became a member of the European Union. The debate, which has at times been vociferous, is now about to result in a compromise that most stakeholders consider acceptable.

When Europe was rebuilt after the Second World War, the housing market in most countries in the west and south evolved entirely on market conditions. However, many families could not afford to pay market rents or buy their own apartments. For this reason, several major social housing programmes were started as a result of government initiatives. These were structured differently in each country, but entitlement to an apartment that was subsidised under these programmes generally meant that earnings had to be less than a specified amount or that a family had a minimum number of children.

Swedish public housing and tenancy legislation

Sweden chose a completely different route. Municipal authorities were assigned to build tenanted properties and offer them to everyone with the support of and guarantees from central government. There were no restrictions in terms of income or any other barriers. The term 'social housing' was banned and the term 'public housing' was used instead. The coming together of people in these housing areas was intended to reduce the class divide and increase integration. Public housing became an integral part of the Swedish welfare state.

The Swedish Tenancy Act has since many years ago contained provisions providing security of tenure for tenants. If the landlord and the tenant are in dispute about a reasonable level of rent, the Regional Rent Tribunal compares the rent with that paid by other tenants for an apartment of a corresponding utility value. According to these rules, this comparison should only be made with apartments in the public housing sector. This led to private property owners feeling that they were being discriminated against. They felt that they were not regarded as full negotiating partners. This means that they find it difficult to charge the rents they would like to.

Private property owners go on the attack

Five years ago, private property owners through European Property Federation (EPF) turned to the EU and sought to use its rules and regulations with the aim of bringing about fundamental policy changes to the Swedish policy and to promote a debate about the public housing sector. With the help of a well-known accountancy firm, the private property owners produced supporting documents that they claimed showed that the Swedish municipal authorities did not impose market-based required returns on their housing companies. This was considered to distort competition. Reference was made to the EU's state aid rules which basically prohibited public support for private businesses, although there are several exceptions. The 'market economy investor principle' means that public

funds may not be provided on conditions that are more favourable than the conditions under which a private owner would provide funds to a private company in a corresponding situation.

Many people in Sweden found this difficult to take in. When Sweden became a member of the EU, it was said that its housing policy would continue to be a matter of national discretion. But in reality it appeared that the competition and state aid rules applied to all areas, with the exception of those countries that had been granted an exemption when they had become a member.

In other words, the main criticisms made against Swedish housing policy, according to the property owners, was not only the low required returns that had been set, which were far too low, but also that municipal authorities provide guarantees for the loans of their companies without them having to pay for this support and likewise, of course, the role of the public housing sector when there is a dispute about rent. All of this formed the basis of the private property owners' complaint to the European Commission about Sweden.

The Government appoints an inquiry

Immediately following the complaint, there was an exchange of correspondence between the Commission and the Swedish Government. The Minister responsible, Mona Sahlin (Social Democrats) also decided to appoint an Inquiry to draw up a Swedish policy that would protect the public housing sector without violating EU law.

It is an old tradition in Sweden to use inquiries as a means of addressing issues. Experts and representatives of different interests participate in the work of inquiries, which means that the results produced are generally thorough and provide broadly supported proposals that have good prospects of being realised through a Riksdag (Swedish Parliament) decision. However, on this occasion sector representatives were not included in the Inquiry.

Two alternatives proposed

When, the Inquiry was completed in April 2008 after almost two and a half year's work, it transpired that the detailed report only had a theoretical and legal approach and it did not provide an accurate reflection of how the Swedish housing market functions in practice. This resulted in critical comments being made by many of the instances when they later had the opportunity of submitting consultative statements on the proposal.

The Inquiry chose to elaborate on two alternative proposals. The first entailed that the main object of the housing companies' work would be to maximise their profit, which would be in line with EU law. The second alternative was to attempt to make use of an exception clause in the EU Treaty. This clause – referred to as 'services of general economic interest' – allows public authorities to provide financial assistance to companies, though it is then likely that the housing company must limit its target group to the most needy and just provide social housing. The Inquiry did not adopt a formal position in favour of either alternative, but referred the matter on for a ruling by the policymakers.

The criticism regarding the first alternative – profit maximisation – related to the fact that the municipal authorities started housing companies in the first place with the main aims of offering good housing and expanding their municipalities, not to make money. In the opinion

of some critics, there was not much justification for a municipal authority to own a housing company if this were to be completely overshadowed by the objective of making a profit.

The second alternative was also criticised. There is no political support for social housing in Sweden. One of the fundamental principles of the Swedish system is that tenancies are open to all income groups and thereby contribute to the integration of society. In the opinion of the critics, experiences from other EU countries also show that social housing results in the extensive control of operations and rents by the State. Housing companies, municipal authorities and many others wanted the operation to continue as before as far as this was possible.

New Government in Sweden

Sweden elected a new Government during the course of the Inquiry. The power that the Social Democrats had held for a number of years came to an abrupt end and the new Government was dominated by a party from the right. A new Minister – Mats Odell (Christian Democrats) – became responsible for housing policy. He announced early on a genuine desire to resolve the problem in Sweden to avoid taking orders from the EU.

As the Inquiry's proposal had been rejected, the Government instead looked for on an alternative that had the potential to be broadly supported in the Riksdag and could thus also survive a possible transfer of power.

Input from the Swedish Association of Municipal Housing Companies and the Swedish Union of Tenants

In April 2009, one year after the Government Inquiry presented its proposal, the Swedish Association of Municipal Housing Companies (SABO) –a trade and interest organisation for public housing companies – and the Swedish Union of Tenants presented a joint proposal that was said to comply with EU law and which could help to improve tenancy law and rights.

The proposal was designed to satisfy all of the stakeholders' vital interests. The tenants would be guaranteed security through a strong form of security of tenure and the established collective negotiation system would be maintained, as would the rules for the Regional Rent Tribunal's consideration of reasonable rents for an apartment. Furthermore, a check would be introduced, which would mean that any substantial rent increases would not take effect immediately but would be introduced gradually.

Public housing companies would be allowed to continue to rent out homes to everyone and be guaranteed the opportunity of working on a businesslike basis at the same time as having social responsibility. Private property owners would be recognised as full parties to rent negotiations.

Account was also taken of their view that municipal authorities should impose a required return for companies and be paid for providing guarantees for loans taken out by companies. The EU's state aid rules were satisfied by requirements for companies to observe businesslike principles and the competition rules were satisfied by abolishing the special role held by public housing companies as regards rent reviews.

As soon as the proposal was presented, Odell (Minister for Housing) held a press conference where he described it as "a historic step towards a better functioning tenancy market and for more tenanted apartments to be built". Even the President of the Swedish Property Federation, whose organisation lay behind the complaint to the European Commission four years previously, stated that "there is now a broad common understanding between partner organisations in the tenancy market regarding the need for statutory amendments, which means the Government's future Bill will be broadly supported in the Riksdag". He also said that: "This proposal means that we will have legislation that no longer violates EU competition legislation. Given this, we will be able to withdraw our complaint to the EU."

Mats Odell directed a new proposal to be drawn up within the Government Offices which in all essential respects was based on the proposal jointly submitted by the Swedish Association of Municipal Housing Companies and the Swedish Union of Tenants. The Government submitted a Bill to the Riksdag with a proposal for new legislation on 25 March 2010.

The Government's new proposal

The Government's new proposal involves passing a new act for public company municipal residential housing companies. This stipulates that housing companies with public aims shall rent out apartments, promote the supply of housing and offer tenants the opportunity of having a degree of influence. This operation must be conducted according to 'businesslike principles'; the operation must be characterised by a profitability perspective, but there will be no requirement to maximise profits. The requirements for businesslike principles mean that municipal authorities must set a required return and take payment for guarantee commitments. However, being 'businesslike' can also be combined with social responsibility, provided that it is in any event profitable over the long term.

As regards the Tenancy Act, the Government's proposal basically follows the input of SABO and the Swedish Union of Tenants. In the event of a tenancy dispute, the Regional Rent Tribunal will no longer just compare rent levels with apartments in the property holdings of public housing companies, but can also make comparisons with apartments owned by private landlords, provided the rent of the comparison apartments has been determined through negotiation. This is combined with a safeguard for tenants, whereby a major increase in rent must always be spread over several years. However, the local parties must ensure that the setting of rent corresponds more closely than at present with the tenants' objective valuations of the varying utility values of apartments.

Broad support for new rules and regulations

If everything goes to plan, municipal housing companies will need to adopt a profitability perspective concerning everything they do yet at the same time continue to offer homes to everyone and negotiate rents with the Swedish Union of Tenants. The municipal authorities will need to formulate clear ownership directives and set a required return based on the market situation and appetite for risk, but they will not be able to require a housing company to perform assignments that are of social benefit but unprofitable, in any event not unless they pay for it.

Rents will also continue to be set via collective bargaining and no market rents will be introduced. Nor will the Government be involved in the setting of rents. The new rules and regulations mean that the importance of the Swedish Union of Tenants will increase as regards consumer protection.

The Riksdag will deal with this proposal in June 2010. When the Riksdag reconvenes in October, a general election will have been held, the outcome of which is uncertain. However, everything suggests that the new rules will enter into force on 1 January 2011, regardless of the outcome of the election. Consequently, the private property owners will probably withdraw their complaint from the European Commission and the matter will be resolved.

Tenants as well as both municipal and private property owners will then all have cause for celebration. The Swedish system has passed the test and it has been possible to maintain it in broad terms. All the parties have had their most important demands satisfied and regards the solution as a reasonable compromise. There have been several significant changes to the new rules and regulations and, even if they are not as great as those once proposed by the Government Inquiry, the Swedish Government is of the opinion that they fully meet EU requirements. Odell (Minister for Housing) has succeeded in his aim to withdraw the issue from Brussels, resolve the situation at national level and create rules and regulations that everyone appears to be able to live with at the same time as potentially providing the preconditions to make tenancies a more attractive form of home occupation.

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