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SwedenAuthor(s): Tom Madell

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Sweden

Public Private Partnerships in Sweden

I. Introduction

A researcher in Finland some years ago wrote that when it comes to privatisation and outsourcing, Sweden talks and Finland does.¹ This is not entirely true, since the public sector in Sweden every year advertises approximately 40,000 public contracts within the public procurement and tendering regime. The total value of those public contracts is estimated as something between 35 and 45 billion € (300 and 400 billion SEK). In addition to these public contracts, one also finds different kinds of purchasing for works, supply and services that are concluded without using the public procurement regime. Some of these can also be different sorts of Public Private Partnerships.

It should also be mentioned that Sweden has not yet implemented the new public procurement Directives (2004/17/EG and 2004/18/EG). But when they are adopted Swedes will also implement the competitive dialogue required. In addition, in the current legislation – the Public Procurement Act (Sw.: lagen (1992:1528) om offentlig upphandling, LOU – and in the proposed rules there are similar procedures for a range of procurements, classified depending on whether they are under or over the thresholds that follow from the directives. The Act also covers B-services.

Except for the Public Procurement Act and the forthcoming implementation of the procurement directives – including the procedures required for competitive dialogue and concessions etc. – there are no explicit rules concerning PPPs in Sweden.

II. Public Private Partnerships and local government

The Green Paper on Public Private Partnerships distinguishes between two formats of public pri-

vate partnerships: the contractual (or the concession model), and the joint-venture model. The PPPs used in Sweden are usually of the former kind with relationships between the public and private sectors based on contracts and different kinds of PPPs and BOTs. They have been used for a long time for the building and management of e.g. athletic arenas and similar kinds of projects in urban areas.

It is no secret that the rigorous public procurement regime has not always been used when public bodies have entered into these kinds of contracts and in some cases – like in the case C-399/98 La Scala – Sweden has been criticised by the Commission for not using the proper public procurement procedures. In 2003 the Commission decided to issue a reasoned opinion against Sweden concerning a decision by a municipality to award a framework contract (covering several works worth at least 19.6 million €) without applying the tendering rules in the Directive on the procurement of public works (93/37/EEC).²

Whether one considers these types of agreements as being “real” PPPs or not, they do involve some kind of partnership between the public and the private sector.

III. Arlanda Express

The most famous PPP-project in Sweden is the Arlanda Express project, considered by some to be the only true PPP-project in Sweden, while in other Nordic countries, several infrastructure projects including schools and hospitals have been realised through PPP-solutions. The Arlanda Express project was constructed as an exclusive 45-year concession given by the Swedish government to a private company to build, finance and operate the high-speed rail link between Arlanda Airport and Stockholm Central Station. The railway connection was planned and constructed by A-Train AB, and, in 1999, this part was transformed to the government. The operation concession was granted until 2040 and, under the concession agreement, Arlanda Express train units are owned and operated by the same company, while the company rents the railway. Arlanda Express also has complete flexibility in setting fares. The government has recently proposed that Sweden will increase the use of similar arrangements for private partners to finance, build and maintain public roads.

1 See Linnéa Henriksson, Om orsaker till marknadsorientering i kommuner i Finland och Sverige, Nordisk Administrativ Tidsskrift 2003, pp. 54-76.

2 See IP/03/1037.

IV. Health and medical services – a new arena for PPPs?

For many years the main responsibility for providing various types of public services in Sweden has rested on local government, i.e. the municipalities or the regional county councils. The importance of local government has also grown apace with the construction of the welfare state. The changes in Swedish welfare policies during recent years, with decentralisation and privatisation, have also been aimed at decreasing the size of the public sector, whilst keeping up the levels and maintaining the goals of the welfare state. Legislation on social services and other local government issues has increasingly been structured as “frame-work” laws although they typically provide few details.³

The Swedish government has recently⁴ suggested changes in the county councils, allowing for the possibility to enter into contracts with private companies for the provision of health and medical care. The new legislation, which is meant to be in force from July 1st 2007, removes the limitations⁵ currently on county councils (that have been in force since the late 1990s) and now allows them to hand over the management of regional hospitals, regional clinics and other hospitals to private entrepreneurs. According to Sections 3, 5 and 18 of the Health and Medical Services Act (Sw.: hälso- och sjukvårdslagen (1982:763)) county councils again will be able to enter into contracts concerning the management of hospitals without needing to state that the activity will not generate profit to the owners or that the activity needs to have public funding. In contrast with the previous legislation there is no longer a demand that at least one hospital in the county needs to be managed by the county council.

The purpose for the changes in the Health and Medical Services Act is to increase the number of providers of public financed health services, to increase the access to health services (and the choices of the citizens) and to stimulate the development of effective solutions to a lower cost. It is considered that building a large number of private entrepreneurs will lead to specialisation and to a more effective and rational use of new techniques etc. To what extent different parts of the health and medical care should be handed over to private entrepreneurs or be provided by the county council are decisions that need to be made by each separate county council from the conditions associated with that particular region.

This development might be seen as the first step to introduce PPPs as a concept in the area of health and medical services, not just at the local level but also at the regional level.

V. To be continued...

Anyone who focuses on government market activities, privatisation, government contracts, and public procurement etc. can no longer hide behind the dichotomy of private law-public law in analysing a certain situation. There are a lot of “quasi” contracts and other relations between the public sector and citizens that need a focus in order for commentators to explain and understand different ‘twilight zone’ phenomena. Theorists and practitioners alike have a unique responsibility to shape the future legal landscape in this “swampy” area. This requires more than just a review of current public-private models of cooperation. It requires the broader “community” models to be informed by the trend to “multilateralisation” and “responsibilisation”. An increased use of PPPs might be one way of meeting those needs, but it still remains to be seen how this will be done within the context of the EC-Treaty and the sometimes rigorous procedures that follow from the procurement directives. *Tom Madell*

United Kingdom

Current UK Developments

It has been a relatively slow start to the year. In the first 4 months¹ of 2007 11 PFI Projects closed in the UK. This compares with 19 in the same period of 2006 and 24 in the same period of 2005. The capital

3 See inter alia the Social Services Act (Sw.: socialtjänstlagen (2001:453)).

4 See Government Bill 2006/07:52, Driftsformer för sjukhus.

5 The provisions in Health and Medical Service Act are currently stating that the management of a hospital are not allowed to generate profit to the owners or shareholders, that medical treatment provided by regional hospitals or regional clinics are not allowed to be managed by private entrepreneurs and that at least one hospital in the county need to be managed by the county council.

1 Source PUK.