



This project has received funding from the European Union's Seventh Framework Programme for research, technological development and demonstration under grant agreement no. 290694.

## TENLAW: Tenancy Law and Housing Policy in Multi-level Europe

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### **Intra-team Comparison Report for DENMARK, FINLAND, SWEDEN**

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Deliverable number 4.1

Lead beneficiary: Technische Universiteit Delft

# 1. The current housing situation

## 1.1. General Features

### 1.1.1. Historical evolution of the national housing situation and housing policy

Compare the historic evolution of the national housing situation and housing policies briefly.

- Very brief overview and comparison of housing situation policies since WW II (or even before, if useful)
- In particular: Are there significant differences as regards the development of the principal types of housing tenures from the 1990s on? If yes, confront the reasons why that happened (e.g. privatization or other policies).
- Compare in particular: To which extent were the countries under review affected by migration within the country, immigration or emigration from/towards other countries inside and outside the EU (including war migration as in Ex-Yugoslavia)

Generally the historic evolution of the national housing situation in the three countries has been very similar without major differences. The differences that might be indicated in the following can generally be explained from different use of financial policies and instruments e.g. types of subsidization over a period of time, as well as the development of different types of dwellings (which will be compared in a later part of the report), more than differences in demand and supply, legislation or general housing policies.

In Denmark as well as in Sweden many people moved to towns and larger cities – especially the capitals Copenhagen and Stockholm – in connection with the transition from an agricultural to an industrial society in the mid and late 19th century even though Sweden was industrialized a bit later than Denmark. The situation was the same in Finland though wars in the 20<sup>th</sup> century also influenced the demand for housing especially in Helsinki (the capital).<sup>1 2</sup>

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<sup>1</sup> Anneli Juntto, *Asuntokysymys Suomessa Topeliuksesta tulopolitiikkaan* [‘The Social History of Finnish Housing Policy from Philanthropy to Corporatism’], Helsinki: Valtion painatuskeskus 1990, p. 18.

<sup>2</sup> In Sweden, 40 % of the population live in metropolitan urban areas. Over 2 million, or 22 percent, live in Stockholm. The population of Helsinki is approximately 600.000 (2012 according to [Befolkningsregistercentralen Kommunernas invånarantal i storleksordning 30.09.2012](#)). The greater Helsinki region has a population of approximately 1.3 million out of 5.4 million people in Finland. Today (2013) approximately 1.2 million people live in Copenhagen. That is approximately 22 % of the population in Denmark. The greater Copenhagen region is home to approximately 1.95 million residents. In 1834 119,292 people lived in Copenhagen. In 1890 the population had more than doubled to 312,859; by 1930 it had increased to 612,434. The second largest city, Aarhus, has approximately 256,000 citizens today. Source: Statistics Denmark and Statistics from the Municipality of Copenhagen.

The industrialization did not just mean urbanization, but also a new way of looking at tenancies. Liberal ideas of freedom of contract and the owner's right to freely dispose of their property broke through. These were – in Sweden – expressed in an act from 1907<sup>3</sup> that regulated rented accommodation. This was the first statutory regulation on tenancies in the three countries. Until 1916, there were no specific statutory restrictions in Denmark on the right to freely establish conditions for rental agreements for residential accommodation. The first Danish statutory regulation of tenancy relationships was introduced in 1916, as a result of a desire to accommodate a sharp increase of rents brought about by a considerable increase in running property costs related to the outbreak of the First World War. A similar temporarily price regulation on tenure was introduced in Sweden and Finland (in 1917). The tenancy relationship was until this point regulated solely through the individual agreement between the parties concerned. The reason that there had been no political need to regulate this area up until this point in any of the countries was probably that there was no housing shortage, rising prices or other circumstances which created a great need to protect the parties in the tenancy relationship.

The interwar politics in Finland were concerned with the housing of landless population in the countryside, but also institutional foundations were laid in the 1920's, when the first tenancy act and the first limited-liability housing company's act were passed in 1925. The first permanent Rent Act in Denmark entered into force in 1937. Permanent rules on (indirect) security of tenure were introduced in Sweden in 1939 (by changes of the act from 1907). Due to the outbreak of the Second World War, the regulation of rents again came into focus for socio-political reasons even though the countries were affected by the war in different ways. There was a desire to avoid rent rises caused by the housing shortage, which was brought about by halted construction, rising prices, etc. As a result, from 1939, in Denmark a series of temporary regulations were once again introduced into the rent legislation concerning the scope for setting and adjusting rents due to the Second World War. In 1940 rent regulation came into force in Finland, and in 1942 a temporarily regulation was also introduced again in Sweden. Again the regulation was based on similar purposes in all three countries.

The preconditions for Danish housing policy in the post-war years, and the housing policy reforms from the mid-1960's onwards in particular, can be traced back to the situation that resulted from the outbreak of the Second World War. Housing production remained at a low level during the 1940's as a result of material shortages and building restrictions. As well in Sweden as in Denmark and Finland the rent control and the price control of cooperative apartments (Sweden) was kept when the war ended. In Finland the government first directly subsidised production in the post-war housing shortage and the so-called "arava" system<sup>4</sup> was introduced. This regulation was a "unique" Finnish system that is not known in Denmark or Sweden and it had an impact on the Finnish housing markets from the 1950's onwards.

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<sup>3</sup> The act on access right to immovable property/*Lag om nyttjanderätt till fast egendom*. SFS 1907:36 as part of The Swedish Land Code (*Jordabalken*) Chapter 3.

<sup>4</sup> The state granted loans with the aim of housing displaced people and of coming to the aid of the demand for labor in urban areas. *Laki asuntolainoista, -takuista ja avustuksista* ['Act on housing loans, guarantees and subsidies'] (224/1949); *laki asutuskeskusten asuntorakennustuotannon tukemisesta valtion varoilla* ['Act on state-financed subsidisation of housing development in urban areas'] (226/1949).

The rental sector was comprehensively reformed in Sweden during the 1960's, and in 1970. The Swedish Land Code of 1970,<sup>5</sup> which contains statutory rules about real estate, was introduced. The provisions on tenancy were moved to Chapter 12, often called the Tenancy Act. At the same time the "utility value" system was introduced, i.e. that rents shall be determined by a comparison with similar tenancies in an area. A system based on the same principles was already in function in Denmark<sup>6</sup> at the same time though the systems were and are not comparable as to how they regulate the rent and how they are legislated. During the period the industrialisation in Finland began a little later than in Sweden and Denmark, but in 1968 rent control was also introduced in Finland mainly due to active Labour-market unions that found that rent control was an element of incomes policy. It made way for a general rent regulation in 1974.

During the 1970's, Denmark saw more construction activity than ever before.<sup>7</sup> The Million Program in Sweden added 1 million dwellings in the period of 1965-1975. During the second half of the 1970's the problem was rather surplus than shortage, and the interest shifted to managing and developing the existing house stock rather than demolishing it. During this period in Sweden there were huge subsidies to owned housing; the state's subsidized interest rate was lower than the inflation as all interest costs were deductible against the marginal tax rate. Parts of the house stock were still outdated; however social segregation in the modern and high standard rental housing constructed by "The Million Programme"<sup>8</sup> was also recognized as an important problem. Those who lacked financial opportunities to buy a house of their own were dependent on renting a dwelling in a multi-family house.

The Danish home-ownership rate declined a bit after the mid-1980's due to a sharp reduction in the tax rebate on interest payments and not so many new single family houses were built.<sup>9</sup> However, from the mid-1990's building of home owned dwellings picked up again and reached a peak around the turn of the millenium. Since then it has shown a downward trend.

In Sweden – from 1980 to 1990 – managing and developing the housing stock continued to be the main problem, together with a shortage of small apartments and

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<sup>5</sup> *Jordabalken* – SFS 1970:994.

<sup>6</sup> Can be dated back to 1923. Consolidated Act no. 228 of May 18<sup>th</sup> 1923.

<sup>7</sup> Construction in Denmark reached a peak in 1973 which has yet to be surpassed: Almost 56,000 new homes were completed mainly in the private sector. As a result of rising construction costs, the introduction of VAT on construction, rising interest rates and the oil crisis, new construction decreased from again the mid-1970's.

<sup>8</sup> The Million Programme was implemented between 1965 and 1974. The aim was to construct one million new modern dwellings within the ten years period, and the idea was that everyone should be able to have a home at an affordable price. This could be solved by subsidies which made it possible for families with children to rent or to buy a home of their own. Country report of Sweden section 1.1.1.

<sup>9</sup> The drop in the 1990's was most pronounced for detached and semi-detached dwellings – typical for home ownership – where the number of completions dropped to only 25 % of the peak year completions, and compared to a drop to 50 % for multi-storey dwellings – typical for the rental market. The proportion of the total housing pool in Denmark made up of private-sector rental properties has more than halved during the past 40 years. From accounting for approx. 40 percent of dwellings during the 1960s, this form of housing today accounts for around 17 %.

student apartments. The economic crisis in the early 1990's made it clear that the housing subsidies must be reduced. Government expenditure on interest subsidies had increased rapidly due to high interest rates and an unregulated credit market, which prompted the Government to take action.<sup>10</sup> From the turn of the millennium onwards, the focus on housing policies has been a rational use of energy and availability, but also indoor environment and ecology.<sup>11</sup>

Significant for the period in Finland leading to and including the seventies, when most suburbs were built, was that a state loan was the only housing loan that people could get. Financial markets were regulated, and kept on being regulated until 1983–1987.

In Denmark building activity picked up from around 1995; however, the economic crisis from 2007 onwards has negatively affected the activity. The relative supply swing towards rental housing in the mid-1990's can be said to be politically influenced mainly because the non-profit sector mainly was in multi-storey buildings and the supply of new units required building permits from the government. In Sweden the biggest change in the different tenures from the 1990's and onwards was the share of tenancies in multi-family houses, which has declined.<sup>12</sup>

The late-eighties “housing bubble” had a large impact on the housing market in the three countries, with rent increases followed by political reforms in the start of the 1990's. In Finland, the Finnish housing market were influenced by three major economic policy factors during this period. In 1993, mortgage debt deduction was transferred from a progressive tax to a basis equal for all; from 1991 to 1995, tenancy law was liberalised; and during the new currency euro, interest rates have been kept low by the European Central Bank.

The last factor has been the key reason for the continued, even increasing, attractiveness of homeownership in the new century in Finland especially. At the same time, state-subsidised developments were moderate, though it was promoted counter-cyclically in 1992–1993 and again in 2009–2010, targeting both rental housing and the “intermediate” tenures between ownership and renting. Once the latest counter-cyclical economic policy ended, state-subsidised production of especially ordinary rental apartments – as opposed to rental apartments for special groups, such as students, the elderly, and the disabled – has reportedly been in a downward spiral (in 2011) and far behind objectives (in 2013). The consecution in state financing for ordinary rental dwellings was phased out at the turn of the century. In the 2007 budget, there was no space for direct state-loans any more.

Denmark and Sweden did not (and has not (yet) got) euro as their currency but interest rates has been kept low as well mainly as a consequence of the relation to the other EU

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<sup>10</sup> Swedish Board of Housing, Building and Planning, *”Bostadspolitiken - Svensk politik för boende, planering och byggande under 130 år”*, (2007) p. 21.

<sup>11</sup> Swedish Board of Housing, Building and Planning, *”Bostadspolitiken - Svensk politik för boende, planering och byggande under 130 år”*, (2007) p. 16.

<sup>12</sup> Between 1990 and 2007, the share of tenancies in multi-family houses decreased from 75 % to 69 %. At the same time, the share of owner-occupied apartments in multi-family houses increased. The sharpest decline in rental units, and the largest increase of owner-occupied dwellings during this period of time was in Stockholm. The distribution between rental and owner-occupied dwellings did not change outside the metropolitan areas.

countries. All three countries have independent central banks that may change rates if it is necessary to (try to) avoid inflation.

Housing policies in the three countries has mainly been the same throughout the years. Swedish housing policy in the post-war period has focused on providing good-quality housing for the whole population, without any purpose to build or grant special housing for low-income households. The aim has been to create good housing for everybody, by taking a broad approach to the complexities of the housing market. The idea behind this strategy has been that by improving the overall housing situation, the situation for vulnerable households would also improve. There was a change in Swedish housing policy in the last decade of the 20th century, when special economic regulations that had previously existed for the public housing sector were abolished. The main focus on both a national and a regional level today is the shortage of housing in the urban areas, and the municipal responsibility for housing construction is currently being debated in a number of government inquiries.

Danish housing policy has also in general had the main aim – through a comprehensive supply of housing to ensure that good (and healthy) housing is available to all of the population. In recent years, there has also been a focus on ensuring that greater consideration is given to the environment and energy efficiency in connection with new construction and refurbishment. The taxation of homeowners has been put on hold at a certain level, and welfare in other areas is not being financed through the tightening of this taxation.

In Finland realising housing at a reasonable price for all households is perhaps the first aim of housing policy. It is pursued through the system of production support, which includes interest subsidies and up-front grants for production and renovation. This system has also served the aims of counter-cyclical economic policies of the government. Based inductively on the policies enacted, another aim of housing policy has seemed to be the promotion of owner occupancy.<sup>13</sup> Ensuring possibilities of housing for low-income households is one policy aim on the ground that a dwelling is a necessity. In urban areas, the prevention of differentiation processes in residential neighbourhoods is another aim of housing policy. These aims are integrated in the purpose of tenant selection in the rent-regulated state-subsidised social rental dwellings.<sup>14</sup>

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<sup>13</sup> A final report of the Working Group for Developing the Finnish Tax System (2010) listed this aim in the second place, right after the realisation of housing at a reasonable price for all households: 'A second typical aim of housing policy seems to be to encourage homeownership. This is manifested, among others, in the fact that owner occupancy is treated more lightly in taxation than rental housing is, and that first-home buyers, in particular, are allocated targeted tax subsidies.' *Verotuksen kehittämistyöryhmän loppuraportti* (Final Report of the Working Group for Developing the Finnish Tax System), Valtionvarainministeriön julkaisu 51/2010, Helsinki: Ministry of Finance 2010, 160.

<sup>14</sup> The purpose of tenant selection is that interest-subsidy rental apartments are assigned to households having the most acute need for a rental dwelling, whilst striving for a varied community structure in the building and a socially balanced neighbourhood. Act on Interest Subsidy for Rental Housing Loans and Right of Occupancy Housing Loans, June 29, 2001/604, 11a (The purposes of resident selection) August 18, 2006/717); correspondingly, *aravarajoituslaki* 17.12.1993/1190, 4a ['The purposes of resident selection'] (August 18, 2006/716).

A lately emerging aim of housing policy has been the prevention of urban sprawl. This aim is related to the environmental impact of housing and transportation.<sup>15</sup>

Migration, immigration or emigration, has played a more indirect role on housing policies and tenancy law regulation as a whole in the three countries, and the means behind regulation are mainly the same though the sizes and nationalities of groups of immigrants differ between the countries.

Immigration has no direct influence on the current general housing situation in Denmark from a tenancy law point of view. Legislation on social services includes regulation on refugees and asylum seekers regarding accommodation. This is mainly on a municipal level. It is a fact that immigrants come to Denmark<sup>16</sup> and that they have a demand for housing, but this has not created major problems regarding demand and supply. Housing policies regarding immigrants on the rental market has been focused on ghettoization. The initiative aimed at combating ghettoization is partly justified based on the fact that large groups of immigrants and their descendants – “people of non-Danish ethnic origin” – are becoming concentrated in certain residential areas. Part of the initiative aimed at ghetto development therefore represents an attempt to offer incentives to certain population groups to settle in other residential areas not characterised by ghettoization. However, the legislation is not directly aimed at any individual or specifically named population groups. The definition of whether a certain area is a ghetto is defined by law under certain criteria.<sup>17</sup>

In Finland the dispersal of immigrants is pursued through municipal housing policies and urban planning. The government advises the municipalities on the policy goals, for instance, through such guidelines as a framework policy in 1997 and migration policy programme in 2006, but the municipalities independently decide on policy implementation.<sup>18</sup> Refugees and asylum seekers are the two groups most strongly targeted by the state and the municipalities regarding accommodation.<sup>19</sup> In addition, the state gives housing renovation grants, subsidising renovations of the apartments of elderly and disabled people<sup>20</sup> and the construction of lifts<sup>21</sup> and other improvements enabling elderly or disabled people to access and move in the building.<sup>22</sup>

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<sup>15</sup> The list of housing policy aims is based on *Verotuksen kehittämistyöryhmän loppuraportti* (Final Report of the Working Group for Developing the Finnish Tax System), Valtionvarainministeriön julkaisuja 51/2010, Helsinki: Ministry of Finance 2010, p. 159–161.

<sup>16</sup> Approximately 542,738 immigrants and/or their ancestors live in Denmark – 9.8 per cent of the total population (2010). The total population is expected to grow from 5.8 million today to 6.1 million people in 2050.

<sup>17</sup> A often used definition of ghetto is “an extreme form of residential concentration; a culture, religious or ethnic group is ghettoized when a high proportion of the group lives in a single area , and b) when that group accounts for most of that group in the area” (The Dictionary of Human Geography, 2000).

<sup>18</sup> Mari Vaattovaara, Katja Viikama, Saara Yousfi, Hanna Dhalmann and Timo M. Kauppinen: *Contextualising ethnic residential segregation in Finland*, p. 233.

<sup>19</sup> Mari Vaattovaara, Katja Viikama, Saara Yousfi, Hanna Dhalmann and Timo M. Kauppinen: *Contextualising ethnic residential segregation in Finland*, p. 234.

<sup>20</sup> *Laki asuntojen korjaus-, energia- ja terveyshaitta-avustuksista* 1184/2005, sections 5(1), 6(1.1 and 2), and 8(1).

<sup>21</sup> *Laki asuntojen korjaus-, energia- ja terveyshaitta-avustuksista*, section 6(1.4).

<sup>22</sup> *Ibid.*

Immigration is also highly concentrated to the metropolitan areas. Over the past fifteen years, Sweden's population has increased mainly due to more people immigrating to Sweden than those who emigrated. Population projections indicate that immigrants will continue to contribute to a significant portion of the population increase in the foreseeable future, with more people applying for asylum and receiving a residence permit in Sweden in recent years.<sup>23</sup> For the majority of the immigration groups, a concentration to the metropolitan areas is common and today immigrants can move to the place they want to live without restrictions. This was not the case earlier.

### 1.1.2. Current situation

- (Give a brief comparative overview of the current situation.
  - Compare in particular: What is the number of dwellings? How many of them are rented vs. owner-occupied? Is the housing situation satisfactory from a tenant perspective, especially in terms of supply and quality?)

The different types of dwellings and tenures in the three countries and the different available statistics make it difficult to draw any conclusions on the spread of households in different sizes of buildings. The larger part of people in all three countries is home owners, when including co-operatives. It seems though that a larger part of the households in Sweden and Finland live in co-operatives of different kinds. This is probably due to the fact that these types of dwellings are more popular in Sweden and Finland than in Denmark and the fact that the development of these types of dwellings has had more focus in housing policies in Sweden and Finland.

The approximate number of households in Denmark in 2012 was 2.5 million. The approximate number of dwellings in Denmark in 2011 was 2,745,000 million. 49.2 % was owner occupied. 7.3 % co-operatives. 18.9 % is rented social housing. 14.1 % are dwellings in the private rented sector. There were 465,210 private rented dwellings in 2010. Approximately 70 % were in buildings with more than 3 units. The rest were in single family houses and buildings with 2 units.<sup>24</sup>

There were 4,524,292 million dwellings in Sweden in 2011. Of these dwellings, 56 % were located in multi-dwelling houses and 44 percent in one or two dwelling buildings. Of a total of 4,582,000 households in Sweden in 2010, 41 percent lived in rented dwellings, 20 percent in owner-tenant<sup>25</sup> apartments, 34 percent in owner-occupied

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<sup>23</sup> Statistics Sweden, Demographic reports 2008:4, "*Immigrants' migration patterns*" (2008) pp. 3. In 2012, more than 111,000 people had received work and residence permits in Sweden. That is the highest annual figure to date and represents an increase of 19 percent compared with 2011. The Swedish Migration Board, <http://www.migrationsverket.se/info/6627.html>, (search completed 30.11.2012).

<sup>24</sup> Statistics Denmark and Whitehead, Christine et al.: *The Private Rented Sector in the New Century: A Comparative Approach*. København: Boligøkonomisk Videncenter, 2012.

<sup>25</sup> The form (bostadsrätt) was created in 1930. For a long time (1942-69) a strict price regulation applied and the holder of a co-operative right was not allowed to change the apartment. Nowadays the apartments can be sold at a market price and can be changed in anyway the owner wants as long as it

dwellings (self-owned one or two dwelling buildings) and 5 percent lived in other forms of tenure.<sup>26</sup> 2 million dwellings in one- and two dwelling buildings<sup>27</sup> and approximately 2.5 million dwellings in apartment buildings, of which 1,588,717 are tenancies, 947,102 are cooperative apartments and 566 are condominiums.

In Finland the number of dwellings is 2.8 million, about 2.5 million of which are permanently occupied.<sup>28</sup> About one third of permanently occupied dwellings are rented. At the same time, only a quarter of the population lives in a rented dwelling: in 2012, 3,817,670 people lived in an owner-occupied home, 1,289,969 in a rented dwelling, and 200,846 in a right-of-occupancy dwelling.<sup>29</sup> The discrepancy rises because the size of renter households (on average 1.65 persons in 2011)<sup>30</sup> is smaller than the size of owner-occupier households.

The supply of rental housing seems to be a general problem in the largest cities in Sweden and Finland and no solution to this has been sufficiently generated yet.

In Denmark there is no general housing shortage and the system for buying, selling and renting of property appears to be fair and well balanced. In the major urban areas and cities with institutions for higher education, particularly Copenhagen, Aarhus, Odense and Aalborg there is strong demand for attractive rented housing and for low-cost rented housing, but there is no documentation for general shortage of housing – if you do not want to live directly in the centre of the city. Studies say that in some areas there might be an increasing rental demand from older persons who need rental dwellings. Furthermore, increasing rental demand has emerged, caused by earlier departure of children from the parental home and an increasing tendency towards more single living. As a result there might be a demand for more rental housing in the future.<sup>31</sup> In the longer perspective, declining building activity in the recent years could also create demand for more rental housing in general.

There is a shortage of rental housing in Sweden, especially in Stockholm (the capital), but also in the larger cities of Göteborg and Malmö, but also in other cities with a university. Overall, there is a net shortage of 92,000 to 156,000 dwellings in the whole country, depending on which economic model is used. This means that the supply

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does not cause damage to other apartments or the house. Today it is regarded as a de facto ownership, even though it is formally a co-operative.

<sup>26</sup> According to calculations made by Statistics Sweden  
[http://www.scb.se/Pages/TableAndChart\\_\\_\\_\\_335518.aspx](http://www.scb.se/Pages/TableAndChart____335518.aspx).

<sup>27</sup> Swedish National Board of Building, Housing and Planning, “*Boverkets lägesrapport - oktober 2012*” pp. 7, 11.

<sup>28</sup> 2,517,000 at the end of 2009. Dwellings and Housing Conditions, Statistics Finland at  
[http://www.stat.fi/til/asas/2009/01/asas\\_2009\\_01\\_2010-11-12\\_tie\\_002\\_en.html](http://www.stat.fi/til/asas/2009/01/asas_2009_01_2010-11-12_tie_002_en.html).

<sup>29</sup> Dwellings and Housing Conditions, Statistics Finland at  
[http://www.stat.fi/til/asas/2012/01/asas\\_2012\\_01\\_2013-10-18\\_fi.pdf](http://www.stat.fi/til/asas/2012/01/asas_2012_01_2013-10-18_fi.pdf).

<sup>30</sup> Dwellings and Housing Conditions, Statistics Finland at  
[http://www.stat.fi/til/asas/2012/asas\\_2012\\_2013-05-22\\_fi.pdf](http://www.stat.fi/til/asas/2012/asas_2012_2013-05-22_fi.pdf).

<sup>31</sup> Morten Skak: *Projecting Demand for Rental Homes in Denmark*. European Journal of Housing Policy, Vol. 8, Nr. 3, 2008, s. 258. Hans Skifter Andersen, Morten Skak: “*Privat boligudlejning - Motiver, strategi og økonomi*”, SBi 2008:01. Hans Skifter Andersen: *Private udlejningsboligers rolle på boligmarkedet – en registeranalyse*. Statens Byggeforskningsinstitut 2007.

needs to increase by between 102,000 and 163,000 homes where there are shortages, and reduced by 7,000 to 10,000 homes in the regions where there is a surplus.<sup>32</sup>

In Finland 270,000 dwellings, or close to 10 % of the stock, are vacant. The problem of vacant dwellings affects municipalities in the northern and eastern Finland, with internal migration flowing into towns in the south and in the west. 23,000 dwellings are being built annually (on average 28,000 since 1990).<sup>33</sup> While new construction in the greater Helsinki region has slightly surpassed the increase of household-dwelling units in 2003–2009, in the city of Helsinki new construction has fallen below that rate, intensifying demand there.<sup>34</sup> The shortage of housing for middle-and-low-income classes in Helsinki has not constrained the desire to migrate there. Larger apartments, especially those with three rooms and a kitchen, may sometimes be vacant even in cities. This is because more and more people live alone, not only in Helsinki, making the demand for smaller apartments higher.<sup>35</sup>

Average useful floor area per dwelling in Denmark in 2009 was 114.4 m<sup>2</sup>. That equals 51.4 m<sup>2</sup> per person. This is probably a large area compared to other countries, but the Danes have been accustomed to living in large dwellings when possible, and because of this demand for larger apartments and houses, floor area in new-build houses has also increased. It is not uncommon that a family of two adults and two children have a house larger than 150 m<sup>2</sup>. This development has continued through recent years. Of course, students and other persons with lower incomes do not have the possibility to rent or buy larger homes. Therefore smaller apartments are still being built.

According to the OECD, 98.4% of the dwelling stock in Denmark in 2004 was equipped with central heating, 94.6% with a fixed bath or shower inside the dwelling, 99.5% with piped water inside the dwelling and 97.1% with a kitchen. In 2009 96% of the dwelling stock had a bath and a shower. The number of homes with installation deficiencies (owner and tenant) has been halved, from around 423,000 in 1980 to 208,000 in 1999. Today, there are around 178,000 dwellings without a bathroom, 58,000 without a toilet, and 52,000 without contemporary heating. Dwellings with deficiencies are particularly prevalent in the municipalities of Copenhagen and Frederiksberg (a total of 71,000).

In 2010, 100 percent of the total dwelling stock had bath or shower, hot running water and central heating in Sweden.<sup>36</sup> The average number of rooms per dwelling in 2008 was 4.2 rooms. The kitchen is usually not counted as a room in Sweden.<sup>37</sup> The average useful floor area per dwelling of the total dwelling stock in 2008 was 92.8 square meters.<sup>38</sup>

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<sup>32</sup> <http://www.boverket.se/Om-Boverket/Nyhetsarkiv/Vad-ar-bostadsbrist/>.

<sup>33</sup> 2011. Dwellings and Housing Conditions, Statistics Finland at [http://tilastokeskus.fi/til/asas/2011/01/asas\\_2011\\_01\\_2012-10-24\\_kat\\_002\\_en.html](http://tilastokeskus.fi/til/asas/2011/01/asas_2011_01_2012-10-24_kat_002_en.html).

<sup>34</sup> Kivistö, pp. 10–11.

<sup>35</sup> Dwellings and Housing Conditions, Statistics Finland, “Nearly one-quarter of the population lived in rented dwellings in 2011”, 24 October 2012, at [http://www.stat.fi/til/asas/2011/01/asas\\_2011\\_01\\_2012-10-24\\_tie\\_002\\_en.html](http://www.stat.fi/til/asas/2011/01/asas_2011_01_2012-10-24_tie_002_en.html).

<sup>36</sup> Housing statistics in the European Union 2010, p. 53.

<sup>37</sup> Housing statistics in the European Union, p. 52.

<sup>38</sup> Housing statistics in the European Union 2010, p. 51.

In Finland the quality – from the same measures – was almost at the same level in 2008: 99 % had bath facilities, 93 % central heating and 96 % flush toilet.<sup>39</sup> The average useful floor area per dwelling has grown by 20 square meters since the early seventies, but it is still relatively small (79.9 square metres per dwelling and 39.6 square metres per person).

### 1.1.3. Types of housing tenures

(Note: Give only a short overview here, as the questionnaire will return to this subject under 3)

- Compare, also on the basis of table 1, the most important tenure structures and indicate their share in the countries under review:
  - Home ownership, including
  - Intermediate tenures, e.g.
    - Condominiums (if existing: different regulatory types of condominiums)
    - Company law schemes: tenants buying shares of housing companies
    - Cooperatives

In Denmark as a percentage of the dwelling stock, approximately 44 % is home ownership – both single family houses and condominiums fall under this category.

In addition to conventional home ownership, Denmark has private co-operative ownership (*andelsboliger*) where owners buy a “society owner share” from the former owner of the dwelling (most often an apartment), and pay the owner society a comparatively low rent for the right of occupation . The price of the society owner share is set according to rules that keep the share price growing over the years, but usually below the market price. The monthly rent covers, among other expenditures, debt servicing and exterior maintenance. When owners want to leave and sell their share, they are free to do this, but potential buyers must – in some cases may – be taken from a waiting list. The board is elected by the shareholders/owners of the co-operative. The legal relationship between the co-operative housing association and the individual shareowner is regulated by the association’s articles of association and not by the rent legislation. In 2010 there were 202,000 co-operative ownerships in Denmark in approximately 10,000 co-operative associations. This equals approximately 7.4 % of the total dwelling stock.<sup>40</sup>

Nearly 70 % of the population are home owners in Sweden. Included in this figure is a form of tenure that is somewhat unique. A formally co-operative apartment (*bostadsrätt*) is a housing co-operative based on a tenant-ownership, where the tenant is a member of the housing co-operative and owns a share of the house. This form of tenure includes all important aspect of ownership in much the same way as condominiums. These became available in apartment buildings for the first time under Swedish law on the 1st

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<sup>39</sup> [http://www.stat.fi/til/asas/2008/asas\\_2008\\_2009-12-15\\_tau\\_001\\_en.html](http://www.stat.fi/til/asas/2008/asas_2008_2009-12-15_tau_001_en.html).

<sup>40</sup> According to the Danish “BBR-register”. See ”Rapport afgivet af en arbejdsgruppe under Erhvervs- og Selskabsstyrelsen: Arbejdsgruppe om panthavers grundlag for at overtage en andelsbolig”, 2011.

of May 2009. It had previously only been allowed in one or two dwelling houses. There were 182 condominiums in Sweden in 2010.

A small fraction, less than 1 % of the total dwelling stock, consists of co-operative rental dwellings. Co-operative rental dwellings are a mediate between rented and co-operative apartments where the tenant rents from an economic association but does not own a share of the house.

In Finland the basic form of direct property ownership contains both the land and the buildings on it, but tenure structure features prominently a legal entity, inserted between the owner-occupant and the property. Nearly all residential multi-storey buildings and many row and semi-detached houses are company-owned, usually through a specific limited-liability company called, here for short, “housing company” (limited-liability housing company, *asunto-osakeyhtiö*: literally “dwelling limited company”, although the word *taloyhtiö*, “house company”, is in wide colloquial use).<sup>41</sup>

Intermediate tenures in Finland are mainly right-of-occupancy dwellings and also partial-ownership (rent-to-buy) arrangements, which are in contemporary debates sometimes treated as a separate tenure. Modelled on the Swedish *bostadsrätt* (a “right of accommodation” in a housing cooperative) as it stood in the nineteen-sixties, the Finnish “right of occupancy” (*asumisoikeus*, literally “housing right”) was introduced by legislation in 1990.<sup>42</sup> The buyer of a right of occupancy disburses an up-front payment – fifteen per cent of the value of the dwelling – and a monthly residence charge – calculated based on the costs of maintenance and financing renovations in the buildings of the same owner. The holder of the right may not be served notice. The right is transferable, on a price no higher than the original, indexed, price. The departing resident notifies the owner and, if a new occupant cannot be found, the owner has the duty to redeem the right, within three months of notification, at the indexed price. While the responsibility for upkeep belongs in the owner, the right-holder may make improvements on the owner’s permission and claim reasonable compensation when moving out.

Right-of-occupancy dwellings have been state-subsidised, and they are all under permanent restrictions within the social housing production system. Half of the right-of-occupancy homes are in the Helsinki region.<sup>43</sup>

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<sup>41</sup> An alternative arrangement for mainly semi-detached houses is an “agreement of joint possession”, which can be registered, under the Land Code (*maakaari* 540/1995, unofficial translation at <http://www.finlex.fi/fi/laki/kaannokset/1995/en19950540.pdf>, section 14:3.), in the Land Register (*kiinteistörekisteri*, “real estate register”). Parties, who agree on joint ownership to an estate and a house, or to either one separately, may define, for instance, the parts of the estate and building that each owns. Two parties may prefer this arrangement to setting up a housing company. The benefits include the possibility of using as security the real estate rather than shares, the fact that a housing company can be costly to operate, and the eventuality that a fifty-fifty deadlock can cripple the use of property in a housing company. On the other hand, a housing company has the advantage of a “standard contract” called the Housing Companies Act and the by-laws drafted in accordance with it. In the absence of these, distributing the costs of water, waste disposal, energy and possible repairs may create additional transaction costs.

<sup>42</sup> Right-of-Occupancy Housing Act 650/1990; Act on Right-of-Occupancy Associations 1072/1994.

<sup>43</sup> Following the financial crisis of 2008, this form of tenure was among the supported by the counter-cyclical economic policies of the government and, for instance, 2,897 dwellings were started in 2009 and 2,123 dwellings in 2010, bringing the number of right-of-occupancy apartments close to 44,000.

Another intermediate tenure was initiated by banks and construction companies during the recession of the early nineties, when developers were left with unsold flats. In these 'partial-ownership' arrangements, the buyer invests a portion – lower than the normal upfront payment for a housing loan, say, ten per cent – of the purchase price, receives a corresponding minority of the shares, and becomes a joint-owner with the seller. The apartment is rented through a fixed-term tenancy contract, the lease conferring to the tenant the right to the possession of the apartment. During the time of the tenancy, the seller (or some institutional landlord to whom the shares have been transferred) remains the majority shareholder, while the tenant has the right to redeem up to 49 % of the shares. At the end of the fixed term, or during a further agreed period, the tenant may redeem the rest of the shares and can become the owner.

- Rental tenures
  - What types of rental tenures with and without a public task exist?
  - What is their share in the housing stock?
  - What can be said in general on the quality of housing provided (parameters: space, fittings and other equipment, state of maintenance/need of refurbishment etc)?
  - Which actors own these dwellings (private persons, profit or non-profit organizations, etc.)?)

From an overall formal perspective, the types of rental tenures in the three countries are very much alike – mainly due to the fact that the countries are “welfare states” where the aim of housing policies has been providing good-quality housing for the whole population, even though it seems like Denmark have had a larger focus on building special housing for low-income households. For historic reasons the Finnish and the Swedish types are also based on the same principles. However, the more one look into details the more differences appear.

In Denmark the private rental housing stock encompasses housing in three main types of property:

- 1) Housing in actual private-sector rental properties owned by professional landlords,
- 2) Rented owner apartments (condominiums) and single-family detached houses of various sizes owned by non-professional landlords
- 3) Rented cooperative housing

A quarter of all private-sector rented housing consists of rented owner apartments (condominiums) often owned by a non-professional landlord.

Within the rented housing market, there are also a total of approx. 595,000 social rented dwellings (equivalent to approximately 20 % of all housing stock). These dwellings fall under a category of rented houses which can be called “social housing” by Danish definition.<sup>44</sup> The non-profit housing covers more than “pure” social housing defined as

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<sup>44</sup> Social housing is the Danish non-profit rental housing sector (“*almennyttige boligselskaber*”) that amounts to approx. 55 % of the rental market (with private – or possibly for-profit – rental housing making up the rest).

homes for people in need. It is supposed to be subsidized housing for the low- and middle-income groups, and was one of the gems of the post-war “Danish Social Democratic welfare state”, yet today not only people in need of a home are placed in social-housing rented apartments, and a lot of low- or middle-income groups do not want or need (for economic reasons) to live in social housing. Everybody in general can apply for a home in a social housing apartment.

The same type of system applies in Sweden. Rental tenures with and without a public task are not distinguished, since the term social housing is not used in Sweden. There are no rental tenures for lower income households especially, since there is no higher income limit to become a tenant. But about half of the rental sector is owned by municipally owned housing companies, whose goal is to provide housing for all, regardless of gender, age, origin or incomes. After time on a waiting list, the dwellings are allocated. There is no upper income limit for potential tenants to avoid stigmatization, and as long as tenants afford the rent, no lower income limit. Some tenants will need a housing allowance though to be able to pay the rent.

In practice, the usual tenants are not wealthy people, but there are a lot of middle-income households living in houses owned by municipal housing companies. For Swedes in general, there is not much difference between private and public rental housing, perhaps mainly because rents do not differ significantly. The rents do not differ that much because dwellings of equal “utility value” should have about the same rent, according to the “utility value” principle.<sup>45</sup>

In Finland residential renting divides into two segments which are roughly equal in size. Besides private markets, there is a state-subsidised, social rental housing sector, distinct when it comes to the owners of the dwellings (municipalities and general-interest organisations), regulated rent, and an administrative tenant-selection procedure. The social rental housing system is grounded on temporary “*avara* restrictions”, which are conditions placed upon state subsidies and which last only for a number of years following the grant of a subsidy for production or renovation. Afterwards, the apartments can be rented normally in the market, and nothing protects the tenant beyond the ground rules of private law. Rents in social rental dwellings are regulated to cover the financing costs of constructing the building and the maintenance costs of the real estate (cost recovery rent). The same unitary tenancy contract regime applies to all other aspects of the landlord-tenant relationship.

#### **1.1.4. Other general aspects of the current housing situation in comparative perspective**

- (Are there lobby groups or umbrella groups active in any of the tenure types?)
- Is vacancy of dwellings a problem (if appropriate, also deal with countermeasures including sanctions)?

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<sup>45</sup> <http://www.europolitics.info/sweden-social-housing-under-businesslike-principle-art321378-3.html>.

- Are there important black market or otherwise irregular phenomena and practices on the housing market (especially the rental market)?

In all three countries there are active lobby and umbrella groups for private property owners/landlords as well as for tenants including cooperative housing societies as well. The largest organisations in all countries have been involved in political negotiations concerning major revisions to the legislation and have considerable political influence in relative terms.

In Sweden the number of vacant apartments decrease and the number of vacancies is much lower than in Finland and Denmark. In September 2011 1.9 % of all tenancies (27,000) were vacant in multi-family houses. In March 2013 approximately 0.9 % of the total stock of rented dwellings was registered as vacant (13,648 apartments).<sup>46</sup> A part of the difference might be explained by the use of different methods on registering when a dwelling is vacant. Otherwise the explanation can be that there is a general housing shortage most severe in the larger cities in Sweden. The vacant dwellings in Denmark and Finland are probably placed mainly in rural areas and smaller cities. With regard to Sweden 7,000-10,000 of the empty apartments is in rural areas and should be demolished. The near absence of other empty apartments is sign of the Swedish general housing shortage.

In Finland close to 10 % (270,000) of the dwellings are vacant.<sup>47</sup> The problem of vacant dwellings affects municipalities in the northern and eastern Finland, with internal migration flowing into towns in the south and in the west. But also in the city of Helsinki, around 24,000 apartments or between 7 and 8 % of the stock are vacant today.<sup>48</sup> Larger apartments, especially those with three rooms and a kitchen, may sometimes be vacant even in cities (see above as well – section 1.1.2).<sup>49</sup>

In 2011 approximately 187,246 households in Denmark were registered as vacant. That equals around 6.8 % of the total number of households.<sup>50</sup>

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<sup>46</sup> The number of apartments available for immediate rent was about 16 000 (or 1.1 %) in 2011. In March 2013 there were 13,648 dwellings vacant, 5709 in the public sector and 7939 in the private sector. Statistics Sweden Yearbook of Housing and Building Statistics 2012 p. 33. Of the 27.000 empty flats 7000-10.000 are empty because they are in rural areas where people do not need them. The other are empty because the landlord wants them to be (repairs, the landlord may need the apartment himself in the near future).

<sup>47</sup> 2011. Dwellings and Housing Conditions, Statistics Finland at [http://www.stat.fi/tup/suoluk/suoluk\\_asuminen\\_en.html](http://www.stat.fi/tup/suoluk/suoluk_asuminen_en.html). In most new multi-storey buildings, each apartment has an electric sauna, so the number of saunas is increasing rapidly.

<sup>48</sup> Any apartment without a recorded resident according to the Population Information System is counted as vacant, which means that secondary homes and holiday homes enhance the vacancy rate.

<sup>49</sup> Dwellings and Housing Conditions, Statistics Finland, “Nearly one-quarter of the population lived in rented dwellings in 2011”, 24 October 2012, at [http://www.stat.fi/til/asas/2011/01/asas\\_2011\\_01\\_2012-10-24\\_tie\\_002\\_en.html](http://www.stat.fi/til/asas/2011/01/asas_2011_01_2012-10-24_tie_002_en.html).

<sup>50</sup> Statistics Denmark. Vacant households in Denmark are registered as households in which no persons are registered with an address. This means that the number includes households without residence requirements. This means that the figures do not actually show that there are many vacant dwellings that cannot be rented out or sold. For example, empty dwellings will be registered when tenants vacate properties, for new-builds or other interim circumstances. In 2007, there were 133,530 empty dwellings, a

In Sweden “black market” problems on the housing market exist. In Finland some minor problems of this character can also be identified. In Denmark the problem is not documented though unauthorized subletting and attempts on tax evasion exists. The reason why there are no significant black-market problems on the housing market in Denmark in general or the rental market specifically is mainly the fact that there is no general housing shortage and because the system for buying, selling and renting of property appears to be fair and well balanced. In some areas a high demand for apartments for especially students may though cause some pressure on the housing market that may cause a black market situation on a small scale. There is no documentation though as to the size of this alleged problem.

There is no clear definition of what a black housing market is in Sweden, although the Swedish National Board of Building, Housing and Planning has made a definition which is divided into unauthorized subletting, trading with leases and fraud. The current law does not prohibit paying for a contract but it is illegal to sell a lease. A complaint is rarely made to the police when it comes to the parts of the black housing market dealing with unauthorized subletting and trading of leases. The cases which are reported to the police and leading to prosecution usually are concerned with fraud.<sup>51</sup> It is impossible to define the extent of the black housing market in number of transactions or financial turnover since it is a criminal activity. Therefore, the figures present in discussions and debates must be considered unsafe. The existence of a black housing market is mainly linked to areas with housing shortages and especially shortage of rental properties. A report from the Swedish Property Federation from 2006 indicated that the trade with leases is worth 1.2 billion a year in Stockholm.<sup>52</sup>

Some “black-market” phenomena have existed or exist in the surroundings of housing markets in Finland. One widespread practice has been the direct payment for repair and other household services (instead of rent payment or agreements in a contract), and to combat the tax evasion the government created a tax credit for domestic help. Among other cases, there are question marks over the number of vacant dwellings in the city of Helsinki and sometimes students living in apartments owned by their parents have received subject-based housing allowance by merely moving their home address to their friend's house.

## **1.2 Economic factors in comparison**

### **1.2.1. Comparative view of the housing market**

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fact which reflects the high level of activity in the housing market at the time, with the result that dwellings did not remain vacant for long between old tenants moving out and new tenants moving in.

<sup>51</sup> Swedish Board of Housing, Building and Planning, “*Dåligt fungerande bostadsmarknader*” (2011) pp. 11-21.

<sup>52</sup> This figure is based on an estimate by the landlord association and it is not independently verified. Swedish Property Federation, “*Missbruket av bytesrätten*” (2006).

- To what extent does a free housing market exist and function - as opposed to managed public and/or social housing (i.e. housing with a public task not or only partially subjected to the market mechanism)?
- What is the current situation of the housing market? Is the supply of housing sufficient/ insufficient and where is this the case (possibly in terms of areas of scarcity of dwellings in growth areas versus shrinkage areas)? Which national market works best (in terms of demand and supply) and why?

In general the housing market in the three countries is free at the point of entry and not directly managed by public authority or specific legislation. Housing policies, housing law or tenancy law is not based on any particular political or legal philosophy – no person or political ideal has functioned as a specific driving force in any of the three countries.

The supply and demand situations in the three countries have led to housing shortage in the larger cities in Sweden and Finland (Helsinki) and to a smaller extent in Denmark. This can mainly be explained by the fact that building activity has been low in the recent years as well as the fact that more people want an apartment (often to themselves alone) in the larger cities. The reason for this is that more people want to live in the largest cities to get a job, study or to live close to relatives (mainly relevant for immigrants).

It seems like the Danish “system” works most effectively, but no figures really document this. As mentioned above there is no general housing shortage in Denmark.<sup>53</sup>

As mentioned as well above there is a shortage of rental housing in Sweden.<sup>54</sup> The shortage can partly be explained by the fact that housing construction has been very low in Sweden, from 1995 until today with a shorter peak right before the financial crisis of 2008. Particularly in Stockholm and in Malmö the population has grown faster than the number of apartments in the past two decades. There has been an increased housing density in Stockholm and Malmö over the last four years.<sup>55</sup>

In Finland 23,000 dwellings are being built annually (on average 28,000 since 1990).<sup>56</sup> While new construction in the greater Helsinki region has slightly surpassed the increase of household-dwelling units in 2003–2009, in the city of Helsinki new construction has fallen below that rate, intensifying demand there.<sup>57</sup> The shortage of housing for middle- and low-income classes in Helsinki has not constrained the desire to migrate there.

### 1.2.2. Comparative view on price and affordability

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<sup>53</sup> Section 1.1.2.

<sup>54</sup> Section 1.1.2. <http://www.boverket.se/Om-Boverket/Nyhetsarkiv/Vad-ar-bostadsbrist/>.

<sup>55</sup> The Swedish National Board on Building, Housing and Planning: *Bostadsbristen ur ett marknadsperspektiv*, p. 17

<sup>56</sup> 2011. Dwellings and Housing Conditions, Statistics Finland at [http://tilastokeskus.fi/til/asas/2011/01/asas\\_2011\\_01\\_2012-10-24\\_kat\\_002\\_en.html](http://tilastokeskus.fi/til/asas/2011/01/asas_2011_01_2012-10-24_kat_002_en.html).

<sup>57</sup> Kivistö, pp. 10–11.

- Prices and affordability:
  - What is the typical cost of rents and its relation to average disposable income (rent-income ratio per household)?
  - To what extent is home ownership attractive as an alternative to rental housing

The comparison on typical costs is difficult due to the fact that the figures presented (in the national reports) might not be based on the same prerequisites. It seems though that the rent-income ratio per household is on the same level in all three countries even though the average rent per square in Denmark is much higher than in Finland. Living standards seems to be basically the same as well as the rent-income ratio so it is not easy to explain the difference in average rent this way.

In 2012, the average rent in Sweden was 5,960 SEK (640 EUR) per month for an average apartment.<sup>58</sup> The average disposable income per household was 275,200 SEK (29,560 EUR) a year in 2011, or 22,900 SEK a month (2,460 EUR).<sup>59</sup> That makes a rent-to-income ratio of 25 %.

In Denmark the average rent per square metre i 2012 was approximately DKK 1,000 (134 EUR) in Copenhagen (and Aarhus). In general, approximately 29 % of the disposable income is used to pay housing expenses.<sup>60</sup> This is a little higher than in Sweden.

In Finland the average rent per square metre of non-subsidised rental dwellings was 11.98 EUR per square metre in the whole country. The average rent per square metre for non-subsidised rental dwellings was 15.33 EUR per square metre in Greater Helsinki and 10.36 EUR per square metre in the rest of Finland. The average rent per square metre of government-subsidised rental dwellings was 10.25 EUR per square metre in the whole country.<sup>61</sup> The most recent figures on rent-income ratio are from 2009, the ratio of housing costs<sup>62</sup> to disposable income averaged 14 % – for renter households, it was 27 %.<sup>63</sup> In comparison, the ratio was 13 % for homeowners with mortgage (9 % for those out of debt), while rising to 24 % when instalments of the loan are taken into

<sup>58</sup> Statistics Sweden, Statistical Yearbook of Sweden 2013, p. 164.

<sup>59</sup> [http://www.scb.se/Pages/TableAndChart\\_\\_\\_\\_163552.aspx](http://www.scb.se/Pages/TableAndChart____163552.aspx).

<sup>60</sup> Year 2005. Dan Andrews, Aida Caldera Sánchez and Åsa Johansson: *Housing markets and structural policies in OECD countries*, Economics Department working paper No. 836. See as well a Danish survey on demand for owner or rental dwellings: Hans Kristensen og Hans Skifter Andersen: *Befolkningens boligønsker*, Center for Bolig og Velfærd – Realdania Forskning, 2009. [http://boligforskning.dk/sites/default/files/Rapport.hsa-als\(5\).doc.pdf](http://boligforskning.dk/sites/default/files/Rapport.hsa-als(5).doc.pdf) . According to *Housing statistics in the European Union 2010* housing consumption as a share of total household consumption in Denmark was 25.4 per cent (1980), 26.1 per cent (1990) and 26.6 per cent (2000). No more recent figures are available.

<sup>61</sup> These data derive from Statistics Finland's annual statistics on the rents of dwellings. The statistics are based on interview data collected in connection with the Labour Force Survey and data obtained from the Social Security Institution's housing register. Statistics on rents of dwellings include some 248,000 rental dwellings. [http://www.stat.fi/til/asvu/2012/asvu\\_2012\\_2013-03-08\\_en.pdf](http://www.stat.fi/til/asvu/2012/asvu_2012_2013-03-08_en.pdf).

<sup>62</sup> Housing costs (*asumiskustannukset*) are distinct from housing expenditure (*asumismenot*), which includes, for homeowners, instalments of the housing loan and finance charge.

<sup>63</sup> Statistics Finland, Income distribution statistics, 2009.

account. If the transfers of housing benefits from the state are factored in, the ratio falls to 24 % for renter households, and 13 % for all.<sup>64</sup>

The Swedish tax system encourages house purchase over other investment options because of the possibility of partly deduction of mortgage interest and tax rebate on 50% of the cost of repair, renovation and extension work.<sup>65</sup> A large part of the wealth of Swedish households (60 % in 2011) consists of wealth from home ownership. The price increases in Sweden on cooperative apartments and owner-occupied housing have been exceptional over the last couple of years. This means that both one and two dwelling houses and tenant-owner apartments have generated higher returns than shares over the past 16 years and the risk of negative returns have been quite small. This means that home ownership has been very attractive as an alternative to rental housing. The financial crises however have had an effect on this situation as well (see section 1.2.5 below).

In Denmark the situation is complex but in relative terms home ownership is attractive for the same reasons as in Sweden – the possibility of partly deduction of mortgage interest and rising prizes. No tax rebate on repaircost in all situations though. Fundamentally, it can be said that when the economy is strong, the system makes the purchase of property attractive as an alternative to renting. As an owner of property, it is possible – if prices are rising – to earn a tax-free profit on the sale of one's property. In addition, the "tax-free value" that arises when the value of the property exceeds the amount for it was purchased can also be mortgaged, enabling the homeowner to release money to fund purchases, for example. A tenant does not have this advantage. On the other hand, the tenant would not be able to borrow large amounts of money from a bank or mortgage company and therefore would be subject to very little financial risk. For some groups of the population, the demand for a rented dwelling is high, even though owner occupation is affordable for these groups. This could be e.g. well-educated people who want to live in the capital. Other groups live in rented dwellings because they cannot afford to buy a house or an apartment. Because of tax regulation, housing support and other aspects it is not easy to make a definitive calculation in general on whether it is more attractive to own or rent.<sup>66</sup>

In Finland various net present value (NPV, the discounted stream of future benefits plus the discounted future selling price, minus the current price) calculations – which ignore, of course, the benefits of renting in unpredictably changing life situations – support ownership over renting, some at all levels of wealth, others excepting the highest level. The most important cause seems also here to be taxation by the state – especially mortgage interest deduction.

### 1.2.3. Tenancy contracts and investment

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<sup>64</sup> Ibid.

<sup>65</sup> SOU 2014:1 - it shows that the tax system is unjust and that the rent sector is disadvantaged in comparison to owners of cooperative apartments and homeowners.

<sup>66</sup> Hans Kristensen og Hans Skifter Andersen: *Befolkningens boligønsker*, Center for Bolig og Velfærd – Realdania Forskning, 2009. [http://boligforskning.dk/sites/default/files/Rapport.hsa-als\(5\).doc.pdf](http://boligforskning.dk/sites/default/files/Rapport.hsa-als(5).doc.pdf).

- Is the return (or Return on Investment (RoI)) for rental dwellings attractive for landlords-investors?

The return seems significantly higher in Sweden and Finland than in Denmark. From the available figures it is not possible to extract the reason directly or to clarify whether the figures are calculated on basis of the same prerequisites.

In Sweden – in 2011 – residential properties returned 7.7%, and in 2012 7.5 %.<sup>67</sup> A study<sup>68</sup> has shown that 42 % of the respondents consider Sweden to be very attractive as a location for real estate investments and 58 % consider it to be attractive. Sweden has a low house building rate, one of the lowest in Europe along with the Netherlands and the UK. It is difficult to draw any direct conclusion of why, but there are explanations that are more likely than others. These are: high construction costs, the rental regulation<sup>69</sup>, taxes and subsidies and an inefficient planning and building permit process.<sup>70</sup>

In Denmark prior to the financial crisis investments in rental property were generally attractive to investors. Historically, property investments in rental dwellings have had given high rates of return and have not been adversely affected by inflation. The total return on investments in residential property since 2007 has developed as follows: 2007: 2.5 %, 2008: -6.5 %, 2009: -1.8 %, 2010: 2.5 % and 2011: 1.7 %. The growth in value throughout the period has been negative. The figures must be viewed in light of the explosive increase in rental property prices during the period leading up to the financial crisis. Since 2007, many property investors have gone bankrupt, which has meant that a high proportion of properties have been purchased at compulsory sale auctions or in connection with compulsory sales from bankrupt estates. This has had a negative impact on purchase prices, but could have a positive effect on the return in the long term.

In Finland the attractiveness of the rental residential sector has increased because of turbulence in the commercial property sectors.<sup>71</sup> State subsidies and, for instance, the growing demand for senior housing also attract investors. Residential has been the best performing sector for four consecutive years in the KTI Index, which measures the total return of directly held property investments in Finland.<sup>72</sup> In 2011, residential investments produced a total return of 9.2 %, consisting of capital growth of 3.6 % and net income of 5.4 %.

#### 1.2.4. Other economic factors

<sup>67</sup> IPD Svenskt Bostadsindex ([www.ipd.com/sweden](http://www.ipd.com/sweden)).

<sup>68</sup> Ernst & Young, "Real Estate Asset Investment Trend Indicator Sweden 2013" p. 8.

<sup>69</sup> However, a report by Christine Whitehead showed that a rent control system only has minor effects on housing construction. (*The Private Rented Sector in the New Century - a comparative approach*, Sept. 2012, p. 36).

<sup>70</sup> National Housing Credit Guarantee Board, "Finanskrisens påverkan på bostadsbyggandet i Europa", (2011) p. 20-24.

<sup>71</sup> *The Finnish Property Market 2012*, pp. 37 and 45-46.

<sup>72</sup> <http://www.kti.fi/index?PHPSESSID=dede44df44ccd6c84ee2027d708e5227>.

- What is the role of estate agents? Are their performance and fees regarded as fair and efficient?
- Which national regulation has proven most effective and just?

In Sweden estate agents mainly work with purchase and sale of property, but might in rare cases help a property owner letting his item if he's having problems getting it sold. They usually don't receive payment if an item is not sold. Vacant dwellings in Sweden are normally allocated by the owner, and municipal housing companies usually do it after time on a waiting list. MHC's sometimes provide rental allocation boards which may be used by private landlords. But their participation is voluntarily. Private rental allocation boards are allowed but are subject to a license. A real estate agent cannot legally handle a housing property for the sole purpose of renting it out unless they have a housing allocation license. According to section 65 a in the Tenancy Act no party may receive, make an agreement on or request payment from a tenancy applicant for the offer of a dwelling unit for other than recreational purposes.

The role of estate agents is limited in relation to the letting of apartments in Denmark. The estate agent can charge the landlord in accordance with their agreement. No rules regulate the size of this fee, but the fee must be fair. In some cases the agent will act as mediator for the landlord and charge the landlord for various services, e.g. advertising and drafting of tenancy agreements. The setting of the fee for this is limited only by the agreement between the parties. It is possible to appeal the amount of the fee to a professional appeal board. The number of appeal cases is limited in this regard. In connection with the purchase and sale of property, estate agents are involved in the vast majority of purchases. Many agents work according to the principle of "no cure, no pay". Under Section 6 of the Rent Act, in connection with the letting of premises for residential purposes, the provision of such tenancies or the exchange of flats, it is not permitted to receive from or charge a fee to the tenant, nor to require the tenant to enter into another contract which is not part of the tenancy agreement. Any amount paid in contravention thereof may be required to be repaid.

In Finland estate agent are also used in relation to letting. From the landlord's point of view, the most convenient way of finding a tenant is to use an estate agent. From year 2000 it has been regulated that the agent's fee must be reasonable, taking into account the character of the assignment, the amount of work carried out, the economically appropriate way of carrying out the assignment, and other circumstances.<sup>73</sup> The standard practice in residential leases is for the agent to charge one month's rent plus VAT. In a major reform of the then-prevailing practice, the act of 2000 provided that the only person who should pay the agent's fee is the principal, who purchases the service.<sup>74</sup>

The regulation in Finland seems to be the most thorough and – from the tenant's point of view – this will probably mean that it is the most effective and just regulation. As the role

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<sup>73</sup> *Laki kiinteistöjen ja vuokrahuoneistojen välityksestä* [Real Estate and Rental Agency Act] 15.12.2000/1074, 20(3).

<sup>74</sup> *Laki kiinteistöjen ja vuokrahuoneistojen välityksestä* [Real Estate and Rental Agency Act] 15.12.2000/1074, 20(2).

of estate agents is very limited when it comes to letting of residential property this is not a problem though and it does not seem to be relevant to make any further regulations in Sweden or Denmark.

### 1.2.5. Effects of the current crisis in comparative perspective

- What were the effects of the crisis since 2007?
  - Has mortgage credit been restricted? What are the effects for renting? Have repossessions (in case of mortgage default) affected the rental market?
  - Has new housing or housing-related legislation been introduced in response to the crisis? What have been its effects?
  - Which state has overcome the crisis best and why?

Though the economy in all three countries were affected by the crisis, all three countries have placed formal or informal limits on their banks and other creditors.

The Swedish economy, and especially the housing market and housing construction, was significantly affected by the recession in the context of the financial crisis in the autumn of 2008. The lengthy rise in home prices began to slow down during the course of 2007, and in the second half of 2008 home prices began to fall. Between 2006 and 2009, housing construction decreased with 65 %. Interest rates remained at a historically low level.

The banks started to introduce stricter requirements on their customers, and in October 2010, the Swedish Financial Supervisory Authority (*Finansinspektionen*) introduced a mortgage cap. This further subdued lending growth by restricting mortgages to 85 % of the property's value.

The Swedish monetary policy has been strongly expansionary, which contributed to a rapid recovery in the economy and especially in the housing market. House prices in Sweden have continued to rise since, albeit at a slower pace in 2011, while most other countries saw the house prices fall. But during the latter part of 2011, the economy weakened in Sweden and there was great concern in the financial markets. Residential house prices began to decline slightly in 2011. Imposing stricter requirements on mortgage repayments were being discussed.<sup>75</sup> There is still a sense that prices are too high (a housing bubble) and that a continued controlled path downwards is preferred.

The rental market in Sweden have not been affected to a greater extend by the financial crisis directly. The reason for this is that the market forces do not affect rents directly. Reduced interest rates lower the rents in the long run and reduced housing production raises the rents in the long run. Repossessions have not affected the rental market in Sweden either.

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<sup>75</sup> [http://www.scb.se/Pages/Article\\_\\_\\_\\_333926.aspx](http://www.scb.se/Pages/Article____333926.aspx).

In the years before the financial crisis, Danish housing was characterised by very large increases in property prices. From 2000 until 2007, housing prices for single-family homes and condominiums rose by 85 % and 105 %, respectively, with the largest increases occurring in the Copenhagen area. Housing prices are mainly powered by economic fluctuations and interest rates. Decreasing interest rates and new mortgage loan types had been introduced and property value taxes were frozen in 2002. These factors all contributed to rising prices. The introduction of amortisation-free loans (2003) is considered to be the main cause of rapid price increases in the period before the most recent financial crisis.

When the crisis developed, prices fell dramatically. This was not anticipated by the Government (or by anyone in the financial sector). The cause of this has been that many Danish households have a large debt because they cannot sell their property – or they cannot sell it without losing a larger amount of money. The banks have become reluctant to lend money for financing house purchases; banks and mortgage companies have become subject to stricter government control, but no restrictions have been introduced concerning loan types, etc. Because a lot of Danish Bank where on the edge of bankruptcy (and some has gone bankrupt) a large amount of regulation towards the administration of the banking business has come in to force.

For letting, the crisis has not had any direct effects in this regard. It is possible that the demand for rented dwellings has increased (or has not decreased at least) because some people cannot lend money to buy a house.

Repossession has no direct effect on the rental market, but since 2007, many property investors have gone bankrupt, which has meant that a high proportion of properties have been purchased at compulsory sale auctions or in connection with compulsory sales from bankrupt estates.<sup>76</sup>

Finland seems to have been able to “handle” the financial crisis best. The housing bubble of 1987–1989 is still the foremost feature of housing prices over the past thirty years in Finland.<sup>77</sup> In 2008, the economic down-swing – caused by the international financial crisis – did lead to a fall in prices, but only for less than a year. In all, since the mid-eighties, the real housing prices have risen approximately 70 %.<sup>78</sup> In the spring of 2010, as a response to the crisis and the unremitting tendency of households getting into debt, the Financial Supervisory Authority<sup>79</sup> released a recommendation, according

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<sup>76</sup> In 2012 there were 5,130 cases of repossession (where, in the event of default in payment or terms, property pledged for a debt is sold to (try to) pay the debt). The number of repossessions has been steady from 2011–2013. From 2006–2010, repossessions increased from less than 100 per month to more than 400 per month. Figures from Statistics Denmark. They indicate all cases of repossession – including privately owned houses and apartments as well as commercial premises. See as well: [http://www.realkreditraadet.dk/Statistikker/Generel\\_statistik/Tvangsauktioner\\_og\\_konkurserkl%C3%A6ringer.aspx](http://www.realkreditraadet.dk/Statistikker/Generel_statistik/Tvangsauktioner_og_konkurserkl%C3%A6ringer.aspx).

<sup>77</sup> Jarkko Kivistö, “Suomen asuntohintakehitys ja siihen vaikuttavat tekijät”, BoF Online 4, 2012, Bank of Finland 28.2.2012, at

[http://www.suomenpankki.fi/fi/julkaisut/selvitykset\\_ja\\_raportit/bof\\_online/Pages/BOF\\_ONL\\_04\\_2012.aspx](http://www.suomenpankki.fi/fi/julkaisut/selvitykset_ja_raportit/bof_online/Pages/BOF_ONL_04_2012.aspx).

<sup>78</sup> Jarkko Kivistö, ‘Suomen asuntohintakehitys ja siihen vaikuttavat tekijät,’ p. 4–5.

<sup>79</sup> <http://www.finanssivalvonta.fi/en/Pages/Default.aspx>.

to which a housing loan should be at maximum 90 % of the purchase price (“loan ceiling”). At the time, loan to value exceeded that limit in 28 % of new housing loans.<sup>80</sup> The banks opposed restrictions, and the Ministry of Employment and the Economy declined, against the background of the opposition, from proposing legislation demanded by the Bank of Finland and the Financial Supervisory Authority in early 2013; but the opinion of banks was reportedly swayed, among other things, by the International Monetary Fund, which in the summer of 2013 recommended loan ceiling, and new proposal for legislation is now being deliberated between the government and the financial sector.<sup>81</sup>

Simultaneously with the crisis, the number of compulsory auctions rose. The nationwide figure climbed to 1,276 compulsory auctions of housing-company shares or real estate in 2010, up 55 % from 2008. This still pales in comparison with the hardest years of recession in the 1990’s, when almost 3,000 dwellings were sold in public auctions annually.<sup>82</sup> Nonetheless, prices have doubled in the Helsinki region in less than two decades. Only in the second half of 2012 was the relative trend that house prices raise more rapidly in the Helsinki region than elsewhere reversed.<sup>83</sup> In Helsinki rents in new rental agreements rose 30 % between 2008 and 2012.<sup>84</sup>

### **1.3. Urban and social aspects of the housing situation in comparison**

#### **1.3.1. Urban aspects in comparative perspective**

- What is the distribution of housing types in the city scale (e.g.: are rented houses mainly in the city centres and owner occupied in the suburbs?) vs. the region scale (e.g.: more rented houses in the big cities, less in the villages?)
- Are the different types of housing regarded as contributing to specific, mostly critical, “socio-urban” phenomena, in particular ghettoization and gentrification
- Do phenomena of squatting exist? What are their – legal and real world – consequences?

Most rental dwellings are located in apartment buildings. But the main alternative form of tenure in the urban areas of the three countries is not the same. In Sweden, where 60 per cent of dwellings in apartment buildings are rented, 40 per cent are tenant-owned cooperative apartments.<sup>85</sup> The tenant-owned apartments dominate in 28 of the 290

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<sup>80</sup> Tiia Kynnäräinen, “*Valvoja pettyi: Asuntolainat ovat yhä ylisuuria*”, Taloussanomat, 22 September 2010.

<sup>81</sup> Anni Lassila, “*Pankit pyörsivät kantansa: Asuntolainojen katto lähellä toteutumista*”, Helsingin Sanomat, 17 January 2014.

<sup>82</sup> “*Pakkohuutokauppojen määrä kasvanut yhä tuntuvasti*”, Turun Sanomat, 8 November 2011.

<sup>83</sup> The prices of homes in old multi-storey buildings and row houses declined in the Helsinki area while remaining constant or only slightly decreasing in the rest of the country. Talouselämä, 31 August 2012 and 28 December 2012.

<sup>84</sup> Bank of Finland, BoF Online, 26 August 2013, p. 37.

<sup>85</sup> The number of dwellings in apartment buildings by type of ownership; Sweden, 2013:

municipalities; 16 of these are located in Stockholm County.<sup>86</sup> The proportion of tenant-owned dwellings has been rising at the expense of rental dwellings.<sup>87</sup> In Denmark, owner-occupancy, less prevalent in urban areas, is significantly less widespread in Copenhagen: in Copenhagen and Frederiksberg (part of Greater Copenhagen), private rental dwellings constitute 34 per cent, social rental dwellings 18 per cent, cooperative apartments 30 per cent (their share rose from 4 to 30 per cent between 1982 and 2000, when private rental housing fell from 65 to 34 per cent),<sup>88</sup> owner-occupancy 18 per cent, and other owner dwellings 6 per cent of the stock. In Finland, the percentage of private rental dwellings in urban areas varies between 14 and 26, and that of social rental dwellings between 17 and 22 (in the city of Helsinki the total is highest: 48 per cent). The share of the main Finnish alternative, limited-liability housing company, is between 31 and 48 per cent in urban areas (44 per cent in Helsinki).<sup>89</sup> In Helsinki, the portions of private and social rental housing vary greatly between districts: 80 per cent of production-subsidised rental dwellings are in the suburbs, while hardly any production-subsidised rental dwellings are located in downtown Helsinki.

The meaning of ‘ghetto’ and ghettoisation is gradational so that, in Finland, the word ‘ghetto’ is too strong in reference to the level of segregation in some pockets in major towns and cities; in Denmark, there has been a tendency for ‘ghettos’ to develop in some residential areas of Copenhagen and the surrounding area and in the major provincial towns and cities;<sup>90</sup> in Sweden, there are no ghettos but segregated areas, in the suburbs of the three metropolitan areas: Stockholm, Göteborg, and Malmö. According to a recent Swedish analysis, the rapid population growth and low construction in the metropolitan areas has made it difficult for those without family wealth to enter the ownership market, while there are indications of certain

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	2013
<b>Multi-dwelling buildings</b>	
<b>Rented dwellings</b>	1,399,913
<b>Tenant-owned dwellings</b>	930,835
<b>Owner-occupied dwellings</b>	458
<b>Data missing</b>	1,047

Source: Statistics Sweden, Statistical database,

[http://www.statistikdatabasen.scb.se/pxweb/en/ssd/START\\_\\_BO\\_\\_BO0104](http://www.statistikdatabasen.scb.se/pxweb/en/ssd/START__BO__BO0104) (2014).

<sup>86</sup> There are 13 municipalities in the country where the entire dwelling stock in apartment buildings consists of rental units (Kinda, Högsby, Färgelanda, Essunga, Ockelbo, Nordanstig, Ragunda, Berg, Nordmaling, Bjurholm, Dorotea, Överkalix, and Pajala). Statistics Sweden, ‘Dwelling stock 2013-12-31: Number of dwellings according to the Dwelling Register,’ 9 June 2014, at [http://www.scb.se/en\\_/Finding-statistics/Statistics-by-subject-area/Housing-construction-and-building/Housing-construction-and-conversion/Dwelling-stock/Aktuell-Pong/87476/Behallare-for-Press/374838/](http://www.scb.se/en_/Finding-statistics/Statistics-by-subject-area/Housing-construction-and-building/Housing-construction-and-conversion/Dwelling-stock/Aktuell-Pong/87476/Behallare-for-Press/374838/).

<sup>87</sup> Statistics Sweden, ‘Tenant-owned dwellings continue to increase at the expense of rental dwellings,’ 30 May 2012, at [http://www.iut.nu/Facts%20and%20figures/Sweden/SWEDEN\\_Statistics\\_May30\\_2012.pdf](http://www.iut.nu/Facts%20and%20figures/Sweden/SWEDEN_Statistics_May30_2012.pdf).

<sup>88</sup> Outside Copenhagen and the surrounding area, the number of cooperative dwellings is very limited. Only in some major towns and cities are there cooperative dwellings. [Report for Denmark, \_].

<sup>89</sup> The above figures in the text are from Jukka Hirvonen, Ari Kurlin, Etta Partanen and Paavo Tikkanen, *Näkökulmia ara-vuokra-asumiseen: Selvitys ara-vuokra-asuntojen asukasrakenteesta ja asukasvalinnasta ara-aso-asuntoihin*, Ministry of the Environment, Report 15/2014, 2014, 67, at [https://helda.helsinki.fi/bitstream/handle/10138/135161/YMra\\_15\\_2014.pdf?sequence=1](https://helda.helsinki.fi/bitstream/handle/10138/135161/YMra_15_2014.pdf?sequence=1).

<sup>90</sup> ‘These areas are often inhabited by a high proportion of tenants who cannot afford to live elsewhere and/or who have been “placed” there by the local authority, which has the right to allocate people to some social housing.’ [Report for Denmark, 30].

developments in the metropolitan rental markets: households wanting to move do not relinquish their tenancies, but trade them, sublet (legally or illegally), or sell their contract illegally; private landlords are increasing their requirements for incomes and references; and municipal housing companies are following in a broadly similar vein.<sup>91</sup> The analysis concludes about the metropolitan rental markets with a comment that can be regarded as abashed and surprised: Those households that cannot get apartments because of low or irregular incomes have three options, which are not mutually exclusive. They can go to the social authorities and ask for help [ . . . ], look for help from friends and relatives, or sublet legally or illegally. [ . . . ] Illegal subletting and overcrowding have been increasing in less attractive suburban areas, typically built during the Million Homes Programme and dominated by immigrant groups. Areas owned by private slumlords have been deteriorating very quickly and in ways thought impossible by many, given tenants' strong legal position in Sweden.<sup>92</sup>

Denmark is the only country with a legal definition of ghetto. Ghetto is defined as a residential area with at least one thousand inhabitants who fulfil three of the following five criteria:

1. The proportion of immigrants and descendants from non-Western countries exceeds 50 per cent.
2. The proportion of 18–64 year olds without any link to the labour market or education exceeds 40 per cent (average for the last two years).
3. The number of people convicted of various offences per 10,000 inhabitants aged 18 or over exceeds 2.7 per cent (average for the past two years).
4. The proportion of 30–59 year olds who have no longer education from school (ground school [9 years] only) exceeds 50 per cent.
5. Average income for 15–64 year olds (excluding those under education) is less than 55 per cent of the average income of the same group in the whole region.<sup>93</sup>

In 2012, there were 33 such residential areas in Denmark.<sup>94</sup> The type of housing associated with segregation is evident: rental apartments (Sweden), municipality-owned social rental dwellings (Finland), and areas dominated by social housing (Denmark). In Sweden, cases of gentrification are said to have been reinforced by the conversion of rental apartments to tenant-owned cooperative ones.<sup>95</sup>

Squatting does not, in any large scale, exist.<sup>96</sup> In the few past cases in these three countries, the police has removed the squatters. In Finland, the property has often been an estate of the municipality, and then negotiations can be undertaken with the

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<sup>91</sup> Hans Lind, 'Social Housing in Sweden' in Kathleen Scanlon, Christine Whitehead, and Melissa Fernández Arrigoitia (eds), *Social Housing in Europe*, John Wiley & Sons 2014, 90–102, 100.

<sup>92</sup> Ibid. Segregation is 'strong and increasing in most Swedish cities.' Ibid., 98.

<sup>93</sup> (Consolidation) Act on Social Housing no.1023 of August 21, 2013, 61a.

<sup>94</sup> [Report for Denmark, 30].

<sup>95</sup> [Report for Sweden, 29].

<sup>96</sup> Apart from Christiania in Copenhagen (which is an independent community of approximately 900 people founded in 1971 on the site of an abandoned military zone), organised squatting does not exist in Denmark. And Christiania cannot serve as a general example. Civic authorities in Copenhagen still regard Christiania as a large commune, but the area has a unique status in that it is regulated by a special law, the Christiania Law of 1989, which transfers parts of the supervision of the area from the municipality of Copenhagen to the state. [Report for Denmark, 30–31].

municipality. If the negotiations fail to lead to an outcome, the squatters are removed.<sup>97</sup> There is no special legislation covering squatting in the three countries.<sup>98</sup> Against the assertion that squatting gives no legal rights, the legal situation might be argued to be more complex in Finland from the point of view of constitutional interpretation and taking into account the case law under the European Social Charter (a broad definition of ‘forced evictions’).

- 1.3.2. Social aspects

### 1.3.2. Social aspects

- What is (are) the dominant public opinion(s) towards certain forms of rental types or tenure forms? (e.g. is renting considered as socially inferior or economically unsound in the sense of a “rental trap”?) In particular: Is only home ownership regarded as a safe protection after retirement?
- What is the typical attitude of tenants towards different forms of tenure (e.g. owners of privatized apartments in former Eastern Europe not feeling and behaving as full owners)

While evidence from Denmark is limited to a perceived general preference for owner-occupation over any renting<sup>99</sup> and some observations on social housing (its lower attractiveness because of ghettos, location, and at least a few years ago inferior-quality and less ‘stylish’ buildings),<sup>100</sup> Sweden and Finland participated in a mid-2000s interview study on the security of tenures.<sup>101</sup> It indicated that the Swedes (interviewed in Gävle) – quite exceptionally – differentiated very little between owning and renting, whereas the Finns (interviewed in Turku) held more diverse opinions. In Sweden, first of all, renting is not a socially inferior alternative, but it had become a less economic alternative – because of low interest rates, rapidly increasing house prices, and relatively high rents –

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<sup>97</sup> ‘Squatting is illegal in Finland, as it means trespassing to other’s premises and it is sanctioned in the Criminal Code. Many squats have ended up in evictions by the police, and some have even led to day-fine verdicts of trespassing and disobedience. However, several squats have ended up to a lease agreement with the owner, often the City of Helsinki, and the Youth Department has paid the rent.’ Eeva Kostianen, ‘Report Template: National Eviction Profiles: Finland,’ Pilot project – Promoting protection of the right to housing – Homelessness prevention in the context of evictions, Human European Consultancy, 24 March 2014, 18 (footnotes omitted).

<sup>98</sup> [Report for Sweden, 30]; [Report for Denmark, 31].

<sup>99</sup> ‘Danes generally prefer owner-occupation to living in private rented or social housing [ . . .].’ Hedvig Vestergaard and Kathleen Scanlon, ‘Social Housing in Denmark’ in Kathleen Scanlon, Christine Whitehead, and Melissa Fernández Arrigoitia (eds), *Social Housing in Europe*, John Wiley & Sons 2014, 77–89, 83.

<sup>100</sup> [Other types of rental housing do not have the same negative reputation. [Is the following survey also the source for the information on social housing in parentheses in the text:] the Danish survey on demand for owner or rental dwellings: Hans Kristensen and Hans Skifter Andersen: Befolkningens boligønsker, Center for Bolig og Velfærd – Realdania Forskning, 2009, [http://boligforskning.dk/sites/default/files/Rapport.hsa-als\(5\).doc.pdf](http://boligforskning.dk/sites/default/files/Rapport.hsa-als(5).doc.pdf)]

<sup>101</sup> [OSIS reference].

despite a previous equality between the tenures. Among the Finns, a strong conviction prevailed that ownership will naturally pay off.<sup>102</sup> Second, both the Swedes and the Finns reasoned similarly that mortgage payments accumulate wealth for oneself and not for someone else ('paying to oneself'). But third, the Finns preferred ownership because of values. Though privacy and security are common values to both owning and renting, homeownership embodies also independence, freedom to do what one wants, pride and a sense of achievement.<sup>103</sup> That is to say, while both an owner-occupier and a renter, in Finland and Sweden alike, attach the meanings of privacy and security against the outside world to housing (these might together be called 'exclusivity' – 'nobody is coming in unless I am letting him/her in'<sup>104</sup>), after that some variation was detected between the countries: Home owners in Finland, especially those living in detached housing, tend to associate housing not only with privacy but also with being independent and free of external control; especially important is the possibility to do as one wishes with the property without a landlord saying what to do. [. . .] The only freedom tenants associate with their housing is freedom from debt load and responsibility of maintenance. Moreover, while some owner-occupiers attach feelings of pride and a sense of achievement to their home, tenants speak of their homes more sparsely and much less emotionally, as only a roof over one's head. This is not so in Sweden; also some interviewees living as tenants in the municipal housing company's [. . .] apartments experience the kind of control over their housing space that home owners in Finland thought to be exclusive of their tenure.<sup>105</sup>

The difference of opinion favouring ownership in Finland does not mean that Swedes do not appreciate the fact that a tenant has no unexpected maintenance costs. But the security of ownership is in Sweden linked to equity and low housing costs (due to low interest rates and monthly fees), and in this economic sense an earlier tradition, where homeownership was seen as less secure and renting as more secure, may have been reversed.<sup>106</sup> Renting is still considered a financially acceptable alternative at both ends of the life cycle.<sup>107</sup>

Surprisingly, those Finns living in social rental dwellings had 'neutral' views similar to the opinions of Swedish tenants. For these Finns, their tenure was safe, even compared with ownership:

They experience their tenure as secure because they know they cannot be evicted without having misbehaved or committed a crime. They feel pretty secure also financially, because the housing company is obliged to do all the maintenance and, furthermore, they know that they will be eligible for receiving municipal housing allowance and/or social assistance in case of economic hardship. Some tenants reflect

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<sup>102</sup> [ ], 94.

<sup>103</sup> Hannu Ruonavaara and Päivi Naumanen, Report on Finland in *Origins of Security and Insecurity: the interplay of housing systems with jobs, household structures, finance and social security (OSIS)* (2004–2006), 93–94.

<sup>104</sup> *Ibid.*, 159 ('Homeowner FIN, female, 56').

<sup>105</sup> *Ibid.*, 159–160.

<sup>106</sup> [Report for Sweden, 30 / Elsinga, M., De Decker, P., Teller, N., Toussaint, J. (eds.), *Home ownership Beyond asset and security. Perceptions of housing related security and insecurity in eight European countries*, p. 238-253.]

<sup>107</sup> *Ibid.* In Denmark similarly, there is no evidence suggesting that only homeownership would be attractive after retirement. [Report for Denmark / Morten Skak: Projecting Demand for Rental Homes in Denmark. *European Journal of Housing Policy*, Vol. 8, Nr. 3, 2008, s. 258].

on the security by contrasting their present situation with the potential situation of home owner. They feel secure, because they know that there is not a big mortgage falling on their heads in case of unemployment or in case they became badly injured or sick.<sup>108</sup>

The fact that the social-sector renters' dwelling is subsidised and they can also receive housing allowance or income support or both illustrates the overlap of 'object-based' and 'subject-based' subsidies. The private renters' cases were more individualised as regards the security of their tenure. From the interviews, the Finnish researchers extract a fairly typical ethos, which they term a 'mixed model of responsibility': 'individuals bear the main responsibility of their housing problems, but if the individuals are not themselves the cause of the financial troubles they are suffering from, "society" should offer some sort of publicly funded aid'<sup>109</sup>. The researchers surmise in the end: 'Perhaps the view of individual responsibility coupled with collective responsibility for the deserving poor is the typical Finnish approach to housing.'<sup>110</sup>

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## 2. Housing policies and related policies in comparison

### 2.1. Introduction

- How is housing policy related to the structure and concept of the (national) welfare state, to other welfare policies and the tax system?
- What is the role of the constitutional framework of housing? (in particular: does a fundamental right to housing exist?)

All three countries have needs- and means-tested housing benefits. But the systems for providing housing to people with lower incomes differ fundamentally at the very level that Sweden has no social housing by definition. Its uniform policy is supported by a broad societal consensus – tested as late as in 2008–2010 – against a differentiated social housing regime. The difference between a more universal and a more selective system is central, but not the only difference between the Nordic countries.<sup>111</sup> In

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<sup>108</sup> [ ], 163.

<sup>109</sup> [ ], 92. About half of the homeowners and most tenants subscribed to this view. A minority of the tenants believed that the state should bear the main responsibility for helping households who have housing-related economic problems. The other half of the homeowners divided equally into those for whom the individual, without qualification, and those for whom the state has the responsibility.

<sup>110</sup> *Ibid.*, 96.

<sup>111</sup> 'Swedish, Danish and Norwegian housing policies have been described as "universal" and directed towards all types of households and segments of the housing market. Finnish and Icelandic housing policies on the other hand are seen as "selective" and oriented more directly towards households of lesser means and based to a large extent on individual means-testing.' Bo Bengtsson and Hannu Ruonavaara, 'Introduction to the Special Issue: Path Dependence in Housing,' *Housing, Theory and Society*, 27(3), 2010, 193–203, 197.

Sweden, housing policy is directed at rental housing, which is provided by municipal housing companies.<sup>112</sup> In Denmark, housing policy is likewise directed at rental housing, but the providers, social housing organisations, are self-governed and there are many more of them than the number of municipalities. In Finland, housing policy is not directed at any particular tenure, but it is expressly oriented towards households of lesser means – in line with the extracted social ‘approach to housing’ above.

Those paths diverged after World War Two, and ideologically, perhaps earlier. For instance, the Swedish universal type of non-profit housing evolved on the back of principles formed in the 1930s, when ‘social-democratic ideology shifted “from mass struggle to a politics which looked to all citizens, a new politics for the large home – the nation.”’<sup>113</sup> After World War Two, municipalities were encouraged to set up their own housing companies, and the housing policy of the dominating Social Democratic Party rested on subsidised loans and the municipal companies acting as developers. The Swedish Social Democrats were very market oriented. The rent regulations were supposed to be temporary and was not an integrated part of the housing policy.<sup>114</sup> When, in 1967, ‘historical cost’ rent regulation was abandoned, a model for the rental market was copied from the labour market: collective bargaining between tenants’ union and the municipal housing company, where the agreed rents were binding also on private landlords. State subsidies were dismantled in the 1990s.

The counterpointing Finnish social sector is an outgrowth of a more piecemeal development, which began from postwar state loans to new owner-occupied dwellings (the old dwellings would be vacated for lower income households) and took on social aspects that were grafted onto the production-oriented policy only in the late 1960s, when the country urbanised and the focus of state loans shifted to rental housing production. After this, the housing policy, and the production of social rental housing in particular, are said to have followed ‘much the same line as Denmark and Sweden.’<sup>115</sup> But when state subsidies were taken down while the rent-setting system was kept in Sweden, in Finland rent regulation which had been introduced at the turn of the 1970s was abolished, but state subsidies were kept, when a centre-right government came into power in 1991. Subsidies were even promoted as an instrument of counter-cyclical economic policy in the recession of the 1990s and again in 2009–2010, targeting both rental housing and the intermediate tenures between renting and ownership.

None of the Nordic countries has a constitutional court. Constitutional rights are pondered in ordinary courts (rarely, in Sweden and Denmark; occasionally, and usually as one ground among other grounds, in Finland), by parliamentary ombudspersons, and in Finland primarily by the Constitutional Law Committee of Parliament, which reviews

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<sup>112</sup> A Swedish municipal housing company may be owned directly by the municipality or it may be a limited liability company where the municipality holds the majority of the shares or it may be a foundation with statutes giving control to the municipality. The essence is that the company is controlled by a municipality. See Section 1 of the Municipal Housing Company Act (2010:879).

<sup>113</sup> Pal Castell, ‘The Swedish suburb as myth and reality,’ Chalmers University of Technology, Göteborg 2010, 2, quoting ethnologist Klas Ramberg. Available at [http://publications.lib.chalmers.se/records/fulltext/local\\_122741.pdf](http://publications.lib.chalmers.se/records/fulltext/local_122741.pdf).

<sup>114</sup> Quoted from Marja Elsinga and Hans Lind, ‘The effect of EU-legislation on rental systems in Sweden and the Netherlands,’ Working Paper 2012:01, Department of Real Estate and Construction Management, Royal Institute of Technology, Stockholm, Sweden, 5. For the Swedish postwar history in the text, see *ibid*.

<sup>115</sup> Martti Lujanen, ‘Main lines of Nordic housing policy’ in Lujanen (ed.), *Housing and Housing Policy in the Nordic Countries*, Nord 2004:7, Copenhagen: Nordic Council of Ministers, 2004, 15–22, 20–21.

legislation prior to enactment. The Constitutional Law Committee and the parliamentary ombudsperson are the most common sources of constitutional doctrine in Finland. The right to housing is goal-like in the constitutions of both Finland<sup>116</sup> and Sweden<sup>117</sup> and not constitutionally guaranteed in Denmark. In Finland, though, the constitutional right to social security comprises in its first paragraph a subjective right to ‘indispensable subsistence and care,’<sup>118</sup> which, it is argued in the government proposal for fundamental rights reform in 1993, includes ‘the arrangement of nutrition *and housing* which are necessary to sustain health and life.’<sup>119</sup> Apart from that argument for a right to ‘arranged housing,’ the concerns of a right to housing are handled in statutes: municipalities in Sweden must provide a dwelling under the social services act<sup>120</sup> and Finnish municipalities have duties to arrange housing for people with severe disabilities<sup>121</sup> and in certain situations involving child protection<sup>122</sup> (these entail subjective rights in Finland). In Denmark, local authorities have arguably an obligation to help an evicted tenant to get a new home.<sup>123</sup> In neither Denmark<sup>124</sup> nor Sweden<sup>125</sup> do constitutional rights apply between the landlord and tenant as private parties. The impact of constitutional rights has been greater in Finland particularly after the fundamental rights reform which took effect in 1995. For instance, it can be argued that, if a tenant encounters physical disability during tenancy, the instalment of necessary devices for coping may not be a ground for termination, because otherwise a person with disability would be discriminated against.<sup>126</sup>

## 2.2. Policies and actors

### 2.2.1. Governmental actors

- Which levels of government are involved in formulating and implementing housing policy (national, regional, local)?
- How effective are the various actors in the countries under review?

<sup>116</sup> The Constitution of Finland (731/1999), 19(4).

<sup>117</sup> The Instrument of Government (*Regeringsformen*) (SFS 1974:152), 2 §.

<sup>118</sup> Those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care. The Constitution of Finland (731/1999), 19(1).

<sup>119</sup> Government proposal 309/1993, 69–70 (emphasis added).

<sup>120</sup> *Socialtjänstlagen* (SFS 2001:453), 4:1.

<sup>121</sup> *Laki vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista* (380/1987), 8.

<sup>122</sup> *Lastensuojelulaki* (417/2007), 35.

<sup>123</sup> [Report for Denmark, 35]. Local authorities have the right to allocate up to one in every four vacant dwellings in public housing to persons in need of housing (excluding dwellings designated as housing for the elderly and housing for young people); see 4.3.1 below. The social service act, paragraph 80, also obliges local authorities to provide temporary shelter if a person or family is homeless. Housing Rights Watch, at <http://www.housingrightswatch.org/page/state-housing-rights-3#.VJRmGMAEONA>.

<sup>124</sup> [Report for Denmark, 35].

<sup>125</sup> [Report for Sweden, 34].

<sup>126</sup> According to the tenancy act, a notice must not be unreasonable and the landlord must have justifiable reason, and at least intuitively – even if constitutional rights were not included in an explicit analysis – opposition to discrimination prevents regarding the instalment of the devices as a justified reason for termination. The financing of the installation and removal of the devices is part of the legal duties of municipalities towards people with severe disabilities. [Report for Finland, 137–138].

The authorities forming housing policy are the government and municipalities.<sup>127</sup> Sweden and Finland have a government agency in this field: the Swedish National Board of Housing, Building and Planning (Boverket)<sup>128</sup> and the Housing Finance and Development Centre of Finland (ARA, the successor to the Finnish National Housing Board of 1966–1993). Swedish municipalities have a responsibility for housing supply in the sense that the municipality should plan the housing supply in order to create opportunities for everyone in the community to live in decent housing. Because of the shortage of housing in urban areas, the responsibility of the municipality for housing production is being debated in a number of government inquiries.<sup>129</sup> As there are no municipal housing or other property taxes in Sweden, municipalities do not gain from allowing housing development.<sup>130</sup> Danish municipalities approve decisions about the construction of new social housing and co-finance the construction by providing basic capital.<sup>131</sup> In Finland, municipalities control spatial planning<sup>132</sup> and set real-estate tax rates within limits given by the Ministry of Finance. Also, they own much of the state-subsidised housing stock, although the buildings and dwellings they own are ‘each municipality’s decision-makers’ own value choice and political decision, thus not a mandate prescribed for the municipality by the state.’<sup>133</sup>

### 2.2.2. Housing policies

- What are the main functions and objectives of housing policies pursued at different levels of governance? In particular:

[Overall: Which housing policies rank best in terms of formulation and implementation?]

- What is the stated objective of national housing policy in each country? (provision of affordable housing for all?; provision of affordable housing only for households in need?; residual provision of housing as a measure of last resort for only the neediest households?; no active and/or effective housing policy at all)
- In which country does the national policy favour rented housing, home ownership (owner-occupation), or where is neutrality of tenure recognised as an objective?

<sup>127</sup> At present, housing is within the remit of the Ministry of Finance in Sweden, the Ministry of the Environment in Finland, and the Ministry of Housing, Urban and Rural Affairs in Denmark.

<sup>128</sup> Boverket is responsible for spatial planning, the management of land and water resources, urban development, building, and housing. The municipality prepares the comprehensive and detailed plan and area regulations; the County Board participates in the consultations, reviewing the final plan and providing input; and Boverket guides and monitors the planning.

<sup>129</sup> There is an investigation into ‘Regional planning and housing supply’ which will present its conclusions in March 2015 (Dir 2013:78).

<sup>130</sup> [Report for Sweden, 35–38].

<sup>131</sup> [Social Housing in Denmark], 78; [The Danish social housing sector], 6; [Report for Denmark, 35].

<sup>132</sup> The municipality is responsible for the master, detailed, and detailed shore plan; joint authorities of municipalities and the County Board plan regional starting points for planning; and the Ministry of the Environment provides national guidelines and objectives.

<sup>133</sup> \_ Mäki-Franti and Tuula Laukkanen, *ARA-vuokratokanta murroksessa*, [ ], 11. In all three countries, the building supervision authorities are municipal.

- Are there experiences of the countries under review with special housing policies targeted at certain groups of the population (e.g. elderly people, migrants, Sinti and Roma etc)?
- Overall: Which national (or subnational) housing policies rank best in terms of formulation and implementation?

Both nationwide and regionally, the focus of Swedish housing policy today is on the shortage of housing in urban areas. In 2009, the government responded by investing in a new tenure, (join-ownership-based) condominium, previously available for detached and semi-detached houses, but extended now to apartment buildings. (Only 700 condominiums have been built, though.) In another response, in 2013, owners of cooperative apartments, condominiums, and detached and semidetached houses were allowed to sublet at market rent.<sup>134</sup> The question whether government policies favour homeowners or tenants is not clear-cut. In Sweden, rent-setting favours tenants, but (30 per cent) interest deduction for home loans, deduction for repair and maintenance work done in an owned home, and ability to defer capital gains tax benefit homeowners. In Denmark, where many properties are subject to rent regulation, interest deduction for home loans, favourable forms of loan available to finance purchases of property, and exemption from tax on the sale of property one has lived in encourage homeownership. In Finland, the question of promoting homeownership has long been debated; when in 2010, a Ministry of Finance working group listed housing-policy aims, the first aim on the list – realising housing at a reasonable price for all households – was immediately followed by the next remark:

A second typical aim of housing policy seems to be to encourage homeownership. This is manifested, among others, in the fact that owner-occupancy is treated more lightly in taxation than rental housing is, and that first-home buyers, in particular, are allocated targeted tax subsidies.<sup>135</sup>

Since then, the going aim has been neutrality and the phasing out of interest deduction for home loans was announced by the government that came into office in 2011. In accordance with a gradually decreasing strategy, the deduction (28 per cent until 2011, 30 since, always 2 per cent more for first-home buyers) diminishes so that interests could be reckoned in full in 2011, but thereafter, over the election period, only 85 per

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<sup>134</sup> Rent regulation does not apply when individuals rent out their house or cooperative apartment provided that the letting is not part of a commercial activity. (If a person is letting three or more dwellings this is normally considered a commercial activity. When a person is letting several homes, the new rules apply only to the first lease.) The parties are in these cases free to agree on the size of the rent. If the agreed rent significantly exceeds the cost of capital (calculated as a reasonable rate of return on the market value of the property) and operating costs of the property, the rent tribunal can lower the rent after an application by the tenant. The landlord is not entitled to receive rent increases from the rent tribunal. See [Report for Sweden, 45].

<sup>135</sup> *Verotuksen kehittämistyöryhmän loppuraportti* (Final Report of the Working Group for Developing the Finnish Tax System), Valtionvarainministeriön julkaisu 51/2010, Helsinki: Ministry of Finance 2010, 160.

cent of interest payments in 2012, 80 per cent in 2013, 75 per cent in 2014, and 70 per cent in 2015.

Finnish production subsidies – which have also served the aims of counter-cyclical economic policies – carry out the aim of ensuring housing possibilities for low-income households and the aim of preventing differentiation processes in residential neighbourhoods, both of which are integrated in the statutory purpose of tenant selection (assigning apartments to households with ‘the most acute need for a rental dwelling, whilst striving for a varied community structure in the building and a socially balanced neighbourhood’<sup>136</sup>). The standard rules of tenant selection apply to special groups, such as students and others, whose housing is subsidised through differentiated species of subsidies, and immigrants and Roma, who have difficulties in the free market.<sup>137</sup> Housing for the elderly is the only targeted policy in Sweden, while in Denmark the term ‘social housing’ is a collective designation for three types of housing: social family dwellings (82 per cent of the stock), social dwellings for the elderly (12 per cent), and social dwellings for young persons (6 per cent).<sup>138</sup> The statutory objective of the Danish social housing organisations is to provide appropriate housing for those in need, at a reasonable rent, and to allow tenants influence over their own living conditions.<sup>139</sup> During 2001–2011, when a liberal-conservative government was in power, the social sector in Denmark ‘changed from providing affordable housing to all groups in society, towards a more selective role of provider of housing for groups with special needs and the elderly.’<sup>140</sup> After the 2001 election, the power of the group whose cooperation had helped to keep social housing an insiders’ issue – social democrats, trade unions, and the national social housing organisation – dissolved.<sup>141</sup> When the new government led by social democrats took office in 2011, social housing is said to have gained momentum<sup>142</sup> and be still a priority.<sup>143</sup>

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<sup>136</sup> Act on Interest Subsidy for Rental Housing Loans and Right of Occupancy Housing Loans (June 29, 2001/604), 11a [‘The purposes of resident selection’] (August 18, 2006/717); correspondingly, *aravarajoituslaki* (17.12.1993/1190), 4a [‘The purposes of resident selection’] (August 18, 2006/716). Ensuring housing possibilities for low-income households is a policy aim on the ground that a dwelling is a necessity. *Verotuksen kehittämistyöryhmän loppuraportti*, Valtionvarainministeriön julkaisuja 51/2010, Helsinki: Ministry of Finance 2010, 160.

<sup>137</sup> See 4.3.1. below. The state is also subsidising the renovation of dwellings for elderly and disabled persons and the construction of lifts and other improvements enabling elderly or disabled persons to access and to move in the building. *Laki asuntojen korjaus-, energia- ja terveyshaitta-avustuksista* (1184/2005), 5(1), 6(1.1, 1.4, and 2), and 8(1).

<sup>138</sup> *The Danish social housing sector*, Ministry of Housing, Urban and Rural Affairs, 1–2, available at <http://www.mbbi.dk/english>.

<sup>139</sup> (Consolidation) Act on Social Housing, 6(1). This is an objects clause that implements the overall objective of the Danish social housing sector, which is to solve urgent social problems in housing. *The Danish social housing sector*, 2.

<sup>140</sup> Hedvig Vestergaard and Kathleen Scanlon, ‘Social Housing in Denmark’ in Kathleen Scanlon, Christine Whitehead, and Melissa Fernández Arrigoitia (eds), *Social Housing in Europe*, John Wiley & Sons 2014, 77–89, 88.

<sup>141</sup> *Ibid.*, 86. ‘[S]ocial housing advocates had to look for new ways of communicating with and influencing the government and the *Folketing* (parliament). They found a partner in the right-wing Danish People’s Party (*Dansk Folkeparti*), which had strong support among residents of social housing and was a key political ally of the liberal-conservative government in office until 2011. They might well have been the strongest political advocates for social housing.’ *Ibid.*

<sup>142</sup> *Ibid.*, 88.

Even though the question of whether tenants or owners receives more support is not clear, as an overall assessment home-ownership as a form is favoured over tenancy as a form in all three countries. The main general support to this sector is tax deductions of interest and that is available in all three countries. It raises housing prices and output. The main general support to tenants is rent regulation. It reduces profitability and output.

### 2.3. Urban policies

- Are there any measures/ incentives to prevent ghettoization and gentrification?
- How effective are they in the countries under review? Are there any means of control and regulation of the quality of private rented housing or is quality determined only by free market mechanisms?

In urban areas and elsewhere, distribution of places of residence is shaped indirectly by spatial planning. In Sweden, the planning rules are the most important tools to prevent segregation. Sometimes, builders are required to construct rental apartments as a condition for being allowed to construct cooperative or business properties.<sup>144</sup> Also, municipal social authorities run the informal practice of renting apartments from municipal housing companies and private landlords and subletting to socially vulnerable tenants.<sup>145</sup> In Finland, the criteria for tenant selection in state-subsidised dwellings realise the aim of diversified resident structure. This allocation is considered the strongest direct measure influencing residential patterns in Finland; urban planning is the more indirect measure.<sup>146</sup> The Danish initiatives to combat segregation have included funding to make social housing more attractive, permission to sell social dwellings so they could be converted to owner dwellings (which has been rarely used), and the right of housing organisations not to allocate tenancies to people out of work or others on the waiting list so as to achieve a more diverse resident composition.<sup>147</sup> In some municipalities, the local authorities have taken over all allocation in an effort to prevent ghettoisation.<sup>148</sup> The Danish legislation has not been directly aimed at any individual or named population groups.<sup>149</sup> The definition on whether an area is a ghetto was given above. The comparison of the effectiveness of these policies is complicated by the fact that Sweden – where there is a severe housing shortage – has received significantly more immigrants than Finland or Denmark.

### 2.4. Energy policies

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<sup>143</sup> [Report for Denmark, 36].

<sup>144</sup> [Report for Sweden, 37].

<sup>145</sup> Ibid.; see 4.3.1. below.

<sup>146</sup> Mari Vaattovaara, Katja Vilkkama, Saara Yousfi, Hanna Dhalmann and Timo M. Kauppinen, 'Contextualising ethnic residential segregation in Finland,' [ ], 234. Mixed tenure type estates are arduous to govern; but Finnish municipalities do own limited-liability housing company apartments, and let these.

<sup>147</sup> [Report for Denmark, 37].

<sup>148</sup> Vestergaard and Scanlon, 'Social Housing in Denmark,' 82.

<sup>149</sup> [Report for Denmark, 36].

- To what extent do European, national and or local energy policies affect housing in general and rental housing in particular in the countries under review?

Energy policies are designed and the various international measures in this field implemented at national level.<sup>150</sup> In Denmark, there have been two broad political agreements extending over elections; such commitments at the country level supplement supranational climate and energy commitments. In 2005, an agreement between the government and the Social Democrats, the Danish People's Party, the Social Liberal Party and the Socialist People's Party set a framework for energy-conservation efforts.<sup>151</sup> In 2012, a new agreement was reached among 95 per cent of the members of parliament, all parties but one.<sup>152</sup> The 2012 deal agreed by parliament commits the country to goals designed to detach it from oil and gas.<sup>153</sup>

In Sweden the Parliament set goals of energy preservation such as the reduction of 50% of energy use in the housing sector to the year of 2050. The two principal methods of reaching the goals of the housing sector are subsidies to energy improvement of old buildings and strict energy requirements on new buildings. Such legislation applies between the state and the owner of the house, thus tenants are not affected by energy legislation.<sup>154,155</sup>

Some examples of how energy policies affect renting can be given. Among the European Union climate-policy and energy-efficiency actions setting objectives and the pace for new regulation is energy performance certification.<sup>156</sup> In Finland, where the tenancy market is most liberal, a requirement such as the energy performance certificate<sup>157</sup> influences rental contracts mainly indirectly – to the extent that the costs of the certificate can be passed on in rents. (In contrast, what is said to have influenced private contracting directly is the development of measurement systems, such as

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<sup>150</sup> The lead ministry for energy policy in Sweden is the Ministry of Enterprise, Energy and Communications; the Ministry of the Environment is in charge of climate and environmental policy, and the Ministry of Health and Social Affairs is responsible for the Planning and Building Act. The Swedish Energy Agency (Energimyndigheten) is the central governmental agency for energy policy. The Danish Ministry of Climate and Energy was established in 2007 by de-merging energy issues from the Ministry of Transport and climate issues from the Ministry of the Environment; with the reshuffle following the 2011 election, it was assigned as a new area building department, and now it is the Ministry of Climate, Energy and Building. The Danish Energy Agency (Energistyrelsen) is responsible for energy and building policy. The Ministry of Employment and the Economy is the main responsible ministry in Finland, but a host of other actors are involved: the Ministry of the Environment, the Ministry of Agriculture and Forestry, the state-owned Motiva Group (which started as the Energy Information Centre in 1993–2000), and at the regional level fifteen Centres for Economic Development, Transport and the Environment (ELY Centres).

<sup>151</sup> Agreement on future energy-saving initiatives on 10 June 2005.

<sup>152</sup> Denmark's Energy Agreement for the period 2012–2020, 22 March 2012.

<sup>153</sup> **'Denmark aims to get 50% of all electricity from wind power,' *The Guardian*, 26 March 2012.**

<sup>154</sup> Report for Sweden Section 2.2 (d).

<sup>155</sup> In Finland, a climate act is in preparation.

<sup>156</sup> Directives 2002/91/EC and 2010/31/EU.

<sup>157</sup> The certificate is purchased by the owner of the building, that is, typically a limited-liability housing company.

apartment-specific measurement of energy consumption.<sup>158</sup>) In Denmark, there is a regime under Section 5(2) of the Housing Regulation Act, which is applicable when improvements of a certain value have been carried out; the incentive for the owner is that she can set rent at a higher level than the rent charged before the improvements were made. From July 1, 2014, for Section 5(2) to apply, the entire property must at the time of rental attain an energy-performance-certification label A–D; or, the owner must have made and incurred expenses for energy improvements<sup>159</sup> covering the part of the property in residential use and exceeding a certain value, before the section is applicable.<sup>160</sup> It is not possible to present a calculation on rent increases under the section.<sup>161</sup> Finally, in Sweden, the landlord has the right to increase rent on grounds of improving the living quality of the single flat (for instance, a renovated bathroom), but improved energy efficiency in the building does not give the landlord the right. The sitting tenants would have to agree to a rent increase voluntarily, and they are in negotiations represented by the tenants' union. According to one tenants' union representative, the local union would face a hard time explaining to the tenants why they should 'pay a higher rent for the environment.'<sup>162</sup> Moreover, Swedish tenants normally pay a lump sum for rent, covering all energy-related costs. The energy bill is paid by the landlord, and so the tenants do not profit from the renovation and are even more unlikely to accept an increased rent voluntarily.<sup>163</sup>

## 2.5. Subsidization

- Compare the different types of housing subsidies available in the countries under review, in particular:
  - Distinguish between object and subject-related subsidies; *i.e.*, subsidies for (constructing and/or renting out) certain dwellings or certain tenants, (certain kinds of) landlords and, if relevant, housing associations or similar entities acting as intermediaries
  - Compare the way and procedure by which subsidization works (e.g. direct, by means of investment loans, tax privileges).
  - Is there a subjective right to certain subsidies (if yes: by whom) or does the public administration have discretion in whom to assign the subsidy?

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<sup>158</sup> Apartment-specific water meters have been mandatory in new buildings beginning from 2011. In apartment buildings, there is usually no apartment-specific heat consumption measurement, because of the high cost of these systems.

<sup>159</sup> Excluding maintenance in the meaning of Rent Act, Section 58 or 58a.

<sup>160</sup> Act nr. 439 of 06/05/2014, section 2, adding a new Section 5(3) to the Housing Regulation Act. Available (in Danish) at <https://www.retsinformation.dk/Forms/R0710.aspx?id=162910>.

<sup>161</sup> An apartment of 100 square metres could be rented out to 14,000–15,000 euros a year, perhaps. If the whole building is renovated including energy efficiency and a new kitchen and bath in the apartment in question, it might be rented out to up to 17,500 euros a year. But this is only a very rough estimate and many other factors are involved.

<sup>162</sup> André Landwehr, 'How can local governments push for ambitious energy-efficient renovation of privately owned million-program houses?' Master Thesis in Built Environment, Malmö University 2013, 21 (interview of a local tenants' union representative).

<sup>163</sup> *Ibid.*

- Which level of government is competent to assign the subsidies?
- Does subsidization reflect the principle of “neutrality of tenure” or are homeowners privileged?
- To what extent is the system of subsidisation effective in the various countries and addresses the really existing needs, particularly those of vulnerable groups (or contains just gifts to the middle class for example), on the housing market?

Housing subsidies can be divided into three groups: financial (‘object-based’) subsidies, direct (‘subject-based’) allowances, and tax subsidies. Tax subsidies, such as the interest deduction for home loans in all three countries, will not be presently considered any further, although they are part and parcel of all economic comparisons. For example, according to the Finnish government, housing was supported by a total of 2,160 million in 2008, 47 per cent of which consisted of housing allowances, 13 per cent of production subsidies and grants, and 40 per cent of interest deductions in taxation.<sup>164</sup> In Sweden, financial subsidies for production were phased down in the 1990s, and the remaining financial production subsidies were challenged, under European state aid law, beginning in 2002 and then discussed, including the notoriously difficult question of how to define a subsidy.<sup>165</sup> Outside the universal system, Sweden gives investment support

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<sup>164</sup> [Government of Finland, 2011], 43.

<sup>165</sup> According to an account of European competition law in the area of social housing, ‘[i]n July 2002, the European Property Federation (EPF) lodged a complaint with the European Commission, objecting to the Swedish practice of allocating state aid to house well-off people. After a state inquiry and much debate, the Swedish parliament in 2007 abolished public service compensation for municipal housing companies in order to maintain the principle of universal access (although the phasing out of state subsidies for housing construction had begun in the early 1990s [. . .]).’ Darinka Czischke, ‘Social Housing and European Community Competition Law’ in Kathleen Scanlon, Christine Whitehead, and Melissa Fernández Arrigoitia (eds), *Social Housing in Europe*, John Wiley & Sons 2014, 332–346, 340. In the following excerpt, some light is shed on the reasons for, and arguments in, the complaint by the Swedish Property Federation:

‘In 2005 the private property owners association filed a complain[t] to the European Commission arguing that the Swedish housing policy broke EU-laws concerning state subsidies and competition. This might seen as [sic] strange as state subsidies were dismantled in the 1990s and in a report published 2006 [. . .] a number of interviewed private housing companies said that there now was a leveled playing field. The “real” reason for the complaint was that the “Three-party agreement” wasn’t implemented in Stockholm. The local Tenant Union in Stockholm, dominated by tenants living in central areas, refused to follow the agreement and the Property Owners Federation therefore needed some new leverage against the Tenant’s Union.

The innovation in the Property Owners complaint, based on a report from Ernst & Young (2004) was a new interpretation of the term “subsidy”. Instead of focusing on traditional subsidies in terms of money going from one party (the state) to another party (the housing companies) or lending money at interest rates below the market level, subsidy now also included *cases where the owner did not demand a market based rate of return on the market value of the assets in the company*. This was measured by relating the net operating income of the company to the market value of the properties. As rental properties in attractive areas in the big cities had high market values because of the option to convert them to condominiums while the net operating income was low because of the rent regulation, the rate of return on market value was very low in the municipal housing companies in the large expanding cities. The difference between a market based rate of return and this actual rate of return was seen as a subsidy. Even if it was not formulated in this way, it meant that almost by definition there were subsidies if a company did not try to maximize profits and did not charge the price that would lead to maximum profits. There were also some other elements in the Ernst & Young investigation and the complaint and that

for producing senior housing and grants to adapt a rental or cooperative apartment to a disability encountered by its resident.<sup>166</sup> In Finland, interest-subsidy loan authorisations have since 2012 been granted over 1 billion in the annual state budget; together with guarantee-loan appropriations (285 million), the total of production subsidies in the 2013 budget was 1,325 million. Also, renovation and energy grants<sup>167</sup> were allocated 50.5 million in 2013, and 26.5 million in 2014 when a new start-up grant for renovation was allocated 100 million. ARA has the discretion in most cases.<sup>168</sup> The typical financial subsidy in Finland, interest-rate subsidy, is a pure subsidy, as the subsidy is not required to be repaid to the state. This arrangement seems different compared to that in Denmark, where social housing has since 1999 been largely financed by mortgages with debt repayments, set by law at 3.4 per cent of initial building costs plus bank charges, that go to the government which services the mortgages. As interest rates are low, the state is today making a profit from social housing built after 1999.<sup>169</sup> Financial subsidies in Denmark include, besides the financing of social housing construction, funding for the refurbishment of social housing areas, a subsidy scheme for solar energy, and an urban renewal programme concerning other than social housing<sup>170</sup>

Direct subsidies can be targeted allowances, such as are the housing benefits in Sweden (granted independent of tenure, paid by the state,<sup>171</sup> in two forms<sup>172</sup>), Finland (independent of tenure, paid by the state,<sup>173</sup> in three categories<sup>174</sup>), and Denmark (only

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focused on more traditional subsidies, e.g. a municipality guaranteeing the loans of the housing company without demanding payment for this.'

Elsinga and Lind, 'The effect of EU-legislation on rental systems in Sweden and the Netherlands,' 6–7.

<sup>166</sup> [Report for Sweden, 40].

<sup>167</sup> The state grants interest subsidies for renovation (to municipalities and general-interest organisations and, up to 40 or 50 per cent of the project costs, to limited-liability housing companies), and there are grants for the following: (1) renovations of the dwellings for the elderly and disabled persons (40 per cent of approved costs); (2) building-condition surveys in cases where the municipal health-protection authority has verified a health risk; (3) the construction of lifts and other improvements enabling elderly or disabled persons to access and move in the building; (4) the eradication of a health risk in exceptional cases; and (5) measures to save energy and to adopt renewable energy sources in small houses (of no more than two apartments) on means basis (and covering only other than cost of labour, which may be included in the tax credit for domestic help). The new start-up grant for renovation 2013–2014 is for limited-liability housing companies and rental housing companies.

<sup>168</sup> In cases (1), (2), and (5) in the previous footnote, the grants are applied from the municipality, after which ARA distributes the state subsidies to the municipalities, while ARA has the discretion in cases (3) and (4). The new start-up grant is 10 per cent of ARA-approved costs.

<sup>169</sup> Vestergaard and Scanlon, 'Social Housing in Denmark,' 80.

<sup>170</sup> Under the Act on Urban Renewal and Urban Development, financial subsidies are provided to two types of urban renewal activity: building renewal (which comprises initiatives for building renewal and for the condemnation of buildings constituting a health or fire hazard for their occupants) and area-based renewal (initiatives for recreational areas and for area renewal).

<sup>171</sup> The Swedish Social Insurance Agency (*Försäkringskassan*) is the government agency responsible.

<sup>172</sup> Housing allowance (*bostadsbidrag*) for families with children and young people aged between 18 and 29; the amount depends on household income, number of children, and housing costs. A person who receives activity or sickness compensation can be entitled to housing supplement (*bostadstillägg*); the same applies for pensioners. [Report for Sweden, 40.]

<sup>173</sup> An independent institution, the Social Insurance Institution of Finland, '*Kela*,' grants the benefits. (The organisation was founded in 1937 as the National Pension Institution, in Finnish, '*kansaneläkelaitos*,' abbreviated '*Kela*,' still its Finnish names.) *Kela* is supervised by parliament, to whom a board of trustees reports annually.

for rental apartments, paid by municipalities, in two forms<sup>175</sup>). Or they can be more general kinds of benefit: ‘economic support’ in Sweden includes actual housing costs for a reasonably priced apartment; ‘income support’ in Finland covers a reasonable level of housing. In Sweden, housing allowances and other kinds of direct economic support are considered the ‘dominant paradigm for helping low-income households.’<sup>176</sup> For the numbers of recipients, 4 per cent of all households were receiving housing allowance in 2010;<sup>177</sup> 6 per cent of households received economic support in 2011, though this last share is higher among households with a foreign background.<sup>178</sup> In Finland, the state budget expenditure for housing allowances was 1.1 billion in 2013; in addition, housing was subsidised (approximately 300 million in 2010) through general income support.<sup>179</sup> Finnish debates on the overlap between direct subsidies and financial subsidies include a proposal from 2010 to steer people who depend on housing allowance to live in state-subsidised dwellings – the percentage of residents in these dwellings receiving housing allowance dropped from 70 in 1990 to 50 in 2009 – and the opposing worry about the adverse effect that an increase in the overlap of financial and direct subsidies would have on the resident structure of the state-subsidised rental buildings. It was pointed out

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<sup>174</sup> (1) General housing allowance covers 80 per cent of the reasonable housing costs of the household, beyond a deductible based on the number of people and their income and wealth. (2) Student housing supplement is 80 per cent of established housing costs, but not granted for the monthly cost exceeding 252 euros: 201.60 euros monthly. (3) Pensioners’ housing allowance is 85 per cent of reasonable housing costs, minus 50,62 euros a month and minus 40 per cent of the amount that exceeds certain family income limits. [Report for Finland, 66.]

<sup>175</sup> All tenants (either in private or in social rented housing) can receive housing support calculated on the basis of the housing expenses, the size of the dwelling, the household income, and the size of the household. Housing support for other people than those on a state pension is called *boligsikring* (‘housing security’). Another scheme, *boligyldelse* (‘housing benefit’), is for recipients of old age pension and dominant in the field of housing for elderly people. [Report for Denmark, 40–41.]

<sup>176</sup> Lind, ‘Social Housing in Sweden,’ 97.

<sup>177</sup> [B]y 2010 only 180 000 households (4% of the total) were receiving housing allowance, compared to 380 000 in 1992 and 570 000 at the bottom of the crisis in 1995.’ *Ibid.*, 98. [With the aim of] cutting the expense of the housing allowance scheme, the Swedish housing allowance system was reformed in 1996–1997 [ . . . ]. This resulted in an expenditure decrease of almost 50% or SEK 4 billion as well as stricter eligibility criteria than before, and the number of housing allowance recipients decreased by approximately 50% over the 1996–2001 period [ . . . ]. This reform introduced a dwelling size constraint, relative to household size, into the Swedish housing allowance system. With the implementation of this reform, recipients could receive a housing allowance only for the part of the useful floor space that is within the set limit; previously, no restrictions were placed on the physical size of recipients’ apartments. Households with floor space above this limit received a reduced housing allowance, while households with floor space under the limit were unaffected by the reform. [T]his size limit has been criticized for creating a lock-in effect [ . . . ].’ Cecilia Enström Öst, ‘Housing allowance, housing consumption and lock-in effects: Evidence from a natural experiment,’ Working Paper 2012:3, Stockholm: Swedish Social Insurance Inspectorate, 2012, 5.

<sup>178</sup> Lind, ‘Social Housing in Sweden,’ 98. ‘The share of households living on economic support is higher among households with a foreign background. For example, in Stockholm, 2.2% of Swedish-born persons received such support in 2011, as opposed to 9.2% of those born outside Sweden. In some Stockholm suburbs, the share of households dependent on economic support is almost 20% and in areas of Malmö the share reaches around 30% [ . . . ]. These are typically large suburban housing estates built in the Million Homes Programme between 1963 and 1972.’ *Ibid.*

<sup>179</sup> ‘There are no national statistics on the proportion of housing costs in income support. Estimates from the local level vary between 21 and 63 per cent and are on average 52 per cent. Considering that the expenditure on income support was 626 million euros in 2010, the mentioned average percentage would mean that housing is subsidised, through income support, an additional approximately 300 million.’ [Report for Finland, 66.]

that spirals of segregation had so far been avoided in Finnish towns and cities, but tightening the tenant-selection criteria would threaten this balance in individual areas and individual buildings.<sup>180</sup>

Types of housing subsidies are multifold beyond the above financial subsidies and needs- and means-tested direct subsidies. For example, a tenant with no or little income can get a rent guarantee from the municipality in Sweden and Finland; municipalities in Finland subsidise rental housing through loan guarantees and loans and through lighter real-estate taxes paid by general-interest owners; and tenants in Denmark can obtain loans to pay the deposit (sometimes 3 to 6 months rent) required when they move into a new dwelling.<sup>181</sup>

## 2.6. Taxation

- Compare the various tax systems applying to different types of tenure (ranging from ownership to rentals) and their effectiveness in the countries under review? In particular:
  - Tenants: Do tenants also pay taxes on their rental tenancies? If so, which ones?
  - Homeowners' income tax: is the value of occupying a house considered as a taxable income? Is the profit derived from the sale of a residential home taxed?
  - Is there any subsidization of rental tenures via the tax system? If so, how is it organized? (for instance, tenants being able to deduct rent from taxable income; landlords being able to deduct special costs; homeowners being treated favourably via the tax system)
  - In what way do tax subsidies influence the rental markets?
  - Is tax evasion a problem? If yes, does it affect the rental markets in any way?
  - Does the tax system reflect the principle of "neutrality of tenure" or are homeowners privileged?
  - To what extent is the tax system of subsidisation effective in the various countries and influences rental markets in a positive (or negative way)?

Tenants do not pay taxes on their tenancies in any of the three countries. Tenants are not taxed in connection with rent expenses; nor are there tax allowances for maintenance expenses or other expenses relating to the rental property. There is no connection between the landlord's payment of taxes and tenant's security of tenure.

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<sup>180</sup> [Committee Report reference].

<sup>181</sup> Loans for tenant deposits are generally only paid for social housing and certain older dwellings. For refugees and certain other groups, loans may also be granted for other dwellings.

There is no documentation of the direct effect tax subsidies have on the rental markets. This also means that it is not easy to determine whether the tax system of subsidisation is effective or whether it influences rental markets in a positive (or negative) way. Of course, if the subsidies described above were to be taken away, this could have a significant effect. In many cases, this would make investment in property much less profitable, thereby creating an impact on both investments in existing property and the incentives to construct new housing.

In Denmark – to some extent – landlords will be able to pass on their tax to tenants by including their expenses in the rent, and advance notice of rent rises can be given on the basis of certain taxes (when they increase).

The value of occupying a house is not considered as a taxable income in any of the three countries. Profits from sale are to some extent taxed.

In all three countries interest expenses relating to financing of the property can be deducted in the calculation of the owner's taxable income.

This possibility – combined with the fact that as an owner of property it is possible to earn a tax-free profit on the sale of one's property – the conclusion is that homeowners are being treated favourably via the tax system. In addition, the "tax-free value" that arises when the value of the property exceeds the amount for it was purchased can also be mortgaged, enabling the homeowner to release money to fund purchases, for example. A tenant does not have this advantage. On the other hand, the tenant would not be able to borrow large amounts of money from a bank or mortgage company and therefore would be subject to very little financial risk.

In Sweden owners of one or two dwelling houses and apartment buildings have to pay a property fee. In some cases stamp duty in order to receive a title deed for the property must be paid. If the house or apartment is sold, there is a capital gains tax of 30 % on two-thirds of any price rises. But this can be deferred as long as another item is bought for at least the same amount of money.<sup>182</sup> Apartment buildings are counted as commercial property and taxed as a commercial activity at a rate of 22 % on any excess. (Only one or two dwelling houses and land intended to be provided with such a house, can be counted as private residential property). The tax rate on the sale of commercial property is 27 % of earnings, compared with 22 % for private residential properties.<sup>183</sup>

For landlords in Denmark, the letting of property – regardless of the number of properties that are let – is generally considered a form of self-employment. For this reason, landlords are generally taxed on their running costs and on the profits they make from the sale of properties. The extent of the taxation will depend on whether the landlord is subject to the personal tax rules, corporate tax rules or special tax rules for pension institutions, i.e. the tax is determined by the "legal" basis under which the rental

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<sup>182</sup><http://www.skatteverket.se/privat/skatter/fastigheterbostad/fastighetsavgiffastighetsskatt.4.69ef368911e1304a625800013531.html>.

<sup>183</sup> <http://www.skatteverket.se/download/18.18e1b10334ebe8bc8000115067/kapitel>.

property is owned. Owners of properties pay direct taxes for their properties as property value tax (in relation to the value of the property), basic rent (municipal tax) and also a number of “green taxes” concerning, for example, systems for heating and utilities, etc.

Any net profit on a property’s running costs is deemed taxable income for landlords who are subject to personal or corporation tax. This is calculated as the income from the operation (primarily rent income) minus expenses for administration, refurbishment, insurance, maintenance and property taxes, etc., as well as interest costs. The cost of improvements that raise the standard of the property relative to its standard at the time of purchase cannot be deducted.

Capital gains in connection with the relinquishment of property are considered taxable income. Any profit from the sale of a property in which the owners themselves have lived is not taxed. If the owner have lived in the residential property that he own a profit from selling the property will not be taxed.

In Finland capital gain from the sale of one’s home is exempted, if the dwelling was used as the subject’s or the family’s permanent home for at least two years.

Homeowners also pay Real-estate tax. The tax is based on the value of the property, and not on income derived from it. A specific tax of 1–3 % is levied for non-built construction sites. Special rates apply in the Helsinki region.

A transfer tax is generally paid by the purchaser. It amounts to 1.6 % of the price of housing-company shares and 4 % of the real estate price. First-home buyers are exempt from the tax on three conditions: if they buy at least fifty per cent of their dwelling, they acquire it to be their permanent home, and they are between 18 and 39 years of age.

It is unclear how the rental markets are affected by tax evasion in the three countries. In the case of property owners, tax evasion with respect to income for renting out the property cannot be documented as a significant problem. The possibility that some landlords do not declare their rental income cannot be ruled out, but the tax authorities can estimate taxable income on a discretionary basis if the property is being let. In the few cases where the landlord deliberately attempts to avoid tax, it will probably be of no direct consequence for the tenants, as they will be protected by the provisions of the rent legislation with regard to the payment of rent and the amount of rent that can lawfully be charged.

In Finland however one widespread practice surrounding housing has been the direct payment for repair and other household services. To combat the tax evasion, the government created a tax credit for domestic help (household, nursing and care work, repair and renovation work, and services in installing and advising on information technology).

**3. Comparison of tenures without a public task (Regulation in Private Markets – points 3 and 4 have been exchanged as private tenancies work as default solutions in many national systems)**

**Key parameter: “Socio-economic equilibrium” between position of landlord and tenant – so as to accommodate both the tenant’s need to have access to decent housing at an affordable cost and the landlord’s profit-orientation and property rights**

### **3.1. Evaluative criteria for the landlord**

#### *3.1.1 Profitability*

- Does rent regulation impede a reasonable profit?
  - o Profit from renting compared to other investments?
- Taxation of income from rent (privileged or absence of taxation) ?
- Other expenses to be borne by the landlord
  - o Costs of repairs for which the landlord is responsible
  - o Costs of utilities, other charges and taxes for which the landlord is responsible
- Other relevant economic and financial advantages/disadvantages for landlords

In all of the three countries investments in property is considered attractive.<sup>184</sup> Investments in private rental properties (where there is rent regulation in Denmark and Sweden<sup>185</sup>) will be determined by the extent to which the investors can expect a return which can compete with other investments. This will mean that profit calculation will take the limitations in the possibilities for rent increases etc. into consideration. Prior to the financial crisis investments in rental property were generally attractive to investors because of rising prices – it was possible to make a profit on the value of the property alone without taking rent payments from the tenants into consideration. Historically, property investments in rental dwellings in the three countries have given high rates of return. The greatest risks associated with investment in residential property where there is rent regulation relate to developments in the price of the property and, to some extent, whether the rent has been determined on the correct basis and is optimised.

In Finland, where there is no rent regulation today, the attractiveness of the rental residential sector has increased because of turbulence in the commercial property sectors.<sup>186</sup> State subsidies and, for instance, the growing demand for senior housing also attract investors. Residential has been the best performing sector for four consecutive years in the KTI Index, which measures the total return of directly held property investments in Finland.<sup>187</sup>

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<sup>184</sup> See section 1.2.3 above as well for figures on return of investment in property in the three countries.

<sup>185</sup> According to a recent study (Ernst & Young, “*Real Estate Asset Investment Trend Indicator Sweden 2013*”), 42 % of the respondents consider Sweden to be very attractive as a location for real estate investments and 58 % consider it to be attractive. An annual survey conducted by the Swedish union of tenants shows that property owners in Scania consider it profitable to own and manage apartment buildings. But the Swedish Property Owner Federation claims that it is much more profitable to build cooperative apartments than rental dwellings and that the rent setting system is a major obstacle for new construction. See as well Hyresgästföreningen: “*Är det en bra affär att äga hyreshus?*” (2012) and Fastighetsägarna: “*Varför byggs det så få hyresrätter?*” (2012).

<sup>186</sup> *The Finnish Property Market 2012*, 37 and 45–46.

<sup>187</sup> <http://www.kti.fi/index?PHPSESSID=dede44df44ccd6c84ee2027d708e5227>.

- Taxation of income from rent (privileged or absence of taxation)?<sup>188</sup>

For landlords in Denmark, the letting of property – regardless of the number of properties that are let – is generally considered a form of self-employment. For this reason, landlords are generally taxed on their running costs and on the profits they make from the sale of properties. The extent of the taxation will depend on whether the landlord is subject to the personal tax rules, corporate tax rules or special tax rules for pension institutions, i.e. the tax is determined by the “legal” basis under which the rental property is owned.

Pension institutions in the form of life insurance companies and pension funds are taxed on an ongoing basis based on estimated property values. In the event of a property being sold, the profit made is determined as the cash value of the sale price minus the value of the property at the start of the year. There are relief rules for many properties which exempt the profits of pension institutions from taxation.<sup>189</sup>

Like other interest expenses, interest expenses relating to financing of the property can be deducted in the calculation of the owner’s taxable income.<sup>190</sup>

In Sweden apartment buildings are counted as commercial property and taxed as a commercial activity at a rate of 22 % on any excess (only one or two dwelling houses and land intended to be provided with such a house, can be counted as private residential property). Rent are recognized as income and all expenses of the property may be deducted, even depreciation. Any interest on loans used for the acquisition of property or equipment is deductible. The tax rate on the sale of commercial property is 27 % of earnings, compared with 22 % for private residential properties.<sup>191</sup>

In Finland Real-estate tax was introduced in 1993 – when a tax on imputed rental income was abolished. The real-estate tax is collected by municipalities and imposed on the owner, landlord or owner-occupant..

Tax rates are decided municipally within limits set by Parliament. The rates are currently between 0.6 and 1.35 % of the taxable values of the building and the land, and between 0.32 and 0.75 % of the value of permanent residences. Given that the tax is based on the value of the property, and not on income derived from it, this is a partial substitute to a wealth tax that was abolished in 2006.

In Denmark any net profit on a property’s running costs is deemed taxable income for landlords who are subject to personal or corporation tax. This is calculated as the

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<sup>188</sup> See section 2.6 above as well regarding taxation.

<sup>189</sup> Borg Kristensen: *Konsekvenser af huslejerregulering på det private boligudlejningsmarked - en mikroøkonomisk undersøgelse*, DREAM 2012.

<sup>190</sup> Mortgage interest is currently deductible at a maximum rate of approximately 33 per cent. Years before, this rate was much higher (up to 60 per cent in the 1980’s and around 45 per cent in the 1990’s). Any profit from the sale of a property in which the owners themselves have lived is not taxed.

<sup>191</sup> <http://www.skatteverket.se/download/18.18e1b10334ebe8bc8000115067/kapitel>

income from the operation (primarily rent income) minus expenses for administration, refurbishment, insurance, maintenance and property taxes, etc., as well as interest costs. The cost of improvements that raise the standard of the property relative to its standard at the time of purchase cannot be deducted. Owners of properties pay direct taxes for their properties as property value tax (in relation to the value of the property), basic rent (municipal tax) and also a number of “green taxes” concerning, for example, systems for heating and utilities, etc. Profits are taxable income. Any profit from the sale of a property in which the owners themselves have lived is not taxed though.

In Sweden owners of one or two dwelling houses and apartment buildings have to pay a property fee. For one or two dwellings houses it is 7 074 SEK or 0.75 % of the assessed value if that provides a lower fee. For apartment buildings it is 1 210 SEK per apartment or 0.3 % of the assessed value. No fee is required for condominiums until 2016. When the house or apartment is sold, there is a capital gains tax of 30 % on two-thirds of any price rises. But this can be deferred as long as another item is bought for at least the same amount of money.<sup>192</sup>

Similar to the regulation in Denmark capital gain from the sale of one’s home in Finland is exempted from taxation, if the dwelling was used as the subject’s or the family’s permanent home for at least two years.

- Other expenses to be borne by the landlord
  - o Costs of repairs for which the landlord is responsible
  - o Costs of utilities, other charges and taxes for which the landlord is responsible
- Other relevant economic and financial advantages/disadvantages for landlords

Under Danish law it is specifically stated in the Rent Act that the landlord shall keep the property and the premises in proper repair at all times. All installations for drainage, supplies of light, gas, water, heating and cooling shall be maintained in good and serviceable repair. The landlord shall likewise be responsible for keeping the premises clean and for usual lighting outside and inside the property, as well as the means of access to the premises; also, the landlord shall be responsible for cleaning of the pavement, courtyard and other communal facilities. The landlord's duty to maintain the apartment by whitewashing, painting and papering shall be deemed to be discharged upon payment from time to time by the landlord. The landlord is responsible for all cost of repairs relation to the items etc. mentioned. It is legal to make an agreement stating that the tenant is responsible for whitewashing, painting and papering. The tenant and the landlord may mutually agree on a different distribution of the maintenance obligations, so that the tenant assumes e.g. the responsibility for maintaining and, if necessary, renewing toilets, water taps, refrigerators, kitchen tables, mixer taps, window panes, floors, floor covering and the like. Arrangements, in accordance with which the tenant takes on the responsibility to maintain anything other than locks and keys, must be stated in the tenancy agreement.

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<sup>192</sup><http://www.skatteverket.se/privat/skatter/fastigheterbostad/fastighetsavgiftfastighetsskatt.4.69ef368911e1304a625800013531.html>

Landlords wishing to refurbish a property must carry out the refurbishment in accordance with general building legislation. If a property is uninhabitable, e.g. because of extensive damage, the local authority where the property is situated may intervene and condemn the property, preventing it from being occupied. The legislation contains no specific minimum requirements regarding the condition that a property must be in before it can be let. It is possible for the local municipality to make a claim to the Rent Tribunal (not just on behalf of the tenant) if a property owner fails to maintain a property so that it is fit for habitation.

In Sweden the same prerequisites apply. The landlord is also here responsible for all maintenance works and repairs and for keeping the dwelling in such condition that, according to the general view in the locality, it is fully serviceable for the purpose intended.<sup>193</sup> The landlord shall, at reasonable intervals of time, arrange for papering, painting and other customary repair in the dwelling because of the deterioration of the unit from age and use. What a reasonable interval of time is varies depending on the size of the apartment and how many tenants living there. When it comes to painting and wallpapering the interval has become wider and is now about twelve to fourteen years. It is important to note that the landlord's obligation to repair does not occur simply because a certain amount of time has elapsed since the previous repair, it is also required that the apartment is in need of maintenance. As in Denmark is it possible – in some cases – that the parties may agree that the tenant will be responsible for maintenance.<sup>194</sup>

A tenant in both private and municipal housing is protected by rules on minimum acceptable standard in the Tenancy Act,<sup>195</sup> such as access to hot and cold water, a toilet, shower, stove, refrigerator etc. If these requirements aren't met, a tenant can make an application to the Rent Tribunal and require the landlord to fix the errors. The Rent Tribunal may impose a penalty if the landlord does not comply with the injunction.

Also in Finland the landlord has the duty to ensure that at the commencement of the lease and throughout its duration, the apartment shall be in such condition as the tenant may reasonably require, taking the age of the apartment, the local housing stock and other local conditions into consideration, unless otherwise agreed regarding the condition of the apartment. The provision imposing this duty on the landlord (section 20) is dispositive, and so the parties may agree on an inferior condition of the apartment. The parties' freedom of contract in private rental markets is limited by the basic requirements for the apartment set in health-protection, land use and building and environmental legislation.

### 3.1.2. *Property rights respected de iure and de facto*

Background: potential risks:

- Risk of default with rent payment
- Risk of abuse or deterioration of the house by the tenant

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<sup>193</sup> *Hyreslagen* Section 15 in combination with section 9.

<sup>194</sup> If the rented property is a single family home or a holiday cottage or the tenancy agreement includes a bargaining clause and the derogatory provisions have been included in a bargained agreement. *Hyreslagen* section 15.

<sup>195</sup> Tenancy Act § 18a.

- Risk of inability to evict a tenant, even in case of protracted violations of the contract or default in rent payment
- Existence and effectiveness of protection/ guarantee mechanisms:
  - Deposit
  - Liens and pledges on the tenant's belongings
  - Personal securities (e.g. surety)
  - Insurances
- Possibility to terminate contract if house is needed for own use or close relatives or another economic use (e.g. converting residential into commercial building)?
- Effectiveness of the eviction procedure?
  - Court proceedings or availability of conciliation or ADR procedure<sup>5.1.3.2.3.</sup>
- Construction and rehabilitation capabilities*
- Availability of mortgage credit
- Public subsidies for construction/rehabilitation
- Private arrangements: tenant agrees to rehabilitate apartment (performance in kind) in lieu of paying rent

The regulation in the three countries is similar to some extent. In Denmark the landlord decides where and how the rent and related bills shall be paid. However, payment can always be made to a bank, including (if applicable) the postal service. The rent is normally due on the first day of each month, but the parties are free to agree upon any another date. The landlord may terminate the tenancy agreement without notice in the case of default in the punctual payment of rent or other monetary liability. The landlord cannot terminate the contract (without further notice), except due to late payment, and if the tenant has not paid the arrears within 14 days from the tenant's receipt of a written notice requiring such payment.<sup>196</sup> This notice shall be given after the last due date for payment and shall state explicitly that the tenancy may be terminated if the back rent is not paid within the time limit. Under Section 94 of the Rent Act, the only case where the landlord is not entitled to terminate the tenancy agreement without notice is one where the matter for which the tenant is blamed is deemed to be immaterial (of "minor significance"). This could be e.g. if the amount that the tenant has not been paid is very small or if the tenant is not to blame for the delay.<sup>197</sup> Some cases are dismissed because the notice has not been explicit enough, thus making it impossible for the tenant to determine exactly what amount must be paid to avoid eviction.<sup>198</sup> If the tenant does not move immediately the landlord can initiate enforcement proceedings.<sup>199</sup>

In Sweden the rent shall be paid not later than the last weekday preceding the beginning of each calendar month – unless the parties have agreed on more favourable terms for

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<sup>196</sup> Rent Act Section 93 subsection 2.

<sup>197</sup> Recent examples from case law references on this topic: Ugeskrift for Retsvæsen 2011 p. 2400 Western High Court decision, Grundejernes Domssamling 2012 no. 77 Eastern high Court decision, Tidsskrift for Bolig- og Byggeret 2012 p. 542 Western High Court decision.

<sup>198</sup> Recent examples from case law: Ugeskrift for Retsvæsen 2006 p. 1864 Supreme Court decision, Ugeskrift for Retsvæsen 2010 p. 88 Western High Court decision.

<sup>199</sup> See answers regarding termination of contract without notice below in Section 6.6.

the tenant.<sup>200</sup> If the payment is delayed more than one week after payment day the tenancy is forfeited and the landlord is entitled to give the tenant an advance notice of termination.<sup>201</sup> However, the landlord must also serve the tenant with a notice saying that paying the rent within three weeks will recover the tenancy, and the notice of cancellation and the reason for the same have been given to the social welfare committee in the municipality where the unit is situated, the tenant may not be divested of the unit if the rent is paid within this period of time or deposited with the County Administrative Board. The tenant cannot be divested of the unit if the social welfare committee, within the time indicated above, has notified the landlord in writing that the committee will take responsibility for payment of the rent. Nor yet if the tenant has been prevented from paying the rent within the three weeks due to illness or some similar unforeseen circumstance and the rent has been paid as soon as possible, though not subsequent to the eviction dispute being determined by the court of first instance.<sup>202</sup>

If a tenant repeatedly pay the rent to late, the landlord can give a notice of termination with a period of notice. Then he can apply to the rent tribunal claiming that the tenant has neglected his obligations to such an extent that in fairness the agreement ought not to be prolonged.<sup>203</sup> When determining if the tenant is entitled to a prolongation, the overall picture of the tenant's behavior during the lease is of interest. The landlord's interest vs. the tenant's interest of keeping the apartment shall be considered.

In Finland the regulation is almost similar. Unless otherwise agreed, rent must be paid no later than on the second day of the rent payment period (one month, unless agreed otherwise).<sup>204</sup> There is no legal obligation on the landlord to send reminders. The landlord may terminate the lease if the tenant neglects to pay the rent within the legally required or agreed time, unless the tenant's action has only minor significance (see below as well).

- Risk of abuse or deterioration of the house by the tenant

Where the tenant neglects the premises and fails to repair the premises without delay – upon notice by the landlord requiring the tenant to do so – the contract can be terminated without notice according to the Danish Rent Act section 93.<sup>205</sup> Termination without notice is also possible where the tenant has failed to comply with the rules of proper conduct and the non-compliance is such that the tenant must vacate the premises.<sup>206</sup>

There is a similar regulation in the Swedish Rent Act section 42 where the contract can be terminated e.g. where if the unit is used contrary to section 23 or 41 and the tenant

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<sup>200</sup> Section 20. With regard to dwellings it is only with regard to the rent for the first month that the parties may agree on an earlier date for payment, for instance a certain time after the contract was signed.

<sup>201</sup> Section 42, first paragraph

<sup>202</sup> Section 44

<sup>203</sup> Section 46 paragraph 2

<sup>204</sup> Act on Residential Leases 34(1).

<sup>205</sup> E.g. Ugeskrift for Retsvæsen 2002 p. 1899 Western High Court decision.

<sup>206</sup> cf. Section 79a (1)(i)-(viii) or (xi), cf. Section 79b(2) of the Rent Act. This also applies where the tenant has failed to fulfil the conditions of a conditional tenancy, cf. Section 79b (1) (i), and the non-fulfilment is such that the tenant must vacate the premises.

does not rectify the matter immediately after being called upon to do so, or if the tenant or any other party to which the tenancy has been transferred or the unit let causes, through negligence, the occurrence of vermin in the unit or, through omission to inform the landlord of this, contributes to the spread of vermin in the property unit. If the unit is otherwise neglected or the tenant or another party to whom the tenancy has been transferred or the unit sublet neglects any point to be observed under section 25 in the use of the unit or does not take the care stipulated in that section and the matter is not rectified without delay after being called for.

Under the Finnish Act on Residential Leases the contract can be terminated without notice if the tenant uses the apartment for any other purpose or in any other manner than that provided when the lease agreement was made; or if the tenant creates a disturbance with his or her way of life or allows others to do so in the apartment; if the tenant fails to take good care of the apartment; or if the tenant violates provisions or regulations for the maintenance of public health and order in the apartment (Section 61[1]). The landlord is only entitled to rescind the contract after issuing the tenant with a prior written warning (in accordance with the rules on serving a notification for notice (section 62).

- Risk of inability to evict a tenant, even in case of protracted violations of the contract or default in rent payment

Between landlords and tenants, no constitutional rights will be violated when the landlord wants to evict the tenant because the tenant has not paid the rent. There are no rules on protection from eviction in the Rent Act. In some cases, due to social legislation, the local authorities have an obligation to help the evicted tenant arrange a new home, e.g. if it is a family with children and/or with social problems. If the matter for which the tenant is blamed is deemed to be of minor significance, the landlord is not entitled to terminate the tenancy agreement without notice. What a "minor significance" is, when not paying the rent on time, is the basis for a lot of disputes in Denmark and the limits for the "significance" are based on case law. This protection of the tenant can be pleaded in only a very few cases under special circumstances, e.g. when the tenant's bank failed to transfer the amount to the landlord's accounts or if the tenant has been hospitalized and unable to make the transfer on time. Even if the amount in question is very small (less than a month's rent or even just a few DKK), this is not a valid reason alone to find the matter immaterial.<sup>207</sup>

The regulation on this subject in the three countries is similar on the matter of "minor significance" to a late rent payment (as a ground for termination of the contract). In the Finnish Act on Residential Leases section 61 and Swedish Tenancy Act section 42 a similar rule applies. The reason for these similar rules on this topic is probably the fact that contract laws in the three countries are based on the same principles.

In Finland (as in Denmark) there are no rules on protection from eviction if the grounds for an eviction in the Act on Residential Leases are fulfilled. But if the apartment reside

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<sup>207</sup> Niels Grubbe, Hans Henrik Edlund: *Boliglejemål*, 2008, p. 434 ff.

children, whose living circumstances are unclear, or people in need of direct care<sup>208</sup> (such as the elderly or mentally ill or intoxicated persons), the Enforcement Code requires that “the local housing and social welfare authorities shall be notified as soon as possible”.<sup>209</sup> This obligation arises if the bailiff discovers, during the proceedings or while carrying out the eviction that said persons reside on the premises, but the bailiff has no active duty to determine the situation.<sup>210</sup> The bailiff may fulfil the obligation by informing either the housing authorities or the social authorities or both.<sup>211</sup> Unlike in Denmark though, the tenant may ask for a postponement of the move day.<sup>212</sup> If the postponement does not cause considerable inconvenience to the applicant, the bailiff may postpone the move day.

Lastly, if, at the time when the eviction is carried out, there are still said people in the apartment, “the eviction shall not be carried out before the housing and social welfare authorities have been reserved the opportunity to arrange for housing or to determine the need for social welfare services”.<sup>213</sup>

In Sweden – if the tenancy is forfeited due to non-payment of rent – the tenant has a chance of recovering the tenancy by paying the rent within three weeks. This period of time starts when he is served with a notice explaining how he may recover it and a notice is sent to the social welfare committee in the municipality where the apartment is located. If the tenant does not pay on time, he will be evicted. However, a tenant may not be evicted from the dwelling if the social welfare committee notifies the landlord in writing that the committee will take responsibility for the payment of rent. This must be made within the three weeks of time. Nor may the tenant be evicted if he has been prevented from paying the rent within the three weeks due to illness or some other similar unforeseen circumstance and the rent is paid as soon as possible. This must be when the eviction dispute is being determined by a court of first instance at the latest.<sup>214</sup>

The social welfare committee in each municipality will in most cases help an evicted person to get a new dwelling, especially if it is a family with children.

- Existence and effectiveness of protection/ guarantee mechanisms:
  - o Deposit

In accordance with the Danish Rent Act the landlord may demand payment of a deposit held as security for the tenant’s obligations upon vacating the premises. The deposit may not be used to cover e.g. rent payments while the tenant still lives in the rented apartment. The tenants obligations includes rent that has not been paid as well as any claims against the tenant regarding maintenance or breach of contract. The deposit may correspond to up to three months’ rent. A deposit is almost always demanded – but not always the full three months’ rent. At the time of the signing of the agreement, the landlord may also besides the deposit demand an advance payment of rent equivalent

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<sup>208</sup> Enforcement Code 7:3.

<sup>209</sup> Enforcement Code 7:3.

<sup>210</sup> Kanerva and Kuhanen, p. 351.

<sup>211</sup> Government proposal.

<sup>212</sup> Kanerva and Kuhanen, 351.

<sup>213</sup> Enforcement Code 7:5(2).

<sup>214</sup> Section 44 in the Tenancy Act.

to up to three months' rent. Such advance payment of rent may cover the rent of the three final months of the period of the tenancy.

In Finland the landlord may also demand a deposit equivalent or up to three months' rent. The tenant typically agrees to deposit security of one or two months' rent on a separate bank account. A security may be put up to cover all obligations arising from the contract or, as is less often done, only some obligations, such as rent payment. At the end of the tenancy, if the tenant is entitled to get the deposit back, it will be with interests, in line with case law on returns from property. In Denmark the tenant will not get any interests from the deposit even if the tenant can claim the whole deposit back after a long period.

In Finland the parties may also agree on an advanced payment. The legal maximum period of an advance rent payment is three months (or, if the rent payment period is longer, one rent payment period).<sup>215</sup>

In both Finland and Denmark a lot of disputes arise from claims on the return of deposits on grounds of the condition of the apartment. This is partly due to the fact that there is no direct legislation on this matter at present.<sup>216</sup>

There are no rules regarding deposits in the Swedish Tenancy Act.<sup>217</sup> The use of deposits is rare, but is usually used as a guarantee for future claims due to damage to the apartment or unpaid rents. If a tenant has a requirement of a security in his tenancy agreement, it is possible to get the fairness of the clause tried. If the clause is considered unreasonable, it will be repealed.<sup>218</sup> One can assume that the authorities applying the law will not accept conditions of security set out in a routine manner. Particularly high restrictiveness can be predicted on different conditions on deposits. If a collateralisation deteriorates, it does not give the landlord the right to terminate the contract - the tenant still has a protected tenancy.<sup>219</sup> As stated above, there is no lawful amount mentioned in the tenancy legislation but the most common amount of deposit is one to three months' rent.

In Sweden and Denmark there are no rules on how the landlord has to manage the deposit as to special accounts etc., and neither on how the landlord is allowed to use to deposit. In Finland the deposit is usually managed on a separate account – probably due to the fact that the tenant can claim interests when the deposit has to be paid back.

- Liens and pledges on the tenant's belongings

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<sup>215</sup> "Any stipulation under which the tenant is liable for advance payment for a period longer than three months or, if the rent payment period is longer, for more than one rent payment period shall be null and void". Act on Residential Leases 36(2).

<sup>216</sup> In Denmark a bill has been proposed regarding more specific regulation on in what condition the tenant may deliver the rented apartment back to the landlord. The state of the rented apartment when the tenant moves in shall be described in a report ect. The regulation is planned to come into force in 2015.

<sup>217</sup> Besides section 28 a. This section states that the tenant is entitled to get his deposit back after two years from the date the commitment entered into force (a period of notice of nine months applies). This right cannot be derogated from by agreement.

<sup>218</sup> Such changes apply only for the future. If the deposit according to the contract covers things totally unrelated to the tenancy and the dispute has already arisen the landlord will be free to make use of the deposit.

<sup>219</sup> Nils Larsson et al.: *Bostadshyresavtal i praktiken*, 2010, p. 79.

In neither of the three countries the landlord has a lien on the tenant's (movable) property in the house. In Finland the landlord's lien on the tenant's property (which was already known in the 1734 Codification) was repealed in 1993 on the ground that it was not much used.

- Personal securities (e.g. surety)

The prerequisites are the same in the three countries on this matter. Directive 95/46/EC which aims to prevent the violation of personal integrity in the processing of personal data applies in all countries and it limits the landlords' possibilities on processing data on tenants. Besides this there is no general regulation on this matter.

In Denmark there are no rules regulating the landlords' possibilities on checking the personal and financial status of the tenant. Some landlords try to "screen" potential tenants on the Internet or ask the potential tenants (directly or indirectly) for information about their financial status, and some landlords probably try to keep some sort of registration of former tenants as well. The landlord could in principle ask for a salary statement, and it is becoming more common. The landlord can gather and keep information about tenants until they move. It is not legal to share information about tenants or former tenants electronically or otherwise due to data protection regulations.<sup>220</sup>

In Sweden the landlord is also free to check both the personal and financial status of an intended tenant. It is common that both private and municipal landlords request a credit report before entering into a rental contract. If a tenant does not have a fixed income, many landlords will require a guarantor or charge a deposit. Information on the potential tenant can be gathered lawfully simply by asking the potential tenant for it. Because freedom of contract prevails, it is in the potential tenant's interest to ensure that the landlord gets the right information. It is easy to buy credit information, were the taxable income for the last year, registered property and debts with the Swedish Enforcement Agency are registered. Lists of bad tenants are only in conflict with the Personal Data Act<sup>221</sup> if they are in electronic form. Hence, a list in writing and shared by mouth is allowed and many landlords most likely have some sort of list of tenants guilty of misconduct.

Also in Finland the regulation on this issue is limited. Landlords renting only a few dwellings may ask virtually any documentation from a prospective tenant, including identifying data, credit information, and information about a workplace or study place. As no ground needs to be stated for looking into documentation, a landlord may even query

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<sup>220</sup> The Act on Processing of Personal Data - Act no. 429 of 31 May 2000. An organisation for the protection of landlords' rights (*SAPU*) have made a members-only "blacklist" of tenants on their websites. The principles for this current blacklisting of tenants have been approved by the Danish Data Protection Agency (*Datatilsynet*). The original list made by SAPU was found invalid on ground of data protection. See Danish Data Protection Agency Journal 2011-43-0031 (in Danish only) e.g. on <http://www.datatilsynet.dk/afgoerelser/seneste-afgoerelser/artikel/register-over-lejere-der-har-misligholdt-lejemaal-eller-lejeaftale/>.

<sup>221</sup> SFS 1998:204.

about a domestic credit card or a domestic driving licence in order to differentiate among the candidates. Landlords are especially advised to enquire about who will be moving into the apartment along with the tenant.<sup>222</sup> For additional information about a possible tenant, a conscientious landlord will contact the tenant's previous landlord, or at least inquire about the previous landlord's contact details. Providing for the concrete rules under the right to privacy, which became a constitutional right in 1995, and implementing the directive of the same year, the Personal Data Act applies, as general legislation, to other than the processing of data "by a private individual for purely personal purposes or for comparable ordinary and private purposes".<sup>223</sup>

- Insurances

In Denmark the insurance burden on a private rental property will usually be split between the landlord and the tenant. The landlord must insure the property itself against damage, e.g. fire, etc., if the property is mortgaged.<sup>224</sup> The tenant must insure the items that she owns, including furniture. If the tenant installs his or her own domestic appliances on the rented property, he or she must insure these goods himself, e.g. to cover any damage that the installed goods may cause to the property. The tenant can choose the insurance company; the landlord has no say in this matter.

In Sweden, both the landlord and the tenant also need to be insured (for the same reasons). The landlord may insure for damages on the property, and the tenant needs household insurance to cover what he owns and his furniture.

As the maintenance of the common areas of a property and the shafts and wires mounted in the dwellings belongs in the responsibility of the housing company, its property insurance covers damage to these parts also in Finland. The interiors of the apartment, including fixtures and surfacing, are within the responsibility of the individual owner or tenant; home insurance is the same for either one. The landlord and tenant may agree that the tenant takes home insurance, and tenancy contracts are said to include more and more frequently a clause, requiring that the tenant must have home insurance.<sup>225</sup> Nevertheless, furniture and fixtures such as wooden flooring may be insured by the landlord's home insurance too.

- Possibility to terminate contract if house is needed for own use or close relatives or another economic use (e.g. converting residential into commercial building)?

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<sup>222</sup> For instance, the Finnish Association of Landlords (*Suomen Vuokranantajat*) at <http://www.vuokranantajat.fi/asuntosijoittaminen/vuokralaisenvaihtoa/>.

<sup>223</sup> Personal Data Act 523/1999, 2(3).

<sup>224</sup> If a cost-based rent is charged (Housing Regulation Act section 5 (1) and section 8), the landlord can include the cost of insurance in the running costs budget, so that the cost is paid by the tenants as part of the rent.

<sup>225</sup> According to the insurance company *Tapiola*, <http://www.lahitapiola.fi/www/Yksityisasiakkaat/Asiakkaana+Tapiolassa/Elamantilanteet/Asuminen/Asunnon+ostaminen+tai+vuokraaminen/Vuokra-asunnon+vakuuttaminen.htm>.

In Denmark it is not possible to terminate the contract with the tenant even if the house is needed for the use of close relatives or another economic reason. Tenancies shall not be terminated with notice by the landlord except in the circumstances mentioned in the Danish Rent Act Section 83. This means that the landlord cannot terminate the contract for any other reasons, even if they seem fair or even if they are included in the tenancy contract signed by the tenant. If the landlord intends to use the premises for his or her own purposes, the landlord can terminate the contract, with one year's notice. Where the tenancy relates to a flat, this is on the condition that only the landlord (and not the landlord's adult children, for example) intends to occupy the flat. Termination must be reasonable in view of the circumstances of both parties. In determining this factor, the duration of the landlord's ownership of the property and – for the purpose of terminating a residential tenancy – the tenant's possibilities of finding suitable alternative accommodation should be considered. The tenant's age, eventual illnesses and similar factors may be taken into consideration. Section 83 also applies where the landlord has inherited the dwelling or bought it after sale, including public auction.<sup>226</sup> Where the tenancy relates to a flat, it is a condition that the landlord intends to occupy the flat. Where the flat is owner-occupied and not previously occupied by the landlord, an additional condition stipulates that the tenancy agreement was entered into prior to 1 July 1986.<sup>227</sup> If the landlord is occupying a flat in the property when giving notice of termination, the landlord, at the time of such notice, shall offer the tenant the possibility to take over this flat. If the property is jointly owned by several persons, the owners may only give a residential tenant notice of termination.

In some cases the landlord is particularly anxious to be released from the tenancy on other substantial grounds – not only breach of contract. It is not easy to determine when “substantial grounds” exist, and this reason for terminating a contract is rarely used. It can be used e.g. if a mortgage bank is forced to take over the property and the rent income does not cover the expenses for the bank.<sup>228</sup>

In Finland – unlike Denmark – the provisions on the detailed grounds for legal notice were abolished along with rent regulation (in the early nineties). Today, the landlord may give notice even for the singular purpose of increasing the rent. On giving notice to the tenant, the landlord must deliver a written notification “stating ... the grounds for” the termination, otherwise the notice will be ineffective.<sup>229</sup> Consequently, the landlord should

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<sup>226</sup> Case law examples: Tidsskrift for Bolig- og Byggeret 1998 p. 264 Eastern High Court decision: a landlord wanted to use a condominium after his divorce. The termination was found reasonable even though the tenant was old, living alone and suffering from some serious health and mental problems. Ugeskrift for Retsvæsen 2006 p. 79 Eastern High Court decision: A landlord sold his single-family home to his daughter. The daughter terminated the contract with the tenants. The termination was found reasonable because of the daughter's relation to the house, her difficulties in finding proper mortgage funding, and the fact that a tenant would not normally be able to rent such a home without a fixed-term contract. Other decisions on the topic e.g. Tidsskrift for Bolig- og Byggeret 2000 p. 325 Eastern High Court decision, Grundejernes Domssamling 2009 no. 59 District Court decision.

<sup>227</sup> The date relates to the point in time when changes of the Rent Act came into force. Martin Birk: *Opsigelse af lejemål i ejerlejligheder* in Tidsskrift for Bolig- og Byggeret 2001 p. 173-76.

<sup>228</sup> Margrete Pump og Martin Preisler Knudsen: *Opsigelse og ophævelse af andre væsentlige grunde* in Tidsskrift for Bolig- og Byggeret 2001 p. 131 ff.

<sup>229</sup> “The lessor shall give notice on a lease agreement by delivering to the tenant a written notification stating the date of the lease termination and the grounds for it. A summons for eviction requesting

give at least some reason(s) for the notice to have effect. Although, as the grounds for legal notice are no longer laid down in legislation, any ground will do as long as it is not contrary to good rental practice. Prior to the end of a fixed term, a court may permit the landlord to give notice if:

- 1) the lessor needs the apartment for his or her own use or for the use of a member of his or her family for reasons of which he or she could not have been aware at the time when the agreement was made; or
- 2) If, for some comparable reason, the agreement's remaining in force until the agreed date would be patently unreasonable from the lessor's point of view.<sup>230</sup>

In Sweden terminating a contract if house is needed for own use or close relatives or another economic use is not an admissible reason in general. A landlord may only terminate the contract when any of the situations mentioned in section 42 or 46 in the Tenancy Act has occurred. In section 46 it is stated that if the tenancy refers to a unit in a single- or two-family dwelling and the grant does not form part of a commercially conducted rental activity and the grantor has such an interest in disposing of the unit that in fairness the tenant should move and that if the agreement refers to a cooperative or condominium apartment and the owner has such an interest in disposing of the apartment that in fairness the tenant should move.

- Effectiveness of the eviction procedure?
  - o Court proceedings or availability of conciliation or ADR procedure

In Denmark the eviction procedure seems to be effective though some landlords might argue that the proceedings are not fast enough. On termination by the landlord, the tenant shall vacate the premises immediately. If this does not happen, the landlord may start proceedings at the Bailiff's Court at once and evict the tenant through this procedure. This applies when rent or another monetary liability has not been paid on time, as stated above. Both formal and material objections will be tried by the Bailiff's Court. The court's decision can be brought before the High Courts.<sup>231</sup> In most cases eviction procedures in the Bailiff's Court are handled within 14 days after the landlord has brought the case before the court. The procedure can be delayed if the tenant has reasonable objections and needs to have a lawyer defending him or her in court. However, even in that situation the Bailiff's Court will try the case within a month or so. The reason for this is that the eviction procedure is caused – in most cases – by the tenant not paying the rent, and the landlord cannot re-let the rented property before the tenant has moved out.

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termination of the lease shall also qualify as a notice notification". "Any notice not given as provided in this section shall be ineffective". Act on Residential Leases section 54(1) and 54(5), respectively.

<sup>230</sup> Act on Residential Leases section 55 (3).

<sup>231</sup> In connection with any other reason for termination without notice, the landlord may start proceedings in the Housing Courts that will try the tenants' formal and material objections against the termination. The court's decision can be brought before the High Courts.

No voluntary or compulsory mechanisms of conciliation, mediation or alternative dispute resolution are being used to any extent. From 1 April 2008 the Danish Courts have offered mediation as an alternative to a traditional adversarial lawsuit.

In Sweden the eviction procedure is handled by the Enforcement Authority. If any of the grounds stated in section 42 of the Tenancy Act is fulfilled, the landlord may apply for an eviction at the Enforcement Authority without a previous notice of termination to the tenant. An application to a district court for the termination of the tenancy or for the eviction of the tenant counts as notice of termination after the tenant has been properly served. The same applies for an application under the Payment Orders and Enforcement Assistance Act<sup>232</sup> to the Enforcement Authority for the eviction of a tenant.<sup>233</sup> If the tenant objects to anything in the landlord's application to the Enforcement Authority the dispute must be referred to the district court. The court will try the tenant's formal and material objections to the termination. If the landlord has terminated the tenancy agreement due to any of the grounds stated in section 46, the question of prolongation must first be settled by the rent tribunal in favour of the landlord before an eviction can be made. The rent tribunal will try the tenant's formal and material objections to the termination.

There are no statistics for matters regarding solely judicial assistance from the Enforcement Authority, and it would not be very accurate considering that judicial assistance not only can be requested in tenancy matters. However, there are statistics on the processing time for matters regarding injunctions to pay and judicial assistance from the Enforcement Authority. The processing time from application to decision (when no objection was raised) was 59 days in 2012 and 58 days in 2011. In the cases where an objection was raised the processing time were 98 days in 2012 and 93 days in 2011.<sup>234</sup> However, in recent years there have been several cases where the Office of the Chancellor of Justice has granted a number of persons' damages due to long delays in the procedure. The average processing time of the court cases where the Office of the Chancellor of Justice has granted individuals damages is 4 years and 8 months.<sup>235</sup>

No voluntary or compulsory mechanisms of conciliation, mediation or alternative dispute resolution are being used to any extent.

In Finland the eviction procedure starts with the bailiff sending an exhortation to move to the address of the premises covered by the ground for enforcement and to other possible known addresses. The exhortation to move can also be left as a sealed or unsealed notice on the premises.<sup>236</sup> The exhortation to move includes the exact date on which the evictee(s) must move<sup>237</sup> – no earlier than one week and no later than two

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<sup>232</sup> Lagen om betalningsföreläggande (SFS 1990:746).

<sup>233</sup> Section 8 in the Tenancy Act.

<sup>234</sup> Årsredovisning 2012 - Kronofogden p. 18.

<sup>235</sup> [http://centrumforrattvisa.se/wpcontent/uploads/files/Rapport%20om%20JKs%20skadestandsnivåer%2020120213\(1\).pdf](http://centrumforrattvisa.se/wpcontent/uploads/files/Rapport%20om%20JKs%20skadestandsnivåer%2020120213(1).pdf).

<sup>236</sup> Enforcement Code 705/2007 (an unofficial translation available at <http://www.finlex.fi/en/laki/kaannokset/2007/en20070705>), 7:2.

<sup>237</sup> Enforcement Code 7:2.

weeks from the receipt of the exhortation to move.<sup>238</sup> The move day may come to pass more than a day earlier than the actual eviction: the bailiff has discretion to carry out the eviction at any time after the move day. Conventionally, the exhortation to move is delivered to the tenant together with the notice of the commencement of enforcement proceedings. In the notice of the commencement of proceedings, the tenant is given an opportunity to be heard. At that stage, the tenant may ask for a postponement of the move day.<sup>239</sup> If the postponement does not cause considerable inconvenience to the applicant, the bailiff may postpone the move day (once or several times) by up to altogether two months from the start of the proceedings. With the consent of the applicant, the eviction may be postponed for a longer period, at most six months from the start of the proceedings, if there is an especially important reason for a longer postponement.<sup>240</sup> The bailiff will consider the need for postponement and the inconvenience to the applicant on a case-by-case basis. The bailiff's decision on a postponement is not subject to appeal.<sup>241</sup> The tenant shall, if the landlord-applicant demands this, pay rent to the landlord for the period of postponement under the earlier terms.<sup>242</sup>

In general the sparseness of civil litigation has been caused, first of all, by the duration of the proceedings. The average length of the different stages of adjudication in district courts may vary from a few months to a year. The appellate-court procedure takes, typically, between one and two years and, if certiorari is granted, the Supreme Court takes from six months to two years in addition.<sup>243</sup>

The Consumer Disputes Board<sup>244</sup> has, since 2007, given recommendations also to resolve disputes concerning rental housing and right-of-occupancy housing in a variety of constellations: when the parties are private individuals, or when the claimant is a private individual against a business landlord, a consumer purchasing a right of occupancy, or a private individual selling a right of occupancy.

### 5.1.3. Construction and rehabilitation capabilities

- Availability of mortgage credit

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<sup>238</sup> "The bailiff shall not without an important reason set the move day earlier than one week nor later than two weeks from the receipt of the exhortation to move". Enforcement Code 7:4(1) first sentence.

<sup>239</sup> Kanerva and Kuhanen, p. 351.

<sup>240</sup> "The move day may be postponed, unless this would cause considerable inconvenience to the applicant. However, the eviction shall be carried out within two months of the pendency of the matter, unless there is an especially important reason for a longer postponement. With the consent of the applicant, the eviction may be postponed for at most six months from the pendency of the matter without that pendency lapsing as a result. The bailiff's decision on a postponement shall not be subject to appeal". Enforcement Code 7:4(1) second until last sentence.

<sup>241</sup> Enforcement Code 7:4(1) last sentence.

<sup>242</sup> "On the demand of the applicant, the evictee shall pay rent to the applicant for the period of postponement, beginning from the move day, under the earlier terms. Advance payment of the rent may be set as a condition for postponement, if this can be deemed reasonable from the point of view of the evictee". Enforcement Code 7:4(2).

<sup>243</sup> Kanerva and Kuhanen, p. 363.

<sup>244</sup> <http://www.kuluttajariita.fi/en/index.html>.

Generally the financial crises from 2007/2008 have had an effect on the availability of mortgage credit in the three countries. This also means that construction as well as selling and buying houses has been influenced by the crises.<sup>245</sup>

In the years before the financial crisis, Danish housing was characterised by very large increases in property prices.<sup>246</sup> The housing prices are mainly powered by economic fluctuations and interest rates. Decreasing interest rates and new mortgage loan types had been introduced and property value taxes were frozen in 2002. These factors all contributed to rising prices. The introduction of amortisation-free loans (2003) is considered to be the main cause of rapid price increases in the period before the most recent financial crisis. When the crisis developed, prices fell dramatically. This was not anticipated by the Government (or by anyone in the financial sector). The cause of this has been that many Danish households have a large debt because they cannot sell their property – or they cannot sell it without losing a larger amount of money. In addition, prices on commercial buildings with rented dwellings increased rapidly – by approximately 200 per cent from 2000 until 2007. After 2007 the decrease in prices for these commercial properties has been even larger than for single-family homes and condominiums. The banks have become reluctant to lend money for financing house purchases; banks and mortgage companies have become subject to stricter government control, but no restrictions have been introduced concerning loan types, etc.

For letting, the crisis has not had any direct effects in this regard. It is possible that the demand for rented dwellings has increased (or has not decreased at least) because some people cannot lend money to buy a house. Fundamentally, it can be said that when the economy is strong, the Danish system makes the purchase of property attractive as an alternative to renting. As an owner of property, it is possible – if prices are rising – to earn a tax-free profit on the sale of one's property. In addition, the "tax-free value" that arises when the value of the property exceeds the amount for it was purchased can also be mortgaged, enabling the homeowner to release money to fund purchases, for example. A tenant does not have this advantage. On the other hand, the tenant would not be able to borrow large amounts of money from a bank or mortgage company and therefore would be subject to very little financial risk.

The typical financing of home ownership in Denmark is based on a down-payment of 5 % (own equity or personal loan), 15 % from loans based on a mortgage from a bank or other financing, and 80 % from a mortgage-based loan from a mortgage bank. Financing is regulated by law; a mortgage bank can finance only up to 80 % of the trading price through mortgage loans. The usual length of contracts on new mortgage loans is 30 years. Building of "normal" private rental housing – without subsidies – is typically financed by loans based on mortgage from banks or other financing, e. g. mortgage banks. The law stipulates that a mortgage bank can finance only up to 80 % of the trading price through mortgage loans.

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<sup>245</sup> See section 1.2.5 and 2.6 above as well.

<sup>246</sup> From 2000 until 2007, housing prices for single-family homes and condominiums rose by 85 % and 105 %, respectively, with the largest increases occurring in the Copenhagen area.

In the spring of 2010, as a response to the crisis and the unremitting tendency of households getting into debt, the Finland Financial Supervisory Authority<sup>247</sup> released a recommendation, according to which a housing loan should be at maximum 90 per cent of the purchase price (“loan ceiling”). At the time, loan to value exceeded that limit in 28 % of new housing loans.<sup>248</sup> The banks opposed restrictions, and the Ministry of Employment and the Economy declined, against the background of the opposition, from proposing legislation demanded by the Bank of Finland and the Financial Supervisory Authority in early 2013; but the opinion of banks was reportedly swayed, among other things, by the International Monetary Fund, which in the summer of 2013 recommended loan ceiling, and new proposal for legislation is now being deliberated between the government and the financial sector.<sup>249</sup>

House loans in Finland are not assumable mortgages, but personal loans. Nevertheless, most Finnish house loans are secured by a home. The indebtedness of households is at an historical high, 119 % in relation to annual disposable income.

The financing of new homes in housing companies (the portion of new houses among home sales is considerable<sup>250</sup> although the housing stock is renewed slowly) is arranged as follows. New apartments are sold in the construction phase.<sup>251</sup> In one arrangement, the construction firm sets up a housing company, with which it enters into a construction contract – in effect making the contract with itself, as it administers and owns the housing company. Alternatively, the housing company may be established by another developer – a municipality, a non-profit, or another firm. In any case, the housing company pays the construction firm, by taking a bank loan, for instance, and then repays the bank with payments from homebuyers, who purchase the shares.<sup>252</sup> The shares are paid in instalments as the work progresses.<sup>253</sup> The founding shareholder of the housing company normally retains ownership to the shares until their price is fully paid, while the buyer holds a lien on the shares as security for repayment of the advance instalments (thus the importance of a proportionality requirement, legislated in the mid-nineties, to protect the buyer against the insolvency of the founding shareholder: the instalments may not be so large as to be clearly or continuously disproportionate to the value of the seller’s performance, and no less than ten per cent of the price may only be due once possession is transferred).<sup>254</sup> By reserving title, the developer maintains authority over the company during construction. On completion of the work, the administration is transferred to the buyers.

+ section 2.7 in the Finland report?

In autumn 2010, new rules came into force regarding mortgage loans in Sweden. The Swedish Financial Supervisory Authority provided new guidelines for mortgage loans which stated that new mortgage loans should not exceed 85 % of the home’s market

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<sup>247</sup> <http://www.finanssivalvonta.fi/en/Pages/Default.aspx>.

<sup>248</sup> Tiia Kynnäräinen, ‘Valvoja pettyi: Asuntolainat ovat yhä ylisuuria,’ *Taloussanomat*, 22 September 2010.

<sup>249</sup> Anni Lassila, ‘Pankit pyörsivät kantansa: Asuntolainojen katto lähellä toteutumista,’ *Helsingin Sanomat*, 17 January 2014.

<sup>250</sup> Mäki-Fränti et al 2011, p. 2.

<sup>251</sup> For the summary in this paragraph, see Government proposal 14/1994 for Housing Transactions Act, general grounds 1.2.

<sup>252</sup> The case Supreme Administrative Court 2002:57 describes this arrangement.

<sup>253</sup> Government proposal 14/1994 detailed grounds 4:29.

<sup>254</sup> Housing Transactions Act 4:29 (2–3) and Government proposal 14/1994 detailed grounds 4:29.

value. This became more commonly known as a mortgage cap. The rules took effect on October 1 2010 and the aim is to increase consumer protection and suppress unhealthy developments in the credit market. The new rules have been the subject of much debate because they risk shutting out first-time buyers who can't afford to get a second mortgage for the remaining 15%.

The financial crisis does not affect the rental sector in Sweden directly either. Market forces do not affect rents directly. Reduced interest rates lower the rents in the long run and reduced housing production raises the rents in the long run.

- Public subsidies for construction/rehabilitation

In Denmark landlords are subsidised directly only when building new housing and are subsidised indirectly by some general tax allowances. It is not possible to determine whether national policy on this matter favours rented housing or housing ownership, because both rented housing and housing ownership are subsidised in many different ways. A regulated and government-financed urban renewal programme can provide grants for selected maintenance and improvement purposes concerning private rental properties as well as support for the renewal of decaying urban areas and more recent residential areas with major social problems.<sup>255</sup>

In Finland housing subsidies can be divided into three kinds: "object-based" financial subsidies; "subject-based" direct subsidies; and tax subsidies. Among financial subsidies for housing production carried out by municipalities and general-interest organisations, where ARA has the discretion, interest-subsidy loan authorisations have since 2012 been granted over 1 billion per year (975 million in 2011, 1,025 million in 2012, 1,040 million in 2013).<sup>256</sup> Guarantee-loan appropriations are granted 285 million,<sup>257</sup> bringing the total social-housing-production subsidisation in the latest 2013 budget to 1,325 million.

The state also gives housing renovation and energy grants, subsidising (1) renovations of the apartments of elderly and disabled people,<sup>258</sup> (2) building-condition surveys in cases where the municipal health-protection authority has verified a health risk,<sup>259</sup> (3) the construction of lifts<sup>260</sup> and other improvements enabling elderly or disabled people to access and move in the building,<sup>261</sup> (4) the eradication of a health risk in exceptional cases,<sup>262</sup> and (5) measures to save energy and to adopt renewable energy sources in small houses (of no more than two apartments) on means basis (and covering only other than cost of labour, which may be included in the tax credit for domestic help).<sup>263</sup> The applicant must have the repair and maintenance responsibility of the object; the grants in cases (1), (2) and (5) are applied from the municipality, after which ARA

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<sup>255</sup> The Danish Act on Urban Renewal and Urban Development, which entered into force on 1 January 2004, serves as a tool for the Danish municipalities to make targeted efforts in urban and housing policy.

<sup>256</sup> *Budget review 2013*, p. 31; *Budget review 2012*, p. 30.

<sup>257</sup> *Budget review 2013*, p. 31.

<sup>258</sup> *Laki asuntojen korjaus-, energia- ja terveystaitta-avustuksista* 1184/2005, 5(1), 6(1.1 and 2), and 8(1).

<sup>259</sup> *Laki asuntojen korjaus-, energia- ja terveystaitta-avustuksista*, 6(1.5).

<sup>260</sup> *Laki asuntojen korjaus-, energia- ja terveystaitta-avustuksista*, 6(1.4).

<sup>261</sup> *Ibid.*

<sup>262</sup> *Laki asuntojen korjaus-, energia- ja terveystaitta-avustuksista*, 2(1.3) and 5(2).

<sup>263</sup> *Laki asuntojen korjaus-, energia- ja terveystaitta-avustuksista*, 2(1.6), 5(3), 6(1.7) and 7.

distributes the state grants to the municipalities, while ARA has the discretion in cases (3) and (4).<sup>264</sup> 2013 budget allocation to these renovation grants is 50.5 million.<sup>265</sup>

Besides the above financial subsidies by the state, many municipalities, especially large cities and towns, subsidise social rental housing through lower price terms in land sales and land leases. Municipalities also subsidise rental housing through loan guarantees and loans and through lighter real-estate taxes paid by general-interest owners.

When it comes to financing for building rental housing in Sweden, there are no state loans provided for the construction of housing. It is possible to apply for investment support for projects that create senior housing through new construction or remodelling. This applies for the adoption of co-operative, rental and co-operative rental dwellings.<sup>266</sup>

Formally, there is a possibility to get a purchase guarantee for first-time buyers, which is a government guarantee covering interest payments on home purchases. The purpose is to provide assistance to households who want to buy a home but aren't able to get home loans even though they have a long-term solvency. It may be due to individual risk factors such as not being known at the bank in the past, individual credit history and more. The guarantee works as an insurance policy for the lender who insures against the risk of losing interest income for a home loan.<sup>267</sup> However, this possibility is not used in practice.

- Private arrangements: tenant agrees to rehabilitate apartment (performance in kind) in lieu of paying rent

In all three countries it is possible to make contractual agreements on the tenants right or duty to rehabilitate the rented apartment. In neither of the countries this the tenant has a statutory right to this.

The Danish Rent Act applies whether rent is payable in money or otherwise, e.g. by way of work or services rendered. If it is specified in the contract how the rent has to be paid, the landlord can terminate the contract even if the rent is not paid in money. No special rules apply and such agreements are very rare. There is no statutory right for the tenant to replace a rent payment with a performance.

Under Finnish law it is not unlawful to replace rent payment, wholly or partly, by performance in kind. But the tenant has no statutory right to this effect (so the situation falls to be treated in line with private-law principles which do not impose an obligation to accept work performance any more than they do an obligation to accept an offer). Conceivably, the parties' agreement may be a "mixed" contract, in effect, consisting of two contracts, a tenancy agreement and a contract of employment, but a contract of employment requires other elements, such as the employer's direction and supervision. Dwellings provided by the employer are again separately regulated in the Employment

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<sup>264</sup> *Laki asuntojen korjaus-, energia- ja terveyshaitta-avustuksista*, 9(1).

<sup>265</sup> *Budget review 2013*, p. 31.

<sup>266</sup> <http://www.boverket.se/Bidrag--Stod/Hyreshus/Investeringsstod-till-aldebostader/>.

<sup>267</sup> <http://www.boverket.se/Bidrag--Stod/Forvarvsgarantier/>.

Contracts Act (“accommodation benefit”).<sup>268</sup> Overall, replacing rent payment by payment in kind is not very common in Finland as it is not in Denmark. Experiences of tenant’s improvement have been mixed.

The Swedish word “ersättning” which is used in section 1 of the Tenancy Act refers both to payment in kind and payment in money. It is thus legal for the landlord to require work through the term of the contract. However a tenant may go to the rent tribunal and ask it to remove such a clause from the rent contract.

### **3.2. Important evaluative criteria for the tenant**

#### **3.2.1. Affordability**

- Initial rent
  - o Free or
  - o Regulated / controlled in some effective way?
- Possibilities of rent increase
- Regulation of deposit
- Regulation of expenses (utilities etc)
- Regulation of repairs: who is responsible for what kind of repairs?
- Other fees (e.g. registration fees or taxes to be paid by tenant)
- Rent subsidies for poor tenants [if relevant, a reference to the above findings is sufficient]

#### **a. Initial rent**

The starting point in all three countries is the contractual freedom in connection with the establishment of tenancy agreements. However, the rent legislation contains a number of mandatory invalidity rules which mean that the rent may be reviewed at any time if the agreed rent violates the legislation. Both Sweden and Denmark have rent control for most tenancies. In Finland no direct rent control systems exist any longer. Rent control was abolished in Finland in the early 1990’s, and today rent is, in the private sector, determined on the basis of what is agreed. This freedom of contract is only limited by the legal power of courts to examine whether the rent, or a stipulation on determining it, is reasonable.<sup>269</sup>

In Sweden the rents are determined through a utility value system (*bruksvärdessystem*), which determines what a reasonable rent for an apartment is. Before 2011 the municipal housing companies had a normative role for all rents (including apartments owned by private landlords) but they have now been replaced with the normative role of collectively negotiated rents instead.<sup>270</sup> The Tenancy Act states that the rent shall be established at a reasonable amount. The rent cannot be considered to be reasonable if

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<sup>268</sup> *Työsopimuslaki* 55/2001 (an unofficial translation available at <http://finlex.fi/en/laki/kaannokset/2001/en20010055>).

<sup>269</sup> Section 27[1] and 30 of the Act on Residential Leases.

<sup>270</sup> Prop. 2009/10:185.

it is palpably higher than the rent for units of equivalent utility value.<sup>271</sup> (The meaning of the term "palpably" will vary depending on the circumstances, but approximately 2-5 percent). Setting the rent according to the utility value system is done in two steps. First of all other apartments whose rent has been determined in a bargaining agreement and that have a utility value as similar as possible to the apartment in question must be found. The rent for the apartment in question is then based on the highest rents of the comparable apartments. It is the parties who must provide data for the comparison. If relevant comparative material is missing the rent tribunal will make an equitable assessment instead. If the parties have agreed on an excessive rent the tenant shall start by informing the landlord of what new terms and conditions he requests. If an agreement cannot be reached, the tenant is entitled to apply to the regional rent tribunal. This application may be made one month after the opposite party has been informed at the earliest. A landlord who has a bargaining agreement with the Swedish Union of Tenants cannot agree on an excessive rent. He is bound by the collective rent bargain agreement with the Union. If the landlord still agrees with the tenants on an excessive rent the agreement is invalid and he must repay the excess plus interest.<sup>272</sup>

In Denmark rent regulation/control applies for almost all tenancies except for properties built after 1991. The system is based on different complex regulation methods and it is based on statutory provisions in the Rent Act and the Housing Regulation Act which are the two main acts regulation Danish tenancy law. There are four types of rent regulation for private rental properties, of which market rent is the only one which actually relates to market forces and therefore to supply and demand. The principal form of regulation is the cost-based rent. Cost-based rent is determined on the basis of the running costs attributable to the property concerned.<sup>273</sup> In addition, the owner can add a number of statutory provisions, a profit and a surcharge for any improvements made to the rented property since the property were originally constructed. The rent is therefore an estimate.

This system means that a very large number of tenancies pay a rent below – or at least under no influence of – market rates. The system is effective – rents are controlled – and it is easy for a tenant to challenge the initial rent if it is not set in accordance with the law. The system has not been challenged on the constitutionality of the respective legislation, relying on the principle of equality.

#### b. Possibilities of rent increase

When it comes to rent increases the landlord and tenant may expressly agree on rent increases by making contractual amendments. Both Denmark and Finland have systems for automatic increases of the rent when agreed upon in the tenancy contract. This is not the case in Sweden. Here all rent increases are carried out in the same way and it depends on whether or not the landlord has a principal bargaining agreement with the Swedish Union of tenants and the tenants have a bargaining clause in their tenancy agreements, or if the landlord lacks such an agreement and then has to negotiate the

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<sup>271</sup> Section 55.

<sup>272</sup> Section 23 in the Tenancy Bargaining Act.

<sup>273</sup> Housing Regulation Act Sections 7-9.

rents with the tenants individually. A principal bargaining agreement requires the landlord to negotiate rents, terms and conditions of housing with the union. If the landlord is bound by this type of agreement he must send the union a written notice about what new terms he requests. Then the landlord and the union negotiate what conditions that should apply. If they do not agree, an application to the rent tribunal must be made. A tenant is bound by the new negotiated rent or term if there is a bargaining clause in the tenancy agreement regarding this matter, but can apply to the rent tribunal for an amendment of the agreement. A landlord without an agreement with the union must negotiate the rent with each tenant individually.

In Finland the only constraint on the parties' power to agree in common on rent increases is contained in the Act on Indexing Restrictions.<sup>274</sup> Nevertheless, courts can always examine the reasonableness of the rent and other contract terms. The most commonly used indices are the cost of living -index and the consumer price index.<sup>275</sup> The consumer price index was employed in the Act on Residential Leases as the index for the transition period, and the cost of living -index was widely used during the dismantling of the rent-regulation system. Combinations of various indices are also lawful.<sup>276</sup> Similarly, other comparable arrangements are lawful, such as percentage or monetary increases and variations of these (three per cent annually in the first two years, two per cent after that). Index clauses may also lawfully be combined with other increases (an index point change plus one per cent). For instance, rent could be linked to an index, with an additional clause stipulating a minimum adjustment to ensure that the rent will increase annually.<sup>277</sup>

In principle, the ground of increase must simply be agreed in the contract, precluding any blanket right for a private landlord to increase rent unilaterally.<sup>278</sup> If the reasonableness of the rent is disputed in court, evidence of reasonable market-level rent should be presented, but statistics are often available only for larger areas than those arguably meant by "the current market rate charged *in the area*" in section 30(1) of the Act on Residential Leases.<sup>279</sup>

In Denmark it is possible to agree on rent increases by specific amounts at specific dates – a so-called "stepwise rent increase".<sup>280</sup> In the case of tenancies subject to the rules on rent not exceeding the amount required to cover the necessary operating costs for the property, the stepwise rent increase must not exceed the said amount at any time. For other tenancies the stepwise rent increase, as a principal rule, must not

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<sup>274</sup> *Laki indeksiehdon käytön rajoittamisesta* (21.12.2000/1195).

<sup>275</sup> Kanerva and Kuhanen, p. 150.

<sup>276</sup> Government proposal 304/1994, p. 64.

<sup>277</sup> Government proposal 304/1994, general grounds 2.2.3.3; examples in brackets in the text, Kanerva and Kuhanen, p. 151.

<sup>278</sup> Act on Residential Leases 27(2); Kanerva and Kuhanen, pp. 34 and 151.

<sup>279</sup> Kanerva and Kuhanen, p. 159 n. 263.

<sup>280</sup> Rent Act Section 53 subsection 2. Rent increases for properties covered by Section 53 subsection (3)-(5) of the Rent Act and The Housing Regulation Act Section 15a may be demanded on the basis of an agreement regulating the rent by certain amounts at certain dates or of the net retail-price index, and may be implemented by the landlord's written notice thereof to the tenant – but only if, after the increase, the rent does not exceed a level in accordance with the legislation.

substantially exceed the value of the property at any time.<sup>281</sup> If an agreement on free regulation of the rent has been made (where applicable), it may be agreed that the rent in the period of the tenancy shall be regulated either in accordance with the net retail price index or by specific amounts on specific dates (stepwise rent increase). The agreement must be stated in the tenancy agreement; otherwise it is not valid.

In Finland, during the lease, the parties may also freely agree to a higher rent only for a few months, for instance, to cover the costs of renovation.<sup>282</sup> In Denmark – when the landlord has improved the premises – the landlord may demand a rent increase by an amount corresponding to the increase of the value of the premises.<sup>283</sup>

### c. Regulation of deposit

In Denmark and Finland the regulation on deposits are almost similar. In both countries it is regulated by rules that may not be derogated from by agreement to the detriment of the tenant. The landlord may demand payment of a deposit held as security for the tenant's obligations upon vacating the premises. The deposit may correspond to up to three months' rent. This includes rent that has not been paid as well as any claims against the tenant regarding maintenance or breach of contract.

At the time of the signing of the agreement, the landlord may also demand an advance payment of rent equivalent to up to three months' rent. Such advance payment of rent can cover the rent of the three final months of the period of the tenancy. In Finland an advance rent payment can be agreed only at time the tenancy contract comes in to force (and not during the duration period), and only for a special cause<sup>284</sup> (such as the financing of future repairs<sup>285</sup> or, evidently, used as an extra security for rent payments).<sup>286</sup> In Denmark, in case of rent increases (or decreases), an adjustment of deposit and advance payment of rent may be required.

In Sweden there are no rules regarding deposits in the Tenancy Act besides section 28a. This section states that the tenant is entitled to get his deposit back after two years

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<sup>281</sup> Jakob Juul-Sandberg: *Det lejedes værdi*, 3. edition, 2014. In regulated municipalities a mutually agreed regulation of the stepwise rent increase may be set aside in properties comprising at least seven flats if, based on an overall assessment, the terms and conditions of the stepwise rent increase imply that the overall terms and conditions for the tenancy agreement are more onerous for the tenant than the terms which apply to the other tenancies in the property.

<sup>282</sup> Courts can always examine the reasonableness of the rent. Kanerva and Kuhanen, p. 145.

<sup>283</sup> The terms "improvement" and "increase of the value of the premises" in the Rent Act are not defined or described further in the Rent Act. This means that in many cases it is not possible for lay persons to properly calculate the rent increase applicable to a particular tenancy. For instance, if the landlord decides to change the kitchens in all the apartments in a property, the rent increase which will be possible will depend on the existing state of the kitchens in the apartments (the newer or better the existing kitchen, the smaller the scale of the improvement), which will mean a deduction in the amount on which the calculation of the improvement can be based. The final decision on the size of the deduction will be made by the Rent Tribunal or the courts if the landlord and the tenant disagree.

<sup>284</sup> "When the lease agreement is made, advance payment of rent for more than one rent payment period may be agreed on if special cause exists. Any stipulation under which the tenant is required to pay rent in advance while the lease is in force shall be null and void. The tenant shall, however, be entitled at any time to pay rent in advance for rent payment periods not yet falling due". Act on Residential Leases 36(1).

<sup>285</sup> Government proposal 127/94, p. 44.

<sup>286</sup> Kanerva and Kuhanen, p. 174.

from the date the commitment entered into force (a period of notice of nine months applies). This right cannot be derogated from by agreement. This means that the use of deposits is rare, but is usually used as a guarantee for future claims due to damage to the apartment or unpaid rents. The most common amount of deposit is one to three months' rent. There are no rules on how the landlord has to manage the deposit as to special accounts etc., and neither on how the landlord is allowed to use the deposit.

In Finland – and in Denmark to a smaller extent – disputes concerning the landlord's refusal to give back the deposit on grounds of the condition of the apartment are one of the most problematic areas. The fact that there is no regulation on this topic in the Swedish Tenancy Act implies that this is not a problem in Sweden. The most likely reason is that tenants use their right to get the deposit back when the tenancy has existed for two years or more.<sup>287</sup>

#### d. Regulation of expenses (utilities etc.)

Denmark has the most restrictive system of the three countries on this matter. Here the landlord may (only) make the tenant pay for power, heating, water, wireless signal transmission and cable TV. No other utility is under the authority of the Rent Act and therefore cannot be charged to the tenant. As a principal rule, in properties where the landlord supplies heating and hot water, and in properties where payment for water is made in accordance with consumption meters, the tenant pays an amount on account to cover the landlord's expenses. The costs of the heating and hot-water supply for the property cannot be included in the rent. The same applies to the water consumption expenses, if these are apportioned on the basis of meters. It can be arranged for the tenant to pay the supplier directly. This may be possible when the rented property is an independent house or a condominium. Otherwise, the landlord shall forward accounts for the actual expenses and amounts paid on account during the accounting period upon the expiry of the accounting period for water and heating consumption.

In Sweden the amount of rent shall be determined in the tenancy agreement, or if the agreement contains a bargaining clause, in the bargaining agreement. However, this does not apply to compensation for expenses relating to the supply of heat, hot water or electric current or charges for water and sewerage, if the tenancy agreement includes a bargaining clause and the basis of payment computation has been established through a bargained agreement or through a decision from the rent tribunal. This is also the case if the unit is situated in a single- or two-family dwelling, or if the cost of the utility is charged to the tenant by individual metering. Usually, when renting an apartment in an apartment building, most tenancy agreements have a total rent where the heat and water supply are included in the rent, as well as waste collection. The household electricity is usually charged separately by a separate contract between an electricity supplier and the tenant. An increase of prices of utilities may be carried out through an increase of the rent, but the rent increase must be negotiated with the Swedish Union of Tenants if the landlord has a principal bargaining agreement or if there is no such agreement, with each tenant individually. If the parties cannot agree, the rent tribunal must make a decision about the increase.

Another cost that usually is in addition to the rent, is the cost of broadband which usually

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<sup>287</sup> See section 3.1.2 on deposits above as well.

is supplied by an external provider. When individuals rent one or two dwelling houses from other individuals they usually conclude contracts directly with the supplier. Gas stoves are relatively uncommon in Sweden.

In Finland the parties may agree on charges such as electricity, water, and heating. All charges paid to the landlord are regarded as part of the rent, no matter how they are called, and the provisions on rent payment and the reasonableness of rent apply. The parties may agree in the tenancy contract on any charges. While the use of a parking lot, sauna, and so on, can be agreed to, one charge too distant from the use of the apartment to be agreed on in the same contract is that for the use of a car, even if it were agreed upon in the same document.<sup>288</sup>

e. Regulation of repairs: who is responsible for what kind of repairs?

Basically the same regulation applies in the three countries. The regulation is non mandatory in Finland and Denmark and semi mandatory in Sweden as derogations are possible in collective bargaining agreements but not in individual contracts. In all three countries the principal rule is that the landlord is obliged to maintain the property to keep it in a proper condition.

In Denmark the obligations on maintenance are regulated in the Rent Act. It is specifically stated that the landlord shall keep the property and the premises in proper repair at all times. All installations for drainage, supplies of light, gas, water, heating and cooling shall be maintained in good and serviceable repair. The landlord shall likewise be responsible for keeping the premises clean and for usual lighting outside and inside the property, as well as the means of access to the premises; also, the landlord shall be responsible for cleaning of the pavement, courtyard and other communal facilities. Papering, painting, plastering or other repairs inside the rented premises occasioned by deterioration due to wear and tear shall be carried out as often as necessary in view of the character of the property and the premises.

The landlord's duty to maintain the apartment by whitewashing, painting and papering shall be deemed to be discharged upon payment from time to time by the landlord.<sup>289</sup> It is legal to make an agreement stating that the tenant is responsible for whitewashing, painting and papering. The tenant and the landlord may mutually agree on a different distribution of the maintenance obligations, so that the tenant assumes e.g. the responsibility for maintaining and, if necessary, renewing toilets, water taps, refrigerators, kitchen tables, mixer taps, window panes, floors, floor covering and the like. Arrangements, in accordance with which the tenant takes on the responsibility to maintain anything other than locks and keys, must be stated in the tenancy agreement. During the term of the tenancy the tenant shall maintain and, where required, replace

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<sup>288</sup> This is the example given in the government proposal 304/1994 detailed grounds 1.1 ("Scope of application of the Act").

<sup>289</sup> The necessary amounts for this are specified in Sections 22 and 23 of the Rent Act and the amount shall be registered in a "maintenance account" for each apartment. The tenant may require the landlord to whitewash, paint and paper the flat as and when required, and any costs incidental thereto may be paid out of the balance available on the maintenance account. The landlord shall not pay more than the amount available in the maintenance account at any time.

locks and keys unless otherwise agreed. No matter an agreement on duties to maintain the apartment. It cannot be agreed that the property shall be in better condition at the termination of the tenancy, than it was at the commencement of the tenancy.

Under the Finnish Tenancy Act the same starting point applies and the regulation is generally based on the parties agreement as the provisions are dispositive: The landlord has the duty to ensure that at the commencement of the lease and throughout its duration, the apartment shall be in such condition as the tenant may reasonably require, taking the age of the apartment, the local housing stock and other local conditions into consideration, unless otherwise agreed regarding the condition of the apartment. If the parties agree that the tenant is responsible for the condition of the apartment and that the apartment should be in the exact same condition at the end of the lease, then the tenant may be responsible for ordinary wear and tear.<sup>290</sup> The parties may also agree that the tenant is responsible for the upkeep of any facilities or equipment available to her or the parties may divide the responsibility.

In Sweden the landlord is responsible for all maintenance works and repairs and for keeping the dwelling in such condition that, according to the general view in the locality, it is fully serviceable for the purpose intended. The landlord shall, at reasonable intervals of time, arrange for papering, painting and other customary repair in the dwelling because of the deterioration of the unit from age and use.<sup>291</sup> If the rented property is a single family home or a holiday cottage, the parties may agree that the tenant will be responsible for maintenance. Through a collective bargaining agreement it can be determined that the mandatory rule of the landlord's obligation to do customary repair shall not apply.<sup>292</sup>

Residential tenants entitled to carry out painting, wallpapering and comparable measures in the dwelling at their own expense. This means that a tenant has a right to exchange perfect fittings with other fittings, if he so prefers. The idea is that the tenant shall be allowed to change the apartment to accommodate his or hers taste. But if the utility value of the apartment thereby is reduced, the landlord is entitled to compensation for the damage. But a judicial review regarding whether or not the utility value has deteriorated cannot be made until the tenant moves out. However, the landlord's duty to repair what is broken is not affected by these rules.

f. Other fees (e.g. registration fees or taxes to be paid by tenant)

In Denmark and in Sweden no registration fees or taxes are to be paid by the tenant. In connection with the letting of premises for residential purposes it is not permitted to

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<sup>290</sup> Kanerva and Kuhanen, pp. 102 and 134.

<sup>291</sup> What a reasonable interval of time is varies depending on the size of the apartment and how many tenants living there. When it comes to painting and wallpapering the interval has become wider and is now about twelve to fourteen years. It is important to note that the landlord's obligation to repair does not occur simply because a certain amount of time has elapsed since the previous repair, it is also required that the apartment is in need of maintenance. The same assessment applies in Denmark.

<sup>292</sup> Nils Larsson et al, *Bostadshyresavtal i praktiken*, 2010, pp. 87-88. The idea is that a residential tenant who is being offered repair is able to abstain it, and in return be able to get lower rent or a rebate. This is called tenant-controlled apartment maintenance and is quite common among the municipal housing companies.

receive from or charge a fee to the tenant, or to require the tenant to enter into another contract which is not part of the tenancy agreement.<sup>293</sup> In Finland no registration or fee payment is needed either.

g. Rent subsidies for poor tenants [if relevant, a reference to the above findings is sufficient]

See section 2.5 above.

### 3.2.2. *Stability*

- Is the position of the tenant under the contract or real property law stable?
  - o Are insecure instruments such as licences instead of leases usual?
  - o Effect of the lack of a written agreement
  - o Effect of omitted registration
  - o Are there incentives for the landlord to conclude an unofficial, hidden, “black market” contract giving less stability to the tenant?
  
- Has a tenant a guarantee to stay as long as he respects the contract?
  - o Open ended lease: adequate protection against unilateral termination by landlord?
  - o Fixed term leases possible so as to circumvent the protection of the tenant in case of open ended leases
  - o Protected periods effective and long enough (are there adequate prolongation rights?)
  - o *Emptio non tollit locatum*
  - o Right of first refusal (call option) of the tenant in cases of sale of the house to a third party
  
- Indirect impediments: if massive rent increases allowed, the tenant may be forced to leave
- Are additional “social defences” available in the eviction procedure?

### 3.2.3. *Flexibility*

- Unilateral termination by tenant possible within reasonable delay?
- Non-abusive subletting allowed?

Conclusion of contracts in the three countries are based on a Nordic cooperation – and in general the same rules on contract formation apply in all Nordic countries. This means e.g. that oral contracts are as binding as written contracts and general rules on contract interpretation and invalidity apply. There is no difference between how a tenancy

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<sup>293</sup> Under Section 6 of the Danish Rent Act. Section 65 a in the Swedish Tenancy Act.

agreement and any other type of contract is concluded, the Contracts Act apply for both types.

If sufficient evidence is given of the existence of a tenancy agreement, nothing else is required. Both Section 4 of the Danish Rent Act and section 2 of the Swedish Tenancy Act states that a tenancy agreement and any other agreements concerning the premises shall be executed in writing if either party require it. If the agreement is not in writing the provisions of the Acts applies. This means that a tenancy agreement shall be deemed to have been concluded subject to the provisions of the Rent Act, unless otherwise provided in the agreement. Oral or unfinished written agreements are therefore valid and the Rent Act will apply. According to the Act on Residential Leases in Finland a fixed-term tenancy agreement must be made in writing, when it concerns other than a holiday home. If not made in writing, a tenancy agreement may only be valid for an unlimited term.<sup>294</sup>

Registration in the Land Registry is not obligatory in Denmark. Under Section 7(1) of the Rent Act, a tenant's rights stated in the Rent Act are enforceable against anyone without registration. This means that if the (former) landlord has charged a higher rent than allowed, the tenant can make his or her claim against the new landlord – even if the landlord is in good faith. It makes no difference whether the tenant has moved away before the property is sold. However, on termination of the tenancy, any proceedings to enforce the tenant's claims shall commence within 12 months from the date of termination. If the tenant has been granted special rights – better than what is stated in the Rent Act – he has to register the tenancy agreement in order to be protected against any new owners and the creditors of the landlord.

There are no registration requirements for tenancy agreements in Sweden either. A tenant has a dynamic third party protection even without registration. Chapter 7 section 13 in the Land Code states that [...] “a grant referring to a lease or tenancy shall be valid against a new owner of the property unit if the grant was made by written agreement and possession was taken prior to the transfer”. This means that the new owner of the property must respect the general rights of the tenant under the tenancy laws.

In Finland it is possible to have a mortgage registered as security for the permanence of lease rights<sup>295</sup> in the title and mortgage register, which is part of the Land Information System of Finland. But this option is not much used. The reason is that the registration under the Code of Real Estate requires the real-estate owner's consent, and the owner usually is, in other cases than the lease of an entire real estate, the housing company rather than the landlord, and the housing company cannot give the consent – put its property up for another person's debt – under the Housing Companies Act.

In Denmark sub-letting agreements shall be made in writing, and the tenant shall submit a copy of the sub-letting agreement to the landlord prior to the commencement of the

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<sup>294</sup> Act on Residential Leases 5(1).

<sup>295</sup> “Any stipulation in the lease agreement stating that no mortgage can be applied for as security for the permanence of the leasehold ... shall be null and void.” Act on Residential Leases section 9.

sub-letting period. There is no specific regulation on contracts regarding sub-letting in Finland or Sweden.

There are no real incentives for the landlord to conclude an unofficial, hidden, “black market” contract given the fact the regulation the countries tenancy acts respectively covers the relation between the landlord and the tenant no matter if the contract is in writing or not. In the tenant were to go to court with a dispute this would be possible. An incentive for the landlord to hide a contract could be tax evasion. But this would not affect the contractual relation with the tenant.

In Sweden there are cases of “rogue” landlords who will try to circumvent the legal rules and offer the tenant a sublease contract only. This is often arranged by the use of a front man, such as a separate company or a relative, which in turn will sublet to the tenant. In these situations the subtenant can have the same right as a primary tenant under certain conditions.<sup>296</sup> In Denmark the Rent Act was changed in 2010 to avoid such situations.<sup>297</sup>

Unauthorized sub-letting, when a tenant is subletting a flat without permission from the landlord, creates an unsafe situation for the person who subleases the flat. The tenant who subleases is liable to pay too much in rent and also lacks a security of tenure. Furthermore, sub-letting an apartment without prior permission constitutes grounds for termination of the “master” tenancy agreement. The principle is that the rent the holder of the master lease is allowed to charge when subletting should be the same rent as he or she is paying. It is not intended that tenant of the “master” lease makes money when subletting even though it is not directly prohibited. This seems to be a larger problem in Sweden than in Denmark and Finland probably due to housing shortage there. The current Swedish law does not prohibit paying for a contract but it is illegal to sell a lease. A complaint is rarely made to the police when it comes to the parts of the black housing market dealing with unauthorized subletting and trading of leases. The cases which are reported to the police and leading to prosecution usually are concerned with fraud.<sup>298</sup> No regulation on this matter is potential in either Denmark or Finland because the problem does not seem to be very big here.

- Has a tenant a guarantee to stay as long as he respects the contract?
- Open ended lease: adequate protection against unilateral termination by landlord?
- Fixed term leases possible so as to circumvent the protection of the tenant in case of open ended leases

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<sup>296</sup> Under Chapter 7 section 31 in the Swedish Land Code

<sup>297</sup> If an apartment was let out to a company exclusively for residential purposes before 13 June 2010, the contract will be regulated by the Business Rent Act. The tenant who actually lived in the apartment, e.g. a shareholder or an employee, was considered a sub-lessee. The relation between the company (tenant) and the sub-lessee was regulated by the Rent Act. This could be legal, but in some cases this “construction” could be made only because the regulation in the Business Rent Act is not so radical. After 13 June 2010, letting apartments to a company exclusively for residential purposes is regulated by the Rent Act as well (Rent Act Section 1, subsection 1 changed by Act no. 632 of 10 June 2010).

<sup>298</sup> Swedish Board of Housing, Building and Planning, “*Dåligt fungerande bostadsmarknader*” (2011) pp. 11-21.

- Protected periods effective and long enough (are there adequate prolongation rights?)
- *Emptio non tollit locatum*
- Right of first refusal (call option) of the tenant in cases of sale of the house to a third party
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In general the regulation in the three countries grants the tenant a guarantee to stay as long as he respects the contract.

In Denmark and in Finland there are no mandatory minimum or maximum duration of the contract period. Theoretically, there is a maximum duration for limited in time contracts of 50 years or for a person's lifetime under Swedish law, but the prolongation rights apply. Tenancy contracts can be entered into for a limited or unlimited period.<sup>299</sup> They are unlimited unless otherwise agreed. In general, immediate termination of the contract is possible only if one of the parties has committed a fundamental breach of contract.

The regulation on the tenant's possibilities for giving notice is almost similar in Denmark and Sweden. In Denmark unlimited tenancies may normally be terminated by the tenant giving three months' notice,<sup>300</sup> while the landlord can give notice (also three months as the main rule)<sup>301</sup> only if certain indispensable conditions are met. Agreements on longer notice periods are legal. In Sweden the period of notice for the tenant is usually three months. This applies provided that no other period has been agreed upon. If a period of notice of e.g. one month has been agreed the tenant may choose between the statutory and the agreed period. If the parties have agreed on a period of notice of more than three months, that period applies for the landlord but not for the tenant – he may choose the statutory period of three months instead.<sup>302</sup> An ordinary period of notice is three months for a landlord as well, unless another period is agreed. However, a shorter period of notice than three months for an open-ended contract (or a fixed term contract lasting for more than three months) is not valid when the landlord terminates the contract. If the tenant and the landlord agree on a period that is less advantageous for the tenant than the statutory right, that agreement is void.

In Finland the tenant's notice period is one month in non-fixed-term contracts, no matter for how long the lease has lasted, and the period cannot be extended in the contract. Ordinarily the landlord may give notice in (i) no less than six months' time, if the lease

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<sup>299</sup> As stated just above according to the Act on Residential Leases in Finland a fixed-term tenancy agreement must be made in writing, when it concerns other than a holiday home. If not made in writing, a tenancy agreement may only be valid for an unlimited term.

<sup>300</sup> It is not legal to agree on a shorter term. Agreements on longer terms are legal. See eg. Niels Grubbe, Hans Henrik Edlund: *Boliglejemaal*, 2008, p. 362.

<sup>301</sup> Under section 82 of the Rent Act the period of notice shall be one month for separate rooms for residential purposes, where the room forms part of the landlord's flat or a single- or double-occupancy house occupied by the landlord, and for flats in buildings in which only two flats exist at the time of the tenancy agreement and where the landlord occupies one of these two flats. This rule applies even in cases where the owner is using one or more rooms in the house for non-residential purposes, and even where one or more rooms in the property are let for residential purposes.

<sup>302</sup> Section 3 of the Tenancy Act.

has lasted uninterruptedly for at least one year immediately prior to the giving of notice (not prior to the end of the notice period), or otherwise in (ii) no less than three months' time.<sup>303</sup> The notice period cannot be reduced in the contract.<sup>304</sup> The landlord may give notice even for the singular purpose of increasing the rent. On giving notice to the tenant, the landlord must deliver a written notification stating the grounds for the termination; otherwise the notice will be ineffective.<sup>305</sup> Consequently, the landlord should give at least some reason(s) for the notice to have effect. Although, as the grounds for legal notice are no longer laid down in legislation, any ground will do as long as it is not contrary to good rental practice.

In Denmark neither party can give notice to terminate a fixed-termed contract unless otherwise agreed (in the tenancy agreement). If the tenant moves out during the fixed term, it is considered breach of contract and the tenant is liable for damages. This is the main rule in Finland as well. Exceptionally, a court may, after providing the other party an opportunity to be heard, permit the tenant or the landlord to give notice on special grounds.<sup>306</sup> If the court permits one party to give notice on a fixed-term agreement, the other party is entitled to reasonable compensation for any loss incurred as a result of the premature termination of the contract.

Under Swedish law the legislation is different on this particular field. Here the tenant will always be free to move with three month notice even in fixed term contracts. Furthermore in Sweden a tenant cannot be evicted merely because the time limit has elapsed, the tenant has the same protected tenancy as tenants with open ended contracts have. If the parties have a fixed term agreement the landlord is bound by that term and he cannot give an advance notice of cancellation. He can only terminate the contract to the date the rental period expires or in case of a breach of contract of the tenant.<sup>307</sup> If the landlord is aware of and accepts that the tenant remains in possession of the dwelling for more than 1 month after expiry of the term, without requiring the tenant to vacate the premises, the tenancy will continue for an indefinite term. Such a provision applies in Denmark as well.

Under Danish Regulation the Housing Court may set aside any provision for a fixed term, where such provision is not found to be warranted by the landlord's own situation.<sup>308</sup> This means that the landlord – at the time when the contract is concluded – must have reasonable grounds to make the contract for a limited period only. It is possible to prolong a limited contract if it is warranted by the landlord's own situation at

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<sup>303</sup> Act on Residential Leases 52(2).

<sup>304</sup> "Any stipulation reducing the lessor's notice period or extending the tenant's notice period shall be null and void". Act on Residential Leases 52(4).

<sup>305</sup> "The lessor shall give notice on a lease agreement by delivering to the tenant a written notification stating the date of the lease termination and the grounds for it. A summons for eviction requesting termination of the lease shall also qualify as a notice notification". "Any notice not given as provided in this section shall be ineffective". Act on Residential Leases 54(1) and 54(5), respectively.

<sup>306</sup> Act on Residential Leases 55(2) and (5).

<sup>307</sup> Section 4 of the Tenancy Act.

<sup>308</sup> Rent Act Section 80, subsection 3.

the time of the prolongation. In Finland only very short fixed-termed contracts may be considered void.<sup>309</sup>

It is possible to make contracts “for life”. Unless otherwise agreed by the parties, such a contract cannot be terminated before the tenant dies. The tenant may register the tenancy agreement with such a right to be protected against any new owners and the creditors of the landlord.<sup>310</sup> Lifespan can be a valid – what is elsewhere called “relative” – fixed term under Finnish tenancy law.<sup>311</sup> A contract valid for the tenant's life is a fixed term contract in Sweden according to a case from 1999.<sup>312</sup> This means that the landlord cannot bring about a change in the rental conditions against the will of the tenant during the tenant's lifetime.

The tenant can stay in the rented premises until the end of the notice period unless otherwise agreed upon after notice has been given. The tenant does not have any statutory right to stay for an additional period of time (prolongation). If the termination of the contract – after the landlord has given notice – is found valid (in court), and the tenant does not move out at the end of the given notice period, the landlord may proceed and evict the tenant without further notice or delay. It is not possible for the tenant to stop the eviction proceedings when there is a final judgment stating that the termination stands. This goes for Denmark and Sweden with the additional remark that in Sweden there is the possibility of a period of grace. If the rent tribunal decides that the tenancy shall cease, a reasonable respite for vacation may be granted in the decision if the landlord or tenant so requests. But if the tenancy is forfeited without the landlord having cancelled the agreement in advance, a respite may only be granted at the tenant's request if the landlord approves of it.<sup>313</sup>

In Finland the system seems to be a little different. A date for removal of the tenant after the end of the notice period can be deferred. The deferral of the removal date is a special action, which the tenant may bring no less than one month prior to the removal date.<sup>314</sup> The tenant may also attach this claim to another claim, which has already been brought before the court. If the tenant has substantial difficulty in obtaining another dwelling, the district court may defer (once) the removal date by up to one year.<sup>315</sup> The deferral must not cause the landlord or some other person (a new tenant) substantial inconvenience or loss, and it is precluded to defer the removal date after (i) a buyer in a

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<sup>309</sup> Act on Residential Leases 4(1), third sentence: “If a fixed-term lease of no more than three months is agreed on with the same tenant more than twice consecutively, the lease shall be considered a non-fixed-term lease notwithstanding the fixed-term provision”.

<sup>310</sup> Section 7(2) of the Rent Act: “Where a tenant acquires more extensive rights by agreement, e.g. contractual security of tenure, a right of assignment or a right to compensation upon vacation under section 63, below, the tenant may demand registration of such agreement. The agreement so registered shall be subject to the largest possible public loans and any other charges and encumbrances on the register at the time of application for registration of the said agreement”.

<sup>311</sup> According to a commentary on the Act on Residential Leases, Kanerva and Kuhanen, p. 55.

<sup>312</sup> RH 1999:60.

<sup>313</sup> Section 52 in the Tenancy Act.

<sup>314</sup> Act on Residential Leases 70(1).

<sup>315</sup> “If a tenant with a non-fixed-term lease encounters substantial difficulty in obtaining another dwelling by the removal date, the court can, at the tenant's request, defer the removal date by up to one year. Deferral of the removal date can be restricted to apply to only part of the apartment.” Act on Residential Leases 69(1–2).

compulsory auction has given notice, (ii) the landlord has the right to rescind the contract, or (iii) the tenant has herself given notice of termination or rescinded the agreement.<sup>316</sup> On making the decision, the court simultaneously announces a new removal date and includes in its decision the duty that the tenant moves out when the lease is terminated.<sup>317</sup> The decision cannot be appealed to a higher court.<sup>318</sup>

Under Danish tenancy law no specific restrictions in general are given in favour of certain tenants or for a certain period or after sale including public action (or inheritance). The general rights of the tenant as stipulated in the tenancy laws have validity without registration against the landlord's creditors and assignees in good faith.<sup>319</sup> Tenant's rights are therefore ensured if, for example, the property is resold. A new owner of the property must respect the general rights of the tenant under the tenancy laws – a tenancy cannot be terminated because the property has been sold. The new owner has no right to do so. The same applies to changes of agreements on advance payment of rent, deposits, and the like within the terms of the law.

The same regulation applies in Sweden – the transferral of a property to a new owner will generally not affect the validity of the tenancy agreements concluded between the former owner and tenants of the transferred property. The new owner will in most cases be bound by the agreements and will become the new landlord.<sup>320</sup> Tenants do not get a specific right to terminate the contract in this situation either.

When the ownership to the apartment in Finland is voluntarily transferred (by sale, gift, etc.), the tenancy agreement is binding on the new owner if any one of the following three conditions is met: the tenant has taken possession of the apartment before the transfer takes place; the agreement transferring ownership includes a provision on the continuance of the lease agreement; or a mortgage has been taken out to secure the permanence of the lease.<sup>321</sup> As an exception to the rule, the buyer of a property sold in a compulsory auction has the right to give notice on any tenancy agreement within a month of having taken possession of the property, unless the property is sold subject to a stipulation guaranteeing the continuance of the lease.<sup>322</sup> The tenant will have the benefit of the landlord's notice period.

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<sup>316</sup> “The removal date shall not be deferred if this causes the lessor or some other person substantial inconvenience or loss. Nor shall the removal date be deferred if the lessor has given notice pursuant to section 39, or if the lessor has the right to rescind the lease agreement under paragraph 1 or 2 of section 61, or if the tenant himself, herself or itself has given notice or rescinded the agreement”. Act on Residential Leases 69(3).

<sup>317</sup> Act on Residential Leases 71.

<sup>318</sup> Act on Residential Leases 70a (599/2002).

<sup>319</sup> Rent Act section 7.

<sup>320</sup> If a written tenancy agreement exists and the tenant has accessed the apartment, the new owner is bound by the agreement according to Chapter 7 section 13 in the Tenancy Act. If there is no written contract or if there is a written contract but the tenant has not acceded the apartment the new owner is bound under certain circumstances – Chapter 7 section 11-14.

<sup>321</sup> Act on Residential Leases 38(1).

<sup>322</sup> Act on Residential Leases 39(1). If the buyer was unaware of the existence of the lease, she may give notice within a month of the later date on which she received notification of the existence of the lease. Ibid.

This exception has in Finland been justified on the ground that debtors could otherwise make – perhaps long-term – lease agreements in the face of bankruptcy, which might diminish the value of the property considerably.<sup>323</sup> In Denmark this potential problem has been dealt with in two ways:

- i) Where a tenant acquires more extensive rights than those that follow from the Rent Act by agreement, e.g. contractual security of tenure, the tenant may demand registration of such agreement in the land register. If the tenant does not, buyers in good faith may be bound by these extensive rights.
- ii) In some cases the new owner may be released from the tenancy contract on “other substantial grounds”. This reason for terminating a contract is rarely used though. It can be used e.g. if a mortgage bank is forced to take over the property and the rent income does not cover the expenses for the bank.<sup>324</sup>

In Denmark no regulation on a right of first refusal of the tenant in cases of sale of the house to a third party applies in general. It would be legal to make an agreement on this in the tenancy contract. In properties used wholly or in part for residential purposes though, the landlord shall offer the property to the tenants on a co-operative basis before disposing of the property to a third party. The provisions on the obligation to offer a property to existing tenants applies to properties used exclusively for residential purposes, containing six or more flats, and other properties containing not less than 13 flats.<sup>325</sup> The purchase must take place subject to the same conditions under which the property would otherwise have been purchased, and the tenants will have to form a co-operative and fulfil the requirements in Chapter 16 of the Danish Rent Act.

Under certain conditions (some of them the same as in Denmark – e.g. forming a co-operative) the tenants may acquire an apartment building on the same terms that would be offered to a buyer who wants to continue with the rental management.<sup>326</sup>

In Finland a residential lease does not give rise to any statutory pre-emption rights or rights of first refusal.

- Indirect impediments: if massive rent increases allowed, the tenant may be forced to leave

This is not directly regulated on in the three countries. If the landlord has given notice on a massive rent increase this can always be tried in the Rent Tribunal (Denmark, Sweden) and/or in court.

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<sup>323</sup> Kanerva and Kuhanen, p. 183–184.

<sup>324</sup> Margrete Pump og Martin Preisler Knudsen: *Opsigelse og ophævelse af andre væsentlige grunde* in *Tidsskrift for Bolig- og Byggeret* 2001 p. 131 ff.

<sup>325</sup> Introduced in the 1970s, this legislation gave the tenants in a rental property a right of pre-emption if the owner wished to sell the property. See Danish Rent Act chapter 16.

<sup>326</sup> SFS 1982:352. The Property Acquisition Rights (Conversion to Tenant-Ownership) Act (*lag om rätt till fastighetsförvärv för ombildning till bostadsrätt eller kooperativ hyresrätt*).

- Are additional “social defences” available in the eviction procedure?

In both Denmark and Sweden the tenant shall be given notice regarding a late payment of the rent (Denmark two weeks, Sweden three weeks). In Sweden the local social welfare authorities must be notified at this point as well (in Denmark this also applies for Social Housing). In Sweden the tenant may not be evicted from the dwelling if the social welfare committee notifies the landlord in writing that the committee will take responsibility for the payment of rent. This must be made within the three weeks of time. Nor may the tenant be evicted if he has been prevented from paying the rent within the three weeks due to illness or some other similar unforeseen circumstance and the rent is paid as soon as possible. This must be when the eviction dispute is being determined by a court of first instance at the latest.<sup>327</sup> The social welfare committee in each municipality will in most cases help an evicted person to get a new dwelling, especially if it is a family with children.

In Denmark it is not possible – without the landlords acceptance – for the tenant to stop the eviction proceedings when a there is a final judgment stating that the termination stands. If the local social welfare authorities want to help it must be before this time. When the landlord gets the verdict that the termination was valid, the landlord may proceed through the Bailiff’s Court without further delay and get the tenant evicted with no possibility for the tenant to mount an objection even if he offers to pay (or the Social welfare authorities do). The Bailiffs Court will notify the municipal social welfare authorities if the tenant have children in the rented premises at the time of eviction, but this does not postpone the eviction for more than a very short time (hours) unless the landlord accept this.

Legislative changes and measures have been implemented though to limit the number of evictions due to the non-payment of rent.<sup>328</sup> But this is related to the time before the eviction proceedings start. Evictions procedures have never been the cause of any disputes from a human-rights point of view in Denmark.

In Finland is it possible to postpone an eviction procedure. If the postponement does not cause considerable inconvenience to the applicant, the bailiff may postpone the move day (once or several times) by up to altogether two months from the start of the proceedings. With the consent of the applicant, the eviction may be postponed for a longer period, at most six months from the start of the proceedings, if there is an especially important reason for a longer postponement.<sup>329</sup> The bailiff will consider the need for postponement and the inconvenience to the applicant on a case-by-case basis. The bailiff’s decision on a postponement is not subject to appeal.<sup>330</sup> The tenant shall, if

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<sup>327</sup> Section 44 of the Tenancy Act.

<sup>328</sup> This was partly due to the fact that the number of evictions was rising. Statistics from the Courts of Denmark: 2,849 evictions in 2006, 3,377 in 2007, 3,762 in 2008, 3,912 in 2009, 4,382 in 2010.

<sup>329</sup> “The move day may be postponed, unless this would cause considerable inconvenience to the applicant. However, the eviction shall be carried out within two months of the pendency of the matter, unless there is an especially important reason for a longer postponement. With the consent of the applicant, the eviction may be postponed for at most six months from the pendency of the matter without that pendency lapsing as a result. The bailiff’s decision on a postponement shall not be subject to appeal”. Enforcement Code 7:4(1) second until last sentence.

<sup>330</sup> Enforcement Code 7:4(1) last sentence.

the landlord-applicant demands this, pay rent to the landlord for the period of postponement under the earlier terms.<sup>331</sup>

The same “social defences” (as in Denmark) apply in Finland. If the bailiff is aware that in the apartment reside children, whose living circumstances are unclear, or people in need of direct care,<sup>332</sup> the Enforcement Code requires that “the local housing and social welfare authorities shall be notified as soon as possible”.<sup>333</sup>

This obligation arises if the bailiff discovers, during the proceedings or while carrying out the eviction that said persons reside on the premises, but the bailiff has no active duty to determine the situation.<sup>334</sup> The bailiff may fulfil the obligation by informing either the housing authorities or the social authorities or both.<sup>335</sup> Lastly, if, at the time when the eviction is carried out, there are still said people in the apartment, “the eviction shall not be carried out before the housing and social welfare authorities have been reserved the opportunity to arrange for housing or to determine the need for social welfare services”.<sup>336</sup>

### 5.2.3. Flexibility

- Unilateral termination by tenant possible within reasonable delay?
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The prerequisite for the answers to this question are that the question referrers to termination in the case of the landlords breach of contract. The regulation on termination by giving notice is answered above (in all three countries it is possible to terminate the contract by giving notice (one or three months) at all times – with respect of the contract stating otherwise (Denmark, Finland fixed-termed contracts).

Immediate termination of the contract (without a notice period) is possible only if one of the parties has committed a fundamental breach of contract. Determination whether there has been a fundamental breach of contract is based on case law and on general contract law. An example of fundamental breach could be where the premises are defective, and where the landlord fails to repair the effect immediately, or where it cannot be repaired within a reasonable time. Then the tenant may terminate the agreement without notice if the defect is deemed to be material, and the landlord is deemed to have acted fraudulently. Termination without notice means that the tenant shall move as soon as possible and that the tenant may stop paying the rent from the day the contract is terminated. The tenant might eventually also make a claim for damages.

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<sup>331</sup> “On the demand of the applicant, the evictee shall pay rent to the applicant for the period of postponement, beginning from the move day, under the earlier terms. Advance payment of the rent may be set as a condition for postponement, if this can be deemed reasonable from the point of view of the evictee” Enforcement Code 7:4(2).

<sup>332</sup> Such as the elderly or mentally ill or intoxicated persons. Enforcement Code 7:3.

<sup>333</sup> Enforcement Code 7:3.

<sup>334</sup> Kanerva and Kuhanen, p. 351.

<sup>335</sup> Government proposal.

<sup>336</sup> Enforcement Code 7:5(2).

In case of unilateral termination by the tenant this is possible within reasonable delay as the tenant may choose to move out before an eventual dispute with the landlord is settled.

- Non-abusive sub-letting allowed?

In Denmark (non-abusive) sub-letting is a right for the tenant according to mandatory provisions in the Rent Act.<sup>337</sup> The tenant of a house or an apartment (not a single room) is entitled to sub-let up to one-half of the rooms of the flat for residential purposes. The total number of occupants of the house or apartment shall not exceed the number of rooms. A tenant is also entitled to sub-let a house or apartment for a period not exceeding two years, when the property is let exclusively for residential purposes and where the absence of the tenant is temporary and due to illness, business, studies, placement, etc. The landlord may (only) object to the sub-letting when the property comprises less than 13 apartments; when the total number of persons in the flat will exceed the number of rooms; or when the landlord may object to the sub-letting on any other reasonable grounds. Sub-letting agreements shall be made in writing, and the tenant shall submit a copy of the sub-letting agreement to the landlord prior to the commencement of the sub-letting period. Otherwise, sub-letting is considered a breach of contract in the relationship between the landlord and the tenant.<sup>338</sup> This also means that the sub-lessor will have to move out.<sup>339</sup>

The Danish Rent Act regulates sub-letting on the same conditions as “normal” letting. The tenant who is sub-letting will be considered as the landlord in relation to the sub-lessee. This means that in general there are no grounds for speculation about offering the tenant only a sublease contract and not an ordinary lease contract. The sub-lessee will not be protected against the landlord’s (the owner of the property) creditors and assignees in good faith. This is the major difference between the tenant’s and the sub-lessee’s right.<sup>340</sup>

In Finland the tenant’s right to sublet is also mandatory. Provided that the sub-letting does not cause significant inconvenience or disturbance to the landlord, the tenant may assign no more than half of the apartment to another person’s residential use<sup>341</sup> (not, for instance, office use)<sup>342</sup>; when this occurs for a consideration, the chapter on sub-letting<sup>343</sup> in the tenancy act applies to the relation between the tenant and the sub-tenant. The regulation of sub-letting is different from that of tenancy in several respects:

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<sup>337</sup> Rent Act Section 69-72. On sub-letting in Denmark – see: Anne Louise Husen, Tove Flygare: *Lejemålets ophør og brugsrettens overgang*, 2. udg., 2011, p. 479 ff., Mogens Dürr, Timmy Witte and Kristin Jonasson: *Boliglejemål*, 2010, p. 748 ff., Niels Grubbe, Hans Henrik Edlund: *Boliglejemål*, 2008, p. 116 f.

<sup>338</sup> Rent Act Section 69, subsection 3 and Section 70, subsection 4 and Rent Act Section 93, subsection 2 *litra f*.

<sup>339</sup> E.g. Grundejernes Domssamling 1995 no. 22 District Court decision.

<sup>340</sup> As described in Louise Faber: *Fremlejetagerens retssikkerhed – in Retssikkerhed i konkurrence med andre hensyn*, Carsten Munk-Hansen og Trine Schultz (red.), 2012, p. 95-117.

<sup>341</sup> In Act on Residential Leases 17(1).

<sup>342</sup> Kanerva and Kuhanen, p. 96.

<sup>343</sup> Act on Residential Leases 80–85.

the sub-tenant may not assign the rented space to another person's use;<sup>344</sup> the mandatory minimum notice period of the sub-lessor is either one or three months, and the mandatory maximum notice period of the subtenant is fourteen days,<sup>345</sup> the sub-tenant must always move out of the apartment when notice has been served, and can only claim damages afterwards;<sup>346</sup> and the sub-lease is terminated without notice at the same time as the sub-lessor's leasehold or other right of use.<sup>347</sup>

In Sweden the right to sub-let is not mandatory. A tenant is normally not allowed to sublet his or hers apartment without prior consent from the landlord. If the landlord does not give permission for the sub-letting the tenant can apply to the rent tribunal.<sup>348</sup> The tenant must have notable reasons for the grant; age, illness, temporary employment in another locality, special family circumstances or comparable circumstances and the landlord may not have any justifiable reasons to refuse consent.<sup>349</sup> The permission from the rent tribunal shall be limited to a fixed term and may be combined with provisions.<sup>350</sup> When the permission has expired, the tenant can reapply for a new permission from the rent tribunal. Permission is normally given for one year at a time and seldom for more than a total of three years.<sup>351</sup> The landlord does usually not have any justifiable reasons to refuse a permission to sublet. The subtenant's solvency normally lacks significance because it is the primary tenant that remains liable for the payment of the rent. The decisions from the rent tribunal in these matters cannot be appealed.

## 4. Comparison of tenures with a public task

### 4.1. Generalities

- Please compare the regulatory types of rental and intermediary tenures with public task (typically non-profit or public/social housing allocated to need), by commenting on their effectiveness, (sufficient or insufficient) supply and market share:
  - Municipal tenancies
  - Housing association tenancies
  - Social tenancies
  - Social housing agencies
  - Privatized or restituted housing with social restrictions

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<sup>344</sup> Kanerva and Kuhanen, 312.

<sup>345</sup> Act on Residential Leases 83.

<sup>346</sup> Act on Residential Leases 84; Kanerva and Kuhanen, pp. 312 and 317.

<sup>347</sup> Act on Residential Leases 85.

<sup>348</sup> A general exception to this rule is found in section 39, which applies when a tenancy leased by a municipality. Such an apartment may be sublet without requiring the consent of the landlord. The landlord shall nevertheless immediately be notified of the sublease. If the tenant still sublets without a permission, and does not take corrective action after being given a reprimand or ask for permission to the lease without delay, he or she risks forfeiting the tenancy.

<sup>349</sup> "Beaktansvärda skäl". The rent tribunal can give permission under the conditions specified in section 40 of the Tenancy Act.

<sup>350</sup> For example, a tenant usually receives permission for one year when he or she wants to try the life as a cohabitant. Nils Larsson et al, *Bostadshyresavtal i praktiken*, 2010, pp. 168-169.

<sup>351</sup> Charlotte Andersson, *Lägenhetsbyten och andrahandsuthyrning*, 2008, pp. 51-52.

- Public entities (e.g. municipalities) taking over private contracts, typically for poor tenants to counteract homelessness
- Etc.

The distinction between housing with a public task and housing without it is most pronounced in Finland with the Arava system. Both municipal and private landlords can apply for state loans on favourable terms. During the time the landlord repays the debt he or she must abide by a rent regulation and by criteria for tenant selection (taking need into account). When the loans are repaid the houses return to the free pricing sector. The Arava system covers half of the rented housing in Finland.<sup>352</sup> The state creates selection criteria and persons risking homelessness have the highest priority. If the need is equal then income and wealth are important factors.<sup>353</sup> Municipal housing companies are bound by these criteria even if they have repaid Arava loans.

In Denmark a cost based rent regulation principle applies to most private landlords. Municipal housing companies (social housing) also set rents in relation to their costs. The difference in rents is thus not the important difference between social housing and private housing.

Danish housing associations (price regulated co-operative apartments covering 7,4 % of the housing market) distribute apartments on the basis of a waiting list with regard to family size as well. The municipal council may avail itself of 25 % of the free apartments to give preference for persons with great need.<sup>354</sup>

The Danish municipal housing companies (*almennyttige boligselskaber*) have 20% of the housing stock and have waiting lists as the basic system. Some groups of individuals have a right of pre-emption on the waiting list: Families with children have a right of pre-emption concerning larger apartments, and the elderly and disabled have a right of pre-emption concerning certain dwellings that are suitable for the elderly and disabled.<sup>355</sup>

In Sweden, the municipal sector must operate on business like principles and has no special legislation with regard to either rents or tenant selection. The special legislation that exists regards details like tenants' influence over their environment.<sup>356</sup> A tenant can

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<sup>352</sup> National Report for Finland section 1.4.

<sup>353</sup> National Report for Finland section 4.3

<sup>354</sup> National report for Denmark section 4.3.

<sup>355</sup> Social housing is regulated by the Consolidation Act on Social Housing (Consolidated Act no.1023 of August 21 2013) and the Consolidation Act on the Rent of Social Housing (Consolidated Act no. 961 of 11 November 2010) – as well as a number of executive orders. Recent key literature: Jakob Juul-Sandberg, Martin Birk, Marianne Kjær Stolt: *Kommenteret Lov om leje af almene boliger*, 2008. Both Acts are thoroughly commented on in KARNOV. National Report for Denmark section 6.2

<sup>356</sup> SFS 2010:879 section 1.

thus not claim better right to a free apartment in relation to another tenant. The municipal housing company is free to decide when to side step the waiting list.

In Sweden housing co-operatives (owner-tenant apartments) have 20 % of the market but should not be considered an intermediate form anymore. Due to important reforms in 1969 regarding free selling prices and a gradual increasing of freedom to change the apartment, it should today be considered to be a form of full ownership. If the municipality wants to provide such an apartment to a person in need they have to buy it from the owner first.<sup>357</sup>

Privatised or restituted housing does not exist as a category in any of the three countries.

Finland has created a special scheme for selling empty to tenants with part-ownership.<sup>358</sup> Sweden has a system with co-operative apartments where the purchase price is returned to the housing association and a new person on a waiting list gets the opportunity to buy the apartment.<sup>359</sup> Neither of these systems give the municipalities a special tool to make houses available to persons in need. Such forms of social housing is not discussed here.

Having the municipality taking over the contract to avoid homelessness is rare in all three countries. In Denmark and Finland, there is no special legal advantage in doing so. In Sweden the municipality can take over the duty to pay the rent within three weeks of notification and thus avoid eviction of the tenant. Otherwise there is no favour given to the municipalities if they take over all duties or part of the duties according to the contract. Any grave misbehaviour of the tenant would still give the landlord just cause to terminate the contract. However the landlord may in all three countries prefer to have the municipality on the contract knowing that any damages resulting from the tenant's misconduct in the rental relationship will always be paid promptly. Financial support to the tenant is the most important tool for avoiding homelessness in all three countries.

#### **4.2. Evaluative criteria for public/social/private subsidized landlords**

- Funding by state or other bodies
- Typical contractual arrangements and regulatory interventions into rental contracts (if appropriate: findings on profitability and respect of property rights as specified below in the context of market rentals)

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<sup>357</sup> The Act on Cooperative Apartments (Bostadsrättslagen, SFS 1991:614) states that a municipality can never be denied membership in a housing cooperative (Chapter 2 Section 4), and always has the right to sublet its apartment (Chapter 7 Section 10).

<sup>358</sup> Finnish National Report, Section 1.4

<sup>359</sup> SFS 2002:93.

In Sweden limited state funding that still exist is available for private as well as public landlords on equal terms. Municipalities can not subsidise their own housing companies. They must be run on business like principles.<sup>360</sup> Contractual arrangements regarding problematic tenants are sometimes made both between the municipality and its housing company and with regard to private landlord. Offering the same deal to all actors is a way of showing that no illegal subsidy is involved. One way which is not uncommon is that the Municipal Social Board rent the apartments from the landlord (sometimes at a premium) and then sublets to the person needing a dwelling.

In Finland the situation is somewhat similar. Special funding for Arava apartments are available to both public and private landlords and they undertake the same social restrictions, if they chose to accept this form of favourable financing. If a landlord owns any house with arava loans some social restrictions apply.<sup>361</sup> One difference in relation to Sweden is that municipalities may subsidize their housing companies with their own money as well.

In Denmark there is state support for dwellings for the young and elderly that is available only to social housing.<sup>362</sup> However, the major part of the financing comes from the municipalities and like in Finland the municipality may subsidize their own housing. .

Overall, in all three countries investment in property is considered, attractive.<sup>363</sup> Swedish property owners has had significantly better returns compared to Danish and Finnish property owners in the latest years,<sup>364</sup> which probably is related to the growing Swedish housing shortage. The rent to income ratios are similar in the three countries, 25 % in Sweden 29 % in Denmark and 27 % in Finland. The similarity of the levels may be partly explained by the fact that subsidies for the landlords play only a small role and that social housing in all three countries is mainly financed through loans that must be repaid and thus create a need for rent income.

### **4.3. Evaluative criteria for the tenant**

#### **4.3.1. Access**

- *Is supply of various forms of dwellings with a public task sufficient*
- *What is the selection procedure (fair, transparent, effective etc) and what are the criteria of eligibility for tenants?*

Neither of the three countries has a specialised social housing. Instead social housing is for middle income families as well as for families with greater need. The biggest difference is that social housing in Denmark and Finland and Swedish municipal housing

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<sup>360</sup>

<sup>361</sup> National report for Finland p. 27. The private landlord must set up a general interest association and the regulation for such associations apply if any of the houses it owns have Arava loans.

<sup>362</sup> National report for Denmark, p. 13

<sup>363</sup> See above section 3.1

<sup>364</sup> See above section 1.2.3

companies distributes apartments according to formal criteria, while private landlords are free to choose their tenants.

The total housing supply is as a general rule sufficient in Denmark and Finland. Both the Arava system and Danish municipal housing companies (almennyttige boligselskaber) can thus perform their tasks. In Sweden, there is a genuine housing shortage. There are more households than dwellings and people have to share apartments with family or friends. There is a long waiting list for municipal apartments in most cities.

In Sweden most municipal companies use a waiting list and complement this with preferences for persons in great need. There is no state specific state regulation on who has great need. In Finland state selection criteria apply to social housing. The criteria is primarily housing need (persons risking homelessness) and secondary income and wealth.<sup>365</sup> Income and wealth thus complement the waiting list.

In Denmark waiting lists are the prime tool with municipal housing and housing associations. Anyone (above the age of 15) can put themselves on the list.<sup>366</sup> In Denmark priority is awarded in the municipal sector (almennyttige boligselskaber) only in relation to housing need, big families can have right to move ahead with regard for larger apartments and elderly och disabled persons can move ahead with regard to apartments that are well adapted to their problem. With regard to housing associations the municipal council may use 25 % of free apartments for persons with great need.<sup>367</sup>

As a general rule transparency in the social sector is adequate. A normal applicant will not know the detailed reason if somebody moves ahead of them (private integrity), but they will know approximately how long it takes to get an apartment in a certain area in Sweden or Denmark or if their wealth or income is too big to get a social apartment in Finland. The Swedish housing shortage mainly strikes at young persons entering the housing market.

#### *4.3.2. Affordability*

- Initial rent: how is it Regulated / controlled in some effective way?
- Possibilities of rent increase
- Regulation of deposit
- Regulation of expenses (utilities etc)
- Regulation of repairs: who is responsible for what kind of repairs?
- Rent subsidies for poor tenants [if relevant, a reference to the above findings is sufficient]

Both the rent and the rent increases are determined directly by the need for the housing association to cover its cost with regard to social housing in Denmark and Finland. There is a principle of cost coverage with regard to the social sector (explicitly if arava

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<sup>365</sup> See above section 4.1

<sup>366</sup> National report for Denmark section 4.3

<sup>367</sup> National report for Denmark section 4.3.

funding is accepted in Finland<sup>368</sup> and implicitly in Denmark). The same principle applied in Sweden before 2010. The municipal housing companies entered into the collective bargaining with a view to get cost coverage. The true meaning of the new principle that municipal housing companies must act according to business like principles has so far not meant anything more than that subsidies are not allowed. They use cost and a reasonable return on investments as a goal in their negotiations. Though technically very different, the end result is the same in all three countries. Even if a municipal housing company sometimes has a freedom to strive to maximise their profits, they do not act in that way.

Deposits are the subject of many conflicts in Denmark and Finland. If the landlord refuses to repay them when the tenant leaves, the tenant must go to court. They are generally allowed in all three countries. In Sweden, the landlord must upon the tenant's request repay the deposit after two years even if the tenancy continues and therefore deposits are less common in Sweden. The regulation on deposits is the same for social housing as for private landlords so the reader is referred to section 3.2.1 (c) above.

In Sweden utilities (except electricity and internet connections) are generally included in the rent and if they are not, the norm is individual metering. Charging separately for utilities is only allowed if individual metering applies or if the pricing is regulated in a collective bargaining agreement. The rent regulation is not directly affected by utility prices.

Finish and Danish landlords who are under a cost based rent regulation or in a similar situation will be compensated for increased cost. Finnish landlords not bound by the arava rent regulation are allowed to charge what they want for utilities. Utility costs are regarded as rents. Danish landlords can only charge their tenant for certain enumerated utilities and they must provide detailed accounts of their cost for these utilities.

Again in all three countries there is no difference between social housing and ordinary housing with regard to utilities so the reader can be referred to section 3.2.1 (d).

#### 4.3.3. *Stability*

- Is the position of the tenant under the contract or real property law stable?
- Has a tenant a guarantee to stay as long as he respects the contract?
- Has the tenant an option to buy the dwelling and, if yes, under what conditions?

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<sup>368</sup> See above section 4.1

As a general rule the tenant has the same rights and duties in social housing as they have towards ordinary private landlords. In practice there are differences. A municipal housing company or a housing association can not terminate a contract because they need the dwelling for their own personal needs, neither are they charging maximum rents in all situations. This difference is most important in Finland where private landlords can terminate rented contracts upon any objective justification like a personal need for the apartment or a wish to increase the rent.<sup>369</sup>

It is less important in Denmark where only landlords with houses built after 1991 are allowed to charge market rents and where the right for landlords to terminate the contract because they need the contract for themselves are limited to the landlord him- or herself (not other family members).<sup>370</sup> It is of least importance in Sweden where a landlord can not evict a tenant on the ground of personal need if the tenant use the apartment as a home and where no rent setting are entirely free of the rent regulation and the collective bargaining system.

As a general rule the individual tenant has no right to buy the apartment in any of the three countries, regardless of whether the landlord is private or social. In Sweden and Denmark two-third majority of the tenants (Denmark 50 % of the tenants)<sup>371</sup> can form a housing association and it can get a pre-emption right to buy the whole house and convert it to a co-operative if the landlord (municipal/social or private) decides to sell. Finland has created a system of part ownership where a tenant can gradually increase his or her ownership and eventually become the owner of the dwelling, but the landlord must have freely chosen to use this form of tenancy. Municipal housing companies can choose to do so.

#### 4.3.4. Flexibility

- Unilateral termination by tenant possible within reasonable delay?
- Non-abusive subletting allowed?

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<sup>369</sup> National Report for Finland section 6.1.

<sup>370</sup> See above section 3.1.2., the landlords right to terminate is restricted by a proportionality test as well.

<sup>371</sup> National Report for Denmark section 6.3.

Again there is no special legislation. Naturally, in social housing, the tenants are not bound through long fixed term contracts. This is of no practical importance in Sweden, where the tenant can always terminate the contract with three months notice. This applies even if the parties have agreed on a long fixed term contract.<sup>372</sup>

In Finland fixed term contracts are generally permitted and if the tenant leaves early and the landlord loses money as a result the tenant must pay damages according to contract law principles. Having a social housing landlord can thus be very favourable for the tenant with regard to flexibility

Denmark comes in the middle as the landlord's right to use fixed term contract is restricted. Under Danish Regulation the Housing Court may set aside any provision for a fixed term, where such provision is not found to be warranted by the landlord's own situation, and thus free the tenant of liability for damages.<sup>373</sup>

Non abusive subletting is again not specially legislated for social housing in any of the three countries. In Sweden a tenant may share the apartment with anyone as long as the landlord suffers no damage. Leaving the apartment and sub-letting the whole apartment requires the landlords permission or a just cause proven to the rent tribunal (such as temporary employment elsewhere, where a time limit of three years apply).<sup>374</sup>

The legislation is almost as generous towards the tenant in Denmark and Finland where half of the rooms can be sublet and there must not be more persons than rooms in the apartment (Denmark). If the tenant leaves the apartment due to temporary employment the time limit for subletting is two years (Denmark) ....<sup>375</sup>

Flexibility with regard to subletting is thus big in all three countries but does not depend upon having a social landlord.

## 5. Conclusion

- Selective interesting features of the countries under review at the choice of the author of the comparative report
- In particular: legal solutions and factual practices working particularly well or badly
- Statement on which countries perform best and/or have promising solutions in the various large fields (i.e. housing with and without a public task etc)

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<sup>372</sup> The Rent Act Section 5.

<sup>373</sup> Rent Act Section 80, subsection 3.

<sup>374</sup> National report for Sweden section 6.4

<sup>375</sup> National report for Denmark and Finland section 6.4

The overall conclusion is that at a fundamental level, the three countries are very similar, though the technical regulation differs. Tenancy law is built upon contract law principles and market principles apply. A tenant not paying the rent will lose the apartment. The possibilities to delay the enforcement of such rules are very limited and neither country requires the landlord to wait until another dwelling is available.

The Municipality may take over the responsibility to pay the debt or guarantee it directly in another way (usual in Sweden and Finland) or may lend money to the tenant so that he or she can make a deposit covering non-paid rent (usual in Denmark). It is up to the municipality to find a way to help tenants pay for their home in all three countries. What is usual in one country is legally possible in the other two. Municipalities in all three countries have a principal freedom to make different kinds of contractual agreements with private landlords on behalf of tenants.

It is not really meaningful to divide between housing with a public task and housing without a public task in any of the three countries. Both Sweden and Finland involve the private landlords in the social sector, in Finland through the Arava system and in Sweden through contractual obligations with the municipality. Some municipalities do not have a municipal housing company. In all three countries the municipalities are able to provide housing for the persons who have the greatest need.

All three countries are successful in the sense that the housing standard is good. Almost all houses are safe and contain all necessary amenities. Those persons who live on social benefits, still live in an adequate dwelling.

The technical construction of rent regulation and subsidies is very complicated and different in the three countries but the end result is quite similar. Denmark has the highest rent-to-income ratio of 29 % even though Finland has free rents for half of the rented apartments. Finland's rent to income ratio of 27 % suggests that the subsidies and rent regulation within the Arava system works towards the same end result as in Denmark.

Both Finland and Denmark can be said to be successful. There is no general housing shortage in either country. Local areas with excessive demand are natural in a market (for instance the city centres of Aarhus, Copenhagen and Helsinki). The problems look manageable and at least in Helsinki new construction in the region seems to keep pace with population growth. People seem to be able to find housing even if they may dislike the commute into the city centre. Finland has many empty houses in rural areas but it is not an example of a market failure (i.e. the market producing newly built houses where people do not want to live or with rents they can not afford). It is a consequence of people moving to cities and leaving the houses in the rural areas they once lived in.

Sweden has the lowest rent-to-income ratio (25%). It also has a general shortage of housing with more households than dwellings. It is difficult to find rented accommodation in Sweden. A person not able to pay the market price in the ownership sector, and not knowing a private landlord, will have to stay on a waiting list with a municipal housing company and the waiting lists gets longer even for the least attractive apartments.

The question then arise if one should look at Sweden and conclude that Finland and Denmark have better regulations. High construction costs and a inability to produce a growth of dwellings that matches the growth of the population is a serious problem.

Refugees and family re-union of persons who arrived as refugees are the main reasons for this population growth. It means that demand for cheap housing is growing and it is much more difficult to construct new and cheap housing compared to new housing in the top end of the housing market. We do not know what would have occurred in Denmark or Finland if they have had the same level of population growth as Sweden.