Consultation response – EU Affordable Housing Act, COM(2026) 599 (LI2026/01654)

To: Ministry of Rural Affairs and Infrastructure, li.remissvar@regeringskansliet.se

Copy: li.bb@regeringskansliet.se

Ref. no.: LI2026/01654

From: Hyresbostadsägarna in Stockholm (Corp ID No. 802556-2797) (”The Swedish Residential Housing Owners’ Association”)

Regarding: Commission proposal for a Regulation establishing a framework for measures in Member States to safeguard housing affordability and availability COM(2026) 599, and Government fact memorandum (faktapromemoria) 2026/27:FPM1

Summary

The Swedish Residential Housing Owners’ Association opposes the proposal in its current form and supports the Government’s preliminary position that the proposal must not harmonise housing policy or encourage particular housing measures.

- **Competence**
  Article 114 TFEU does not provide a legal basis for the part of the proposal concerning the acquisition and use of land and housing. That part should be removed.

- **Property rights**
  The proposal turns restrictions on the right to acquire, use and let property into a standard instrument recognised under Union law. The right to property under Article 17 of the Charter must be the starting point in the enacting terms, not an afterthought in the explanatory memorandum. Private rental housing owners must not be treated less favourably than public sector owners.

- **Swedish circumstances**
  The housing shortage in Sweden is caused by supply, the planning process and rent-setting, not by short-term rentals or second homes. The price-to-income ratio as the sole indicator is not suited for a market dominated by rental tenancies and tenant-owner housing (*bostadsrätt*).

- **Rental pricing**
  It must be stated in an article, and not only in recital 33, that rent regulation falls outside the scope of the Regulation.

- **Delegation**
  The thresholds in Article 6 are essential elements of the legislative act and must not be amendable by the Commission by means of a delegated act.

- **In the alternative**
  Should the Regulation be adopted, it should be limited to short-term rental as a service, and the safeguards for individual owners in Articles 8–13 should be strengthened.

Proposed Swedish negotiating position

The Swedish Residential Housing Owners' Association proposes that Sweden adopt the following position in the Council negotiations.

1. **Primarily:** seek the withdrawal of the proposal as a regulation and its replacement by guidance on existing case law and the supply-side elements of the Recommendation.
2. **Request a legal assessment** by the Council Legal Service of Article 114 TFEU as the legal basis, in particular for Article 2(1)(b).
3. **In the alternative:** limit the scope to short-term rental as a service and delete the restrictions on acquisition and use.
4. **Maintain the full application of the Services Directive** including the notification requirement.
5. **Delete the delegation** in Article 6(5). Thresholds should be amended only through the ordinary legislative procedure.
6. **Insert the right to property** and the freedom to conduct a business in the enacting terms, with the burden of proof on the authority, a right to compensation, and equal treatment of owners in the private and public sector.
7. **Exclude rent-setting** and rent negotiation systems explicitly in Article 2.
8. **No new mandatory tasks** for Swedish public authorities, municipalities or property owners.

1. Premises: Swedish conditions

The Swedish Residential Housing Owners' Association considers that the proposal has been drafted with southern European tourist destinations in mind and is therefore poorly targeted to the Swedish housing market. Sweden should highlight the following three distinctive features in the Council negotiations.

The shortage is a supply issue

The Commission itself states that insufficient supply is the main structural cause of the shortage of affordable housing. In Sweden, supply is linked to the municipal planning monopoly, long lead times, construction costs and a rental pricing system that holds back investment and mobility. None of these factors are affected by restrictions on short-term rentals or on acquisitions.

The same criticism has been raised in the European Parliament. The EPP Group argues that the proposal fails to address the supply shortage, that the obstacles lie in construction costs, land prices, planning restrictions and slow permitting procedures, and that on these points the Commission offers only recommendations.[1] The Group opposes the restrictions on second homes and points to the protection of private property.

The Swedish Residential Housing Owners' Association considers that Sweden should support the call for the announced housing simplification package to be brought forward.

Forms of tenure make the price-to-income ratio misleading

Article 6 measures housing stress solely as purchase price relative to disposable income (a ratio of 8, or 10 without a trend requirement). In Swedish cities, most households live in rental tenancies or tenant-owned dwellings. A *bostadsrätt* (tenant-owner housing) is a right of use attached to a share in a tenant-owned dwellings' association, not ownership of real estate property. In the rental market, scarcity manifests itself in queue times rather than price, since rents are determined according to the use value principle (*bruksvärde*) and through collective bargaining. An area may therefore be classified as stressed, or not, on grounds unrelated to the actual availability of housing.

Sweden already has legislation on letting

Subletting of rental and tenant-owned dwellings requires consent under Chapter 12 of the Land Code (*Jordabalken*) and the Tenant-Owner Act (*Bostadsrättslagen*). The letting of one's own home is governed by the Private Letting Act (2012:978). There are no general restrictions on the acquisition of housing; the Land Acquisition Act (1979:230) concerns agricultural property. There is no Swedish regulatory need to which the

[1] EPP Group, press release 9 September 2026, https://www.eppgroup.eu/newsroom/housing-crisis-does-not-need-more-restrictions.

Regulation responds. Its practical effect will instead be to give municipalities and authorities a template for interventions that do not currently occur.

The proposal also affects activities that are common in the Swedish rental market: block leasing, corporate housing and letting to legal persons. These dwellings are not the tenant's "primary residence" within the meaning of the Regulation and may therefore be caught by restrictions on use under Article 2(1)(b). For private rental housing owners, such letting forms part of ordinary property management. It should never be equated with withdrawing the accommodation from the housing market.

2. The proposal exceeds the competence of the EU

The Swedish Residential Housing Owners' Association considers that the proposal goes beyond the powers conferred on the Union.

Housing policy is a national competence, and Article 114 TFEU is insufficient as a legal basis for the proposal. This starting point is shared even by commentators sympathetic the initiative. Planning, tenancy law, building regulations and the allocation of social housing are matters for the Member States, regions and municipalities.[2] The Union's instruments are therefore funding, State aid rules and non-binding recommendations. Rental regulation is not within Union competence. Housing objectives can thus be pursued with precisely these instruments, without a binding regulation on acquisition and use. The same analysis warns that subsidised demand is partly capitalised into rents and land values if supply is constrained.

Article 114 confers no general power to regulate

A measure adopted on this basis must genuinely have as its object the improvement of the conditions for the establishment and functioning of the internal market (Case C-376/98, *Germany v Parliament and Council*, EU:C:2000:544, paragraphs 83–84). Mere disparities between national rules, or an abstract risk of obstacles, are not sufficient. The stated objective of the proposal is the affordability and availability of housing, i.e. a housing policy objective. The internal market is not improved by giving local restrictions on acquisition and use a common template. On the contrary, such restrictions will become more numerous and easier to justify.

The distinction between the two parts of the proposal

Short-term rental is a service already covered by the Services Directive and Regulation (EU) 2024/1028. There, a genuine link to the internal market exists. The acquisition and use of land and housing (Article 2(1)(b)) is something different: it is the core of the Member States' systems of property ownership and land policy. Article 345 TFEU provides that the Treaties shall in no way prejudice the rules in Member States governing the system of property ownership. Admittedly, that provision does not exempt national

[2] The European Post, 20 September 2026, https://theeuropeanpost.eu/research-analysis/the-affordable-housing-act-tests-the-limits-of-eu-competence/

rules from the fundamental freedoms (Joined Cases C-105/12 to C-107/12, *Essent*, paragraph 36), but it weighs heavily against the Union itself legislating on when the ownership and use of housing may be restricted.

Subsidiarity

The Court of Justice has already developed the requirements applicable to national restrictions, inter alia in *Cali Apartments* (Joined Cases C-724/18 and C-727/18), *Libert* (Joined Cases C-197/11 and C-203/11) and *Festersen* (Case C-370/05). The Commission fails to demonstrate why this case law, applied by national courts, needs to be replaced by a directly applicable regulation. According to *ItaliaOggi*, the EU committees of both chambers of the Italian Parliament have adopted reasoned opinions finding that the proposal infringes the principle of subsidiarity.[3]

Choice of instrument

A regulation is directly applicable and leaves no margin for implementation. In an area where the Union lacks its own competence, a recommendation should have sufficed. Sweden should at the very least request an opinion from the Council Legal Service on the legal basis.

The Services Directive

Article 3 exempts short-term rental measures from the Services Directive, including the notification requirement in Article 15(7). This removes the Commission's ex ante control and weakens the protection of service providers. The Swedish Residential Housing Owners' Association shares the Government's view that the application of the Services Directive must be safeguarded.

3. The right to property

The proposal treats the right to property as an obstacle to be managed rather than as a right to be protected. The Swedish Residential Housing Owners' Association considers that the starting point should be the reverse.

Legal framework

The right to own, use and dispose of lawfully acquired possessions is protected by Article 17 of the EU Charter of Fundamental Rights, Article 1 of Protocol No. 1 to the European Convention on Human Rights and Chapter 2, Article 15 of the Instrument of Government (*Regeringsformen*). The freedom to conduct a business is protected by Article 16 of the Charter. Limitations must be provided for by law, pursue an objective of general interest, respect the essence of the right and comply with the principle of proportionality (Article 52(1) of the Charter). The Court of Justice has struck down national interferences with property rights on precisely this basis (Case C-235/17, *Commission v Hungary*). The European Court of Human Rights has done likewise

[3] ItaliaOggi, 29 October 2026, https://www.italiaoggi.it/diritto-e-fisco/fisco/affitti-brevi-camera-e-senato-bocciano-la-stretta-ue-invasione-di-campo-sulla-proprieta-hruixmhx.

regarding rent control and ground lease regulation (*Hutten-Czapska v Poland*; *Lindheim and Others v Norway*).

In *Hutten-Czapska*, the European Court of Human Rights held that rent control which does not allow the owner to cover maintenance costs and obtain a reasonable return violates the protection of property. The same standard should apply to restrictions on use and vacancy affecting private rental housing owners.

What the proposal does

The Regulation is said not to create any right or obligation to intervene, but Article 5 provides that an authority "may" restrict short-term rentals and the acquisition and use of housing where Articles 6–10 are satisfied. In practice, this becomes a Union-law checklist: the authority that ticks the boxes obtains a presumption that the interference is compatible with EU law. The explanatory memorandum states that Article 17 is "respected" by means of procedural safeguards. Article 16 of the Charter and Article 345 TFEU are not mentioned at all.

Vacancy measures in particular

Under Article 10(1)(g), measures against long-term vacancy are to be calibrated according to the number of housing units held by the same owner and whether the acquirer is a legal person. This singles out professional private landlords as targets, since they routinely own many dwellings through companies. The exemptions in Article 9(4) do not cover renovation, conversion, temporary relocation of tenants (decanting) or vacating a property pending sale, all of which are normal features of property management.

What should be required

The Swedish Residential Housing Owners' Association considers that the Government should demand the following:

- An article expressly stating that measures must be compatible with Articles 16 and 17 of the Charter, and that the burden of proof lies with the authority.
- A right to compensation where a measure substantially impedes ongoing lawful use, in line with Chapter 2, Article 15 of the Instrument of Government.
- Protection of existing legal relationships also in the case of restrictions on use, not only restrictions on acquisition (Article 10(1)(f)).
- Deletion of the criteria relating to the number of housing units and legal persons in Article 10(1)(g).
- That long-term letting of dwellings always be regarded as residential use, irrespective of whether the tenant is a natural or legal person, and thus be exempt from restrictions on use and vacancy.
- That measures may not entail an obligation to let, nomination rights for public bodies or compulsory administration. The owner must retain the right to choose the tenant and the form of tenure.

- That measures be neutral as between categories of owner. Private rental housing owners must not be subject to restrictions from which municipal housing companies are exempt.
- That a measure under appeal may not be enforced against the owner before a court has ruled on it, where the owner would otherwise risk damage that is difficult to repair.

4. Comments on individual Articles

Article	Content	Comment
2.1 b, 5.1 b	Restrictions on the acquisition or use of land and housing that is not a primary residence	Should be deleted in its entirety, not only as regards land. Lacks a sound internal market basis and interferes with the system of property ownership. For undeveloped land, "primary residence" is moreover indeterminable and conflicts with planning legislation.
2.2	Measures taken solely based on other overriding reasons relating to the public interest are not covered	Opens the door to circumvention: an authority can cite another purpose and thereby avoid the safeguards. Should be narrowed or deleted.
3.1	Short-term rental measures exempted from the Services Directive	Should be deleted; the notification requirement should remain.
4	Definitions; "primary residence" to be specified in national law	It should be clarified that a dwelling let on a long-term basis, including through a legal person, does not constitute "non-primary use".
6.1–6.2	Housing stress: price-to-income ratio of at least 8 with a ten-year increase, or at least 10	A single purchase-price-based indicator is insufficient. It should be stated that the criteria are cumulative. Member States should be permitted to add indicators, such as supply data, as additional requirements. Optional indicators are opposed, since they widen the scope for intervention.
6.5	Commission may amend thresholds and Annex by delegated act	Opposed. The thresholds determine the scope of the Regulation and are essential elements within the meaning of Article 290 TFEU.
9.2–9.3	Authority must demonstrate a significant adverse effect over at least three years	Supported in substance. The requirement should concern causation, not correlation.

9.4	Exemptions from vacancy measures	Should be supplemented with renovation, conversion, temporary relocation of tenants and pending sale.
10.1 b	No less restrictive measure may be equally effective	Supported. Should expressly include supply-side measures such as land-use planning and land allocation.
11	Procedural safeguards and judicial review	Supported. Should be supplemented with standing for business and property owners' organisations.
12	Maximum five years, extension following review	The number of extensions should be limited, otherwise the time limit becomes a formality. Extension should be conditional on the authority demonstrating which supply-side measures it has itself taken; its own inaction must not justify continued intervention.
13	Publication of measures, assessments, area and duration	Should expressly include underlying data, calculations and methodological choices, so that the assessment can be reproduced and reviewed under Article 11.
15	Exercise of the delegation	Refers to Article 6(3); the power is in Article 6(5). The error should be corrected if the delegation is retained.

Articles 8–13 set out the conditions an authority must satisfy before intervening. They are the only part of the proposal that strengthens the position of the individual owner. The same protection already follows from the case law of the Court of Justice and can be clarified through Commission guidance, without a new regulation.

Administrative burden

Calculating price-to-income ratios at sub-area level requires data that Statistics Sweden (SCB) and the Swedish Mapping, Cadastral and Land Registration Authority (*Lantmäteriet*) do not currently produce in that form. The Government should not accept new mandatory tasks for public authorities or an increased reporting burden for property owners.

5. Rent Setting and the Recommendation

Rent regulation falls outside the scope of the Regulation, and this must be secured in the enacting terms. At present, the delimitation follows only from recital 33 and the explanatory memorandum, which state that measures regulating rents in residential tenancy agreements fall outside the scope unless they restrict acquisition or use. That proviso is unclear. Sweden should demand an express provision in Article 2 stating that

rental pricing, security of tenure and the forms of rent negotiation are not covered. This applies irrespective of whether the landlord negotiates with a tenants' organisation or with the tenants themselves.

The accompanying Recommendation introduces the concept of affordable housing areas and advocates faster permitting procedures and the conversion of existing buildings.

The Swedish Residential Housing Owners' Association welcomes the supply-side part of the Recommendation. It also shows that the Commission can act through non-binding instruments in the housing field. Sweden should, however, ensure that the concepts in the Recommendation do not later become the basis for binding requirements on rent levels or forms of tenure.

The Swedish experience is that price regulation and restrictions on use allocate scarcity but do not remedy it. An EU framework that makes restrictions the most readily available tool risks crowding out the measures that increase supply.

State aid and competitive neutrality

The Regulation forms part of a broader plan. Since December 2025, affordable housing has been a separate exempted category under the Commission's SGEI Decision, with no compensation ceiling and no notification requirement.[4] This is sensitive for Sweden. Under the Act (2010:879) on Municipal Housing Companies, municipal housing companies must be run on businesslike principles, precisely to ensure competitive neutrality vis-à-vis private landlords. The Government should make clear that the new State aid rules are not to be used to subsidise publicly owned housing at the expense of private landlords. Any such aid should be available to private rental housing owners on equal terms.

Risk of setting a precedent

The model of a Union framework laying down the conditions for national market interventions can be reused. The next regulation may concern rent levels, forms of tenure or categories of owner. This is a further reason to exclude rent-setting in the enacting terms now and to have the legal basis examined before the model becomes established.

Stockholm, 14 November 2026

The Swedish Residential Housing Owners' Association in Stockholm

[4] Commission Decision on services of general economic interest (SGEI Decision), as revised in December 2025, see competition-policy.ec.europa.eu/state-aid/legislation/sgei_en.