



September, 2020

IN BRIEF

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The constitutional basis for Sweden's exceptional COVID-19 policy

Professor Lars Jonung

The Swedish policy response to COVID-19 is exceptional by international standards. This *In Brief* explains how this approach is determined by three articles in the Swedish Constitution. The first guarantees freedom of movement for Swedish citizens, ruling out nationwide lockdowns. The second establishes unique independence for public agencies, allowing them to design the policy response to the pandemic. The third grants exceptional powers to local government. In addition, the Swedish approach is fostered by strong trust in the government and in public authorities.

The Swedish method

COVID-19 has triggered drastic policy measures in many countries, including lockdowns and severe restrictions on the freedom of movement of people. Sweden is one clear exception to this pattern: no nationwide mandatory lockdown has been enforced. Swedes are able to move freely within their country as well as across the Swedish border – although they are likely to be stopped from entering many countries.

It is true that there are restrictions concerning the maximum size of public gatherings. Restaurants that do not adhere to social distancing rules can be forced to shut down. High schools and universities have been closed, while day-care facilities and elementary schools have remained open. Still, public authorities rely essentially on recommendations and information concerning hand-washing, social distancing, self-isolation, travelling and working from home, rather than on any legally

binding measures.

The Swedish approach of keeping an open society during the pandemic has drawn immense international interest. Why is the policy response in Sweden so different? Many explanations for its exceptionalism have been presented. As a rule, the main reason for the Swedish policy response has not been brought out. It is dictated by the legislative framework, more precisely by the rules of the Constitution concerning the freedom of personal movement and concerning the independence of public authorities and of local authorities.

A lively debate about the pros and cons of the Swedish approach has evolved in terms of public health outcomes. However, these consequences are not dealt with here. Instead, my focus is solely on the determinants of the Swedish policy response to COVID-19. Thus, the institutional framework for the policymaking process is the key to understanding the whole COVID-19 story for Sweden.

The role of the Constitution

Two paragraphs in the Swedish Constitution dictate the character of the policy response: the one concerning personal freedom of movement and the one about the independence of public agencies or authorities. In addition, the Constitution gives extensive powers to local government in designing policy measures regarding public health issues, thus limiting the role of the central government.

The Constitution guarantees personal freedom of movement

The Swedish government is not allowed to declare a state of emergency in peacetime. Thus, the main factor behind Swedish exceptionalism during the present pandemic is that the Swedish Constitution prohibits the use of lockdowns as seen from Chapter 2, Article 8 in the Swedish Constitution (*Regeringsformen*): *'Everyone shall be protected in their relations with the public institutions against deprivations of personal liberty. All Swedish citizens shall also in other respects be guaranteed freedom of movement within the Realm and freedom to depart the Realm.'*

The above paragraph thus guarantees full freedom of movement for Swedish citizens within Sweden and across the Swedish border under peacetime conditions. The paragraph is not absolute. There are exceptions for example for prisoners and conscripts for military service, as stated in Chapter 2, Article 20-21 in *Regeringsformen*. Local restrictions on the movement of people can be adopted for health reasons. However, there is no exception for a contingency like a pandemic. Thus, these rules cannot be adopted for a full nationwide lockdown similar to those put in place in other countries.

The *Regeringsform* (Chapter 2, Article 24) allows the government to restrict the freedom of meeting and of demonstration due to an "epidemic": *'Freedom of assembly and freedom to demonstrate may be limited in the interests of preserving public order and public safety at a meeting or demonstration, or with regard to the circulation of traffic. These freedoms may otherwise be limited only with regard to the security of the Realm or in order to combat an epidemic'*. The freedom of assembly has also been restricted by a ban on all public meetings with more than 50 participants, as part of the government's strategy to deal with COVID-19.

The Constitution guarantees the independence of public agencies

Public agencies are independent from the government in their daily business, according to the Constitution. The tradition goes far back in history. A first step was taken in the *Regeringsform* of 1634,

designing the structure of public agencies after the death of King Gustavus Adolphus II in the Thirty Years' War. A second step was the *Regeringsform* of 1720, following the death of Charles XII, restricting the power of the King and establishing independent public agencies. Today, the Swedish system is based on administrative dualism, where the public agencies are set up outside the ministries of the central government.

This approach reflects the wording of the Constitution in Chapter 12, Article 2 of the *Regeringsform* on the independence of administration: *'No public authority, including the Riksdag, or decision-making body of any local authority, may determine how an administrative authority shall decide in a particular case relating to the exercise of public authority vis-à-vis an individual or a local authority, or relating to the application of law.'*

The Constitution thus prevents interference by ministers of government in affairs that are assigned to various public authorities. Public agencies are given a status to some extent similar to the independence of the courts and of the Riksbank, the Swedish central bank. Still, the government appoints the heads of public agencies, determines their budgets and the legislation relevant for their tasks.

The Public Health Agency of Sweden (*Folkhälsomyndigheten*) is such a public authority, now in charge of framing and designing the policy response to the pandemic. It is run by experts in epidemiology, not by political appointees. The collaborative work of health economists and epidemiologists at the Swedish Public Health Agency has produced a response that considers the overall impact of its measures and recommendations.

To sum up, the Constitution insulates the public authorities from direct political meddling to a much greater degree than in any other democracy, allowing experts to design the policy response. Although the government is not formally bound to follow the recommendations of public agencies, it is in fact the case by tradition.

The Constitution guarantees self-government at the local level

In addition, the Swedish Constitution gives a strong role to local self-government. This tradition goes back to the late Middle Ages. The autonomy of the local authorities is anchored in Chapter 14, Article 2, in *Regeringsformen* on local authorities: ‘*The local authorities are responsible for local and regional matters of public interest on the principle of local self-government.*’

Self-government through the municipalities at the local level and the regions at the regional level actually covers the major share of the large Swedish public sector, including the healthcare and elderly care sectors. As a result, the power of the central government in these health-related areas is limited by the independence of the local authorities. This decentralised structure of 290 municipalities and 21 regions contributes to the exceptional Swedish response to the pandemic.

The role of trust

As the Swedish Constitution prohibits the use of lockdowns and a state of emergency as policy tools, the government has to rely primarily on information and recommendations to influence the behaviour of the public. The impact of this type of policy tools is closely related to the degree of trust in society. The Swedish public has a strong trust in public institutions, in its government’s effectiveness and honesty, in the accountability of elected politicians, in the democratic process, and in the rule of law.

In the debate on the Swedish exception, a host of other factors have been suggested. They emphasise, for example, the strong liberal tradition in Swedish history or the long period of peace, making it difficult for Swedes to understand the dangers that can threaten society. However, these factors are of secondary importance compared to those presented above, founded in the design of the Swedish Constitution.

Will the Swedish approach be successful?

There are, in principle, two ways to influence the behaviour of the public by policy measures: either by instruments based on coercion, or by tools aimed

at voluntary changes in behaviour. The present pandemic serves as an illustration of these two approaches. In the first case, compulsory lockdowns are used as a prime instrument in many countries. In the second case, advice, persuasion and recommendations by the authorities represent the policy instruments adopted.

Which choice of policy will work best during a pandemic? We do not know at this stage. Will the Swedish model be successful? The full answer will be available in the coming years. Now Sweden is serving as an experiment – or the rest of the world is the experiment, as seen from a Swedish perspective. But recently, there are signs that the Swedish model is under threat. The high mortality rates due to COVID-19, especially in care homes for the elderly, and the lack of testing are sources of rising criticism.

The government appointed this summer a commission to evaluate the response to the pandemic. It will provide a final report by early 2022.

Conclusions

The Swedish strategy in dealing with COVID-19 – commonly described as liberal, lax, less stringent, or permissive – stands out as an exception in an international context. It is essentially based on advice and recommendations concerning individual behaviour, not on binding compulsory measures such as lockdowns. The main reason for this exceptionalism is the design of the Swedish Constitution. The Constitution mirrors the norms held by the public concerning freedom and the power of central government as well. Commonly, the international attention given to Sweden does not pay attention to these roots. Most Swedes are not aware of them either. They listen to the advice and recommendations of the Public Health Agency and other government authorities, and adjust according to their free choice.

Professor Lars Jonung is Professor Emeritus at the Department of Economics, Lund University, Sweden and a Senior Research Associate of the Martens Centre. He was Chairman of the Swedish Fiscal Policy Council 2012-2013 and Research Adviser 2000-2010 at DG ECFIN, European Commission, Brussels, where he focused on macroeconomic and financial issues related to the euro.

An earlier version of this report appeared on Voxeu.org and is available [here](#).

Editor: Dr. Eoin Drea.

The Wilfried Martens Centre for European Studies is the political foundation and think tank of the European People's Party (EPP), dedicated to the promotion of Christian Democrat, conservative and likeminded political values.

This publication receives funding from the European Parliament.

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Wilfried Martens Centre for European Studies
Rue du Commerce 20
Brussels, BE – 1000
<http://www.martenscentre.eu>