



European Economic and Social Committee

TEN/484
Issues with defining
social housing

Brussels, 13 December 2012

OPINION

of the

European Economic and Social Committee

on

Issues with defining social housing as a service of general economic interest
(own-initiative opinion)

Rapporteur: **Mr Hencks**

On 19 January 2012, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

Issues with defining social housing as a service of general economic interest
(own-initiative opinion).

On 21 February 2012, the Committee Bureau instructed the Section for Transport, Energy, Infrastructure and the Information Society to prepare the Committee's work on the subject. The section adopted its opinion on 26 November 2012.

At its 485th plenary session, held on 12 and 13 December 2012 (meeting of 13 December), the European Economic and Social Committee adopted the following opinion by 67 votes to 5 with 4 abstentions.

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1. The right to housing – general principles

- 1.1 The right to housing is an international obligation incumbent on the Member States, which the European Union has a duty to take into account. Indeed, this right is recognised in the United Nations Universal Declaration of Human Rights, which lays down that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services". The Council of Europe's revised Social Charter states that "With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed to promote access to housing of an adequate standard, to prevent and reduce homelessness with a view to its gradual elimination and to make the price of housing accessible to those without adequate resources". The right to housing is incorporated into many Member States' constitutions and/or is covered by specific laws regarding its proper implementation.
- 1.2 The European Union's own Charter of Fundamental Rights stipulates that "In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices".
- 1.3 In most Member States, these rights are implemented by means of a service of general economic interest (SGEI), in line with Article 36 of the Charter of Fundamental Rights,

according to which "The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union".

- 1.4 Pursuant to Article 106(2) of the TFEU, and where universal access to housing is classified as an SGEI, undertakings entrusted with the operation of such services are only subject to Community competition rules and to the prohibition and monitoring of State aid, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them by national, regional or local authorities. The Commission's decision of 20 December 2011 (the SGEI decision) restricts provision of subsidised social housing to people who are disadvantaged or socially less advantaged groups which, due to solvability constraints are unable to obtain housing at market conditions.
- 1.5 Under the terms of Protocol No 26 annexed to the Treaty of Lisbon, the primary responsibility for commissioning, providing, financing and organising SGEIs falls to the Member States and their national, regional and local authorities, which have wide discretion in the matter and the freedom of democratic choice.
- 1.6 The same protocol requires, among other things, that Member States ensure a high level of affordability for their SGEIs and promote universal access to them.
- 1.7 Implementation of the right to housing determines that of other fundamental rights such as the right to human dignity, the protection of private, home and family life, water, health, energy, etc. Having decent housing is essential if an individual is to be able to thrive and integrate into society.
- 1.8 The effectiveness of the right to housing usually and essentially depends on the availability of an adequate housing supply. The right to housing often simply means a right to access decent and affordable housing.
- 1.9 Guaranteeing access to housing rarely implies any obligation on the public authorities to provide housing to anyone requesting it. The State, or the public authority responsible, has a political duty to improve access to housing for everyone, by means of its policies and programmes.
- 1.10 Member States intervene - in highly differing ways and to highly differing degrees - in the workings of their housing markets in the context of enacting this fundamental right, to ensure that every citizen is able to access decent and affordable housing. Appropriate involvement of future occupants in the building of social housing contributes both to the affordability of this form of housing and to the employment prospects of those concerned.

1.11 In this regard, housing is a good (whether public or under trusteeship) for which the Member States set – in line with their own policy choices and collective preferences - minimum standards of fitness for habitation and comfort, specific urban planning and construction rules and maximum effort rates. Some States such as Germany manage increases in housing prices and even establish mechanisms for providing social assistance or tax support to help out with what is the main item of essential household expenditure.

2. Social housing

2.1 The fact cannot be avoided that despite these provisions, access to decent housing is no longer affordable for many EU citizens. In 2010, despite the undertaking in the revised Council of Europe Social Charter to prevent and reduce homelessness with a view to its gradual elimination, 5.7% of Europe's population suffered from housing deprivation (Source: Europe Information Service S.A.), 17.86% lived in overcrowded or unfit accommodation, and for 10.10% of households, housing costs absorbed more than 40% of their disposable income.

2.2 Many Member States have also chosen to define and organise a parallel supply of what is known as "social housing" to complement the spontaneous supply on the private market. This social housing is provided on specific conditions, primarily by not-for-profit agencies created especially for this purpose, but also by private investors that are natural or legal persons entrusted with this task, subsidised by national, regional or local authorities.

2.3 All Member States except Greece have a stock of social housing. 25 million European households thus occupy social housing for which conditions for local and regional planning, access and prices are set directly by the public authorities in the Member States.

2.4 This parallel housing supply contributes in particular to limiting the magnitude of property market cycles and housing bubbles, due to its stability and its price management. As a result, Member States that have a substantial stock of social housing have not fallen victim to property bubbles and to the far-reaching consequences of such phenomena.

2.5 Social housing is one way in which the public authorities can respond to the housing market's failure to meet all housing needs and ensure universal access to decent housing at an affordable price/rent. Appropriate involvement of future occupants in the building of social housing makes such housing more affordable, improves occupiers' attitude towards the housing provided and allows them to acquire or improve working habits and skills, thus increasing their chances in the job market.

2.6 The market's failure to meet all housing needs does not only affect individuals who simply have no access to housing but also those living in housing that is unhealthy, unfit or over-occupied, and those spending the lion's share of their income on rent or mortgage repayments.

2.7 These housing needs vary considerably from one Member State to another and within Member States, between countries in western and eastern Europe, between rural and urban areas and, within urban areas, between city centres and suburbs.

2.8 The EU Member States make use of three different approaches

A) The residual approach

Social housing subsidised by a public authority is reserved exclusively for those who are clearly identified as disadvantaged or excluded. There are very strict rules governing the allocation of such housing. Rent is covered almost entirely by the social security system. This approach does not compete with the private housing sector and fully meets the Community definition of a service of general economic interest for social housing as articulated in the decision of the European Commission of 20 December 2011 limiting the exemption from notification of compensation for public service costs to the "provision of social housing for disadvantaged citizens or socially less advantaged groups, who due to solvency constraints are unable to obtain housing at market conditions".

This category includes Bulgaria, Cyprus, Estonia, Hungary, Ireland, Latvia, Lithuania, Malta, Portugal, Romania, Slovakia, Spain and the United Kingdom (partially, where the social renting sector is concerned).

B) The generalist approach

This approach is designed to assist the disadvantaged or excluded (as under the residual approach) and people with few resources, who struggle to access adequate housing due to their precarious income. Access to housing is usually dependent on ceilings for income and on household composition. Rents are regulated and remain affordable. Broadly speaking, this approach has a limited impact on the overall level of housing supply and prices, and does not effectively come into conflict with the private property market, as profit margins are minimal.

This approach applies to broader categories of the population but also meets Community requirements to focus on social demand and is used in Austria, Belgium, the Czech Republic, France, Finland, Germany, Italy, Luxembourg, Poland, Slovenia and Spain (for accession to ownership).

C) The universal approach used in Denmark and in the Netherlands, but differently.

In the Netherlands, this approach is intended to provide housing for anyone, whatever their income (including disadvantaged or low-income individuals), and represents a supply that complements the traditional property market. It has a considerable impact on market conditions and prices through a pricing policy based on the actual costs of housing, rather

than referring to market prices, while providing security of tenancy not offered by the private sector market.

Due to its lack of focus on specific social demand, this universal approach to housing is disputed by the European Commission, which believes that it does not match the Community definition of the SGEI for housing. The universal approach is no longer used in Sweden, which has abandoned the explicit classification of housing as an SGEI.

In Denmark, the universal approach is deeply embedded in the welfare model. It does not limit the notion of disadvantaged, vulnerable or excluded groups or persons to a certain income level. The focus is on providing affordable and accessible housing for people in need thereof. It supplements the traditional property market by lifting legal social obligations, ensuring equality and a social mix across ethnicity, gender, income, age, disabilities and mental or physical need. The pricing policy is regulated and based on the actual costs, which excludes the possibility of overcompensation.

3. Social housing and Community legislation

- 3.1 Given the failure of market forces alone to ensure decent housing for everyone, under Community law, social housing can be viewed as a service of general economic interest (SGEI), provided that it is classified as such by the Member State concerned and can consequently receive public subsidies or compensation.
- 3.2 Protocol No 26 annexed to the Lisbon Treaty confirms the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users. Social housing is subject to public service obligations set by national, regional or local government with regard in particular to planning, pricing and criteria for eligibility and tenancy. This protocol requires Member States to ensure, among other things, that SGEI demonstrate a high level of affordability and equal treatment and promote universal access and user rights.
- 3.3 If classified as a SGEI, social housing is covered by the provisions of Articles 14 and 106(2) TFEU and its Protocol No 26, which establishes in particular the principle of collective social and cultural preferences and of meeting needs as expressed locally with regard to the Member States' definitions of SGEI. These provisions prioritise fulfilment of the missions assigned to social housing over the rules of competition and the internal market, provided that certain conditions defined in the SGEI decision, as described in point 3.6 below, are met.
- 3.4 Application of these provisions under the TFEU has led the Commission to exempt state aid granted to social housing agencies from the requirement for prior notification.

3.5 Member States' classification of social housing as a SGEI is subject only to the European Commission checking for obvious errors, under the auspices of the Court of Justice of the European Union.

3.6 In this area, because public service is social in nature, the European Commission considers that social housing should be defined with direct reference to people who are disadvantaged or to socially less advantaged groups rather than to reflect the diversity of housing needs as expressed on local housing markets. This is a permanent bone of contention between the Commission and some Member States, social housing agencies and social housing tenants' representatives, some of which disagree with the Commission's position, whilst others endorse it.

4. A legal framework that destabilises Member States' social housing policies

4.1 The way the European Commission makes decisions in checking obvious errors in Member States' classification of social housing as a service of general economic interest has led to changes in some Member States' policy choices for organising and financing social housing and generated legal disputes.

4.2 In the Netherlands, implementation of this decision-making method has led to nearly 400 000 households being excluded from access to social housing, as they are deemed too well-off - according to the European Commission - to access social housing. In reality, however, they are not sufficiently well-off to access housing under market conditions.

4.3 In Sweden, the refusal to apply this decision-making method has led to the public authorities excluding social housing from the scope of services of general economic interest, which jeopardises its funding in the form of public service compensation that is the only form compatible with the principle of prohibiting State aid under the Treaty.

4.4 In France, the Union *nationale de la propriété immobilière* [national association of property owners] has filed a complaint with the European Commission against the French government, primarily on the grounds that the income ceilings for accessing social housing are too high and would make it impossible to comply with the decision-making practices established by the Commission.

4.5 The proposed directives on public procurement and on concessions point towards submitting cooperation among social housing agencies covered by the concepts of social enterprises and public bodies to the provisions of these directives and to calls for tenders. By extending case-law relating to cooperation between public authorities to cover all contracting authorities, the European Commission is also helping to undermine the practices of cooperation and pooling of resources needed to modernise public housing, to ensure its proper management and to strengthen its local consolidation.

- 4.6 These practical examples demonstrate the direct impact of European Union law on the conditions for defining, organising and financing social housing by the Member States and call for a legal framework favourable to the development of social housing in the European Union.
- 4.7 Because of its numerous different aspects and its major presence in the European Union, social housing plays a key role in implementing the Europe 2020 strategy. It contributes actively to achieving the goal of making the EU a smart, sustainable and inclusive economy by helping to ensure high levels of employment, productivity, social inclusion and cohesion and makes an active contribution to combating climate change, while at the same time fighting against energy poverty.
- 4.8 While each Member State should adopt its own national targets in each of these areas, including building up a supply of social housing, practical, European-level measures should underpin the Europe 2020 strategy, not least in the field of social housing.
- 5. Social housing policies that fully reflect the Europe 2020 objectives and better economic governance**
- 5.1 Social housing actively contributes to achieving a number of the Europe 2020 strategy's goals, regarding support for the strategy to boost the growth and attractiveness of regions, the investment generated and the creation of jobs that cannot be relocated, combating poverty and social exclusion and the commitment to the fight against climate change and energy poverty.
- 5.2 The European Union is the world's second largest producer of social housing, following China, which has made social housing a policy to support economic and urban growth and to mitigate housing bubbles in the private sector.
- 5.3 Social housing is fully eligible for the structural funds for the 2014-2020 period, as proposed by the European Commission, especially for renovations to improve energy efficiency and for promoting renewable energy, in the field of integrated measures for sustainable urban development and for combating exclusion from access to housing for marginalised communities and to affordable and high-quality social services.
- 5.4 Social housing offers a practical and effective response to the desire of the Commission and Council to strengthen economic governance of the euro area and in particular to monitor housing bubbles and the devastating effects these have on social and macroeconomic balances. Developing a parallel social housing supply helps limit the magnitude of these housing market cycles and bubbles.
- 5.5 If budgetary constraints or an excessively restrictive interpretation of the definition of people who are disadvantaged or of socially less advantaged groups mean that a Member State's social housing supply is no longer able to meet the real needs of its citizens, as stipulated by its international commitments on the right to housing, universal access to decent and

affordable housing will only be achievable through major public authority intervention in the private market.

6. Addressing new energy-related and social issues

- 6.1 Social housing has to deal with the new climate situation and the need to improve the energy efficiency of its existing stock and new supply. Energy investment policies implemented by social housing agencies should receive public support, as they help combat climate change, combat energy poverty in low-income households and promote local employment and regional economic development. Cohesion policy can contribute actively to this process and provide leverage to harness additional financing from other sources.
- 6.2 Population ageing is also a major issue that will require adapting social housing to meet the needs of elderly and dependent people and to the development of new integrated services making it possible for dependent people to stay in their own homes and to access social housing.
- 6.3 The increasingly precarious situation of households living in and/or applying for social housing strengthens the need for a social mix and quality in the supply of social housing at local level and for the development of integrated approaches to sustainable urban development covering the social, economic, urban and environmental aspects, as put forward in the European Commission's draft ERDF Regulation.

7. The European Union's role

- 7.1 The European Union must first provide a legal framework that supports the development of social housing in the Member States, both in terms of financing this supply and the arrangements for defining and operating such housing. This favourable legal framework can be broken down into monitoring obvious mistakes in classifying such supply as a service of general economic interest, the compatibility of state aid granted to social housing agencies, implementation of the provisions on public procurement and cooperation between social housing agencies but also the application of reduced VAT rates as it is a basic necessity.
- 7.2 The Commission should reconsider its decision-making practices for checking obvious mistakes in Member States' classification of social housing as a service of general economic interest, because they may not always reflect the specific needs of the sector. Member States should be given the discretion to set access conditions and prices for housing in a way that takes account of local needs and local preferences, as well as the real needs of disadvantaged citizens or socially less advantaged groups, in accordance with the provisions of Protocol No 26 on services of general interest.
- 7.3 The EESC welcomes the European Commission's decision to renew the exemption from the obligation to notify State aid in the form of public service compensations granted to social

housing agencies and is pleased to note that the decision takes into account certain features, concerning in particular the length of terms of office and long-term investment.

- 7.4 The Committee appreciates the willingness expressed by the European Commission in a communication on social entrepreneurship, to promote an ecosystem conducive to the development of social enterprises in the EU, which would also cover access to housing, and to fostering the establishment of socially-inclusive investment funds. It emphasises the need to uphold the role of the social partners in Member States where they are traditionally involved in the management of social housing.
- 7.5 The Commission, Parliament and the Council should include in the proposed directives on public procurement and concessions, cooperation between social housing agencies in their capacity as public bodies and social enterprises, by incorporating it into the sphere of public-public cooperation, in light of the public interest role of these bodies and their public or private participation.
- 7.6 The European Commission should reconsider its proposals on the future common VAT system by maintaining the option for Member States to apply reduced rates for the construction and renovation of social housing by public, social and private providers alike, as it is a basic necessity of a local nature that does not affect trade between Member States or the smooth operation of the internal market.
- 7.7 The EU should also support Member States in increasing the supply of social housing and in modernising it to meet the new demographic, social and climate-related challenges and thereby actively contribute to achieving the objectives of the Europe 2020 strategy.
- 7.8 The EESC therefore welcomes the Commission proposal on the ERDF and ESF regulations, which consist of making the following areas eligible for the 2014-2020 Structural Funds: priority investments to finance energy-efficient renovation of social housing, integrated measures to ensure sustainable urban development, access to high-quality and affordable social housing for marginalised communities and support for social enterprises. The EESC would point out that the aim is to be able to offer high-quality social housing to anyone in need of it.
- 7.9 The EESC considers that such measures are necessary and should accompany the provisions of the European Commission's proposed directive on energy efficiency, which requires social housing agencies to improve the energy efficiency of 4% of the social housing stock each year. This type of obligation must be flanked by specific measures for financing investment, through the ERDF in particular but also by setting up an investment fund at the European level.
- 7.10 The European Parliament and the Council should adopt the Commission's proposals for the ERDF and ESF regulations, which contribute to implementing the Europe 2020 strategy and

for the first time recognise – in the Structural Funds regulations – housing's priority role in Member States' investment policies in the framework of cohesion policy for 2014-2020.

- 7.11 The regulation of housing markets in the Member States is an important issue for the stability of the euro area, given the macroeconomic and social impact of housing bubbles. Social housing helps to stabilise housing markets and regulate property cycles.
- 7.12 The EESC welcomes the Commission's proposal to establish stronger macroeconomic surveillance of the euro area and to include a chapter on the macroeconomic effects of housing bubbles. The Committee considers that this stronger surveillance mechanism should be accompanied by measures to promote mechanisms for the smart regulation of housing markets in Member States and for developing a supply of social and private housing to stabilise and mitigate property cycles, in line with the principles of sustainable urban development.
- 7.13 The EESC believes that a discussion should be opened on European reserves to stabilise the funding of social housing, which is part of the European social model. The idea of a capped European savings account for social housing should be considered. This account could be opened online with the EIB, which would manage the funds. Such a procedure would perform the two-fold task of stabilising investment in social housing and of giving account holders a strong sense of citizenship.

Brussels, 13 December 2012.

The President
of the
European Economic and Social Committee

Staffan Nilsson
