

# EU Urban Agenda - Housing Partnership

## **Guidance Paper on EU regulation & public support for housing**

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## Summary

*The aim of the EU Urban Agenda Housing Partnership is to provide guidance how to make state support available for social and/or affordable housing, in line with the EU state aid rules, through different schemes, including the SGEI decision.*

This paper of the EU Urban Agenda Housing Partnership raises the awareness of European institutions to continue the work on better EU regulation on public support measures and Services of General Economic Interest (SGEI) that can ensure sufficient and adequate supply of social and affordable<sup>1</sup> dwellings in urban areas. Parts of this paper are preparatory actions, while other parts, like the Guidance are finalized actions.

It is the conclusion of an intense, broad discussion with the European Commission (DG REGIO, DG ENER, DG EMPL, DG COMP, Cabinet Vestager), experts from the Member States: Slovakia (coordinator), Latvia, Luxembourg, The Netherlands, Slovakia, from the cities: Vienna (AT, coordinator), Riga (LV), Scottish Cities Alliance (UK), Poznan (PL), Lisbon (PT), Eurocities, from the stakeholders AEDES, Housing Europe, International Union of Tenants (IUT), with experts from URBACT and from the European Investment Bank.

The paper unifies the essential results of a long time debate on that topic. It is based on scientific findings of widespread case studies of the situation in many cities in Europe. Increasing housing costs and housing exclusions, particularly in profit-oriented and speculative parts of the sector, can be limited by public and (for-profit and non-profit) private investments in social and affordable dwellings.

The deliveries of the Housing Partnership are the result of the joint work of cities, Member States, EU institutions, supply and demand side on European scale. They reflect the diversity of realities of housing systems throughout the EU.

The development of the last years in Europe have led to an alarming decline of public investments at local level. The uncertainty and instability of the finance framework and low expected returns prevent investments in social and affordable housing. Housing market failures<sup>2</sup> endanger social cohesion in Europe, increase homelessness and poverty, and drop the confidence in democracy. To address all these challenges, national and local authorities must be able to adopt adequate housing policies, including state aid measures, to create conditions and support for investments in social and affordable housing.

The scope of social housing can vary from one Member State to another, from one city to another, depending on the history and culture of public intervention in each Member State and on the prevailing economic and social conditions. The members of the partnership are aware of the importance of socially-oriented urban development and call the EU legislators to leave the definition of target group<sup>3</sup> of social housing at local and regional level. The principle of subsidiarity has to be honoured at EU level to allow for effective housing policies in Europe.

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<sup>1</sup> Since Member States may use different terms that do not always have to the same meaning or connotation, this paper refers to both social and affordable housing. A key role of social housing is to respond to housing needs in terms of affordability, quality and availability. The EU SGEI Decision only uses the term social housing.

<sup>2</sup> See annex 2 Market failures in housing, IUT

<sup>3</sup> Commission Decision on the application of Article 106 (2) of the Treaty on the Function of the European Union to State aid in the form of public compensation granted to certain undertaking entrusted with the operation of services of general economic interest, notified under document C(2011)9380, 2012/21/EU, URL: [http://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/docs/ia\\_2011/c\\_2011\\_9380\\_en.pdf](http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2011/c_2011_9380_en.pdf)

It should be stressed that EU competition rules can be exempted if the performance of certain housing Services of Economic General Interest SGEI require this. This should however not affect the development of trade to such an extent as would be contrary to the interests of the Union. The effects on trade are limited since housing is not a movable item. Thus trade may only be affected indirectly.

State aid rules applied to housing mainly protect cross-border capital flows in real estate and SGEI may affect this only in so far as necessary.

Therefore, SGEI in housing should be principally guided by specific national, regional or local requirements, since local authorities have the competence to identify and address the housing needs and living conditions of various groups. Also to avoid social segregation, the concentration of vulnerable groups has proven to be counter-productive and requires active urban policies, including on housing.

Finally, the EU and its Member States have an obligation towards citizens to ensure their universal access to decent, affordable housing in accordance with fundamental rights such as articles 16, 30 and 31 of the European Social Charter<sup>4</sup>. To ensure and improve the living quality for all EU citizens in urban areas and to create jobs, local investments in social and affordable housing are crucial.

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<sup>4</sup> See on the Website: European Social Charter, URL: <https://www.coe.int/de/web/conventions/full-list/-/conventions/rms/090000168007cf93>

## 1. The aim of this document

This document<sup>5</sup> is a contribution from the Housing Partnership to the EU Urban Agenda and is intended as an action to contribute to better EU regulation on public support measures and Services of General Economic Interest (SGEI) for the provision of social and affordable housing.

The Housing Partnership wants to emphasize that adequate policies and measures that support an adequate supply of housing are crucial to balance and enhance the economic development of housing to benefit the whole society and ensure affordable and thriving living environment for all.

Sustainable investments in social and affordable housing are needed to improve the inadequate housing situation, accessibility and affordability in many rural and urban areas in the EU<sup>6</sup>. Therefore, national and local authorities must be able to adopt housing policies, including support investment measures with state aid, to create the conditions to achieve the necessary investments in social and affordable housing and to guarantee high quality living environments.

Members States and local authorities can entrust and compensate specific missions of general interest to certain housing providers<sup>7</sup>. This mobilizes large long term investments. These tasks and activities have to be fine-tuned to both existing and expected needs.

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<sup>5</sup> This document has been adopted by the members of the Housing Partnership. It does not necessarily represent the individual views and opinions of the European Commission or the European Investment Bank.

<sup>6</sup> See report *Inadequate housing in Europe: Costs and consequences*, Eurofound, 2016

<sup>7</sup> Called PSO's or public service obligations under the SGEI rules

## 2. Determination of the prevailing situation

The members of the EU Urban Agenda Housing Partnership recognize that:

1. A large part of European population – especially in urban areas - especially low and lower income households, cannot access adequate housing. Increasing utility prices, housing costs and housing exclusions especially in profit-oriented and speculative parts of the sector, social segregation, economic marginalisation of low and middle income groups have negative consequences for the population of the EU and of Members States. The number of homeless people is arising.
2. Housing markets typically suffer from several market failures, meaning that purely market-led outcomes diverge from socially acceptable overall impact. E.g. there is a sub-optimal provision of merit goods and an unequitable final distribution of scarce resources.
3. Housing market failures<sup>8</sup> are a burden on different groups in society, for the local economy and for social cohesion. Europe witnessed a drop in investments between 2008 and 2012 in the provision of social housing, except for France, while demand for affordable housing increased.<sup>9</sup>
4. The EU and its Member States have an obligation towards citizens to ensure their universal access to decent, affordable housing in accordance with fundamental rights such as articles 16, 30 and 31 of the European Social Charter.
5. According to the Pact of Amsterdam<sup>10</sup>, EU legislation sometimes has conflicting impacts and its implementation at local level can be difficult. Drawing on the general principles of better regulation, EU legislation should be designed so that it achieves the objectives at minimum cost without imposing unnecessary legislative burdens. In this sense the Urban Agenda for the EU and this paper will contribute to the Better Regulation Agenda. It is a contribution to the design of future and revision of existing EU regulation, in order for it to better reflect urban needs, practices and responsibilities in the field of affordable housing.
6. Social and affordable housing in all its local, regional and national variety therefore actively contributes to the Europe 2020 goals. The sector has proven to have the capacity to boost growth and create jobs, thus raising the attractiveness of cities and regions. The investment and employment generated cannot be relocated, which gives it an important role for sustainable local economies. It actively contributes to combatting poverty and social exclusion both directly and indirectly. It delivers an important share in our joint commitment to work against climate change and energy poverty.

<sup>8</sup> See annex 2 Market failures in housing, IUT

<sup>9</sup> Report by Housing Europe 2015

<sup>10</sup> Pact of Amsterdam Establishing the Urban Agenda for the EU, Agreed at the Informal Meeting of EU Ministers Responsible for Urban Matters on 30 May 2016 in Amsterdam

### 3. Housing, an issue of the Member States

7. The EU does not have an official mandate on housing. The provision of affordable and social housing is a concern of national, regional and local policies. In practice, the Commission can have an important impact on national housing policies, especially through competition policies related to the concept of “Services of General Economic Interest” (SGEI) and the application of state aid rules<sup>11</sup>.
8. Such tensions led to controversies in several Member States and one court case<sup>12</sup> where it was estimated that thousands of people would no longer be able to access either the commercial housing market or the social housing sector<sup>13</sup>.
9. The European Commission recognises that Member States have a wide discretion to define, organise and finance social housing. We therefore underline the importance for Member States to organise and define social and affordable housing missions as public service obligations to providers to deliver decent and affordable housing.
10. 30 major European cities signed a resolution stating that housing, especially social housing, is a clear issue of the Member States and their local authorities demanding the current EU-legislation to be changed in line with the principle of subsidiarity. The cities are aware of the importance of socially-oriented urban development and call the European Commission to leave the definition of social housing and the decision on the type of provision to the Member States and their local and regional authorities<sup>14</sup>.
11. In the same Resolution the cities raised the importance of socially-oriented urban development and their need to guarantee a certain variety in the area of social, cooperative and public housing that often goes far beyond the mere provision of housing but, instead, provides important social infrastructure. They disapprove of the approach to concentrate exclusively on low-income groups, as this leads to social segregation. Also they are aware of the importance of the housing industry, in particular of social housing, as a strong engine for economic growth.
12. According to the EU Treaty<sup>15</sup> national and local authorities have a wide margin of competence to identify and address the housing needs and living conditions of various groups including young households, elderly people, homeless people, low and middle income groups, and groups of vulnerable households based on their financial situation or other conditions.
13. The scope of social housing can vary from one Member State to another, depending on the history and culture of public intervention in each Member State and on the prevailing economic and social conditions<sup>16</sup>. Due the existence of wide regional disparities in housing costs and quality between and within Member States, the principle of subsidiarity has to be honoured at EU level to allow for effective housing policies.

<sup>11</sup> <https://ec.europa.eu/futurium/en/content/eu-urban-agenda-challenge-affordable-housing-europe>

<sup>12</sup> [Case C-414/15](#)

<sup>13</sup> Report ‘Open Doors, Closed Doors’, Dutch Councils for the Environment and Infrastructure, 2011  
[http://www.rli.nl/sites/default/files/open\\_deuren\\_samenvatting\\_engelse\\_vertaling\\_def\\_0.pdf](http://www.rli.nl/sites/default/files/open_deuren_samenvatting_engelse_vertaling_def_0.pdf)

<sup>14</sup> RESOLUTION for social housing in Europe from Amsterdam, Barcelona, Berlin, Bratislava, Brussels, Budapest, Bucharest, Copenhagen, The Hague, Dublin, Frankfurt, Hamburg, Krakow, Leipzig, Ljubljana, Milan, Munich, Nantes, Paris, Prague, Riga, Tallinn, Turin, Vilnius, Warsaw, Vienna, Zagreb, October 2013, <http://www.housingeurope.eu/file/61/download>, later on Graz, Lisbon and Rom e.

<sup>15</sup> Article 14 TFEU, Article 106(2) and Protocol 26 TFEU

<sup>16</sup> Letter of EU Commissioner Vestager to Housing Europe, 6 April 2016

## 4. Services of General Economic Interest (SGEI)

14. According to Protocol 26 of the Treaty on the Functioning of the European Union (the Treaty), the performance of SGEI tasks, such as the provision of social and affordable housing, should be based on specific national, regional or locally entrusted missions that reflect the needs and proportional support to housing and communities.
15. Article 106(2) of the Treaty states that undertakings entrusted with the operation of SGEI are subject to the rules contained in the Treaty, in particular to the rules on competition, but adds this is only the case in so far as the application of these rules does not obstruct, in law or in fact, the performance of the tasks entrusted. This should however not affect the development of trade to such an extent as would be contrary to the interests of the Union<sup>17</sup>.
16. The competence of Member States to define social housing as SGEI however remains subject to the principles of necessity, proportionality and the absence of any manifest error.
17. The regulatory competence of the Commission to intervene in the definition and organisation of SGEI is limited to cases where there is a manifest error. The Commission mentions that Member States cannot attach specific public service obligations to services that are already provided or can be provided satisfactorily and under conditions, such as price, objective quality characteristics, continuity and access to the service, consistent with the public interest, as defined by the State, by undertakings operating under normal market conditions. As for the question of whether a service can be provided by the market, the Commission's assessment is limited to checking whether the Member State's definition is vitiated by a manifest error, unless provisions of Union law provide a stricter standard<sup>18</sup>.
18. Support measures or schemes for social housing do not necessarily need to provide an advantage to an undertaking. This is the case when the compensation offered to cover the net costs of the SGEI provision and follows the jurisprudence of the Altmark-criteria<sup>19</sup>. In practice this proves to be very challenging for national and local authorities. This explains why the SGEI Decision is more appropriate and is used more often.
19. The Commission laid down conditions in the SGEI Decision whereby a public support measure that constitutes state aid to a provider of social housing does not have to be notified to the Commission for ex ante approval before implementing the measure<sup>20</sup>.
20. As an indication to what may be seen as social housing activities exempted from notification of state aid, the SGEI Decision mentions the term "undertakings in charge of social services, including 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."
21. The Housing Partnership notes this generates legal uncertainty for investors, financiers and, local and national authorities. It is questionable from a subsidiarity and proportionality perspective in the context of the wide margin, in which Member States and local authorities have to organise their SGEI.

<sup>17</sup> Article 106(2) TFEU and Preamble 3 of the Commission Decision of 20 December 2011 (2012/21/EU)

<sup>18</sup> Communication from the Commission, European Union framework for State aid in the form of public service compensation (2011) (2012/C 8/03)

<sup>19</sup> Judgment of 24 July 2003 in Altmark Trans and Regierungspräsidium Magdeburg (C-280/00, ECR, EU:C:2003:415)

<sup>20</sup> Commission Decision of 20 December 2011 (2012/21/EU)



22. Social housing is the only sector in the SGEI Decision for which the European Commission mentions a target group. This is not the case with hospitals and other social services.
23. Furthermore, the same target group has also been used by the European Commission outside the scope of the SGEI Decision<sup>21</sup>. Hence this raises doubts if this notion must be applied for all SGEI regarding housing, regardless of the size and the fact if it is notified or not.
24. This uncertainty may limit the adoption of SGEI policies to deliver social and affordable housing to some groups and may hinder the promotion of social mix, diversity of habitat, housing tenure neutrality and sustainable urban development.
25. The OECD defines social (rental) housing as ‘residential rental accommodation provided at sub-market prices and allocated according to specific rules rather than according to market mechanisms’.
26. The term “disadvantaged citizens or socially less advantaged groups” raises questions and creates legal uncertainty in member States and cities about its exact significance. Are young working households disadvantaged? Or senior people? Are school teacher, nurse and police officers, socially less advantaged? How does this relate to the tasks of social mixity, community services and urban renewal some housing organization have?
27. Theoretically a Member State could argue 50% of the population is disadvantaged compared to the other half. It could provide half of the population with social housing as SGEI if circumstances would require this.
28. It was also questioned by actors in light of the competence of Member States and local authorities to organise and support housing activities, particularly where there is a lack of supply of sufficient affordable housing for low or middle-income people. Authorities decide there is a need to provide state aid to maintain adequate housing conditions for well-defined groups – e.g. in terms of target groups, housing costs, quantity, quality - and to guarantee liveable and non-segregated cities.
29. The value of social housing interventions – in bricks and in services - to prevent the formation of ghettos and uplift disadvantaged urban areas is currently not recognized in the SGEI Decision.
30. At the same time, the Housing Partnership notes that the EU Treaty allows for taking into account the wide margin of competence Member States and cities have to support social housing and affordable housing and to organise SGEI when they face clear economic and social needs among clearly defined groups of persons or in specific areas.
31. In recent years, the interpretation of what constitutes social housing as an SGEI has shifted. According the Commission’s Decision on Dutch social housing , the Commission's role is limited to verifying that Member States do not make manifest errors in the definition of social housing as SGEI, and that they comply with the basic conditions of the SGEI state aid rules, notably the necessity to avoid overcompensation and accounting separation. In exercising that

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<sup>21</sup> Ireland notified an SGEI compensation. The Commission Decision mentioned ‘social housing means the provision of housing for the most socially disadvantaged households, and in particular for those households which due to their economic circumstances are unable to fund their own housing requirement at socially acceptable conditions through recourse to commercial lenders.’ (N209/2001) and the Netherlands (N642/2009)

role, the European Commission does not impose on Member States a specific notion of social housing that can represent an SGEI<sup>22</sup>.

32. This was already recognized by the vice-president of the European Commission in 2014: ‘the Commission has no power at all to impose a definition of social housing. It is for each Member State individually to define its policy in this area. The Commission has the sole responsibility to ensure that the aid intended for social purposes is not misused to finance commercial activities, which would be contrary to the provisions of the Treaty. Similarly, the Commission is not opposed to the principle of social diversity in the allocation of social housing.’<sup>23</sup>
33. These views and interpretations of social housing as an SGEI generate confusion and raise questions about the validity of the current notion used in the SGEI Decision.
34. An eventual review of the SGEI Decision (technically foreseen in the legal text for 2017) and the considerations mentioned here provide the opportunity to clarify the treatment of social housing in the SGEI Decision. In view of this Housing Partnership, this includes the removal of the current EU notion on social housing in the SGEI regulation based on the decisions, reports and communications of the European Commission and other EU institutions. We propose the Housing Partnership prepares actions that contribute to the revision.

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<sup>22</sup> Letter of EU Commissioner Vestager to Housing Europe, 6 April 2016

<sup>23</sup> Letter from the vice-president of the European Commission, Mr. Almunia, to Mr Häupl, Mayor and Governor of Vienna, 25 April 2014.

## 5. Support for multi-apartment residential buildings

35. Multi-apartment residential buildings deserve special consideration. While they are the principle source of energy consumption and require important renovation measures to achieve local, national, EU and global goals on energy and CO<sub>2</sub> reductions. They also need to be maintained in an adequate state. At the same time an important share of multi-apartment dwellings in Europe – built in the 1970-ties or 1980-ties - will soon reach the end their life-cycle. Those buildings are up for deep renovation, demolition or replacement.
36. Renovation or energy efficiency enhancement of such multi-apartment buildings can pose additional challenges if the tenureship is diverse and ownership is in different hands. Qualifying such renovations as SGEI is very difficult to organise and entrust to specific housing providers, especially when they are not owning (most of) the dwellings in apartment buildings. In practice this proves to be administratively difficult to implement and can create a serious burden for necessary refurbishment works.
37. If residents are not eligible for social housing and when the buildings are not social housing buildings, it does not seem possible to organise energy efficiency or renovation measures of residential buildings as SGEI.
38. At the same time many Member States, especially in Central and Eastern Europe, require major renovation efforts and energy measures while the capacity of social housing and SGEI housing providers is very restricted or non-existent. This raises questions for national and local authorities how to take this on with support measures. And, if this is organised as SGEI, how the groups of “disadvantaged citizens or socially less advantaged” should be interpreted. Such confusions are delaying renovation projects that improve the quality of apartments and the position of households in terms of affordability, health and comfort, especially in many<sup>24</sup> Central and Eastern European Member States where the need for such investments is relatively high.
39. In case the apartments are not owned by a single entity or mix different kind of ownership, it may be unlikely that state support can be covered under the SGEI Decision. However, other state aid rules may be applicable and make it possible to allow support that is compatible with the Treaty. The Partnership wishes to offer more guidance and provides an overview alternative possibilities.
40. Furthermore, it should be reminded that other pieces of regulation on state aid are available, besides the SGEI Decision, to make state support available to housing and community investments.
41. Such possibilities are valuable for authorities who do not always have the legal expertise. That is why we explore and clarify a few possibilities in the form of guidance in this paper.

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<sup>24</sup> *Inadequate housing in Europe: Costs and consequences*, Eurofound, 18 August 2016

## 6. Guidance

Taking into account these issues and considerations, the Housing Partnership wants to highlight several possibilities and clarify certain concepts<sup>25</sup>.

**A.** In case the provision of housing as SGEI can fulfill the strict Altmark-criteria, this means the compensation provided by authorities is not considered as state aid by EU law.

**B.** We remind that the notion of ‘social housing’ as SGEI has been approved, under certain conditions, by the Commission as compatible under Article 106 (2) TFEU in previous cases.

**C.** Compensation for SGEI in housing that do constitute state aid can be accepted as compatible under EU law under Article 106 (2) TFEU after a formal notification to the Commission. However SGEI activities in social housing that conform to the SGEI Decision requirements are also compatible under Article 106 (2) TFEU and are exempted from the obligation to notify.

**D.** As an example, the following SGEI activities were accepted under the SGEI Decision to be compatible<sup>26</sup>. This provides some indication as to how Member States have introduced social housing definitions as SGEI that do not constitute a ‘manifest error’ according to the assessment of the European Commission:

- Social housing was linked to "a specified target group of disadvantaged citizens or socially less advantaged groups including a margin that will ensure social mix" which was translated as “households with an income not exceeding EUR 33.000” which covered, potentially, around 43% of the population<sup>27</sup>.
- Infrastructure works in communities strictly ancillary to social housing, e.g. public utilities and roads that connect dwellings to the main network.
- Construction and renting out of public purpose buildings that comprised community centres, health centres, women shelters, care homes for the elderly, cultural centres, sport centres etc.
- The notification of additional aid was approved for social housing and public purpose buildings in specific declining and disadvantaged urban areas, that was needed to regenerate these communities and prevent the worsening of social problems. The areas were selected on the basis of socio-economic indicators such as the level of income, unemployment, literacy, crime rate, etc.

**E.** This is an illustration of which social housing activities were accepted as SGEI in the Netherlands. This case does not impose any limits on other Member States. National and local authorities have a wide margin of competence to organise their own housing as SGEI.

**F.** The provision of social housing for clearly defined groups of people, for the promotion of non-segregated communities and for the regeneration of declining urban areas was accepted as SGEI. The

<sup>25</sup> This is not a legal advice and only offers general guidance. It is recommended to always confirm the correct implementation of EU law by an expert based on the particularities of each case. The Partnership does not assume any responsibility about the correct application of any legal requirements.

<sup>26</sup> Decision of the European Commission E2/2005 (existing state aid) and N 642/2009 (notification of new aid)  
[http://ec.europa.eu/competition/state\\_aid/cases/197757/197757\\_1155868\\_173\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/197757/197757_1155868_173_2.pdf)

<sup>27</sup> Using such national averages does not necessarily guarantee the adequate scope of target groups because 1) housing markets vary a lot between regions and cities 2) such a percentage only shows the potential amount of people in social housing. It does not reflect the actual accessibility and availability of social housing and 3) it is over-estimated because even if with a low income, a share does not need social housing because they were able to access home-ownership in the past and have affordable mortgages (insider-outsider dilemmas).

upcoming review of the SGEI Decision<sup>28</sup> should take this into account and delete the mention of social housing as limited to "disadvantaged citizens or socially less advantaged groups."

**G.** Alternatively, Member States may choose to use the general Article 2(1)(a) of the SGEI Decision. That article exempts any SGEI when the compensation is not higher than EUR 15 million annually per provider. While the exemption for social housing of article 2(1)(c) has no compensation ceiling but is linked to a certain notion of target groups, it may be interpreted in a way that social housing can be defined in a wider sense if the compensation is limited to EUR 15 million.

**H.** These notions of social housing as SGEI should also be clarified in light of the employment of EU funds to improve the European stock of social and affordable housing (ERDF, EFSI, EIB).

**I.** If authorities wish to evaluate the risks involved in their support measures and address uncertainty over state aid rules at the pre-project stage, they can ask the services of the Directorate-General for Competition to have an informal discussions at the pre-notification stage to give them reassurance.

**J.** State support to social or affordable housing can be organised in line with other state aid rules than the SGEI Decision. We highlight the following possibilities.

**K.** Authorities may use policies that provide support to the direct provision of social or affordable housing without being earmarked as state aid, according to article 107(3) TFEU<sup>29</sup> For example:

- The support measure or scheme is not selective in nature. E.g. The support is available to every undertaking willing to provide social or affordable housing.
- There is no distortion of competition or no affection of intra-Community trade. E.g. aid granted under the SGEI de-minimis regulation<sup>30</sup> when the total amount to any one undertaking providing SGEI does not exceed EUR 500.000 over any period of three years.
- When a support measure or scheme is not providing an advantage to an undertaking. E.g. when the compensation covers the net costs of the SGEI provision based on the Altmark-criteria<sup>31</sup>, including that the provider(s) are chosen through public procurement or that the compensation is determined on the basis of an analysis of the costs which a "typical undertaking, well-run and adequately provided with appropriate means" would have incurred in discharging public service obligations<sup>32</sup>. In practice this proves to be very difficult to interpret and implement for national and local authorities.
- If such work is not done as an SGEI, but the state support is directly provided to private persons, this could mean there is no state aid because no undertakings are involved. Each home-owner could declare he or she is not also running an undertaking from home and that any private owners who does run a small undertaking from home, declares that the amount of state support it received is limited to EUR 200.000 for each single undertaking over any period of three years, as required by the Regulation on de-minimis<sup>33</sup>.

<sup>28</sup> See preamble 32 of Commission Decision of 20 December 2011 (2012/21/EU)

<sup>29</sup> See also the Commission's *Guidance on the notion of State aid*  
[http://ec.europa.eu/competition/state\\_aid/modernisation/notice\\_aid\\_en.html](http://ec.europa.eu/competition/state_aid/modernisation/notice_aid_en.html)

<sup>30</sup> Commission Regulation (EU) No 360/2012 of 25 April 2012

<sup>31</sup> Judgment of 24 July 2003 in Altmark Trans and Regierungspräsidium Magdeburg (C-280/00, ECR, EU:C:2003:415)

<sup>32</sup> It proves to be a challenge for legal experts and economists to define such a "typical undertaking". This makes the application of this possibility difficult.

<sup>33</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013

**L.** State aid to invest in housing projects and in urban (re)development of problematic districts may also be allowed after notification and approval from the Commission under article 107 (3)(a) TFEU “aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment” or under article 107 (3)(c) TFEU “aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”<sup>34</sup> In the latter case it was accepted that pursuant to Articles 3 TEU and 174 TFEU, economic and social cohesion is an objective of the EU. Strengthening economic and social cohesion implies the improvement of the urban environment and the quality of life in the area. It is thus recognised that cohesion policy can help to create sustainable communities by ensuring that economic, social and environmental issues are tackled through integrated strategies for renewal, regeneration and development in both urban and rural areas<sup>35</sup>. It has to be noted that, in general, such notification of individual projects are perceived as time and capacity consuming by national authorities, EU officials and stakeholders. Therefore the SGEI Decision exemption remains a preferred choice, when it can cover the social housing activities at stake.

**M.** Non-financial measures are also available to authorities to support investments in affordable, adequate and social housing without being labelled as state aid under EU rules. E.g.:

- Rent law (including rent regulation, rent control, security of tenure) for new or existing dwellings. This is also relevant to prevent price increases and lack of availability caused by short-stay sub-letting platforms.
- Minimum building quality and safety requirements
- Legal protection against evictions
- Minimum affordability or quality criteria based on income levels or other requirements to provide adequate housing
- Land Planning policies for new developments that require a minimum quota of affordable or social housing per project or city.
- Land-planning and zoning that dedicates certain zones to develop only social or affordable housing based on certain criteria of income, rent levels or housing costs<sup>36</sup>.
- The use of local ‘misappropriation ordinances’ and anti-speculation units from local authorities can prevent property owners to leave apartments empty, evict people and not maintain buildings with the intention to chase away the current people and then sell the property or raise the rents.
- Support the creation and capacity of institutions and organisations that will contribute to social and affordable housing such as not-for-profit investors, Community Land Trusts, housing cooperatives and public companies.

**N.** We recommend to Member States and the European Commission to further explore practical and legal possibilities by providing more guidance to local authorities on how they may support the quality and affordability of housing for households, especially vulnerable groups and lower incomes, in sustainable and liveable communities.

<sup>34</sup> See N 342/2008 – Czech Republic Housing and Social Programme for problematic districts

<sup>35</sup> State aid No SA.31877 Land sale and housing development Apeldoorn. See also N798/2006 for the construction of “special housing” with care facilities for elderly people in Sweden.

<sup>36</sup> European Parliament resolution of 11 June 2013 on social housing in the European Union, point 20

## **Members of the EU Urban Agenda – Housing Partnership**

### **Member States:**

Slovakia (coordinator), Latvia, Luxembourg, The Netherlands, Slovenia + 2 observers (Czech Republic and Sweden)

### **Cities/City Networks:**

Vienna (AT, coordinator), Lisbon (PT), Poznan (PL), Riga (LV), Scottish Cities Alliance (UK), Eurocities

### **Stakeholders:**

AEDES, Housing Europe, International Union of Tenants (IUT)

### **EU- Institutions:**

DG REGIO, DG ENER, DG EMPL, European Investment Bank (EIB)

### **Experts:**

Dr. Orna Rosenfeld, Urban Studies Science Po, Paris on behalf of DG REGIO, URBACT