

Guidance Paper on EU regulation & public support for housing

Document for the 6th Partnership Meeting

Brussels, 22 -23 March 2017

.....

For IUT Board meeting in Brussels April 27-28

Board members are recommended read the entire decision pages 1-15 in the attached Guidance Paper.

The annex, from page 17, gives an overview on the city case studies and the opinions of the partnership members.

Part of the annex is also the IUT contribution, page 26

Content

Summary	3
1. The aim of this document	4
2. Determination of the prevailing situation	5
3. Housing, an issue of the Member States	5
4. Services of General Economic Interest (SGEI)	6
5. Support for multi-apartment residential buildings	10
6. Guidance	11
7. Actions	15
8. Members of the EU Urban Agenda Partnership	16
7. Annex	17
7.1 Eurocities: Case studies from European capitals	17
7.1.1 Barcelona	17
7.1.2 Leipzig	17
7.1.3 Rotterdam	17
7.1.4 Vienna	18
7.1.5 Vision	19
7.1.6 Overview of sources and discussions	20
7.3 Contributions from members of the Partnership	26
7.3.1 IUT – International Union Tenants	26
7.3.2 Slovenia	28
7.3.3 Poznan	31
7.3.4 Other positions and decisions about state support for social housing	31

Summary

The aim of the EU Urban Agenda Housing Partnership will 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 affordable¹ 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), 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), 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 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 failures² 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 group³ 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.

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.

¹ 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.

² See annex 2 Market failures in housing, IUT

³ 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

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 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. 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.

1. The aim of this document

This document⁴ 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 EU⁵. 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 guarantee high quality living environments.

Members States and local authorities can entrust and compensate specific missions of general interest to certain housing providers⁶. This mobilizes large long term investments. These tasks and activities have to be fine-tuned to both existing and expected needs.

⁴ 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.

⁵ See report *Inadequate housing in Europe: Costs and consequences*, Eurofound, 2016

⁶ Called PSO's or public service obligations under the SGEI rules

2. Determination of the prevailing situation

The participants 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 outcomes. E.g. there is a sub-optimal provision of merit goods and an unequitable final distribution of scarce resources.
3. Housing market failures⁷ are a burden on different groups in society, for the local economy and on 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.⁸
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 Amsterdam⁹, 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.

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 through different the regulation of

⁷ See annex 2 Market failures in housing, IUT

⁸ Report by Housing Europe 2015

⁹ 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

competition policies related to the concept of “Services of General Economic Interest” (SGEI) and the application of state aid rules¹⁰.

8. Such tensions led to controversies in several Member States and one court case¹¹ where it was estimated that thousands of people would no longer be able to access either the commercial housing market or the social housing sector¹².
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 organize and define social and affordable housing missions as public service obligations to providers to deliver decent and affordable housing.
10. 27 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 authorities¹³.
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 treaty¹⁴ 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 conditions¹⁵. 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.

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

¹⁰ <https://ec.europa.eu/futurium/en/content/eu-urban-agenda-challenge-affordable-housing-europe>

¹¹ [Case C-414/15](#)

¹² 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

¹³ 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 Rome.

¹⁴ Article 14 TFEU, Article 106(2) and Protocol 26 TFEU

¹⁵ Letter of EU Commissioner Vestager to Housing Europe, 6 April 2016

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 Union¹⁶.
16. Such competence by Member States to define social housing as SGEI however remains subject to the principles of necessity, proportionately and the absence of any manifest error.
17. The regulatory competence of the Commission to intervene in the definition and organization 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 standard¹⁷.
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-criteria¹⁸. 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 measure¹⁹.
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 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.
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.

¹⁶ Article 106(2) TFEU and Preamble 3 of the Commission Decision of 20 December 2011 (2012/21/EU)

¹⁷ Communication from the Commission, European Union framework for State aid in the form of public service compensation (2011) (2012/C 8/03)

¹⁸ Judgment of 24 July 2003 in Altmark Trans and Regierungspräsidium Magdeburg (C-280/00, ECR, EU:C:2003:415)

¹⁹ Commission Decision of 20 December 2011 (2012/21/EU)

23. Furthermore, the same target group has also been used by the European Commission outside the scope of the SGEI Decision²⁰. 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 organize 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 organize 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 to 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 role, the European Commission does not impose on Member States a specific notion of social housing that can represent an SGEI²¹.
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

²⁰ 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)

²¹ Letter of EU Commissioner Vestager to Housing Europe, 6 April 2016

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.’²²

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. The announced review of the SGEI Decision in 2017 and the considerations mentioned here provide the opportunity to clarify the treatment of social housing in the SGEI Decision. In view of this 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 partnership prepares actions that contribute to the revision.

²² 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 CO₂ reductions. They also need to be maintained in an adequate state. At the same time an important share of multi-apartment dwellings in Europe – build 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 organize and entrust to specific housing providers, especially when they are not owning (most of) the dwellings in apartment buildings.
37. If residents are not eligible for social housing and when the buildings are not social housing buildings, it does not seem possible to organize 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 organized 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 many²³ 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.

²³ *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 concepts²⁴.

- 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 compatible²⁵. 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 population²⁶.
 - 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.

²⁴ 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.

²⁵ 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

²⁶ 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).

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 organize 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 upcoming review of the SGEI Decision²⁷ 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 organized 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) TFEU²⁸. 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 regulation²⁹ 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-criteria³⁰, including that the provider(s) are chosen through public procurement or that the compensation is

²⁷ See preamble 32 of Commission Decision of 20 December 2011 (2012/21/EU)

²⁸ See also the Commission's *Guidance on the notion of State aid*
http://ec.europa.eu/competition/state_aid/modernisation/notice_aid_en.html

²⁹ Commission Regulation (EU) No 360/2012 of 25 April 2012

³⁰ Judgment of 24 July 2003 in Altmark Trans and Regierungspräsidium Magdeburg (C-280/00, ECR, EU:C:2003:415)

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 obligations³¹. 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-minimis³².

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”³³ 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 areas³⁴. 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.

³¹ 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.

³² Commission Regulation (EU) No 1407/2013 of 18 December 2013

³³ See N 342/2008 – Czech Republic Housing and Social Programme for problematic districts

³⁴ 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.

- 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 costs³⁵.
- 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 organisation 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.

³⁵ European Parliament resolution of 11 June 2013 on social housing in the European Union, point 20

7. Actions

The partnership is submitting this Guidance as one of the deliverables to the draft “Action Plan” of the Housing Partnership. According to the Pact of Amsterdam the partnership wishes to put it for consideration, after guidance from the DG Meeting on Urban Matters, to the Council of the EU and the European Commission, the first actions derived from this document.

Action	Responsible	Deadlines	State of Play
Action 1: Contribute to the revision of the SGEI Decision and clarify the notion of social housing as SGEI.	Housing Partnership	As soon as the revision of the SGEI Decision will be prepared by the Commission.	To be discussed in the March Meeting of the Housing Partnership. The contribution has to be discussed and commented by the DG Meeting on Urban Matters, by the Council of the EU and by the European Commission.
Action 2: Publish this Guidance and disseminate it under local and national authorities, gather and add further legal possibilities and practical solutions.	Housing Partnership, DG Regio, Website	After it has been approved as an action by the DG Meeting on Urban Matters.	To be discussed in the March Meeting of the Housing Partnership. The contribution has to be discussed and commented by the DG Meeting on Urban Matters, by the Council of the EU and by the European Commission.
Action 3: Work on the state support for Housing Guidance	Housing Partnership, European Commission (DG COMP and GROW) and Member States (UDG)	Starting in 2018 in preparation of the new funding period post 2020.	To be discussed in the March Meeting of the Housing Partnership. The contribution has to be discussed and commented by the DG Meeting on Urban Matters, by the Council of the EU and by the European Commission.
Action 4: Provide guidance for the use of state aid for social housing and other housing measures, such as energy measures, in light of EU fundings (ERDF, ESF, EFSI, EIB).	European Commission, European Investment Bank	Starting in 2018 in preparation if the new funding period post 2020.	To be discussed in the March Meeting of the Housing Partnership. The contribution has to be discussed and commented by the DG Meeting on Urban Matters, by the Council of the EU and by the European Commission.

8. Members of the EU Urban Agenda Partnership

The members of the Housing Partnership of the Urban Agenda for the EU are:

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

7. Annex

7.1 Eurocities³⁶: Case studies from European capitals

7.1.1 Barcelona

- Very high number of evictions (2400 a year), 80% of which due to non-payment of the rent, especially affecting the lower-middle class.
- High rent prices, preventing lower-middle class to access the private rental sector.
- High vacancy rate in the private sector (31200 dwellings vacant in 2014) and very small public rental stock.
- The city is facing public finances and public subsidies shortages due to austerity measures in Spain, but must build more public housing stock (currently only 2% of total stock), in a framework which can be challenging for the provision of affordable housing because of EU state aid rules.

7.1.2 Leipzig

- It is very difficult for public authorities to subsidise affordable housing because of the rising housing market prices. Flats at low price become scarce in certain parts of the city and there is a risk of gentrification.
- The refugee's influx in the city will increase the demand on low cost housing. According to some estimation, it will almost double the demand, in a city which is already intensively growing in terms of population.
- To maintain social mix and social cohesion the city needs more affordable housing everywhere in the city, and it must also improve deprived areas.

7.1.3 Rotterdam

- The reduction of the stock of social housing following the Dutch case was particularly detrimental to the lower middle class, which is now excluded from social housing and struggles to have access to private rental market, as a result the lower middle incomes (teachers, nurses, policemen...etc.) are facing increasing difficulties to access to affordable housing.
- The very complex state aid legislation on Services of General Economic Interest at EU level and, as a consequence, at national level leaves very small room for the city and housing associations to intervene on the affordable housing market.

³⁶ Key points from EUROCIITIES affordable housing workshop, 26 April 2016

7.1.4 Vienna

- A high number of social and affordable housing in Vienna supports social mix and social cohesion in the city.
- The city has to meet some serious challenges: there is a rapid population growth, even more with refugees, and migrants are the most at risk of poverty. Vienna needs more social housing to maintain its current standards of social cohesion while budget cuts have adverse consequence on this objective.

EU regulatory framework

- The restriction of providing social housing only to ‘disadvantaged citizens or socially less advantaged groups’ as stipulated in the Almunia package should be removed, in respect of the principle of subsidiarity and the right of local authorities to define, organise and finance services of general economic interest, such as social housing.
- Focusing only on disadvantaged citizens limits the potential for greater social cohesion, social integration through social mix, and can lead to the creation of ghettos in cities, reinforcing social exclusion, inequalities and urban polarisation.
- Member states are often the only counterparts for the European Commission when discussing problems about state aid rules for affordable housing. As a result, the actual impact of EU regulations on the local level is not sufficiently visible for EU decision makers.

Social mix

- Affordable housing makes an important contribution to achieving a number of the Europe 2020 strategy's goals, such as boosting the growth and attractiveness of regions, generating investment and creating local jobs, combatting poverty and social exclusion as well as addressing climate change and energy poverty.
- Affordable housing is an important resource for addressing poverty and social exclusion, and for improving social cohesion. But to do this, access to affordable housing has to be extended to other groups of people who are struggling to find affordable housing (i.e. those on low-middle incomes) to ensure that social mix can happen.
- Promoting social mix will not resolve all problems but it is a precondition for a healthy society. Social mix in a city refers to people with a range of lifestyles, ages, family statuses, ethnic origins, incomes and religions living together in a neighbourhood. Encouraging social mix can prevent segregation and ghettoisation, helps to avoid the stigma associated with social housing, and fosters social cohesion. It must be pursued in a well-planned framework, through an integrated approach that includes investing in education and integration as well as in the physical regeneration of the area and affordable housing.
- When a city invests in social and affordable housing, there is a clear business case behind it. Investing in affordable housing to prevent social conflict and urban polarisation is far more cost effective than dealing with the negative consequences later on.

Final remarks

- It is also important to recognise that cities with less developed policy for affordable housing (mainly in southern, eastern and central Europe) require more support from the EU to develop their capacity and awareness of how to access adequate funding and to acquire the expertise needed to generate social and affordable housing investments. The State Aid package is likely to be revised at the end of 2017. It is important that the revision takes into account the impact of EU regulations at local level, and what the challenges are for cities in delivering affordable housing.

7.1.5 Vision

Our vision of Europe is one where all citizens have a home they can afford easily, which gives families the necessary room to develop all talents, children enough space to grow in the best conditions, our older generation the security of a good care. In this sense, housing constitutes the fundament for all to participate in our society and economy, in cultural and political life. Secure, healthy and affordable housing is a precondition for the access to education, employment and genuine social security.

[An] issues that need to be tackled in the Partnership [is] the review of state aid to social housing (competition law vs principle of subsidiarity):

- Examination of effects of state aid regulations and decisions with regard to social housing systems in different MS; also on local level
- Analysis of competition law vs the principle of subsidiarity
- Inclusion of new relevant goals, as the advantages of a good social mix for society and the economy in general
- Contribution of the housing sector to overall economic stability

This will contribute to the “better regulation” strand of the partnership and should be prioritized, as revision of state aid package is due in 2017

7.1.6 Overview of sources and discussions

This Guidance Paper is the outcome of discussions among the Housing Partnership. The members of the partnership held fruitful discussions on support measures in affordable housing, including social housing, and how relevant EU regulation on state aid could be used or improved.

The partners exchanged views on several issues and explored solutions. The details and sources of these discussions are gathered in this annex.

Housing is a fundamental right in several European and international binding agreements for the EU³⁷. The provision of **sufficient and adequate housing plays several crucial roles in cities and societies**. Affordability, accessibility and poverty alleviation are key objectives as well as social cohesion but other benefits should not be forgotten: employment opportunities, more stable housing and financial markets, urban (re)development and attractive communities, combating and preventing homelessness, care and housing, shelters for vulnerable people, etc. etc.

Affordable and social housing makes an important **contribution to achieving a number of the Europe 2020 strategy's goals, the UN Sustainable Development Goals, and the UN Habitat 3 New Urban Agenda**. such as boosting the growth and attractiveness of regions, generating investment and creating local jobs, combatting poverty and social exclusion as well as addressing climate change and energy poverty.

Affordable and social housing is an important resource to **promote social inclusion, address poverty, improve social cohesion, boost the growth and attractiveness of regions, as well as to address climate change and energy poverty**. But to do this, access to affordable housing has to be extended to other groups of people who are struggling to find affordable housing as well (e.g. those on low-and middle incomes). This also combats segregation and ensures social cohesion in cities, communities and countries.

For many cities, the refugee crisis has put even more pressure on the availability of housing and other services. This trend is likely to continue, as most recognised refugees will settle in cities. The construction of new social housing for vulnerable groups such as refugees is not hindered by state aid rules and could be organized as an SGEI. Nevertheless, EU's approach to restrict the provision of social housing to vulnerable groups, such as refugees, can create social conflicts with low and middle income groups and undermine political support. **Giving newcomers access to social housing in cities while lower and middle class populations struggle to find decent and affordable housing will lead to resentment and will undermine the efforts of governments to find sustainable housing and integration solutions.**

³⁷ Article 25(1) Universal Declaration of Human Rights, article 31 European Social Charter, article 34(3) of EU's Charter of Fundamental Rights

Another emerging trend is the growing rate of evictions of low-middle income families and of homelessness in many European cities, which is a clear sign that there is greater need for more social and affordable housing. **The shortages are affecting middle income groups as well as the most vulnerable in our societies.** Cities which have strong social and affordable housing providers are better able to combat these issues and can provide adequate answers for different target groups.

To achieve such important objectives of general interest, national and local authorities may decide to **support housing activities and investments as SGEI**. To prevent unfair competition and unnecessary public spending, EU rules require that such support is only allowed for objectives that would otherwise not be achieved in the same quantity or quality.

This assessment proves to be problematic due to diverging perceptions and overlapping competencies between different government levels. EU state aid rules that protect competition have clashed with national and local policies intended to provide more or better housing in cities and towns.

EU's involvement in state aid is justified when **support measures affect trade between Member States**. Since dwellings cannot be traded as service or goods across borders, EU's involvement in SGEI and state aid is mainly explained by the need to protect cross-border capital flows. At the same time, the EU Treaty clearly notes the importance of SGEI and its priority above EU rules when they disproportionately hinder the correct delivery of SGEI.

Article 106(2) TFEU mentions: 'Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, **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. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.'

This balance needs to be kept in mind by authorities when the **protection of the free flow of capital is conflicting with the correct delivery of services of general interest such as social housing**.

We remind that article 3(3) of the Treaty on European Union, that sets the target for the EU to achieve a highly competitive social market economy aiming at full employment and social progress.

It should be noted that, with respect to effect on trade, **the Commission is bound by the jurisprudence of the European Courts**, who have exclusive and final competence to define the existence of State aid. In this regard the Commission's competence is to define compatibility rules.

Supply and demand for housing and housing financing still mostly depend on national, regional and local conditions. Hence, housing policies need to be regulated at those levels which are most effective and relevant. This is why the **EU has not been given direct housing competencies**.

The current levels of protection of the free movement of capital between member states undermine the housing competence of member states and blocks their right to answer the full range of housing needs at national and local level.

This is the result of the mentioning in the current SGEI Decision (2012/21/EU) of a restriction on the provision of social housing to clearly defined groups of **‘disadvantaged citizens or socially less advantaged groups’**.

It is not clear what the reason is for the use of this definition in the SGEI Decision and in other Commission decisions. Social housing is the **only SGEI categories with a specific EU wide target group**, whereas the scope of the SGEI in other categories is being assessed case-by-case , taking into account national and local needs.

The introduction and application of such a definition is **questionable from a subsidiarity perspective**, which is an important principle for authorities to be able to respond to the local needs in housing and community investments.

In practice, **EU’s influence on social housing, through the SGEI Decision, has a negative impact in national and local policies**. The current EU provisions that refer to this ambiguous target group confuses public authorities, tenants, , housing providers, project developers, financiers and home-seekers. It also risks **increasing social and ethnic segregation**. Such concerns are voiced by other parties as well (see Annex).

Above all, this approach **stigmatizes and excludes households that are not perceived as disadvantaged** but still encounter increasing difficulties in finding affordable and adequate housing in many urban areas. Local fine-tuning is crucial to answer these specific needs of the population and EU citizens, especially in dense urban areas with high demand.

In a recent report the OECD³⁸ found that **ensuring access to adequate affordable housing features as a key policy objective in most countries**, often with a focus on specific target groups. In their responses, 16 OECD countries identified ensuring access to affordable housing as a key objective, and most of these countries referred specifically to low-income households or 'those in need'. In addition, 12 countries reported among the main objectives for housing policy: “increasing access to adequate housing and/or improving housing conditions of specific population groups”. These target groups include: indigenous people in Australia and Canada; elderly people in Austria, Finland, Japan and Sweden; people with special needs or disabilities in Bulgaria, Finland and Switzerland; young persons in the Czech Republic, Japan, Romania and Sweden, and families with children in the Czech Republic, Japan, Latvia and Poland. Sweden identified improving access to housing for migrants as an avowed public policy objective, while the Netherlands identified the provision of housing for asylum seekers as the current main policy challenge.

Members of the Partnership have noticed several problems based on the current view of social housing in the SGEI Decision which seems to focus only on the market deficiencies impacting on vulnerable people and leaves out other social, affordable and adequate housing policies. E.g. social segregation; overall affordability; accessible cities; availability of key workers; lack of housing supply for all; specific needs

³⁸ Housing policy objectives and obstacles, Affordable Housing Database, OECD, December 2016

of less vulnerable groups with limited means; public purpose buildings and social infrastructure in deprived areas.

In contrast, **inadequate housing affects large parts of the European Union**. Inadequacies such as the inability to keep homes adequately warm still affect a substantial proportion of the population in most Member States. Some inadequacies, such as lack of indoor sanitary facilities, are close to non-existent in some countries while affecting up to a fifth of the population in others. Housing inadequacies have negative impacts that include ill-health or accidents, resulting in substantial healthcare costs. The annual total cost to the economies of the EU of leaving people living in inadequate housing is nearly €194 billion. If all necessary improvements were completed at once, the cost to EU economies and societies would be repaid within 18 months by projected savings such as lower healthcare costs and better social outcomes. Like many other Member States across eastern Europe, Latvia has an ageing housing stock which is characterised by poor energy efficiency and poor living conditions for local residents; 70% of apartment blocks in the country are over 50 years old. Flat owners often spend half of their monthly wage on heating bills.³⁹

Examples of cases where EU regulation affects housing investments

Investments in social and affordable housing are promoted by the local authority and the national government to prevent a certain area of the city from declining and make it more attractive. The measures are based on **socio-economic and living environment criteria (security, health) linked to an area. The neighbourhood has an increasingly vulnerable population while middle income groups are leaving**. The challenge is to make this area attractive again to larger segments of the population. Investments in social and affordable housing is needed. In a later stage, when the risks are lower, these efforts will pave the way for more commercial real estate investors and businesses. The regeneration policy is integrated in city and community plans combining housing infrastructure with education, health, transport, social services. Such area-based interventions are difficult to take on based on the target group definition of the SGEI Decision.

It should be reminded that dysfunctional housing markets generate important negative externalities for the rest of the economy. For example, housing shortages affect the mobility of workers in the labour market.⁴⁰ In the larger Stockholm region housing shortage is estimated to result in SEK 22 billion in loss of growth⁴¹, mainly due to difficulties in recruiting competent staff.

The local waiting list for social or public housing in a town includes households with **varying needs and protection levels defined by public authorities** for which there are not enough adapted services. The return on investment is limited due to regulated minimum quality levels (accessibility, energy performance, domotica, no overcrowding, care services) or guaranteed protection (rent prices and tenant protection) which makes this unattractive and too risky for a commercial investor. Only some dedicated

³⁹ Inadequate housing in Europe: Costs and consequences, Eurofound, 18 August 2016

⁴⁰ Barcelo, C. (2003) *Housing Tenure and Labour Mobility: A Comparison across European Countries*, CEMFI Working Paper No. 0302. Oswald, A. J. (1999) *The Housing Market and Europe's Unemployment: A Non-Technical Paper*

⁴¹ Swedbank, 2014

companies are willing to provide this specific housing demand with state support. This guarantees minimal living standards for all, not only vulnerable groups.

In larger urban areas demographic growth has not been met by a proportional increase in housing construction. The consequence – a severe housing shortage – is a major market failure which has been aggravated by the widening income gap. Access to housing is becoming an insuperable problem to a growing number of low- and middle income households.

In a shrinking city, the authorities decided to **protect remaining residents from the effects of demographic outflows** by supporting the supply of adapted housing for elderly and preserve and attract young households as well by renovating the old buildings. This requires state support to the local housing company because the long payback time and uncertainties about the returns increases risk and makes bank finance more expensive in an area already avoided by regular investors. At the same time the home-owners accelerate the trend and put more price pressure by putting their homes on the market. Housing policies in shrinking areas require Services of General Economic Interest that deal with special dynamics and investments beyond the target group defined by the Commission.

House prices **in city of Stockholm** have surged in recent years. The local government wants the city to remain accessible for many layers of the population (including young households, low and middle incomes, workers such as teachers, police officers, nurses, etc.). However it finds the ‘gentrification’ trend is excluding those groups and place a pressure on transport capacity and commuters. In a number of Member States speculation in –existing or new- real estate is helped with generous fiscal support schemes for home-owners and the increase of mortgage-debt since the 90’s (leading to higher LTV) have kept adding pressure on house prices. While demand is rising, supply is lagging behind. There are not many vacant plots, but one option is to sanitize an industrial site and build a mixed project with two flats and individual dwellings. This would provide housing for vulnerable groups (25%), lower income groups (50%) and certain categories of key workers (25%), together with a care centre, social services, a public library and shops on the ground floor. This should also become an energy neutral community to be in line with 2030 and 2050 energy goals. The city did not find interest from commercial investors and approached social and cooperative housing providers. To make the project feasible a national fund and the city will need to provide a discount on the land and a subsidy. There are doubts if the scheme is exempt from notification. And, if not, how the notification will be assessed knowing that previous decisions by the Commission used a similar vulnerable target group approach for social housing as in the Decision. This would probably mean the project cannot be achieved, or only for very low or very high income groups.

Another city mentions three main challenges: very high number of evictions (2400 a year), 80% of which due to non-payment of the rent, especially affecting the lower-middle class; high rent prices, preventing lower-middle class to access the private rental sector; a high vacancy rate in the private sector (31.200 dwellings vacant in 2014) and very small public rental stock.

The city is facing public finances and public subsidies shortages due to austerity measures in Spain, but must build more public housing stock (currently only 2% of total stock), in a framework which can be challenging for the provision of affordable housing because of EU state aid rules.

Following the Decision on Dutch social housing from the European Commission, a Dutch city signals the reduction in the social housing stock, was particularly detrimental to the lower middle class, which is now excluded from social housing and struggles access the commercial rental market or homeownership. As a result some critical professions with lower middle incomes (teachers, nurses, policemen, etc.) have increasing difficulties to find affordable housing in their city.

Another example is the **refurbishment of multi-apartment residential buildings**, which are the principle source of energy consumption, especially in Central and Eastern Europe which require substantial investments⁴². These measures contribute to the general interest in numerous ways (improve health, fight energy poverty, climate goals, energy independence). But the organization and financing of renovations face market failures that require support, including loans from the European Investment Bank. National actors and financial parties struggle how to apply complex state aid rules, including SGEI rules, in multi-apartment complexes with mixed tenures and mixed public-private ownership. Refurbishment of such buildings could likely not be qualified as SGEI from a State aid point of view if they are not labelled as social housing. However, there are other legal bases besides the SGEI rules for state aid that lend themselves to this type of measures. E.g. the programs where the EIB supports the energy efficiency enhancement of multi-apartment buildings are usually qualified as de minimis aid to the tenants.

The complex nature of state aid legislation at EU level leaves many cities and housing associations with questions about their scope to intervene in the provision of affordable and adequate housing. These examples above show social and affordable housing cannot be linked to one target group and is often designed by national and local authorities as an instrument to contribute to territorial policies and to respond to diverse types of local needs where housing provision is an end goal as well platform to enhance the lives of people.

⁴² Eurofound correspondents from six countries, primarily in central and eastern Europe (Estonia, Germany, Hungary, Latvia, Lithuania, and Slovakia) pointed to a need for more energy efficient dwellings. For instance, Latvia has an ageing housing stock which is characterised by poor energy efficiency and poor living conditions for local residents; 70% of apartment blocks in the country are over 50 years old. Flat owners often spend half of their monthly wage on heating bills. The Eurofound report shows the investments needed to renovate inadequate housing in those six countries would amount to 70 billion euro (Eurofound, Inadequate housing in Europe: Costs and consequences, 2016)

7.3 Contributions from members of the Partnership

In this chapter the contributions of members of the partnership are collected.

7.3.1 IUT – International Union Tenants

To deal correctly with the problems of the housing market, it is of vital importance to understand the peculiarities of the housing market. A common mistake among economists is not to assess these peculiarities correctly and as a consequence they fail to understand that the same principles cannot be applied to housing as, for example, the cheese market.

Housing markets are defined by several market failures. Market failures signify that market-driven outcomes diverge from socially acceptable outcomes. In comparison to production of other goods, housing construction is extremely capital intensive, time consuming and the result is immovable and thus unique. At the same time adequate housing is considered a human right on the same level as food, health care or education. It is a paradox that a basic need as housing is subject to a market filled with such complexities and failures as the housing market.

Optimal markets require competition between suppliers, perfect information among agents (buyers and sellers), markets that fully value externalities into the pricing of goods and services, no missing markets e.g. non-provision of public goods and under provision of merit goods, an equitable final distribution of scarce resources.

The housing market is far from an optimal market. Chronic housing shortages and shortages of affordable homes have been a major problem for many years, as well as too many poor quality homes

Housing markets are incomplete; they do not provide low-income earners with adequate or affordable housing. Housing markets have negative externalities; housing shortages affect the mobility of workers in the labour market.⁴³ Mainly due to difficulties in recruiting competent staff the larger Stockholm region housing shortage is estimated to result in SEK 22 billion in loss of growth.⁴⁴ Housing is by nature a complex product and connected with asymmetric information between buyer and seller. Housing markets are unstable; increased production can only in the very long term satisfy an increase in demand while demand can increase sharply in a short time (and decrease). Price becomes the only valve to regulate demand pressures. Since flow is relatively low in relation to log, single purchases of housing in a defined area drive up prices. Those who master production can optimize supply so that market prices are kept high. The greater the concentration is in the housing construction industry, the lower the probability there will be a balance between supply and demand. The sector will also focus on the part of the market where returns are the highest, that is the housing needs of high income households. As a consequence of all these failures housing markets fail to limit the size of the gap between income earners.

⁴³ Barcelo, C. (2003) *Housing Tenure and Labour Mobility: A Comparison across European Countries*, CEMFI Working Paper No. 0302. Oswald, A. J. (1999) *The Housing Market and Europe's Unemployment: A Non-Technical Paper*

⁴⁴ Swedbank, 2014

These market shortcomings are visible in almost all of Europe's larger cities as well in many smaller cities. Sharply rising income inequalities and a growing migration to major urban areas lead to prices on housing exorbitant not only for poor households but also middle-income families. A major task for society must be to balance these market failures.

Today's housing policies are inadequate. In most Member States generous subsidies are handed out to support home ownership, while subsidies to rental housing or social housing are low or non-existing. This leads relatively poorer conditions in in large parts of rental housing. At the same time owner homes to a larger degree than rentals are inhabited by high income earners, rendering these subsidies incompatible with social inclusion. The lack of neutrality between different forms of housing is a major driving force behind segregation and social inequality in Europe.

"What about investing into cheap, affordable rentals?" the European Commission asks in their comments on the state aid opinion of the housing partnership. This is exactly what is needed to meet the demands of the urban poor and the urban middle class. These investments do however not come about with the existing limitations of social housing and private investors are not standing in line to invest in this kind of housing.

Changing or completely abolishing the definition of social housing would give Member States access to a wider range of measures to meet the goals of the urban agenda. By identifying and striving to overcome unnecessary obstacles in EU policy, the Urban Agenda for the EU aims at enabling Urban Authorities to work in a more systematic and coherent way towards achieving overarching goals.⁴⁵ The overarching goal of partnership 3 is to reduce poverty and improve the inclusion of people in poverty or at risk of poverty in deprived neighbourhoods. The overarching goal of partnership 4 is to have affordable housing of good quality. In this focus will be on public affordable housing, state aid rules and general housing policy.

The EC states correctly that new evidence shows that national housing markets are fragmented. To apply one single rule to these different markets – that social housing should be limited to disadvantaged citizens or socially less advantaged groups – does not help the Urban Authorities to meet the goals of the Urban Agenda. For solutions to be adequate they must take into consideration the shortcomings of each and every market and these can, as the EC correctly states, differ. In this perspective it is most peculiar that the only SGEI specifically regulated by the Commission is social housing. It would be interesting to hear the Commission elaborate on why this is the case. In our opinion the only way out of this deadlock is to abolish the imposed limitation of social housing totally.

The objective of the urban poverty partnership is to reduce poverty and improve the inclusion of people in poverty or at risk of poverty in deprived neighbourhoods. Urban poverty in the context of the Urban Agenda refers to structural concentration of poverty in deprived neighbourhoods and the remedies are urban regeneration of deprived neighbourhoods and socio-economic integration of people living in neighbourhoods. Social integration is of tantamount importance to meet social unrest and dissolve ghettos. To a large degree these phenomena are a result of the shortcomings of the housing sector. To

⁴⁵ Objectives and scope of the Urban Agenda for the EU - Pact of Amsterdam

meet these challenges public sector involvement is needed. It is however hampered by the limits of the SGEI definition of social housing as social integration is not included. Subsidized housing in or in the vicinity of deprived neighbourhoods open to middle-income households would change the social structure of these areas. Social and public housing in some Member States have integration as their prime assignment and the idea is to create a social mix within the properties of the companies. These Member States see social mixture as way to social integration, but their ambitions are quenched by the narrow definition of social housing.

We believe Member States are best suited to analyse and come up with solutions that bring about balance on their different housing markets and socially more equitable markets. The Commission still has the prerogative to scrutinize and correct deviations from state aid rules. The Commission suggests that Member States should be given the possibility to prepare a better national definition for SGEI, which also promotes the goal of non-segregation and analyses who are in housing need in that given Member State. This, however, does not solve the problem, which the Commission itself acknowledges, i.e. that national housing markets are fragmented. Solutions for each housing market must be based on the facts on the ground, and not a national fit for all solution.

The conflict between State aid and private developers can easily be overcome by inviting private housing developers to become social landlords. This solution has in reality been tested for many years in Germany.

7.3.2 Slovenia

Slovenia, as a member state of Housing partnership of the UAEU, strongly supports the proposed statement. We would like to emphasize that housing policy's function - as a public intervention in the housing field - is to provide incentives and support to the economic development and advancement of the whole society, in terms of maintaining the population and ensuring it a quality living environment. Consequently we cannot agree with the Commission's restrictive interpretation of social housing only to "disadvantaged citizens or socially less advantaged groups". Specially, because at the end of 2015 Slovenia adopted new Resolution on the National Housing Programme 2015–2025 (ReNSP15–25), which devotes particular attention to creating conditions for providing quality of life for various target populations groups. Interlinked measures in various priority areas, in the form of project packages, will address the housing needs of various population groups: mainly the young and the elderly.

Previously the activities of the state had principally focused on social transfers to provide for the population's housing security, while the economic and the spatial planning impact of the housing policy remained a secondary concern. As a result the current situation is as follows:

- there is a shortage of housing in areas where the need for them is the greatest;
- there is a shortage of rental housing, in particular housing that would allow vulnerable population groups to address their housing needs;

- the share of privately-owned dwellings is very high, and this has a considerable impact on the status of the housing stock;
- the housing stock is getting older – it does not meet the energy and functionality standards of modern society and results in an increased cost of living;
- investors show no interest in investing in housing that is in the public interest;
- the legislation in force does not support the rental market – the fiscal and the housing legislation in particular do not allow for the implementation of balanced measures aimed at establishing an effective system of housing supply;
- mobility of the population is low – in the sense of preparedness to change dwellings in relation to the needs arising in different periods of life.

In Slovenia the supply of housing is particularly insufficient in major cities and urban centres, where the demand – because of better employment and educational opportunities, accessibility of public authorities and services, and better traffic connections – is the greatest. Due to the high demand, the property prices in these areas are higher than elsewhere. Statistical data also show that the availability of housing in peripheral and economically less favourable areas is greater and exceeds the needs of the population. In order to provide a balanced supply of adequate dwellings, it is above all necessary to bring the existing unoccupied housing stock back into residential use, and thus increase the volume of the usable housing stock. In areas with great demand for dwellings it is necessary to provide a combination of spatial planning and fiscal measures that will encourage investors to invest in the construction of adequate dwellings, and thus allow for the creation of a stable housing market in the long term. Considering that in the majority of cases people are looking for a dwelling for the first time, and are not trying to permanently address their housing need, the long-term target is the construction of rental dwellings, both public and private.

In order to increase the housing stock adequate and appropriately distributed building land with infrastructure in place will be provided in the long term. In particular degraded urban areas will be targeted that are suitable for residential construction and that may bring about urban and social renewal and overall regeneration. In areas hit by depopulation, such as border and mountain areas, it is imperative to create conditions for maintaining people in these areas and to enable people who wish to remain and work there to renovate the existing housing stock; and for meeting the development policy targets by adopting adequate spatial planning solutions. The housing and residential building land tax policy must work hand in hand not only with the targets of the fiscal policy, but also with the targets of the housing policy.

Providing incentives and assistance for alternative forms of supplying dwellings, such as housing cooperatives, will help increase the number of options and choices for addressing individuals' housing needs.

The ReNSP15-25 envisages that the central role in the increase of the rental housing stock will be played by the Slovenian Housing Fund in cooperation with local communities.

The Housing Fund has established a professional and project-based cooperation with the public and private sectors and, with its operation in various areas, contributes to the achieving of goals, set in developmental, spatial and social development programmes of the state, as well as the regulation of conditions in the housing area and the improvement of legislation in the field of its operation. In the years of its operation, it became nationally and internationally recognised implementing authority for housing policy of the state in Slovenia, which, with its constant public tenders, public calls, and programmes, offers a variety of products for construction, finalisation, reconstruction, purchase and rental of apartments, both for material persons as well as for legal entities.

It is authorised to:

- give long-term loans with favourable interest rate to material persons and legal entities for the acquisition of non-profit rental housing
- give long-term loans with a favourable interest rate to material persons and legal entities for the acquisition of their own apartments and residential buildings through purchase, construction, or for maintenance and reconstruction of apartments and residential buildings
- invest into apartment construction and building land
- provide aid in the payment of loans
- does real estate business with the purpose of ensuring public interest
- ensures financial motivation for long-term housing savings, especially in the form of premiums for savings of material persons
- encourages various forms of ensuring owned and rented apartments: with rent purchase of apartments and renting them out, with the sales of apartments in form of leasing, with co-investments with public or private investors, and similar
- carries out other legal tasks and tasks for the implementation of the national housing programme.

To sum up, we firmly believe that housing policy is a comprehensive policy that demands the support of the whole government and the responsibility of all line ministries and all levels of society in order to carry out the agreed measures. Affordable housing will create conditions for efficient economic growth, as housing supply that meets the needs of the population provides impetus to economic development, helps reduce traffic and traffic emissions, and ensures the rational use of resources. A country that provides its population with options and conditions to have adequate and affordable housing in different periods of their lives ensures equality of opportunities for all, increases social security, eliminates poverty and contributes to sustainable demographic renewal in a long-living society.

We are of opinion that it's up to each member state (and its local and regional authorities) to define its policy in this area and therefore we completely agree with the statement that is proposed by the Housing Partnership of the Urban Agenda for the EU.

7.3.3 Poznan

In order to avoid any confusion we see a need of clear indication that social services within the meaning of SGEI include both social housing and affordable housing.

[Proposing] a deletion of categories of persons, towards whom state help should be addressed (i.e. "disadvantaged citizens or socially less advantaged groups"), would also help in understanding the point of view presented in opinion.

The [Guidance] states that the decision of the European Commission concerning SGEI contains a definition of social housing. In fact the EC decision does not contain such a definition. We propose a modification of wording in the confusing sentence, E.g. use such expression as "quasi-definition" or "clarification the Commission." We suggest an additional remark that the current partial quasi-definition unnecessarily limits the competences of the Member States by indicating the target group, which may receive directed state support in the form of social housing.

We also propose a clear indication, that the determination of the target group shall belong to the sole competence of the Member States.

7.3.4 Other positions and decisions about state support for social housing

European Parliament: *Urges compliance with Article 14 of and Protocol No 26 annexed to the TFEU, under which **public authorities are free to determine how the social housing sector is organised and funded and what types of household are eligible, with a view to meeting the needs of the local population and to ensuring a high level of quality, safety, affordability, equal treatment and the promotion of user rights; sees the intervention of public authorities here as a response to the shortcomings of the market, with the aim of ensuring universal access to decent, affordable housing in accordance with Articles 16, 30 and 31 of the European Social Charter.***

Committee of the Regions: *It is up to the Member States and local and regional authorities to define services of general interest in the context of social housing policy, and the way in which they must be made available; and also stresses that it is not within the Commission's remit to establish the conditions for allocating social housing or to define the categories of household whose basic social needs cannot be met by market forces alone; (own-initiative opinion 2011)*

*[CoR] advocates **widening the definition of social housing contained in the Commission Decision of 20 December 2011:** to give the Member States more discretion in planning, delivering, financing and organising the construction of social housing and guarantee the democratic right to choose, **the restriction of social housing to "disadvantaged citizens or socially less advantaged groups" should be removed.** The right to adequate and affordable accommodation should be given more priority, because the inability of the housing market to meet everybody's accommodation needs affects not just people who have no access to housing at all, but also the occupants of housing that is hazardous to health, inadequate or overcrowded, as well as people who are paying most of their income on rent or their monthly mortgage payments. (own-initiative opinion 2016)*

European Commission: in England we may have a situation where an average housing price in local markets in Northern England is £35.000 and in greater London £900.000. This means that there are different types of vulnerability that are the result of the housing market differences. This also means that investment and level of housing subsidy to make the product affordable is considerably different. However, the at-risk-of-poverty rate in England is defined as equivalised disposable income (after social transfer) below the at-risk-of poverty threshold, which is set at 60 % of the national median equivalised disposable income after social transfers. This indicator does not take into account the cost of housing or the differences of thereof (assumes an average national price at least). This simple example suggests that there may be clashes between policies at the national level that would make the implementation of the EU social housing definition challenging (even this is not the case in the UK).

Slovenia does not agree with the Commission's restrictive interpretation of social housing only to "disadvantaged citizens or socially less advantaged groups". Specially, because at the end of 2015 Slovenia adopted new Resolution on the National Housing Programme 2015–2025 (ReNSP15–25), which devotes particular attention to creating conditions for providing quality of life for various target populations groups. Interlinked measures in various priority areas, in the form of project packages, will address the housing needs of various population groups: mainly the young and the elderly.

Mayors' Resolution for social housing in Europe by the cities of Amsterdam, Barcelona, Berlin, Bratislava, Brussels, Bucharest, Budapest, Copenhagen, Dublin, Frankfurt, Graz, Hamburg, Krakow, Leipzig, Lisbon, Ljubljana, Milan, Munich, Nantes, Paris, Prague, Riga, Rome, Tallinn, The Hague, Turin, Vienna, Vilnius, Warsaw, Zagreb: *'We ask 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.'*

EUROCITIES statement: It is not for the European Commission to define 'social housing'. This definition should be deleted. Housing policy is a competence of the member states. The exemption of social housing from state aid notification in the Almunia package is welcomed in principle. However, as city authorities, we do not agree with the restriction of access to social housing to 'disadvantaged citizens or socially less advantaged groups' as stipulated in the package. This is contradictory to subsidiarity and to the local right to define, organise and finance services of general economic interest, such as social housing. Focusing only on low-income groups limits social cohesion, as it can prevent social mix; it also limits the integration of refugees for example. We recommend that the sentence, which refers to 'disadvantaged citizens or socially less advantaged groups' in recital 11 of the decision of the Almunia package is deleted.

International Union of Tenants: 'The target group of social housing, and the EU jurisprudence, is extremely problematic for cities and regions because it creates uncertainty in the definition of policies and undermines social mix. Therefore, the target group should be defined at local level, according to local needs. This requires a change in current EU legislation, namely the deletion of the definition of social housing in the SGEI decision [of 20 December 2011] (Recital 11).'

Housing Europe: ‘We ask the European Commission to keep the current exemption of social housing under the SGEI Decision and **not link it to a target group defined by the Commission, such as ‘disadvantaged citizens or socially less advantaged groups’**. The revised SGEI Decision should cover the provision of social services by undertakings, including the provision of social housing for categories of households or specific groups who, due to solvency constraints or special needs, are unable to fulfil their housing needs by obtaining decent and affordable housing at market conditions in urban or rural areas.’

Europa Decentraal (Dutch centre on EU law and legislation for local and regional authorities): It can be **hard for authorities to realise area developments projects in conformity with the state aid rules and to act in the public interest at the same time.**

European Commission: 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 Treaty⁴⁶.

According to the Commission’s recent established practice, certain limits are imposed on what may be regarded as a service of general economic interest within the framework of social housing. The public services have a social character; the definition of activities of housing association must therefore maintain a direct link with socially disadvantaged households⁴⁷.

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, should also benefit from the exemption from notification provided for in [the SGEI] Decision (SGEI Decision 2011)

European Investment Bank: The EIB is a major financier of social housing projects across the EU, given its positive effects on urban renewal and social inclusion. **We note that local and national authorities in some Member State face difficulties in applying the State aid rules on Services of General Economic Interest to such projects.** The EIB supports **bringing greater legal certainty in this area**, as there appears to be increasing demand by Member States for supporting social and affordable housing, refugee accommodation, regeneration of declining inner city areas, etc. with repayable support. Therefore, **more clarity and simplicity would also facilitate the preparation and appraisal of social housing projects, leading to more timely investments.**

⁴⁶ Letter of the Vice-President of the European Commission, Almunia to the Mayor of Vienna, 25 April 2014.

⁴⁷ Article-17 letter from the European Commission to the Netherlands, 14 July 2005