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TENLAW: Tenancy Law and Housing Policy in Multi-level Europe

National Report for

BELGIUM

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National Report for Belgium

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1 Housing situation¹

1.1 General features

The special and complicating feature of Belgium is the fact that it has become a federal state² quite recently, while responsibilities for housing were at different levels of government. Belgium consists of the Administrative Regions of Flanders, Brussels and the Walloon Region (also called Flanders, Walloon Region and Brussels in this document). Since 1980 the Administrative Regions are responsible for making housing policy and doing housing research.³ The Brussels Region was recognized in 1988.⁴

Income tax and rent regulation of the private rental sector, the sector without a public task, remained in the hands of the federal government. On both of these counts changes are intended. The favourable income tax treatment of the owner-occupied dwelling will be devolved to the regions as of 1 January 2015.⁵ The Housing Rent Act will be devolved to the regions in July 2014, as explained in Section 5.⁶ If no changes are made by the Administrative Regions in rent control legislation, the national legislation will remain applicable. However, even without any changes, the devolution of these last instruments of housing policy to the regions, will in effect put housing policy completely in the hands of the Administrative Regions and will give them opportunity to deviate from past policies.

¹ The information has been compiled in the period of late December 2012 to early February 2013. In early August 2013 further information was added in response to the questions from the leading team. Finally, in March of 2014 changes were made based on the comment of the reviewers.

² Marietta Haffner et al., *Bridging the gap in social and market rented housing in six European countries* (Amsterdam: IOS Press, 2009), 63.

³ Sien Winters, *De actoren van het Vlaams Woonbeleid* (Brussel: Koning Boudewijnstichting, 2004A), 20: In the period 1980 and 1990 almost no research activities took place. Only after a so-called 'black Sunday' (translated) in 1994, the Flemish government took on the responsibility for good quality research after housing policy got political priority.

The three regions of Belgium based their own policy in the beginning largely on the 1970 National Housing Code (*Huisvestingscode*) which established the legal basis for housing policy in Belgium (Section 1.2, 3.2 and 3.3).

⁴ If statistics are available for Belgium, they will be presented together with those for the regions. Statistics are rounded off to the nearest whole number. Given the framework of the project, however, practical reasons it was not possible to make 4 country descriptions (Belgium, Flanders, Walloon Provinces, Brussels) in one; therefore, Flanders is the region that is described in most detail in sections 1 through 4 as the information was most easily accessible and more than half of the population and households are housed here.

See: Belgium Federal Government, Statistics Belgium, 'Structuur van de bevolking volgens huishoudens', <<http://statbel.fgov.be/nl/statistieken/cijfers/bevolking/structuur/huishoudens/>>, 17 January 2013.

And: Belgium Federal Government, 'Bevolking - Cijfers bevolking 2010-2012', <http://statbel.fgov.be/nl/modules/publications/statistiques/bevolking/bevolking_cijfers_bevolking_2010_-_2012.jsp>, 17 January 2013.

⁵ This information has been provided by a colleague (January 2013) based on the national coalition agreement of 2011.

⁶ Information about preparations needed in Flanders for this change can be found in: Bernard Hubeau & Diederik Vermeer, *Regionalisering van de federale huurwetgeving* (Leuven, Steunpunt Wonen, 2013).

1.2 Historical evolution of the national housing situation and housing policy

- *The historic evolution of the national housing situation and housing policies.*

Since the first Housing Act came into force in Belgium in 1889, central government's policy aim was to stimulate owner-occupation.⁷ Governments led by the Catholic Party in particular have promoted this growth, with their emphasis on private initiative and the nineteenth-century model of family life.⁸ The Liberals, too, have supported home ownership as a form of societal discipline and as a counter to socialism. In short, all the conservative parties have supported home ownership. Even if the policy focus was home ownership, it also turned out as a question of little choice, as the social rental sector remained small, and the private rental sector did not provide much security to its tenants.⁹ It is thus commonly remarked that Belgians are born with a 'brick in the belly'.¹⁰ Nowadays, home ownership, because of its dominant share on the market, can almost be forced onto households who can afford it, because of it having become the 'social norm', is an argument put forward by De Decker (2007).¹¹

To go back to the roots of housing policy, Boelhouwer and Van der Heijden (1993)¹² suggest based on their literature study that policy changed after the introduction of the 1989 Housing Act that aimed at the stimulating home ownership among labourers. It moved from home ownership to social housing and from indirect to direct involvement. The Belgian government became directly involved in the provision of 'cheap' rental and owner-occupied dwellings via the National Society for Cheap Dwellings as of 1922. For the Socialists this involvement was inspired by the ideals of the garden city movement in England. They aimed for the provision of social housing estates.

When the Conservatives, in particular the Catholic Party, started ruling without the Socialists, another policy switch took place, as they opposed what they regarded "as the collectivization of housing". The 1922 Moyersoen Scheme was the result. It offered grants to potential home owners in order to stimulate housing construction. With the introduction of the Housing Fund of the Association of Large Families in Belgium, which offered cheap loans to large families, the scheme turned more effective in 1928. To counter the decline in the level of housing construction during the depression of the 1930s, the government countered with the introduction of the National Society for Small Land Ownership. It aimed to provide housing in the countryside for urban industrial labourers.

⁷ Peter Boelhouwer & Harry Van der Heijden, *Housing Systems in Europe: Part I. A Comparative Study of Housing Policy* (Delft: Delft University Press, 1992), 84 and 85.

⁸ This taken from Haffner et al., *Bridging the gap*, 64 and 65.

⁹ Pascal de Decker, 'Belgium: Between confidence and prudence', in *Home ownership beyond asset and security*, eds. Marja Elsinga et al. (Amsterdam: IOS Press, 2007), 35.

¹⁰ Cited from: Sien Winters, 'Belgium-Flanders', in *Asset Management in the Social Rented Sector. Policy and Practice in Europe and Australia*, ed. Vincent Gruis & Nico Nieboer (Dordrecht: Kluwer Academic Publishers, 2004B), 62.

¹¹ De Decker, 'Belgium: Between confidence and prudence', 39.

¹² Boelhouwer & Van der Heijden, *Housing Systems in Europe: Part I. A Comparative Study of Housing Policy*, 96 et seq.

Nevertheless, Belgium was confronted with a housing shortage after World War II. Increases in construction failed to occur for a number of reasons. First, rapid rises in wage costs and prices of materials for construction were not followed by increasing grant sizes. Also a rent freeze until 1956 made renting a preferred option. Last, but not least the coalition government, consisting of the Catholic Party and the Belgian Socialist Party, could not agree on post-war housing legislation until 1948. Then two important acts for Belgian housing policy were passed. The De Taeye Act built on the 1922 Moyersoen Scheme and the 1889 Housing Act in designing several instruments with which promote home ownership could be promoted. The 1949 Brunfaut Act made it easier to provide rental housing for households with a low income. Both laws helped to produce a steady stream of production.

When the conclusion was that some of the housing stock being built had been of poor quality, in 1953 the tasks of the then existing housing actors, such as the National Society for Cheap Dwellings, were extended to include slum clearance and replacement construction. These became an essential part of Belgian housing policy. In 1956 with the Leburton Act the various housing schemes were integrated and the need for housing statistics was made public. The establishment of the National Institute for Housing was the result. It was to function as housing research and advisory body which carried out its first survey on housing quality in 1961-1962, followed by the surveys of 1971 and 1982-1983, respectively. With the Housing Code (*Huisvestingswet*) of 1970, the integration of housing policy was realized (see further, Section 3.2 and 3.3).

- *In particular: the evolution of the principal types of housing tenure from the 1990s on.*
- *Explain the growth and decline of the different tenures and the reasons why that happened (e.g. privatisation or other policies).*

Even though housing policies have been the responsibility of the Administrative Regions since the 1980s, the strong focus on home ownership in policy has not changed since regionalization. Consequently, that sector has become the largest sector on the housing market, as Table 1.1 shows. Of the almost four million Belgian occupied dwellings in 2001, up from more than 3.5 million dwellings in 1991, the majority of dwellings are owner-occupied: almost 2.75 million in 2001, up from almost 2.5 million in 1991. Owner occupation thus increased from circa 65% to almost 70% in ten years' time, while renting decreased from 35% to 31%). Averages for a country always conceal regional differences. In this case, Brussels is "lagging behind" the national trend. This development will not come as a surprise, as it may be considered as a well-known fact that rental dwellings generally are overrepresented in urban areas, as is shown for Belgium in Section 2.6. The fact that the size of the Brussels rental sector decreased between 1991 (61%) and 2009 (55%) most likely must be ascribed to the emphasis in housing policy on home ownership.

More recent data than 2001 for all the categories of Table 1.1 and based on household data will be available in due course from the 2011 Census. Data from other sources than the Censuses report slightly lower rates of home ownership than in 2001: 68% in

2007¹³, 65% in 2009¹⁴, and 68% in 2009¹⁵. Based on the share of population living in the different tenures, the most recent available data is for 2009, as Table 1.1 shows. The difference between Flanders and the Walloon Region is five percentage points. As it is up from two percentage points in 1991 (but based on households), it may indicate that the rate of home ownership in Flanders is growing faster than in the Walloon Region.

Table 1.1 Tenure structure: share of occupied owner-occupied and rented dwellings, in Belgium and the Administrative Regions (%), 1991 and 2001 (based on occupied dwellings implying a household base)¹⁶, 2009 (based on persons/population)¹⁷

	1991		2001			2009	
	Owner-occupation	Renting	Owner-occupation	Renting		Owner-occupation	Renting
Region of Flanders	69	31	74	26		77	23
Walloon Region	67	33	70	30		72	28
Region of Brussels	39	61	43	57		45	55
Belgium	65	35	70	31		72	28
Belgium, dwelling total	1,270,000*	2,400,000*	2,709,868	1,188,255		Nav	Nav

* Estimated from graph.

Nav = data not available

A more detailed classification of **home ownership** and renting tenures for the year 2009 can be observed in Summary table 1. Based on number of households, it is the **outright owners** (households without a mortgage) that make up the largest tenure in Belgium (36%). The Walloon Region can be found exactly on the country-average, while it is higher for Flanders (39%) and much lower for Brussels (22%). With a Belgian average of 30% the group of **home owners with a mortgage** comes second (30%); again following a similar distribution across the regions: highest for Flanders (32%), closely followed by the Walloon Region (31%) and the Region of Brussels (17%).

Furthermore, given the urban context (see above), Brussels with 12% is the region with the largest share of **renting with a public task** (here called the rental tenure with a **below-market rent**; elsewhere in this publication called **social rent**). With 47% it is also the region with the largest share of **private renting** (the **sector without a public task**). Thus the growth of home ownership has caused the rental sector to decline.

¹³ Based on calculations with EU-SILC 2008 database reported on in: Marietta Haffner, Christian Lennartz & Kees Dol, 'Housing', in *Countries compared on public performance. A study of public sector performance in 28 countries. Appendices*, ed. Jedid-Jah Jonker (The Hague: The Netherlands Institute for Social Research, 2012a), 91.

¹⁴ Based on OECD Housing Market questionnaire reported on in: Dan Andrews, Aida Caldera Sánchez & Åsa Johansson, *Housing Markets and Structural Policies in OECD Countries*, OECD Economics Department Working Papers, No. 836 (no place of publication: OECD Publishing, 2011), 16.

¹⁵ Dol & Haffner, *Housing Statistics*, 64.

¹⁶ 1991 and 2001 from Dominique Vanneste, Isabelle Thomas & Luc Goossens, *Woning en woonomgeving in België* (Brussel: FOD Economie, 2007), 107 and 108.

¹⁷ Calculation with EU-SILC database from: Sien Winters & Kristof Heylen, *Kwaliteit en betaalbaarheid van wonen: een vergelijking tussen de drie Belgische gewesten als case voor het testen van de samenhang tussen huisvestingssystemen en woonsituatie van huishoudens met een laag inkomen* (Leuven: Steunpunt Wonen, 2012), 4.

- *In particular: What is the role of migration within the country, immigration or emigration from/towards other countries inside and outside the EU (including war migration as in Ex-Yugoslavia)?*

Between 1948 and about 1988 total immigration more or less balanced total emigration with numbers lying between 40,000 and 80,000 persons.¹⁸ Since that year immigration numbers (about 166,000 in 2010) increasingly surpassed emigration numbers (about 80,000 in 2010). In a comparison of EU-countries the Belgian so-called crude rate of net migration plus adjustment¹⁹ amounts to 1.4 (provisional number) which is a little less than the EU-27 crude rate of 1.7. Population growth in the last two decades was helped along by immigration.²⁰

Migration has resulted in a population composition by nationality by 1 January 2011 that is shown in Table 1.2. The group of the population with an EU-nationality is about twice as big as the group that has a non-EU nationality. Nationalities that are called Ex-Yugoslavia is in the question are a minority.

Table 1.2 Population by nationality, in Belgium and the Administrative Regions, 1 January 2011²¹

	Belgium	From EU-27	From other countries	Ex-Yugoslavia
Region of Flanders	5,878,652	268,848	159,138	2,802
Walloon Region	3,186,614	256,642	82,284	946
Region of Brussels	766,744	221,482	130,862	899
Belgium	9,832,010	746,972	372,284	4,647

1.3 Current situation

- *In particular: What is the number of dwellings? How many of the dwellings are rented vs. owner-occupied? What would be the normal tenure structure (see Summary table 1)? What is the most recent year of information on this?*

Table 1.3 shows data on housing stock for both government levels for the years 1991 and 2001 because of the national survey which was held. In this period the stock of occupied private dwellings increased 9%, more in Flanders (9.6%) and the Walloon Region (9.5%), and less in Brussels (3.7%). In the period 1981-2009 the total housing stock is estimated to have increased with about 40%.

¹⁸ Belgium Federal Government, 'Internationale migratie', <http://statbel.fgov.be/nl/statistieken/cijfers/bevolking/migraties/internationaal/>, 17 January 2013.

¹⁹ Eurostat, 'Table tsdde230 Crude rate of net migration plus adjustment', <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tsdde230&plugin=1>, 17 January 2013. 'The indicator is defined as the ratio of net migration plus adjustment during the year to the average population in that year, expressed per 1,000 inhabitants. The net migration plus adjustment is the difference between the total change and the natural change of the population.'

²⁰ KBC, 'De Belgische vastgoed- en hypotheekmarkt. Ontwikkeling, waardering & toekomstvisie', *Economic Research Notes* (23 juli 2012), 12.

²¹ Belgium Federal Government, 'Nationaliteit van de bevolking per gemeente', http://statbel.fgov.be/nl/modules/publications/statistiques/bevolking/nationalite_actuelle_de_la_population_par_commune.jsp, 17 January 2013.

Table 1.3 (Occupied) housing stock, in Belgium and the Administrative Regions, 1981, 1991, 2001, 2009

	Housing stock	Occupied private stock				Housing stock
	1981, 31 March ²²	1991 ²³	2001	2001 (%)	Development (%) 1991-2001	2009 ²⁴
Region of Flanders	1,961,481	2,141,557	2,348,025	58	9.6	Nav*
Walloon Region	1,184,822	1,212,139	1,327,084	33	9.5	Nav*
Region of Brussels	453,674	394,468	408,882	10.0	3.7	Nav*
Belgium	3,599,977	3,748,164	4,083,991	100.0	9.0	5,043,000

* Nav: Data not available

The normal tenure structure of renting versus owning is described in Section 1.2 (see also Summary table 1). Section 1.4 elaborates.

1.4 Types of housing tenures

Summary table 1 shows the normal tenure structure in Belgium in 2009. As described before, home owners without a mortgage dominate, followed by those with a mortgage. The market share of the rental sector amounts to 32%. In Belgium it is the type of landlord that mainly determines whether one can speak of social or private renting.²⁵ This information is presented at the end of this section in response to the question who owns the stock.

- *Home ownership*
 - *How is the financing for the building of homes typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)?*

The group of outright owners is with 36% slightly larger than the group of home owners with a mortgage with 30% (see Summary table 1). In the latter case, repayment loans are popular.²⁶ The loan-to-value (LTV) for which no regulatory limits are set²⁷ is mostly set around 80%. As no regulatory limits are set, it is possible to take out an additional personal loan next to the mortgage, allowing the total LTV to reach more than 100%. In the literature the LTV is either indicated as average, normal or typical and it either

²² Boelhouwer & Van der Heijden, *Housing Systems in Europe: Part I. A Comparative Study of Housing Policy*, 85.

²³ 1991 and 2001 from Vanneste, Thomas & Goosens, *Woning en woonomgeving*, 38. The statistics on occupied stock do not allow for determining the number of vacant dwellings, as can be observed in: Kees Dol & Marietta Haffner, *Housing Statistics in the European Union 2010* (The Hague: Ministry of the Interior and Kingdom Relations, 2010), 63.

²⁴ Dol & Haffner, *Housing Statistics*, 60.

²⁵ This is taken from Haffner et al., *Bridging the gap*, 64.

²⁶ Kristof Heylen & Marietta Haffner, 'The Effect of Housing Expenses and Subsidies on Income Distribution in Flanders and the Netherlands', *Housing Studies* 27, no. 8 (2012): 1142-1161.

²⁷ In: Andrews, Caldera Sánchez & Johansson, *Housing Markets and Structural Policies in OECD Countries*, OECD Economics Department Working Papers, 33.
And: De Decker, 'Belgium: Between confidence and prudence', 36.

applies to first-time buyers or new mortgages or it is about a maximum limit.²⁸ A higher LTV may have to be compensated by a higher interest rate.²⁹ The criterion of banks, however, will not be the LTV, but a lower than 33% expenditure-to-income ratio.

- *Intermediate tenures:*
 - *Are there intermediate forms of tenure classified between ownership and renting (such as condominiums, company law schemes and cooperatives)?*

No intermediate tenures between renting and owning are distinguished in the housing stock statistics, as can be observed from Summary table 1. Information about condominiums has not been found in the period that this study has been carried out. This also applies to company law schemes.

- *Rental tenures*
 - *Are there tenures with and without a public task distinguished? If so, how are they called and what is their share in the housing stock?*

See Section 1.2 and at the end of this section.

- *How is the financing for the building of rental housing typically arranged?*

Social housing – finance

The financing system for social rental and owner-occupier housing that entered into force in **Flanders** on 1 January 2013 (Decree on Financing of Social Housing, *Financieringsbesluit*) contains the rules for the financing of social housing³⁰. Via the so-called Decree on Funding (*Fundingbesluit*) the funds of the Flemish government are paid to the regional support organization called VMSW (*Vlaamse Maatschappij voor Sociaal Wonen*) which will allocate the subsidies in three ways to the investors in social housing: help in the payment of the debt, project subsidies and help to the pre-financing of those taking the initiative for social housing projects.

Since 2006 investments in social housing in **Brussels** are financed mostly with a mix of loans and subsidies paid for by the Administrative Region.³¹ The subsidies were the new element in that reform (see Brussels Housing Code, articles 60-65). In 2006 they were also extended to new construction based on the Regional Housing Plan which was formulated in 2005 to counter the scarcity of affordable dwellings in Brussels with the plan to realize 5,000 new units.³² On the loans, the Brussels Region will guarantee the 27-year loans of the BGHM.

²⁸ European Mortgage Federation, *Hypostat 2011* (Brussels: European Mortgage Federation, 2011), 95.
And: European Central Bank, *Housing finance in the Euro area* (Frankfurt am Main: ECB, 2009): 27.
And: Dol & Haffner, *Housing Statistics*, 97.

And: De Decker, 'Belgium: Between confidence and prudence', 36.

²⁹ De Decker, 'Belgium: Between confidence and prudence', 36.

³⁰ Wonen Vlaanderen, 'Hervorming financiering sociale huisvesting is rond',
<http://www.wonenvlaanderen.be/ondersteuning_voor_professionelen/financiering_van_woonprojecten>,
31 January 2013.

³¹ BGHM Brusselse Gewestelijke Huisvestingsmaatschappij, 'Investeringsplannen',
<<http://www.slr.be/de-bghm/opdrachten/plans-dinvestissements>>, 31 January 2013.

³² BGHM Brusselse Gewestelijke Huisvestingsmaatschappij, 'Het Gewestelijk Huisvestingsplan',
<<http://www.slr.be/de-bghm/opdrachten/plan-regional-du-logement>>, 31 January 2013.

In the **Walloon Region** subsidies (from local actors or via the SWL (*Société Wallonne du Logement*, the regional support organization) of the Administrative Region) are available for the acquisition, construction and renovation, etc. of social rental dwellings and of so-called modest rental dwellings (article 29 of the Housing Code).³³ The former dwellings (social) are to be rented out to low-income households, while the latter (modest) will be supplied to households with a higher than a low-income. The income limit is based on the number of adult household members plus an amount for any child in the household. The dwelling must be rented out to the policy target group for at least thirty years. In the former case, the subsidy can amount to 75%, while in the latter case it can amount to 40% of 'price'; in both cases depending on activity and location. The subsidy will be paid in three shares. The remainder of the needed finance, next to the subsidy, will be arranged via the capital market, either with or without the help or intervention of the SWL.³⁴

Information on the subsidization of social landlords is collected in Section 3.6 and on the taxation of social landlords in Section 3.7.

Private renting – finance

Little information has been found in the literature about the financing of private landlords. Within the group of private person landlords, the self-employed dominate with 46%.³⁵ This share may indicate that they may operate professionally and that loans will be taken out to finance the investment. The organizational landlords – the three housing property firms – that are quoted on the stock market (see Section 3.2)³⁶ will be funded via their stock and probably debt.

Information on the subsidization of private landlords is collected in Section 3.6 and on the taxation of private landlords in Section 3.7.

- *What can be said in general on the quality of housing provided?*

Quality criteria on the housing stock are presented in Table 1.4. The first one is about the age distribution of the housing stock in 2001. The pre-1945 stock is overrepresented in the Region of the Walloon Region and Brussels. The size of the pre-1945 stock of Belgium makes that Belgium has a relatively old stock in comparison with the other EU-countries.³⁷

³³ Direction Générale Opérationnelle Aménagement du territoire, Logement Patrimoine et Energie, 'Logement moyen locatif', <http://dgo4.spw.wallonie.be/DGATLP/DGATLP/Pages/Log/Pages/Aides/SOPP/Art29moyen.asp#Subvention>, 31 January 2013.

³⁴ La Société wallonne du logement, 'Missions et fonctionnement', http://www.swl.be/index.php?option=com_content&view=category&layout=blog&id=50&Itemid=85, 31 January 2013.

³⁵ Marja Elsinga et al., *Beleid voor de private huur: een vergelijking van zes landen* (Leuven: Kenniscentrum voor Duurzaam Woonbeleid, 2007), 14.

³⁶ Haffner et al., *Bridging the gap*, 66.

³⁷ Dol & Haffner, *Housing Statistics*, 54. This source does not contain any younger building stock than presented in Table 9.

Table 1.4 Construction period of dwelling stock, size of dwelling, number of rooms, type of dwelling, and facilities inside home, in Belgium and the Administrative Regions, share (%) category distinguished, 2001³⁸ and 2005³⁹

	Region of Flanders	Walloon Region	Region of Brussels	Belgium
Construction period (2001)				
Before 1919	9	27	16	15
1919–1945	15	18	26	17
1946–1970	32	24	38	30
1971–1980	17	14	11	16
1981–1990	11	7	4	9
1991–2000	15	10	5	13
	100%	100%	100%	100%
Size in square meter (2001)				
<35	8	8	14	9
35–54	19	19	21	19
55–84	27	28	29	28
85–104	22	22	20	22
105–124	13	13	9	13
>124	11	9	7	10
	100%	100%	100%	100%
Number of rooms (2005)				
1-2	5	4	24	7
3	12	8	23	12
4	21	17	23	20
5	26	21	12	23
6+	37	51	17	40
	100%	100%	100%	100%
Type of dwelling (2005)				
Single-family	79	83	22	74
Multi-family	21	17	78	26
	100%	100%	100%	100%
Facilities inside home (2005)				
Bath/shower	99	98	96	98
Toilet with flush	99	98	95	98
Central heating	82	76	84	80
Running water	98	97	98	98
Problems with dwelling (2005)				
Leaky roof, damp wall/floor or rot window frames	12	18	19	15
Too dark	8	14	12	10
Total	100%	100%	100%	100%

The size classification of the dwellings is also given in Table 1.4 for the year 2001. The larger dwellings are slightly overrepresented in Flanders as compared to the Region of the Walloon Region. As to be expected because of the urban context, the smaller dwellings of up to 84 square meters are overrepresented in Brussels. This also applies to the dwellings with up to four rooms. The dwellings in the Walloon Region are the biggest with more than half of them containing six rooms, and more than 80% being a

³⁸ Vanneste, Thomas & Goosens, *Woning en woonomgeving*, 45 and 63.

³⁹ Heylen & Winters, *Woonsituatie in Vlaanderen*, 24 and 27.

single-family dwelling. On the other hand in the urban area of Brussels almost 80% of the dwellings are a multi-family dwelling.

As expected for a western European country, the basic facilities, such as bath/shower, toilet with flush and running water are generally available inside the home. This is much less the case with central heating; especially in the Walloon Region. This finding will be related to the age of the stock. Also in the Walloon Region almost one in five homes seems to have problems with leakiness, dampness or rot; also in Brussels. On average the Flemish dwellings score better on these quality indicators; probably mainly because its stock is slightly younger than in the other Administrative Regions.

Results from similar calculations for 2009 (but based on persons and not households or dwellings) on 1) overcrowding and 2) leakiness, dampness and rot, but then compared to the other EU-countries, show that notwithstanding the similar housing policies that are implemented in the Administrative Regions (see Introduction to Part 1), the quality outcomes are quite different.⁴⁰ The Flemish Region scores better than the EU-27 average on these two counts, while the scores for the Walloon Region are worse, but still better than the EU-average. Brussels with more than 20% of dwellings in 2009 on the leakiness indicator scoring much higher. Overcrowding (12% of homes) is lower than the EU-average.

In all Administrative Regions the quality of owner-occupied dwellings on average is better than for tenants.⁴¹ Especially, housing quality of the population living in private rental dwellings is worse than of those living in the other tenures.

There are thus clear differences across the Administrative Regions concerning the housing situation: tenure size, etc. But also within the regions differences can be found between the more rural and the more urbanized areas, as the analyses with a database with rent contracts (27 May, 2010) in the rental sector shows for Flanders.⁴² This database for the registration of rental (social and private) contracts for Belgium has been especially well filled since 2007 with new contracts. Since that year it does no longer cost anything to register a contract, and a legal obligation for landlords to register new rental contracts was introduced. Median rent levels in districts vary from 435 Euro per month up to 616 Euro per month. The relationship with urbanization shows that the cities of Antwerp and Gent have the lowest median rent, while in the areas around the cities, the highest median rent levels can be found. The expectation is that these differences depend mainly on the composition of the housing stock in the different localities based on dwelling type, size of the dwelling, and other quality characteristics. With a hedonic price analysis an another database, it was shown that the age of a building, the type of dwelling, and number of bedrooms are important explanatory factors for the rent level.

⁴⁰ Winters & Heylen, *Kwaliteit en betaalbaarheid*, 27.

⁴¹ Winters & Heylen, *Kwaliteit en betaalbaarheid*, 24.

See also: Heylen & Winters, *Woonsituatie in Vlaanderen*, 24 and 27.

⁴² Sien Winters, *Huurprijzen en richthuurprijzen. Deel VI: Synthese* (Heverlee: Steunpunt Ruimte en Wonen, 2012), 7 et seq.

Based on tenure structure and quality (and other criteria as well, such as income and income poverty), it is concluded that the housing situation may differ across regions, even though housing policies are similar.⁴³ One example may be that because the Walloon Region and Brussels have a relatively larger supply of social renting than Flanders, this could imply that lower income groups in Flanders, must live in the more expensive private rental sector (see Section 2.7).

- *What is the market share (% of stock) of each type of tenure?*
- *Which actors own these dwellings (private persons, profit or non-profit organizations, etc.)?*

Summary table 1 shows the normal tenure structure in Belgium in 2009. As described before, home owners without a mortgage dominate, followed by those with a mortgage. The market share of the rental sector amounts to 32%.

In Belgium it is the type of landlord that mainly determines whether one can speak of social or private renting.⁴⁴ If private persons or companies let the dwellings, they belong to the **private rental sector**, as can be observed from Table 1.5.

If a registered or accredited **social housing landlords** (*sociale huisvestingsmaatschappij*; SHM) in Flanders⁴⁵ and Brussels⁴⁶ or *Openbare Vastgoedmaatschappij* (OVM) in Brussels⁴⁷ or *Sociétés de Logement de Service Public* (SLSP)⁴⁸ in the Walloon Region) lets the dwellings, the dwellings are considered as 'social rental dwellings. Accreditation of these landlords is or used to be the responsibility of the regional support organizations for social housing called VMSW (*Vlaamse Maatschappij voor Sociaal Wonen*)⁴⁹, BGHM (*Brusselse Gewestelijke Huisvestingsmaatschappij*) and the SWL (*Société Wallonne du Logement*; see Section 4.3). They were erected in due course after two national organizations for social housing were abolished. Local authorities and municipal welfare organisations known as OCMWs (*Openbaar Centrum voor Maatschappelijk Welzijn*, as they are called in Dutch) or groups of local authorities and OCMWs are also considered as social landlords.⁵⁰

In Table 1.5, which shows the data for 2001, the social rented sector amounted to 24% of the rental sector. With 67% of dwellings, private person landlords owned the largest share of rental dwellings, while private organization landlords' market share amounted to nine percent of rental dwellings.

⁴³ Winters & Heylen, *Kwaliteit en betaalbaarheid*, 27.

See also: Heylen & Winters, *Woonsituatie in Vlaanderen*, 49.

⁴⁴ This is taken from Haffner et al., *Bridging the gap*, 64.

⁴⁵ VMSW, 'Statistiek', <<http://www.vmsw.be/nl/algemeen/over-vmsw/historiek>>, 31 January 2013.

⁴⁶ BGHM Brusselse Gewestelijke Huisvestingsmaatschappij, 'Huisvestingsmaatschappijen', <<http://www.slr.b.irisnet.be/huisvestingsmaatschappijen>>, 31 January 2013.

⁴⁷ BGHM Brusselse Gewestelijke Huisvestingsmaatschappij, 'Beheersovereenkomsten', <<http://www.slr.b.irisnet.be/de-bghm/contrats-de-gestion>>, 31 January 2013.

⁴⁸ La Société wallonne du logement, 'Het netwerk van huisvestingmaatschappijen. Een ambitie, een waardige woning voor iedereen', <http://www.swl.be/index.php?option=com_content&view=article&id=209&Itemid=341>, 18 January 2013.

⁴⁹ VMSW, 'Sociaal wonen mogelijk maken', <<http://www.vmsw.be/>>, 18 January 2013.

⁵⁰ Vanneste, Thomas & Goosens, *Woning en woonomgeving*, 124.

Table 1.5 Rented dwellings according to owner (%), in Belgium and the Administrative Region, 2001⁵¹

	Social renting		Private renting		Total rental market
	Social landlord	Public landlord*	Private person landlord	Private organisation landlord	
Region of Flanders	24		66	11	100%
Walloon Region	27		67	6	100%
Region of Brussels	18		73	9	100%
Belgium	21	3	67	9	100%

* Renting from a public organisation (either a OCMW (see text for meaning of abbreviation) which is a public welfare organization or a municipality).

1.5 Other general aspects

- Are there lobby groups or umbrella groups active in any of the tenure types? If so, how are they called, how many members, etc.?

Different umbrella organizations are described briefly in the following sequence: tenants, owners, others.

Flemish Tenants' Platform (VHP; *Vlaams Huurdersplatform*)⁵². The VHP came into existence on 1 September 2012 as successor to *Vlaams Overleg Bewonersbelangen* (VOB)⁵³. VHP is a non-profit umbrella organization that supports renters' associations (that are united in the ***Vlaamse Huurdersbond***) in the development of their vision and work package, coordinates their consultations, offers advice and governance support and promotes their interests at the involved government actors, the societal organizations, the relevant governance and advisory bodies.

More recently, it has also been institutionalized that VHP supports the non-profit umbrella organization **VIVAS, Association of Social Tenants (*VIVAS. Vereniging van Inwoners van Sociale Woningen*)**⁵⁴ for social dwellings (social tenants) in their consultations by providing information and by stimulating their cooperation and consultations. Furthermore, it promotes their interests and points of view, it provides research, education, etc. It help with setting up tenant participation.

Last, but not least VHP provides a platform of documented knowledge exchange about renting and housing for their members. Next to the tenants' associations and VIVAS,

⁵¹ Vanneste, Thomas & Goosens, *Woning en woonomgeving*, 124 and 125. Not shown in the table is the 2% of Belgian households that live rent-free. Calculations with EU-SILC database for 2005 also show that 2% of rental dwellings is rent-free.

See also: Kristof Heylen & Sien Winters, *Woonsituatie in Vlaanderen. Gegevens en mogelijkheden van de EU-SILC* (Heverlee: Steunpunt Ruimte en Wonen, 2008), 18. A tenure type as cooperative owners or cooperative tenants is not specified in the data.

⁵² Huurdersbond, 'Vlaams HuurdersPlatform' <<http://www.vob-vzw.be/>>, 25 January 2013.

⁵³ It was the only umbrella organization that was recognised and subsidized in the Flemish Housing Code (see Section 3.2). Presumably, this will now be the case for the VHP.

⁵⁴ Vivas, 'Netwerk sociale huurders', <<http://www.vivas.be/>>, 25 January 2013.

different other societal organisations concerning housing, poverty and welfare are the members, as well as a number of experts that are member based on their personal expertise.

The VHP seems to support tenant organizations, while the **Tenants' Union (*Huurdersvakbond* or *Syndicat des Locataires*) in Brussels**⁵⁵, which is a non-profit organization, defends the right of (individual) tenants; especially of social tenants. It organizes advice, takes part in projects of social cohesion, aims for integration via housing, and campaigns, if necessary.

Brussels Federation of Tenants Associations (*Brusselse Federatie van Huurdersverenigingen*; BFHV⁵⁶ or *Fédération Bruxelloise de l'Union pour le Logement*; FéBUL⁵⁷). This non-profit umbrella organization is member of the BRoW and defends the rights of the tenants. It is an educational and support center for tenant organizations, social cohesion projects, advisory boards of tenants and other organization that strive for the right to housing. It also invests in 'action-research' translated and organizes and participates in activities that aim for implementing the right to housing, even if it is a partial right.

Walloon Association of the Advisory Committees of Tenants and Owners (*Association Wallonne des Comité Consultatif des Locataires et Propriétaires*; AWCCLP)⁵⁸. This non-profit umbrella organization aims to help advisory committees of tenants and owners of social housing that are managed by so-called Housing Societies of Public Services (*Sociétés de Logement de Service Public*; SLSP).⁵⁹ Ninety SLSPs are under the custody of the Walloon Housing Society (*Société Wallonne du Logement*; SWL) (see Section 1.4 and 4.3).

Association for Social Housing (*Vereniging voor Sociale Huisvesting*; VSH or *Association du Logement Social*; ALS)⁶⁰. This national non-profit association aims to promote social housing policy at all levels of government. It also offers specific services to its members to facilitate the management of dwellings. It unites different groups of actors that are involved in the supply and finance of social housing: the social landlords in Brussels and the Walloon Region and the providers of social loans for owner-

⁵⁵ Pianofabriek, 'Lexicon Wonen', <http://www.pianofabriek.be/article.php3?id_article=377>, 23 January 2013.

And: SL Syndicat des Locataires, 'Site officiel du syndicat des locataires', <<http://syndicat-des-locataires.skynetblogs.be/>>, 23 January 2013.

And: Thomas Lemaigre & Baudouin Massart, *Belangrijkste actoren en uitdagingen op het vlak van huisvesting in het Brussels Hoofdstedelijk Gewest* (Brussel: Koning Boudewijnstichting, 2004A), 11.

⁵⁶ BBRW Brusselse Bond voor het Recht op Wonen, 'BFHV – FéBUL', <<http://www.rbdh-bbrow.be/spip.php?article289>>, 23 January 2013.

⁵⁷ Fédération Bruxelloise de l'Union pour le Logement (FéBUL), 'Bienvenue', <<http://www.febul.be/>>, 23 January 2013.

⁵⁸ AWCCLP Association Wallonne des Comités Consultatifs de Locataires et Propriétaires, 'Quels sont les rôles de l'AWCCLP', <<http://www.awcclp.be/roles-awcclp.html>>, 25 January 2013.

⁵⁹ AWCCLP Association Wallonne des Comités Consultatifs de Locataires et Propriétaires, 'Organigramme des différents acteurs du logement', <<http://www.awcclp.be/apercu-des-acteurs.html>>, 25 January 2013.

⁶⁰ ALS-VSH, 'Vereniging Voor Sociale Huisvesting', <<http://www.als-vsh.be/>>, 25 January 2013.

occupation (*sociale kredietvennootschappen*) of the three Administrative Regions. In total there are five divisions for each geographic group. In social renting 90% (more than 87,800 dwellings) and 85% (about 23,500 dwellings) of dwellings are represented by the association in the Walloon Region (78 of 100 social landlords) and Brussels (23 of 33 social landlords), respectively. The financiers operate in three groups according to region.

The Royal General Owners' Union (*Het Koninklijk Algemeen Eigenaarsverbond vzw; KAEV*)⁶¹. This is a non-profit umbrella organization representing the interests of owner-occupiers and owner-landlords in Flanders. It cooperates since 1 April 2010 with the **General Owners and Co-owners Syndicate (*Algemeen Eigenaars en Mede-eigenaars Syndicaat; AES*)**⁶², also called **Syndicat National des Propriétaires; SNP**⁶³ to represent the interest of owners towards other parties. The organization calls itself AES-KAEV.

Federation of Flemish Social Rental Agencies (*Huurpunt, Federatie van SVK's in Vlaanderen*)⁶⁴. Social Rental Agencies (*Sociale Verhuurkantoren; SVK*) offer social rental houses or apartments to vulnerable households as intermediary between private owner-landlords and these households (see Section 4.3). The federation which represents the accredited Social Rental Agencies came into being when the VOB was abolished on 17 September 2012. The website was being built at the time of writing.

Federation of Social Rental Agencies of the Region of Brussels (*Federatie van de sociale verhuurkantoren van het Brusselse Gewest; FSVK*)⁶⁵. This non-profit organization aims to defend its twenty members, to promote the Social Rental Agencies and to extend their numbers, to stimulate the cooperation among the Social Rental Agencies by the exchange of good practices and experiences, to start off and develop the provision of judicial and technical services for the Social Rental Agencies, to represent the Social Rental Agencies in consultations and to inform by organizing

⁶¹ Het Koninklijk Algemeen Eigenaarsverbond, 'Home', <<http://www.eigenaarsverbond.be/>>, 21 January 2013.

⁶² Lemaigre & Massart, *Belangrijkste actoren*, 26.

This source also refers to AES, as if it is also active in Brussels. This is the way it also looks on the website, as it can be read in Dutch and French. The French name implies that it is a national organization for owners of dwellings: SNP/AES, 'Even voorstellen', <<http://www.aes-snp.be/>>, 24 January 2013.

The latter point is confirmed by Thomas Lemaigre & Baudouin Massart, *Acteurs et enjeux principaux du logement. Point de vue général sur la Wallonie et Bruxelles* (Brussel: Koning Boudewijnstichting, 2004B, 7.

⁶³ According to the country expert AES is now called Non-profit Association of United Owners (*Verenigde Eigenaars vzw* or *Propriétaires Réunis asbl*). See also: Verenigde Eigenaars, 'Even voorstellen', <<http://www.ve-pr.be/>>, 5 March 2014.

⁶⁴ HUURpunt, 'Federatie van SVK's in Vlaanderen', <<http://huurpunt.be/>>, 21 January 2013.

And: Sociaal Verhuurkantoor, 'De sociale verhuurkantoren', <<http://www.vob-vzw.be/SVK/tabid/64/Default.aspx>>, 25 January 2013.

⁶⁵ Sociaal Brussel online, 'Federatie van de sociale verhuurkantoren van het Brusselse gewest', <<http://www.bruxellessocial.irisnet.be/CDCS-CMDC/organizationPrint.jsf?orgID=013216>>, 24 January 2013.

And: FEDSVK Federatie van de Sociale Verhuurkantoren van het Brusselse Gewest, 'Welkom', <<http://www.fedais.be/>>, 25 January 2013.

The twenty-eight Social Rental Agencies (<http://huurpunt.be/>; AIS) are also actors on the housing market in the **Walloon Region**, but do not seem to be united in an umbrella organization.⁶⁶

Brussels Union for the Right to Housing (Brusselse Bond voor het Recht op Wonen; BRoW; or Rassemblement Bruxellois pour le Droit à l'Habitat; RBDH)⁶⁷. This non-profit umbrella organization aims to realize and defend the right to sufficient quality and affordable housing. It has about 50 members for whom it constitutes a platform of information exchange. Furthermore, it helps educate social workers and it is member of advisory bodies.

This Union may be member of a federal union called **Rassemblement fédéral pour le droit (RFDH)** together with **Solidarités nouvelles-Charleroi pour la Wallone**⁶⁸ and VOB (which has been replaced by VHP, see above in this section).⁶⁹ A website has not been found.

- *What is the number (and percentage) of vacant dwellings?*
- *Are there important black market or otherwise irregular phenomena and practices on the housing market (especially the rental market)?*

No information has been encountered about either a black market phenomenon on the rental market or about the number of vacant dwellings. In the latter case, the statistics about tenure generally are about occupied dwellings (see Table 1.5). Because of scarcity of dwellings, **Flanders and Brussels**, however, are aiming to stimulate building and non-vacancies via levies (see Section 2.1). No information has been encountered for the Walloon Region.

Summary table 1 Tenure structure* based on households (%), in Belgium and the Administrative Regions, 2009⁷⁰

	Owner-occupation		Renting		Total
	Outright owner	Mortgagor	Below market rent	Private renting	
Flanders	39	32	8	19	100
Walloon Region	36	31	10	21	100
Brussels	22	17	12	47	100
Belgium	36	30	9	23	100

* No intermediate tenures (in the definition of the questionnaire) identified.

⁶⁶ Fonds du Logement des familles nombreuses Wallonie, 'Missions', <<http://www.flw.be/agences-immobiliieres-sociales>>, 25 January 2013.

⁶⁷ BBRW Brusselse Bond voor het Recht op Wonen, 'Wie zijn wij', <<http://www.rbdh-bbrow.be/spip.php?rubrique8&lang=nl>>, 21 January 2013.

⁶⁸ Solidarités Nouvelles, 'Bienvenue', <<http://www.solidaritesnouvelles.be/solidarite/>>, 25 January 2013.

⁶⁹ Lemaigre & Massart, *Acteurs et enjeux principaux du logement*, 8.

⁷⁰ KBC, 'De Belgische vastgoed- en hypotheekmarkt. Ontwikkeling, waardering & toekomstvisie,' 13. About 2% of Belgian households lives rent-free, but is not shown in the table.

2 Economic, urban and social factors

2.1 Current situation of the housing market

- *What is the current situation of the housing market? Is the supply of housing sufficient/ insufficient and where is this the case (possibly in terms of areas of scarcity of dwellings in growth areas versus shrinkage areas)?*
- *How is the demand for housing expected to develop? What is the expectation about the growth and decline in number of households in the future in a scenario of average economic development? Is there a year forecasted where growth in number of households will stabilize or will start declining?*

The structural shrinkage of the Belgian rental sector has been referred to before (e.g. previous section). One of the questions that can be asked based on such an observation is: how much longer will this trend continue? In other words, will home ownership grow to reach a market share of 80%, 90% or even a percentage close to 100%? Presumably, this will be highly unlikely, though the social pressure of becoming a home owner in Belgium seems to be high nowadays.⁷¹ A much higher rate of home ownership seems to be unlikely if one takes into account the trend that is signalled in Flanders: an increase of households with a weak social-economic profile in the private rental sector. These households can neither find a home in the social rental nor the owner-occupied sector.⁷² There will thus be a need of private rental dwellings. Another source states that the number of tenants is increasing in comparison with home owners.⁷³ According to this source, this can be explained with the larger numbers of immigrants and the strong house prices rises in the past fifteen years.

The question will be how this need for (rental) housing will be determined. For **Flanders** information has been found that it has started to estimate housing need. With the Decree on Land and Building (*Decreet Grond- en Pandenbeleid*) that came into force on 1 September 2009⁷⁴ and the Decree of the Flemish Government for the determination of rules for the gap between housing need and building potential (*Besluit van de Vlaamse Regering tot bepaling van nadere regels voor de vaststelling van de spanning tussen de woning behoefte en het bouwpotentieel*) of 3 July 2009⁷⁵, the government determined rules for the municipalities on how to determine the gap.

No further information has been found on the size of this gap between need and construction; only on the projected increase of the number of households. Under the assumption that the thinning of households will continue as up to the year 2004 (strong scenario), the number of households is projected to grow with another fourteen percent

⁷¹ De Decker, 'Belgium: Between confidence and prudence', 39.

⁷² Winters, *Huurprijzen en rijkthuurprijzen*, 1.

And: Pascal de Decker, 'Jammed between Housing and Property Rights: Belgian Private Renting in Perspective', *European Journal of Housing Policy* 1, no. 1 (2001): 20.

⁷³ KBC, 'De Belgische vastgoed- en hypotheekmarkt. Ontwikkeling, waardering & toekomstvisie,' 14.

⁷⁴ Departement RWO, 'Decreet Grond- en Pandenbeleid',

<<http://www.rwo.be/Portals/100/PDF/Publicaties/decreet-grond-en-pandenbeleid.pdf>>, 26 January 2013.

⁷⁵ Staatsblad Moniteur, 'Vlaamse overheid',

<<http://staatsbladclip.zita.be/staatsblad/wetten/2009/10/06/wet-2009035802.html>>, 26 January 2013.

in the period 2005-2025: from 2.5 million to more than 2.8 million.⁷⁶ When the thinning of households is assumed to slow down, the growth is projected to amount to twelve percent, and the number of households will reach a little less than 2.8 million. This amounts to about 300,000 households in twenty years' time. If the number of households indeed develops as assumed, on average 15,000 new households will be looking for a dwelling in Flanders each year.

The Flemish government has also wished to specify the social housing need, and has asked the VMSW to produce such a need figure.⁷⁷ The VMSW concluded that it amounts to around 70,000 candidates in 2011. Formulated in another way, on the basis of the net taxable incomes for 2005 and the rules of 2007, it is estimated that almost half of all Flemish tenants were eligible to rent a social dwelling.⁷⁸ This means that, according to this estimate, about 39% of market tenants were eligible for a social rental dwelling. The social rental sector is thus not only small in absolute terms, but also in terms of eligible households.

It is likely that in Flanders the development of demand for dwellings will be monitored closely. Furthermore, the Flemish government has developed further policies to fight the undersupply of dwellings.⁷⁹ These include that municipalities will be obliged to introduce an activation fee (*activeringsheffing*), if there is structural undersupply of dwellings in order to stimulate owners of building land to start building. Another instrument is the vacancy fee (*leegstandsheffing*) that municipalities may use to counter large vacancies. It is no obligation to charge these fees, but the municipality is responsible to register all vacant dwellings.

Brussels also uses a vacancy fee to prevent vacancies, also because of bad quality of the building.⁸⁰ It has been made more effective in 2010 by accepting it for less exemptions, for example.

- *What is the number/percentage of families/households depending on rental housing (vs. owner-occupancy and other forms of tenure)? What is the number/percentage of immigrants among them?*

Table 2.1 shows that in 2001 the dwellings of non-Belgian households generally are older and more likely to be of the rental type than of Belgian households.⁸¹

⁷⁶ Ruimtelijke ordening, Woonbeleid, Onroerend erfgoed, 'Tabel 1 Geprojecteerd aantal private huishoudens naar huishoudgrootte',

<<http://www.rwo.be/Portals/100/tabel%201.pdf>>, 26 January 2013.

⁷⁷ Vlaamse Maatschappij Voor Sociaal Wonen, *Statistisch bulletin kandidaat-huurders editie 2011. Versie 1.1* (Brussel: VMSW, 2011), 18 et seq.

⁷⁸ Sien Winters *et al.*, *Op weg naar een nieuw Vlaams sociaal huurstelsel?* (Brussel: Ministerie van de Vlaamse Gemeenschap, Departement RWO-Woonbeleid, 2007), 85.

⁷⁹ Ruimtelijke ordening, Woonbeleid, Onroerend erfgoed, 'Veelgestelde vragen',

<<http://www.rwo.be/NL/RWOnieuwsbrief/Hoofdmenu/Veelgestelde vragen/Voorgemeenten/ActiveringsenLeegstandsheffing/tabid/12422/Default.aspx>>, 28 January 2013.

⁸⁰ Stad Brussel, 'Wijziging belasting op stadskankers en leegstand',

<<http://www.brussel.be/artdet.cfm?id=5744>>, 28 January 2013.

⁸¹ Vanneste, Thomas & Goosens, *Woning en woonomgeving*, 42 and 115.

Table 2.1 Households by nationality construction period and tenure (%) in Belgium, 2001⁸²

	Belgian	European Union	Europe, non-European Union	Turkey	Morocco	Other
Construction period						
Before 1919	16	18	17	22	23	15
1919-1945	18	21	24	37	30	25
1946-1970	32	29	40	29	31	37
After 1970	34	32	19	12	16	23
	100%	100%	100%	100%	100%	100%
Tenure						
Owner-occupation	71	58	24	52	28	17
Rent	29	42	76	48	72	83
	100%	100%	100%	100%	100%	100%

2.2 Issues of price and affordability

- *What is the typical cost of rents and its relation to average disposable income (rent-income ratio per household)?*

Table 2.2 shows the average rents paid per month in each tenancy type that has been distinguished and in total per Administrative Region and in Belgium. Two gaps can be observed. First, in Brussels rents on average are significantly higher than in the other two Administrative Regions. Second, rents in social renting are significantly lower than in private renting.

Table 2.2 Rent and total housing expenses (including maintenance expenses, energy costs, insurance, etc.) per month (in Euro) per tenancy type, in Belgium and the Administrative Regions, 2005⁸³

	Social renting		Private renting		Total rental market	
	Rent	Total expenses	Rent	Total expenses	Rent	Total expenses
Flanders	256	389	427	567	390	538
Walloon Region	216	382	378	529	337	439
Brussels	255	374	476	573	448	547
Belgium	241	384	424	562	385	526

For Table 2.2, the rent-to income ratio was not calculated with the EU-SILC database, as income data are from another year than the expense data. However, when this fact is ignored (because rents may not be changed every year in every country), the Belgian rent-to-income-ratio (corrected for housing allowances) averaged almost 29% in

⁸² Rijksoverheid, 'Kenmerken van woningen van allochtonen en autochtonen, 2009', <http://vois.datawonen.nl/quickstep/QSReportAdvanced.aspx?report=cow10_620&geolevel=nederland&eoitem=1&period=most_recent_period>, 22 February 2013.

⁸³ Heylen & Winters, *Woonsituatie in Vlaanderen*, 32.

2007/2008.⁸⁴ If unaffordability is defined as housing expenses taking a larger share than 30% of disposable household income (after housing allowances have been deducted from rent), 34% of Belgian tenants would pay an unaffordable rent in 2007/2008.⁸⁵ This share is relatively high compared to other EU-countries, such as the Netherlands where the share is a little more than 20% of tenants. It must be remembered that the rent-to-income ratio cannot definitely tell whether housing will be unaffordable, as the same ratio may imply different levels of affordability, either because of different levels of income or because of a subjective perception of what amount will be considered as affordable or not.

The expenditure-to-income ratio for owner-occupiers – as calculated in the usual way when expenses are at stake (taking mortgage interest, mortgage repayment and tax deduction into account) – is not available for Belgium.

- *To what extent is home ownership attractive as an alternative to rental housing?*

As explained in Section 1.2, home ownership has grown strongly in Belgium and has always been supported financially by the national and regional governments. Section 3.6 and 3.7 give an impression on the present-day financial aid to the different sectors.

- *What were the effects of the crisis since 2007?*

In Belgium house prices on average have been rising in nominal and real terms since about 1985.⁸⁶ In the period 1995-2011 real house prices have been rising with almost five percent per year, although less in the past five years than in the earlier period. This development, that showed little impact of the crisis since 2007 on house prices, has driven potential candidates towards the rental sector where rents have been rising relatively little between 2007 and 2010 in comparison to other EMU-countries. Further information on the effects of the crisis can be found in Section 2.5.

2.3 Tenancy contracts and investment

- *Is the return (or Return on Investment (RoI)) for rental dwellings attractive for landlords-investors?*
 - *In particular: What were the effects of the crisis since 2007?*

Generally the rental sector has been shrinking since the Second World War.⁸⁷ The fact that the private rental sector is mostly run by landlords who can be called amateur landlords – private persons (and not businesses) with an average of a little more than two dwellings – must be regarded as indication of the unprofitability of the sector. The

⁸⁴ Marietta Haffner & Kees Dol, *Internationale Vergelijking van woonuitgaven met EU-SILC* (Delft: TU Delft, Onderzoeksinstituut OTB, 2011), 12.

⁸⁵ Haffner, Marietta, Christian Lennartz & Kees Dol. 'Housing'. In *Countries compared on public performance. A study of public sector performance in 28 countries*, ed. Jedid-Jah Jonker, (The Hague: The Netherlands Institute for Social Research, 2012b), 250.

⁸⁶ KBC, 'De Belgische vastgoed- en hypotheekmarkt. Ontwikkeling, waardering & toekomstvisie,' 5, 19-20.

⁸⁷ Winters, *Huurprijzen en righthuurprijzen*, 1.

return on investment is thus estimated relatively low for **Flanders**.⁸⁸ Also for Flanders, it is explained that private landlords will often be retired from work and that they will leave the market because of new administrative requirements and because of rising prices that will have made the sale of the dwelling profitable.⁸⁹ The Global Financial Crisis (GFC) will not have affected the situation drastically, as rising house prices indicate a continuing demand for owner-occupation (and a continuing indirect return on investment), instead of an abrupt switch in demand towards the rental sector.

- *To what extent are tenancy contracts relevant to professional and institutional investors?*
 - *In particular: may a bundle of tenancy contracts be included in Real Estate Investment Trusts (REITS) or similar instruments?*
 - *In particular: Is the securitization system related to tenancies in your country? Are commercial (or other) landlords allowed to securitize their rental incomes? If yes: Is this usual and frequent?*

As most landlords are private person landlords with small portfolios, the expectation is that REITS based on or securitization of tenancy contracts will not play a role on the rental market.

2.4 Other economic factors

- *What kind of insurances play a role in respect to the dwelling (e.g. insurance of the building, the furniture by the landlord; third party liability insurance of the tenant)?*

A fire insurance is the oldest and most used insurance for dwellings in Belgium.⁹⁰ It is not an obligatory insurance, but if taken out, it will cover nowadays some obligatory items, such as insurance against flood damage. In principle, the insurance will cover damage to the dwelling and furniture and the like. Such an insurance will also be useful for the tenant, if it includes third-party liability.⁹¹ No information has been found on the penetration of insurances in rental markets.

- *What is the role of estate agents? Are their performance and fees regarded as fair and efficient?*

Almost 30% (2005/2006) of **Flemish** tenants rented a dwelling from a private person landlord via an intermediary which is responsible for the management of the rental dwelling.⁹² Almost 29% makes use of the services of a commercial estate agent; the remainder 1%), almost 4000 dwellings (2007) are rented via Social Rental Agencies (*Sociale Verhuurkantoren*; SVK). Social Rental Agencies offer social rental houses or apartments to vulnerable households as intermediary between private owner-landlords and these households (see Section 4.3). In the Administrative Regions of the Walloon

⁸⁸ Pieter Vandenbroucke et al., *Naar een aanbodbeleid voor de Vlaamse private huurmarkt* (Brussel: Ministerie van de Vlaamse Gemeenschap, Departement Ruimtelijke Ordening, Woonbeleid en Onroerende Erfgoed - Woonbeleid, 2007), 94.

⁸⁹ Winters, *Huurprijzen en righthuurprijzen*, 1.

⁹⁰ FOD Economie, K.M.O., Middenstand en Energie, 'Brandverzekering en natuurrampen', <http://economie.fgov.be/nl/consument/Verzekering/Assurance_incendie/>, 28 January 2013.

⁹¹ Assuralia, Beroepsvereniging van verzekeringsondernemingen, 'Basisinformatie brand en diefstalverzekering', <[http://www.assuralia.be/index.php?id=206&L=0&tx_ttnews\[tt_news\]=1114&cHash=8f56b7df256ee54ce8b2552b0173da0e](http://www.assuralia.be/index.php?id=206&L=0&tx_ttnews[tt_news]=1114&cHash=8f56b7df256ee54ce8b2552b0173da0e)>, 28 January 2013.

Region and Brussels Social Rental Agencies (*Agences Immobilières Sociales*; AIS) are also active (see above).⁹³ In Brussels there were 12 Social Rental Agencies active in 2001. They were renting out 650 dwellings. For the Walloon Region 28 of these agencies are mentioned (see Section 1.5).

2.5 Effects of the current crisis

- *Has mortgage credit been restricted? What are the effects for renting?*
- *Indicate the current figures on repossession⁹⁴ (seizures of houses in case of mortgage credit default of the buyer)? Have repossessions affected the rental market?*
- *Has new housing or housing-related legislation been introduced in response to the crisis?*

As a result of the GFC, in a comparison of five countries⁹⁵, **Belgium** had the smallest decline in GDP in 2009 (-2.9%), as well as in the period 2008-2010 (forecast of -1.3%).⁹⁶ Unemployment remained steady at 7.5% in the period 2007-2009. As the Flemish economy has been stronger than the economy of the Walloon Region, the crisis will have hit harder in the latter region than in the former one.⁹⁷

Even if the Belgian economy did not remain unaffected by the GFC, the housing market appeared relatively unaffected. One of the signs is the continuously rising Belgian house prices of the past fifteen years.⁹⁸ The housing market will also have been steadily growing thanks to government intervention, when at the end of 2008 a number of big Belgian banks were confronted with liquidity problems.⁹⁹ Bankruptcy was warded off and mortgage credit remained available.

The fact that the mortgage market can be described as risk-averse with its low average amounts of housing debt per caput and the relatively low LTV-ratios, can also be considered as having contributed to a steady house price growth.¹⁰⁰ Furthermore, another stabilizer can be considered as limitation of the changes in variable interest rates and allowance for long periods of repossession which is regulated in Belgium. The latter regulation causes banks to be careful in allowing exotic loan types (such as interest-only loans), high LTV-ratios and variable repayment schemes.

⁹² Marja Elsinga et al., *Beleid voor de private huur*, 14.

And: Pascal de Decker et al., *Eigenaars die woningen verhuren aan een sociaal verhuurkantoor. Profiel, motieven en tevredenheid* (Heverlee: Steunpunt Ruimte en Wonen, 2009), 20.

⁹³ Les Agences immobilières sociales, 'Les Agences immobilières sociales', <<http://www.arianet.irisnet.be/legislat/ais.htm>>, 27 January 2013.

⁹⁴ Information about repossessions has not been found.

⁹⁵ Belgium compared with the Netherlands, Germany, Ireland and the UK.

⁹⁶ Harry van der Heijden, Kees Dol & Michael Oxley, 'Western European housing systems and the impact of the international financial crisis', *Journal of Housing and the Built Environment* **26**, no. 3 (2012): 298.

⁹⁷ Kees Dol, Harry van der Heijden & Michael Oxley, *Economische crisis, woningmarkt en beleidsinterventies; een internationale inventarisatie* (Delft: TU Delft, Onderzoeksinstituut OTB, 2010), 11.

⁹⁸ Winters & Heylen, *Kwaliteit en betaalbaarheid*, 5.

⁹⁹ Dol, Van der Heijden & Oxley, *Economische crisis*, 11.

And: Sien Winters & Marja Elsinga, 'Wonen in Vlaanderen in internationaal perspectief', in *De sociale staat van Vlaanderen*, ed. Lieve Vanderleyden, Marc Callens & Jo Noppe (Brussel: Studiedienst Vlaamse Regering, 2011), 228.

¹⁰⁰ Winters & Elsinga, 'Wonen in Vlaanderen in internationaal perspectief', 226.

Another contributing factor to the health of the housing market may be the structure of the Belgian housing market which has been classified as a static housing market.¹⁰¹ This implies that households more or less stay put once they become owner-occupier, instead of moving along a housing ladder from a smaller to a larger dwelling. In such a market private persons play a large role; construction is custom-built (and not at the top of the market to allow for the filtering of dwellings to the starters on the owner-occupied market) and changing housing preferences will effect a renovation instead of a move. Static housing markets therefore are said to be less prone to changing economic environments, as house building will not be speculative but based on demand. This description characterizes well the Belgian situation.

Even if house prices kept on rising, according to Van der Heijden (2012)¹⁰² jobs have been lost in the sector of new construction. Based on this argumentation, the Belgian government lowered the VAT (Value Added Tax) rate of 21% applicable to new construction temporarily to six percent. The period started on 1 January 2009 and was later extended to the end of 2010. The period was extended thereafter to 30 June 2011.¹⁰³ It is not known whether the Belgian government has introduced any other housing-related legislation in response to the crisis. It seems unlikely, however, as the regions are responsible for housing policy, and not the federal government.

In **Flanders**, the government promised to invest an extra 85 million Euro on social rental dwellings based on an earlier conclusion that the social rental sector was too small.¹⁰⁴ Furthermore, the requirements to be able to receive the free Flemish housing expense insurance were eased, such as the drop of most of the income requirements.

2.6 Urban aspects of the housing situation

- *What is the distribution of housing types in the city scale (e.g.: are rented houses mainly in the city centres and owner occupied in the suburbs?) vs. the region scale (e.g.: more rented houses in the big cities, less in the villages?)*

The largest share of dwellings was found in the agglomerations of Belgium in 2001, as Table 2.3 shows, though the growth in the period 1991-2001 took place in the suburbs (+15%) and not in the agglomerations (+5%). The singles are concentrated in agglomerations, while families with children were choosing less urbanized areas.

¹⁰¹ Van der Heijden, Dol & Oxley, 'Western European housing systems and the impact of the international financial crisis', 302 et seq.

And: Dol, Van der Heijden & Oxley, *Economische crisis*, 81-84.

¹⁰² Dol, Van der Heijden & Oxley, *Economische crisis*, 21.

¹⁰³ Federale Overheidsdienst FINANCIËN, *Wegwijs in de fiscaliteit van uw woning* (Brussel: FOD Financiën, 2011), 50.

¹⁰⁴ Dol, Van der Heijden & Oxley, *Economische crisis*, 21.

Table 2.3 Distribution of dwelling types (occupied) according to level of subsidization and single-family dwelling and apartment, in Belgium, 2001¹⁰⁵

		Rental dwellings		Owner-occupied dwellings	Total number of dwellings (%)
	Apartment	Single-family	Apartment	Single-family	
Agglomeration	484,334	190,273	180,782	795,216	1,650,605 (44%)
Banlieu (suburb)	38,982	68,187	13,364	392,188	512,721 (13%)
Housing zone of commuters	64,949	100,472	23,276	571,425	760,122 (20%)
Small city or urban area	51,350	68,905	15,246	319,794	455,295 (12%)
Rural area	21,571	55,990	7,448	333,189	418,198 (11%)
Total	661,186	483,827	240,116	2,411,812	2,146,336

Furthermore, most apartments can be found in large urban environments: five of six rental apartments and almost all owner-occupied apartments (see Table 2.3). The latter group of dwellings constitutes a clear minority on the housing market in Belgium.

- *Are the different types of housing regarded as contributing to specific “socio-urban” phenomena, e.g. ghettoization and gentrification?*

Statistics on the topics of gentrification and ghettoization have not been encountered. The influence of gentrification on residual living is unclear, according to Ryckewaert et al. (2011).¹⁰⁶ On segregation, Bircan et al. (2009) report that concentrations of problems with vulnerable groups and housing will be found in cities. They are also confronted with the pressure on the housing market that is caused by immigration¹⁰⁷. Quality problems seem to persist.¹⁰⁸

- *Do phenomena of squatting exist? What are their – legal and real world – consequences?*

Statistics on the topic of squatting have not been encountered. Squatting did not seem to be illegal in 2013 in Flanders.¹⁰⁹

2.7 Social aspects of the housing situation

- *What is (are) the dominant public opinion(s) towards certain forms of rental types or tenure forms? (E.g. is renting considered as socially inferior or economically unsound in the sense of a “rental” trap?) In particular: Is only home ownership regarded as a safe protection after retirement?*
- *What is the typical attitude of tenants towards different forms of tenure (e.g. owners of privatised apartments in former Eastern Europe not feeling and behaving as full owners)?*

¹⁰⁵ Vanneste, Thomas & Goosens, *Woning en woonomgeving*, 38 and 131.

¹⁰⁶ M. Ryckewaert, P. de Decker, S. Winters, B. Vandekerckhove, F. Vastmans, M. Elsinga & K. Heylen, *Een woonmodel in transitie. Toekomstverkenning van het Vlaamse wonen* (Antwerpen: Garant, 2011).

¹⁰⁷ T. Bircan, M. Hooghe & A. Kayaoglu, ‘Inkomensongelijkheid, migratiepatronen en sociale ongelijkheid in Vlaanderen’, in *De sociale staat van Vlaanderen*, ed. L. Vanderleyden, M. Callens & J. Noppe (Studiedienst Vlaamse Regering, 2009), 363-381.

¹⁰⁸ Ryckewaert, et al., *Een woonmodel in transitie. Toekomstverkenning van het Vlaamse wonen*.

¹⁰⁹ Knack.be, ‘Mathias De Clercq wil kraken strafbaar maken’

<<http://www.knack.be/nieuws/belgie/mathias-de-clercq-wil-kraken-strafbaar-maken/article-normal-93139.html>>, 5 March 2014.

Since the first Belgian Housing Act of 1889, the main objective of central government has been to encourage owner-occupation, regardless of the political party in power.¹¹⁰ Governments led by the Catholic Party in particular have promoted this growth, with their emphasis on private initiative and the nineteenth-century model of family life. The Liberals have supported home ownership as a form of societal discipline and as a counter to socialism. The early policies that were implemented helped richer workers find a newly-constructed dwelling. The sector quickly expanded and became the largest sector on the housing market. It is thus commonly remarked that Belgians are born with a brick in their belly.¹¹¹ Nowadays, it seems to be the case that home ownership, because of its dominant share on the market, can almost be forced onto households who can afford it, because of social pressure, however.¹¹²

Interview results show that in **Belgium (Gent; Flanders)** renting is seen as ‘throwing away money’.¹¹³ This argument was also given as the main reason why the respondents bought their house. Other reasons were that owning a house is always a good investment; you achieve more freedom in adapting the house and also more stability. The Belgians (Flemish) also regard their dwelling as security in times where welfare states and pension systems are under pressure.

The decline of the private rental sector may not only be the result of the growth of home ownership, but also may be due to a more general perception that many rental dwellings simply do not represent good value for money.¹¹⁴ “Complaints about high and rising rents for often poor accommodation and the lack of secure housing are common. The ... most vulnerable groups of the population ... live often in this sector...”. The market rental sector is described as not offering “a stable tenure alternative to home ownership” because of “continuing uncertainty, recurring changes in legislation and the factual power relationship between the tenant and landlord...”. Therefore Summary table 2 shows that home ownership is the preferred tenure in Belgium.

Summary table 2 Social and urban factors in Belgium

	Home ownership	Social renting	Private renting
Dominant public opinion	Preferred		More insecure
Contribution to gentrification?	No information		
Contribution to ghettoization?	No information		

¹¹⁰ From Haffner et al., *Bridging the gap*, 63 et seq.

¹¹¹ Winters, ‘Belgium-Flanders’, 61 et seq.

¹¹² De Decker, ‘*Belgium: Between confidence and prudence*’, 39.

¹¹³ Vicky Palmans & Pascal de Decker, *Households’ perceptions of old age and housing equity: the case of Belgium* (Hogeschool Gent, 2009), 48 and 41.

¹¹⁴ De Decker, ‘Jammed between Housing and Property Rights: Belgian Private Renting in Perspective’, citations on page 17 and page 20.

3 Housing policies en related policies

3.1 Introduction

- *How is housing policy related to the structure and concept of the (national) welfare state, to other welfare policies and the tax system?*

In the terminology of Esping-Andersen¹¹⁵, Belgium's welfare state is classified as a corporatist welfare regime.¹¹⁶ Such a regime will have a relatively high degree of decommodification meaning that households can largely provide for their own social welfare via social policies of the state, independent of labour market income. It also is associated with a relatively high degree of stratification implying that the position of the citizen and the differences between (hierarchies) them will be maintained. On the one hand this is about the effects of how government distributes the income in a society; on the other about the effects of how it distributes the social services in a society (which lead for instance to a lower (stigmatization) social status)¹¹⁷. The mix of state, market and family in the provision of and intervention in housing in a corporatist welfare regime will be based on consensus, cooperation and coordination between social partners and the government. The organization of society is in the hands of families and non-profit organizations: many social services are not delivered via the market by its commercial parties but outside the market, via family services which are often reciprocal or via non-profit organizations which also often do not operate according to market principles. The result of policy will be segmented to maintain the hierarchy in society (often based on group membership, like in traditional families, trade unions or churches). Policy will thus have an incremental, problem-solving and framework type of character.

In Belgium the starting point of social policy is the so-called equivalence principle – the preservation of the standard of living – basing social rights and amounts on salary earned.¹¹⁸ Compared to Germany this relationship will be less strong in Belgium, as minimum and maximum amounts have been introduced as well as the extension of these rights to the people that are not working, but could be working because of age. The aim was that income inequality among groups of beneficiaries would be reduced. Furthermore, as in France, the Belgian welfare system is differentiated according to occupational groups, is pillarized for implementation (like via trade unions), and is based on the family with increased rights of the recipients because of persons to be taken care of. In comparison with the Netherlands, the most salient differences, are the existence of the focus on the family, the absence of universal benefits, and less generous social benefits, because of the larger numbers of recipients. Another difference is the less well

¹¹⁵ Gøsta Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Cambridge, Polity Press, 1990), 1 et seq.

¹¹⁶ Winters & Heylen, *Kwaliteit en betaalbaarheid*, 2.

¹¹⁷ Own elaboration based on:

Joris Hoekstra, 'Housing and the Welfare State in the Netherlands: an Application of Esping-Andersen's Typology', *Housing, Theory and Society* **20**, no. 2 (2003): 58 et seq.

And: Joris Hoekstra, 'Is there a Connection between Welfare State Regime and Dwelling Type? An Exploratory Statistical Analysis', *Housing Studies* **20**, no. 3 (2005): 475 et seq.

And: Joris Hoekstra & Agnes Reitsma, *De zorg voor het wonen. Volkshuisvesting en verzorgingsstaat in Nederland en België* (Delft: DUP Science, 2002), 1 et seq.

¹¹⁸ Winters & Heylen, *Kwaliteit en betaalbaarheid*, 6.

developed second and third pillars of the Belgian pension system. On the other hand, the share of Belgian home owners is relatively high, which in Flanders certainly is the outcome of housing policy regarding home ownership as the cornerstone of the welfare state.¹¹⁹ It is thus no surprise that the Flemish regard their dwelling as security in times where welfare states and pension systems are under pressure.¹²⁰ Possibly, the owner-occupied dwelling can be regarded as the most important indicator of welfare of the elderly.

The issues of tax law in the context of housing policy are dealt with in Section 3.7.

- *What is the role of the constitutional framework of housing? (in particular: does a fundamental right to housing exist?)*

Since the first Housing Act of 1889, encouraging home ownership has been the main objective of the Belgian government.¹²¹ Since 1994, housing policy has had to be based on the right to decent housing which has been enshrined in Belgium's Constitution in article 23.¹²²

Further information on the Belgian Constitution and the international framing of the right to housing can be found in Section 5.

3.2 Government actors

- *Which levels of government are involved in housing policy (national, regional, local); what are they called; how many are there of each?*

The 1970 National Housing Code (*Huisvestingscode*) established the legal basis for housing policy in the three regions of Belgium.¹²³ It summarised all the existing housing rules and regulations at that time, thus forming the legal basis for housing policy in Belgium.

Since 1970, regionalisation has taken place and Belgium has transformed itself from a highly centralised country to a federal state consisting of three autonomous and Administrative Regions.¹²⁴ In 1980, constitutional reforms were passed which officially recognised the **Region of Flanders** and the **Region of the Walloon Region**. The **Brussels Region** was recognised in 1988 (see Section 3.3 and 5).

Powers have been increasingly devolved to the regions. With the law of 8 August 1980, the regions were formally given responsibility for housing policy, although this excluded rent policy and legislation for the private rented sector and tax policy (income tax and

¹¹⁹ Winters & Elsinga, 'Wonen in Vlaanderen in internationaal perspectief', 220.

¹²⁰ Taken from: Winters & Heylen, *Kwaliteit en betaalbaarheid*, 4.

¹²¹ From: Haffner et al., *Bridging the gap*, 74-75.

¹²² Catherine Delforge & Ludivine Kerzmann, *Belgium* (Louvain-la-Neuve: Université Catholique Louvain, not dated), 2.

¹²³ Winters, 'Belgium-Flanders', 61.

And: Haffner et al., *Bridging the gap*, 74-75.

¹²⁴ From: Haffner et al., *Bridging the gap*, 63.

VAT). These policy fields remained the responsibility of **national government**. From a legal point of view, the national government and the autonomous regions are equal.

Alongside the national and regional levels of government in public administration, there are also two other levels of government, the **provincial level** (five Flemish and five Walloon Region) and the **local (municipality) level**.¹²⁵ The 589 municipalities and cities (308 in Flanders, 262 in the Walloon Region and 19 in Brussels) also have some housing responsibilities.

Next to these government levels, there are three **communities** – the French-speaking community, the Flemish-speaking community and the German-speaking community. These communities do not necessarily coincide geographically with the regions. The Flemish-speaking inhabitants of the Region of Brussels, for example, are considered as being part of the Flemish-speaking community though they live outside the Region of Flanders. The language communities are chiefly responsible for cultural affairs and education. The regions are responsible for matters such as planning, housing, land, the environment, energy, employment, economic policy and foreign trade.

The communities and regions are both organised in such a way that they have, in principle, their own governments and their own parliaments. In Flanders, however, these have been merged and there is one combined government and one combined parliament.

- Which level(s) of government is/are responsible for designing which housing policy (instruments)?
- Which level(s) of government is/are responsible for which housing laws and policies?

This description about responsibilities in the field of housing policy indicates that the **federal government** remains, up until the moment of writing this document, responsible for the rent control and tenancy protection in the private rental sector. This type of regulation is to be found in book 3 of the Civil Code¹²⁶ and in the Belgian Housing Rent Act (*Huurwet*)¹²⁷ in combination with the Civil Code. Furthermore, it remains responsible for the national taxes, such as the VAT and the personal and corporate income tax.

The devolution of rent control in the private rental sector (also for leasing and commercial rents) to the regions on 1 July 2014, will put housing policy completely in the hands of the Administrative Regions and will give them opportunity to deviate from past policies. This also applies to the transfer of certain tax expenditures from a central to a regional level (see Section 3.7).

The **regions** are responsible for the registration taxes and the housing policy. After the 1980 state reform, the *Administrative Regions* developed their own Housing Codes in

¹²⁵ Portaal Belgium.be, 'de gemeente', <http://www.belgium.be/nl/over_belgie/overheid/gemeenten/>, 8 February 2013.

¹²⁶ JUSTEL - Geconsolideerde wetgeving, 'Burgerlijk Wetboek'.
<http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1991022032&table_name=wet>, 30 January 2013.

¹²⁷ Federale Overheidsdienst Justitie, *De Belgische huurwet* (Brussel: Federale Overheidsdienst, mei 2012).

due course. These codes offer the framework for the quality control, the organisation and financing of social rental housing (rental housing with a public task) and owner-occupied housing, subsidies for housing for private persons. They will generally attempt the aim to fulfil the constitutional right to housing. Divergence in policy between the regions remained limited, up to today, in terms of central assumptions and strategies.¹²⁸

The regional Housing Codes came into force in different years:

- **Flanders** passed its Housing Code in 1997.¹²⁹ It was based on the constitutional right to decent housing (see Section 3.1). It defines the objectives of housing policy and the tools with which they would be achieved. It created new tools, such as standards for security, health and housing quality.¹³⁰ In the version of 2007, the definition of social landlord was broadened, to include the dwellings that were let by Social Rental Agencies.¹³¹ On the subject of social housing, the Housing Code identifies the social housing associations and their sector organisations as the preferred partners for the implementation of social rental housing policy. The Flemish Housing Code defines their tasks as: 'the provision of social dwellings, revaluation of the housing stock and pursuit of a social land and buildings policy'¹³².

The fact that history of the market rental sector has been a matter of contract and is still largely the legal responsibility of central government rather than of the Flemish government may very well explain the sector's scant treatment in the Flemish Housing Code. The code contains rules on the accreditation of Social Rental Agencies and tenant organisations and on housing quality. The latter rules were stipulated by the Flemish government's decree of 6 October 1998 which defined the supervision of quality control. It was published on 30 October 1998.

Last, but not least, in Flanders the 1997 Housing Code charged local authorities with the task of organising broad consultations with stakeholders in order to coordinate their activities in the fields of housing and welfare.¹³³ These activities are also asked for in order to develop a local housing plan.¹³⁴ The local authorities are considered as having few responsibilities for social housing, however, unless they own some units themselves.

¹²⁸ Winters & Heylen, *Kwaliteit en betaalbaarheid*, 7.

¹²⁹ Ruimtelijke ordening, Woonbeleid, Onroerend erfgoed, 'Vlaamse Wooncode', <<http://www.rwo.be/NL/RWOnieuwsbrief/Hoofdmenu/Regelgeving/Wonen/Decreten/VlaamseWooncode/tabid/12473/Default.aspx>>, 30 January 2013.

¹³⁰ Information on another change can be found on: Wonen Vlaanderen, 'Integriedecreet- en besluit gepubliceerd in Belgisch Staatsblad', <https://www.wonenvlaanderen.be/ondersteuning_voor_professionelen/woningkwaliteit_voor_professionelen/nieuws_woningkwaliteit#item_2510>, 11 August 2013.

¹³¹ Haffner et al., *Bridging the gap*, 64.

¹³² Cited from: Winters, 'Belgium-Flanders', 64.

¹³³ Haffner et al., *Bridging the gap*, 78.

¹³⁴ Wonen Vlaanderen, 'Over woonbeleidsvisie en woonplan', <http://www.wonenvlaanderen.be/ondersteuning_voor_professionelen/lokaal_woonbeleid/ontwikkelen_van_een_woonbeleidsvisie>, 30 January 2013.

- The Administrative Region of the **Walloon Region** passed its Housing Code in 1998 and a reform of it in April of 2003.¹³⁵ On 2 February 2012 the name of the 1998 Decree was changed to Housing and Sustainable Living Code implying that sustainability is being added to the aims of the code.¹³⁶
- In the **Brussels Region** the first part of the Housing Code was passed in July of 2003. Since 1 July 2004 the Housing Code of Brussels includes new rules for the renting out of dwellings.¹³⁷ The code also includes all measures for the regulation of the quality of dwellings. It is thus one of the instruments that aim to correct the living conditions of tenants in Brussels in line with article 23 of the Belgian Constitution. Another reform of the Housing Code took place in 2013.¹³⁸

Next to these typical government levels, in each Administrative Region there is a **regional organisation** that is responsible for the implementation of housing policy concerning social housing.¹³⁹ One of their tasks used to be or still is accredit the social housing organizations. Another one is to implement the subsidization scheme. In Flanders the accredited social housing organizations are called social housing association (*sociale huisvestingsmaatschappij*; SHM); in Brussels, also SHM, but also public real estate association (*openbare vastgoedmaatschappijen*; OVMs); and in the Walloon Region they are called associations of public housing (Sociétés de Logement de Service Public; SLSP).

The regional organizations are the following organizations:

- In **Flanders** it is the Flemish Association for Social Housing (Vlaamse Maatschappij voor Sociaal Wonen, VMSW).¹⁴⁰ It was erected by article 50 of the Flemish Housing Code in 2006. The VMSW is an external, independent government agency. It replaced the Flemish Housing Company (*Vlaamse Huisvestingsmaatschappij*; VHM) and promotes social housing provision. Since 2006, the VMSW has retained its tasks of finance (including financial supervision) and guidance, and was relieved of its supervisory role including the instrument of prior authorisation.¹⁴¹

¹³⁵ Lemaigre & Massart, *Acteurs et enjeux principaux*, 14.

¹³⁶ Haffner et al., *Bridging the gap*, 64.

And: JUSTEL - Geconsolideerde wetgeving, 'Waalse Huisvestingscode en het Duurzame Wonen', <http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1998102939&table_name=wet>, 30 January 2013.

¹³⁷ Brusselse Hoofdstedelijk Gewest, 'De Brusselse Huisvestingscode', <<http://www.huisvesting.irisnet.be/wie-doet-wat/de-brusselse-huisvestingscode>>, 30 January 2013.

And: JUSTEL - Geconsolideerde wetgeving, 'Ordonnantie houdende de Brusselse Huisvestingscode', <http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2003071748&table_name=wet>, 30 January 2013.

¹³⁸ ImmoSpector, Carine Govaert, 'Brussel hervormt Huisvestingscode', <[http://www.immospector.be/NewsView.aspx?contentdomains=OR\(IMMOPRO\)&id=kl1681135](http://www.immospector.be/NewsView.aspx?contentdomains=OR(IMMOPRO)&id=kl1681135)>, 11 August 2013.

¹³⁹ Portaal belgium be, 'De sociale huisvestingsmaatschappijen', <http://www.belgium.be/nl/huisvesting/sociale_huisvesting/sociale_huisvestingsmaatschappijen/>, 13 January 2013.

¹⁴⁰ VWSM, 'Sociaal wonen mogelijk maken', <<http://www.vmsw.be/>>, 18 January 2013.

¹⁴¹ Haffner et al., *Bridging the gap*, 88-89.

- In the **Walloon Region** there is the Walloon Society of Housing (*Société Wallonne du Logement*; SWL).¹⁴² It strives for the aims of Walloon housing policy through the agreement concerning the management that is signed with the government of the Region of the Walloon Region.
- In **Brussels** the Brussels Regional Housing Association (*Brusselse Gewestelijke Huisvestingsmaatschappij*; BGHM) is active.¹⁴³ It came into existence in 1984 as a result of regionalization. It signed an agreement concerning the management with the government of the Brussels Region.

The regions set out housing policy usually by decrees.

For **Flanders** some examples follow. The Decrees on Housing of 24 March 2006 and 30 June 2006 (together with other regulation) form the legal framework for the restructuring of the Flemish ministry responsible for housing. The decrees also form the legal framework for the transformation of the VHM into the VMSW. Furthermore, the financing system for social rental and owner-occupier housing that entered into force in Flanders on 1 January 2013 (Decree on Financing of Social Housing, *Financieringsbesluit*) contains the rules for the financing of social housing projects.¹⁴⁴ Via the so-called Decree on Funding (*Fundingbesluit*) the funds of the Flemish government are paid to the VMSW which will allocate the subsidies to the investors in social housing (see also Section 1.4).

Another example is the Decree on Land and Building (*Decreet Grond- en Pandenbeleid*) that came into force on 1 September 2009 is focused on an effective use of space and thus countering scarcity of dwellings.¹⁴⁵ It directly relates to the Flemish housing code in article 2.1.3 (2°) where it states that a sufficient supply of qualitative good land, buildings and infrastructure is needed to realize the economic, social and cultural rights, as stated in article 23 of the Belgian Constitution and the right to housing, as stated in article 3 of the Flemish Housing Code. The Decree delivers instruments to realize these goals.

3.3 Housing policies

- *What are the main functions and objectives of housing policies pursued at different levels of governance?*
 - *In particular: Does the national policy favour certain types of tenure (e.g. rented housing or home ownership (owner-occupation))?*

¹⁴² La Société wallonne du logement, 'Het netwerk van huisvestingsmaatschappijen', <http://www.swl.be/index.php?option=com_content&view=article&id=209&Itemid=341>, 18 January 2013.

¹⁴³ BGHM Brusselse Gewestelijke Huisvestingsmaatschappij, 'In het kort', <<http://www.slr.b.irisnet.be/de-bghm>>, 18 January 2013.

¹⁴⁴ Wonen Vlaanderen, 'Hervorming financiering sociale huisvesting is rond', <http://www.wonenvlaanderen.be/ondersteuning_voor_professionelen/financiering_van_woonprojecten>, 31 January 2013.

¹⁴⁵ Sien Winters et al., *Voorstel tot indicatoren voor het Vlaamse woonbeleid* (Heverlee: Steunpunt Ruimte en Wonen, 2012), 11.

Three aims of post-war Belgian housing policy can be summarized as follows (see also Summary table 3):

- to tackle the housing shortage by encouraging low-income households to become home owners;
- to provide social rented housing for those unable to become home owners;
- to improve the quality of housing through a renewal policy.¹⁴⁶

Since the aim of housing policy has been to aid as many households as possible, aid has not necessarily been targeted at the neediest households. With the possible exception of the second half of the 1970s (and 1991), housing policy in Belgium has been characterised by a relatively low financial commitment from the government, not only at the level of the household, but also from a wider macro perspective, as De Decker argues.¹⁴⁷ Focusing policy on facilitating home ownership from the beginning of housing policy at the end of the 19th century, will have contributed to this result.

Generally, it can be concluded that the housing policies of the regions only differ slightly from each other. Divergence in policy, is considered as limited, as the regions continued using the instruments that were applied at the time of regionalization, but with differences in intensity.¹⁴⁸ Even nowadays the differences in types of policy are limited.¹⁴⁹ This applies for the large owner-occupied sector (especially in the Regions of Flanders and the Walloon Region) and the small social rental sector – the sector with a public task. Thus an important part of the housing market is market-dominated. Similarities still also exist in the limited financial support that is available for the private rental sector – the rental sector without a public task –, the allocation of private rental dwellings to vulnerable households via Social Rental Agencies, the limited housing allowance scheme for tenants moving to a suitable or standard quality dwelling, an income-based rent which can also be called differential rent setting allowing for what can be described as an implicit housing allowance, the tariffs of the registration tax, and the role of the municipalities in the local housing policy.

Example of Flanders

To give an example of housing policies in Belgium, the Flemish situation is presented; first the housing policy aims are described that are put forward in the Housing Code; then the government objectives.

The 1997 Flemish Housing Code has not changed tremendously throughout its existence.¹⁵⁰ Its housing goals have not changed. Article 3 of the Flemish Housing Code is crucial for housing policy aims: 'Everybody has a right to housing. To achieve the aim

¹⁴⁶ Haffner et al., *Bridging the gap*, 75.

¹⁴⁷ De Decker, 'Belgium: Between confidence and prudence', 35.

¹⁴⁸ Vanneste, Thomas & Goossens, *Woning en woonomgeving in België* (Brussel: FOD Economie, 2007), 20.

¹⁴⁹ Winters & Heylen, *Kwaliteit en betaalbaarheid van wonen: een vergelijking tussen de drie Belgische gewesten als case voor het testen van de samenhang tussen huisvestingssystemen en woonsituatie van huishoudens met een laag inkomen*, 2.

And: Vanneste, Thomas & Goossens, *Woning en woonomgeving*, 21.

¹⁵⁰ Winters et al., *Voorstel tot indicatoren voor het Vlaamse woonbeleid*, 10-11.

the availability of a suitable dwelling with a good quality in an adequate neighborhood for an affordable price with secure tenancy needs to be stimulated.’ This article contains the general housing goals of affordability, availability, quality and secure tenancy.

Article 4 of the Flemish Housing Code defines a special aim: to advance the right to decent or dignified housing which is in line with the constitutional right to housing; especially for the most vulnerable households. Also the article contains some strategic goals that were added in in 2008 and that aim for a contribution to wider societal objectives:

1. the realization of optimal development chances for everyone;
2. an optimal liveability of neighborhoods;
3. the advance of integration (inclusion) of occupiers in society;
4. the stimulation of equal chance for everyone.

In the Flemish coalition agreement 2009-2014 affordable and qualitative-good housing are at the center of attention.¹⁵¹ Six objectives are identified. The 2009 Decree on Land and Building (*Decreet Grond- en Pandenbeleid*; see Section 2.1) is considered as the starting point for achieving affordable housing. The aim is to increase housing supply by 2023 with more than 43,000 social rental dwellings, more than 21,000 social owner-occupied dwellings and 1,000 social plots of land. A so-called housing policy plan is intended to supply the foundation.

As explained in Section 2.1, the Flemish government has thus developed policy to fight the undersupply of dwellings.¹⁵² These include that municipalities will be obliged to introduce an activation fee (*activeringsheffing*), if there is structural undersupply of dwellings in order to stimulate owners of building land to start building. Another instrument is the vacancy fee (*leegstandsheffing*) that municipalities may use to counter large vacancies.

The Minister intends to use different housing policy instruments to advance the affordability of owner-occupied housing, such as the modest owner-occupied dwelling. For the private rental market the Minister aims to extend the system of housing allowances, the supply of dwellings via Social Rental Agencies and to supply tax and financial stimuli in exchange for fair rent levels. Information about subsidies is listed in Section 3.6.

The second objective is about sustainable and good-quality construction, renovation and living. The policy framework for quality monitoring will be optimized. Second, the existing subsidies for dwelling renovation and improvement (see Section 3.6) will be integrated and made more effective. Furthermore, more focus will be put on sustainability and energy-saving. Also, there will be more focus on the relocation of households and the renovation of existing social rental dwellings.

¹⁵¹ Winters et al., *Voorstel tot indicatoren voor het Vlaamse woonbeleid*, 11-12.

¹⁵² Ruimtelijke ordening, Woonbeleid, Onroerend erfgoed, ‘veel gestelde vragen voor gemeenten’, <<http://www.rwo.be/NL/RWOnieuwsbrief/Hoofdmenu/Veelgestelde vragen/Voorgemeenten/ActiveringsenLeegstandsheffing/tabid/12422/Default.aspx>>, 28 January 2013.

Secure tenancy for home owners will be guaranteed by the insurance called *verzekering gewaarborgd wonen* (see Section 3.6); for social tenants via support; for private tenants a study will be needed to determine how secure occupancy can be advanced.

The fair access to an affordable and good-quality dwelling will be achieved by preventing exclusion from the private rental market, improving the access to mortgage loans, improving the physical access to dwellings and increase the possibilities for social dwellings.

The fifth policy goal is about a social and warm cohabitation. The measures to achieve this are concerned with the cohabitation in social neighborhoods and the creation of added value by combining housing, welfare and care policies.

The sixth strategic objective aims for efficient and effective governance; especially on the local level. This is to be achieved by subsidies, support and coaching. In the medium term, municipalities are to develop housing plans and centrum cities are to work with so-called city contracts (*stadscontracten*; see next section).

Last, but not least the Pact2020 is a strategic plan for Flanders covering all policy domains.¹⁵³ The plans aim for the creation of welfare, inclusion and sustainability via four priorities:

1. a competitive and sustainable economy;
2. more people at work in more suitable jobs and in on average longer careers;
3. a high level of quality of life;
4. efficient governance.

Housing plays a role in the strive for achieving high life quality. Several domains are covered: environment-friendly housing, modern housing and less poverty, as expressed by the number of lacking structural or comfort items connected to the house (indicators of deprivation).

- *Are there measures against vacancies (e.g. fines or forced assignments of vacant houses)?*

As explained in Section 2.1, the Flemish government has developed policies to fight the undersupply of dwellings.¹⁵⁴ These include that municipalities will be obliged to introduce an activation fee (*activeringsheffing*), if there is structural undersupply of dwellings in order to stimulate owners of building land to start building. Another instrument is the vacancy fee (*leegstandsheffing*) that municipalities are to use to counter large vacancies.

Brussels also uses a vacancy fee to prevent vacancies, also because of bad quality of the building.¹⁵⁵ It has been made more effective in 2010 by accepting it for example less exemptions.

¹⁵³ Sien Winters et al., *Voorstel tot indicatoren voor het Vlaamse woonbeleid*, 12-13.

¹⁵⁴ Ruimtelijke ordening, Woonbeleid, Onroerend erfgoed, 'Veelgestelde vragen', <<http://www.rwo.be/NL/RWOnieuwsbrief/Hoofdmenu/Veelgestelde vragen/Voorgemeenten/ActiveringsenLeegstandsheffing/tabid/12422/Default.aspx>>, 28 January 2013.

¹⁵⁵ Stad Brussel, 'Wijziging belasting op stadskankers en leegstand',

- Are there special housing policies targeted at certain groups of the population (e.g. elderly people, migrants, Sinti and Roma etc.)?

The **Flemish** policy for the **elderly** aims to create the conditions¹⁵⁶ that

- Guarantee the elderly access to economic, social and cultural rights
- Prevent and decrease discrimination and social exclusion based on age
- Make possible the participation of the elderly in an evaluation of this policy
- Realize an inclusive coordinated and integrated policy.

The policy focuses on eight topics: information, input and participation; poverty and social protection; diversity and discrimination; health, sports and wellbeing, active and productive old age; housing and energy; mobility accessibility and safety; and culture, social life, lifelong learning, tourism and media. There are more than 200 actions possible to inform and integrate the elderly, the brochure explains. One example would be to stimulate a sports program that is suitable for the elderly.

As can be observed from the above description, no special policies for **immigrants** that have received a residence permit seem to exist. In a brochure of the organizations that are responsible for the welcome and the coordination of the procedures for immigrants – the *Commissariaat-generaal voor de Vluchtelingen en de Staatlozen* (CGVS) and *Federaal Agentschap voor de Opvang van Asielzoekers* (Fedasil) – it is explained that once an immigrant has received a residence permit, the immigrant has the same rights as any Belgian to settle in any municipality.¹⁵⁷

Information on **Sinti and Roma** has not been found during the fact finding phase of this study.

3.4 Urban policies

- Are there any measures/ incentives to prevent ghettoization?

Even though **Belgium** is well-known for its ribbon building along the roads¹⁵⁸, there are also efforts by cities to increase density. These efforts are applauded by the government.¹⁵⁹ Generally, urban policy in Belgium will consist of diversification implying

<<http://www.brussel.be/artdet.cfm?id=5744>>, 28 January 2013.

¹⁵⁶ Departement Welzijn, Volksgezondheid & Gezin, *Het Vlaams Ouderenbeleid* (place of publication not given, 2012), 1 et seq.

¹⁵⁷ Commissariaat-generaal voor de Vluchtelingen en de Staatlozen (CGVS) & Federaal Agentschap voor de Opvang van Asielzoekers (Fedasil) *Asiel in België. Informatieve brochure voor asielzoekers over de asielprocedure en opvang in België* (Brussel, Fedasil, 2010), 33.

¹⁵⁸ Joost Tennekes & Arjan Harbers, *Grootschalige of kleinschalige verstedelijking? Een institutionele analyse van de totstandkoming van woonwijken in Nederland, Vlaanderen en Noordrijn-Westfalen* (Den Haag: Planbureau voor de Leefomgeving, 2012), 62.

¹⁵⁹ Freya van den Bossche, *Wonen in Vlaanderen 2050. Krijtlijnen van een toekomstvisie* (Brussel: Wonen, Energie, Sociale Economie en Steden, 2012), 6-7.

the change of tenure mix in neighborhoods by demolishing, upgrading, etc. the stock.¹⁶⁰ Flemish cities usually still have plots of land to be filled in the process of urbanization.¹⁶¹ This is also the case for the land behind the “ribbons”.

Urbanization in **Flanders** thus generally takes place on a small scale, often by the owner or buyer(s) of the land plot. In the past many plots of land got the spatial use of housing, as housing was deemed necessary to fuel welfare growth. In 1998 Flanders tried for the first time to stop the unlimited construction by producing a Spatial Structure Plan of Flanders (*Ruimtelijk Structuurplan Vlaanderen*, RSV) in which it identified the contours of the cities and in which it identified construction numbers. The question however will be whether the plan will be effective in limiting new construction to urban areas, as 74% of the land designated with a housing use can be found outside these contours.

The regions also actively stimulate urban policies. For example, with a city contract (*stadscontract*) the **Flemish** government intends to bundle the efforts for thirteen cities that have such a contract with the Flemish government.¹⁶² The contract contains two parts: the first one is a general one that applies in the thirteen cities; the second part is tailored to the local needs. In the latter case the development of or access to new or renewed parts of the city is the objective in relationship to public works, mobility, spatial planning housing and immobile legacy. The contracts were applicable in the period 2007-2012. The Flemish government has decided that they will be extended for the period 2013-2014.¹⁶³

For the financing of innovative urban renewal projects the **Flemish** government organizes a competition in which about twenty cities can participate.¹⁶⁴ The aim is to achieve leverage for the development of a neighborhood and to improve the liveability substantially in the neighborhood. Two types of subsidy are available. The project subsidy allows for coaching and support of experts. The concept subsidy allows for two support teams, one on the regional level and one on the local level.

In conclusion, it must be stated that the term ghettoization has not been used in the documents that have been consulted. Policy seems to be about achieving a pleasant living environment.¹⁶⁵

¹⁶⁰ Reinout Kleinhans, ‘Social implications of housing diversification in urban renewal: A review of recent literature, *Journal of Housing and the Built Environment* 19, no. 4 (2004): 368.

¹⁶¹ Joost Tennekes & Arjan Harbers, *Grootchalige of kleinschalige verstedelijking?*, 42 and 63.

¹⁶² Thuis in de stad, ‘Stadscontracten’,

<http://www.thuisindestad.be/stadscontracten_2.html>, 30 January 2013.

¹⁶³ Vlaamse overheid, ‘Beslissing van de Vlaamse Regering - vrijdag 8 februari 2013’,

<http://www.vlaanderen.be/servlet/Satellite?NB_Registratiepersoonid=1254458752507&pagename=nieuwsberichten%2FNB_KortBestek%2FKortbestek&cid=1337436384417>, 8 February 2012.

¹⁶⁴ Thuis in de stad, ‘Stadsvernieuwing’,

<http://www.thuisindestad.be/Stadsvernieuwing_6.html>, 31 January 2013.

¹⁶⁵ Freya van den Bossche, *Wonen in Vlaanderen 2050. Krijtlijnen van een toekomstvisie* (Brussel: Wonen, Energie, Sociale Economie en Steden, 2012), 6-7.

- *Are there policies to counteract gentrification?*

Policies that explicitly counteract gentrification have not been found during the course of this study.

- *Are there any means of control and regulation of the quality of private rented housing or is quality determined only by free market mechanisms?*

As the housing stock of **Belgium** is relatively old, concerns about the quality of the stock can be found in the policies of the regions (see above). For the first time in Belgian history, the 1991 Belgian Housing Rent Act contained the concept of the level of quality 'that a rental dwelling must satisfy some basic requirements with regard to safety, health and habitability.'¹⁶⁶ But although the concept was introduced, it was not properly defined.¹⁶⁷ The Belgian Housing Rent Act (*Huurwet*) states that a landlord needs to ensure that at the moment a rental agreement is entered into, the residential property must conform to basic requirements of safety, health and habitability. The law allows for a rental agreement 'with renovation': a contract which includes certain stipulations about renovation to be carried out during the contract period.

Two methods have been established to regulate the quality of dwellings in **Flanders**. These will be described here as an example: the administrative procedure and the process of criminal prosecution both have their judicial roots in the 1997 Flemish Housing Code (*Vlaamse Wooncode*) and the related 1997 Parliamentary Decree (*Kamerdecreet*)¹⁶⁸. Both find their roots in the Belgian constitutional right to decent housing (article 23).

Since 1998, 'suspect' dwellings have been subject to an administrative procedure. Inspectors of the Flemish Region will carry out a technical check to establish whether a dwelling is fit or unfit for habitation. The mayor of the local authority concerned will, after a hearing, then declare a dwelling fit or unfit for habitation.

The second way to protect housing quality is through criminal prosecution. This more heavy-handed procedure was introduced in 2001 after it was established that the administrative procedure had not eliminated all malpractices. The Flemish Housing Inspection (*Vlaamse Wooninspectie*), which is an 'internal private agency' of the ministry responsible for housing, will monitor offences against the Flemish Housing Code and the related Parliamentary Decree. The point of departure of these documents is, in accordance with the Belgian Housing Rent Act of 1991, that the quality of each dwelling in Flanders must conform to basic standards of safety health and living quality. When offences are detected, criminal prosecution will follow. In the six years since 2001, when

¹⁶⁶ De Decker, 'Jammed between Housing and Property Rights: Belgian Private Renting in Perspective', 30.

And from: Haffner et al., *Bridging the gap*, 74-75.

¹⁶⁷ According to the country expert the quality norms were concretized by the Royal Decree of 8 July 1997 (formally published (*Belgisch Staatsblad*) on 21 August 1997).

¹⁶⁸ Wonen Vlaanderen, 'Integratiedecreet- en besluit gepubliceerd in Belgisch Staatsblad', <https://www.wonenvlaanderen.be/ondersteuning_voor_professionelen/woningkwaliteit_voor_professionelen/nieuws_woningkwaliteit#item_2510>, 11 August 2013.

the Flemish Housing Inspection started, there have been almost 1,200 actions involving almost 1,100 buildings containing almost 3,600 housing units of insufficient quality.

The Decree of Change of 7 July 2006, which came into law on 9 September 2007, aimed to make both procedures more effective. For the administrative procedure, a quick repair claim was introduced, as well as the possibility for local authorities to claim the costs of moving the tenant to a dwelling which was of sufficient quality. The process of criminal prosecution became more effective when some of the possibilities for discussion were removed. It also increased the penalties from a fine of between €100 and €10,000 to a fine of between €500 and €25,000 and a prison sentence of six months to three years. In aggravating circumstances, the fine rises to between €1,000 and €100,000, and the prison sentence is set at one to five years. A repair claim was also introduced in order to be able to check that unfit dwellings are made fit for habitation by the owner.

- *Does a regional housing policy exist?*

Information about the housing policy in Belgium which is designed and implemented by the regions can be found in Section 1.1, 3.2 and 3.3.

3.5 Energy policies

- *To what extent do European, national and or local energy policies affect housing?*

Section 3.3 gives examples of how **Flanders** intends to intensify energy policies in the future.

As the **other Administrative Regions** also offer instruments to stimulate environmental-friendly behavior (see Section 3.6), they will also have a policy set out.

It is not known to what extent European energy policies affect housing.

Summary table 3 Belgian laws and policies, brief interpretation, 2013

	National level	Administrative Regions	Municipality
Policy aims	Housing policy is a regional responsibility	<ul style="list-style-type: none">• To encourage home ownership• To provide social rental dwellings for vulnerable households• To improve housing quality	No detailed information
Laws	Housing Rent Act in combination with the Civil Code	Regional Housing Codes as basis for housing policy	

3.6 Subsidization

- *Are different types of housing subsidized in general, and if so, to what extent?*
- *Explain the different forms of subsidies for tenants, (certain) landlords and, if relevant, housing associations or similar entities acting as intermediaries (e.g. direct, by means of investment loans, tax privileges). Which level of government is competent to assign the subsidies? Is there a right to certain subsidies or does the public administration have discretion in whom to assign the subsidy?*

Subsidies can be classified in many ways. They can be focused on demand or on supply; the occupier or the owner. They could be focused on either tenure or could be applicable in more than one tenure. Furthermore, they can be connected to the dwelling as is the case with objectsubsidies which are also known as bricks-and-mortar subsidies. Subsidies can also be connected to persons. In that case they are called subjectsubsidies or personal subsidies. Subsidies could be given as deductions on interest, as grants or via the tax system (see next section). Last, but not least, subsidies can be given by different levels of government but can also be achieved by regulation whereby the cost of housing without regulation would be higher than the cost with regulation.

In this study the classification of subsidies applied is first by tenure (Table 1.4, 1.5 and 2.1) and second according to the point in time that they take place. Subsidization could take place before acquisition, as for example in the case of a subsidized savings scheme. Subsidization can also take place at the point of purchase in the form of e.g. a once-only grant. When subsidization takes place during the occupation phase (during tenancy), it is usually in the form of some type of recurrent subsidies. The latter subsidies could be designed as a monthly income supplement or in the case of a loan a lower than market interest rate. They could also come in the form price deduction as may be the result in the case of rent regulation.

In Belgium, it will be the regions that are subsidizing housing, as housing is their responsibility.

Owner-occupation

For owner-occupation there are generally four options available for the acquisition of a dwelling in Belgium: social loans, social dwellings, social land plots in Flanders¹⁶⁹ and free mortgage insurance in Flanders¹⁷⁰. Some of these options are also available for or in combination with the renovation of a dwelling.

The free mortgage insurance, which is completely paid for by the **Flemish** government, will run for ten years after the start of the mortgage loan. It will pay the mortgage payments that amount to a maximum of 600 Euro per month for a maximum of three

¹⁶⁹ Wonen Vlaanderen, 'Een sociale kavel kopen via een sociale huisvestingsmaatschappij (SHM)', <http://www.wonenvlaanderen.be/premies/sociale_kavel>, 31 January 2013.

¹⁷⁰ Wonen Vlaanderen, 'Verzekering Gewaarborgd Wonen', <http://www.wonenvlaanderen.be/premies/verzekering_gewaarborgd_wonen>, 31 January 2013.

years, if the owner-occupier loses his income, for example, and becomes fully unemployed.

Three general options for getting a social loan¹⁷¹ have been identified. They have different requirements, some are about having children, some are about income limits, some are about type of dwelling (modest). The advantages may be a lower-than-market interest rate or a fixed interest rate during the loan term. The organizations that provide such loans are:

- Accredited credit societies (*erkende kredietmaatschappijen*). In **Flanders** they provide a non-subsidized social loan for a modest dwelling. The advantages for the mortgagor consist of the free mortgage insurance that is provided by Flanders and the fixed mortgage interest rate.¹⁷² These societies also exist in **Brussels**¹⁷³ and in the **Walloon Region** (see 1.5).
- The VMSW in **Flanders**.¹⁷⁴
- **Flemish** Housing Fund for Large Families (*Vlaams Woningfonds voor Grote Gezinnen*)¹⁷⁵ and the Fund for the Capital Region of **Brussels** (*Woningfonds van het Brussels Hoofdstedelijk Gewest*)¹⁷⁶.

Furthermore, there are options to directly acquire a social owner-occupied dwelling in **Flanders** either from a social housing association or Vlabinvest.¹⁷⁷ The acquisition of social owner-occupied dwelling from a social housing association will be from an association that specializes in building owner-occupied dwellings (instead of social rental dwellings). Vlabinvest (*Investeringsfonds voor Grond- en Woonbeleid voor Vlaams-Brabant*) was erected by the Flemish government to help households with a small to middle income to find affordable housing in the edge around Brussels in order for them to be able to remain in the neighborhood.¹⁷⁸ The aim is to produce housing with a lower-than-market price. In **Brussels** a similar organization G.I.M.B. (*Gewestelijke InvesteringsMaatschappij voor Brussel*) seems to be operating, although the website

¹⁷¹ Wonen Vlaanderen, 'Sociale lening',
<http://www.wonenvlaanderen.be/premies/sociale_lening>, 31 January 2013.

¹⁷² Vlaamse Kamer, 'Sociale leningen in Vlaanderen',
<<http://www.sociaal-woonkrediet.be/FP1%20SW%20VL.htm>>, 31 January 2013.

¹⁷³ Brusselse Hoofdstedelijk Gewest, 'Sociale kredietmaatschappijen',
<<http://www.huisvesting.irisnet.be/premies-en-steunmaatregelen/sociale-kredietmaatschappijen>>, 31 January 2013.

¹⁷⁴ De Vlaamse Woonlening, 'Een eigen woning is makkelijker dan je denkt',
<<http://www.vlaamsewoonlening.be/home/tabid/7058/default.aspx>>, 31 January 2013.

¹⁷⁵ Vlaams Woningfonds, 'Lenen kan in 1-2-3 stappen',
<<http://www.vlaamswoningfonds.be/lenen/lenen-kan-in-1-2-3-stappen>>, 31 January 2013.

¹⁷⁶ Brusselse Hoofdstedelijk Gewest, 'Hypothecaire kredieten van het gewestelijk Woningfonds', <<http://www.huisvesting.irisnet.be/premies-en-steunmaatregelen/hypothecaire-kredieten-van-het-woningfonds>>, 31 January 2013.

¹⁷⁷ Wonen Vlaanderen, 'Sociale koopwoning',
<http://www.wonenvlaanderen.be/premies/sociale_koopwoning>, 31 January 2013.

¹⁷⁸ Vlabinvest, 'Betaalbaar wonen in de Vlaamse rand',
<<http://www.vlabinvest.be/home/tabid/7736/default.aspx>>, 31 January 2013.

does not indicate anything about vulnerable households.¹⁷⁹ The BGHM indicates on its website that it does operate a private-public-partnership with G.I.M.B.¹⁸⁰

Renovation and improvement subsidies available for **Flemish** occupiers (**owner occupiers or tenants**) and private person landlords that have a contract of at least nine years with a Social Rental Agency.¹⁸¹ For the elderly (65+), along the same line, an adaptation subsidy is available.¹⁸² For private persons there are also a number of options, some offered by municipalities, available for energy saving.¹⁸³

The **Brussels** Region also offers subsidies for energy savings for low-income households.¹⁸⁴ Some of them are offered by the municipalities.¹⁸⁵ There is also a regional 'green' loan available for energy saving works.¹⁸⁶

According to Winters and Heylen¹⁸⁷ the **Walloon Region** has had a longer tradition in renovation subsidies than Flanders, but have not (yet) closed the gap in quality that existed between the two regions.

Social landlord

Subsidization of the social landlords in **Flanders** has been reformed (see Section 1.4). The financing system for social rental and owner-occupier housing that entered into force in Flanders on 1 January 2013 (Decree on Financing of Social Housing, *Financieringsbesluit*) contains the rules for the financing of social housing projects and of the GSC (the regional social correction).¹⁸⁸ Via the so-called Decree on Funding (*Fundingbesluit*) the funds of the Flemish government are paid to VMSW) which will allocate the subsidies in three ways to the investors in social housing: help in the payment of the debt, project subsidies and help to the pre-financing of those taking the initiative for social housing projects.

¹⁷⁹ G.I.M.B. Gewestelijke Investeringsmaatschappij voor Brussel, 'Welkom', <<http://www.srib.be/nl>>, 31 January 2013.

¹⁸⁰ BGHM Brusselse Gewestelijke Huisvestingsmaatschappij, 'Het Gewestelijk Huisvestingsplan', <<http://www.slrh.irisnet.be/de-bghm/opdrachten/plan-regional-du-logement>>, 31 January 2013.

¹⁸¹ Wonen Vlaanderen, 'Wat en voor wie is de Vlaamse verbeteringspremie?', <http://www.wonenvlaanderen.be/premies/vlaamse_verbeteringspremie/wat_en_voor_wie_is_de_vlaamse_verbeteringspremie>, 31 January 2013.

¹⁸² Wonen Vlaanderen, 'Wat en voor wie is de aanpassingspremie?', <http://www.wonenvlaanderen.be/premies/vlaamse_aanpassingspremie_voor_ouderen/wat_en_voor_wie_is_de_aanpassingspremie?982db3993bc718df8695aeaf7da5e3bd9299ef1f=vg80pg9h5a17cc66ct8d049k55>, 31 January 2013.

¹⁸³ Wonen Vlaanderen, 'Premies', <<http://www.wonenvlaanderen.be/?page=255>>, 31 January 2013.

¹⁸⁴ Brusselse Hoofdstedelijk Gewest, 'Gewestelijke energiepremies', <<http://www.huisvesting.irisnet.be/premies-en-steunmaatregelen/energiepremies>>, 31 January 2013.

¹⁸⁵ Brusselse Hoofdstedelijk Gewest, 'Gemeentelijke premies en steunmaatregelen', <<http://www.huisvesting.irisnet.be/premies-en-steunmaatregelen/gemeentelijke-premies>>, 31 January 2013.

¹⁸⁶ Brusselse Hoofdstedelijk Gewest, 'Brusselse groene lening', <<http://www.huisvesting.irisnet.be/premies-en-steunmaatregelen/sociale-groene-lening>>, 31 January 2013.

¹⁸⁷ Winters & Heylen, *Kwaliteit en betaalbaarheid*, 24.

¹⁸⁸ Wonen Vlaanderen, 'Hervorming financiering sociale huisvesting is rond', <http://www.wonenvlaanderen.be/ondersteuning_voor_professionelen/financiering_van_woonprojecten>, 31 January 2013.

- The help in the payment of the loan will be available for the (a) acquisition, (b) construction or (c) renovation/improvement/adaptation of social rental dwellings, (d) the demolition of one or more constructions or (e) a combination of these options.
- The project subsidies will be available for (a) the construction or adaptation of housing infrastructure (e.g. site preparation, construction of infrastructure or common facilities or the adaptation of the housing environment) in the case of the construction or maintenance of social rental dwellings, social owner-occupied dwellings¹⁸⁹ or social plots. It is also available for (b) the acquisition of immovable property for the realisation and maintenance of social owner-occupied dwellings or social plots and (c) the construction of social owner-occupied dwellings or the renovation/adaptation of buildings with the aim of producing social owner-occupied dwellings.
- The help in the pre-financing is available for the acquisition of immovable property for the realization of social rental dwellings, social owner-occupied dwellings or social plots.

The GSC is a refund that a social landlord will get for renting out dwellings to low-income households for which an income-based rent below cost-price rent is determined (see below).¹⁹⁰

Private landlord

With the 2009 Decree on Land and Building Policy (*Decreet Grond- en Pandenbeleid*) the **Flemish** Parliament created the possibility for market parties to provide/build social rental dwellings in combined projects by putting such an obligation to municipalities. The lower the share of social or affordable housing in a municipality, the higher the obligation.¹⁹¹ Private investors in principle have three ways to fulfil the requirement when rental dwellings are concerned: 1) self-building and selling to a social landlord, 2) sale of land, 3) renting to a Social Rental Agency (Section 1.5 and 4.3) for 27 years. In none of those pathways a subsidy is available. Sales prices and rents are prescribed.

The **renovation subsidies** are described in the section entitled Owner-occupation.

Tenant

Specifically for the tenant, there are number of options in **Flanders** that could be described as housing allowances. The explicit ones are not in line with what normally in the international literature is understood in the case of housing allowances as being income support in the case that rent (or housing expenses) is (are) considered as too high in relation to income. The Flemish ones are like special-purpose housing allowances. The first one is a housing allowance for low-income private tenants with the

¹⁸⁹ Subsidies are also available for owner-occupied dwellings for which allocation criteria are applied. Some social 'landlords' only produce social owner-occupied dwellings. From: Sociale koopwoningen, 'Sociale huisvestingmaatschappijen', <<http://viwc.vlaanderen.be/static/Pages/textpages/Socialehuisvesting/socialekoopwoningen.html>>, 31 January 2013.

¹⁹⁰ The basis of the GSC is unchanged in comparison to the previous regulation of 18 July 2008 which was called NSF2-Decree.

¹⁹¹ Stad Gent, *Grond- en Pandenbeleid in Gent. Naar een evenwichtige woonstad* (Gent: Dienst Wonen en Dienst Stedenbouw en Ruimtelijke Planning, 2011), 13.

aim to facilitate the move to a better suitable dwelling or to dwelling let out by Social Rental Agency.¹⁹² Better suitable must be interpreted in different ways: better quality of the dwelling or dwelling adapted to handicap of the occupier. Brussels also offers such a moving house subsidy.¹⁹³ The second housing allowance is available for tenants that have been on the waiting list for a social rental dwelling for five years.

The so-called implicit housing allowance will make the link between income and rent, but only for social tenants.¹⁹⁴ The landlord will set the rent according to household income in this case. This is also known as differential rent setting. With the 2007 Decree on Social Rent, which was implemented on 1 January 2008, the rent calculation in the social rental sector based on market rent was introduced. This is the amount that the tenant will pay, if income is high enough. The basic principle by which the affordability of a social rental dwelling is determined is that a tenant should pay no more than 1/55th of their predicted annual taxable income as monthly rent. If the dwelling is considered as too large for the size of the household, a surcharge was to be payable as of 1 January 2009. In due course, this new system of rent calculation was to be introduced at all social landlords. Only in the case of Social Rental Agencies rents will be set according to agreement with the landlord. This system of rent setting has been determined entirely by the Flemish government. Any degree of autonomy in rent setting that social landlords previously had, in order to ensure a balanced budget for example, has been made impossible by this legislation.

There are also other subsidies available that have not been mentioned here. These can be found on the relevant websites.¹⁹⁵ In the **Walloon Region** many of above-mentioned subsidies are also available.¹⁹⁶ As is stated before, all Administrative Regions apply an implicit housing allowance in the social rental sector by having the social landlords calculate the rent based on income for households with a lower household income.

The **renovation subsidies** are described in the section entitled Owner-occupation.

¹⁹² Wonen Vlaanderen, 'Wat en voor wie is de tegemoetkoming in de huurprijs?', <http://www.wonenvlaanderen.be/premies/vlaamse_tegemoetkoming_in_de_huurprijs/wat_en_voor_wie_is_de_tegemoetkoming_in_de_huurprijs>, 31 January 2013.

And from: Haffner et al., *Bridging the gap*, 94-95.

¹⁹³ Brusselse Hoofdstedelijk Gewest, 'Gewestelijke verhuistoelagen (VIBH)', <<http://www.huisvesting.irisnet.be/premies-en-steunmaatregelen/gewestelijke-verhuistoelagen-2013-vibh>>, 31 January 2013.

¹⁹⁴ From: Haffner et al., *Bridging the gap*, 80-81.

¹⁹⁵ Wonen Vlaanderen, 'Premies', <<http://www.wonenvlaanderen.be/premies?982db3993bc718df8695aeaf7da5e3bd9299ef1f=28vq19it50j1r q3th53ofgskt2>>, 31 January 2013;

And: Brusselse Hoofdstedelijk Gewest, 'Premies en steunmaatregelen',

<<http://www.huisvesting.irisnet.be/nl/premies-en-steunmaatregelen>>, 31 January 2013.

¹⁹⁶ Direction générale opérationnelle - Aménagement du territoire, Logement, Patrimoine et Energie, 'Aides et primes',

<<http://dgo4.spw.wallonie.be/DGATLP/DGATLP/Pages/Log/Pages/Aides/AidesMenu.asp>>, 31 January 2013.

- Have certain subsidies been challenged on legal grounds (in particular: on the basis of competition law or budget law)?

The Court of Justice of the European Union has been asked to ascertain the legitimacy of the 2009 Decree on Land and Building Policy Decree in three ways. The court ruled on May 8, 2013.¹⁹⁷ First it declared: “The condition that there exists a ‘sufficient connection’ between the prospective buyer [or prospective tenant] of immovable property and the target commune constitutes an unjustified restriction on fundamental freedoms.” It does explain that the connection (either by having lived there for at least six years or working there or by having some other important connection) with the target municipality can only applied if it is based on the housing needs of a municipality and those households most in need. Second, the fact that investors cannot freely use the land that was acquired, may be considered as a restriction on the free movement of capital. It is for the Belgian court to assess whether such an obligation satisfies the principle of proportionality (“is necessary and appropriate to attain the objective pursued”). Third, it is also for the Belgian court to assess whether the tax and other subsidies provided would be considered as state aid. Presumably, the subsidies referred to here will be those that are used to acquire or rent the properties built by the investor, as it appeared above that there may not be any direct subsidies available to the investor.

The Constitutional Court (*Grondwettelijk Hof*) cancelled the disputed clauses of the Decree on Land and Building (*Decreet Grond- en Pandenbeleid*).¹⁹⁸ More detailed information is to be found in Section 7.2.

¹⁹⁷ Court of Justice of the European Union, Judgement in Joined Cases C-197/11 and C-203/11, *press release* (8 May 2013), http://europa.eu/rapid/press-release_CJE-13-57_en.htm.

¹⁹⁸ (GwH 7 November 2013, decrees 144/2013 and 145/2013), as provided by country expert.

Summary table 4 Typology of subsidization of landlord in Belgium*, 2013

	Social renting	Private renting
Subsidy before start of contract (e.g. savings scheme)	Aid with pre-financing	Aid with pre-financing for social dwellings
Subsidy at start of contract (e.g. grant)	Subsidization for production of social rental dwelling	<ul style="list-style-type: none"> • Subsidization for production of social rental dwelling • Renovation, improvement, adaptation subsidies for private person landlords with contract with Social Rental Agency
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee)		

* Differences between Administrative Regions; not all subsidies exist in all regions.

Summary table 5 Typology of subsidization of tenant in Belgium*, 2013

	Social renting	Private renting
Subsidy before start of contract (e.g. voucher allocated before find a rental dwelling)	None	None
Subsidy at start of contract (e.g. subsidy to move)	None	None
Subsidy during tenancy (in e.g. housing allowances, rent regulation)	Income-based rent Grants for renovation, etc.	<ul style="list-style-type: none"> • Housing allowance for low-income tenant for move to better suitable dwelling or to dwelling let out by Social Rental Agency • Grants for renovation, etc.

* Differences between Administrative Regions; not all subsidies exist in all regions.

Summary table 6 Typology of subsidization of owner-occupier in Belgium*, 2013

Subsidy before start of contract (e.g. savings scheme)	None
Subsidy at start of contract (e.g. grant)	Grants for renovation, etc.
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee, housing allowances)	Social loans Social owner-occupied dwelling Free regional loan insurance Social land plot Grants for renovation, etc.

* Differences between Administrative Regions; not all subsidies exist in all regions.

3.7 Taxation

- What taxes apply to the various types of tenure (ranging from ownership to rentals)?
 - In particular: Do tenants also pay taxes on their rental tenancies? If so, which ones?

Owner-landlords or owner-investors are the actors on the housing market that owe taxes. This implies that tenants do not pay any taxes at any moment in time related to the tenancy contract; there may be costs, like key money, but no taxation. In the occupation period, tenants may pay property (occupation) taxes or taxes related to maintenance and improvement. The latter is the case in Belgium, not the former.

In this study taxation for housing is described according to the three moments in time that it can play a role: at the point of acquisition (construction or acquisition of dwelling or start of contract), during the period of occupation of the dwelling and at the end of the tenancy (sale, end of contract).¹⁹⁹ These phases will be distinguished in the description of the different taxes that follows and are Summary table 7. Different ways of acquiring the dwelling can be relevant: buying, building, getting a present and getting an inheritance. Inheritance and gift tax at the point of acquisition will not be discussed here, however.

- In particular: Is the value of occupying an owner-occupied house considered as taxable income in income tax?
- In particular: Is the profit derived from the sale of a residential home taxed?

Taxation at the point of acquisition

Taxation at the point of acquisition of real estate (thus also a dwelling) is focused on the purchaser or builder (investor in) of the dwelling. At the point of acquisition the investor, regardless of whether it will be the owner-landlord, the owner-occupier or the owner-builder, will have to pay either Value Added Tax, which is generally known as VAT or a tax called registration rights or duties (*registratierechten*).²⁰⁰

The federal government is responsible for designing and changing VAT-rules, but only within the framework determined by the European Union.²⁰¹ The regions are responsible for the registration duties.

The VAT of 21% (standard rate) is owed on materials and services bought when a dwelling is built or when a newly-built dwelling is bought. Since 1 January 2011 VAT is also to be paid on the land when bought at the same time as the newly-built dwelling. If the acquisition concerns a new social dwelling, lower VAT-rates are applicable. If the social dwelling is bought from a welfare organization, an OCMW, the rate is 12%; if it is bought from a regional housing society (such as the Flemish VMSW) or one of their social accredited providers, it will be 6%. A lower rate of 6% is also applicable, when a dwelling is bought to demolish it and rebuilt it as a privately-used dwelling in one of

¹⁹⁹ Marietta Haffner, 'Fiscal treatment of owner-occupiers in six EC-countries: A description', *Scandinavian Housing & Planning Research* 10, no. 1 (1993): 49.

²⁰⁰ Federale Overheidsdienst FINANCIËN, *Wegwijs in de fiscaliteit van uw woning*, 9 et seq.

²⁰¹ Elsinga et al., *Beleid voor de private huur*, 18.

And: Haffner, 'Fiscal treatment of owner-occupiers in six EC-countries: A description', 49-50.

thirty-two designated cities in Belgium. Last, but not least the lower rate of 6% is also applicable to construction works on dwellings that are older than five years.²⁰²

Registration duties, which are a regional tax,²⁰³ are to be paid, usually effectively by the buyer, in the case of the purchase of land or the purchase of an existing dwelling. They are calculated based on the purchase price and a number purchase costs (like the costs paid for the services of a real estate agent). The rate of the registration duties differs across the Administrative Regions. It will be 10% for real estate in the Region of Flanders, and 12.5% in both of the other Administrative Regions.

In all Administrative Regions the registration rights can be reduced in certain situations.

- The **Walloon Region** allow a rate of 10%, if the acquisition takes place with a mortgage loan from a certain financial institution with a social objective.
- The **Regions of Flanders and Brussels** will reduce the rate to 1.5% if a social dwelling (as defined by supplier of the dwelling) is purchased. The requirement is that the buyer will receive a purchase subsidy from the region (*aankooppremie*) or will receive financial help in paying for the loan.
- The **Region of the Walloon Region** will reduce the rate to 0% (in practice a general duty of 25 Euro), if a social dwelling is bought from a public body that is designated a social landlord. The buyer will have to receive a purchase subsidy (*aankooppremie*) as defined in the Walloon Housing Act, will he be eligible for the lower rate.
- For the purchases of a so-called 'modest' (owner-occupied or rental) dwelling in the **Region of Flanders** and of the **Walloon Region** the registration duties will be lower than standard as well. In the Region of Brussels this category – that is defined based on a maximum of so-called 'cadastral income', a kind of imputed rent, corrected for the number of children living in the household – was abolished. The registration duty rate will be 5% in Flanders and the Walloon Region it will be 6% in the normal case, and 5% in the cases identified above. where the purchase is realized with a mortgage loan from a financial institution with a social objective. These rules also apply to the purchase of land destined for the construction of a modest owner-occupied dwelling.
- The **Flemish Region** will allow for a deduction in tax base of standard an amount of 15,000 Euro (*abattement*), if the dwelling is bought to be used as principal residence. This amounts to a tax deduction of 1,500 Euro, 750 Euro or 225 Euro for a tax rate of 10%, 5% or 1.5%, respectively. The amount of deduction will be increased (*bij-abattement*) by 10,000 Euro in the case of a 10% rate, by 20,000 Euro in the case of a rate of 5% and by 66,666.67 Euro in the case of a 1.5% rate, if a mortgage loan is need to finance the purchase. These rules generally apply for contracts as of 1 January 2009.
- In case a previous principal owner-occupied dwelling is sold to buy another one in **Flanders**, the deduction of the tax base that can be taken to the new dwelling amounts to a maximum of 12,500 Euro (*meeneembaarheid van abattement*). The two *abattement* deductions from the previous cannot be accumulated with the portable one.

²⁰² Information provided by country expert.

²⁰³ Haffner et al., *Bridging the gap*, 93.

- Also for contracts as of 1 January 2009, the **Flemish Region** will allow for an extra renovation-deduction (*renovatie-abattement*) of 30,000 Euro in the case a vacant or neglected dwelling is acquired. Main requirement is again, as with the other deductions, that it is to be used as principal residence within the set period of a maximum of two (existing dwelling) or five (newly-built) dwelling.
- The **Region of Brussels** also allows deductions of the registration duties to be paid by allowing a reduced tax base to be taken into account (*abattement*) for the purchase of a dwelling or land to be used for construction. The reduction of the tax base will be 60,000 Euro or 75,000 Euro if it is located in an area of enhanced development of housing and renovation (*ruimte voor versterkte ontwikkeling van de huisvesting en de renovatie*; RVOR) as indicated by regional development plan (*Gewestelijk Ontwikkelingsplan*; GewOP). The tax advantage amounts to 7,500 Euro or 9,375 Euro, respectively.

Taxation during the period of occupation

During the period of occupation, income, wealth and property taxes may be relevant for owners of dwellings.²⁰⁴ Belgian tax authorities are responsible for the personal income tax and the corporate income tax, while the Administrative Regions are responsible for the taxation of the ownership of immovable property (*onroerende voorheffing*).²⁰⁵ These tax rules affecting the housing market are described next.

But first, the VAT, when it is relevant for renovation work which may take place in the period where the dwelling is occupied (or before).²⁰⁶ If the dwelling is older than fifteen years, the lower VAT-rate of 6% is applicable for small and large renovation works that are directly paid for by the end-user, either the owner-occupier or the tenant.

On-going taxation during the occupation period when the occupier is living in a dwelling, concerned with two types of tax in Belgium: national personal or corporate income tax²⁰⁷ and the regional immovable property tax (*onroerende voorheffing*). Owners of immovable property are to pay national income tax and regional immovable property tax on the income that the dwelling produces.²⁰⁸ For private person owners (owner-occupiers and private person landlords), this income is called cadastral income (*kadastraal inkomen*) and is an imputed rent income that the dwelling would deliver, if it were rented out. This income that is (fictitiously) determined for the date of 1 January 1975 has not been corrected with inflation until 1 January 1991. Since 1 January 1991, the values of 1975 are corrected for inflation. The correction coefficient for the tax year 2011 amounted to 1.579. From this gross imputed rent, owner-occupiers are allowed to deduct imputed costs of 40% of imputed rent income to calculate the net imputed rent or the cadastral income that will be taxed. For private person landlords this

²⁰⁴ Haffner, 'Fiscal treatment of owner-occupiers in six EC-countries: A description', 50-52.

²⁰⁵ Haffner et al., *Bridging the gap*, 93.

²⁰⁶ Federale Overheidsdienst FINANCIËN, *Wegwijs in de fiscaliteit van uw woning*, 50.

²⁰⁷ Up until the calendar year 2011 it was possible for owners (and the like) to get an income tax reduction in so-called zones of positive metropolitan policy. Activities like renovation, improvement, maintenance were included. These will have delivered a tax deduction of 15% of the expenses that are eligible. For the tax year of 2011 the deduction has been limited to 710 Euro per dwelling.

From: Federale Overheidsdienst FINANCIËN, *Wegwijs in de fiscaliteit van uw woning*, 57-60.

²⁰⁸ Federale Overheidsdienst FINANCIËN, *Wegwijs in de fiscaliteit van uw woning*, 101 et seq.

imputed income is 40% higher.²⁰⁹ This implies that in effect they are not allowed to deduct costs.

As indicated before, all owners of immovable property have to pay the regional immovable property tax (*onroerende voorheffing*).²¹⁰ The rates differ across the Administrative Regions. In the Flemish Region it is 2.5% of the cadastral income.²¹¹ For social rental dwellings that are rented out it is 1.6%. In the Regions of the Walloon Region and Brussels the normal rate amounts to 1.25% of cadastral income; the rate for letting out social rental dwellings is 0.8% of cadastral income. The basic regional levies are increased with the levies (*opcentiemen*) of the provinces, agglomerations and municipalities. The amount tax cannot legally be charged to the tenant or lessee.²¹²

Deductions of the regional immovable property taxes are available for e.g. modest properties, the handicap or war handicap of the occupier, and the number of children. In the case where the landlord pays the tax, it is the situation of the tenant that determines the extent of the deductions. The tenant will be able to get a lower rent because of these deductions.²¹³ The requirements and the levels of deductions differ across the Administrative Regions.²¹⁴

In principal, all owners of immovable property that are subject to the personal income tax have to pay this tax on the income (*kadastraal income*) from their dwelling.²¹⁵ However, the owner-occupied dwelling is exempted as of 1 January 2005. This generally does not apply for dwellings for which a loan has been taken out before that date. This implies that most owner-occupiers are still paying this tax.

Next to the exemption from income tax, owner-occupiers can also benefit from an income tax deduction.²¹⁶ For owner-occupiers that finance the acquisition of their only dwelling with a loan that has a loan term of at least ten years and that has been contracted as a new loan since 1 January 2005, federal tax regulations allow for an annual limited tax deduction based on mortgage payments (both interest and repayment), the 'housing bonus' (*woonbonus*). The bonus is limited for taxable income of 2010 to 2,080 Euro per year per tax payer (thus twice for a couple) plus an increase of 690 Euro in the first ten years. The amount will be increased with 70 Euro, if the owner-occupier has three kids in the household in the year after the mortgage loan was taken out. For the taxable income of 2012 the amounts are: 2,120 Euro, 710 Euro and

²⁰⁹ Federale Overheidsdienst FINANCIËN, *Wegwijs in de fiscaliteit van uw woning*, 124.

And: Elsinga et al., *Beleid voor de private huur*, 20.

²¹⁰ Federale Overheidsdienst FINANCIËN, *Wegwijs in de fiscaliteit van uw woning*, 105 and 106.

²¹¹ It is not clear from the literature whether private landlords that are organized as a firm pay the immovable property tax also on imputed cadastral income or on actual rent income. The latter is the case for income tax (see below).

²¹² According to Art. 5 of the Housing Rent Law or art. 29 of the Lease Law. Information provided by country expert.

²¹³ Portaal belgium be, 'Onroerende voorheffing voor een gehuurde woning', <http://www.belgium.be/nl/huisvesting/huren_en_verhuren/huur_en_lasten/onroerende_voorheffing/>, 28 January 2013.

²¹⁴ Federale Overheidsdienst FINANCIËN, *Wegwijs in de fiscaliteit van uw woning*, 107-115.

²¹⁵ Federale Overheidsdienst FINANCIËN, *Wegwijs in de fiscaliteit van uw woning*, 116 et seq.

²¹⁶ Federale Overheidsdienst FINANCIËN, *Wegwijs in de fiscaliteit van uw woning*, 61 et seq.

70 Euro. The bonus is the amount that will be deducted from taxable income from the tax payer. The value of it will depend on the tax rate of the tax payer, which is a maximum of 50% in 2011.

For owner-occupied dwellings which do not qualify for the *woonbonus*, the previous system of mortgage interest and capital repayment deductions is still applicable. That will be the majority of owner-occupied dwellings.

Last, but not least in personal income tax there are certain tax deductions from tax payable possible for the owners of dwellings or the tenant if the tenant has the works done in his name.²¹⁷ They are concerned with expenditure for safety and against burglary, as well for the interest costs of a 'green' loan and costs for the insulation of roofs.

For all owners of dwellings that are organized as firms (*vennootschappen*) – private and social landlords – actual rent income is always taxed in corporate income tax.²¹⁸ The tax rate for corporate income tax is lower for social landlords than the standard rate: it will be 5% for housing associations.²¹⁹ The standard tax rate is 33.99% in 2012.²²⁰

Taxation at the end of tenancy

Generally no transaction taxes are due on sale by the seller of the dwelling, but only by the buyer at the point of acquisition, as explained earlier in this section.

However, the question becomes how capital gains will be treated at the point of sale. Belgium does not have a separate capital gains tax. Any gains (and losses) are to be included in total income of the tax payer, if a dwelling is sold within a period of five years after acquisition.²²¹ The tax rate is 16.5%. Owner-occupied dwellings are exempted from capital gains tax.

- *Is there any subsidization via the tax system? If so, how is it organised?*

Social landlords in Belgium are treated more favorable than private landlords, as Summary table 8 shows. They pay a lower rate of VAT on construction than others; they pay a lower rate for their immovable property tax than private landlords and their cadastral income is set lower than for private landlords; and the corporate tax rate is 5% instead of the standard rate of almost 34% for organization landlords. In other words, private landlords pay a higher rate of VAT, of corporation tax and immovable property

²¹⁷ Federale Overheidsdienst FINANCIËN, *Fiscaal Memento Nr. 25* (Brussel: Stafdienst Beleidsexpertise en –Ondersteuning, 2013), 17, 41 et seq.

²¹⁸ Elsinga, et al., *Beleid voor de private huur*, 20.

²¹⁹ Federale Overheidsdienst Financiën, 'Artikel 216, WIB 92 (aj. 2010) – Vennootschapsbelasting', <<http://ccff02.minfin.fgov.be/KMWWeb/document.do?method=view&id=643f9f63-16b6-4229-a93f-a11ba33955b3#findHighlighted>>, 28 January 2013.

²²⁰ Portaal belgium.be, 'Vennootschapsbelasting', <http://www.belgium.be/nl/economie/onderneming/fiscaliteit_en_boekhouding/vennootschapsbelasting/>, 28 January 2013.

²²¹ Notaris.be: De site van de Nederlandstalige notarissen, 'Meerwaardebelasting', <<http://www.notaris.be/verkoopen-kopen-huren-lenen/kopen-en-verkoopen/meerwaardebelasting/>>, 28 January 2013.

tax than social landlords. The private person landlords in the immovable property tax pay more taxes and have fewer personal income tax deductions in comparison to owner-occupiers.

- *In what way do tax subsidies influence the rental markets?*

Nothing specific has been found during this study on how taxation influences behavior of landlords.

- *Is tax evasion a problem? If yes, does it affect the rental markets in any way?*

Tax evasion is regarded as a problem in Belgium. It is rooted in the fact that tax authorities often are not able to check the data that they get from tax payers.²²² This also applies to the acquisition and sale of immovable property (real estate).

²²² HUMO.be, The Wild Site, 'Belastingontduiking in België',
<<http://www.humo.be/humo-archief/72083/belastingontduiking-in-belgie>>, 28 January 2013.

Summary table 7 Tax treatment of owners of dwellings in Belgium, 2013

	Home owner		Social landlord		Private landlord	
	Name of taxation	Does it contain an element of subsidy, if any? If so, what?	Name of taxation	Does it contain an element of subsidy, if any? If so, what?	Name of taxation	Does it contain an element of subsidy, if any? If so, what?
Taxation at point of acquisition						
National VAT	VAT for new construction	Yes, lower rate possible for some social dwellings	VAT for new construction	Yes, lower rate possible for some social dwellings	VAT for new construction	No, for private rental dwelling
Regional registration tax	Registration tax for the acquisition of an existing dwelling	Lower rate possible for some social dwellings or loans	Registration tax for the acquisition of an existing dwelling	Lower rate possible for some social dwellings	Registration tax for the acquisition of an existing dwelling	
Taxation during tenancy						
National VAT	VAT for renovation	Yes, lower rate than standard for older dwellings	VAT for renovation	Yes, lower rate than standard for older dwellings	VAT for renovation	Yes, lower rate than standard for older dwellings
Regional tax on immovable property	Tax on ownership of real estate	Yes, in certain situations	Tax on ownership of real estate	Yes, lower rate than standard; deductions possible for tenant in certain situations	Tax on ownership of real estate	Yes, deductions possible for tenant in certain situations
National personal income tax	Personal income tax	Exempted from taxation as of 2005; deduction possible	Not applicable	No	Private person landlord	Yes, deductions from payable tax for e.g. safety and environmental-friendly measures ¹
National corporate income tax	Not applicable		Organization landlord	Yes, lower tax rate than standard	Organization landlord	No
Taxation at the end of tenancy						
National capital gains tax: not a separate tax; included in total income	If sale is within five years after acquisition	Exempted	If sale is within five years after acquisition	No	If sale is within five years after acquisition	No

1) Also available for tenant if tenant is paying for these works.

4 Regulatory types of rental and intermediate tenure²²³

4.1 Classifications of different types of regulatory tenures

- Which different regulatory types of tenure (different regulation about contracts and tenant security) do you classify within the rental sector? What are their shares in dwelling stock (compare Summary table 1)?

Belgium has become a country of home owners since its first Housing Act of 1889. The social rental sector has remained small, allowing the market mostly to affect housing outcomes, not only in the owner-occupied segment, but also in the private rental segment. The latter statement applies to all Administrative Regions, but in the urban area of Brussels, it is private renting that dominates, while in the Region of Flanders and of the Walloon Region, it is owner-occupation that dominates, as Summary table 1 shows.

In Belgium it is the type of landlord that largely determines whether one can speak of social or private renting.²²⁴ If private persons or companies let the dwellings, they belong to the private rental sector. If a registered or accredited social housing association lets the dwellings, they are considered as social rental dwellings. The regional housing societies are responsible for the accreditation of the social landlords.²²⁵ As Section 4.3 shows, the ownership of social rental dwellings is more widely spread than based on the ownership definition.

4.2 Regulatory types of tenures without a public task

- Different types of private rental tenures.

In Flanders, private person landlords with small portfolios dominate the market rental sector.²²⁶ On average, each private person or individual landlord let 2.2 dwellings in 2005, while 60% of them owned no more than one dwelling for renting. The self-employed with 46% are the biggest group of private person landlords.²²⁷

Most private individual landlords (more than 70%) manage their dwellings themselves. The remainder make use of one of two types of agent or intermediary organisation which operate on this market: the commercial real estate agents with a share of almost 29% and the Social Rental Agencies who manage the remainder of the dwellings (about one percent). The latter dwellings are officially regarded as social rental dwellings²²⁸ and are discussed in the next section.

²²³ I.e. all types of tenure apart from full and unconditional ownership.

²²⁴ Haffner et al., *Bridging the gap*, 64.

²²⁵ Portaal Belgium.be, 'De sociale huisvestingsmaatschappijen', <http://www.belgium.be/nl/huisvesting/sociale_huisvesting/sociale_huisvestingsmaatschappijen/>, 13 January 2013.

²²⁶ Haffner et al., *Bridging the gap*, 66.

²²⁷ Elsinga et al., *Beleid voor de private huur*, 14.

²²⁸ Haffner et al., *Bridging the gap*, 64.

Within the small segment of the market rented sector that is run by companies (see Table 1.4), two larger, professional firms called Home Invest (since 1999) and Aedifica (since 2006) are active.²²⁹ They both are quoted on the stock market (Euronext Brussels). They are called *residentiële vastgoed-BEVA's* (*Beleggingsvennootschap in Vast Kapitaal*), which can be translated as 'housing property firms'. There is a special tax facility for them on their profits paid out.

A third Flemish housing property firm quoted on the stock market is called N.V. Serviceflats Invest. As the name indicates, it only invests in so-called service flats. The basic idea is that the elderly (over 75 year of age) buy the stock of the firm. In return they are entitled to live in a flat. The Flemish government provides subsidies for the construction of this type of housing, which has similarities with the German rental cooperatives.

According to Vandenbroucke *et al.*²³⁰ the principal difference between the private individual and professional landlords is their knowledge of the market and their expectations concerning financial return. Professional landlords can diversify their portfolios better than private individual landlords. Indirect return on investment appears to be more important for them than for private individual landlords, who appear to be more interested in the direct return from renting.

- *Are there regulatory differences between professional/commercial and private person landlords?*

It is expected that there are little regulatory differences between these groups of landlords.²³¹ For example, the 1997 Flemish Housing Code contains no specific provisions for market landlord organisation types. The regulation of the various types of landlord thus depends mainly on the judicial form of the landlord organisation. The normal (accountancy and supervisory) rules for firms in other sectors will apply to the larger firms that are quoted on the stock market. They may be different from the ones that are applicable for the smaller firms, such as *vennootschap met beperkte aansprakelijkheid* and *patrimoniumvennootschap*, which are not quoted on the stock market.²³²

Consumer law, however does make differences in the implementation of EU-Directives, such as in unlawful terms in relation to professional landlords.²³³

Financing is discussed in Section 1.4.

- *Are there different intertemporal schemes?*

As explained in Section 1.2, rent control and security of tenure have remained federal responsibilities since regionalization has taken place.²³⁴ They do not include any

²²⁹ From: *Ibid.*, 66 and 94.

²³⁰ Pieter Vandenbroucke et al., *Naar een aanbodbeleid*, 30.

²³¹ From: Haffner et al., *Bridging the gap*, 90.

²³² Elsinga et al., *Beleid voor de private huur*, 15.

²³³ Information provided by country expert.

intertemporal schemes. The Belgian Housing Rent Act or Law (*Huurwet*) is based on the strong protection of property rights. This arises from the *Code Napoleon*, which was introduced in 1804. Since it is based on a conservative-liberal philosophy, it assumes equality between the parties concerned and is based on contractual freedom between them.

- Are there different schemes of tenancy law and rent regulation?

Parliament sought to pursue better tenant security and greater rent control through the Belgian Housing Rent Act of 1991, which dedicated a separate section to rent regulation in the Civil Code. A statutorily guaranteed security of tenure of nine years can be seen as the corner-stone of the reform, although exceptions to this were and are still allowed. These refer to the revision of the Belgian Housing Rent Law in 1997, which allowed only one renewal of a short-term contract, for instance. It also contains binding rules which cannot be changed in individual rental agreements and additional rules that apply when the rental agreement includes no other stipulations.

The Housing Rent Law distinguishes four different types of rental agreement with limited duration: a life-long agreement, a nine-year agreement, a long-term agreement (of over nine years) and a short-term agreement (of three years or shorter). The standard rental agreement has a duration of nine years. The nine-year period is automatically applicable for oral agreements, written agreements with no contract length or written agreements with a contract period of between three and nine years (see Section 5 and 6).

Even though the rental agreement with a duration of nine years is denoted as standard contract, with its share of 45% in all the contracts as originally entered into that were registered for 2007 by the Flemish Consultation Organisation for Occupiers (*Vlaams Overleg Bewonersbelangen*; VOB), this type of contract does not seem to be too popular. The majority of contracts in 2007 were the short-term contracts of three years or shorter. They had a share of 52%, while the legislator actually introduced them as exceptions. The rest of the contracts are contracts which run longer than nine years (2%).

Neither landlord nor tenant can terminate a short-term contract unless the contract explicitly provides for this. Since 1997, a short-term contract can only be extended once. This must be done in writing and the same terms (same rent, etc.) must be maintained. Unless the rental agreement is terminated at the end, it will automatically become a nine-year rental agreement.

The registration of new rental agreements with the government has been incentivised since 2007. Where the rental agreement is not registered, the tenant can opt to leave the dwelling without notice and without reimbursement to the landlord. Until 2006, there was little incentive to register new agreements, even though costs involved were low (€30). The advantages were not perceived as large, only the possibility of informing a potential landlord-buyer about rent income.

²³⁴ From: Haffner et al., *Bridging the gap*, 90 and 91.

Rent regulation (also called control) differs for new and existing contracts. For new contracts, there is no rent regulation in general. Rents for existing contracts (sitting tenants) are regulated with the health index. This concerns annual rent changes. But there are some specifications to the general rules.

4.3 Types of regulatory tenure with a public task

The regulatory tenure with a public task has been called social renting in Belgium. The main landlords will be the registered or accredited social housing associations. As explained in Section 1.4, they are called different names in the Administrative Regions:

- In **Flanders** they are called *sociale huisvestingsmaatschappij* (SHM).²³⁵ The 102 housing associations have the legal form of a commercial or trading company (*handelsvennootschap*). In legal terms, housing associations thus are private non-governmental organisations.

In total they own almost 148,000 dwellings.²³⁶ On average that total will amount to about 1,350 dwellings per social landlord in 2011. Generally, they are not very large, the smallest organization owning 173 dwellings (Elk Zijn Dak), the largest about 18,000 (in Antwerp).

Most of the housing associations provide mainly social rental dwellings, but also some owner-occupied dwellings. There are also housing associations that specialise in building and selling owner-occupied dwellings for middle-class households.²³⁷ Alongside these activities, they also supply subsidised loans from the VMSW to the buyers of mainly new-build dwellings.²³⁸

The municipal councils are the largest shareholders and housing associations' Boards of Directors are dominated by municipal representatives.²³⁹ Tenants are not represented on the Board, but they may become involved in specific projects, mainly urban renewal projects aiming at improving the quality of life of the neighbourhoods. Based on these different purposes, the level of tenant participation will vary considerably between housing associations.

According to the Flemish Housing Code, accreditation of housing associations will be needed if a housing association wishes to claim government financing for the realization of social dwellings.²⁴⁰ Accreditation was regulated by the Decree of the

²³⁵ VMSW, 'Historiek. Van NMH en NLM over VHM tot VMSW', <<http://www.vmsw.be/nl/algemeen/over-vmsw/historiek>>, 31 January 2013.

²³⁶ VMSW, 'Huurders en huurwoningen', <<http://www.vmsw.be/nl/algemeen/statistieken/huurders-en-huurwoningen>>, 31 January 2013.

²³⁷ Afdelingen Woonbeleid en Financiering Huisvestingsbeleid, 'Sociale koopwoningen', <<http://viwc.vlaanderen.be/static/Pages/textpages/Socialehuisvesting/socialekoopwoningen.html>>, 31 January 2013.

²³⁸ Haffner et al., *Bridging the gap*, 68.

²³⁹ From: Haffner et al., *Bridging the gap*, 67.

²⁴⁰ From: Haffner et al., *Bridging the gap*, 89 and 90.

Flemish government of 17 December 1997 on the Accreditation of Housing Associations. With the Decree on Housing of 30 June 2006, which made the Flemish government responsible for accreditation, the 1997 decree was partially discontinued. In 2008, new legislation on the accreditation of social housing associations was being prepared.

- In the **Walloon Region** the social landlords will be called Sociétés de Logement de Service Public (SLSP).²⁴¹ Sixty-eight (or 70²⁴²) of this type of social landlords are active. They manage 103,000 dwellings (on average about 1,515 per OVM), about one quarter of the housing stock in the Walloon Region. They house about 214,000 people, about six percent of the Walloon population. There are 32,000 tenants on the waiting list. New constructions amount to about 620 units per year.

The OVMs are a legal entity, more specific a cooperative company with limited liability.²⁴³ This is in line with the Law Book on Companies. They are accredited by the SWL (see also below). Compared to the Flemish counterpart, the cooperative form implies that tenants have more input in the management of the social landlords.²⁴⁴ The General Assembly will meet once a year. Also, there needs to be an Advisory Board of tenants and owner-occupiers (in the latter case, it will be most likely the case where it concerns a social owner-occupied dwelling).

- In **Brussels** the social landlords may also be called SHM²⁴⁵, as in Flanders, or *Openbare Vastgoedmaatschappij* (OVM).²⁴⁶ Thirty-three OVMs are active in the Brussels Region. In total they owned 38,000 dwellings in 2009; the biggest one renting out almost 3,600 dwellings; the smallest one owning 276 dwellings.²⁴⁷ The description of their tasks can be found in articles 18 to 22 in the Housing Code.²⁴⁸

The social landlords are stimulated, supported, coached and financed by their respective regional organization (see also Section 3.2).

²⁴¹ La Société wallonne du logement, 'Het netwerk van huisvestingmaatschappijen. Een ambitie, een waardige woning voor iedereen',

<http://www.swl.be/index.php?option=com_content&view=article&id=209&Itemid=341>, 18 January 2013.

²⁴² AWCCLP Association Wallonne des Comités Consultatifs de Locataires et Propriétaires. 'Aperçu des acteurs du logement', <<http://www.awcclp.be/apercu-des-acteurs.html>>, 31 January 2013.

²⁴³ La Société wallonne du logement, 'Het netwerk van huisvestingmaatschappijen. Een ambitie, een waardige woning voor iedereen',

<http://www.swl.be/index.php?option=com_content&view=article&id=209&Itemid=341>, 18 January 2013.

²⁴⁴ La Société wallonne du logement, 'Missions et fonctionnement',

<http://www.swl.be/index.php?option=com_content&view=category&layout=blog&id=50&Itemid=85>, 31 January 2013.

²⁴⁵ BGHM Brusselse Gewestelijke Huisvestingsmaatschappij, 'Huisvestingsmaatschappijen', <<http://www.slr.birisnet.be/huisvestingsmaatschappijen>>, 31 January 2013.

²⁴⁶ BGHM Brusselse Gewestelijke Huisvestingsmaatschappij, 'Beheersovereenkomsten', <<http://www.slr.birisnet.be/de-bghm/contrats-de-gestion>>, 31 January 2013.

²⁴⁷ BGHM Brusselse Gewestelijke Huisvestingsmaatschappij, 'Aantal woningen per maatschappij', <<http://www.slr.birisnet.be/huisvestingsmaatschappijen/patrimoine/3-donnees-regionales/20081231-AANT-WO-per-OVM.pdf/view>>, 31 January 2013.

²⁴⁸ BGHM Brusselse Gewestelijke Huisvestingsmaatschappij, 'De opdrachten van de huisvestingsmaatschappijen', <<http://www.slr.birisnet.be/huisvestingsmaatschappijen/missions>>, 31 January 2013.

- In **Flanders** it is the Flemish Association for Social Housing (*Vlaamse Maatschappij voor Sociaal Wonen*; VMSW).²⁴⁹ It was erected by article 50 of the Flemish Housing Code in 2006. The VMSW is an external, independent government agency. Its legal form is a civil public limited company of public law (*burgerlijke naamloze vennootschap van publiek recht*).²⁵⁰ It replaced the Flemish Housing Company (*Vlaamse Huisvestingsmaatschappij*; VHM) in 2006.²⁵¹

It promotes social housing provision. The VMSW can directly support the housing goals of the Flemish government by providing mortgage loans and infrastructure works. Since 2006, the VMSW has retained its tasks of finance (including financial supervision) and guidance, and was relieved of its supervisory role including the instrument of prior authorisation. The task of financing includes getting finance from the European capital market and by managing the funds of the individual VHM.²⁵²

- In the **Walloon Region** the central organization is the Walloon Society of Housing (*Société Wallonne du Logement*; SWL).²⁵³ It came into existence in 1984 as a result of regionalization. It is a legal entity of public law, more specific a limited public company (*naamloze vennootschap*). The Administrative Region and other public entities are the shareholders of SWL.²⁵⁴ It strives for the aims of Walloon housing policy through the agreement concerning the management that is signed with the government of the Region of the Walloon Region. Its role and tasks are delineated in articles 86-129 of the Walloon Housing Code.
- In **Brussels** the Brussels Regional Housing Association (*Brusselse Gewestelijke Huisvestingsmaatschappij*; BGHM) is active.²⁵⁵ Following regionalization, it came into existence in 1985. It signed an agreement concerning the management with the government of the Brussels Region (articles 33-36 of the Brussels Housing Code). It has 25 tasks.²⁵⁶ One of which is the renting out of dwellings, next to those that are related to support the OVHs with whom the BGHM has signed agreements concerning their management (articles 37 and 38 of the Brussels Housing Code).²⁵⁷

²⁴⁹ VMSW, 'Sociaal wonen mogelijk maken', <<http://www.vmsw.be/>>, 31 January 2013.

²⁵⁰ VMSW, 'Administratief', <<http://www.vmsw.be/nl/algemeen/over-vmsw/administratief>>, 31 January 2013.

²⁵¹ Haffner et al., *Bridging the gap*, 88-89.

²⁵² VMSW, 'De kerntaken van de VMSW', <<http://www.vmsw.be/nl/algemeen/over-vmsw/kerntaken>>, 31 January 2013.

²⁵³ La Société wallonne du logement, 'Het netwerk van huisvestingmaatschappijen. Een ambitie, een waardige woning voor iedereen', <http://www.swl.be/index.php?option=com_content&view=article&id=209&Itemid=341>, 18 January 2013.

²⁵⁴ La Société wallonne du logement, 'Mode de fonctionnement', <http://www.swl.be/index.php?option=com_content&view=category&layout=blog&id=41&Itemid=61>, 31 January 2013.

²⁵⁵ BGHM Brusselse Gewestelijke Huisvestingsmaatschappij, 'In het kort', <<http://www.slr.birisnet.be/de-bghm>>, 18 January 2013.

²⁵⁶ BGHM Brusselse Gewestelijke Huisvestingsmaatschappij, 'Opdrachten', <<http://www.slr.birisnet.be/de-bghm/opdrachten>>, 18 January 2013.

²⁵⁷ BGHM Brusselse Gewestelijke Huisvestingsmaatschappij, 'Beheersovereenkomsten', <<http://www.slr.birisnet.be/de-bghm/contrats-de-gestion>>, 18 January 2013.

On the subject of social housing, the Housing Code identifies the social housing associations and their sector organisation as the preferred partners for the implementation of social rental housing policy. The **Flemish** Housing Code defines their tasks as “the provision of social dwellings, revaluation of the housing stock and pursuit of a social land and buildings policy”.²⁵⁸ By the Flemish Housing Code, the VMSW is also part of the social sector.²⁵⁹

Local authorities and municipal welfare organisations known as OCMWs (*Openbaar Centrum voor Maatschappelijk Welzijn*, as they are called in Dutch) or groups of local authorities and OCMWs are also considered as social landlords, as they were in certain housing statistics (in 2001 see Table 1.4).²⁶⁰ The **Flemish** Housing Code took these organizations officially on board in 2007, when it broadened its legal definition of social housing to OCMWs, groups of OCMWs, municipalities and groups of municipalities in the role of landlord.²⁶¹ It also included the Flemish Housing Fund (see Section 3.6) and the private rental stock that is let out by Social Rental Agencies. Presumably, the latter group of dwellings are also considered as social in **Brussels and the Walloon Region**, as they will be allocated according to social principles.

Social Rental Agencies began as grass-roots organisations in the mid-1980s, originating chiefly from welfare work institutions which were seeking to ‘socialise’ the market rented sector.²⁶² The limited institutional response to the economic crisis of the 1980s was the reason for their emergence. Social Rental Agencies aim to create an alternative to market rent for vulnerable tenants who are unable to find a social rental dwelling. Social Rental Agencies lower the management costs of landlords by doing unpaid work for them, so that lower-than-market rents can be set. In exchange for a low rent, the Social Rental Agencies do not charge commission, are responsible for the administration and minor renovation work. This is their current primary function. They also offer individualized support for tenants with problems as part of their aim of preventing homelessness. Originally, they also aimed to provide a strong link between housing and welfare aims and to develop local policy networks on affordable housing.

This description is based on the development of these agencies in Flanders, but as they also exist in the other two regions (see Section 1.5), the description will be largely applicable there as well.

During the 1990s, the agencies were institutionalized in **Flanders**. By 2005 the Flemish government had accredited 40 Social Rental Agencies. They rented out 3,032 dwellings in 2005, and 2,623 of those dwellings were rented out by accredited agencies. The impact of the letting offices on the Flemish housing market is therefore limited. Based on the information in Section 1.5 (the number of agencies), this must also be the conclusion for **the Region of Brussels and of the Walloon Region**.

²⁵⁸ Cited from: Winters, ‘Belgium-Flanders’, 64.

²⁵⁹ Haffner et al., *Bridging the gap*, 64.

²⁶⁰ Vanneste, Thomas & Goosens, *Woning en woonomgeving*, 124 and 125.

²⁶¹ Haffner et al., *Bridging the gap*, 64.

²⁶² *Ibid.*, 86-87.

- Specify for tenures with a public task:
 - Selection procedure and criteria of eligibility for tenants;
 - From the perspective of prospective tenants: how do I proceed in order to get “housing with a public task”?

Each regional organization publishes on their website the requirements and procedures for a **candidate-tenant** (house hunter or prospective tenant) to get a social rental dwelling allocated.

- In **Flanders**, the website discusses the following topics: dwellings (to achieve rational occupation: occupation based on household composition and requirements), requirements, rent calculation based on income, registration requirements and allocation conditions.²⁶³ The house hunter will have to register with the social landlord in his/her municipality.
- In the **Walloon Region**, the SWL-website leads the house hunter towards a booklet that can be ordered: *La location d'un logement de service public en Région wallonne*.²⁶⁴
- The **Region of Brussels** also shows the prospective tenant on a website on how to go about in order to get a social rental dwelling allocated.²⁶⁵ Registration can be multiple since 2002; implying that the candidate tenant registers with different OVMs.

For **Flanders** the registration, selection procedure and the eligibility criteria will now be described in more detail.²⁶⁶ On the subject of registration, the housing association will offer to send the prospective tenant's registration to other housing associations active within the municipality and in neighbouring municipalities. Each social housing association works with an individual waiting list of prospective tenants once they have registered. Thus tenants need to register at each housing association that they would want to be considered. Waiting lists must be updated every second year.

The eligibility criteria have been based on the 2007 Decree on Social Renting (*Kaderbesluit Sociale Huur*) and the 2007 Implementing Decree on Finance of Social Landlords. The most important innovations of this round of legislation that entered into force on 1 January 2008 include:

1. Permanent residence permit. Because social rental dwellings are connected to an indefinite right to stay, the prospective tenant should have a permanent residence permit.
2. Language and naturalisation or establishment requirements at the moment of registration and of allocation of a social rental dwelling. The requirements concern the willingness of prospective tenants and new tenants to learn the language and follow citizenship courses.
3. Trial period of two years for new tenants.

²⁶³ VMSW, 'Een sociale woning huren', <<http://www.vmsw.be/language/nl-be/nl/particulieren/huren-via-eeen-shm>>, 31 January 2013.

²⁶⁴ La Société wallonne du logement, 'Louer un logement social', <http://www.swl.be/index.php?option=com_content&view=category&layout=blog&id=54&Itemid=125>, 31 January 2013.

²⁶⁵ BGHM Brusselse Gewestelijke Huisvestingsmaatschappij, 'Een sociale woning huren', <<http://www.slr.be/irisnet.be/een-sociale-woning-huren>>, 31 January 2013.

²⁶⁶ From: Haffner et al., *Bridging the gap*, 77 et seq.

4. Possibility of allocating dwellings based on local needs within the framework of the Flemish allocation system.
5. New method of calculating social rent to increase affordability and transparency. This will no longer be based on basic rent plus income coefficient, but on market rent, household taxable income and the quality of the dwelling.
6. Supervision to guard the implementation of the framework order on social renting (not a new option; information of expert).
7. Financing system based on a repayment-only loan for 33 years, plus a correction based on the difference between the housing association's income and norms for expenditures in order to promote efficiency.

In general, this new legislation aimed to give potential tenants and new tenants more obligations than under the previous legislation.

The Flemish Decree on Social Renting of 12 October 2007 has also regulated the allocation procedure. There are six eligibility rules. The first three are that applicants must be over eighteen, own no dwelling at the time of registration and be registered in the 'population' register or as foreigners. The aim of this requirement is that permanent rental agreements should not be entered into with temporary citizens. A fourth criterion is about income limits.

The municipality or partnership of municipalities is regarded as the organiser of local policy, and as such it is possible for this actor to draw up an allocation code, after negotiating with actors on the local housing market. Such an allocation code is necessary in order to ensure habitability, reserve access to social rented housing for special groups, or waive the standard requirement of having local ties. If a local authority draws up an allocation code itself, income limits may be set higher than the standard.

The two last criteria (of the six) for registration concern the willingness of the prospective tenant to learn Dutch, unless there are good reasons (such as a health condition) not to, and to become a naturalised citizen, where possible. The Constitutional Court ruled on 10 July 2008 in the Constitutional Court (*Grondwettelijk Hof*) Judgement No. 101²⁶⁷, that this requirement is not applicable to prospective tenants in municipalities on the language border who prefer to make use of language facilities offered. It became also possible for such a potential tenant to insist that communication takes place in French. The Constitutional Court specified here that penalties for a refusal to learn Dutch or to follow a citizenship course should be proportionate to the inconvenience caused. Dissolution of a rental agreement is only possible subject to prior judicial verification. The Housing Code has not been adapted to this ruling.²⁶⁸ Neither has the 2007 Decree on Social Renting been changed based on this ruling.

Priority rules determine the allocation sequence of the dwellings. There is a system that is to be used by the VMSW and the social housing associations. Priority for a dwelling is determined on the basis of a number of criteria. The first one is whether the dwelling is of a suitable size for the household. If not, a payment needs to be made for the

²⁶⁷ *Grondwettelijk Hof* Judgement No. 101.

²⁶⁸ GwH nr. 101/2008. Information by country expert.

‘oversized’ dwelling. A second criterion is whether the candidate satisfies the ‘absolute priority’ rules (such as having a handicap, being of age, or being in urgent need of (other) housing). Relevant as third criterion is the chronological order of registration. There are also two ‘optional priority’ rules. The first was included in the 2000 Social Rental Decree (*Sociaal Huurbesluit*) and allows the landlord to prioritise ‘local’ candidates who have been living in the area for at least three of the previous six years. The second allows landlords to prioritise candidates who do not already live in a social rental dwelling or who do not have a permanent rental agreement (renting from a Social Rental Agency or OCMW).

- *For tenures with a public task: typical contractual arrangements, and regulatory interventions into, rental contracts.*

Security of tenure in the social rented sector is indefinite after a trial period of two years for new tenants. This provision was introduced by the 2007 Decree of Social Renting. The Constitutional Court ruled on 10 July 2008 in the *Grondwettelijke Hof* Judgement No. 101 that the social landlord cannot terminate the contract on their own authority. A decision by the ‘justice of the peace’ (*vrederechter*) will be necessary for such a termination. The 2007 Decree on Social Renting will have been adapted to this ruling. The reader is referred to Section 6 on this topic where it is treated extensively.

Another property right concerns the conditional right to buy. The Transfer Decree (*Overdrachtenbesluit*) that was published on 8 December 2006 and came into law ten days later is the legal basis here. The right to buy allows tenants to buy their social rental dwelling provided that it is not an apartment; it is more than 15 years old and the tenant has rented it for at least five years. This right to buy appears to be a genuine right to buy, since the housing association does not need to give its explicit permission for the sale of the dwelling (as it did with a previous right to buy under previous legislation).

- *For which of these types will you answer the questions in the remainder of this country report; which regulatory types are important in your country?*

Summary table 8 shows that the private person landlords (without a public task; but also including those whose dwellings are let out via Social Rental Agencies) and the housing associations with a public task (also called social landlords) are the largest segments of the rental housing market in Belgium. These are the types of landlord that will be focused on in the remainder of this country report.

Summary table 8 Characterization of types of Belgian landlord to be included in the remainder of the report, 2001 and 2009 (derived from Table 1.5 and Summary table 1)

	Main characteristics: Type of landlord (estimated size of market share within rental market)
Rental housing without a public task	72% (2009) 76% (2001) Total includes:
	1) Private person landlord (67%) (2001) 2) Private organization landlord (9%) (2001)
Rental housing with a public task	28% (2009) 24% (2001) Total includes:
	1) Public landlord (3%) (2001) 2) Housing association (21%) (2001)

Bold: types of landlord to be described in remainder of this report.

5 Origins and development of tenancy law

Preliminary note: The law concerning both Belgium's private and social tenancy will be amended. As of 1 July 2014 the regions will be competent and responsible for the tenancy legislation. This document is updated until 1 January 2014.

- *What are the origins of national tenancy law and where was and is it laid down (civil code, special statute, case law)?*

National Housing Code and regional housing codes

Belgium is a federal state consisting of three regions, namely the Flemish Region, the Brussels Region and the Walloon Region. The 1970 National Housing Code (*Huisvestingscode; Code du Logement*) is the legal basis for the housing policy in the three regions of Belgium. Subsequently, each of the regions has developed its own housing code. The housing codes are the legal basis for the regional social rental sector and social tenancy law.

The Flemish Region has implemented the Flemish Housing Code (*Vlaamse Wooncode*)²⁶⁹ in July 1997, which was last amended in August 2013. The legal basis for the housing policy the Brussels Region is laid down in the Housing Code of Brussels (*Brusselse huisvestingscode*).²⁷⁰ The most recent change in legislation dates from July 2013. In 1998, the Walloon Region passed the Walloon Housing Code (*Code Wallon du Logement*) and reformed it in May 2013.²⁷¹ In addition to this, the provinces and municipality have also implemented housing regulations.

The aforementioned codes offer the framework for quality control, the organisation and financing of social rental housing (rental housing with a public task) and owner-occupied housing and subsidies for housing for private persons. Furthermore, it includes standard social tenancy contracts (*Type huurovereenkomsten*). Social landlords must use these contracts to rent out dwellings in the social rental sector.

Social rental dwellings and applicable law

It is the nature of landlord that mostly determines whether one can speak of social or private rental dwellings. Landlords in the social housing sector are mainly registered or accredited social housing associations. The regions are responsible for the registration. If dwellings are rented by these associations, one can speak of social rental dwellings.²⁷² It can be said that these dwelling are let to tenants with little means.

²⁶⁹ Decreet houdende de Vlaamse wooncode, Belgisch, Belgium Official Journal 15 July 1997.

²⁷⁰ Ordonnantie van het Brussels Hoofdstedelijk Gewest van 17 juli 2003 "houdende de Brusselse Huisvestingscode", Belgium Official Journal 9 September 2003.

²⁷¹ Code Wallon du Logement, Belgium Official Journal 4 December 1998.

²⁷² The associations are organized as follows. Flemish Region: Flemisch Association for Social Housing for Social Housing (*Vlaamse Maatschappij voor Sociaal Wonen*), Flemish Housing Company (*Vlaamse Huisvestingsmaatschappij*). Brussels Region: Brussels Regional Housing Association (*Brusselse*

Social landlord must conclude social tenancy contracts with their tenants. These contracts are subject to the general contract law. Additionally, the general tenancy law and the Housing Rent Act are applicable, *but only if* the applicable social tenancy law does not differ from a) the general contract law, b) the general tenancy law and c) the Housing Rent Act. The general contracts law, the general tenancy law and the Housing Rent Act are all laid down in the Civil Code.²⁷³

Private rental dwellings and applicable law

Generally speaking, private rental dwellings are rented out by private persons or companies. Private tenancy contracts are governed by the Civil Code and the Housing Rent Act, which is included in the Civil Code.²⁷⁴ This is federal state law and applies to all private tenancy contracts concluded in Belgium.

It should be noted that social tenancy law partially influences the private tenancy sector. This is mainly legislation regarding housing quality standards, such as the basis requirements of safety, health and habitability.

Transferring the Housing Rent Act to the regions

In the preparation of the sixth state reform, it was agreed that the federal competence concerning the Housing Rent Act will be transferred to the regions. Subsequently, as of 1 July 2014 the regions will be competent and responsible for the legislation concerning both private and social tenancy law.²⁷⁵

- *Who was the political driving force? Was it based on a particular legal philosophy (e.g. socialism)? Is there a particular philosophy behind the rules (e.g. protection of the tenant's home as in Scandinavia vs. just a place to live as in most other countries)*

Generally speaking, the federal housing policy is orientated towards economic purposes.²⁷⁶ Furthermore, the regional housing policies focusses on the constitutional right to decent housing.²⁷⁷ In addition to this, the government also created a balance between the tenants' and landlords' rights. Subsequently, it can be said that its aim to protect the tenant who uses the rented dwelling as his main residence. For example, by guaranteeing the duration period and restricting the rent increase. The landlords' rights are also taken into consideration, e.g., they have the right to early terminate contracts for own use.²⁷⁸

gewestelijke Huisvestingsmaatschappij). Walloon Region: Walloon Society of Housing (*Société Wallone du logement*).

²⁷³ E.g., the calculation of the rent and the duration of social tenancy contracts.

²⁷⁴ L. Machon et al., *101 vragen en antwoorden over de nieuwe wet*, (Mechelen: Wolters Kluwer Belgium N.V.), 13.

²⁷⁵ Institutioneel akkoord voor de zesde staatshervorming: "een efficiëntere federale staat en een grotere autonomie voor de deelstaten" (Vlinderakkoord), 11 oktober 2011.

²⁷⁶ S. Winters, 'Belgian state Reform as an opportunity to reorient Flemish housing policy', *International Journal of Housing Policy*, 13 no.1 (2013): 90-99.

²⁷⁷ Art. 23 Belgium Constitution.

²⁷⁸ Art. 3 Housing Rent Act.

- *What were the principal reforms and their guiding ideas up to the present date?*

For this question, reference is made Chapter 3.

- *Human Rights:*
 - *To what extent and in which fields was tenancy law since its origins influenced by fundamental rights enshrined in the national constitution; and international instruments, in particular the ECHR.*

The national constitution and international law on fundamental rights influences both private and social tenancy law.

Belgium Constitution and the right to housing

The right to decent housing is enshrined in Article 23 Belgian Constitution. Although it has no direct effect in the Belgium legal system, it influences tenancy law.²⁷⁹ This constitutional right is used to fill in open norms in tenancy law and the law of obligations in general, such as: good faith and the principles of abuse of law and fairness.²⁸⁰ Furthermore, it affects tenancy law on several levels: 1) the Access to the housing market, 2) contract's duration, 3) the quiet enjoyment under a tenancy contract, 4) the rent and utility costs and expenses and 5) the option for the parties to terminate or early terminate the contract.²⁸¹ These subjects are further detailed below.

1. Access to the housing market

The general rule of contractual freedom also applies to tenancy contracts. Nevertheless, there are restrictions. For instance, in accordance with Article 8 ECHR, discrimination of a potential tenant is prohibited.²⁸²

There are other restrictions. The Access to social housing is limited to those whose with modest incomes or who are in a precarious state. As housing policy is the regions' formal responsibility, each region has developed its own conditions of admission. This subject is further detailed under Section 6.3.

2. Contract's duration

The right to decent housing is also secured by the mandatory duration of contracts. The general rule is that a contract is concluded for a period of nine years.²⁸³ Derogation is only allowed in several cases. These are enumerated in Article 3 §§ 6,7, and 8 Housing Rent Act. This subject is further detailed under Section 6.4 '*Duration of contract*'.

²⁷⁹ M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, Reeks Huurrecht, vol. 1 (Brugge: die Keure, 2006), 76; B. Hubeau & R. de Lange (eds), *Het grondrecht op wonen, De grondwettelijke erkenning van het recht op huisvesting in Nederland en België*, (Antwerpen – Apeldoorn: Maklu Uitgevers, 1995), 40.

²⁸⁰ M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 76; B. Hubeau & R. de Lange (eds), *Het grondrecht op wonen, De grondwettelijke erkenning van het recht op huisvesting in Nederland en België*, 106.

²⁸¹ B. Hubeau & R. de Lange (eds), *Het grondrecht op wonen, De grondwettelijke erkenning van het recht op huisvesting in Nederland en België*, 115.

²⁸² B. Hubeau & R. de Lange (eds), *Het grondrecht op wonen, De grondwettelijke erkenning van het recht op huisvesting in Nederland en België*, 116.

²⁸³ Art. 3 § 1 Housing Rent Act.

Social tenancy contracts have their own regime for the duration of contracts. A standard social tenancy contract has a duration of two years. In Brussels social tenancy contracts can be concluded for a period of 9 years or an indefinite period of time. In the Walloon Region contracts are concluded for a period of nine years. This subject is also further detailed under Section 6.4 '*Duration of contract*'.

3. Quiet enjoyment under a tenancy contract

The right to decent housing includes the right to respect one's private life as stated in Article 8 ECHR and Article 22 Belgium Constitution. Besides this, it includes the inviolability of the home as stated in Article 8 ECHR and Article 15 Belgium Constitution. These rights are applicable from the moment the tenant moves into the dwelling²⁸⁴ and are further elaborated in Article 1719, 3° CC. This article states that the landlord is obliged to provide the tenant the peaceful enjoyment of the dwelling for the duration of the contract.

The right to decent housing also refers to safety, health and habitability requirements as laid down in Article 2 Housing Rent Act. However, there is one exception to this basic rule. Parties may conclude a renovation contract, which implies that the tenant accepts that his right to peaceful enjoyment is set-aside during a certain period due to refurbishment (*renovatie*) and rebuilding (*verbouwing*).²⁸⁵

4. Rent, expenses and utility costs

The general rule of contractual freedom applies to private tenancy contracts. Parties, who conclude a private tenancy contract, are free to conclude the basic rent.

The landlord's right to increase the rent annually is a statutory right.²⁸⁶ Restrictions are further detailed under Section 6.4 '*Rent payment*' and '*Clauses on rent increase*'. With respect to social tenancy contracts, each region has its own regulation concerning rent calculation and rent increase. This is also detailed under Section 6.4 '*Rent payment*' and '*Clauses on rent increase*'.

The right to decent housing also influences the questions who must bear the property tax. Article 5 Housing Rent Act states that this tax cannot be charged to the tenant.

For other expenses, it should be noted that the tenant should only pay the actually incurred expenses (*daadwerkelijk gemaakte kosten*). Besides this, a cost calculation should be presented in a separate and detailed bill.²⁸⁷

Article 10 Housing Rent Act complies to the right of decent housing by stating that the deposit cannot exceed the amount of three months' rent.²⁸⁸

²⁸⁴ R. Timmermans, 'Het grondrecht op privacy van de huurder en het recht van de verhuurder op betreding van de huurwoning', *Het huurrecht in de praktijk*, 2 (2011), 55.

²⁸⁵ Art. 8 Housing Rent Act.

²⁸⁶ Arts 1728bis CC and 6 Housing Rent Act.

²⁸⁷ Art. 1728ter CC. B. Hubeau & R. de Lange (eds), *Het grondrecht op wonen, De grondwettelijke erkenning van het recht op huisvesting in Nederland en België*, 122-123.

²⁸⁸ B. Hubeau & R. de Lange (eds), *Het grondrecht op wonen, De grondwettelijke erkenning van het recht op huisvesting in Nederland en België*, 124.

Furthermore, deposits cannot exceed the amount of three months' rent.²⁸⁹ This is further detailed under Section 6.4.

5. Option for the parties (early) terminate the contract

Due to the right to decent housing, the possibility for early termination is restricted.²⁹⁰ Termination, due to the tenant's default, can only be effected by a court decision. A resolutive condition stipulated in a contract is therefore null and invalid.²⁹¹ The aim is to protect the tenant's right to decent housing, by having the justice of peace (*vrederechter*; *juge de paix*) deciding whether the tenant's default justifies termination.²⁹² It also allows him a degree of discretion.²⁹³ He may, for instance to grant the tenant a postponement of payment.²⁹⁴

The possibility to terminate the contract, in case the rented dwelling is transferred to a buyer, is also restricted. It is subject to strict conditions.²⁹⁵

6. Humanisation of evictions

Finally, the right to decent housing also includes the right to protection from illegal evictions. To meet this aim, the federal state has implemented the Act of 30 November 1998. The eviction procedure is detailed under Section 6.7 '*Eviction procedure: conditions, competent courts, main procedural steps and objections.*'

International law and the right to housing

The right to housing under international law does exist. However, not all international laws are hard laws. Hereunder follows an outline.

- **International Covenant on Economic, Social and Cultural Rights**²⁹⁶

Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states clearly that the parties to this Covenant recognize a) the right of everyone to an adequate standard of living for himself and his family including housing. Furthermore, it states that the parties have to take appropriate steps to ensure the realization of this right. Belgium is party to the ICESCR and has the obligation to set out quality standards. Each region has its own regulation relating quality standards for e.g., hygiene and preventing diseases. The ICESCR has no

²⁸⁹ Art. 10 Housing Rent Act.

²⁹⁰ Art. 11 Housing Rent Act; Art. 3 §5 Housing Rent Act.

²⁹¹ Art. 1762bis CC.

²⁹² The justice of peace court is a judicial sub district, He has competence, regardless the amount, to e.g., tenancy disputes and family law.

²⁹³ Art. 1184 CC; B. Hubeau & R. de Lange (eds), *Het grondrecht op wonen, De grondwettelijke erkenning van het recht op huisvesting in Nederland en België*, 108.

²⁹⁴ Art. 1244 CC, which states: The judge may, nevertheless, notwithstanding any clause to the contrary, having regard for the situation of the parties, and in using discretion very cautiously and taking account of delays already enjoyed by the debtor, accord limited delays for payment and suspend litigation, even if the debt is evidenced by a notarized document, other than a judgment.

²⁹⁵ Art. 9 Housing Rent Act.

²⁹⁶ A. Hanselaer, B. Hubeu (eds), *Sociale huur*, Reeks Huurrecht, vol.4 (Brugge: die Keure, 2011), 57.

direct effect, however, the regions are obliged to act in accordance with the ICESR's principles.²⁹⁷

- **European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)**²⁹⁸

The right to respect one's private and family life is enshrined in Article 8 ECHR. However, both Belgium case law and doctrine do not recognize that the right to decent housing falls under the scope of this provision.

- **Convention on the Rights of the Child**²⁹⁹

Although article 27 of the Convention on the Rights of the Child refers to housing, it has no direct effect on tenancy contracts.

- **Regulation (EEC) No 1.612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community**³⁰⁰

Article 9 of the Regulation (EEC) No 1.612/68 of the Council of 15 October 1968 states that the freedom of movement for workers within the Community does have effect on tenancy law. It states the following:

"1. A worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy all the rights and benefits accorded to national workers in matters of housing, including ownership of the housing he needs.

2. Such worker may, with the same right as nationals, put his name down on the housing lists in the region in which he is employed, where such lists exist; he shall enjoy the resultant benefits and priorities.

If his family has remained in the country whence he came, they shall be considered for this purpose as residing in the said region, where national workers benefit from a similar presumption."

- **Convention on the Rights of Persons with Disabilities and Optional Protocol Constitutional of December 2006**³⁰¹

Article 28 of the Convention on the Rights of Persons with Disabilities and Optional Protocol Constitutional law and the Optional Protocol Constitutional of December 2006 obliges the Member States (including Belgium) to provide access to housing programs in the public sector for persons with a handicap. Furthermore, they have to take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability. In general, it can be said that this convention has no direct effect. The rights concerning disabled persons is further elaborated under Section 6.3 'Restrictions on choice of tenant - antidiscrimination issues.'

- *Is there a constitutional (or similar) right to housing (droit au logement)?*

²⁹⁷ RvS, 30 December 1993, nr. 45.552, De Wispelaere.

²⁹⁸ A. Hanselaer, B. Hubeu (eds), *Sociale huur*, 58.

²⁹⁹ A. Hanselaer, B. Hubeu (eds), *Sociale huur*, 58.

³⁰⁰ A. Hanselaer, B. Hubeu (eds), *Sociale huur*, 59.

³⁰¹ A. Hanselaer, B. Hubeu (eds), *Sociale huur*, 61.

The right to decent housing is enshrined in Article 23 Belgium Constitution. See also Section 6.4 *'To what extent and in which fields was tenancy law since its origins influenced by fundamental rights enshrined in - the national constitution'*.

6 Tenancy regulation and its context

6.1 General introduction

- *Short overview over core principles and rules governing the field.*

A rental agreement is a reciprocal agreement³⁰² and is formed by an offer and its acceptance. Consequently, the declaration of intention of both parties about the dwelling and the rent payment are the minimum requirement to conclude a valid tenancy contract.

Private tenancy contracts

Private tenancy contracts are governed by the Civil Code, which implies contract of freedom. However, the Housing Rent Act's mandatory provisions will be applicable, if the conditions of Article 1 Housing Rent Act are met. This article sets out four conditions.

Firstly, parties must enter into a rental agreement. Secondly, the property must be used as a dwelling. Thirdly, the tenant must use the dwelling by himself as his principle residence (*hoofdverblijf*). Finally, the tenant requires the landlord's permission in order to use the dwelling as his principle residence. The requirements are enumerative, which means that the Housing Rent Act's protective provisions lapses, if one of these conditions are not met or no longer are met.

If and under what conditions a private contract can be terminated, depends on the type of tenancy contract. By law, several private contract types are allowed. The standard contract has a duration of nine years.

The landlord's right to increase the rent annually is a statutory right.³⁰³ They may increase the rent based on the consumerprice index.

Dwellings may only be rented out, if they meet the housing quality standards (*woningkwaliteitsnormen*). The regions are competent with respect to these standards.

Social tenancy contracts

Flemish Region, Brussels Region and the Walloon Region have their own rules concerning social tenancy contract. The Civil Code, which includes general private law, general tenancy law and the Housing Rent Act is applicable to social tenancy contracts, *but only if* the applicable social tenancy law does not differ from the Civil Code.³⁰⁴ These regions are, for example, competent to determine regulations concerning rent increase and contract termination.

- *To what extent is current tenancy law state law or infra-national law (if legislative jurisdiction is divided: what is the allocation of competencies and for which subject matters)*

³⁰² Art. 1102 CC states the following: 'a contract is synallagmatic or bilateral when the contracting parties obligate themselves reciprocally toward each other.'

³⁰³ This right is based on Art. 1728bis CC in conjunction with Art 6 Housing Rent Act.

³⁰⁴ E.g., the calculation of the rent and the duration of social tenancy contracts.

State law or infra-national law?

The Civil Code falls under the scope of the federal state and applies to all private tenancy contracts. The regional social tenancy law governs social tenancy contracts, *but only if* the applicable social law does not differ from the Civil Code. Social tenancy law contains regulation which also influence the private tenancy sector partially, e.g., legislation regarding housing quality standards.

Transferring the federal private tenancy law to the regions

As described before, the federal competence concerning private tenancy law (i.e. Housing Rent Act) will be transferred to the regions per 1 July 2014. Thus, as of that time, the regions will be competent and responsible for the legislation concerning both private and social tenancy law.³⁰⁵

- *Is the position of the tenant also considered as a real property right (and therefore also governed by property law) or (only) as a personal (obligatory) right?*

Under Belgium law, a tenancy contract nor the tenant's position are considered as real property rights. According to Article 1709 CC a tenancy contract is a contract whereby the lessor undertakes to provide the tenant the enjoyment of a property for a certain time and a certain price. The tenant, on the other hand, undertakes to pay the price.³⁰⁶

Although, a tenancy contract is not governed by real property law, it has some real property right aspects. These can be found in the Bankruptcy law (*Faillissementswet; Loi sur les faillites*) and the Attachment- and execution law (*Beslag- en executierecht; Droit de saisie et d'exécution*). In some cases, the tenant is also protected in case transfers the dwelling is transferred to a third party. These consequences are further elaborated under Section 6.6 'Statutory restrictions on notice' and Section 6.7 'May rules on the bankruptcy of tenant-consumers influence the enforcement of contracts?'

- *To what extent is the legislation divided up into general private law and special statutes? To what extent are these rules mandatory and dispositive? Does the relationship between general and special rules work properly so as to create legal certainty?*

Private rental sector and private tenancy contracts

Private tenancy contracts are governed by general contract law, general tenancy law and the Housing Rent Act. All these regulation are laid down in the Civil Code.

General tenancy law consists of the basic rules of tenancy and is laid down in the Articles 1714 - 1762*bis* CC. These are mainly permissive provisions. Therefore, parties may derogate by contract from these provisions. In addition to the general tenancy law provisions, a special regime applies for tenancy contracts concerning the lease of a dwelling which is used by the tenant as his main residence. This regime is laid down in

³⁰⁵ Institutioneel akkoord voor de zesde staatshervorming: "een efficiëntere federale staat en een grotere autonomie voor de deelstaten" (Vlinderakkoord), 11 oktober 2011.

³⁰⁶ Article 1709 CC.

the Housing Rent Act. It consists of twelve articles, mainly mandatory law and numbered 1 - 12.³⁰⁷

Furthermore, each region has developed its own regulation concerning housing quality standards, which apply to both private and social tenancy contracts. E.g., the Flemish Housing Code, the Housing Code of Brussels and the Walloon Housing Code.

Social rented sector and social tenancy contracts

As earlier mentioned, the three regions are responsible for the social tenancy sector. Each region has its own standard social tenancy contracts. As described above, social tenancy contracts are also governed by the Civil Code but *only if* the regional social tenancy law do not differ from the Civil Code.³⁰⁸ This is in line with the transition of powers to the three regions.³⁰⁹ The Constitutional Court determined in 2008 that the regional authorities may deviate from the Civil Code.³¹⁰

Table 6.1 shows which rules govern the legal relationship between the tenant and the landlord if a *private tenancy contract* is concluded.

Table 6.1: Private tenancy contracts and applicable regulations

	Applicable rules are laid down in:
Private tenancy contract	General contract law
	General tenancy law
	(If the regional social tenancy law does not differ from it)
	Housing Rent Act (if the dwelling is the main residence)

Note that social tenancy regulations also influence the private tenancy sector partially, e.g., legislation regarding housing quality standards.

³⁰⁷ Art. 12 Housing Rent Act. An overview of the Housing Rent Act mandatory and permissions provisions is described in A. van Oevelen (ed.), *Woninghuur*, Reeks Huurrecht, vol. 2 (Brugge: die Keure, 2009), 19-23.

³⁰⁸ For instance, the calculation of the rent.

³⁰⁹ A. Hanselaer, B. Hubeu (eds), *Sociale huur*, 45.

³¹⁰ GwH 10 July 2008, nr. 101/2008.

Table 6.2 shows which rules govern the legal relationship between the tenant and the social landlord, if a *social tenancy contract* is concluded.

Table 6.2: Social tenancy contracts and applicable regulations

	Basic rules social tenancy are laid down in:
Flemish Region	Flemish Housing Code (<i>Vlaamse Wooncode</i>), Framework Social Rent (<i>Kaderbesluit Sociale huur</i>) ³¹¹
Brussels Region	Brussels Housing Code & the 26 September 1996 Decision of the Brussels-Capital Region ³¹²
Walloon Region	Walloon Housing Code (<i>Code Wallon du Logement</i>) & 6 September 2007 Decree of the Walloon Government ³¹³

Note that general contract law, private tenancy law and the Housing Rent Act are applicable to social tenancy contract, if the regional legislation do not differ from them.

Relationship between standard and special rules

As described above, the regions were formally given responsibility for housing policy, including the housing quality standards. Nevertheless, the federal state has also issued minimum norms concerning housing quality standards. The basis is laid down in Article 2 Housing Rent Act and specified in detail in the Royal Decree of 8 July 1997.³¹⁴

The Constitutional Court judged several times that the transfer of powers to the regions does not affect the power of the federal state to regulate contractual relations between tenants and landlords. This is because controlling the tenant's and landlord's relation still remains the federal states responsibility.³¹⁵

In line with the Constitutional Court, the Counsel of State holds the view that the transfer of such powers does not affect the jurisdiction of the federal state to impose obligation on the landlord which relates to condition of the rented property.³¹⁶

It follows from above that the federal state and the regions have the same authority to regulate housing quality standards. In principle, the regions have the authority to

³¹¹ Besluit van de Vlaamse Regering van 12 oktober 2007 tot reglementering van het sociale huurstelsel ter uitvoering van titel VII van de Vlaamse Wooncode, which was amended by: het Besluit van de Vlaamse Regering tot wijziging van diverse bepalingen betreffende het woonbeleid, Belgium official Journal, 13 December 2013 (*Kaderbesluit Sociale huur*);

³¹² Besluit van de Brusselse Hoofdstedelijke Regering van 26 september 1996 houdende de regeling van de verhuur van woningen die beheerd worden door de Brusselse Gewestelijke Huisvestingsmaatschappij of door de openbare vastgoedmaatschappijen (26 September 1996 Decision of the Brussels-Capital Region).

³¹³ 6 Septembre 2007 Arrêté du Gouvernement wallon organisant la location des logements gérés par la Société wallonne du Logement ou par les sociétés de logement de service public (6 September 2007 Decree of the Walloon Government).

³¹⁴ Koninklijk besluit van 8 juli 1997 tot vaststelling van de voorwaarden waaraan ten minste voldaan moet zijn wil een onroerend goed dat wordt verhuurd als hoofdverblijfplaats in overeenstemming zijn met de elementaire vereisten inzake veiligheid, gezondheid en bewoonbaarheid, Belgium Official Journal 21 August 1997.

³¹⁵ Several judgement are summed up in A. van Oevelen (ed.), *Woninghuur*, 14 note 54.

³¹⁶ A. van Oevelen (ed.), *Woninghuur*, 15. Advice Counsel of State concerning the preliminary draft of the Act 'tot wijziging van sommige bepalingen betreffende de huurovereenkomsten', Parl.St. Kamer 1996-97, nr. 717/1, 24.

regulate the housing quality standards, but the federal state may still regulate both the contractual relations between parties and the housing quality standards. The regulations exist independently from each other. Unfortunately, this leads to overlapping regulations and a lack of coordination.

- **Result 1: Overlapping federal state regulations and regional regulations**
Overlapping of regulations on both federal state and regional level is the result. An illustrative example is the federal minimum requirements concerning housing standards as laid down in the Royal Decree of 9 July 1997. These norms largely resemble with the safety, health and habitability requirements in the regional Housing Codes and underlying decrees. However, the private law sanctions for violation of the housing quality standards on regional level differ from each other. In reaction to this, Article 2 § 1, Section 5 Housing Rent Act is set aside, in case the regional regulations are violated.³¹⁷ This is because the regional sanctions are stricter and a judge has to make an ex officio decision concerning this subject.
- **Result 2: Lack of coordination between the federal state and the regions**
Another consequence occurs if parties include a renovation contract in their tenancy contract and they differ from the minimum standards of Article 2 of Housing Rent Act and the Royal Decree of 8 July 1997. The consequence will be that e.g., a Flanders' mayor probably cannot issue a conformity certificate (*conformiteits certificaat*).³¹⁸ This certificate states that the dwelling or room complies with the minimum quality standards. As a result, the tenancy contract including the renovation agreement is null and void. Moreover, the landlord can be prosecuted.³¹⁹ The Brussels' Housing Code has regulated this issue. The goal and purpose of the certificate of conformity is further detailed under Section 6.1 '*Are there regulatory law requirements influencing tenancy contracts*'.
- *What is the court structure in tenancy law? Is there a special jurisdiction or is the ordinary one competent? What are the possibilities of appeal?*

Under Article 591 of the Judicial Code (*Gerechtelijk Wetboek*; *Code Judiciaire*), all claims in matters of tenancy law fall within the jurisdiction of the justice of peace court of the place where the dwelling is located, regardless the amount of the claim. The justice of peace court is a judicial subdistrict. The justice of peace has competence, regardless the amount, to e.g., tenancy disputes and family law.

Legal remedies: Application to set aside a default judgement (verzet)

The justice of peace may pass judgment against a person in default.³²⁰ The basic rule is that the default judgment must be served within one year, otherwise it will be null and void.³²¹

³¹⁷ A. van Oevelen (ed.), *Woninghuur*, 104.

³¹⁸ A. van Oevelen (ed.), *Woninghuur*, 105.

³¹⁹ A. van Oevelen (ed.), *Woninghuur*, 105.

³²⁰ This procedure is laid down in arts 802-806 Judicial Code.

³²¹ Art. 806 Judicial Code. The exceptions to this basis rule are laid down in the arts 47-57 Judicial Code.

The party, against whom judgment has been given, can make an objection against the judgement (*verzet*).³²² In that case, the justice of peace must hear the case once again. The statement of opposition (*akte van verzet*) should be motivated. If not, it may be declared invalid. The objection must be made within one month starting from the day after the service of the judgment. It is not possible to make an objection against a second judgement in default.

Legal remedies: Appeal

The general rule is that appeal is possible at the court of first instance and in all cases once the judgment is pronounced; even it is a judgment in default.³²³ The court of first instance re-examines the case's facts and gives its own judgement.

The period to appeal is one month and commences on the date of service of the judgment in accordance with Article 792 Judicial Code.³²⁴ The period is calculated from midnight to midnight. The deadline to apply a remedy is at the risk of forfeiting all rights.³²⁵ However, if that day is a Saturday, Sunday or national holiday, the period ends on the next working day.³²⁶

Legal remedies: Appeal in cassation

After having a judgement by the court of first instance, a convicted person can appeal to the Court of Cassation. It takes notice of the decisions and reviews the lawfulness of judgements.³²⁷ This court does not enter into the merits of the case itself.³²⁸ Unless the law provides for a shorter period, the period for cassation is three months and commences on the date of service of the judgment in accordance with Article 792 Judicial Code.³²⁹

- Are there regulatory law requirements influencing tenancy contracts?
 - Regulatory law requirements on - new and/or old - habitable dwellings capable of being rented - e.g. on minimum size, number of bathrooms, other mandatory fittings

Tenancy contracts with a duration of no longer of nine years concerning dwellings which are used as the tenants' primary residence, must be registered with the registration office where the dwelling is located.³³⁰ This also applies to the attachments. The registration of written contracts is confirmed by a stamp on the contract. The contract has from that time onwards a 'fixed date'.

³²² Art. 1047 Judicial Code.

³²³ Art. 1050 Judicial Code.

³²⁴ Art. 1050 Judicial Code.

³²⁵ Art. 860 Judicial Code.

³²⁶ Art. 53 Judicial Code.

³²⁷ Art. 608 Judicial Code.

³²⁸ Art. 147 Constitution states: 'There is a Supreme Court for all Belgium. This Court has no competence over the substance of the case.'

³²⁹ Art. 1073 Judicial Code.

³³⁰ Art. 19, 3° of the Flemish, Brussels and Walloon Codes on the Registration, Mortgage and Court fees (*Wetboek der registratie-, hypotheek- en griffierechten Vlaams Gewest; Wetboek der registratie-, hypotheek- en griffierechten Brussels Gewest; Code des droits d'enregistrement, d'hypothèque et de greffe (Region Wallone)*).

Contracts with a duration of longer than nine years are included in a notarial deed and must be executed before a civil-law notary.³³¹ The ‘fixed date’ is the execution date.³³² These deeds must be transcribed into the records of the mortgage registry within fifteen days by the civil-law notary.³³³

The fixed date has consequences for the tenant, as he enjoys security of tenure, for example, if the dwelling is sold.³³⁴ See for further details Section 6.3 ‘*Registration requirements; legal consequences in the absence of registration*’ and Section 6.4 ‘*Does the change of the landlord through inheritance, sale or public auction affect the position of the tenant?*’.

The basic quality requirements of safety, health and habitability lay within the competence of the three regions. These requirements are laid down in the regional regulations and in Article 2 Housing Rent Act, which refers to the Royal Decree of 8 July 1997 (See table 6.3).

Table 6.3 Right to decent housing in Belgium

	Further specified in:
Right to decent housing: 23 Belgium Constitution	Federal state: art. 2 Housing Rent Act and Royal Decree of 8 July 1997 ³³⁵
	Flemish Region: Title III Flemish Housing Code and ancillary decisions by the Flemish Government ³³⁶
	Brussels Region: Brussels Housing Code and ancillary decisions by the Brussels Government ³³⁷
	Walloon Region: Walloon Housing Code and ancillary decisions by the Walloon Government. ³³⁸

The statutory basis of the right to decent housing for the Flemish Region is laid down in Flemish Housing Code, the Framework Social Rent and the ancillary decisions.³³⁹

Article 3 of the Flemish Housing Code states that everyone is entitled to a dwelling, which meets at least the minimum quality requirements. Furthermore, it guarantees housing security at an affordable price. The minimum quality requirements are related to safety, health and habitability and are included in Title III Flemish Housing Code. This title applies to both private and social tenancy contracts in Flemish Region. Especially, the aspect of safety concerning gas and electrical installation is of great importance.

³³¹ Art. 2 Mortgage Act (*Hypotheekwet; Loi hypothécaire*), Belgium Official Journal 22 December 1851.

³³² Art. 1328 CC describes in which cases documents have a fixed date.

³³³ Art. 32, 1° in conjunction with art. 32, 5° Flemish, Brussels and Walloon Codes on the Registration, Mortgage and Court fees.

³³⁴ <http://minfin.fgov.be/portail2/nl/e-services/myrent/faq.htm#B>, 13 March 2013.

³³⁵ Koninklijk besluit van 8 juli 1997 tot vaststelling van de voorwaarden waaraan ten minste voldaan moet zijn wil een onroerend goed dat wordt verhuurd als hoofdverblijfplaats in overeenstemming zijn met de elementaire vereisten inzake veiligheid, gezondheid en woonbaarheid.

³³⁶ E.g., Besluit van de Vlaamse Regering betreffende de kwaliteits- en veiligheidsnormen voor woningen.

³³⁷ E.g., Besluit van de Brusselse Hoofdstedelijke Regering tot uitvoering van de Huisvestingscode, Belgium Official Journal 23 april 2004.

³³⁸ E.g., 11 February 1999 Arrêté du Gouvernement wallon déterminant les critères de salubrité, le caractère aménageable ou non des logements ainsi que les critères minimaux d’octroi de subventions.

³³⁹ Kaderbesluit Sociale huur.

Other examples of minimum requirements are: minimum size, sanitary facilities, drinking water, the availability of heating and lighting and stability of the building.³⁴⁰

The Flemish Housing Code includes criminal and administrative enforcement mechanisms.³⁴¹ The administrative enforcement procedure has the aim to ensure that dwellings meet the minimum quality requirements and that they are suitable for living. If not, the dwelling or room may be declared unsuitable for living, unfit for habitation or overcrowding.³⁴²

Flemish Region

Flemish Region: Certificate of conformity

One of the consequences of such a declaration is that the certificate of conformity lapses. This certificate states that the dwelling or room complies with the minimum quality standards. It is not a rental licence. The certificate is, generally, valid for ten years. As of 11 August 2013, the municipalities have the authority to make the certificate of conformity compulsory.³⁴³

Parties can conclude a renovation agreement in their tenancy contract. They may differ from the minimum standards of Article 2 of Housing Rent Act and the Royal Decree of 8 July 1997.³⁴⁴ The consequence will be that a mayor in the Flemish Region probably cannot issue a conformity certificate.³⁴⁵ Consequently, the tenancy contract including the renovation agreement are null and void.

Flemish Region: Providing minimum data concerning property's structural status

For private tenancy contracts of more than nine years, the Flemish government imposes additional obligations on the landlord. He is obliged to provide the potential tenant minimum data concerning the property's structural status.

Flemish Region: Energy performance certificate, smoke alarms, roof isolation

In the framework of the Kyoto Protocol on climate change,³⁴⁶ the European Directive on the energy performance of buildings requires Member States to introduce an energy performance certificate. This certificate should be available at the buildings construction, sale or lease.³⁴⁷ It states how energy efficient a property is.

³⁴⁰ Art. 5 Flemish Housing Code.

³⁴¹ B. Hubeau & T. Vandromme (eds), *Vijftien jaar Vlaamse Woonscode Sisyphus (o)ngelukkig?*, Reeks Zakenrecht, (Brugge: die Keure, 2013), 43.

³⁴² Art. 15 Flemish Housing Code.

³⁴³ https://www.wonenvlaanderen.be/ondersteuning_voor_professionelen/woningkwaliteit_voor_professionelen/nieuws_woningkwaliteit, 3 August 2013.

³⁴⁴ Koninklijk besluit van 8 juli 1997 tot vaststelling van de voorwaarden waaraan ten minste voldaan moet zijn wil een onroerend goed dat wordt verhuurd als hoofdverblijfplaats in overeenstemming zijn met de elementaire vereisten inzake veiligheid, gezondheid en bewoonbaarheid.

³⁴⁵ A. van Oevelen (ed.), *Woninghuur*, 105.

³⁴⁶ 11 December 1997.

³⁴⁷ Vlaams Energie agentschap: 'Implementatie Europese Richtlijn 'Energieprestaties van gebouwen' - EPB – EPC,' April 2010.

All rented dwellings and rooms must be fitted with a smoke detector.³⁴⁸ This is the landlord's responsibility.³⁴⁹ For contracts concluded prior to 1 January 2013 a rule of transitional law applies, which means a phased introduction of this obligation.³⁵⁰

As of 1 January 2015, buildings must meet certain roof insulation norms. This applies to all single-family houses, studios and apartments.³⁵¹

Flemish Region: Regulations on municipality level

Municipalities have their own regulations with respect to public hygiene and safety. These regulations can be found in regional decrees.

Brussels Region: Brussels Housing Code and the right to decent housing

On 28 July 2013 the new Brussels Housing Code entered into force.³⁵² The Constitutional right to decent housing is specified in Article 5 of this code.

According to Article 5, the availability of decent housing should be promoted by stating that everyone has the right to a decent housing. Decent housing must be in consistent with the quality rules of safety, health, and equipment (*uitrusting*). Furthermore, the housing must be affordable and offer housing security. It must be adapted to a disability, have a healthy indoor climate, have a good energy features, be connected to community facilities and nearby other services of general interest (e.g., schools, kindergartens, cultural centres, commercial and recreational areas).³⁵³

The Brussels Housing Code also states that dwellings must meet the minimum norms concerning electricity, gas, water tightness, availability of day light, basic sanitation and heating equipment, adequate ventilation of rooms and suitable surface area for the number of residents.³⁵⁴

A landlord, who wishes to rent out his dwelling, needs to ensure that the property meets the above mentioned minimum standards.

³⁴⁸ This is mandatory for contracts concluded after 31 December 2013.

³⁴⁹ Decreet van 1 juni 2012 houdende de beveiliging van woningen door optische rookmelders, Belgium Official Journal 13 Juli 2012; Besluit van de Vlaamse Regering houdende wijziging van het besluit van de Vlaamse Regering van 6 oktober 1998 betreffende de kwaliteitsbewaking, het recht van voorkoop en het sociaal beheersrecht op woningen en van het besluit van de Vlaamse Regering van 3 oktober 2003 betreffende de kwaliteits- en veiligheidsnormen voor kamers en studentenkamers wat betreft de uitrusting met rookmelders, Belgium Official Journal, 6 August 2012.

³⁵⁰ Decreet van 1 Juni 2013 houdende beveiliging van woningen door optische rookmelders, Belgium Official Journal 13 June 2012.

³⁵¹ Decreet van 28 oktober 2011 tot wijziging van het besluit van de Vlaamse Regering van 6 oktober 1998 betreffende de kwaliteitsbewaking, het recht van voorkoop en het sociaal beheersrecht op woningen (kwaliteitsbesluit) en van het besluit van de Vlaamse Regering van 3 oktober 2003 betreffende de kwaliteits- en veiligheidsnormen voor kamers en studentenkamers (kamerbesluit) en tot vaststelling van de inwerkingtreding van artikel 32, 3°, van het decreet van 29 april 2011 houdende wijziging van diverse decreten met betrekking tot wonen (Woonwijzigingsbesluit), Belgium Official Journal 5 december 2011.

³⁵² Ordonnantie van 17 juli 2013 tot wijziging van de ordonnantie van 17 juli 2003 houdende de Brusselse Huisvestingscode.

³⁵³ The quality rules of safety, health and equipment are specified in Art. 6 Brussels Housing Code.

³⁵⁴ Art. 4 Brussels Housing Code.

Brussels Region: Certificate of conformity

For homes with a usable area of less than 28 m² and furnished accommodation, a certificate of conformity must be awarded by Regional Inspection Service (*Gewestelijke Inspectiedienst*).³⁵⁵ This must be requested by the landlord and must be issued before the dwelling can be rented out. For leased dwelling larger than 28 m², a different certificate is required. However, this one is not mandatory.³⁵⁶

Brussels Region: energy or environmental criteria and energy performance certificate

The new Brussels Housing Code includes no energy or environmental criteria. An energy certificate is also not mandatory. According to the State Secretary of the Brussels Parliament, the certificate was only officially introduced a year ago. The usefulness of it will be evaluated and, if necessary, legislation will be implemented.³⁵⁷

Walloon Region: Walloon Housing Code and the right to decent housing

Article 2 of the Walloon Housing Code states that the purpose of this code is to provide healthy homes and ensure availability for families with modest incomes and families in a precarious state. Article 3 sets out minimum health standards, e.g., the structure and size of the dwelling, the water tightness, the natural light, the sanitation and heating.³⁵⁸

Walloon Region: Rental licence

The landlord must obtain a rental license prior to the rental of a dwelling.³⁵⁹ In order to obtain such a license, the dwelling must meet the abovementioned minimum health standards.³⁶⁰ This permit is valid for five years.³⁶¹ The certificate of conformity issued by the mayor is an condition to obtain a rental licence.

Walloon Region: energy or environmental criteria and energy performance certificate

As of 31 December 2010 energy performance certificate is mandatory for the lease of a dwelling, which are used by the tenant as his main residence.³⁶² The Walloon Region may impose an administrative fine, if the landlord rents out a dwelling without such a certificate.³⁶³

³⁵⁵ Art. 7 Brussels Housing Code.

³⁵⁶ An exception is made for tenancy contract which included the obligation for the tenant to carry out renovation works. The obligation to have an certificate of conformity shall be waived for the planned duration of the renovation. But only for a maximum of twelve months, commencing on the date of closing of the registered according to the rules of registered tenancy contracts.

³⁵⁷ [http://www.immospector.be/NewsView.aspx?contentdomains=OR\(IMMOPRO\)&id=kl1681135](http://www.immospector.be/NewsView.aspx?contentdomains=OR(IMMOPRO)&id=kl1681135), 6 August 2013.

³⁵⁸ The Government has specified these minimum norm in the 11 February 1999 Arrêté du gouvernement wallon déterminant les de salubrite le caractère eméliorable ou non des logement ainsi que les critères minimaux d'octroi de subventions.

³⁵⁹ Art. 10 Walloon Housing Code.

³⁶⁰ Art. 10 Walloon Housing Code and 11 February 1999 Arrêté du Gouvernement wallon déterminant les critère de salubrité, le caractère amé liorable ou non des lodgements ainsi que les critères minimaux d'octroi de subventions.

³⁶¹ Art. 11 Walloon Housing Code.

³⁶² <http://www.6minutes.be/Artikel.aspx?ArtikelID=19145&RubriekID=9>, 12 November 2013.

³⁶³ http://www.kadaster.be/PEB-EPB.aspx#waals_gewest, 31 October 2013.

6.2 The preparation and negotiation of tenancy contracts

- *Freedom of contract*
 - *Are there cases in which there is an obligation for a landlord to enter in to a rental contract?*

The theory of culpa in contrahendo is applicable in these cases. There are no mandatory rules in which there is an obligation for a landlord to enter in to a rental contract. However, a landlord is in very specific circumstances obliged to conclude a tenancy contract. This is further detailed under Section 6.3 '*Ancillary duties of both parties in the phase of contract preparation and negotiation ("culpa in contrahendo" kind of situations)*'.

- *Matching the parties*
 - *How does the landlord normally proceed to find a tenant?*

Private rental sector

Landlords can choose to advertise dwellings themselves in newspapers, on internet or even by putting a sign board against the dwelling's window.

They can also buy the services provided by a rental agent or real estate agent as described below.

Social rental agencies (sociale verhuurkantoren)

Besides the above mentioned options, a landlord can also rent out his dwelling to a Social Rental Agency (*sociale verhuurkantoor*).³⁶⁴

Social Rental Agencies aim to create an alternative to market rent for vulnerable tenants who are unable to find a social rental dwelling. They do not act as intermediaries or nor as rental agents or real estate agents.³⁶⁵ The prospective tenant must meet several conditions in order to be entitled to a dwelling and has to take a vesting in to consideration³⁶⁶

On the one hand, a social rental agency acts as tenants, if a contract is concluded with a landlord. The Civil Code is applicable to this contract. On the other hand, the agency itself acts as a landlord, if the dwelling is thereafter rented out to a tenant. This tenancy contract is governed by social tenancy law.

Recent research shows that, for instance, in the Flemish Region most of the social rental agencies are promoted via friends. The Public Centres for Social Welfare (*Openbaar*

³⁶⁴ Flemish Region: Title V, Chapter IV Flemish Housing Code; Brussels Region: Title IV, Chapter VII Brussels Housing Code & Walloon Region: Arrêté du Gouvernement wallon du 23 septembre 2004 relatif aux organismes à finalité sociale (besluit van de Waalse regering van 23 september 2004 betreffende de sociale huisvestingsinstellingen).

³⁶⁵ B. Hubeau & T. Vandromme (eds), *Vijftien jaar Vlaamse Wooncode Sisyphus (o)ngelukkig?*, 284.

³⁶⁶ The conditions can be found on this internet page: <http://www.vmsw.be/nl/particulieren/huren-via-een-svk/informatie-voor-de-huurlers/wie-komt-in-aanmerking->, 8 January 2014.

Centrum voor Maatschappelijk Welzijn; OCMW), also get landlord in contact with social rental agencies.³⁶⁷

- *What checks on the personal and financial status are usual? In particular: May the landlord ask for a salary statement? May he resort to a credit reference agency and is doing so usual?*

Private rental sector

The usual checks on personal and financial status are: first name, surname and payslips or other income documents.

Whether and what type of checks on the personal and financial status are allowed, is regulated by the Privacy Act. The scope of this Act is described below and applies to landlords and credit reference agencies.

Social rental sector

Each region has its own regulations and conditions concerning the registration and allocation of social dwellings.³⁶⁸ A candidate tenant must meet additional requirements in order to get registered and to get a house allocated, e.g., being of full of age and income requirements. Therefore, these checks are allowed.

- *How can information on the potential tenant be gathered lawfully? In particular: Are there blacklists of “bad tenants”? If yes, by whom are they compiled? Are they subject to legal limitations e.g. on data protection grounds?*

Gathering information on a person’s personal data is regulated by several laws.

Everyone has the right to the protection of personal data concerning him or her. This right is enshrined in Article 8 of the European Union’s Charter of Fundamental Rights.³⁶⁹

The right to respect of one private and family life is enshrined in Article 8 ECHR and Article 22 of the Belgian Constitution.

A limitation of these rights can only be done by law, which means that this requires a legislative assembly’s intervention. The legislator has made the collection of information on a tenant (and individuals in general) subject to the ‘*Wet van 8 december 1992 voor de bescherming van de persoonlijke levenssfeer ten opzichte van de verwerking van persoonsgegevens*’ (Privacy Act). This Act aims to protect against the abuse of individuals’ personal data. Personal data is defined as: “*any information relating to an identified natural person or a person who may be identified by means reasonably likely to be use.*”³⁷⁰

³⁶⁷ P. De Decker, E. Vlerick & M. Leroy, *Eigenaars die hun woningen verhuren aan een social verhuurkantoor. Profiel, motieven en tevredenheid*, Steunpunt Ruimte en Wonen, (Heverlee: 2009), 101.

³⁶⁸ Flemish Region: Framework Social Rent; Brussels Region: 26 September 1996 Decision of the Brussels-Capital Region; Walloon Region: 6 September 2007 Decree of the Walloon Government.

³⁶⁹ Citizens can only rely on the Charter of Fundamental Rights when it comes to legislation that is initiated by the European Union. National laws and regulations fall outside the scope of this Charter.

³⁷⁰ International Standards on the Protection of Personal Data and Privacy (2009) (The Madrid Resolution). Resolution adopted on 5 November 2009 by the International Conference of data Protection and Privacy commissioners.

Examples are: name, address, phone number, income, but also email addresses.³⁷¹ The rights and obligations of the person whose data are processed as well as the rights and obligations of the processor itself are defined in the Privacy Act.³⁷²

Personal data of a potential tenant can therefore lawfully be gathered by others (mainly landlords and real estate agents), if they comply with Articles 4-8 Privacy Act.

Information about persons should not be collected or processed in unfair or unlawful ways, nor should it be used contrary to the purposes and principles of the Charter of the United Nations.³⁷³ The processing of personal data should be limited to such processing as is adequate, relevant and not excessive in relation to the purposes. In particular, the responsible person should make reasonable efforts to limit the processed personal data to the minimum necessary.³⁷⁴

As a general rule, personal data may only be processed in one of the following situations:³⁷⁵

- after obtaining the free, unambiguous and informed consent of the data subject, or
- where the processing is necessary for the maintenance or the performance of a legal relationship between the responsible person and the data subject, or
- where the processing is necessary for complying with an obligation imposed on the responsible person by the applicable national legislation, or is carried out by a public authority where necessary for the legitimate exercise of its powers, or
- where there are exceptional situations that threaten the life, health or security of the data subject or of another person, or
- where a legitimate interest of the responsible person justifies the processing, and the legitimate interests, rights and freedoms of data subjects do not prevail.

The Privacy Commission and its statutory task

The Privacy Commission, which is a Federal body, is the independent supervisory authority, whose task is to ensure that the right of privacy is respected, if personal data are processed, used or passed on.³⁷⁶

³⁷¹ Recommendation No. R(99) 5 of the Committee of Ministers to member states for the protection of privacy on the internet: Guidelines for the protection of individuals with regard to the collection and processing of personal data on information highways (1999), http://hub.coe.int/c/document_library/get_file?uuid=1d807537-6969-48e5-89f4-48e3a3140d75&groupId=10227, 27 March 2013.

³⁷² The Privacy Act was amended by the Act of 11 December 1998 as a result of the adoption of the European directive 95/46/ EG of 24 October 1995, which had to be transposed into Belgian law. The second change in legislation was the adoption of the Act 26 February 2003. On 13 February 2001 and on 17 December 2002 <http://www.privacycommission.be/en/in-a-nutshell003> two Royal Decrees were implemented. Citizens can only rely on the Charter of Fundamental Rights when it comes to legislation that is initiated by the European Union. National laws and regulations fall outside the scope of this Charter.

³⁷³ Article 1 Guidelines for the Regulation of Computerized Personal Data Files Adopted by General Assembly resolution 45/95 of 14 December 1990.

³⁷⁴ Principle nr. 8: Proportionality Principle: 1 International Standards on the Protection of Personal Data and Privacy (2009) (The Madrid Resolution). Resolution adopted on 5 November 2009 by the International Conference of data Protection and Privacy commissioners.

³⁷⁵ Principle nr. 8: Proportionality Principle: 1 International Standards on the Protection of Personal Data and Privacy (2009) (The Madrid Resolution). Resolution adopted on 5 November 2009 by the International Conference of data Protection and Privacy commissioners.

Besides this, the Privacy Commission hears claims lodged by any person concerning the protection of his/her rights and fundamental freedoms with regard to the processing of personal data within its competence.³⁷⁷ The Privacy Committee's advises are no court judgements. Nevertheless, if a landlord or a real estate agent violates the Privacy Act or Antidiscrimination Act, he may face a criminal sanction.

Privacy Commission recommendations concerning data processing

Recommendation concerning blacklists

In 2002, the Privacy Committee made a recommendation concerning the composition of an external file of non-paying tenants (blacklist). This file was drawn up by the 'General Owners and Co-owners Syndicate' (AES), which is an interest group for landlords in the private rental sector.³⁷⁸ Landlords could, via internet, check a whether a (prospect) tenant is a non-payer. Besides this, a list was made available with names, addresses, days of birth, numbers of months of outstanding rent and other remarks.

The Privacy Committee concluded that the list falls under the Privacy Act's scope and must comply this Act. Furthermore, it concluded that the list harms (prospect) tenants' interests by protection the landlords' interest. Besides this, the list has a particular wide geographical en personal scope. The constitutional right to a decent housing could be damaged by this list.

The Privacy Committee concluded, furthermore, that it is the legislator's task to protect this right and to establish conditions under which this right may be exercised and that the list does not comply with the provisions as laid down in the Privacy Act.

Recommendation concerning the processing of data from prospective tenants

The Privacy Committee made a recommendation concerning the processing of data from prospective tenants in 2009 (SE/08/128).³⁷⁹ The research covered mainly data collection by landlords in the private sector and real estate agents in the context of lease of the tenant's primary residence and commercial lease. The Privacy Committee's recommendation was that landlords and real estate agents have to consider the systematic collection of data from prospective tenants by using standard forms. They must also ensure that they can prove the proportionality for a) each collected data and b) all processing of such data. Table 6.4 included a few examples.³⁸⁰

³⁷⁶ <http://www.privacycommission.be/en/in-a-nutshell>, 26 February 2013.

³⁷⁷ Art. 31 Privacy Act.

³⁷⁸ Privacy Commission, 'Advies betreffende de samenstelling van een extern bestand van wanbetalers bij huurders', Advies Nr 52 / 2002 van 19 december 2002, http://www.privacycommission.be/sites/privacycommission/files/documents/advies_52_2002_0.pdf, 16 July 2013.

³⁷⁹ Recommendation number 01/2009 (SE/08/128) of 18 March 2009, http://www.privacycommission.be/sites/privacycommission/files/documents/aanbeveling_01_2009_0.pdf, 27 May 2013.

³⁸⁰ Recommendation number 01/2009 (SE/08/128) of 18 March 2009, http://www.privacycommission.be/sites/privacycommission/files/documents/aanbeveling_01_2009_0.pdf, 27 May 2013.

Table 6.4 Collection data from prospective tenants

Collection data of the prospective tenant:	Privacy Commission conclusion:
Name, surname	Justified, in an initial stage.
Current address	This is not justified in the pre-contractual fase, but it is justified, if the contract will be drawn up
Ethnic decent, birthplace, nationality, prospective tenant's number plate,	This is a <i>priori</i> discrimination according to the Antidiscrimination Act.
Marital status	Justified, but the tenant refusal to answer this question may not lead to not concluding the tenancy contract.
Date of birth	This is a <i>priori</i> discrimination according to the Antidiscrimination Act, but if a contract is drawn up, the tenant should prove it.
National Register's identification number (<i>identificatie nummer Rijksregister</i>)	Only persons who are authorized by the ' <i>Wet van 8 augustus tot regeling van een Rijksregister van de natuurlijke personen</i> ' are allowed to collect a person's identification number. Landlords and real estate agents are not authorized by this Act.
Payslips and other income documents	Justified, as long as the information is used to check whether the prospective tenant is solvent. The handover of the document is not justified, as the landlords check is merely to conclude whether the prospective tenant is solvable.
Persons who will life in the dwelling	Justified
Certificate of good conduct, referee	Not justified
Handicap or health status	Not justified, unless the prospective tenant has given his permission in writing (which always is revocable) and the permission is necessary in order to be granted a dwelling which is adjusted for handicaps or tenants with health issues.

- *What checks may and does the tenant carry out on the landlord (e.g. to avoid being trapped by a swindler landlord)*

The tenant can check the land registry, in which is the ownership of property is registered.³⁸¹

- *What services are usually provided by estate agents?*

For the sake of efficiency, this question will be answered under the following question

- *To what extent are estate agents regulated? In particular: are there rules on how an agent should present a house, i.e. on the kind of information which needs to be given?*

There are two types of intermediates who can play a role in the area of rental housing: rental agencies and estate agents.

Services provides by rental agencies

On the one hand, there are rental agencies, which can find rental property according to the client's wishes by doing a so-called 'sign hunting'. The agency checks advertisements in newspapers, magazines, internet and other available recourses and draws up an inventory of the available housing stock. Furthermore, it will provide their

³⁸¹ Tenancy contracts with a duration of longer than nine years, are also registered with the land registry.

clients a list of available dwellings and contact details. But this is where the agency's service ends. The client has to contact the landowner and do all the negotiations by himself.³⁸² Unlike estate agents contracts, these contracts are not governed by a special Act or Decree.

Services performed by registered estate agents

On the other hand, there are registered estate agents. In Belgium, these agent must be licensed and registered with the Association of Estate Agents (*Beroepsinstituut van Vastgoedmakelaars*). Only registered agents are permitted to act as intermediate between tenants and landlords.

Registered agents are permitted to provide other types of services, such as: the managing the property and collecting the rent for the landlord. In order to do so, parties must conclude a contract. There are two types of contract.

The first contract type is an agency contract (*bemiddelingsopdracht*). The agent will search for a suitable dwelling, accompany client during the visits, provide the tenant with information about the dwelling and, in most cases, negotiate the tenancy conditions on behalf of his client. The second contract type is the written mandate, which has a broader scope. Mandate is a contract for services whereby the mandatory (*lasthebber*), binds himself towards the other party, the mandator (*lastgever*), to perform one or more juridical acts for the account of the mandator.

The conditions of these two contracts are regulated by the 1 January 2007 Royal Decree.³⁸³ It aims to prevent the consumer against malpractice by the real estate agent. There are no specific rules about how an estate agent should present a house. Nevertheless, in general it can be said that both rental agencies and estate agents are prohibited to make advertisements which mislead or which may mislead the people who receive them.³⁸⁴ Furthermore, Article 1716 CC states that any official or public communication of a house should include the requested rent and common expenses (*gemeenschappelijke lasten*). Article 5ter Housing Rent Act must also be taken into consideration. The commission may not be charged to the tenant, unless he has given the agent the assignment.

- *What is the usual commission they charge to the landlord and tenant? Are there legal limitations on the commission?*

In Belgium, the usual rate is between 3.63% (3% + VAT) and 7.26% (6% + VAT).³⁸⁵

³⁸² <http://www.justlanded.com/english/Belgium/Belgium-Guide/Housing-Rentals/Agencies>, 19 February 2013.

³⁸³ Koninklijk besluit van 1 januari 2007 betreffende de voorwaarden van vastgoedmakelaars in contracten van bemiddeling, Belgium Official Journal 19 January 2007.

³⁸⁴ 6 April 2010 Wet betreffende marktprijzen en consumentenbescherming; 2 August 2002 Wet betreffende de misleidende en vergelijkende reclame, de onrechtmatige bedingen en de op afstand gesloten overeenkomsten inzake de vrije beroepen.

³⁸⁵ <http://www.billionhomes.com/vastgoednieuws/2013/02/12/het-ereloon-van-de-vastgoedmakelaar/>, 1 October 2013.

Price-fixing is in conflict with the Competitive Trading Act. So, real estate agents are free to reach agreement on price with their clients. For instance, they may charge a percentage of the rent or a fixed fee per transaction. In accordance with Article 5 Housing Rent Act, the costs for the provided services may not be charged to the tenant, unless the tenant has assigned the agent to act as an intermediary. Moreover, the agent may only receive fees from his client, unless stipulated otherwise.³⁸⁶

- *Ancillary duties of both parties in the phase of contract preparation and negotiation ("culpa in contrahendo" kind of situations)*

Culpa in contrahendo

One of the principles of contract law is the freedom to contract which includes the freedom to break off negotiations.³⁸⁷ It may happen that a 'pre-contracting party' gives rise to a legitimate expectation that a tenancy contract will be concluded and then withdraws himself from the negotiations. Sometimes, the party's withdrawal can be qualified as contract refusal.³⁸⁸ Generally speaking, the obligation to contract, due to contract refusal, is not accepted. However, it can be said that in very specific circumstances the landlord is obliged to conclude a contract. E.g, in the case he absolute dominant position, he carries out tasks that are similar to those of the government and related to an essential good, in this case, the housing for the tenant.³⁸⁹

The obligation to inform the tenant

Generally speaking, the parties have to the duty to inform each other during the pre-contractual process. For instance, a landlord has to provide information to which the other does not have access.³⁹⁰

Furthermore, he must inform his potential tenant about the common costs in an apartment building. This is accordance with Article 1716 CC. A landlord who acts contrary to this Article may have to pay an administrative fine between €50 and €200.³⁹¹ Besides this, the landlord is liable against the tenant for the damaged suffered.

A landlord must also inform the potential tenant about the utility costs and how these costs are calculated. This obligation is not included in Article 1716 CC. The basis is the doctrine of culpa in contrahendo as described above.³⁹²

Moreover, a landlord who fails to notify his tenant that the actual costs will exceed the advanced payment fails to meet his pre-contractual obligation to inform the tenant correctly. He is therefore liable.³⁹³

³⁸⁶ Art. 26 Reglement van plichtenleer van het Beroepsinstituut van Vastgoedmakelaars.

³⁸⁷ J. Herbots, *Contract law in Belgium*, (Deventer – Boston: Kluwer Law and Taxation Publishers), 1995, 115.

³⁸⁸ Arts 1382 and 1883 CC. It should be noted that the pre-contractual liability is not specific regulated by law. Art. 1382 states: 'Any act whatever of man which causes damage to another obliges him by whose fault it occurred to make reparation'. Art. 1383 states that: 'Each one is liable for the damage which he causes not only by his own act but also by his negligence or imprudence.'

³⁸⁹ M. Dambre, *De huurprijs*, 140.

³⁹⁰ Arts 1382 and 1883 CC on tort. J. Herbots, *Contract law in Belgium*, 118.

³⁹¹ Art. 1716 CC in conjunction with art. 119bis New Municipality Act.

³⁹² M. Dambre, *Huurrecht*, Syllabus Beroepsopleiding van Vlaamse Balies, not dated, 6.

Mandatory attachments to the contract

In the phase of contract preparation, parties must also take notice that it is mandatory to attach three documents to the tenancy contract. Firstly, a detailed inventory must be drawn up (*plaatsbeschrijving*).³⁹⁴ Secondly, a copy of the Royal Decree of 8 July 1997 must be attached to the tenancy contract.³⁹⁵ This Decree determines that a dwelling, which is rented out as a primary residence, must meet the basic requirements concerning health, safety and habitability. Finally, an appendix which explains important aspects of tenancy law must be attached, such as, rights and obligations.

Besides the aforementioned documents, a copy of the applicable standing orders (*huishoudelijk reglement*) must also be attached to the social tenancy contracts.³⁹⁶ These orders form an integral part of the tenancy agreement. There is no specific sanction, if these attachments are not attached to the tenancy contract.

6.3 Conclusion of tenancy contracts

- *Tenancy contracts*
 - *Distinguished from functionally similar arrangements (e.g. licence; real right of habitation)*

A tenancy contract is a contract whereby the landlord, on the one hand, undertakes to provide the tenant the enjoyment of a property for a certain time and a certain price. The tenant, on the other hand, undertakes to pay the price.³⁹⁷ There are other types of rights of enjoyment (*genotsrechten*) which grants a right to a dwelling, but these rights are not governed by the Housing Rent Act.³⁹⁸ The contract can be either be a personal right of enjoyment or a real right of enjoyment.

Tenancy contracts versus personal rights

The loan agreement

An example of a personal right of enjoyment is a loan agreement (*bruikleen*). The tenant may use the dwelling, but does not have to pay any consideration.³⁹⁹

³⁹³ Kr. Brussel 22 November 1995, *T. Vred.* 1997, 114.

³⁹⁴ Art. 1730 CC, which states 'if an inventory of the premises was made between the landlord and the tenant, the latter must return the thing such as he received it, according to such inventory, except for what perished or deteriorated through decay or act of God'.

³⁹⁵ Art. 2 Housing Rent Act.

³⁹⁶ Art. 11 Type social tenancy contract, attached as Appendix 5 to 6 September 2007 Decree of the Walloon Government.

³⁹⁷ Art. 1709 CC.

³⁹⁸ A. van Oevelen (ed.), *Woninghuur*, 54.

³⁹⁹ A. van Oevelen (ed.), *Woninghuur*, 54.

The 'bezetting ter bede'

The *bezetting ter bede* is not provided by law. This is not a tenancy contract, but an innominate contract (*onbenoemde overeenkomst*) which has been developed in the legal practice. It provides the user the right to reside in the dwelling during a certain period. A price for the use can be agreed on. This type of agreement is often used in situations where the dwelling's designated use will change, but still is pending and also to evade the Housing Rent Act's mandatory legal provisions. It is also used after expropriation.

Property belonging to the public domain

Property belonging to the public domain cannot be a subject to tenancy contracts.⁴⁰⁰ However, a user's right can be granted by concluding a concession contract. The government is entitled to terminate the contract at a short notice and at all times.

Tenancy contracts versus accessory contracts

The Housing Rent Act is not applicable to accessory contracts (*accessoire overeenkomsten*).⁴⁰¹ This is a contract under which the dwelling is assigned to the tenant, but subordinated to the main contract, which relates to the function or activity of the tenant. E.g., a contract concerning a dwelling in which a concierge resides during his labour contract.

Tenancy contracts versus mixed contracts

Mixed contracts are contract whereby the housing is associated with a service delivery. It depends on the purpose whether the Housing Rent Act is applicable. If parties consider the granting of enjoyment of overriding importance, the Housing Rent Act becomes applicable. Every case has to be assessed specifically.⁴⁰²

Tenancy contract versus mixed uses contracts

If a tenancy contract covers the renting of a premises, which the tenant resides in and practice his profession or his agricultural undertaking, it is possible that the Trade Rent Act (*Handelshuurwet*) or the Agricultural Tenancies Act (*Pachtwet*) is applicable. Parties must identify the main destination of the leased property in order conclude which act is applicable.⁴⁰³

Lease of a dwelling which is (or no longer is) the principal residence

The Housing Rent Act is only applicable, if it meets the following four cumulative conditions as stated in Article 1 Housing Rent Act.

Firstly, the leased property must be used as a dwelling. Any kind of movable or immovable property (*roerend of onroerend goed*) or part of it can comply with the definition. This means that it does not matter whether the dwelling is a house, a houseboat, a trailer (mobile home) or a caravan.

⁴⁰⁰ A. van Oevelen (ed.), *Woninghuur*, 55.

⁴⁰¹ Art. 1 § 2 Housing Rent Act.

⁴⁰² A. van Oevelen (ed.), *Woninghuur*, 65.

⁴⁰³ A. van Oevelen (ed.), *Woninghuur*, 65-66. L. Machon et al., *101 vragen en antwoorden over de nieuwe wet*, 17.

Secondly, the dwelling must be used by the tenant as his principle residence. The definition principle residence is not clearly defined.⁴⁰⁴ However, one can say it is the place where a person: a) resides continuously, b) has his family life and c) has his centre of social and property interests (*vermogensrechtelijke belangen*).⁴⁰⁵ Any case must be verified separately. The tenant requires the landlord's permission, in order to use the dwelling as his principle residence. The permission can be granted expressly or tacitly.⁴⁰⁶

If a tenant decides to have his principle residence elsewhere, the Housing Rent Act's special mandatory protective provisions will lapse.⁴⁰⁷ The ratio behind this is that the tenant (obviously) does not have to be protected.⁴⁰⁸ Consequently, the tenancy contract will be governed by the rules of ordinary additional law.⁴⁰⁹ This has to be assessed on a case-by-case basis.⁴¹⁰

Social tenancy contracts in the regions

Both the doctrine and case law agree that social tenancy contracts do not fall under the scope of the Civil Code, *if and in so far* as the regions have issued regulations.⁴¹¹

Tenancy contracts versus real rights

Alongside personal rights, real rights are also not governed by the Housing Rent Act. Examples of real rights of enjoyment are: ground lease, right of superficies, usufruct, right of use and occupation.

Ground lease (*erfpacht; emphytéose*) grants the leaseholder the full enjoyment of someone else's immovable property.⁴¹²

The right of superficies (*opstalrecht; droit de superficie*) grants the right to build on one's land.

Usufruct (*vruchtgebruik; usufruit*) enables the usufructuary to enjoy things of which another has ownership, but with the responsibility of conserving the thing.⁴¹³

The right of use (*recht van gebruik; le droit d'usage*) is a partial usufruct. One who has the use of the fruits can claim them only to the extent that they are necessary to him for his needs and those of his family.⁴¹⁴

⁴⁰⁴ L. Machon et al., *101 vragen en antwoorden over de nieuwe wet*, p 14. Tenants must be recorded with the population register in the municipality where the dwelling is located.

⁴⁰⁵ More criteria are enumerated in ⁴⁰⁵ A. van Oevelen (ed.), *Woninghuur*, 57-58.

⁴⁰⁶ Art. 1 Housing Rent Act; A. van Oevelen (ed.), *Woninghuur*, 61-62.

⁴⁰⁷ M. Dambre et al., *Huurzakboekje*, (Mechelen: Wolter Kluwer Belgium, 2012), 15.

⁴⁰⁸ L. Machon et al., *101 vragen en antwoorden over de nieuwe wet*, 20.

⁴⁰⁹ A. van Oevelen (ed.), *Woninghuur*, 65-66.

⁴¹⁰ A. van Oevelen (ed.), *Woninghuur*, 65-66.

⁴¹¹ For the Flemish Region, this is laid down in art. 93 § 1 Flemish Housing Code.

⁴¹² Art. 3 Erfpachtwet 10 Januari 1824.

⁴¹³ Art. 578 CC.

⁴¹⁴ Art. 630 CC.

The right of habitation (*recht van bewoning; le droit d'habitation*) is a special form of usufruct. One who has a right of habitation may live there with his family, even though he was not married at the time when the right was given him.⁴¹⁵

- *Legal specifications of tenancy contracts, e.g. contracts on furnished apartments; student apartments; contracts over room(s) only (e.g. student rooms); contracts over rooms or apartments located in the house in which the landlord lives himself as well.*

If a rental agreement is not governed by the regulations concerning housing rent, retail rent or agricultural lease, ordinary tenancy law is applicable.⁴¹⁶

Tenancy contracts concerning movable and immovable property

Tenancy contracts regarding both movable⁴¹⁷ and immovable property can be subject to Housing Rent Act. The Housing Rent Act applies by law, if it satisfies the requirements as described in Article 1 Housing Rent Act. This means that tenancy contracts concerning caravans, houseboats and trailers can be governed by the Housing Rent Act. The same applies to rented pitches on which the tenant has placed a caravan or trailer and uses it as his principle residence.⁴¹⁸

Furnished dwellings

Fully furnished and semi- furnished dwellings are also governed by the Housing Rent Act, if the tenant uses his dwelling as his primary residence.⁴¹⁹ There are no Housing Rent Act provisions governing the rented furniture. The Articles 1757 and 1758 CC are applicable and imply that the duration of the lease of the furniture equals the duration of the lease of the dwelling. Parties may agree on different arrangements.

Student rooms

The Housing Rent Act applies to leases of dwellings that the tenants use as their principle residence and for which the landlord's permission is required.⁴²⁰ In most of the contracts concerning student flats or rooms, the principle residence is excluded in advance. Consequently, the Housing Rent Act is not applicable, except for Article 1*bis* Housing Rent Act.⁴²¹

Contracts over rooms or apartments located in the house in which the landlord lives himself as well

These types of contract are governed by the Housing Rent Act, if the room or apartment is the tenant's principle residence.

Secondary residences: holiday homes, hotel rooms and lodging

⁴¹⁵ Art. 632 CC.

⁴¹⁶ M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 5.

⁴¹⁷ For example: a houseboat, a trailer and a caravan.

⁴¹⁸ M. Dambre et al., *Huurzakboekje*, 13-14

⁴¹⁹ A-L. Verbeke & P. Brulez (eds), *Knelpunten Huurrecht – Tien Perspectieven*, Reeks Knelpunten Contractenrecht, nr. 10, (Antwerpen - Cambridge: Intersentia, 2012), 318.

⁴²⁰ Art. 1 Housing Rent Act.

⁴²¹ Art. 1714*bis* CC. A-L. Verbeke & P. Brulez (eds), *Knelpunten Huurrecht – Tien Perspectieven*, 307-308.

A lease contract regarding a secondary residence is not governed by Housing Rent Act. This changes if parties declare that the Housing Rent Act is applicable.

Timesharing

Timesharing is a formula whereby consumers can 'buy' the right for a certain period to use a furnished holiday residence for a number of weeks per year.⁴²²

- *Requirements for a valid conclusion of the contract*
 - *Formal requirements*

Article 1108 CC sets out conditions for a valid contract:

- The consent of the party who obligates himself

A rental agreement is a reciprocal agreement⁴²³ and is formed by an offer and acceptance by parties who are legally competent.⁴²⁴ The declaration of intention of both parties concerning the dwelling and the rent payment are the minimum requirements to conclude a valid tenancy contract. In principal, both oral and written lease contract are valid contracts and are governed by the Civil Code.⁴²⁵

- A person's capacity to contract

Persons who are legally competent may conclude contracts, unless the law states otherwise. See for further elaboration on this subject Section 6.4 '*Parties to a tenancy contract*'.

- The subject of the obligation

The subject of the obligation for the landlord is to provide his tenant the quite enjoyment of the dwelling. For the tenant, it is the payment of the rent.⁴²⁶ Furthermore, the dwelling and the rent must determinable.⁴²⁷

- *Contract in writing.*⁴²⁸

The contract must be concluded in writing and parties have to sign as many contracts as there are parties.⁴²⁹

- *Is there a fee for the conclusion and how does it have to be paid? (e.g. "fee stamp" on the contract etc)*

There is no fee for the conclusion of tenancy contracts.

- *Registration requirements; legal consequences in the absence of registration*

Registration of tenancy contracts

⁴²² Timesharing is governed by the Wet van 28 augustus 2011 betreffende de bescherming van de consumenten inzake overeenkomsten betreffende het gebruik van goederen in deeltijd, vakantieproducten van lange duur, doorverkoop en uitwisseling.

⁴²³ Art. 1102 CC; M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 276-277.

⁴²⁴ Art. 388 in conjunction with art. 1123 CC.

⁴²⁵ Art. 1714 CC.

⁴²⁶ M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 331.

⁴²⁷ M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 331-332.

⁴²⁸ Causa is an element essential to the enforceability of a contract consisting of an adequately serious "cause" or reason for a person to have obligated himself contractually in J.H. Crabb, 'The Constitution of Belgium and the Civil Code As Amended to September 1 1982 in the Belge 379, HeinOnline, 1982.

⁴²⁹ Art. 1bis Housing Rent Act. Oral contracts are valid contracts.

The landlord must register the contract with the local office of the Receiver of Registrations, Ministry of Finance (*Registratie, Ministerie van Financien*) by submitting a signed contract or a copy of it.⁴³⁰ See table 6.5.

Tenancy contracts governed by the Housing Rent Act must be registered within two months after the contract is signed.⁴³¹ The contract can be submitted via internet, e-mail or ordinary post.⁴³²

The registration of written contracts is confirmed by a stamp on the contract. The contract has from that time onwards a 'fixed date'. The 'fixed date' of contracts executed by a civil-law notary equals the execution date.⁴³³

The fixed date has consequences for the tenant, as he enjoys security of tenure, for example, if the dwelling is sold or in case of a public auction.⁴³⁴ Thus is further detailed under Section 6.4 '*Does the change of the landlord through inheritance, sale or public auction affect the position of the tenant?*'.

Tenancy contracts with a duration of longer than nine years must be included in an authentic deed and executed by a civil-law notary. The deed must be registered within fifteen days into the records of the mortgage registry within the court district where the immovable property is situated. See table 6.5.⁴³⁵

Table 6.5 Registration of tenancy contracts

	Registration of local office of the Receiver of Registrations	Registration with mortgage registry
Contracts < 3 years, contracts of 9 years	yes	no
Contracts longer than 9 years	yes	yes

What are the (legal) consequences if the landlord does not register the contracts ?

A contract which is not registered remains a valid contract. However, a € 25 penalty can be imposed on the landlord, if the contract is not registered within two months after signing it.⁴³⁶ The costs concerning a late registration must be borne by the landlord.⁴³⁷

Furthermore, the tenant may, at any moment during the contract, terminate the contract without a three months' notice. Besides this, the landlord has no right to a fixed compensation, if the tenant terminates the contract within the first three years.⁴³⁸ This also applies to contracts longer than nine years and for contracts for the duration of the tenancy life.⁴³⁹

⁴³⁰ <http://minfin.fgov.be/portail2/nl/e-services/myrent/faq.htm#B>, 13 March 2013.

⁴³¹ Art. 19 Flemish, Brussels and Walloon Codes on the Registration, Mortgage and Court fees

⁴³² <http://minfin.fgov.be/portail2/nl/e-services/myrent/faq.htm#B>, 13 March 2013.

⁴³³ Art. 1328 CC describes in which cases documents have a fix date.

⁴³⁴ <http://minfin.fgov.be/portail2/nl/e-services/myrent/faq.htm#B>, 13 March 2013.

⁴³⁵ Art. 32, 1° in conjunction with art. 32, 5° Flemish, Brussels and Walloon Codes on the Registration, Mortgage and Court fees; Art. 1 subsection 2 Mortgage Act.

⁴³⁶ Art. 41, 1° Flemish, Brussels and Walloon Codes on the Registration, Mortgage and Court fees.

⁴³⁷ Art. 5bis Housing Rent Act.

⁴³⁸ Art. 3 § 5 subsections 2 and 3 Housing Rent Act; A. van Oevelen (ed.), *Woninghuur*, 49.

⁴³⁹ A. van Oevelen (ed.), *Woninghuur*, 49.

In case of a three years contract or less, the latter above mentioned described sanction is not applicable, if the contract is not registered within two months.⁴⁴⁰ This means that the contract cannot be early terminated.⁴⁴¹ The Constitutional Court considers that this exception is not in conflict with the principle of equality.⁴⁴²

Do oral agreements have to be registered?

There is no obligation to register that an oral tenancy contract has been concluded.⁴⁴³

- *Restrictions on choice of tenant - antidiscrimination issues*
 - *EU directives and national law on antidiscrimination*

EU legislation concerning antidiscrimination

On EU level, the following directives are of importance for the rental sector:

- the Council Directive 2004/113/EC of 13 December 2004 implementing the equal treatment between men and women in the access to and supply of goods and services,
- the Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin,
- the Council Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment,
- the Council Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) N° 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC,
- Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents,
- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, and
- Regulation (EEC) N° 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community.

Belgium

Depending on the scope of the directives, the implementation can be a federal or a regional matter.

Federal state

Antidiscrimination Act and the Antiracism Act

Due to the Council's directives 2004/113/EC and 2000/43/EC, the federal state has implemented two Acts to prevent antidiscrimination: the Antidiscrimination Act and the

⁴⁴⁰ Art. 3 § 6 subsections 2 Housing Rent Act rules out art. 3 §§ 2- 5 in advance; A. van Oevelen (ed.), *Woninghuur*, 49.

⁴⁴¹ A.-L. Verbeke & P. Brulez (eds), *Knelpunten Huurrecht – Tien Perspectieven*, 127.

⁴⁴² GwH 1 December 2011, nr. 2011, *NjW*, 2012, 102.

⁴⁴³ M. Dambre, 'Huurrecht', 15, <http://www.fransbaert.be/upload/Huur%20Balie2011.pdf>, 13 March 2013.

Antiracism Act.⁴⁴⁴ These acts are only applicable for dwellings in the private tenancy sector which are made available to the general public.

The Antidiscrimination Act prohibits discrimination based on age, sexual orientation, disability, religion or belief, marital status, birth, wealth, political opinion, trade union beliefs, language, current or future state of health, physical or genetic property, and social origin. The Antiracism Act prohibits discrimination based on nationality, a so called race, skin colour, heritage or national of ethnic origin.

Equal treatment for Blue Card holders

The Council Directive 2009/50/EC creates a uniform European Blue Card for highly qualified third-country nationals and the conditions for entry and residence rights. More specific, Article 14 states that EU Blue Card holders enjoy equal treatment with nationals of the Member State issuing the Blue Card, as regards to access to goods and services and the supply of goods and services made available to the public, including procedures for obtaining housing.

Aliens Act and Aliens Decree

The Aliens Act⁴⁴⁵ has been amended due to the Council Directive 2004/38/EC. For EU citizens who reside more than three months within the territory of a Member State, there is no obligation anymore to make an application for establishment and to be in possession of a Belgian residence permit (purple or blue card).

Consequently, EU citizens and their family member have to be treated equally as citizens of the particular Member State. This also applies to landlords.

Third-country nationals who are long-term residents

The 25 November 2003 Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents is partially implemented in the Belgium law.⁴⁴⁶ The European Union grants European resident status to non-EU nationals who have legally and continuously resided for a period of five years within the territory of an EU country. Because of this, landlords must treat these residents equally.

Family reunification

The 22 September Council Directive 2003/86/EC on the right to family reunification determines the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States. In some cases it

⁴⁴⁴ Antidiscrimination Act: Wet van 10 mei ter bestrijding van bepaalde vormen van discriminatie, BS, 20mei 2007, addendum, Belgium Official Journal 5 June 2007; Antiracism Act: Wet van 30 juli 1981 tot bestraffing van bepaalde door racisme en xenophobie ingegeven daden, Belgium Official Journal 8 augustus 1981.

⁴⁴⁵ Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen/ Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, Belgium Official Journal 15 December 1980.

⁴⁴⁶ Koninklijk besluit tot wijziging van het koninklijk besluit van 9 juni 1999 houdende uitvoering van de wet van 30 april 1999 betreffende de tewerkstelling van buitenlandse werknemers, Staatsblad 26 juni 1999.

can influence tenancy law, for example, the tenant's spouse becomes also the tenant by operation of law.⁴⁴⁷

Freedom of movement for workers within the Community

Article 9 of the 15 October 1968 Regulation (EEC) N° 1612/68 of the Council on freedom of movement for workers within the Community affects tenancy law. It states that a worker, who is a national of a Member State and who is employed in the territory of another Member State, enjoys all the rights and benefits accorded to national workers in matters of housing.

Such worker may, with the same right as nationals register his name on housing lists in the region in which he is employed. Besides that, he enjoys the resultant benefits and priorities. If his family has remained in the country from where he came, they are considered for this purpose as residing in the same region, where national workers benefit from a similar presumption.

Flemish Region

The Flemish Housing Code and the Framework Social Rent (*Kaderbesluit Sociale huur*)⁴⁴⁸ included the obligation for the social landlord to implement an objective allocation system.⁴⁴⁹

Brussels Region

In the Brussels Region, the Brussels Housing Code was amended in March 2009 and Title IX was included, which prohibits racism and discrimination.

Walloon Region

The Walloon Region has amended the 6 November 2008 decree *ter bestrijding van bepaalde vormen van discriminatie*, which abandons racism and discrimination.⁴⁵⁰

- *Limitations on freedom of contract through regulation*
 - *Mandatory provisions in rental contracts, in particular: mandatory minimum requirements of what needs to be stated in a tenancy contract*

According to Article 1*bis* Housing Rent Act the following provisions must be stated in a tenancy contract: the tenant's and landlord's identity, the contract's starting date, an indication of all the rooms and parts of the rented building and the rent.⁴⁵¹

- *Control of contractual terms (EU directive and national law); consequences of invalidity of contractual terms*

General conditions and Market prices and Consumers Protection⁴⁵²

⁴⁴⁷ Art. 215 §2 CC.

⁴⁴⁸ Kaderbesluit Sociale huur.

⁴⁴⁹ M. Dambre et al., *Huurzakboekje*, 405.

⁴⁵⁰ 6 November 2008 Decree *ter bestrijding van bepaalde vormen van discriminatie*, Belgium Official Journal 10 April 2009. The legal basis for this decree is the 2006/114EC Directive of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.

⁴⁵¹ Art. 93, § 1, 2° Flemish Housing Code: A social tenancy contract governed by the Flemish Housing Code must also state the name of minors who will live in the dwelling.

Book 4 of the Code of Economic law (*Wetboek Economisch Recht*), with title 'Markt prices and consumers protection' (*Marktpraktijken en consumentenbescherming*) is applicable to tenants who act as a private person and a landlord who acts as an entrepreneur.⁴⁵³

This Book includes a blacklist of general conditions which are considered to be unlawful and, therefore, null and void.⁴⁵⁴ Besides this, general conditions and other conditions are null and void, if they are contrary to public order or public morality.⁴⁵⁵ Furthermore, conditions which create an significant imbalance between parties' rights and obligations at the expense of consumers are also unlawful.⁴⁵⁶ It should be noted that only unlawful conditions should be excluded from the contract. The contract itself is valid, unless this particular conditional is essential to qualify the contracts as a tenancy contract.

- *Statutory pre-emption rights of the tenant*

The tenant has no statutory pre-emption right.

- *Are there provisions to the effect that a mortgagor is not allowed to lease the dwelling (charged by the mortgage) or similar restrictions?*

Generally speaking, in Belgium, a mortgagor is allowed to rent out his dwelling. However, in most cases, the mortgagor has to obtain the mortgagee's permission to rent out his dwelling for nine years or longer. If the dwelling is rented out without permission, the mortgagee may claim that the rent period will be reduced. The mortgagee has to bare the tenant only for the time which remains to run, either for the first period of nine years, if the tenant is still in it, or of the second period of nine years and so on, so that the tenant has only the right to complete the enjoyment of the period of nine years in which he is. The mortgagee cannot start a procedure against the tenant and have him evicted.

6.4 Contents of tenancy contracts

- *Description of dwelling; indication of the habitable surface (and consequences in case of the provision of wrong data)*

The description of the dwelling is detailed in the tenancy contract itself. In case wrong data is provided by the landlord, he can be held liable for the consequences. The tenant

⁴⁵² The legal basis for this is the Directive 2006/114EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.

⁴⁵³ Wet houdende invoeging van boek VI "Marktpraktijken en consumentenbescherming" in het Wetboek van economisch recht en houdende invoeging van de definities eigen aan boek VI, en van de rechtshandhabingsbepalingen eigen aan boek VI, in de boeken I en XV van het Wetboek van economisch recht, Belgium Official Journal 30 December 2013.

⁴⁵⁴ Art. 2, 28° in conjunction with art. 74 in conjunction with art. 75 Market Practices Act.

⁴⁵⁵ Art. 6 CC. S. Stijns, *Verbintenissenrecht*, (Brugge: die Keure, 2005), 38-39.

⁴⁵⁶ Art. 2, 28° in conjunction with art. 75 Market Practices Act.

may request the justice of peace to adjust the rent, to terminate the contract or claim to be compensated.

- *Allowed uses of the rented dwelling and their limits*
 - *In particular: to what extent are mixed (residence/commercial) contracts lawful and usual (e.g. having a shop, a legal office or a doctor's studio in the dwelling)*

Whether a particular use of a dwelling is allowed, depends on what parties have agreed. The rent of a dwelling for residence and commercial purposes can be concluded in one tenancy contract. In these cases, the question rises whether the Trade Rent Act (*Handelshuurwet*) becomes applicable. The basic rule is that the primary use of the main thing the thing also determines the secondary thing.⁴⁵⁷ Every case has to be assessed specifically.

- *Parties to a tenancy contract*
 - *Landlord: Who can lawfully be a landlord?*

Private tenancy law

Legal competent

Generally speaking, any person who is legally competent may conclude contracts, unless the law states otherwise.⁴⁵⁸ There are two categories of people who are not legally competent.

The first category refers to people who are fully legal incompetent (*algemeen handelingsonbekwaam*):

- Minority, unless they are declared emancipated minors (*ontvoogde minderjarigen*).⁴⁵⁹
- Prolonged minority (*Verlengde minderjarigheid*).⁴⁶⁰
- Mental incompetency (*Gerechtelijk onbekwaam verklaarde geesteszieken*).⁴⁶¹

The second category refers to people who are partial legal incompetent (*gedeeltelijk handelingsonbekwamen*). For example:

- Emancipated minors (*ontvoogde minderjarigen*).⁴⁶²
- Mentally retarded (*zwakzinnigen*) and prodigals (*verkwisters*).⁴⁶³
- Persons who are put under administration or (temporary) administration (*onder bewindstelling*).⁴⁶⁴

⁴⁵⁷ B. Hubeau, edited by P. de Smedt, *Artikelgewijs commentaar, Bijzondere Overeenkomsten, OBO, OBO, Afl, 38* (November 1998).

⁴⁵⁸ Art. 1123 CC.

⁴⁵⁹ Art. 372 in conjunction with art. 374 in conjunction with art. 376 or art. 389 CC and arts 378 and 410 CC.

⁴⁶⁰ Art. 487bis CC. This is a person who is above 18 years old, however, due to mental retardation, he is still considered, by the law, as a person of less than fifteen years old. M. Dambre, B. Hubeau & S. Stijns (eds), *Huurrecht*, 313.

⁴⁶¹ Arts 314 and 489 CC. M. Dambre, B. Hubeau & S. Stijns (eds), *Huurrecht*, 314.

⁴⁶² Arts 477 CC and 481 CC. Minors having attained the age of fifteen full years may in some cases be emancipated (*ontvoogd*) by the juvenile court. They are granted a minor limited legal capacity to contract and may enter into tenancy contracts whose duration do not exceed nine years.

⁴⁶³ Arts 502 and 513 CC. M. Dambre, B. Hubeau & S. Stijns (eds), *Huurrecht*, 315-316.

⁴⁶⁴ 488bis CC; M. Dambre, B. Hubeau & S. Stijns (eds), *Huurrecht*, 317-318.

Holder of a right of usufruct (vruchtgebruiker)

The holder of a right of usufruct can legally rent out a dwelling, provided that as long as the dwellings designated use is respected.⁴⁶⁵ The question rises whether the bare owner is bound by the contract when the usufructuary dies. Article 595 CC deals with the following two situations.

- Contracts concluded for nine years or less. In these cases, the bare owner must respect the remaining duration of these contracts.
- Contrasts concluded for longer than nine years. The bare owner must then respect the contract either for the first period of nine years or for the second period of nine years and so on, so that the tenant has only the right to complete the enjoyment of the period of nine years in which he is.⁴⁶⁶

Ground lease and right of superficies

The leaseholder is entitled to conclude a tenancy contract concerning the ground and the building which he has built on the ground.⁴⁶⁷ The aforementioned also applies for the superfiary.⁴⁶⁸

Bankruptcy

Although, a bankrupt person can legally conclude tenancy contract, the contract itself is not enforceable against the receiver nor creditors. Contracts can be declared null and void by judgement.⁴⁶⁹

Social Rental Agencies (sociale verhuurkantoor)

Social Rental Agencies in the three regions aim to create an alternative to market rent tenants who have little means and are unable to find a social rental dwelling. These agencies lease dwellings from private landowners by concluding a private tenancy contract. The Social Rental Agency, then, leases the dwelling to tenants. This contract is governed by social tenancy law.

Social tenancy law

The regions determine which organisation may rent out dwelling in the social rental sector.

Flemish Region

In Flemish Region the some organisations have authority to act as an landlord in the social rental sector, e.g., Flemish Association for Social Housing (*Vlaamse Maatschappij voor Sociaal Wonen*) and the Flemish Housing Fund for large families (*Vlaams Woningfonds van de Grote Gezinnen*).

Brussels Region

⁴⁶⁵ Art. 595 CC; A-L. Verbeke & P. Brulez (eds), *Knelpunten Huurrecht – Tien Perspectieven*, 154.

⁴⁶⁶ Art 595 CC and A-L. Verbeke & P. Brulez (eds), *Knelpunten Huurrecht – Tien Perspectieven*, 155.

⁴⁶⁷ Art. 3 Groud lease Act (*Wet over het recht van erfpacht/ Loi sur le droit d'emphytéose*), Belgium Official Journal 10 January 1824.

⁴⁶⁸ Art. 1 Superficies Act (*Wet over het recht van postal/ Loi sur le droit de superficie*), Belgium Official Journal 10 January 1824.

⁴⁶⁹ M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 327.

The Brussels Regional Housing Association (*Brusselse Gewestelijke Huisvestingsmaatschappij* or OVMs (*Openbare Vastgoedmaatschappij*) are authorized to act as landlord in the social rental sector.

Walloon Region

The housing associations (*les sociétés de logement*), which are authorized by the Walloon Region may lawfully act as landlords in the social tenancy sector.

Social Rental Agencies

See above.

- Does a change of the landlord through inheritance, sale or public auction affect the position of the tenant?

Change of landlord through inheritance: private tenancy contracts

Tenancy contracts are not terminated by the landlord's death. The landlord is considered to have stipulated for himself and for his heirs and assigns, unless the parties have agreed otherwise or it results from the nature of the contract.⁴⁷⁰ See table 6.6.

Change of landlord through inheritance: social tenancy contracts

Unlike in private tenancy law, Flemish and Brussels social tenancy contracts will be terminated by operation of law when the last tenant dies.⁴⁷¹ See table 6.6.

Change of landlord through sale: private tenancy contracts

Whether the change of landlord through sale also changes the tenant's position, depends on the questions whether the tenancy contract has a 'fixed date'.

The position of the tenant, who has a contract with a fixed date, does not change, if the dwelling is transferred to the buyer. The buyer cannot evict the tenant, even if this right is reserved in the tenancy contract.⁴⁷² See table 6.6.

The consequences for a tenant with a contract without a fixed date depends on whether he resides longer or shorter than 6 months in the rented dwelling.

If the tenant resides longer than six months, the buyer should respect the tenancy contract. Nevertheless, he has the right to terminate it, if a) he takes a notice of three months into consideration and b) he will reside in the dwelling himself. The three months' notice must be served to the tenant within three months after the execution of the authentic deed of sale.⁴⁷³ The result of non-compliance with this deadline is that the buyer must respect the tenancy contract.⁴⁷⁴ See table 6.6.

⁴⁷⁰ Art. 1742 in conjunction with art. 1122 CC.

⁴⁷¹ Art. 2 §1, subsection 1, art. 34 Flemish Housing Code; Art 28 § 2 Standard Flemish social tenancy contract.

⁴⁷² Art. 9 Housing Rent Act.

⁴⁷³ Art. 9 Housing Rent Act.

⁴⁷⁴ Arts 11 and 15 Wet tot wijziging van sommige bepalingen betreffende de huurovereenkomsten, Belgium Official Journal 21 May 1997.

If the tenant resides less than six month, he is less fortunate. The buyer can terminate the contract without a reason and owing him a compensation.

Public auction and the position of the tenant

A tenancy contract, which has a fixed date before the writ of attachment is transcribed into the mortgage registry, cannot be set aside.⁴⁷⁵

The buyer cannot evict the tenant, even if this right to terminate the contract in case of sale is reserved in the tenancy contract.⁴⁷⁶ The same applies for contracts which are concluded after the writ of attachment is transcribed.⁴⁷⁷ See table 6.6.

In the opposite situation, where a contract has no fixed date, the tenant can be evicted, if by the buyer complies with Article 9 § 2 Housing Rent Act. See table 6.6.

Table 6.6 Position tenant in case of change of landlord

		Contract with fixed date	Contract without fixed date
Position tenant in case of change of landlord through:	A) Inheritance (private tenancy contract)	No change	No change
	B) Inheritance (social tenancy contract)	Contract will terminate	Contract will terminate
	B) Sale	No change	Buyer can terminate contract under certain conditions
	C) Public auction	No change	Buyer can terminate contract under certain conditions

- Tenant: Who can lawfully be a tenant?

What is described under “who can lawfully be a landlord”, also applies to the following legal concepts (*rechtsfiguren*):

Unemancipated minors (*niet-ontvoogde minderjarigen*), persons who are placed under the status of prolonged minority (*verlengde minderjarigheid*), mental incompetent persons (*gerechtelijk onbekwaam verklaarde geesteszieken*), persons who are partial legal incompetent (*gedeeltelijk handelingsonbekwaam*), mentally retarded (*zwakzinnigen*) and prodigals (*verkwisters*), persons who are put under (temporay) administration (*onder bewindstelling*) and Social Rental Agencies.

Although, a bankrupt person can legally conclude tenancy contracts, the contract itself is not enforceable against the receiver nor creditors. However, the rent due can only be paid with new income arising after the declaration of bankruptcy.

Legal entities can also be tenants. It should be noted that the Housing Rent Act is not applicable.

- Which persons are allowed to move in an apartment together with the tenant (spouse, children etc)?

⁴⁷⁵ Arts 1565 and 1775 section 1 Judicial Code.

⁴⁷⁶ Art. 9 Housing Rent Act.

⁴⁷⁷ Art. 1775 Judicial Code.

The landlord must respect the tenant's family and private life and he may not interfere. Therefore, unless parties have contracted otherwise, he is free to decide with whom he will share his dwelling.⁴⁷⁸ However, the tenant is restricted, as he landlord may object if objective conditions justify so, e.g., overcrowding or subletting.⁴⁷⁹

- *Changes of parties: in case of divorce (and equivalents such as separation of non-married and same sex couples); apartments shared among students (in particular: may a student moving out be replaced by motion of the other students); death of tenant.*

Consequences if spouses divorce

Both spouses have signed the tenancy contract

In case both spouses have signed the tenancy contract, they are both tenants. If it is their family dwelling they rent, both spouses are, even after the divorce, still jointly and separately liable. A notice to terminate the contract, given by one spouses, is null and invalid. Both parties jointly must give notice to terminate the contract.⁴⁸⁰

The departing spouse has signed the tenancy contract

Also in this case, the same principle applies as describes above. Both spouses are tenants. They can only jointly give notice to terminate the contract.⁴⁸¹

Legal consequences if legal co-habitees (wettelijk samenwonenden) separate

Legal co-habitees and married couples are by law treaded equally.⁴⁸²

Legal consequences if the spouses actual separate (feitelijk scheiden)

Both spouses have signed the tenancy contract

If one spouse leaves the dwelling, he still remains contract party and, therefore, still is jointly and severally liable with his the spouse who stays behind. This means that only both spouses can give notice to terminate the contract. There are authors claiming that it is possible to give notice without the other spouse's cooperation.

The actual departing spouse has signed the tenancy contract

Another scenario is that the departing spouse has signed the tenancy contract and leaves the dwelling. In that case, the dwelling can no longer be considered as the principal residence. The spouse who remains behind may only reside in the dwelling, if the landlord explicitly agrees in writing that the tenancy contract is transferred to him.⁴⁸³

⁴⁷⁸ C. Delforge & L. Kerzmann, *Belgium*, (Louvain-la-Neuve: Université Catholique Louvain, not dated), 8; <http://vastgoedabc.be/vraag/mag-er-iemand-bij-je-intrekken-als-je-huurt>

⁴⁷⁹ <http://vastgoedabc.be/vraag/mag-er-iemand-bij-je-intrekken-als-je-huurt>, 2 May 2013. Unless otherwise is agreed, the tenant has no obligation to report a change in the number of persons in the apartment.

⁴⁸⁰ Art. 1476 CC.

⁴⁸¹ Art. 1476 CC.

⁴⁸² Art. 215 § 2 CC, art. 1477 CC and art.1 § 3 Housing Rent Act.

⁴⁸³ Art. 4 § 1 Housing Rent Act.

Legal consequences for unmarried couples living together (feitelijke samenwonenden)

The protective provisions do not apply to unmarried couples living together. If there are two tenants and one has left the dwelling, he still is jointly and severally liable.

Apartments shared among students

If a landlord rents out a separate apartment in a building to a student, the other students do not have the right to decide who will replace the student who moves out his apartment.

However, if a student rents a room and he is allowed to sublet or transfers a part of the tenancy contract, he is entitled to decide who replaces the student who moves out.

It is not unlikely that parties have agreed that sharing the dwelling is not allowed without the landlord permission. Such a stipulation is valid and the landlord may refuse the new student.⁴⁸⁴

Tenant's death: private tenancy contracts

A tenancy contract governed is not terminated by the tenant's death, unless parties have agreed otherwise.⁴⁸⁵ The heirs or beneficiaries acquire the contract under universal title, which means they must comply with the tenancy contract. The landlord can only (early) terminate the contract, if the conditions as described in Article 3 Housing Rent Act are met. See table 6.7.

It should be noted that the surviving spouse and the surviving legal cohabitee obtain, with the exclusion of all other heirs, the right to rent the dwelling which serves as the common residence.⁴⁸⁶ This rule applies to all private tenancy contracts, including contracts for the duration of the tenant's life. See table 6.7.

Tenant's death: social tenancy contracts

If a tenancy contract is governed by social tenancy law, the outcome can be different. In some cases the contract can be terminated by operational of law.⁴⁸⁷ In general, the rule is that the contract is terminated, if the surviving tenant dies. See table 6.7.

⁴⁸⁴ C. Delforge & L. Kerzmann, *Belgium*, 10.

⁴⁸⁵ Art. 1742 CC in conjunction with art. 1122 CC.

⁴⁸⁶ Art. 215 § 2 in conjunction with art. 1477 § 2, 745bis § 3 and 745octies § 1 CC.

⁴⁸⁷ A. Hanselear & B. Hubeau (eds), *Sociale huur*, Reeks Huurrecht, vol. 4 (Brugge: die Keure, 2011), 159 and 267.

Table 6.7 Change of parties and legal consequences

Change of parties: death	Private tenancy law	Social tenancy law
Married couples and legal co-habitees	Surviving spouse obtains the right to rent the dwelling 215 § 2, 745bis § 3 CC	By law, the contract terminates in some cases. These are summed up in the Regional laws.
Legal co-habitees	Surviving co-habitee obtain the right to rent the dwelling 215 § 2 in conjunctions with 1477 § 2, 745octies § 1 CC	
Unmarried couples living together (feitelijke samenwonenden)	If the surviving person is the co-tenant there is no issue, otherwise the landlord does not have to accept him living in the dwelling.	

- *Subletting: Under what conditions is subletting allowed? Is subletting being abused e.g. with the aim of circumventing the legal protection of tenants (when the tenant is offered not an ordinary lease contract but a sublease contract only)?*

Subletting: private tenancy contracts

Under private tenancy law, a tenant who rents a dwelling and uses it as his principle residence is not allowed to sublet the dwelling completely. This is mandatory law. The tenant may sublet a part of it under the conditions that the remainder part of the dwelling remains assigned as his principal residence. The landlord has to grant him permission, which can be also given tacitly or afterwards.⁴⁸⁸

The Housing Rent Act prescribes the legal relationship between the tenant and his subtenant, if the dwelling is the subtenant's principle residence. This means that the subtenant enjoys the same legal protection as the tenant.⁴⁸⁹

It should be noted that the term of the sublease's contract period may not exceed the remaining term of the main lease contract period.⁴⁹⁰

Subletting with the aim of circumventing the tenant's legal protection can only be the case, if this part of the dwelling is sublet without the landlord's permission, or it is not the subtenants main residence.

Subletting: social tenancy contracts

The tenant may in no case sublet the dwelling or a part of it.⁴⁹¹

- *Is it possible, and if yes under what conditions, to conclude a contract with a multiplicity of tenants (e.g. group of students)?*

⁴⁸⁸ Art 4 § 2 Housing Rent Act; M. Dambre, *Bijzondere overeenkomsten*, Syllabus (Brugge: Die Keure), 265.

⁴⁸⁹ Art. 4 § 2 Housing Rent Act.

⁴⁹⁰ Art. 4 § 2 Housing Rent Act.

⁴⁹¹ Flemish Region: Appendix to the Framework Social Rent; Brussels Region: Appendix to the 26 September 1996 Decision of the Brussels-Capital Region; Walloon Region: Appendix to the 6 September 2007 Decree of the Walloon Government.

The principle of freedom of contract implies that it is possible to conclude a contract with two or more tenants. They become co-tenants and have an undivided right. Each of them is responsible for the obligations.⁴⁹²

- *Duration of contract*
 - *Open-ended vs. limited in time contracts for limited in time contracts: is there a mandatory minimum or maximum duration?*

Duration: private tenancy contracts

Four types of private tenancy contracts can be concluded by parties concerning a dwelling which is the tenant's principle residence. See also table 6.8.

a. Standard contract: duration of nine years

Firstly, contracts can be concluded for a period of nine years.⁴⁹³ This is a standard contract. Oral agreements are also considered to be concluded for a period nine years. The same applies for contracts with a duration between three and nine years or which do not state a duration are and for contracts concluded after 31 May 1997 for an indefinite period (*onbepaalde duur*).⁴⁹⁴ Oral agreements concluded before 28 February 1991 follow the same regime as the afore mentioned contracts.⁴⁹⁵

b. Short term contract: duration of three years or less

Secondly, parties can conclude a contract with a period of three years or less.⁴⁹⁶

c. Long term contract: duration of longer than nine years

Thirdly, tenancy contracts can also be concluded for a period longer than nine years, however, no longer than 99 years.⁴⁹⁷ These contracts must be in writing.

d. Contract which is concluded for the duration of the tenant's life (*voor de duur van het leven van de huurder*)

The last exception to the general rule is that, as of 1 June 1997, contracts can be concluded for the duration of the tenant's life.⁴⁹⁸ The contract ends by law, when the tenant dies. The applicable provisions are mandatory.

⁴⁹² C. Delforge & L. Kerzmann, *Belgium*, 8.

⁴⁹³ Art. 3 § 1 Housing Rent Act.

⁴⁹⁴ Art. 3 § 1 Housing Rent Act.

⁴⁹⁵ Federale overheidsdienst Justitie, 'De huurwet', http://justitie.belgium.be/nl/binaries/Loyer-2012-NL_BD-DEF_tcm265-138431.pdf, 14 February 2013, 20.

⁴⁹⁶ Art. 3 § 6 Housing Rent Act.

⁴⁹⁷ A. van Oevelen (ed.), *Woninghuur*, 160.

⁴⁹⁸ Art. 3 § 8 and A. van Oevelen (ed.), *Woninghuur*, 162-163.

Table 6.8 Types of private tenancy contracts⁴⁹⁹

Type of contract	Duration	In writing
Standard contract	9 years	yes
A long period	> 9 years	yes
Period of a lifetime	Concluded for the duration of the tenant's life	yes
A short period	3 years of less	yes
Oral	9 years	-

Duration: social tenancy contracts

Flemish Region

There are two types of standard social tenancy contracts which can be concluded. The first contract may be concluded for a trial period of a maximum of two years. During this period, the tenant will be evaluated. If the tenant meets all the conditions during this period, the contract will continue for an indefinite period.⁵⁰⁰

The second contract, is a sublet lease which can concluded between a Social Rental Agency (*sociale verhuurkantoor*) and a tenant. The duration of this these contracts equals the duration of the head lease.⁵⁰¹

Brussels Region

Since January 2013 the following three types of standard social tenancy contracts can be concluded:

- *Contracts for nine years*⁵⁰²

Contracts concluded as of 1 January 2013 are concluded for a period of nine years. These contracts can be renewed for three years leases after the tenant meets several conditions, such as income evaluation and composition of the family.⁵⁰³

- *Contract for an indefinite period of time*⁵⁰⁴

This contract applies to the tenants of a) whom the contract came into force before 1 January 2013 and b) who change their dwelling after 1 January 2013.

The contract also applies to tenants who rent a dwelling for the first time as of 1 January 2013, if on the date of the original lease the tenant is at least disabled for 66% or older than 65 years old.

- *Standard renovation contract*⁵⁰⁵

⁴⁹⁹ Taken from: L. Machon et al., *101 vragen en antwoorden over de nieuwe Woninghuurwet*, 35.

⁵⁰⁰ Arts 91 - 92 Flemish Housing Code. This standard social tenancy contract is attached as Appendix I to the Kaderbesluit Sociale huur.

⁵⁰¹ The standard social tenancy contract used by the Social Rental Agencies is attached as Appendix II to the Kaderbesluit Sociale huur.

⁵⁰² The standard social tenancy contract for nine years is attached as Appendix 6 to the 26 September 1996 Decision of the Brussels-Capital Region.

⁵⁰³ These conditions are laid down in art. 158 of the Brussels Housing Code and the art. 15.1 en and further of the 26 September 1996 Decision of the Brussels-Capital Region.

⁵⁰⁴ The standard social tenancy contract for an indefinite period of time is attached as Appendix 3 to the 26 September 1996 Decision of the Brussels-Capital Region.

⁵⁰⁵ Type renovation contract is attached as Appendix 5 to the 26 September 1996 Decision of the Brussels-Capital Region 26 September 1996.

This type of contract has a duration for an indefinite period of time. It is a specific contract in which the lessee undertakes the work which is defined in the contracts attachment.

Walloon Region⁵⁰⁶

With respect to the Walloon Region, contracts are concluded for a period of nine years. If this lease is not terminated after the expiry of the period for which it is closed, the contract will be renewed for another period of nine years under the same conditions.⁵⁰⁷

- *Other agreements and legal regulations on duration and their validity: periodic tenancies ("chain contracts", i.e. several contracts limited in time among the same parties concluded one after the other); prolongation options; contracts for life etc.*

Chain contracts

Private tenancy contracts with a duration of maximum three years can be extended once. It must be done in writing and the total contract's duration cannot be longer than three years. If the parties do not comply with these conditions, the contract will be, by law, converted into a standard nine years contract. The purpose of the restrictions is to prevent that systematic new short-term tenancy contracts of short duration are concluded between the same parties or with another tenant, each time at a higher rent.⁵⁰⁸ Such use or abuse of short-term contracts circumvents the Housing Rent Act's, namely housing security and rent control. The effective date of the second contract is the same as the effective date of the first short term contract.

For social tenancy contracts, it can be said that each region has its own regulation concerning contracts extension. This is elaborated under Section 6.4 *'Open-ended vs. limited in time contracts for limited in time contracts: is there a mandatory minimum or maximum duration?'*

For prolongation options reference is made to Section 6.6 *'Notice by the tenant'* and *'Notice by the landlord'*.

The Court of Cassation has judged that contracts for the duration of the tenant's life are not considered to be a contract for an indefinite period (*onbepaalde duur*). Furthermore, if the tenant uses the dwelling as his main residence, these contracts are governed by the Housing Rent Act.⁵⁰⁹

- *Rent payment*
 - *In general: freedom of contract vs. rent control*

According to Article 1728 CC the tenant has to pay the rent at the agreed times.⁵¹⁰ If a tenancy contract is governed by social tenancy law, there is no freedom of contract to

⁵⁰⁶ This standard social tenancy contract is attached as Appendix 5 to the 6 September 2007 Decree of the Walloon Government.

⁵⁰⁷ Appendix 5 of the 6 September 2007 Decree of the Walloon Government.

⁵⁰⁸ A. van Oevelen (ed.), *Woninghuur*, 194.

⁵⁰⁹ Cass. 29 May 1998, *Act.jur.baux* 1998, 622, with commentary from B. Louveaux and *TBBR* 2000, 95, with commentary from Y. Merciers. A. van Oevelen (ed.), *Woninghuur*, 162-163.

⁵¹⁰ Art. 1134 CC.

determine the rent. As will be explained below, each region has its own regulation to determine the rent.⁵¹¹

- *Rent control: how is it legally framed; when does it apply; who carries it out; what are the consequences when the parties agree on an excessive rent.*

Private tenancy contracts: rent control

If a contract is governed by private tenancy law, the rent, with respect to short-term contracts, is controlled. The purpose of the restrictions is to prevent that systematic new short-term tenancy contracts of short duration are concluded between the same parties or with another tenant, each time at a higher rent.⁵¹²

Parties are allowed to extend a short-term contract once under the same conditions.⁵¹³ The rent may only be increased with the statutory rent indexation. Unless:⁵¹⁴

- the rental value of the dwelling has increased or decreased with at least 20 % due to new circumstances, or
- the rental value has increased with at least 10 % due to performed work (*werkzaamheden*), such as a renovation.⁵¹⁵ The Court of Cassation ruled that this is mandatory law.⁵¹⁶

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If parties do not respect these limitations, the tenancy contract is considered not to be extended under the same conditions. Consequently, by law, the short-term contract will be converted into a standard contract (nine years contract). The commencement date equals the commencement date of the first short-term contract.⁵¹⁷ The aforementioned consequence also applies in the following situations:

- if the contract is extended for the second time;
- if the same parties conclude a different contract;
- if the same parties conclude a second contract under different conditions;
- if parties have not given a notice in time to terminate the first or second contract;
- if the contract duration is more than three years;
- despite a valid notice, the tenant continues to live in the dwelling, without the landlord opposing;
- if the second contract is concluded under (more or less the same conditions), but with another tenant.⁵¹⁸

In all the aforementioned situations, the rent is blocked for nine years.

⁵¹¹ Flemish Region: Framework Social Rent. Brussels Region: the 26 September 1996 Decision of the Brussels-Capital Region; Walloon Region: 6 September 2007 Decree of the Walloon Government.

⁵¹² A. van Oevelen (ed.), *Woninghuur*, 194.

⁵¹³ Art. 3 § 6 Housing Rent Act.

⁵¹⁴ Art. 1 *bis* Housing Rent Act.

⁵¹⁵ Art. 7 § 1 *bis* Housing Rent Act.

⁵¹⁶ Cass. 21 June 2004, *Echos log*, 2005, 30 and R.A.B.G. 2005, 565, with commentary from M. Dambre.

⁵¹⁷ Art 3 § 6 section 5 Housing Rent Act.

⁵¹⁸ Art 7 § 1 *bis* Housing Rent Act; A. van Oevelen (ed.), *Woninghuur*, 195.

Statutory rent indexation is allowed, even if parties have not concluded this.⁵¹⁹ After the nine years period, parties are free to conclude a new rent. This has to be done in writing.⁵²⁰

Social tenancy contracts: rent control

Rent control regulations on regional levels differs from the private tenancy law. Each region has its own complex regulation concerning the rent control.⁵²¹ The rent in social housing in the Flemish Region is based on household income. In the Brussels Region, the complex rent's calculation is subject to several factors, such as the family income and the number of children.⁵²² In the Walloon Region, the rent is in is calculated in accordance with the regulations regarding the rent's determination of social housing in the territory of the Walloon Region.⁵²³

- *Maturity (fixed payment date); consequences in case of delayed payment*

Private tenancy contracts: rent payment

Parties are legally free to agree when the rent is due. However, most tenancy contracts require that rent must be paid monthly, in advance, on a fixed date of the month. The landlord is not allowed to terminate the tenancy contract or evict the tenant in case tenant has not paid the rent. Firstly, he must demand payment. If the tenant still fails to pay, he can start a lawsuit. The Justice of peace has jurisdiction in these cases. There are two option open for the landlord:

- he can summon the tenant to appear in court and start a reconciliation procedure. The role of the justice of peace is to mediate, or
- he can summon the tenant to appear in court and start an application proceedings. The landlord may request: payment of overdue payment, termination of the tenancy contract, payment of compensation and interest, unblocking the deposit and the tenant's eviction.

In the opening session, the justice of the peace will first ensure whether reconciliation is possible. If not, the judge will give judgement. He may also grant a postponement of payment in a situation that the tenant is temporally not able to pay his rent as a result of unforeseen circumstances. A contractual clause which states that the tenancy contract may be terminated by the landlord, if the tenant does not pay the rent due is null and void.⁵²⁴

Social tenancy contracts: rent payment

The Civil Code's provisions concerning rent payment also apply for social tenancy contracts. Rent arrears can be a reason to terminate the contract, however it should be kept in mind that the main goal of social housing is to give families stability and

⁵¹⁹ Art. 1728*bis* CC.

⁵²⁰ Art. 6 section 1 Housing Rent Act.

⁵²¹ Flemish Region: Framework Social Rent. Brussels: 26 September 1996 Decision of the Brussels-Capital Region.

⁵²² 26 September 1996 Decision of the Brussels-Capital Region.

⁵²³ Art. 7 § 1 of the standard social tenancy contract, which is attached as Appedix 5 to the 6 September 2007 Decree of the Walloon Government.

⁵²⁴ Art. 1762*bis* CC; L. Machon et al., *101 vragen en antwoorden over de nieuwe Woninghuurwet*, 63.

confidence to get out of and to stay out of poverty. Therefore, the termination of a contract is a last remedy. It is because social housing's goal is that landlords have the obligation to prevent a dissolution of contracts and eviction of tenants. If and under what conditions a contract may be terminated is different for each region.⁵²⁵

- *May the tenant exercise set off and retention rights over the rent payment? (i.e. the tenant withholding the rent or parts of it when the landlord does not respect his contractual duties, e.g. does not repair a defect)*

The tenant may set off the rent payment, if the landlord does not comply with his obligations.⁵²⁶

- *May claims from rental agreements be assigned to third parties (i.e. may the landlord assign his rent claim to a bank?)*

The right for the landlord to assign his claims (including the rent claim) is laid down in Article 1689 CC. The assignment can only be invoked against the tenant as of the moment he has taken notice of it or acknowledged it.⁵²⁷

- *May a rent payment be replaced by a performance in kind (e.g. reparation, renovation)? Does the tenant have a statutory right to this effect? Could a lien of the "tenant-contractor" create problems in that case? (a lien is a statutory right of a contractor to ensure his being paid for his performances, e.g. improvements to the house, e.g. § 648 BGB)*

Parties enjoy freedom of contract and can decide to replace the rent payment by a performance in kind. For instance, they can agree on a payment in kind by entering into a renovation contract. The tenant does not have a statutory right to this effect.

There exists no statutory lien for the tenant. However, the lien is accepted in the jurisprudence and doctrine.⁵²⁸ The tenant may refuse to give possession in case necessary.⁵²⁹

- *Does the landlord have a lien on the tenant's (movable) property in the house (Vermieterpfandrecht as in § 562 BGB, which functions as a guarantee for the payment of the rent by the tenant)? If yes, what is the scope of this right? How is it enforced?*

The tenant is obliged to sufficient furniture the rented dwelling.⁵³⁰ It serves as a security for the rent payment. This obligation lapses, if the tenant pays the full rent or the entire rental period in advance or pays it over the course of the lease.⁵³¹ The landlord can

⁵²⁵ Flemish Region: Framework Social Rent. Brussels Region: 26 September 1996 Decision of the Brussels-Capital Region. Walloon Region: 6 September 2007 Decree of the Walloon Government.

⁵²⁶ Art. 1184 CC.

⁵²⁷ Art. 1690 § 1 CC.

⁵²⁸ J.L.P. Cahen & P. Coppens, *Preadviezen: retentierecht naar Nederlands Recht, retentierecht naar Belgische recht*, (Zwolle: Tjeenk Willink, 1969), 19.

⁵²⁹ J.L.P. Cahen & P. Coppens, *Preadviezen: retentierecht naar Nederlands Recht, retentierecht naar Belgische recht*, 19.

⁵³⁰ Art. 1752 CC.

⁵³¹ M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 402.

claim the benefit (*voorrecht*) of unpaid rent.⁵³² The landlord may also seize the furniture in the dwelling to ensure the rent's payment. The seizing is allowed without a court's leave.⁵³³

- *Clauses on rent increase*
- *Open-ended vs. limited in time contracts*

Private tenancy contracts: rent indexation

There is no distinction between open-ended contracts and contracts limited in time. The rent may be indexed every year by the landlord. The legal basis for the indexation is laid down in Article 1728*bis* CC and Article 6 Housing Rent Act. Indexation is only permitted, if the tenancy contract is in writing.⁵³⁴ The contract does not have to include an explicit provision.

- *Automatic increase clauses (e.g. 3% per year)*

Private tenancy contracts: automatic increase

An automatic indexation is not allowed. There is no automatic rent increase. As described above, the rent can be indexed by the landlord.

- *Index-oriented increase clauses*

Private tenancy contracts: index-oriented increase clauses

The possibility to index the rent should be requested in writing by the landlord and it has a retroactive effect limited to three months. This means that the landlord's request may be done after the date on which the rent can be indexed, but it will only have effect for the last three months. According to Article 2273 CC, rents will be time-barred (*verjaren*) after one year.⁵³⁵ The time limit will begin on the day on which the request has been sent to the tenant.

The indexation should be done in accordance with Article 1728*bis* CC.⁵³⁶ The new rent can be calculated as follows:⁵³⁷

$$\text{New rent} = \frac{(\text{initial price of the contract} \times \text{consumer price index})}{\text{beginning consumer price index}}$$

A website maintained by the Belgium government offers a calculator in order to determine the new rent in an easy way.⁵³⁸

http://statbel.fgov.be/en/statistics/figures/economy/consumer_price_index/rent_calculator/

⁵³² Arts 12 and 20, 1° Mortgage Act.

⁵³³ Art. 1461 Judicial Code; M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 381.

⁵³⁴ Art. 6 section 1 Housing Rent Act.

⁵³⁵ Art. 2273 CC.

⁵³⁶ Art. 6 Housing Rent Act.

⁵³⁷ Art. 1728*bis* CC.

⁵³⁸ http://statbel.fgov.be/en/statistics/figures/economy/consumer_price_index/rent_calculator/, 5 June 2013.

It should be noted that the initial rent is the rent which was agreed on in the first contract and it may not include other costs and charges (*kosten en lasten*).⁵³⁹

Social tenancy contracts and rent increase

The regions have each their own system for increasing or decreasing the rent.⁵⁴⁰ For instance, the Flemish Region has chosen for a system whereby the rent is revised every year. Such a revision is recalculated on the basis of the income in the new reference year (*nieuwe referentie jaar*) and the actual number of people who depend on the tenant. In addition, among other things, the index-based rent is also taken into account.⁵⁴¹

- *Utilities*
 - *Describe the usual kinds of utilities (e.g. basic utilities like the supply of water, gas and electricity vs. additional utilities, i.e. services such as waste collection) and their legal regulation*

The usual kinds of utilities are water, gas, electricity, lightening and heating. Other types of utilities can be: maintenance, internet, waste collection and antipollution tax. Both the tenant and landlord can conclude contracts for water, gas, electricity and internet, which are governed by private law.

- *Responsibility of and distribution among the parties: Does the landlord or the tenant have to conclude the contracts of supply?*

See Section 6.4 *'What is the standing practice?'*

- *Which utilities may be charged from the tenant?*

See Section 6.4 *'What is the standing practice?'*

- *What is the standing practice?*

Private tenancy contracts

Taxes concerning the use of property, such as waste collection, antipollution tax are charged from the tenant. Owner's charges, such as property tax must be paid by the landlord.⁵⁴² There is no legal provision that specifies a complete list of services, which the landlord should provide to his tenant.

If no agreement has been made, the tenant should only bear the costs and expenses associated with a service or performance which the tenant takes advantage of, such as heating, electricity and gas.⁵⁴³ He may conclude an individual contract with the suppliers.

⁵³⁹ Federale overheidsdienst Justitie, 'De huurwet', http://justitie.belgium.be/nl/binaries/Loyer-2012-NL_BD-DEF_tcm265-138431.pdf, p 35, 14 February 2013.

⁵⁴⁰ Framework Social Rent. For Brussels Region the rent revision is laid down in the 26 September 1996 Decision of the Brussels-Capital Region.

⁵⁴¹ The rules for the calculation of social rent only apply to social tenants from a legally recognized Social Housing Association (SHM), not for social tenants of a municipality, CPA's, OMCW, Association of OMCW's, social housing or the Flemish Housing Fund.

⁵⁴² Art. 5 Housing Rent Act.

⁵⁴³ M. Dambre et al., *Huurzakboekje*, 44.

The landlord may also provide this service by concluding a contract and having the tenant pay him. In this case, Article 1728*ter* CC has to be taken into consideration. Firstly, the tenant should only pay the actually incurred expenses (*daadwerkelijk gemaakte kosten*). Parties may agree a payment of an irrevocable fixed amount and this may differ from the actually incurred expenses.⁵⁴⁴ If that is the case, parties should take in to account that unilateral adjustment is not allowed.⁵⁴⁵ They may request the justice of peace to revise the fixed amount or conversion in the actually incurred expenses (*omzetting in de werkelijke kosten*).⁵⁴⁶ Secondly, each year, the landlord must provide the tenant detailed annual settlement.

There is a separate regulation for apartment buildings laid down in Article 1728*ter* CC. If the management is in one hand and the apartment building has more than one apartment, it is sufficient that the cost calculations are presented and that the individually invoices are deposited for inspection. This includes providing a copy, if requested.⁵⁴⁷

Social tenancy contracts

The regulations concerning the payment of utility cost differ from the regulations as laid down in the Civil Code.

Flemish Region

For instance, the Flemish government has stated in the Annex III of the Framework Social Rent as well as in the standard social tenancy contract which costs and expenses related to the rent of social housing must be borne by the tenant or the landlord. The costs charged to the tenant and expenses must correspond with the actual made costs. Furthermore, these costs are not included in the rent and have to be paid in advance.⁵⁴⁸ The annual settlement is based on the costs of the previous year.

Brussels Region

The 26 September 1996 Decision of the Brussels-Capital Region includes an exhaustive list that states which cost have to be borne by whom.⁵⁴⁹ Generally, a fixed amount has to be paid by the tenant to the social landlord.

Walloon Region

In the Walloon Region, the social landlord can charge tenants the following costs on top of the rent charges:

- costs in return for the services the tenants enjoy,
- costs for the use the facilities of the house,
- costs for the use of common facilities and parts.⁵⁵⁰

⁵⁴⁴ Art. 1728*ter* CC.

⁵⁴⁵ Federale overheidsdienst Justitie, 'De huurwet', http://justitie.belgium.be/nl/binaries/Loyer-2012-NL_BD-DEF_tcm265-138431.pdf, 14 February 2013, 41.

⁵⁴⁶ Art. 7 § 2 in conjunction with art 9, 4° and 15 Wet van 13 April 1997.

⁵⁴⁷ Art. 1728*ter* CC.

⁵⁴⁸ M. Dambre et al., *Huurzakboekje*, 132-134.

⁵⁴⁹ Art. 28 of the 26 September 1996 Decision of the Brussels-Capital Region.

⁵⁵⁰ Art. 25 of the 6 September 2007 Decree of the Walloon Government.

- *How may the increase of prices for utilities be carried out lawfully?*

Private tenancy contracts

Firstly, parties may mutually decide to revise (*herzien*) the fixed costs or convert (*omzetten*) into the actually incurred expenses (*daadwerkelijk gemaakte kosten*). In the latter case, Article 1728 *ter* CC will become applicable by law. This article has been described above under Section 6.4 '*What is the standing practice?*'. Secondly, parties may, at any time, request the judgement of peace to revise the fixed costs or convert into the actually incurred expenses.⁵⁵¹ The revision or the conversion cannot be applied retroactively, unless the judgement of peace decides otherwise.⁵⁵² These options are mandatory law and, therefore, also applicable to contracts concluded before the entry into force of the Housing Rent Act on 28 February 1991).⁵⁵³

Social tenancy contracts

With respect to social tenancy contracts, reference is made to Section 6.4 '*What is the standing practice?*'.

- *Is a disruption of supply by the external provider or the landlord possible, in particular if the tenant does not pay the rent?*

The supply of electricity, gas and water is regulated by the Regions.

Flemish Region: cutting of electricity and gas supply

In the Flemish Region, only the network manager (*netwerk beheerder*) may disconnect the energy supply. The water provider and landlord do not have this authority.⁵⁵⁴

The electricity and gas supply for a domestic consumer may only be cut off in case of non-payment by the tenant and after not responding on reminders of a default notice. If no new supplier is found, the network manager will provide the consumer with energy (as a social provider).

In case the tenant is in default, the network manager may place a budget meter free of charge. A budget meter is a device that allows only services by inserting a prepaid card.⁵⁵⁵ The network manager may cut off electricity or gas completely, if the consumer refuses the budget meter or he refuses to draw up a repayment scheme or he does not comply with the repayment scheme.⁵⁵⁶

Flemish Region: cutting of water supply

⁵⁵¹ Art. 7 § 2 Housing Rent Act.

⁵⁵² A. van Oevelen (ed.), *Woninghuur*, 272.

⁵⁵³ M. Dambre et al., *Huurzakboekje*, 45

⁵⁵⁴ <http://www.vreg.be/afsluiting-door-uw-netbeheerder>, 27 August 2013.

⁵⁵⁵ <http://www.eerstehulpbijschulden.be/schulden-wat-nu/wonen-elektriciteit-gas/elektriciteit-en-gas/budgetmeter>, 27 August 2013.

⁵⁵⁶ <http://www.eerstehulpbijschulden.be/schulden-wat-nu/wonen-elektriciteit-gas/elektriciteit-en-gas/afsluiting>, 28 August 2013.

Cutting of water supply is allowed, if, for instance, fraud by the consumer is proven or if he is evidently unwilling, provided that the local advisory committee has given its authority⁵⁵⁷

Brussels Region: cutting off electricity and gas supply

In the Brussels Region, an unpaid bill leads to a demand for payment and, if necessary, a default notice. In the worst case, the supply will be restricted to 2,300 Watt (usually 10 Ampere). The supplier shall establish a repayment plan for the tenant, but if the tenant does not pay, it is only the justice of peace who can decide to cut off the electricity and gas.⁵⁵⁸

Brussels Region: cutting off water supply

The landlord remains jointly and severally liable for the payment concerning the water supply.⁵⁵⁹ The supply of water for consumers who reside his primary residence cannot unilaterally be cut off.

If a consumer is not able to pay his invoices, he can rely on the OCMW. It can assist the consumer by a) paying the invoice or b) if the water contribution is included in the rent, the payment of an amount calculated on a flat rate of 80 litres per day per person. Finally, the supplier can request the justice of peace for permission to cut off the water supply, but only after obtaining the major's or the OCMW's chairman's advice.

Walloon Region: cutting of electricity and gas supply

Electricity cannot be cut off in the Walloon Region. In the worst case, the supplier can install a budget meter, but only after the bills have not been paid for three months.

Walloon Region: cutting of water supply

The Walloon Region incorporated the Social Water Fund (*Sociaal Water Fonds*). The purpose is to bear part of the water invoice for those who are in payment difficulties.⁵⁶⁰

The OCMW will only be informed by the supplier, if the consumer does not reject.⁵⁶¹ In the Walloon Region, the water supply can only be cut off after the justice of peace has decided this.

- *Deposit*
 - *What is the legal concept (e.g. is the deposit an advance rent payment or a guarantee deposit to cover future claims of the landlord)?*

⁵⁵⁷ Arts 4 and 6 of the 'Decreet van 20 december 1996 tot regeling van het recht op minimumlevering van elektriciteit, gas en water.'

⁵⁵⁸ <http://www.test-aankoop.be/nt/nc/dossier/afsluiting-van-elektriciteit-wegens-onbetaalde-factuur>, 28 August 2013.

⁵⁵⁹ Art. 3 § 2 of the 8 September 1994 Ordonnantie tot regeling van de drinkwatervoorziening via het waterleidingnet in het Brussels Hoofdstedelijk Gewest.

⁵⁶⁰ Art. 2 & 13 of the 4 February 2004 'Besluit van de Waalse Regering tot uitvoering van het decreet van 20 februari 2003 houdende oprichting van een Sociaal Waterfonds in het Waalse Gewest en tot bepaling van de desbetreffende modaliteiten.'

⁵⁶¹ Art. 10 of the 4 February 2004 'Besluit van de Waalse Regering tot uitvoering van het decreet van 20 februari 2003 houdende oprichting van een Sociaal Waterfonds in het Waalse Gewest en tot bepaling van de desbetreffende modaliteiten.'

The regulation concerning deposits is laid down in Article 10 Housing Rent Act. The private law regulation concerns deposits for both private and social tenancy contracts. However, the regions may have additional regulations for social tenancy contracts.⁵⁶²

Parties may agree that the tenant pays a security deposit at the beginning of the tenancy. Most landlords do, in fact, require such a deposit.

The concept of the deposit is that it serves as a security for the entire tenant's obligation. For instance, to set off outstanding rent, to repair damage beyond normal tear and wear, to restore personal property other than because of normal wear and tear and other tenant's possible contractual defaults.

- *What is the usual and lawful amount of a deposit?*

If the tenant guarantees a deposit in cash, a maximum deposit two months' rent is allowed, provided that it is paid once in full.⁵⁶³ He may also have a bank to issue a bank guarantee, which may not exceed an amount of three months' rent.⁵⁶⁴

- *How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant?)*

There are three possibilities for the landlord to manage the deposit.

Deposit in cash

Firstly, a payment in cash can be placed in an interest-bearing bank account in the tenant's name. This is a blocked account and the tenant's authorization is required in order to withdraw the money. If the landlord receives the deposit in cash and he refuses to deposit it in to the account, he owes the tenant an average market rate of interest. Moreover, if he remains in default after receiving notice, he must pay the tenant the statutory interest as of the notice date.⁵⁶⁵

Issuance of a bank guarantee

A second option is to issue a bank guarantee. The tenant must pay the bank in instalments for a maximum of three years. In return, the bank provides the landlord a guarantee letter. On the one hand, the bank will not receive any interest from the tenant. And on the other, the bank will only have to pay the tenant the interest from the day the deposit is fully paid.⁵⁶⁶

Issuance of a bank guarantee with the assistance of OCMW

The last option is for tenants who have access to social assistance (*sociale bijstand*). They can be assisted by the local OCMW (*Openbaar Centrum voor Maatschappelijk*

⁵⁶² M. Dambre et al., *Huurzakboekje*, 136 & 166.

⁵⁶³ Art. 10 § 1 Housing Rent Act.

⁵⁶⁴ Art. 10 § 1 Housing Rent Act.

⁵⁶⁵ Art. 10 § 2 Housing Rent Act.

⁵⁶⁶ Art. 10 § 1 Housing Rent Act.

Welzijn), i.e. the Public Centre for Social Welfare.⁵⁶⁷ The bank can issue a bank guarantee through the intermediary of the OCMW and it will stand surety for the tenant. Also in this case, the deposit may equal a maximum of three months' rent.⁵⁶⁸

These deposits can only be resealed after the contract's has ended under condition that both parties agree or by a judge's verdict.

Deposit in kind

A deposit in kind may also be agreed upon by parties and the above described legal limitations will then not be applicable. This means that jewelry, shares, gold, etc. can be handed over to the landlord. Moreover, there is no maximum deposit amount to take into consideration.⁵⁶⁹

- *What are the allowed uses of the deposit by the landlord?*

The deposit may be used to repair damage beyond normal tear and wear or to restore personal property other than because of normal wear and tear, such like a broken key. It may also be used in case the tenant is in breach of contract. Furthermore, it can be used setting of the rent due and payable.

- *Repairs*
 - *Who is responsible for what kinds of maintenance works and repairs? What kind of repairs or works may lawfully be assigned to the other party (especially the tenant)*

Private and social tenancy contracts

The tenant must, by the nature of the contract and without need of any particular stipulation, maintain the dwelling in order so that it can serve the use for which it has been let.⁵⁷⁰ Legal provisions concerning maintenance, repairs and improvements are regulatory provisions. Parties may conclude otherwise, but if not, both are responsible for certain repairs and maintenance as described below.⁵⁷¹

What is the Landlord's responsibility?

The basic rule is that the landlord must deliver the dwelling in good repair or whatever character. During the contract, he is responsible for the damages as a result of normal wear and tear, normal use, old age, major repairs, major maintenance, force majeure and hidden defects.⁵⁷² Furthermore, he must, make all the repairs, which may become

⁵⁶⁷ See for the tasks of the OCMW: http://en.wikipedia.org/wiki/Public_Centre_for_Social_Welfare

⁵⁶⁸ Art. 10 § 1 Housing Rent Act.

⁵⁶⁹ L. Machon et al., *101 vragen en antwoorden over de nieuwe Woninghuurwet*, 29. Parties may decide whether jewellery has to be deposited in a bank.

⁵⁷⁰ Art. 1719 CC.

⁵⁷¹ The regions may have additional regulations. A. Hanselaer, B. Hubeau (eds), *Sociale Huur*, 117-122 and 261.

⁵⁷² Arts 1755 and 1721 CC F. Tollenaere, *Huren op de private huurmarkt, Eindelijk een droom of eerder een nachtmerrie*, Cahiers voor de welzijnswerker, (Mechelen: Kluwer), 39.

necessary, other than those incumbent upon the tenant.⁵⁷³ Finally, keeping the wells and cesspools clean is also the landlord's responsibility.⁵⁷⁴

What is the tenant's responsibility?

The tenant has the responsible for repairs and day-to-day and routine maintenance, which are not major repairs or major maintenance.⁵⁷⁵ Furthermore, he is not responsible for the damages as a result of normal wear and tear, normal use and old age. Damages caused by tenant, his family members or visitors must also be repaired by him.⁵⁷⁶ The same applies for damages as result of a fire, unless it is force majeure.⁵⁷⁷ Furthermore, he is responsible for the repairs regarding:⁵⁷⁸

- fireplaces, back-plates, mantelpieces and mantelshelves;
 - the plastering of the bottom of walls of flats and other places of dwelling, to the height of one metre;
 - pavements and tiles of rooms, where only a few are broken;
 - panes of glass, unless they are broken by hail, or other accidents, extraordinary and by force majeure, for which a tenant may not be made responsible; and
 - doors, windows, boards for partitioning or closing shops, hinges, bolts and locks.
- *Connections of the contract to third parties*
 - *Rights of tenants in relation to a mortgagee (before and after foreclosure)*

The mortgagee has no an independent claim against the tenant before and after foreclosure. He cannot start a procedure and claim the tenant's eviction.

Nevertheless, Article 45 Mortgage Act⁵⁷⁹ (*Hypotheekwet/ Loi hypothécaire*) states that tenancy contracts concluded after the establishment of the mortgage and concluded in good faith will be respected. However, if the contract's duration is longer than nine years, the contract period is reduced in accordance with Article 595 CC. Consequently, the mortgagee may require that the tenancy contract will be reduced to a nine-years maximum.

6.5 Implementation of tenancy contracts

- *Disruptions of performance (in particular "breach of contract") prior to the handover of the dwelling*

In the sphere of the landlord:

- Delayed completion of dwelling

One should first check whether the tenancy contract contains any arrangements concerning delay. If this is not the case and the landlord fails to deliver the dwelling in

⁵⁷³ Art. 1720 CC.

⁵⁷⁴ Art. 1756 CC.

⁵⁷⁵ Art.1754CC; http://www.belgium.be/nl/huisvesting/huren_en_verhuren/herstellingen_en_onderhoud/, 28 April 2013.

⁵⁷⁶ Art. 1735 CC.

⁵⁷⁷ Art. 1733 CC.

⁵⁷⁸ Art. 1754 CC.

⁵⁷⁹ Belgium Official Journal 22 December 1851.

time, the tenant can hold him liable for the damage suffered.⁵⁸⁰ The justice of peace can terminate the contract and award damages.

- Refusal of handover of the dwelling by landlord (in particular: case of “double lease in which the landlord has concluded two valid contracts with different tenants over the same household)

A landlord can legally rent out the same dwelling multiple times for the same period. However, he can only provide one tenant the enjoyment of the dwelling. The question rises which tenant has a priority right to occupy the dwelling. Generally speaking, the tenant who first occupies the dwelling and who acts in good faith may reside in the dwelling.⁵⁸¹ If one of them has not occupied the dwelling, preference will be given to the tenant who has a contract with the oldest fixed date. The landlord is contractual liable to the other tenant, because he had guaranteed the dwelling's enjoyment.⁵⁸²

- Refusal of clearing and handover by previous tenant

In case a previous tenant refuses to clear and handover the dwelling he used to rent, the landlord may start an eviction procedure. This procedure is further detailed under Section 6.7 *‘Eviction procedure: conditions, competent courts, main procedural steps and objections.’*

- Public law impediments to handover to the tenant

For the answer to this question, reference is made to Section 6.1 *‘Are there regulatory law requirements influencing tenancy contracts?’*.

In the sphere of the tenant: refusal of the new tenant to take possession of the house

Standard private tenancy contract include, among other obligations, that the tenant must use the lease property as his main residence for himself and his family. Social tenancy contracts contain a similar obligation.

If the tenant does not comply with the obligation to reside in the dwelling himself, he will be in default. The landlord may demand from the justice of peace that the contract will be set aside.⁵⁸³

- *Disruptions of performance (in particular “breach of contract”) after the handover of the dwelling*

Defects of the dwelling

- Notion of defects: is there a general definition?

A landlord must handover the dwelling free from defects, unless parties have agreed otherwise.⁵⁸⁴ Article 1721 CC states that:

‘A warranty is due to the tenant for all defects of the dwelling leased which prevent use of it, although the landlord did not know of them at the time of the lease. Where any loss results to the tenant from those vices or defects, the landlord is obliged to indemnify him.’

⁵⁸⁰ Art. 1146 & art. 1147 CC.

⁵⁸¹ M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 368.

⁵⁸² Art. 1719, 3° CC.

⁵⁸³ Art. 1184 in conjunction with art. 1741 CC.

⁵⁸⁴ Art. 1729, 3° CC.

A defect includes every loss or failure that comes out of the dwelling itself and therefore becomes unsuitable to use the dwelling, obstructs the normal use of the dwelling, or if the tenant would pay less rent had he known this defect.

Article 1721 CC is regulatory law and parties may agree otherwise by contract. It is not required that no use of the dwelling at all is possible in order to meet the definition. A partial disruption is sufficient, provided it is noticeable.⁵⁸⁵ However, minor shortcomings are excluded.

Furthermore, throughout the duration of the contract, he must make all repairs which may become necessary, other than those to be made by a tenant.⁵⁸⁶ This is mandatory law.⁵⁸⁷

- Examples: is the exposition to noise e.g. from a building site in front of the house or are noisy neighbours a defect? damages caused by a party or third persons? Occupation by third parties? Is the occupation of the house by third parties such as squatters considered as a defect in legal terms?

The landlord has the obligation to warrant his tenant against third parties' legal acts. He is not obliged to warrant the tenant against defects which third parties cause to his quiet enjoyment under a tenancy contract.⁵⁸⁸ Nevertheless, the tenant may proceed against them in his own name.⁵⁸⁹ This means that noise from a building site in front of the dwelling, noisy neighbours or damages caused by third parties are not qualified as defects as defined in Article 1721 CC.

A tenant who has the same landlord as a second tenant and who lives in the same building is considered to be a third party.⁵⁹⁰ The tenant has to hold the third party liable for the disruption of his quiet enjoyment under a tenancy contract by invoking Articles 1382 and 544 CC. The mere fact that a second tenant also rents from the same landlord, is not sufficient to implead the landlord (*verwaring oproepen*). Nevertheless, the landlord can be impleaded, if the defect arises from a right awarded by him to the second tenant. For example, a landlord grants the second tenant the right to do business, which causes nuisance and, therefore, disrupts the other tenant from his quiet enjoyment under the tenancy contract.⁵⁹¹

With respect to occupation of third parties and squatters, it can be said that the landlord has to warrant only his tenant in case the third party claims to have a real right or a personal right with respect to the dwelling.⁵⁹² If this is not the case, the main rule of Article 1725 CC applies, which states that the landlord is not required to guarantee the tenant against disturbance which third persons cause by acts of violence against his enjoyment.

⁵⁸⁵ M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Huurrecht*, 373.

⁵⁸⁶ Art. 1720 CC.

⁵⁸⁷ Art. 2 § 2 Housing Rent Act.

⁵⁸⁸ Art. 1725 CC.

⁵⁸⁹ Art. 1725 CC.

⁵⁹⁰ M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 371.

⁵⁹¹ M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 372.

⁵⁹² M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 370.

- - *The possible legal consequences: rent reduction; damages; “right to cure” (to repair the defect by the landlord); reparation of damages by tenant; possessory actions (in case of occupation by third parties) what are the relationships between different remedies; what are the prescription periods for these remedies*

Possible legal consequences

In case of a defect, the tenant must immediately notify the landlord. As of that moment, the tenant has several legal options:

- a) he may claim that the contract will be set aside including compensation,
- b) he can claim rent reduction,
- c) he can claim the repair of the dwelling at the expense of the landlord, or
- d) he can claim other compensation.

Prescription (verjaring)

Personal actions expire after ten years.⁵⁹³ Outstanding rent expires within five years.⁵⁹⁴ Rent indexations, which become overdue, expire after one year.⁵⁹⁵

- *Entering the premises and related issues*

- Under what conditions may the landlord enter the premises?

In accordance with Article 1719, °3 CC, the landlord is obliged to provide the tenant the peaceful enjoyment of the dwelling for the duration of the contract.⁵⁹⁶ Therefore, the landlord is not allowed to enter the dwelling at any moment without the tenant's permission to, e.g., check whether urgent work has to be carried out⁵⁹⁷ or whether the tenant complies with the designated use of the dwelling.⁵⁹⁸ This right elaborates on the tenant's a) fundamental right to privacy, which is enshrined in Article 8 ECHM and Article 33 Belgium Constitution as well as b) the fundamental right of inviolability of the home as stated in Article 8 ECHM and Article 15 Belgium Constitution.

In some situations, the landlord has the right to enter the rented dwelling. For example⁵⁹⁹ to draw up a detailed inventory (*plaatsbeschrijving*) in accordance with Article 1730 CC.⁶⁰⁰ If, during the lease, the dwelling needs repairs and these cannot be delayed, the tenant must tolerate them. Even if they cause inconvenience to him and they deprive him of the use of a part of the dwelling while they are being made. However, if such repairs last more than forty days, the rent will be diminished in proportion to the time and to the part of the dwelling of which he was deprived.⁶⁰¹ Furthermore, the landlord may

⁵⁹³ Art. 2262bis CC.

⁵⁹⁴ Art. 2277 CC.

⁵⁹⁵ Art. 2273 CC.

⁵⁹⁶ B. Hubeau & R. de Lange (eds), *Het grondrecht op wonen, De grondwettelijke erkenning van het recht op huisvesting in Nederland en België*, 120.

⁵⁹⁷ Art. 1724 CC.

⁵⁹⁸ Art. 1728 CC, 3° CC.

⁵⁹⁹ M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 370.

⁶⁰⁰ F. Tollenaere, *Huren op de private huurmarkt, Eindelijk een droom of eerder een nachtmerrie*, 56.

⁶⁰¹ Art. 1724 CC.

enter the dwelling with a prospective tenant or buyer, but only if the contracts provides this option. If this matter is not arranged, it is the justice of peace who decides.⁶⁰²

Obviously, in all these cases, the landlord has to inform his tenant about the intended visits.⁶⁰³ This also applies in cases the landlord has reserved this right in the tenancy contracts, although this is called into question in the literature.⁶⁰⁴

- Is the landlord allowed to keep a set of keys to the rented apartment?

There are several opinions in the doctrine concerning the question whether a landlord is allowed to keep a set of keys of the rented dwelling. On the one hand, it is said that he may not keep a set of keys without the tenant's permission.⁶⁰⁵ On the other, he may a set of keys. However, he may not enter the dwelling without the tenant's permission. The tenant may not refuse on unreasonable grounds.⁶⁰⁶

- Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?

Locking a tenant out of the rented dwelling is an illegal eviction and therefore not allowed.⁶⁰⁷

- *Rent regulation (in particular implementation of rent increases by the landlord)*
 - *Ordinary rent increases to compensate inflation/ increase gains*

For this question reference is made to Section 6.4 'Clauses on rent increase'.

Table 6.9 is added below to provide an overview of the different situations.

Table 6.9 Rent indexation

	Oral contracts concluded <i>before</i> 31 May 1997.	Oral contracts concluded <i>after</i> 31 May 1997	Written contracts concluded <i>before</i> 28 February 1992	Written contracts concluded <i>before</i> 31 May 1997
Indexation allowed?	Subject to Act of 29/12/1983 (amended by the Act of 20 February 1991)	No, unless otherwise agreed	Yes, if agreed expressly in writing	By law, <i>unless</i> expressly agreed otherwise in writing
When?	Subject to Act of 29/12/1983 (amended by the Act of 20 February 1991)	Once a year, on the contract's entrance date.	Once a year, on the contract's entrance date.	Once a year, on the contract's entrance date.
Increase clause	Subject to Act of 29/12/1983 (amended by the Act of 20 February 1991)	Art. 1728 <i>bis</i> CC <u>Initial rent x health index</u> Initial health index	Subject to Act of 29/12/1983 (amended by the Act of 20 February 1991)	Art. 1728 <i>bis</i> CC <u>Initial rent x health index</u> Initial health index

⁶⁰² Other examples are described in: R. Timmermans, 'Het grondrecht op privacy van de huurder en het recht van de verhuurder op betreding van de huurwoning', *Het huurrecht in de praktijk* 2 (2011), 55-61.

⁶⁰³ This is an elaboration of one the general principle of law, namely, good faith, art. 1134, sub section 3 CC.

⁶⁰⁴ B. Hubeau & R. de Lange (eds), *Het grondrecht op wonen, De grondwettelijke erkenning van het recht op huisvesting in Nederland en België*, 120.

⁶⁰⁵ F. Tollenaere, *Huren op de private huurmarkt, Eindelijk een droom of eerder een nachtmerrie*, 31.

⁶⁰⁶ Interview with P. Brulez on 11 October 2013.

⁶⁰⁷ A-L. Verbeke & P. Brulez (eds), *Knelpunten Huurrecht – Tien Perspectieven*, 206.

- *Is a rent increase after renovation measures, e.g. upgrading the energy performance of the house, or similar lawful and dealt with in a special procedure?*

Private tenancy contracts

Rent increase after renovation or similar activities for private tenancy contracts are governed by Article 7 Housing Rent Act. Parties may agree on a rent increase between the ninth and sixth month prior to the end of each three-year period.⁶⁰⁸ If no agreement has been reached, the justice of peace grants a rent review:

- if, due to new circumstances, it appears that the normal rental value of the rented dwelling is at least 20 % higher than the rent on the moment of the claim, or
- the landlord has done renovation work, on his account, in order to improve the dwelling and the the improvement increases the normal rent value by 10 %.

Normal rent value is defined as: “the rent paid in the district for a dwelling with similar standing and facilities”.⁶⁰⁹ The Belgian Court of Cassation has defined “new circumstances” as: “circumstances that did not exist at the time of conclusion and could not be foreseen at that the time”.⁶¹⁰ However, in the literature, there is no consensus on what new circumstances in fact are.⁶¹¹ Work that has been carried out pursuant to a statutory or contractual obligation, does not give the landlord the right to revise the rent.⁶¹²

Procedure to be followed by the landlord

The right to increase the rent is governend by mandatory law.⁶¹³ The landlord must comply with several conditions. Firstly, the claim must be made within the ninth and sixth month prior to the end of the three-year period. Secondly, he must prove a) that there are sufficient reasons to justify the claim and b) that the increase corresponds to the real modifications of the normal rent value.⁶¹⁴ The judge judges with observance of the principle of fairness.⁶¹⁵ If an increase is granted, the tenant must pay it from the first day of the new period of three years.⁶¹⁶

Social tenancy contracts

In the Brussels Region, one of the three types of standard tenancy contracts which can be concluded, is the renovation contract.⁶¹⁷ The rent can be adjusted as a result of renovation.

⁶⁰⁸This applies only to contracts concluded after 28 February 1991, http://justitie.belgium.be/nl/themas_en_dossiers/huren_en_verhuren/huurprijs_indexatie_en_kost/, 6 June 2013.

⁶⁰⁹ C. Delforge & L. Kerzmann, *Belgium*, 21.

⁶¹⁰ Cass. 12 February 1972, Pas., 1972, I, 542.

⁶¹¹ C. Delforge & L. Kerzmann, *Belgium*, 21.

⁶¹² A. van Oevelen (ed.), *Woninghuur*, 253.

⁶¹³ Art. 12 Housing Rent Act.

⁶¹⁴ C. Delforge & L. Kerzmann, *Belgium*, 21.

⁶¹⁵ Art. 7 Housing Rent Act.

⁶¹⁶ Art. 7 Housing Rent Act.

⁶¹⁷ The renovation contract is attached as Appendix 5 to the 26 September 1996 Decision of the Brussels-Capital Region.

- *Rent increases in “housing with public task”*

Each region has its own regulations concerning rent increase. For instance, the Flemish Region has chosen for a system whereby the rent is revised every year.

- *Procedure to be followed for rent increases*
- Is there some orientation at the market rent; if yes, how is the market rent measured/calculated (e.g. statistical devices such as a Mietspiegel [= rent statistics for a certain area])?

The landlord and tenant may freely decide what the rent will be and there is no orientation with respect to the market rent. The Flemish Region has developed a tool to help the landlord and tenant to help determine a rent price for dwellings in the Flanders Region. This tool can be found on <https://www.woninghuurprijzen.be/>

For more information reference is made to Section 6.5 ‘*Ordinary rent increases to compensate inflation/ increase gains*’.

- Possible objections of the tenant against the rent increase

Table 10 above shows that the landlord has always the right to index the rent. A tenant who has paid more than he should, may set this off against the rent that will be due.

- *Alterations and improvements by the tenant*

Legal provisions concerning maintenance and repairs are regulatory provisions. Unless stipulated otherwise, the following applies.⁶¹⁸

- *Is the tenant allowed to make (objective) improvements on the dwelling (e.g. putting in new tiles)?*

Alterations (*veranderingen*) and improvements (*verbeteringen*), which will not lead to a change in the dwelling’s structure, such as decorative embellishment, may be executed by the tenant.⁶¹⁹

- *Must, and if yes under what conditions, improvements of the dwelling by the tenant be compensated by the landlord?*

The tenant has the obligation to deliver the dwelling in the original condition. If alterations and improvements are removable, the tenant may take these along with him. If he does not, the landlord acquires the things and should compensate his tenant.⁶²⁰

If the alterations and improvements are not removable, the landlord becomes owner and no compensation is due, unless, the expenses: a) were necessary to ensure the preservation of the dwelling and b) added value to the dwelling.

⁶¹⁸ Social tenancy contracts conclude otherwise.

⁶¹⁹ M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 356.

⁶²⁰ The latter is, for instance, not the case for Flemish social tenancy contracts. If a tenant alters or improves the dwelling without the landlord’s consent, the landlord does not have to compensate the tenant for these improvement or alterations.

This means that unnecessary alterations and improvements will not have to be compensated by the landlord.

- *Is the tenant allowed to make other changes to the dwelling?*
- In particular changes needed to accommodate a handicap (e.g. building an elevator; ensuring access for wheelchairs etc)?

As described above, alterations and improvements, which will lead to a change in the dwelling's structure, may not be executed by the tenant, without the landlord's prior consent.

It should be noted that the landlord cannot forbid the tenant to make reasonable adjustments (*redelijke aanpassingen*) to the dwelling which are needed to accommodate a handicap. The landlord's refusal to make reasonable adjustments is considered to be discrimination of persons with disabilities.⁶²¹ However, there is no discrimination if the adjustment to make the dwelling accessible for wheelchair users is an unreasonable burden for the landlord.⁶²²

- Fixing antennas, including parabolic antennas

Many contracts stipulate that it is not allowed to erect a (parabolic) antenna, without the landlord specific permission. The question has risen, whether these clauses are valid under European law.

The European Court of Human Rights has ruled several times in cases concerning Article 10 ECHR⁶²³ This Article guarantees the right of receiving information.

One of these cases is the case of *Khurshid Mustafa and Tarzibachi v. Sweden*.⁶²⁴ The ECHR has ruled that a country may breach an individual's right to freedom of information, if they are constrained from having a satellite dish on their property. Although it was a dispute between private parties, which fall outside its scope of responsibility, the ECHR finds that the Court is admissible, even in a case involving two private parties. Moreover, member States have a positive obligation under ECHR.⁶²⁵ A contractual clause, which prohibits erecting satellite dishes, may be an unlawful breach of the tenant's right of freedom to receive information. The right to have a satellite dish to receive free information may be limited, but only on very serious grounds of public interest. The interests of the tenant and landlord will have to be weighed up. Furthermore, the landlord's restriction should be proportionate in relation to the tenant's interests. In this particular case, the tenants' interest outweighed the landlord's interest.

⁶²¹ Arts 9 and 14 Antidiscrimination Act; S. Stijns & P. Wéry (eds) *Antidiscrimatiewet en contracten* (Burgge: die Keure, 2006), 130.

⁶²² M. Dambre et al., *Huurzakboekje*, 407.

⁶²³ ECHR *Autronic AG v. Switzerland*, 22 May 1990 Application No. 12726/87; ECHR *Özgür Gündem v. Turkey*, 16 March 2000, Application No. 23155/93; ECHR *Fuentes Bobo v. Spain*, no. 39293/98; ECHR *Appleby and Others v. the United Kingdom*, 6 May 2003, Application No. 44306/98.

⁶²⁴ ECHR *Khurshid Mustafa and Tarzibachi v. Sweden* 16 December 2008, Application No. 23883/06.

⁶²⁵ ECHR *Autronic AG v. Switzerland*, 22 May 1990 Application No. 12726/87; ECHR *Özgür Gündem v. Turkey*, 16 March 2000, Application No. 23155/93; ECHR *Fuentes Bobo v. Spain*, 29 February 2000, no. 39293/98, Application No. 44306/98.

Conclusion: contractual clauses may prohibit that tenants erect a parabolic antenna or an antenna. However under European law, it is doubtful that landlords can invoke these clauses.

Table 6.10 shows an overview of who is responsible for repairs, improvements and alterations.

Table 6.10 Responsibility for repairs, improvements and alterations

	Tenant	Landlord	remarks
Repairs	day-to-day and routine	Other repairs	Unless otherwise stipulated
Alterations	If stipulated	In general landlord responsibility	Unless otherwise stipulated
Improvements	If stipulated	In general landlord responsibility	Unless otherwise stipulated

- *Maintenance measures and improvements, in particular upgrading the energy performance of the house by the landlord*
 - *What kinds of maintenance measures and improvements does the tenant have to tolerate?*

Unless parties agree otherwise, the landlord is responsible for all repairs which may become necessary, other than those to be made by a tenant. For instance, maintaining and repairing water, gas and electricity pipes.⁶²⁶ Furthermore, the tenant has to tolerate non urgent repairs, however only if he wishes that these defects are repaired by his landlord.⁶²⁷

After a contract is concluded, it can happen that regulations are prescribed by the government concerning improvements. The question rises which party has to execute these regulations. With respect to safety regulations, the Court of Cassation decided in 29 May 1989 that the landlord cannot be held responsible for these improvements.⁶²⁸

The tenant has also have to tolerate that the landlord enters the dwelling to check the condition of the property whether (urgent) maintenance is necessary.⁶²⁹ However, abuse of this right can be qualified as a disruption of quiet enjoyment under a tenancy agreement.⁶³⁰

- *What conditions and procedures does a landlord who wants to make renovations need to respect (e.g. giving adequate [i.e. sufficiently long] notice; offer an alternative dwelling; offer a rent reduction to compensate for disturbances)?*

There is no specific procedure that must be followed if a landlord wants to make renovations. Parties may agree how to act in these matters. Nevertheless, the landlord should in any case notice the tenant within a reasonable time period.

⁶²⁶ Art. 1720 CC; This is mandatory law: Art. 2 § 2 Housing Rent Act

⁶²⁷ M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 366.

⁶²⁸ M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 359.

⁶²⁹ Art. 544 CC; M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 367.

⁶³⁰ Art. 1719 3° CC; M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 367.

In case of urgent repairs, Article 1724 CC applies. If repairs last more than forty days, the price of the rent will be reduced in proportion to the time and to the part of the dwelling of which the tenant was deprived. Moreover, if repairs are such that the dwelling becomes uninhabitable for the tenant and his family, he may request the justice of peace to terminate the tenancy contract.⁶³¹

- *Uses of the dwelling (allowed vs. forbidden) such as keeping animals; smells; receiving guests; prostitution and commercial uses (e.g. converting one room in a medical clinic); removing an internal wall; fixing pamphlets outside*

Keeping animals

A limited prohibition to keeping animals is allowed as long as it complies with Article 1728, 1° CC. This means that a prohibition to keep too many or dangerous pets or pets which cause damage or inconvenience is allowed.⁶³² This has to be assessed on a case-by case basis. It should be noted that lower courts are divided on this issue.⁶³³

Parties may stipulate otherwise. Nevertheless, they have to pay attention to make sure that the tenancy contract does not violate Article 8 the ECHR, which protects the right to respect the tenant's private and family life. It can be said that a general prohibition to keeping pets is disproportionate to the aim pursued and violates Article 8 ECHR.⁶³⁴ However, a limited prohibition is allowed. The justice of peace decides on a case-by case basis whether a contract can be terminated, if a tenant violates the ban on keeping pets (e.g., a dog or a cat).

Smells

A use clause can be found in nearly every standard tenancy contract. It sets out the permitted and prohibited uses of the dwelling and can be described in general or more specific. Tenants, who do not abide by the agreement, are in breach of contract. Tenants, who causes odour nuisance can be held liable to those who suffer from the nuisance.⁶³⁵ The landlord cannot be added as a third party in a legal action.⁶³⁶

Receiving guests

The right to receive guests is a part of the tenant's private and family life and is protected by Article 8 ECHR, unless the exception as laid down in Section 2 of this Article applies. However no case law has been found.

Commercial uses and prostitution

The tenant must use the dwelling with due care and according to the purposes intended by the lease, or according to the circumstances failing an agreement.⁶³⁷ The tenant may

⁶³¹ Art. 1724 CC; M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 367.

⁶³² M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 438.

⁶³³ M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 108.

⁶³⁴ M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 109. Equality and Human Rights Commission, Human rights at home: Guidance for social housing providers, (March 2011). For jurisprudence concerning pets see: B. Hubeau & R. de Lange (eds), *Het grondrecht op wonen, De grondwettelijke erkenning van het recht op huisvesting in Nederland en België*, 108-109.

⁶³⁵ Art. 1382 or Art. 544 CC.

⁶³⁶ M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 370.

⁶³⁷ Art. 1728 CC.

not, without the landlord's consent, change the intended purpose. The landlord's consent can be given tacitly, but the mere fact that the landlord does not respond, does not imply that he has given his consent.⁶³⁸ An explicitly stipulation of the purpose, should be applied strictly.⁶³⁹ If the tenant uses the dwelling in another way than it was intended for, the landlord may, according to the circumstances, have the lease terminated by the justice of peace.⁶⁴⁰ It is not required that the landlord has suffered damage.

Removing an internal wall

The main rule is that without the landlord's prior consent, alterations and improvements, which will lead to a change in the dwelling's structure, may not be executed by the tenant. In principle, this is a breach of contract and the tenant has to compensate the damage. Parties are free to make other arrangements in their contract. This subject is further detailed under Section 6.4 '*Repairs*', Section 6.5 '*Rent regulation (in particular implementation of rent increases by the landlord)*' and Section 6.5 '*Alterations and improvements by the tenant*'.

Fixing pamphlets

Right to freedom of expression falls under the scope of Articles 9 and 10 ECHR and Article 19 and 25 Belgian Constitution. Nevertheless, it is subject to certain restrictions, such as the interests of national security and discrimination regulations.

- *Is there an obligation of the tenant to live in the dwelling? Are there specificities for holiday homes?*

Private tenancy contracts

One of the tenant's primary obligations is that he uses the dwelling according to the purpose which the lease contemplated. If he rents the dwelling to use it as his principle residence, it is obvious that he has to live in the dwelling itself.

Depending on the circumstances of the case, a unilateral change (*eenzijdige wijziging*) in the dwelling's use, could lead to the termination of the contract in accordance with the Articles 1728-1729 CC.⁶⁴¹ The result of this is that the Housing Rent Act, including the protective provisions, will no longer be applicable. The ordinary tenancy law is (subsequently) applicable.

With respect to holiday homes it can be said that parties may agree that the tenant uses the dwelling as his principle residence. In that case, the Housing Rent Act becomes applicable. Without the landlord's permission, the tenant cannot use a holiday home as his principle residence. Consequently, the Housing Rent Act will not be applicable.

Social tenancy contracts

⁶³⁸ A. van Oevelen (ed.), *Woninghuur*, 447-448, footnote 278.

⁶³⁹ A. van Oevelen (ed.), *Woninghuur*, 447, footnote 273.

⁶⁴⁰ Art. 1729 CC.

⁶⁴¹ A-L. Verbeke & P. Brulez (eds), *Knelpunten Huurrecht – Tien Perspectieven*, 325. Although the Housing Rent Act is not applicable, pursuant to art. 1714bis CC, the contract must be in writing and fulfil the criteria as describes in art. 1bis Housing Rent Act.

Social tenancy contracts include the obligation for the tenant to live in the dwelling himself. If not, the landlord is, depending on the circumstances of the case, allowed to terminate the contract.⁶⁴²

- *Video surveillance of the building*
 - *Is the surveillance of certain parts (e.g. corridors) of the building lawful and usual?*

The use of a video surveillance of a part of an building falls under the scope of the 21 March 2007 Act on the placement and use of surveillance cameras (*Wet tot regeling van de plaatsing en het gebruik van bewakingscamera's*). The use of the cameras must meet the proportionality principle. This means complying with the following conditions:

- a) there must be a balance between the users interests and the right to the protection of the private life of the filmed person,
- b) no other means must be available that interfere less in the private life of the filmed person,
- c) processing unnecessary images is prohibited, and
- d) the camera only focus to the place where the user is authorized.⁶⁴³

6.6 Termination of tenancy contracts

- *Mutual termination agreements*

Tenancy contracts may be revoked by mutual consent.⁶⁴⁴ This applies to all types of tenancy contracts. There is no prescribed form to revoke the tenancy contract.

- *Notice by the tenant*
 - *Periods and deadlines to be respected*

Tenancy contracts are fixed-term contracts and these type of contract are in principle non terminable, unless it is regulated by law or parties have agreed otherwise.⁶⁴⁵ Private tenancy contracts are governed by the Housing Rent Act and have their own specific regimes. These are laid down in Article 3 Housing Rent Act. The Housing Rent Act is laid down in the Civil Code. For social tenancy contracts each region has its own regulation. The periods and deadlines which must be respected are described below.

- *May the tenant terminate the agreement before the agreed date of termination (especially in case of contracts limited in time); if yes: does the landlord then have a right to compensation (or be allowed to impose sanctions such as penalty payments)?*

Private tenancy contracts

Article 3 Housing Rent Act describes if and under which conditions a private tenancy contract can be terminated or early terminated.

⁶⁴² Art. 1728 in conjunction with art. 1729 CC.

⁶⁴³ <http://www.belgium.be/nl/justitie/privacy/camerabewaking/voorwaarden/>, 3 September 2013.

⁶⁴⁴ Art. 1134 subsection 2 Housing Rent Act.

⁶⁴⁵ A. van Oevelen (ed.), *Woninghuur*, 112.

As mentioned under Section 6.4 '*Duration of contracts*' under private tenancy law, there are four types of tenancy contracts and each has its own regime when it comes to termination or early termination. Each regime will be explained in sequence.

Termination by tenant: standard contract (nine years)

Tenancy contracts end after a period of nine years has expired, if at least six months before the due date one of the parties has given a notice to terminate the contract.⁶⁴⁶ The notice can be oral or in writing, no motive has to be given and no compensation has to be paid.

If a notice of termination has not been served within this period, the notice itself is invalid and the contract will automatically be extended for three years under the same conditions.⁶⁴⁷ It is generally assumed that the extended contract ends after a period of three years, if the notice to terminate this contract has been given by the tenant three months before the due date.⁶⁴⁸ Also in this case, the notice can be done orally, without a motive and without paying a penalty to the landlord.

Early termination by tenant: standard contract (nine years) (Tussentijdse opzegging door huurder)

Not only can a tenant terminate the contract at the end of the contract period, he can also terminate it at any time during the contract period with a notice period of three months.⁶⁴⁹ The tenant must pay the landlord a fixed compensation, if he ends the contract during the first three years period. Article 3 § 5 Housing Rent Act provides the following fixed compensations:

- three months' rent, if the contract ends during the first year of the contract;
- two months' rent, if the contract ends during the second year of the contract; and
- one months' rent, if the contract ends during the third year of the contract.⁶⁵⁰

However, if the tenancy contract is still not registered within two months after closing the contract, the tenant can terminate the contract at any moment, without a notice period or paying a fixed compensation.⁶⁵¹

Furthermore, the landlord has no right to a fixed compensation, if the notice period ends on the last day of the third year of the tenancy contract.⁶⁵² The same is applicable, in case the tenant terminates the contract after the third year.⁶⁵³ Moreover no compensation has to be paid in the case parties mutually agree to terminate the contract.⁶⁵⁴

⁶⁴⁶ Art 3 § 1 Housing Rent Act.

⁶⁴⁷ Art 3 § 1 Housing Rent Act.

⁶⁴⁸ Art. 3 § 5 Housing Rent Act.

⁶⁴⁹ Art. 3 § 5 Housing Rent Act.

⁶⁵⁰ L. Machon et al., *101 vragen en antwoorden over de nieuwe Woninghuurwet*, 40.

⁶⁵¹ Art. 3 § 5 section 3 Housing Rent Act; Art. 32, 5° Wetboek der Registratie-, Hypotheek-, en Griffierechten.

⁶⁵² A. van Oevelen (ed.), *Woninghuur*, 148.

⁶⁵³ A. van Oevelen (ed.), *Woninghuur*, 148.

⁶⁵⁴ A. van Oevelen (ed.), *Woninghuur*, 148.

The tenant's statutory notice options are mandatory.⁶⁵⁵ Stipulations which are in conflict with mandatory provisions have no effect.

Termination by tenant: short term contract (duration of three years or less)

Short term tenancy contracts end after the contract period has expired, under the conditions that at least three months before the due date one of the parties has given a notice to terminate the contract. The notice can be oral or in writing, no motive has to be given and no compensation has to be paid.

If a notice of termination has not been served within this period, the contract is automatically converted in a standard nine years contract.⁶⁵⁶ The same applies when the tenant has given a notice, but without resistance continues to stay in the dwelling. Note that the second contract's effective date (*inwerkingtredingsdatum*) is the same as the date of the short term contract entered into force. For example:

Parties agree on a one year's contract and the effective date is 1 April 2010. Parties do not give notice to terminate this contract. The result is that this contract will be converted into a standard nine years contract. The new effective date is not 1 April 2011, but 1 April 2010 and the (converted) contract terminates will terminate on 31 March 2019.

Unclear is which provisions are applicable this this converted contract. On the one hand, the rent and other conditions remain the same as they were concluded in the three years contract. On the other, the provisions concerning indexation and the review of rent (*huurprijsherziening*) and utility charges fall under the scope of the regulation concerning nine years contracts.⁶⁵⁷

Avoiding conversion of a short term contract into a standard nine years contract

It is possible to avoid that a short term contract converts into a standard nine years contract. The following has to be done:⁶⁵⁸

- the extension of the contract has to be in writing,
- the rent has to be the same or less,⁶⁵⁹
- the tenant has to be the same party,
- the extension is only allowed once,
- the contract periods of the original and new lease combined may not exceed three years,
- it is allowed that the duration of the second contracts is not the same as duration of the first contract,⁶⁶⁰
- the extension is only allowed once.

Chain contracts

⁶⁵⁵ Art. 12 Housing Rent Act.

⁶⁵⁶ Art. 3 § 6 Housing Rent Act.

⁶⁵⁷ Arts 6 and 7 Housing Rent Act; A. van Oevelen (ed.), *Woninghuur*, 154.

⁶⁵⁸ Art. 3 § 6 section 5; L. Machon et al., *101 vragen en antwoorden over de nieuwe Woninghuurwet*, 56-57.

⁶⁵⁹ M. Dambre et al., *Huurzakboekje*, 54.

⁶⁶⁰ A. van Oevelen (ed.), *Woninghuur*, 157.

For this question reference is made to Section 6.4 *‘Other agreements and legal regulations on duration and their validity: periodic tenancies (“chain contracts”, i.e. several contracts limited in time among the same parties concluded one after the other); prolongation options; contracts for life etc.’*

Early termination by tenant: short term contract (Tussentijdse opzegging)

As article 3 §§ 2 - 5 Housing Rent Act are not applicable for short term contracts, parties do not have a unilateral right to early terminate a short term contract. It is argued in the literature whether parties can agree otherwise, but there is no clear answer to this question.⁶⁶¹ In addition to this, it can be said that the case law accepts a contractual stipulation concerning early termination in favor of the tenant. Stipulations, which are in the landlord's favor are in conflict with the Housing Rent Act's mandatory stipulations.⁶⁶²

Oral tenancy contracts

The Constitutional Court decided⁶⁶³ that tenants who have concluded an oral tenancy contract do not have to take a notice in to consideration, if they wish to early terminate a contract. Furthermore, no compensation has to be paid to the landlord. According to Constitutional Court Article 3 § 5 subsection 3 Housing Rent Act is not applicable to oral tenancy contracts. The Court substantiates its decision by comparing the oral tenancy contract with a non-registered tenancy contract. In latter case, the tenant does not have to take a notice into account and compensation is due if the contract is not-registered.⁶⁶⁴ There is no justification to treat an oral tenancy contract differently than a non-registered written contract.

Termination by tenant: long term contract (longer than nine years)

The provisions concerning the termination of long term contracts are the same as for the standard nine years contract. Article 3 § 7 section 2 Housing Rent Act states that a contract ends after the contract period has expired, if at least six months before the due date one of the parties has given a notice to terminate the contract. The notice can be oral or in writing, no motive has to be given and no compensation has to be paid. However to avoid evidentiary problems it's advisable to give the notice in writing. If this does not happen, the contract will (every time) be extended under the same conditions and for a period of three years.⁶⁶⁵

Termination by tenant: early termination of a long term contract (longer than nine years)

The tenant can terminate the contract at any time during the contract period with a notice period of three months.⁶⁶⁶ But he must pay the landlord a fixed compensation, if he ends the contract during the first three years period. Article 3 § 5 Housing Rent Act provides the following fixed compensations:

- three months' rent, if the contract ends during the first year of the contract
- two months' rent, if the contract ends during the second year of the contract

⁶⁶¹ Art. 3 § 3 Housing Rent Act; A. van Oevelen (ed.), *Woninghuur*, 155.

⁶⁶² M. Dambre, 'De vervroegde beëindiging van de woninghuur van korte duur', *TBBR* (2009), 378-380.

⁶⁶³ GwH 1 December 2011, nr. 182/2011.

⁶⁶⁴ Art. 3 § 5 Housing Rent Act.

⁶⁶⁵ Art. 3 § 7 section 3 Housing Rent Act.

⁶⁶⁶ Art. 3 § 5 Housing Rent Act.

- one months' rent, if the contract ends during the third year of the contract.⁶⁶⁷

Termination by tenant: contract for the duration of the tenants life (voor het leven van de huurder)

Generally speaking, a contract for the duration of the tenants life terminates when the tenant dies. The tenant may always terminate this contract at any moment, even if it is not stipulated in the contract itself. The termination is subject to three months' notice.⁶⁶⁸

Notice by the tenant in the case the landlord terminates the contract in accordance with Article 3 §§ 2 – 4 Housing Rent Act (tegen opzeggen)

The tenant is allowed to terminate the contract subject to a months' notice, if the landlord terminates the tenancy contract pursuant to Article 3 §§ 2 – 4 Housing Rent Act. Alongside this, no fixed compensation is due by the tenant.⁶⁶⁹

In all cases where a cancellation at all times is allowed, the notice period starts on the first day of the month following the month during which the notice is given.⁶⁷⁰

Early termination by tenant: other options

Right to suspend performance

The party toward whom the engagement has not been executed has the choice either to force the other to execute the engagement if it is possible or to claim damages. Rescission must be sought at law, and the defendant may be granted a delay according to the circumstances.⁶⁷¹ An express resolutely clause is considered not written.⁶⁷² Nevertheless, parties are allowed to agree that the tenant, the landlord or both may resolute the contract in certain events. These events must occur irrespective of any failure to perform the contractual obligations.

Termination by tenant: in case the dwelling is destroyed or partly destroyed

If, during the period of the contract, the dwelling is completely destroyed by a fortuitous event, the contract is terminated as a matter of law. If it is destroyed partly, the tenant may, according to the circumstances, demand either a diminution of the price or the termination of the contract itself.⁶⁷³ Neither cases give rise to indemnification.⁶⁷⁴ The same rules apply, if the government decides to expropriation for public use.⁶⁷⁵

Social tenancy contract

The regulation concerning termination and early termination in social tenancy law differs from private tenancy law's regulations.

Flemish Region: termination and early termination by the tenant

⁶⁶⁷ Art 3 § 5 Housing Rent Act; A. van Oevelen (ed.), *Woninghuur*, 161.

⁶⁶⁸ Art. 3 § 5 Housing Rent Act; A. van Oevelen (ed.), *Woninghuur*, 162.

⁶⁶⁹ Art. 3 § 5 last section Housing Rent Act.

⁶⁷⁰ Art. 3 § 9 Housing Rent Act.

⁶⁷¹ Art. 1184 CC.

⁶⁷² Art. 1762bis. CC.

⁶⁷³ L. Machon et al., *101 vragen en antwoorden over de nieuwe Woninghuurwet*, 41.

⁶⁷⁴ Art. 1722 CC.

⁶⁷⁵ M. Dambre et al., *Huurzakboekje*, 61.

Article 92 §1 3° Flemish Housing Code states that a tenancy contract governed by the Flemish Housing Code will be concluded for a trial period of a maximum of two years. During this period, the tenant has to meet certain obligations as described in Article 92 Flemish Housing Code. After this period, he will be evaluated. If the tenant meets all his obligations, the contract will continue as a lease for an indefinite period. Nevertheless, if the tenant does not comply with his obligations, the social landlord is not authorized to terminate the contract after two years without a court's intervention.⁶⁷⁶

At any time during the contract, the tenant may, by registered letter, early terminate the tenancy contract. If several people rent the dwelling, the early termination by one of them cannot be invoked against the other tenants.⁶⁷⁷

The last tenant,⁶⁷⁸ who terminates the tenancy contract, has to take a notice period of three months into account. The notice period starts from the first day of the month following the month in which the notice was given and has to be done by registered letter.⁶⁷⁹

Social Rental Agencies

Contracts concluded between a Social Rental Agency differs from the regime with respect to social tenancy contract. The duration of this contract cannot be longer than the duration of the contract concluded between the owner/landlord and the Social Rental Agency.⁶⁸⁰

Brussels Region: termination and early termination by the tenant

As of 1 January 2013, three types of standard social tenancy contracts can be concluded.

The tenant may, at any time by registered letter, early terminate the contract by giving a three months' notice.⁶⁸¹ In all cases, the notice period starts on the first day of the month following the month during which the notice is given.⁶⁸² Note that tenancy contracts concluded prior to 1 January 2013 are concluded for an indefinite period of time.⁶⁸³

Walloon Region: termination and early termination by the tenant

The tenant can, at any time, early terminate the tenancy contract by registered letter. He must take a notice of three months into account. The commencement date is the first day of the month following the month during which the notice given. This period may be modified by mutual agreement after the notification.⁶⁸⁴

⁶⁷⁶ GwH 10 July 2008, nr. 101/2008.

⁶⁷⁷ Art. 98 § 2 Flemish Housing Code in conjunction with art. 33 § 5 Framework Social Rent.

⁶⁷⁸ The last tenant as stated in Article 98 Flemish Housing Code.

⁶⁷⁹ Art. 98 § 2 Flemish Housing Code.

⁶⁸⁰ The termination and early termination is further detailed in the art. 36 of the standard social tenancy contract, which is attached as Appendix 2 to the Framework Social Rent.

⁶⁸¹ Art 28 § 1 of the Brussels' standard social tenancy contracts, which are annexed as Attachments 3, 5 and 6 to the 26 September 1996 Decision of the Brussels-Capital Region

⁶⁸² Art. 28 § 1 of the Brussels' standard social tenancy contracts, which are annexed as Attachments 3, 5 and 6 to the 26 September 1996 Decision of the Brussels-Capital Region.

⁶⁸³ Art. 15.4 of the 26 September 1996 Decision of the Brussels-Capital Region.

⁶⁸⁴ Art. 17 of the 6 September 2007 Decree of the Walloon Government.

Comparison between private and social tenancy law

If one compares the termination of contract in private and social tenancy law, there are two striking differences:

- the termination in social tenancy law has to be done by registered letter;
- under social tenancy law, the tenant does not have to pay compensation in case he early terminates the tenancy contract. If private tenancy law is applicable, the tenant must pay a maximum of three months' rent depending on the moment the notice has been given.

- *Are there preconditions such as proposing another tenant to the landlord?*

Parties may agree preconditions. This falls under the scope of the freedom of contract.

- *Notice by the landlord*
 - *Ordinary vs. extraordinary notice in open-ended or time-limited contracts; if such a distinction exists: definition of ordinary vs. extraordinary (=normally related to fundamental breaches of the contract, e.g. in cases of massive rent arrears or strong antisocial behaviour)*

Private tenancy contracts

A. Termination by landlord: standard private tenancy contract (nine years)

Standard private tenancy contracts end after a period of nine years has expired, if at least six months before the due date one of the parties has given a notice to terminate the contract.⁶⁸⁵ The notice can be oral or in writing, no motive has to be given and no compensation has to be paid.

If a notice of termination has not been served within this period, the contract is automatically extended (*verlengen*) for three years under the same conditions.⁶⁸⁶ Contrary to the tenant, the landlord has to observe a notice period of six months in order to terminate the extended contract.⁶⁸⁷ Also in this case, the notice can be done orally, without a motive and without paying a penalty to the landlord.

Termination by landlord: early termination of a standard privacy contract (nine years)

The landlord has three options to early terminate a standard contract and these are summed up in Article 3 §§ 2 through 4 Housing Rent Act. These are further detailed below.

1. Early termination by landlord: for one's own or his family's use

The first for the landlord is the possibility to early terminate the contract, if he wishes to actual reside in de dwelling or have it occupied by his family.⁶⁸⁸ This includes:

- The landlord's children, (great-)grandchildren, adopted children, parents, (great-)grandparents, brothers, sisters, uncles, aunts, cousins, nephews and nieces.

⁶⁸⁵ Art. 3 § 1 Housing Rent Act.

⁶⁸⁶ Art. 3 § 1 Housing Rent Act.

⁶⁸⁷ Art. 3 § 1 Housing Rent Act; L. Machon et al., *101 vragen en antwoorden over de nieuwe Woninghuurwet*, 49; A. van Oevelen (ed.), *Woninghuur*, 109.

⁶⁸⁸ Art. 3 § 2 Housing Rent Act.

- The landlord's spouse, his/hers spouse's children, (great-)grandchildren, adopted children, parents, (great-)grandparents, brothers, sisters, uncles, aunts, cousins, nephews and nieces.

What are the formalities?

The termination is subject to a six months' notice and must state the person's identity and kinship with the landlord. Furthermore, it must describe the reason for the early termination and the conditions.⁶⁸⁹ Without an explanation, the termination is null and invalid.⁶⁹⁰ If the dwelling is not occupied within a year, or if the conditions are not met, the tenant is entitled to a compensation of 18 months' rent, unless there are exceptional circumstances⁶⁹¹

A termination in the first three years is only possible for relatives in the first and second degree. This means that the early termination for other relatives is only allowed after three years after the contract's date of entry into force. In these cases, the six months' notice period cannot expire before the end of the first three-year period.⁶⁹² It should be noted that this only applies to contract renewals (*vernieuwing*) or extensions (*verlenging*) after 31 May 1997.⁶⁹³

The landlord must prove his kinship within two months after the tenant's request.⁶⁹⁴ All means of proof are acceptable. In order to respect all periods in the Housing Rent Act, it is advisable that the tenant does this within one month after the landlord's notice takes effect.⁶⁹⁵ If the landlord does not comply with the tenant's request, the tenant can claim the annulment of the landlord's notice.⁶⁹⁶

The landlord may waive his right to terminate the contract.

2. Early termination by landlord: building activities

The second possibility to early terminate a private tenancy contract is, if the landlord wishes to refurbish (*renoveren*), rebuilt (*verbouwen*) and or reconstruct (*wederopbouw*) (a part of) the dwelling.⁶⁹⁷

The early termination is possible at the end of the first and second three-years period and is subject to six months' notice and has to be in writing.⁶⁹⁸ The letter must state that the early termination is for the purpose of refurbishment, rebuilding or reconstructing⁶⁹⁹ The work which has to be done can also be the embellishment of the dwelling. No compensation is due, if the contract has been legally valid terminated.⁷⁰⁰

⁶⁸⁹ Art. 3 § 2 Housing Rent Act.

⁶⁹⁰ Federale overheidsdienst Justitie, 'De huurwet', http://justitie.belgium.be/nl/binaries/Loyer-2012-NL_BD-DEF_tcm265-138431.pdf, 14 February 2013, 22.

⁶⁹¹ Art. 3 § 2 Housing Rent Act.

⁶⁹² Art. 3 § 2 Housing Rent Act.

⁶⁹³ Art. 15 section 1 Wet 13 April 1997.

⁶⁹⁴ Art. 3 § 2 Housing Rent Act.

⁶⁹⁵ L. Machon et al., *101 vragen en antwoorden over de nieuwe Woninghuurwet*, 44.

⁶⁹⁶ Art. 3 § 2 Housing Rent Act.

⁶⁹⁷ Art. 3 § 3 Housing Rent Act.

⁶⁹⁸ Art. 3 § 3 Housing Rent Act.

⁶⁹⁹ L. Machon et al., *101 vragen en antwoorden over de nieuwe Woninghuurwet*, 45.

⁷⁰⁰ L. Machon et al., *101 vragen en antwoorden over de nieuwe Woninghuurwet*, 48

These are the conditions that must be met in order to terminate the contract:

- the building activities must comply with the current planning regulation and provisions,
- the activities must be carried out to the (part of the) dwelling in which the tenant resides,
- the landlord must notify the tenant about at least one of these documents: the issued building permit, the contract documents, a description of the activities including the estimated costs or a building contract. At least one of these document have to be hand over to the tenant at the commencement of the work, and⁷⁰¹
- the activities' cost price must exceed three year's rent.

Building activities in an apartment complex

It is not unlikely that a landlord, who owns an apartment complex, has concluded several private tenancy contracts with different commencements dates. And therefore, it would almost be impossible to plan building activities for all the dwellings simultaneously. Moreover, it prevents vacancy. In this case, the early termination can be done after the first contract period at any time. The terminations are subject to a six months' notice. Note that all the above described conditions a) - d) must be met, but instead of a cost price which equals three years rent, it is sufficient that it equals two years rent.⁷⁰²

The work must commence within 6 months and end within 24 months after the end of the notice period.⁷⁰³ At the request of the tenant, the landlord must provide him the documents showing that the work is in compliance with the legal requirements. This has to be done free of charge.⁷⁰⁴ If the landlord does not perform within de prescribed period and working conditions, the tenant is entitled to a compensation of eighteen months rent.

The possibility to early terminate the tenancy contract is permissive law, parties may agree to exclude or restrict the right to early termination.⁷⁰⁵

3. Early termination by landlord: without stating reasons

The third and last option for the landlord to early terminate a private tenancy contract can be done without stating reasons. This is allowed at the end of the first and second three-years period. The landlord has to give a six months' notice.⁷⁰⁶

Unlike the above two options to early terminate a contract without paying a compensation, the landlord must compensate the tenant.

The compensation equals:

- nine months' rent if the contract period ends at three years, and
- six months' rent if the contract period ends at six years.

⁷⁰¹ L. Machon et al., *101 vragen en antwoorden over de nieuwe Woninghuurwet*, 46.

⁷⁰² Art. 3 § 3 Housing Rent Act.

⁷⁰³ Art. 3 § 3 Housing Rent Act.

⁷⁰⁴ Art. 3 § 3 Housing Rent Act.

⁷⁰⁵ Art. 3 § 3 Housing Rent Act.

⁷⁰⁶ Art. 3 § 4 Housing Rent Act.

For the sake of clarity, no compensation is due if the contract ends after the nine years period.

The possibility to early terminate the tenancy contract is also permissive law. Parties may agree to exclude or restrict the right to early termination.⁷⁰⁷

B. Termination by landlord: short term contract (duration of three years or less)

A short term private tenancy contract ends after a period of three years has expired, if at least three months before the due date one of the parties has given a notice to terminate the contract.⁷⁰⁸ This legal provision is mandatory law.⁷⁰⁹ The notice can be oral or in writing. No motive has to be given and no compensation has to be paid.

If a notice of termination has not been served within this period, the contract will automatically be converted in a standard nine years contract, which is considered to commence on the date of the original short term contract.⁷¹⁰

For example:

Parties agreed on a two years contract. The date of commencement is 1 March 2010. The two-years period passes without a parties' notice. The result is that the short term contract is deemed to have entered into force for a period of nine years (standard contract) on 1 March 2012. But, the commencement date is still 1 March 2010.

The question rises which provisions are applicable. On the one hand, the rent and other conditions remain the same as they were concluded in the three years contract.

On the other, the provisions concerning indexation and the review of rent (*huurprijsherziening*) and utility charges fall under the regulation concerning nine years contracts.⁷¹¹

It is possible to avoid that a short term contract converts into a standard nine years contract. The following has to be done:⁷¹²

- the extension of the contract has to be in writing,
- the rent has to be the same or less,⁷¹³
- the tenant has to be the same party,
- the extension is only allowed once,
- the contract periods of the original and new lease combined may not exceed three years, and
- it is allowed that the duration of the second contract is not the same as duration of the first contract⁷¹⁴

⁷⁰⁷ Art. 3 § 4 Housing Rent Act.

⁷⁰⁸ Art. 3 § 6 Housing Rent Act.

⁷⁰⁹ A. van Oevelen (ed.), *Woninghuur*, 153.

⁷¹⁰ Art. 3 § 6 Housing Rent Act.

⁷¹¹ Arts 6 and 7 Housing Rent Act; A. van Oevelen (ed.), *Woninghuur*, 154.

⁷¹² Art. 3 § 6 section 5; L. Machon et al., *101 vragen en antwoorden over de nieuwe Woninghuurwet*, 56-57.

⁷¹³ M. Dambre et al., *Huurzakboekje*, 54.

⁷¹⁴ A. van Oevelen (ed.), *Woninghuur*, Reeks Huurrecht, 157.

C. Early termination by landlord: short term private tenancy contract

Early termination of a short term private tenancy contract is excluded by law.⁷¹⁵ However, in the literature it is still disputed whether it is possible to stipulate this by contract.⁷¹⁶

D. Termination by landlord: long term contract: private tenancy contract (longer than nine years)

Long term private tenancy contracts end after the contract period has expired, if at least six months before the due date one of the parties has given a notice to terminate the contract.⁷¹⁷ The notice must be properly served.⁷¹⁸ If not, the contract will be extended for three years under the same conditions.⁷¹⁸

E. Early termination by landlord: long term private tenancy contract (longer than nine years)

The option to early terminate a long term private tenancy contract is the same as the termination options for standard private tenancy contracts (nine years contracts).

F. Termination by landlord: a private tenancy contract for the duration of the tenant's life

The (early) termination of a private tenancy contract for the duration of the tenant's life by the landlord is only possible if it is stipulated in the contract.⁷¹⁹

⁷¹⁵ Art. 3 § 6.

⁷¹⁶ A. van Oevelen (ed.), *Woninghuur*, 155.

⁷¹⁷ Art 3 § 7 Housing Rent Act.

⁷¹⁸ Art 3 § 7 Housing Rent Act.

⁷¹⁹ Arts 3 §§ 2-4 in conjunction with art 3 § 8 Housing Rent Act; L. Machon et al., *101 vragen en antwoorden over de nieuwe wet*, 53.

The table below provides an overview of the results of termination and early termination of a contract.

Table 6.11 Termination of tenancy contracts

Type of contract in private tenancy law		
Standard contract (9 years) A long period (> 9 years)	End of the contract: notice	Contract does not end at the end of the contract period, unless one of the parties has given a notice at least 6 months before the termination. A contract for the period of the tenant's life cannot be terminated by the landlord.
	In case of extension	Contract will be extended for 3 years each time
	Termination during contract period: notice	Landlord: early termination is allowed if one of the in article 3 §§2-4 situations occurs. Tenant: 3 months' notice (including a fixed compensation) 3 §5
Short term contract	End of the contract: notice	Contract does not end at the end of the contract period, unless one of the parties has given a notice at least 3 months before the termination
	In case of extension	Extension is allowed once, if certain conditions have been met.
	Termination during contract period: notice	Not possible
Period for a lifetime	Termination during contract period: notice	Can only be terminated by the landlord, if this is stipulated in the contract.

Extraordinary notice

There is no definition for extraordinary notice. Nevertheless, one can say that a materially attributable breach is not sufficient serious to justify the contract's termination.⁷²⁰ Besides that, by the breach must justify the sanction. For instance, a temporary non-payment unrelated to time does not justify the termination.⁷²¹

It is the justice of peace who may terminate a tenancy contract. An express resolutive clause is considered not written.⁷²² This has to be assessed on a case-by case basis. Nevertheless, parties may agree a resolutive condition describing a certain circumstance that occurs outside the scope of any possible default. For example: a diplomat clause. This clause means that in case the tenant will be reassigned, a shorter notice period applies.

⁷²⁰ A. Van Oevelen, "Knelpunten gemene huur" in A. Verbeke, Knelpunten huur, Antwerpen, Intersentia, 2003, 13.

⁷²¹ Vred. Gent, 27 September 2001, *TGR*, 2005, 2.

⁷²² Art. 1762bis CC.

- *Statutory restrictions on notice:*
- *For specific types of dwellings, e.g. public dwellings; rental dwellings recently converted into condominiums (if there exists a special form of protection in this case as in German law) etc.*

Social tenancy contracts

The regulation concerning termination and early termination in social tenancy law differs from the private tenancy law's regulations. These contracts are concluded for an indefinite period of time (*onbepaalde duur*)

Flemish Region

As described above, contracts governed by the Flemish Housing Code are firstly concluded for a trial period of maximum of two years, in which period the tenant will be evaluated. If he meets all the conditions during this period, the contract will continue as a lease for an indefinite period. Nevertheless, if the tenant does comply with his obligation, the social landlord is, since the 10 July 2008 Constitutional's Court verdict, not authorized to terminate the contract after two years without a court's intervention.

A contract, governed by Flemish social tenancy law, can be early terminated by the landlord only in the following situations:

- a) if the tenant or his minor children acquire a dwelling (*woning*) or a plot of building land designated for housebuilding,
- b) in case of serious breach of contract, or
- c) in the event of non-payment (*wanbetaling*).
- d)

The landlord has to take a notice period is 6 months into consideration.⁷²³

If the tenant's default is due to insolvency, the tenancy contract can be terminated only after consultation with the OCMW⁷²⁴

Termination in case of renovation of the dwelling

Unlike private landlords, social landlords cannot early terminate a social tenancy contract for planned renovation work. Social landlords must provide temporary housing for these tenants. In some cases it is not possible to find an alternative suitable dwelling for the tenant. For that reason, the Flemish Government is empowered to deviate from certain standards during the renovation work, but only for a period not exceeding six months. The deviations may never jeopardize the safety or health of tenants.⁷²⁵

⁷²³ Art. 98 § 3 Flemish Housing Code. These conditions are specified in art. 33 § 5 Framework Social Rent.

⁷²⁴ Art. 98 § 3 Flemish Housing Code.

⁷²⁵ Art. 5 Flemish Housing Code.

Brussels Region

For the landlord, there are limited reasons to terminate a contract. Examples are:⁷²⁶

- the refusal of acceptance of an adapted dwelling (*aangepaste woning*)
- in the event of failure to pay solidarity contribution (*solidariteitsbijdrage*)⁷²⁷
- acquisition of a dwelling

The landlord has to take a notice period is 6 or 3 months into consideration, depending on the reason for termination.

Walloon Region

Under the scope of the Walloon Housing Code, tenancy contracts are concluded for a period of nine years or for the remaining term of the right of residence.⁷²⁸ The right to terminate the contract is limited. For instance e.g., the tenant has provided incorrect information. The notice period can be three or six months depending on the reason for termination.⁷²⁹

- *In favour of certain tenants (old, ill, in risk of homelessness)*

Private tenancy contracts

If tenants are married or legal cohabitants (*wettelijk samen-wonenden*) the tenancy contract belongs jointly to the spouses. Therefore, the notice to terminate the contract must be sent in writing or given by bailiff's notification to both spouses and cohabitants separately.⁷³⁰ Each of the spouses can invoke the nullity of such document which are sent to or given by bailiff's notification to the other spouse, but only if the landlord has the knowledge of their marriage.⁷³¹ The same applies to legal cohabitants.

Flemish Region: Fund against evictions in the private tenancy sector

The Flemish government incorporated in 2012 the Fund against evictions (*Fonds ter bestrijding van de uitzettingen*). It is the fund's aim help tenants in the private tenancy sector with limited means to become solvent, without having them evicted or deprive them from their income security. This also contributes to the preventions of homeless people.⁷³² The fund pays the tenant's rent temporally.

The justice of peace must grant his permission before help can be offered. This can only be done, if he ascertains in law (*in rechte vaststellen*) that the tenant has serious payment problems. The risk is that the tenant commences a legal action against his landlord in order to frustrate the landlord's notice and, therefore, delay a possible eviction.

⁷²⁶ Arts 28, 28bis, 28ter and 28quater of the 26 September 1996 Decision of the Brussels-Capital Region.

⁷²⁷ The solidarity contribution (*solidariteitsbijdrage*) is a contribution which have to be paid by the tenant in case his income exceeds the income for the allocation of a social dwelling.

⁷²⁸ Art. 24 of the 6 September 2007 Decree of the Walloon Government.

⁷²⁹ Art. 18 of Appendix 5 of the 6 September 2007 Decree of the Walloon Government.

⁷³⁰ Arts 215 § 2 and 1477 § 2 CC.

⁷³¹ Arts 215 § 2 and 1477 § 2 CC.

⁷³² Reguleringssimpactanalyse voor de instelling van een tegemoetkoming van het Fonds ter bestrijding van de uithuiszetting, VR2012 2112 DOC. 1448/3, not dated, http://www.wetsmatiging.be/sites/default/files/ria/VR20122112_DOC.1448.pdf, 31 July 2013.

- *For certain periods*

No sources have been found with respect to this question.

- *After sale including public auction (“emptio non tollit locatum”), or inheritance of the dwelling*

Private tenancy law: security of tenure and sale

Whether the tenant enjoys security of tenure, depends on the question whether the tenancy contract has a fixed date or not. As described under Section 6.3 ‘*Registration requirements; legal consequences in the absence of registration*’, tenancy contracts must be registered in order to have a fixed date. If the contract is registered before the dwelling’s disposal (*vervreemding van de woning*), the new owner must respect the tenant’s rights.⁷³³ This provision is not applicable to contracts for a definite period which are concluded before 28 February 1991.⁷³⁴

The tenant cannot rely on the aforementioned legal protection, if the contract does not has a fixed date. In this case, the new owner can terminate the contract without a motive or paying a penalty, in case the tenant has occupied the dwelling less than six months. If the tenant has occupied the dwelling for more than six months, the new owner acquires the landlord’s right and does not have to respect the three years term to expire. He still may terminate the contract under the conditions that: a) he gives a notice of three month and b) he will reside in the dwelling himself. The notice must be given within three months counting from the date on which the deed of transfer was executed. If not, the new owner must respect the tenant’s rights.⁷³⁵

Security of tenure and attachment (beslag)

The consequences of the attachment of the leased property and tenancy contracts, in general, are governed by Article 1575 Judicial Code.

This article states that tenancy contracts, which have a fixed date before the writ of attachment is transcribed into records of the mortgage registry,⁷³⁶ can be invoked against the attaching party.

For contracts longer than nine years, it is also required that the contract is registered into the records of the mortgage registry.⁷³⁷ Without this registration, the tenancy contract cannot be invoked against the attaching party, even if it has a fixed date.

Article 1575 Judicial Code is *also* applicable if the tenancy contract is governed by the Housing Rent Act. As both Articles 1575 and 9 Housing Rent Act are mandatory law, these articles should be combined. It was not the legislator’s aim to depart from the principle of Article 1575 Judicial Code rule during the drafting of the Housing Rent Act.

⁷³³ Art. 9 Housing Rent Act.

⁷³⁴ Federale overheidsdienst Justitie, ‘De huurwet’, http://justitie.belgium.be/nl/binaries/Loyer-2012-NL_BD-DEF_tcm265-138431.pdf, 14 February 2013, p 52.

⁷³⁵ Wet van 13 april 1997 and Federale overheidsdienst Justitie, ‘De huurwet’, http://justitie.belgium.be/nl/binaries/Loyer-2012-NL_BD-DEF_tcm265-138431.pdf, 14 February 2013, 53

⁷³⁶ Art. 1569 Judicial Code.

⁷³⁷ Art. 1 Mortgage Act.

The combination of these two articles has two consequences:

- a) as described above, contracts with a fixed date prior to the date of the writ of attachment can be invoked against the attaching party. This is even the case if a tenancy contract clause provides the transferee the right to evict the tenant⁷³⁸
- b) a tenancy contract cannot be invoked against the attaching party, if the tenancy contract does not have a fixed date before the writ of attachment is transcribed into the records of the mortgage registry and the tenant resides less than six months in the dwelling.⁷³⁹

Discussion in the doctrine

In the doctrine, there is discussion concerning the last mentioned consequence. The majority of the authors, along with several judgement, state that Article 9 subsection 2 Housing Rent Act prevails over Article 1575 subsection 1 Judicial Code.⁷⁴⁰

By contrast, the minority of the doctrine and the case law state that Article 1575 Judicial Code has a general scope. If it was the legislator's aim the depart from this general provision, it must have done it explicitly. Consequently, Article 1575 subsection 1 Judicial Code prevails over Article 9 subsection 2 Housing Rent Act.

Tenancy contracts concluded after the writ of attachment is transcribed into the records of the mortgage registry cannot be invoked against the attaching party.⁷⁴¹

Security of tenure and mortgage

The above mentioned concerning attachment also applies for the mortgager. In addition to his, Article 45 Mortgage Act⁷⁴² adds that tenancy contracts, in good faith allowed after the establishment of the mortgage, shall be respected. However, if they are concluded for more than nine years, the rent is reduced in accordance Article 595 CC. Consequently, the mortgagee may require that the tenancy contract will be reduced for a period of maximum nine years.

Security of tenure and inheritance

Private tenancy law

A private tenancy contract is not terminated by the death of the landlord or by that of the lessee.⁷⁴³ The heirs or beneficiaries acquire the contract under universal title, which means they must comply with the tenancy contract. They can only (early) terminate the tenancy contract if they meet the conditions as described in Article 3 Housing Rent Act.

⁷³⁸ Art. 1569 in conjunction with art 1575 Judicial Code in conjunction with art. 9 Housing Rent Act

⁷³⁹ Art. 1565 in conjunction with art. 1575 Judicial Code in conjunction with art. 9 subsection 2 Housing Rent Act.

⁷⁴⁰ A. van Oevelen (ed.), *Woninghuur*, 307.

⁷⁴¹ Art. 1575 subsection 2 in conjunction with art. 1565 Judicial Code.

⁷⁴² Belgium Official Journal 22 December 1851.

⁷⁴³ Art. 1742 CC.

Social tenancy law

Unlike in private tenancy law, Flemish's and Brussels' and Walloon's social tenancy contracts will be terminated by operation of law when the last tenant dies.⁷⁴⁴

- *Requirement of giving valid reasons for notice: admissible reasons*

Tenant

The tenant does not have to give a reason for the notice of termination. Under private tenancy law, the notice can be given oral, whereas under Flemish and Brussels social tenancy law, the notice must be given by registered letter. This is further elaborated under Section 6.6 *'Notice by the tenant'*.

Landlord

The requirements for giving valid reasons for the notice of termination are by the landlord are described under Section 6.4 *'Notice by the landlord'*.

- *Objections by the tenant*

Private tenancy contracts

The tenant can invoke Article 11 Housing Rent Act in order to have the contract extended for an additional period of time. This is further outlined under Section 6.6 *'Does the tenant has "prolongation rights", i.e. the statutory right to stay for an additional period of time (outside the execution procedure)?'*

Social tenancy contracts

Flemish Region

In the Flemish Region social tenants can complain with their landlord in first instance. If does not solve the problem, they may fail their complaint with the Flemish Ombudsman Service. This is further detailed under question Section 6.8 *'How are tenancy law disputes carried out? Is tenancy law often enforced before courts by landlords and tenants and/or are - voluntary or compulsory - mechanisms of conciliation, mediation or alternative dispute resolution used?'*

Walloon Region

The landlord has the obligation to hear the tenant.⁷⁴⁵

- *Does the tenant has "prolongation rights", i.e. the statutory right to stay for an additional period of time (outside the execution procedure)?*

The tenant has, in exceptional and difficult circumstances, a certain statutory prolongation right to extend the tenancy contract for an additional period of time. This is

⁷⁴⁴ Art. 2 §1, subsection 1, 34 Flemish Housing Code; Art 28 § 2 standard social tenancy contracts, attached as Appendices 3, 5 and 6 to the to the 26 September 1996 Decision of the Brussels-Capital Region; art. 17 standard social tenancy contract, attached as Appendix 5 of the 6 September 2007 Decree of the Walloon Government.

⁷⁴⁵ Article 18 § 4 of the Standard social tenancy contract, attached as Appendix 5 of the 6 September 2007 Decree of the Walloon Government.

laid down in Article 11 Housing Rent and it is called the “social clause”. Examples of such circumstances are serious illness, old age, the death of a next of kin, and pregnancy. He can claim this right in any case the landlord has given notice to (early) terminate the tenancy contract. This clause is mandatory law.⁷⁴⁶

The tenant must request the landlord, by registered letter, to renew (*verlengen*) the contract not later than one month before the expiry of the contract to the landlord. Non-compliance with the aforementioned term entails nullity.⁷⁴⁷ The tenant may also request a contract’s extension, if he has given notice to terminate the tenancy contract.⁷⁴⁸ Moreover, the tenant’s request can also be done in case the dwelling has been transferred to a new owner or the landlords’ heirs or beneficiaries.⁷⁴⁹

In case the landlord grants his permission, parties can agree upon the duration of the extended contract. In case the landlord refuses, the justice of peace has to decide. Both parties interests and their age have to be taken into consideration. Renewal for an indefinite period is not allowed.

- *Challenging the notice before court (or similar bodies), in particular claims for extension of the contract or for granting of a period of grace under substantive or procedural law*

The legal basis of a claim to extend a tenancy contract is primary Article 11 Housing Rent Act. If this Article cannot be invoked, the tenant can rely on Article 1224, Section 2 CC. Fairness is the legal basis of these two articles.⁷⁵⁰

Article 11 Housing Rent Act: social clause

As described under Section 6.6 ‘Does the tenant has “prolongation rights”, i.e. the statutory right to stay for an additional period of time (outside the execution procedure)?’ Article 11 Housing Rent Act gives the tenant, in exceptional and difficult circumstances, the right to have his tenancy contract extended for an additional period of time. This is the so-called “social clause”. Examples of such circumstances are: serious illness, old age, the death of a next of kin, and pregnancy. The tenant can claim this right in any case the landlord has given notice to terminate or early terminate the tenancy contract. Article 11 Housing Rent Act is mandatory law.⁷⁵¹ In fact, it is an open standard, which gives the judge the possibility to weigh the various arguments and to take the specific circumstances into account. The burden of proof is on the tenant. He must proof the exceptional and difficult circumstances.

Consequences if the contract is extended

If the judge extends the existing contract, it will be done under the same contractual conditions, except for the conditions which are altered by court judgement.⁷⁵² The judge may grant the landlord compensation, in case the contract will be extended. For

⁷⁴⁶ Art. 11 Housing Rent Act.

⁷⁴⁷ Art. 11 Housing Rent Act.

⁷⁴⁸ L. Machon et al., *101 vragen en antwoorden over de nieuwe wet*, 36.

⁷⁴⁹ L. Machon et al., *101 vragen en antwoorden over de nieuwe wet*, 37.

⁷⁵⁰ A. van Oevelen (ed.), *Woninghuur*, 177.

⁷⁵¹ Art. 11 Housing Rent Act.

⁷⁵² A. van Oevelen (ed.), *Woninghuur*, 174.

example: a rent increase or a reduction of the compensation, which the landlord has to pay if Article 3 § 4 Housing Rent Act applies.⁷⁵³

The contract terminates without prior notice and a short-term contract (*three years or less*) will not be converted into a standard contract (*nine years*).⁷⁵⁴ The landlord has to take into account that if at the expiration of written tenancy contract the tenant remains in the dwelling and is left in possession, a new tenancy contract arises whose effect is regulated by the same conditions as the previous contract.⁷⁵⁵

Duration of the contract's extension

Parties may agree the period of extension. However, Article 1 Section 3 Housing Rent the duration must be determinable and an extension for an indefinite period of time is null and void.⁷⁵⁶

- *Termination for other reasons*

Private tenancy contracts

Parties may terminate the contract by mutual consent. Option two is to have the contract terminated by the justice of peace due to breach of contract.⁷⁵⁷

The third option is that the tenancy contract is terminated as a matter of law if, during the period of the agreement, the dwelling is wholly destroyed by a fortuitous event. If it is destroyed only in part, the tenant may, according to the circumstances, demand either a diminution of the price or the termination of the contract itself. The same rules apply, if an authorized authority decides to expropriation for public use.⁷⁵⁸

Although express resolute conditions (*ontbindende voorwaarden*) are considered not written,⁷⁵⁹ parties may agree a resolute condition describing a certain circumstance that occurs outside the scope of any possible default. For example: a diplomat clause clause. This clause means that in case the tenant will be reassigned, a shorter notice period applies.⁷⁶⁰

Social tenancy law

The reason for termination a social standard contract is laid down in the standard social tenancy contracts.⁷⁶¹

⁷⁵³ A. van Oevelen (ed.), *Woninghuur*, 174.

⁷⁵⁴ A. van Oevelen (ed.), *Woninghuur*, 174.

⁷⁵⁵ Art. 1738 CC.

⁷⁵⁶ For jurisprudence reference is made to A. van Oevelen (ed.), *Woninghuur*, 166-177.

⁷⁵⁷ Art. 1184 in conjunction with 1741 CC.

⁷⁵⁸ Art. 1184 in conjunction with 1741 CC; M. Dambre et al., *Huurzakboekje*, 61.

⁷⁵⁹ Art. 1762bis

⁷⁶⁰ M. Dambre et al., *Huurzakboekje*, 61.

⁷⁶¹ Flemish Region: the standard social tenancy contract is attached as Appendix 2 of the Framework Social Rent. Brussels Region: the standard social tenancy contracts are attached as Appendices 3 ,5 and 6 to the 26 September 1996 Decision of the Brussels-Capital Region; Walloon Region: The standard social tenancy contract is attached as Appendix 5 of the 6 September 2007 Decree of the Walloon Government.

- *Termination as a result of execution proceedings against the landlord (in particular: repossession for default of mortgage payment)*

A tenancy contract does not terminate by operation of law as a result of execution proceedings against the landlord.

In these situations, the question rises what the buyer's rights are in relation to the tenant. Both Articles 1575 Judicial Code and 9 Housing Rent Act are applicable.

The combination of these two articles has two consequences:⁷⁶²

- a) Contracts with a fixed date prior to the date of the writ of attachment can be invoked against the buyer. This is even the case, if a tenancy contract clause provides the buyer the right to evict the tenant.⁷⁶³
- b) A tenancy contract cannot be invoked against the buyer, if it does not have a fixed date before the writ of attachment is transcribed into the records of the mortgage registry and the tenant resides less than six months in the dwelling.⁷⁶⁴

- *Termination as a result of urban renewal or expropriation of the landlord*

For the sake of efficiency, this question is answered with the following question.

- *What are the rights of tenants in urban renewal? In particular: What are the rules for rehousing in case of demolition of rental dwellings? Are tenants interested parties in public decision-making on real estate in case of urban renewal?*

Judicial expropriation (*gerechtelijke onteigening*) is a remedy by which the competent authority takes ownership of real property. It is only allowed if the public interest requires so.⁷⁶⁵ This form of expropriation can be used for urban renewal purposes.

All right concerning the rented dwelling will lapse due to expropriation.⁷⁶⁶ No distinction is made between contracts with and without a 'fixed date'. From a legal point of view, expropriation is counted as a complete loss due to force majeure.⁷⁶⁷ In accordance with Article 1722 CC, the contract is terminated by operation of law. Both the tenant the landlord can receive compensation from the government, which depends on the contract's duration.⁷⁶⁸ However, the tenant has the right to reside in the dwelling as long as the compensation is deposited at the Deposit and Consignation Office (*Deposito en Cogsingatiekas*).⁷⁶⁹ During this period, he must pay the dispossessor a compensation. It should be noted this is not a tenancy contract, but a 'bezitting ter bedde', which is a

⁷⁶² Cass. 19June 2003, Huur 2005/1, with an extensive commentary from F. Logghe.

⁷⁶³ Art. 1569 in conjunction with art 1575 Judicial Code in conjunction with art. 9 Housing Rent Act

⁷⁶⁴ Art. 1565 in conjunction with art. 1575 Judicial Code in conjunction with art. 9 subsection 2 Housing Rent Act.

⁷⁶⁵ M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 167.

⁷⁶⁶ M. Denys, *Uw rechten bij onteigening* (Gent: Mys & Breesch, 1999), 85.

⁷⁶⁷ Art. 1722 CC.

⁷⁶⁸ M. Denys, *Onteigening en planschade deel II Onteigeningsvergoeding*, Reeks Recht en Praktijk nr 31 (Antwerpen: Kluwer, 2001) 295; M. Denys, *Uw rechten bij onteigening*, Gent: Mys & Breesch, 1999), 86.

⁷⁶⁹ M. Denys, *Uw rechten bij onteigening*, 87.

innominate contract (*onbenoemde overeenkomst*).⁷⁷⁰ The consequence is that Housing Rent Act's mandatory legal provisions are not applicable.

The owner is obliged to inform the tenant about estimating the value of the leased asset. If the landlord acts negligent, he himself is liable for compensation. Parties may exclude this right in their contract. However, this can only be invoked by the landlord, for example, in case the property's value decreases due to a low rent, which results in a lower compensation for the landlord.⁷⁷¹

Urban renewal and other government decisions fall also other the scope of Article 1722 CC.

With respect to private tenancy contracts, it can be said that the landlord has no obligation to rehouse the tenant, unless parties have agreed otherwise. Social landlords, have the obligation to rehouse their tenants.⁷⁷² Parties can claim priority.

No sources of case law could be found with respect to the question *Are tenants interested parties in public decision-making on real estate in case of urban renewal?*

6.7 Enforcing tenancy contracts

- *Eviction procedure: conditions, competent courts, main procedural steps and objections*

The eviction of a tenant can be requested if the tenant serious fails to comply with his obligations.⁷⁷³

The landlord can starts a procedure against the tenant a) to have the tenancy contract terminated, and b) to have the tenant evicted.⁷⁷⁴

The justice of the peace court of the place where the rented property is located has jurisdiction in disputes concerning the rental of a dwelling.⁷⁷⁵

The justice of peace is, by law, obliged to attempt the parties to reach a settlement, even if they have tried reaching an out-of-court settlement before.⁷⁷⁶

The Law of 30 November 1998⁷⁷⁷ obliges each OCMW to provide the most appropriate manner, within their statutory tasks, help in order to avoid eviction. The OCMW will be preventive informed as soon as a claim for eviction is requested at court. It must be

⁷⁷⁰ M. Denys, *Uw rechten bij onteigening*, 87.

⁷⁷¹ M. Dambre et al., *Huurzakboekje*, 61; M. Denys, *Uw rechten bij onteigening*, 89.

⁷⁷² E.g., for the Flemish Region, this obligation is laid down in the Flemish Housing Code.

⁷⁷³ The legal procedure is laid down in the Articles 1344*ter* up to and including 1344*sexties* Judicial Code.

⁷⁷⁴ Art. 1344*bis* Judicial Code.

⁷⁷⁵ Arts 591, 1° and 629, 1° Judicial Code.

⁷⁷⁶ Art. 1344*septies* (Art. 2 Wet of 18 June 2008, Belgium Official Journal 14 July 2008).

⁷⁷⁷ Wet van 30 november 1998 ter humanisering van de uitdrijvingen, Belgium Official Journal 29 January 2001.

notified of any claim of judicial eviction and provides, in the most appropriate manner, help within its legal mandate.⁷⁷⁸ The tenant can oppose against the notification.⁷⁷⁹

Legal remedies: objection against sentence (verzet) and appeal

The tenant can make an objection against the judgement, if he is judged in default.⁷⁸⁰ An appeal against the judgment lies to the court of first instance. The Supreme Court decides on the appeal in cassation against the decisions of the court of first instance.⁷⁸¹

At what moment does the tenant have to leave the dwelling?

The general rule is that the tenant has to leave the dwelling within one month after the bailiff has served the judgement.⁷⁸²

The one-month eviction period can be shorter or longer in three cases depending on the following:⁷⁸³

- the landlord proves that the tenant has already left the house,
- both parties have agreed another period and this agreement is included in the judgment of eviction,
- the judge extends or shortens the period on the tenant's or the landlord's request.

In the latter case, the applicant must prove that there are exceptionally serious circumstances in this specific situation. The judge has to take into account the tenant's possibilities to find a new residence, his financial means and his family's needs.⁷⁸⁴

The bailiff has to inform the tenant at least five working days in advance about the exact date of the eviction.⁷⁸⁵

- *Rules on protection ("social defences") from eviction*

Not only has the OCMW certain obligation to help the tenant to avoid eviction, on both federal and regional level initiative was taken to avoid eviction.

Federal state: Rental guarantee fund

On 10 May 2011 a legislative proposal was submitted to establish a federal rental guarantee fund (*federal huurwaarborg fonds*).⁷⁸⁶ This fund guarantees the deposit of three months' rent and warrants that the deposit will be paid. It applies to both private and social contracts. This proposal has not been passed yet, due to the fact that the Housing Rent Act will be transferred to the regions on 1 July in 2014.

⁷⁷⁸ Art. 1344ter Judicial Code.

⁷⁷⁹ Art. 1344ter Judicial Code.

⁷⁸⁰ Art. 1047 Judicial Code

⁷⁸¹ Art. 609 Judicial Code.

⁷⁸² Wet van 30 november 1998 ter humanisering van de uitdrijvingen; N. Bernard et al, *Les Expulsions de Logement Uithuiszettingen*, Brussels: Die Keure, 2011, 49.

⁷⁸³ http://www.belgium.be/nl/huisvesting/huren_en_verhuren/geschillen/uthuiszetting/, 19 May 2013.

⁷⁸⁴ http://www.belgium.be/nl/huisvesting/huren_en_verhuren/geschillen/uthuiszetting/, 19 May 2013.

⁷⁸⁵ Art. 1344quarter CC.

⁷⁸⁶ <http://www.senate.be/www/?MIval=/publications/viewPubDoc&TID=83888417&LANG=nl>, 4 November 2013.

Flemish Region: Fund against evictions

The Flemish government incorporated the Fund against evictions (*Fonds ter bestrijding van de uitzettingen*).⁷⁸⁷ The effective date is 1 January 2014. It is the fund's aim help tenants with limited means to become solvent, without having them evicted or deprive them from their income security. This also contributes to the preventions of homeless people.⁷⁸⁸ The fund pays the tenant's rent temporally. The justice of peace must grants his permission. This can only be done, if he ascertains in law (*in rechte vaststellen*) that the tenant has serious payments problems.

- *May rules on the bankruptcy of tenant-consumers influence the enforcement of contracts?*

Generally, a tenant's and/ or a landlord's bankruptcy does not terminate the tenancy agreement by law.⁷⁸⁹ However, it will terminate by law, if one of the party's bankruptcy is a condition subsequent or the contract has a intuited personae-character.⁷⁹⁰ This means that the identity of one of the parties is of overriding importance. In case of a bankruptcy, the bankruptcy trustee is, under conditions, entitled to terminate contracts which were concluded before the adjudication order was issued.⁷⁹¹

Debt management arrangement (Collectieve schuldenregeling)

The debt management arrangement's aim is to strengthen the debtor financial position, in order to enable him to pay his debts with the result that he and his family can lead a decent life. At the debtor's request, a debt counsellor can be appointment by judgement, if he meets all the condition necessary. As shown in Table 6.12, the granting of the debtor's request has consequences for the landlord.

Table 6.12: Consequences: debt management arrangement and rent payment

	<i>Request the justice of peace to order the tenant to pay the outstanding rent payment (betalen achterstallig huur)</i>	<i>Request the justice of peace to terminate the contract (ontbinding huurovereenkomst)</i>
<i>Rent due and payable before granting debt management arrangement</i>	<i>Not possible</i>	<i>Not possible</i>
<i>Rent due and payable after granting debt management arrangement</i>	<i>Possible</i>	<i>Possible</i>

6.8 Tenancy law and procedure “in action”

The practical role of private rented housing can only be realistically assessed when the practical functioning of the legal system in our field (“tenancy law in action”) is taken into account.

⁷⁸⁷ 4 October 2013 Besluit van de Vlaamse Regering houdende instelling van een tegemoetkoming van het Fonds ter bestrijding van de uithuiszettingen, Belgium Official Journal 25 November 2013.

⁷⁸⁸ Reguleringssimpactanalyse voor de instelling van een tegemoetkoming van het Fonds ter bestrijding van de uithuiszetting, VR2012 2112 DOC. 1448/3, not dated, http://www.wetsmatiging.be/sites/default/files/ria/VR20122112_DOC.1448.pdf, 31 July 2013.

⁷⁸⁹ Art. 46 Bankruptcy law (*Faillissementswet*).

⁷⁹⁰ M. Dambre, B. Hubeau & S. Stijns (eds), *Huurrecht*, 599.

⁷⁹¹ Cass. 24 June 2004, *Arr.Cass*, 2004, 1201; Cass. 10 April 2008, *RW* 2005-06. 56. nr.8; See for further details: A-L. Verbeke & P. Brulez (eds), *Knelpunten Huurrecht – Tien Perspectieven*, 219-252.

- *What is the legal status and what are the roles, tasks and responsibilities of associations of landlords and tenants?*

There are several umbrella organizations of landlords and tenants active in Belgium. Generally speaking, they support, defend the right or consult those they represent. An overview per region is detailed under Section 1.5.

- *What is the role of standard contracts prepared by association or other actors?*

Private tenancy contracts

Tenants unions have developed standard tenancy contracts for the lease of nine years and the lease of maximum three years. These contracts are available via internet.⁷⁹²

Social tenancy contracts

Each region has developed its standard social tenancy contracts, which must be used if a dwelling is leased in the social tenancy sector.

Flemish Region: standard tenancy contract

In the Flemish Region, landlords in the social tenancy sector must use the standard tenancy contract which is adopted by the Flemish government.⁷⁹³ Only the Social Rental Agencies use a separate standard tenancy contract. This is due to the fact that they sublet a dwelling. This contract is also adopted by the Flemish government.

Brussels Region: standard tenancy contract

The Brussels-Capital Region has adopted also standard tenancy contracts for the lease of dwellings in the social sector.⁷⁹⁴ Furthermore, a contract has been adapted which must be used if renovation work will be carried out in the dwelling.

Walloon Region: standard tenancy contract

The Walloon Region uses also a social standard tenancy contract.⁷⁹⁵ The same applies for renovation contracts.⁷⁹⁶

- *How are tenancy law disputes carried out? Is tenancy law often enforced before courts by landlords and tenants and/or are - voluntary or compulsory - mechanisms of conciliation, mediation or alternative dispute resolution used?*

Private and social tenancy contracts

Although out-of court settlements are encouraged, as of 1 January 2003 there is no compulsory mechanism of conciliation or alternative dispute resolution. Parties may even well decide to have their disputed settled by mean of mediation or arbitration. The same procedure applies for private and social tenancy contracts.

⁷⁹² <http://www.vob-vzw.be/hb/modelcontracten/tabid/73/default.aspx>, 5 November 2013.

⁷⁹³ 12 October 2007 Besluit van de Vlaamse Regering tot reglementering van het sociale huurstelsel ter uitvoering van titel VII van de Vlaamse Wooncode.

⁷⁹⁴ 26 September 1996 Decision of the Brussels-Capital Region.

⁷⁹⁵ 6 September 2007 Decree of the Walloon Government.

⁷⁹⁶ 30 March 1999 Arrêté ministériel déterminant les conditions techniques relatives aux logements faisant l'objet d'une prime à la réhabilitation en faveur des locataires et établissant une convention-type de bail à réhabilitation.

Even if a party decides not to attempt to reach a settlement, and directly initiate proceedings, the justice of peace must first attempt to reconcile the parties before the procedure will be continued.⁷⁹⁷

No figures have been uncovered concerning the question whether tenancy law often is enforced before courts by one of the parties.

Social tenancy contracts

Flemish Region: Internal complaint handling

Besides bringing an action before the justice of peace, tenants in the Flemish Region can also file a formal complaint against their social landlord.

Firstly, tenants can file a complaint with their social landlord. The right of complaint is laid down in the van 1 June 2011 Complaints Decree.⁷⁹⁸ The social landlord must handle the complaint within 45 calendar days. It has to notify the social tenant in writing about the findings of the complaint's investigation and its reasons for its findings. The social tenant has to be notified, in case the complaint can be lodged with the Flemish Ombudsman Service (*Vlaamse Ombudsdienst*) or to another agency.⁷⁹⁹

Flemish Region: External complaint handling⁸⁰⁰

The Flemish Ombudsmans Service (*Vlaamse Ombudsdienst*) examines the functioning of the administrative authorities of Flemish Region.⁸⁰¹

Most of the complaints concern: long waiting periods for prospective tenants of social housing, calculation of the rent, lack of clarity concerning the rental expenditure (*huurlasten*), the repayment of deposits, lack of maintenance of social housing.⁸⁰²

Social Housing Supervisor (Toezichthouder Sociale Huur)

Finally, The Flemish housing code described in which cases the social tenant can make objection with the *Social Housing Supervisor (Toezichthouder Sociale Huur)* against social landlord's decisions.⁸⁰³ For example, the decisions concerning the allocation of a dwelling and the decision to refuse a candidate-tenant.⁸⁰⁴

⁷⁹⁷ 1344septies Judicial Code.

⁷⁹⁸ 1 June 2011 Decreet houdende toekenning van een klachtrecht ten aanzien van bestuursinstellingen, Belgium Official Journal 17 July 2011.

⁷⁹⁹ Art. 11 of the 1 June 2011 Decreet houdende toekenning van een klachtrecht ten aanzien van bestuursinstellingen'

⁸⁰⁰ <http://www.vlaamseombudsdienst.be/ombs/nl/dienst/samenwerking.html>.

⁸⁰¹ 7 July 1998 Decreet van het Vlaamse Parlement houdende instelling van de Vlaamse ombudsdienst (Vlaams ombudsdecreet)

⁸⁰² Other complaints are described in Hanselaer A. Hanselaer, B. Hubeu (eds), *Sociale huur*, 223.

⁸⁰³ Art. 95 Flemish Housing Code

⁸⁰⁴ Art. 29bis Flemish Housing Code and the 14 september 2007 besluit van de Vlaamse Regering van tot uitvoering van art. 29bis van het decreet van 15 juli houdende de Vlaamse Wooncode, Belgium Official Journal 19 november 2007.

Brussels Region

In Brussels social tenants can make objections to the allocation of housing. But it has no Ombudsman Service, such as the Flemish Ombudsman Service, where citizens can submit their complaints.⁸⁰⁵

Walloon Region

In 2011 the Walloon Region introduced the 'service de médiation' for anyone who has a dispute with a Walloon authority.⁸⁰⁶ This institution can be compared with the Flemish Ombudsman Service.

- *Do procedures work well and without unreasonable delays? What is the average length of procedures? Are there peculiarities for the execution of tenancy law judgments (e.g. suspensions of, or delays for, eviction)?*

In the Flemish Region, the average length of a procedure of first instance is between the six and then months. However, approximately 80 - 90 % of the default procedures are completed within two months.⁸⁰⁷ Adversarial proceedings have an average duration of six to twelve months. Appeal cases have a duration of approximately a year. No figures were found for the Brussels and Walloon Regions.

- *Are there problems of fairness and justice? Are there problems of access to courts especially for tenants? What is the situation concerning legal fees, legal aid and insurance against legal costs?*

Right to legal aid: Belgian Constitution

In Belgium, the right to legal aid is a constitutional right and laid down in Article 23 Belgian Constitution. It is the legislators aim to enable citizens to defend their legitimate interests.⁸⁰⁸ To guarantee this right, the Belgian Constitution expressly instructed the legislature to take the necessary measures to meet this aim.

Nevertheless, this does not imply that the legislature itself should provide for help. It also does not imply that the assistance should be free of charge. However, for those who have insufficient income, the government must bear the costs associated with the conduct of legal proceedings.⁸⁰⁹

Right to legal aid: five pillars

Article 23 Belgian Constitution is further detailed in several laws and royal decisions.⁸¹⁰ To ensure that the social right of legal aid has a broad range, the legislator has

⁸⁰⁵ M. Dambre et al., *Huurzakboekje*, 169.

⁸⁰⁶ Décret du 30 mai 2011, portant assentiment de l'accord de coopération entre la Communauté française et la Région wallonne portant création d'un service de médiation commun à la Communauté française et à la Région wallonne., <http://www.mediateur-wallonie.be/index.php>.

⁸⁰⁷ M. Dambre, interview, 13 June 2013.

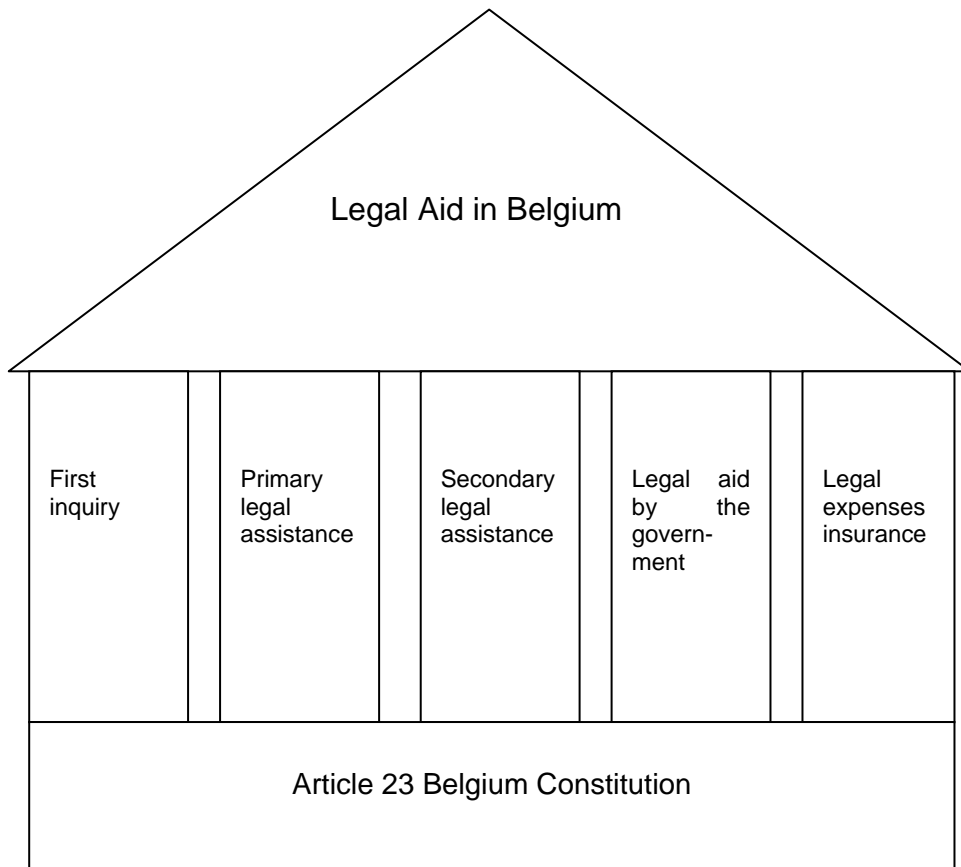
⁸⁰⁸ Voorstel Stroobant tot herziening van titel II van de Grondwet door invoeging van een artikel 24bis betreffende de economische en sociale rechten, Parl. St. Senaat B.Z. 1991-92, nr. 100-2/3, 19 (verder vermeld als Voorstel Stroobant van 9 juni 1993)

⁸⁰⁹ M. Troobant, *De sociale grondrechten naar Belgisch recht. Een analyse van de parlementaire werkzaamheden bij art. 23 G.W.* Sociale grondrechten, (Antwerpen: Maklu, 1995).

⁸¹⁰ Judicial Code, the 13 June 1999 Koninklijk Besluit houdende organisatie van de Dienst Justitiehuisen van het Ministerie van Justitie, B.S. 29 June 1999 (second edition), 24.386 en the 23 June 1999 Ministerieel Besluit tot vaststelling van de basisinstructies voor de justitiehuisen, Belgium Official Journal. 29 June 1999 (second edition), 24.390.

developed several options. One can say that the right to legal aid is based on five pillars, which are shown in Figure 6.1 and described below.

Figure 6.1: Legal aid in Belgium⁸¹¹



1. First inquiry (eerstelijnswerking)

The main task of the ‘first inquiry’ is to inform citizens concerning legal questions and if necessary refer them to a specialized body or organization. The first inquiries are organized in all houses of justice by legal assistance. It is free of charge and anonymous.⁸¹²

2. Primary assistance: first legal advice (eerstelijnsbijstand)

The right to primary and secondary legal assistance are elaborated in more detail in the Judicial Code.⁸¹³

Lawyers provide primary legal assistance in the form of practical and legal information. They can initiate legal opinion or refer to a specialized body or organization.⁸¹⁴ This assistance is free of charge.

⁸¹¹ Own elaboration.

⁸¹² A Brochure is online available: http://justice.belgium.be/fr/binaries/Eerstelijnswerking_tcm421-138451.pdf, 12 August 2013.

⁸¹³ Art. 508/1 – 508/23 Judicial Code.

⁸¹⁴ Art. 508/1 Judicial Code.

3.Secondary legal assistance: advocate's assistance (tweedelijnsbijstand)

Secondary legal assistance is provided to an individual in the form of a detailed legal advice, assistance, which can also be in the context of a procedure, or assistance in proceedings including the representation within the meaning of Article 728 Judicial Code.⁸¹⁵ The secondary legal assistance is free or partially free for people who meet certain conditions.⁸¹⁶

4.Legal aid by the government: exception of payment of legal costs (*rechtsbijstand door de overheid*)

The government provides legal aid to those who do not have the necessary income proceedings. It exempts the person seeking for assistance from the costs of judicial or extrajudicial proceedings. E.g., costs for registration and costs concerning bailiffs and experts. The procedure and conditions are laid down in the Articles 644-699 Judicial Code.

The internet site: www.rechtenverkenner.be provides an online overview of one's social rights for the people living in the Flemish Region. It shows a distinction between social rights on federal, regional, provincial and municipal level.

5.Legal expenses insurance⁸¹⁷

The legal expenses insurance enables access to law and justice for all strata of the population. This insurance covers the judicial and extrajudicial litigation costs, the cost of lawyers, bailiffs, experts, mediators, and implementation. The premium is limited to € 144 per year with a tax benefit (exemption from tax which the government normally raises from insurance contracts).

The Minister of Justice and Minister of Consumer Affairs introduced the 'Insurance legal aid contract'.⁸¹⁸ This guarantees the free choice of a lawyer in case a judicial or administrative proceeding is initiated or if a conflict arises between insurer and insured.

⁸¹⁵ Art. 508/1 Judicial Code.

⁸¹⁶ 18 December 2003 Koninklijk besluit tot vaststelling van de voorwaarden van de volledige of gedeeltelijke kosteloosheid van de juridische tweedelijnsbijstand en de rechtsbijstand. A Brochure is online available: http://justitie.belgium.be/nl/binaries/Een%20betere%20toegang%20tot%20justitie_tcm265-138448.pdf, 12 August 2013.

⁸¹⁷ Federale overheidsdienst Justitie, 'Een betere toegang tot justitie', http://justitie.belgium.be/nl/binaries/Een%20betere%20toegang%20tot%20justitie_tcm265-138448.pdf, 13 August 2013.

⁸¹⁸ The legal basis is laid down in the Koninklijk besluit van 15 januari 2007 tot vaststelling van de voorwaarden waaraan een verzekeringsovereenkomst rechtsbijstand moet voldoen om te worden vrijgesteld van de jaarlijkse taks op de verzekeringsverrichtingen bedoeld in artikel 173 van het Wetboek diverse rechten en taksen, Belgium Official Journal 27 February 2007, in which the principles of the European Directive of 22 June 1987 are converted and the 25 June 1992 Belgische wet op de landverzekeringsovereenkomst/ Loi sur le contrat d'assurance terrestre, Belgium Official Journal 20 August 1992. The European Directive aims to coordinate national requirements for insurance against legal cost.⁸¹⁸ The 'Belgische wet op de landverzekeringsovereenkomst' guarantees the person's independence seeking for legal advice. Furthermore, a rule of conduct is implanted: Protocolakkoord tussen de bij Assuralia aangesloten rechtsbijstands- verzekeraars, de OVB en de OBFG, 3 November 2011. The underlying idea of this conduct is to have a framework of rules which must be abided by lawyers and insurers

Furthermore, it guarantees that the insured has the right to choose a lawyer in case of disagreement between the insurer and the insured.

Legal court procedure and tenancy law

The legal court procedure for tenancy issues is described under **9** *‘What is the court structure in tenancy law? Is there a special jurisdiction or is the ordinary one competent? What are the possibilities of appeal?’*. To bring a matter for the justice of the peace no mandatory legal representation required. In order to make access to court as easy as possible, the Belgian judicial officers have made, among other things, models of summons available online.⁸¹⁹

The legal basis rates which judicial officers may charge for their interventions are laid down in the 30 November 1976 Royal Decree. The rates are available online.⁸²⁰ Courts’ fees are also published online.⁸²¹

Problems with access to court?

As described above, tenants have many possibilities to access court and seek justice. In Belgium there are no serious issues encountered concerning this subject.

- *How about legal certainty in tenancy law? (e.g.: are there contradicting statutes, is there secondary literature usually accessible to lawyers etc?)*

The Housing Rent Act is merely applicable if the tenant uses the rented dwelling as his main residence, with his landlord’s permission. The Housing Rent Act includes mandatory protective provisions. These provisions will lapse as soon as the dwelling is no longer used as the tenant’s primary residence. Consequently, the tenancy contract is subject to the ordinary additional law provisions.⁸²²

A second problem rises for the tenant in case he changes the dwelling’s primary residence. In accordance with articles 1728 and 1729 CC, the landlord may, in according to the circumstances, may demand that the contract will be set aside.

For other in certainties in tenancy law, reference is made to Section 6.1 *‘To what extent is the legislation divided up into general private law and special statutes? To what extent are these rules mandatory and dispositive? Does the relationship between general and special rules work properly so as to create legal certainty?’*

- *Are there “swindler problems” on the rental market (e.g. flats fraudulently advertised on the internet as rental offers by swindlers to whom the flats do not belong)?*

Swindler problems are a marginal issue in Belgium.⁸²³

⁸¹⁹ http://www.infogerechtsdeurwaarder.be/file/de_dagvaarding.html, 13 August 2013.

⁸²⁰ http://www.infogerechtsdeurwaarder.be/file/tarief_2013.html.

⁸²¹ 22 June Programmawet, http://www.ccecrb.fgov.be/Suivi_accord_gouvernemental/2012-1864.pdf, 13 August 2013.

⁸²² A. van Oevelen (ed.), *Reeks Huurrecht*, 65-66.

⁸²³ Interview with drs. P. Brulez, Institute contract law, Leuven University, 11 October 2013.

- *Are the areas of “non-enforcement” of tenancy law (such as legal provisions having become obsolete in practice)?*

The applicability of Article 1742 CC is excluded in standard contracts. This article states that a private tenancy contract, is not terminated by the tenant's death, unless parties have agreed otherwise.⁸²⁴

Also, the applicability of Article 1724 CC is explicitly excluded in all tenancy contracts. This article states, among other thing, the following. In cases where repairs last more than forty days, the rent will be diminished in proportion to the time and to the part of the dwelling leased of which the tenant was deprived.

Furthermore, the obligation to sufficiently furniture the rented dwelling is outdated.⁸²⁵ The aim is to provide the landlord security for the rent payment. This obligation is laid down in Article 1752 CC. Nowadays, landlords prefer a deposit. Article 1754 is also outdated. This Article states that certain repairs must be done by the tenant.

- *What are the 10-20 most serious problems in tenancy law and its law enforcement?*

The most serious problems in tenancy law are:

- the tenant is not able to pay the rent;
- the tenant suspends the rent payment;
- issues concerning the dwelling's quality;
- lack of maintenance of the dwelling;
- negligence of the dwelling by the landlord;
- disagreements concerning e.g. validity or motives for valid termination;
- other formal aspect such as contract's registration;
- outcome of certain issues are difficult to predict. This is mainly the case with issues concerning defects with respect to the dwelling;
- the use of deposits;
- issues concerning the rent increase.

- *What kind of tenancy-related issues are currently debated in public and/or in politics?*

In 2014 the Housing Rent Act will be devolved to the regions and become their competence. The regions may adjust the Housing Rent Act. Nevertheless, this act's provisions are applicable, until the regions have made adjustments.

Another issue which has been discussed is the deposit. It has been discussed that the two months' deposit is not sufficient to cover the costs. Rack-renters (*huisjesmelkers*) still remains an issue. Rack-renters abuse the tenants' vulnerable position by leasing them unsuitable dwellings for rents which are too high.

⁸²⁴ Art. 1742 CC in conjunction with 1122 CC.

⁸²⁵ Art. 1752 CC.

7 Effects of EU law and policies on national tenancy policies and law

7.1 EU policies and legislation affecting national housing policies

For efficiency's sake, 7.1 and 7.2 are described the section below.

7.2 EU policies and legislation affecting national tenancy laws

A. EU social policy against poverty and social exclusion

Housing policy is a national state matter. Nevertheless, European policy against poverty and social exclusion has some effect on Belgium housing policy. The European Council requested the Member States in March 2000 to increase social inclusion and exclude social poverty by launching a Community strategy against poverty and exclusion.⁸²⁶

It is within this framework that, since 2001, all Member States of the European Union draw up National Action Plans to meet these aims.⁸²⁷

Belgium includes the constitutional right to decent housing as one of the pillars to meet these aims.⁸²⁸ The focus lays on disadvantaged regions and neighborhoods within the European regional policy and urban policy. Local governments and private organizations are financially supported by European Regional Development Fund for adapting neighborhoods' infrastructures and to setting up development programs.⁸²⁹ Several measures were taken to improve access to dwellings in the private and social tenancy sector and to provide aid to tenants and Social Rental Agencies.⁸³⁰ Although progress was made, the effect was limited.⁸³¹

Furthermore, the European Commission introduced in its Europe 2020 strategy which, among other objectives, focuses on social inclusion.⁸³² Consequently, the Member States have to yearly rapport how this aim is converted into a National Reform Programme.⁸³³

B. Consumer law and policy

General conditions and Markt prices and Consumers Protection⁸³⁴

Book 4 of the Code of Economic law (*Wetboek Economisch Recht*), with title 'Markt prices and consumers protection' (*Marktpraktijken en consumentenbescherming*) is

⁸²⁶ The legal basis concerning EU social policy is laid down in the 1992 Maastricht Social Policy Agreement. The Treaty of Amsterdam has integrated this policy in Article 151 of the Treaty on the Functioning of the European Union (TFEU).

⁸²⁷ POD Maatschappelijke Integratie, *Nationaal Actieplan 2008-2010*, Brussel, not dated.

⁸²⁸ S. Winters, *De actoren van het Vlaamse woonbeleid*, not dated.

⁸²⁹ S. Winters, *De actoren van het Vlaamse woonbeleid*, not dated.

⁸³⁰ Federal government, 'Federaal Plan Armoedebestrijding', (2012), 36.

⁸³¹ Federal government, 'Federaal Plan Armoedebestrijding', 36.

⁸³² http://ec.europa.eu/europe2020/index_en.htm, 5 November 2013.

⁸³³ The National Reform Programme is available at <http://www.be2020.eu/Index.php?lang=nl&IS=91>, 5 November 2013.

⁸³⁴ The legal basis for this is the Directive 2006/114EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.

applicable to tenants who act as a private person and a landlord who acts as an entrepreneur.⁸³⁵

This Book includes a blacklist of general conditions which are considered to be unlawful and, therefore, null and void.⁸³⁶ Furthermore, conditions which create a significant imbalance between parties' rights and obligations at the expense of consumers are also unlawful.⁸³⁷

Also, general conditions and other conditions are null and void, if they are contrary to public order or public morality.⁸³⁸

It should be noted that only these conditions should be excluded from the contract. The contract itself is valid, unless this particular conditional is essential to qualify the contracts as a tenancy contract.

Advertisements and the Market prices and Consumers Protection

The Market Practices Act is applicable to advertisement concerning the sale of products, which includes tenancy contracts. More specific, it contains rules concerning comparative advertising. Misleading advertisements and comparative advertisement containing hyperboles are misleading. A prohibitory injunction (*stakingsvordering*) can be invoked by a (prospective) tenant.⁸³⁹

Unfair trade practices (oneerlijke handelspraktijken)

Furthermore, the Market Prices Act prohibits unfair trade practices, which among other things, includes behaviour, communication, advertising and marketing.⁸⁴⁰ A prohibitory injunction (*stakingsvordering*) can be invoked by a (prospective) tenant.⁸⁴¹

C. Competition and state aid law

European competition and state aid law influence Belgium housing policy, more specific the social housing policy. Unfair competition and state aid is prohibited.⁸⁴² However, in some cases state aid is allowed.⁸⁴³

Free competition

European competition rules are applicable if private or governmental organizations act as an undertaking. Generally speaking, for undertakings it is prohibited, and incompatible with the internal market, to conclude agreements and make decisions and

⁸³⁵ Wet houdende invoeging van boek VI "Marktpraktijken en consumentenbescherming" in het Wetboek van economisch recht en houdende invoeging van de definities eigen aan boek VI, en van de rechtshandhabingsbepalingen eigen aan boek VI, in de boeken I en XV van het Wetboek van economisch recht, Belgium Official Journal 30 December 2013.

⁸³⁶ Art. 2, 28° in conjunction with Art. 74 in conjunction with Art. 75 Market Practices Act.

⁸³⁷ Art. 2, 28° in conjunction with Art. 75 Market Practices Act.

⁸³⁸ Art. 6 CC. S. Stijns, *Verbintenissenrecht*, 38-39.

⁸³⁹ Art. 113 Market Practices Act.

⁸⁴⁰ Art. 2, 29° Market Practices Act.

⁸⁴¹ Art. 113 Market Practices Act.

⁸⁴² Art. 107 (1) TFEU.

⁸⁴³ Art. 107 (2) TFEU.

concert practices which may affect trade between Member States and which has as their object or effect the prevention, restriction or distortion of competition within the internal market.⁸⁴⁴ Any agreement or decision prohibited tot the aforementioned definition are automatically void.⁸⁴⁵ This also applies for social housing landlords if they act as an undertaking. The Council is allowed to make regulations and directives to ensure the compliance the aforementioned prohibition.

Abuse of dominant position within the internal market

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States. This applies to all Belgium entities who act as an undertaking.⁸⁴⁶ They must meet the prohibitions. The Council is allowed to make regulations and directives to ensure the compliance the aforementioned prohibition.

State aid

Generally speaking, state aid is only allowed under several conditions.⁸⁴⁷ These conditions influence social housing policy.

Preliminary ruling by the European Court of Justice

Recently, the European Court of Justice was requested to give a preliminary ruling concerning fundamental freedoms, freedom of movement of capital and state aid with respect to social housing.⁸⁴⁸

The 2009 Decree on Land and Building Policy (*Decreet Grond- en Pandenbeleid*) the Flemish Parliament created the possibility for market parties to provide/build social rental dwellings in combined projects. It imposes a social obligation which is linked to a planning permission for land developers,. This ensures the delivery of a supply of social housing units.⁸⁴⁹ In return, the decree provides, tax incentives, subsidy mechanisms, a purchase guarantee in respect of the housing developed.⁸⁵⁰ Furthermore, it states, among other things, that dwellings may be rented only to persons who have a sufficient connection with the commune.

The Court of Justice of the European Union has ascertained the legitimacy of the Decree in three ways. The court ruled on May 8, 2013.⁸⁵¹

⁸⁴⁴ Art. 101 (1) TFEU.

⁸⁴⁵ Art. 101 (2) TFEU.

⁸⁴⁶ Art. 102 TFEU.

⁸⁴⁷ Art. 107 TFEU.

⁸⁴⁸ Court of Justice of the European Union, Judgement in Joined Cases C-197/11 and C-203/11, *press release* (8 May 2013), http://europa.eu/rapid/press-release_CJE-13-57_en.htm.

⁸⁴⁹ Art. 4.1.16 Decree of the Flemish Region of 27 March 2009 on land and real estate policy.

⁸⁵⁰ Art. 4.1.20-4.1.24 Decree of the Flemish Region of 27 March 2009 on land and real estate policy.

⁸⁵¹ Court of Justice of the European Union, Judgement in Joined Cases C-197/11 and C-203/11, *press release* (8 May 2013), http://europa.eu/rapid/press-release_CJE-13-57_en.htm.

Fundamental freedoms

Firstly it declared: “The condition that there exists a ‘sufficient connection’ between the prospective buyer or prospective tenant of immovable property and the target commune constitutes an unjustified restriction on fundamental freedoms.” It does explain that the connection (either by having lived there for at least six years or working there or by having some other important connection) with the target municipality can only be applied if it is based on the housing needs of a municipality and those households most in need.

Free movement of capital

Secondly, the fact that investors cannot freely use the land that was acquired, may be considered a restriction on the free movement of capital.⁸⁵² It is for the Belgian court to assess whether such an obligation satisfies the principle of proportionality (“is necessary and appropriate to attain the objective pursued”).

State aid

Thirdly, The Court declared that the Flemish government provided state aid in the form of compensation for the social obligation. This compensation was provided in the form of tax incentives and subsidy mechanisms. Furthermore, it decided that it was for the Belgian court to assess whether the tax incentives and subsidy mechanisms would be considered state aid and if so, whether the Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) EC to State aid is applicable to such measures.⁸⁵³

The Court referred the case back to the Belgium Constitutional Court, which ruled that it is not against the principle of renting dwellings to only persons who have a sufficient connection with the commune. However, this defeats the purpose. Furthermore, a number of fundamental freedoms (free movement of services, of capital, of movement and of residence) will be limited. However, these restrictions are not directly related to the socio-economic aspects of the objective pursued by the legislator's aim to exclusively protect the less wealthy locals in the property market. Therefore, the Court annulled the regulation concerning this aspect.

Furthermore, it judged that the compensatory measures affect intra Community trade and conflict with European rules on state aid. For that reason, the compensatory measures were set aside. Moreover, it is judged that a developer/builder has to bear a disproportionately heavy burden, if he must supply social housing without being able to receive compensation in any way at the same time. Consequently, the Court has set aside Chapter 3 'Social security' of Title 1 of Book 4 of the 2009 Decree on Land and Building Policy.

D. Tax law

The Council Directive on the harmonisation of the laws of the Member States relating to turnover taxes allows Member States to decide that supply, construction, renovation and

⁸⁵² Art. 63 TFEU.

⁸⁵³ Article 107 TFEU.

alteration of housing provided as part of social policy may be subject to reduced value added tax VAT rates.⁸⁵⁴ In Belgium, the leasing of dwellings is exempt from (VAT)

E. Energy saving rules

The European Directive on the energy performance of buildings requires Member States to introduce an energy performance certificate. It states how energy efficient a property is. This certificate should be available at the buildings construction, sale or lease.⁸⁵⁵ This subject is further detailed under Section 6.1 *'Are there regulatory law requirements influencing tenancy contracts.'*

F. Private international law including international procedural law

From an international private law point of view, several European regulations influence national tenancy law.

Applicable law: Rome Convention⁸⁵⁶

Rome I Convention applies to contractual obligations in situations involving a choice of laws. The general rule is that parties may choose the governing law.⁸⁵⁷

It should be taken in to account that, where all other elements relevant to the situation at the time of the choice are located in one or more Member States, the parties' choice of applicable law other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement.⁸⁵⁸

However, overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under the Rome I Convention.⁸⁵⁹

Moreover, the application of a provision of the law of any country specified by the Rome I Convention may be refused only if such application is manifestly incompatible with the public policy of the forum.⁸⁶⁰

In absence of choice, the applicable law is determined based on where the property is located,⁸⁶¹ unless the contracts has a duration of maximum six months. For these contracts, the governing law is that of the country where the landlord has his habitual

⁸⁵⁴ Council Directive 92/77/EEC of 19 October 1992 supplementing the common system of value added tax and amending Directive 77/388/EEC (approximation of VAT rates).

⁸⁵⁵ Vlaams Energieagentschap: *"Implementatie Europese Richtlijn 'Energieprestaties van gebouwen' - EPB – EPC,"* April 2010.

⁸⁵⁶ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

⁸⁵⁷ Art. 1 Rome I Convention.

⁸⁵⁸ Art. 3 (3) Rome I Convention.

⁸⁵⁹ Art. 9 Rome I Convention.

⁸⁶⁰ Art. 21 Rome I Convention.

⁸⁶¹ Art. 4 (1) (c) Rome I Convention.

residence, provided that the tenant is a natural person and has his habitual residence in the same country.⁸⁶²

Rome I applies to tenancy contracts concluded after 17 December 2009.

Applicable law: Rome Convention⁸⁶³

Contracts concluded on or before 17 December 2009 are, for the applicable law, subject to the Rome Convention. Also in these cases, the governing law is determined based on where the property is located⁸⁶⁴, unless parties have chosen otherwise.⁸⁶⁵

Jurisdiction: Brussels I Regulation⁸⁶⁶

The Brussels I Regulation lays down rules governing the jurisdiction in civil matters in the European Union countries. The general rule is that the court of the Member State in which the property is situated has the exclusive jurisdiction concerning tenancy contracts.⁸⁶⁷ This Regulation applies to legal proceedings instituted after the entry into force on 1 March 2002. For proceeding instituted before 1 March 2002, reference is made to Article 66 of this Regulation.

G. Antidiscrimination legislation

European antidiscrimination legislation affects housing policy and tenancy law.

For instance, the ECHR has vertical and horizontal effect. The ECHR influence is detailed under Section 6.1 *'Human Rights'*, Section 6.2 *'Matching the parties'*, Section 6.5 *'Is the tenant allowed to make other changes to the dwelling?'* and *'Uses of the dwelling'*.

Furthermore, European directives and regulations concerning antidiscrimination have effect on Belgium housing policy and tenancy law. Particularly, the Council's directives 2004/113/EC and 2000/43/EC have resulted in the Antidiscrimination Act and the Antiracism Act. It should be noted that with the transfer of the federal Housing Rent Act, the Antidiscrimination Act and the Antiracism Act will no longer be applicable on tenancy contracts. The influence of European antidiscrimination legislation is further elaborated under Section 6.2 *'Matching the parties'* and Section 6.3 *'Restrictions on choice of tenant - antidiscrimination issues'*.

Several authorities have been formed against discrimination. For example, the Privacy Commission is independent federal supervisory authority, formed by the federal government. Its mission is to ensure that that privacy is respected when personal data are processed. For more information, reference is made to Section 6.2 *'Matching the parties'*.

⁸⁶² Art. Art. 4 (1) (d) Rome I Convention.

⁸⁶³ Convention 80/934/ECC on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980.

⁸⁶⁴ Art. 4 Rome Convention.

⁸⁶⁵ Art. 3 Rome Convention.

⁸⁶⁶ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

⁸⁶⁷ Art. 22 Brussels I Regulation.

Furthermore, The Centre for Equal Opportunities and Opposition (CEO) to racism was formed to promote equality of opportunity and to combat all forms of discrimination. Tenants or potential tenant can file a complaint with the CEO. It also inform all actors in the tenancy field.⁸⁶⁸

H. Constitutional law affecting the EU and the European Convention of Human Rights (Harmonization and unification of general contract law)

No sources have been found with respect to the harmonization and unification of unification of general contracts law have, up until now, no effect on tenancy policies and tenancy law.

I. Fundamental freedoms

Free movement of workers

The prohibition on obstacles to free movement of workers is applicable to policy areas such as housing. These workers must be treated equally as citizens of the particular Member State. Also reference is made to Section 6.3 'Restrictions on choice of tenant - antidiscrimination issues'.

Free movement of goods

Free movement of goods is laid down in the Articles 28 and 29 Treaty on the Functioning of the European Union (TFEU). Impediments related to the import, transit and export of goods are prohibited.⁸⁶⁹ This has effect on housing policy as the Dutch government has to respect the free import, export and transit of goods for the housing market.

Free movement of services and establishment

The regulations concerning the free movement of services are laid down in the Articles 56 – 62 TFEU. Restriction to provide services within the Union by nationals resident in another EU Member State than that of the person for whom the service is provided, are prohibited. Art. 49 TFEU applies to self-employed persons and companies who wishes to establish in an another Member State.

The free movement of services is mainly detailed in the Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006

on services in the internal market. It regulated the several matters, such as: the access to information concerning regulations and the acknowledgement of certificates. However, services concerning social housing, the development or use of land, town and country planning and building standards are excluded by this Directive.⁸⁷⁰

⁸⁶⁸ <http://www.diversiteit.be/?action=onderdeel&onderdeel=79&titel=Wonen&setLanguage=3>, 7 October 2013.

⁸⁶⁹ The exceptions are laid down in Art. 36 TFEU.

⁸⁷⁰ Recital 9 of the Preamble of the 12 December 2006 Directive 2006/123/EC. This Directive is implemented by the regions. Flemish Region: 25 June 2010 Decreet tot gedeeltelijke omzetting van Richtlijn 2006/123/EG. van het Europees Parlement en de Raad van 12 december 2006 betreffende diensten op de interne markt, Belgium Official Journal August 2010; Brussels Region: Ordonnantie tot

Free movement of capital

The free movement of capital and payment is laid down in Article 63 TFEU. It affects national housing policy as it applies in cases where other nationals wishes to purchase, use or sell real estate in other Member States.⁸⁷¹ This subject is further detailed under C. 'Competition and state aid law'.

7.3 Table of transposition of EU legislation

DIRECTIVES	TRANSPPOSITION	RELATED SUBJECT
CONSTRUCTION		
Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJEU 30.4.2004 N° L 134/114)	Act: Wet overheidsopdrachten en bepaalde opdrachten voor werken, leveringen en diensten van 15 juni 2006 (Belgisch Staatsblad, 15-02-2007) Act: Wet van 16 juni 2006 betreffende de gunning, informatie aan kandidaten en inschrijvers en wachttermijn inzake overheidsopdrachten en bepaalde opdrachten voor werken, leveringen en diensten (Belgisch Staatsblad 15.02.2007),	It is envisaged a special allocation procedure for contractors when the target is the construction of social housing (art. 34).
Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJEC 11.02.1989 N° L 40/12)	Royal Decree: the 19 augustus 1998 Koninklijk besluit betreffende de voor de bouw bestemde producten (Belgisch Staatsblad 11 September 1998)	About construction products: free movement and the certificates required.
TECHNICAL STANDARDS		
Energy efficiency		
Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJEU 14.11.2012 N° L 315/1).	Implementation must be done before 5 juni 2014 by amending: Flanders: 8 May 2009 Energiedecreet (Belgisch Staatsblad 27 maart 2007) and 19 November 2010 Energie besluit (Belgisch Staatsblad 8 December 2010)	Energy saving targets imposed to the State. It also deals with the Public Administration buildings and others that require greater energy savings.

gedeeltelijke omzetting van de Richtlijn 2006/123/EG van het Europees Parlement en de Raad van 12 december 2006 betreffende diensten in het Brussels Hoofdstedelijk Gewest, Belgium Official Journal 8 June 2011; Walloon Region: 10 December 2009 Decreet bedoeld voor het algemeen omzetten van de Richtlijn 2006/123/EG van het Europees Parlement en de Raad van 12 december 2006 betreffende de diensten op de interne markt wat betreft de aangelegenheden beoogd in artikel 138 van de Grondwet, Belgium Official Journal, 24 December 2009.

⁸⁷¹ The exceptions are laid down in the Arts 64, 65, 66 and 75 TFEU.

Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJEU 18.06.2010 N° L153/13).	Flanders: Amendment of: 8 May 2009 Energiedecreet (Belgisch Staatsblad 27 maart 2007) and 19 November 2010 Energie besluit (Belgisch Staatsblad, 8 December 2010)	Energy efficiency of the new and the existing buildings.
Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (OJEU 18.6.2010 N° L 153/1).	Royal Decree: 13 August 2011 Koninklijk besluit betreffende de vermelding van het energieverbruik en het verbruik van andere hulpbronnen op de etikettering en in de standaardproductinformatie van energiegerelateerde producten (Belgisch Staatsblad, 5 September 2011)	Labelling and basic information for household electric appliances' users.
Commission Delegated Regulation (EU) N° 874/2012 of 12 July 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of electrical lamps and luminaires (OJEU 26.9.2012 N° L 258/1).		
Commission Directive 98/11/EC of 27 January 1998 implementing Council Directive 92/75/EEC with regard to energy labelling of household lamps (OJEC 10.3.1998 N° L 71/1).	Commission Directive 98/11/EC of 27 January 1998 was appealed by commission Delegated Regulation (EU) N° 874/2012	
Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJEU 5.6.2009 N° L 140/16).	Flanders Decree: 8 July Decreet houdende de implementatie van de Richtlijn 2009/28/EG van het Europees Parlement en de Raad van 23 april 2009 ter bevordering van het gebruik van energie uit hernieuwbare bronnen en houdende wijziging en intrekking van Richtlijn 2001/77/EG en Richtlijn 2003/30/EG (Belgisch Staatsblad, 25 July 2011)	Promotion of the use of renewable energy in buildings.
Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (DOCE 14.8.2009 N° L 211/55).	8 January 2012 Wet tot wijziging van de wet van 29 april 1999 betreffende de organisatie van de elektriciteitsmarkt en de wet van 12 april 1965 betreffende het vervoer van gasachtige produkten en andere door middel van leidingen (Belgisch Staatsblad, 11 January 2012)	Basic standards for electricity sector.
Heating, hot water and refrigeration		
Commission Delegated Regulation (EU) N° 626/2011 of 4 May 2011 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of air conditioners (OJEU 6.7.2011 N° L 178/1).		Labelling and information to provide about air conditioners.

Commission Delegated Regulation (EU) N° 1060/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household refrigerating appliances (OJEU 30.11.2010 N° L 314).		Labelling and information to provide about household refrigerating appliances.
Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJEU 14.8.2009 N° L 211/94).	Flanders Decree: 8 July 2011 Decreet houdende de wijziging van de wet van 10 maart 1925 op de elektriciteitsvoorziening en het Energiedecreet van 8 mei 2009, wat betreft de omzetting van de Richtlijn 2009/72/EG en de Richtlijn 2009/73/EG (Belgisch Staatsblad, 16 augustus 2011)	Basic legislation about natural gas in buildings and dwellings.
Council Directive of 10 December 1982 amending Directive 78/170/EEC on the performance of heat generators for space heating and the production of hot water in new or existing non-industrial buildings and on the insulation of heat and domestic hot-water distribution in new non-industrial buildings (OJEC 31.12.1982 N° L 378/19).		Legislation about heating and hot water in dwellings and buildings.
Household appliances		
Commission Delegated Regulation (EU) N° 392/2012 of 1 March 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household tumble driers (OJEU 9.5.2012 N° L 123/1).		Labelling and information to provide about tumble driers.
Commission Delegated Regulation (EU) N° 1059/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household dishwashers (OJEU 30.11.2010 N° L 314/1).		Labelling and information to provide about dishwashers.
Commission Delegated Regulation (EU) N° 1061/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household washing machines (OJEU 30.10.2010 N° L314/47).		Labelling and information to provide about washing machines.
Commission Delegated Regulation (EU) N° 1062/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of televisions (OJEU 30.11.2010 N° L 314/64).		Labelling and information to provide about televisions.

Commission Directive 2003/66/EC of 3 July 2003 amending Directive 94/2/EC implementing Council Directive 92/75/EEC with regard to energy labelling of household electric refrigerators, freezers and their combinations (OJEU 09.07.2003 N° L 170/10).	Repealed by Directive 2010/30EU	Labelling and information to provide about household electric refrigerators and freezers.
Commission Directive 2002/40/EC of 8 May 2002 implementing Council Directive 92/75/EEC with regard to energy labelling of household electric ovens (OJEC 15.05.2012 N° L 128/45).	Repealed by Directive 2010/30EU	Labelling and information to provide about household electric ovens.
Commission Directive 96/60/EC of 19 September 1996 implementing Council Directive 92/75/EEC with regard to energy labelling of household combined washer-driers (OJEC 18.10.1996 N° L 266/1).	Repealed by Directive 2010/30EU	Labelling and information to provide about household combined washer-driers.
Lifts		
European Parliament and Council Directive 95/16/EC of 29 June 1995 on the approximation of the laws of the Member States relating to lifts (OJEC 07.09.1995 N° L 213).		Legislation about lifts.
Boilers		
Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (OJEC 22.06.1992, N° L 167). Amended by Council Directive 93/68/EEC of 22 July 1993 (BOE 27.03.1995 N° 73).		Legislation about boilers.
Hazardous substances		
Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJEU 01.07.2011 N° 174/88).	30 August 2013 Royal Decree: Koninklijk besluit tot wijziging van het koninklijk besluit van 17 maart 2013 tot beperking van het gebruik van bepaalde gevaarlijke stoffen in elektrische en elektronische apparatuur (Belgisch Staatsblad, 10 September 2013)	Legislation about restricted substances: organ pipes of tin and lead alloys.
CONSUMERS		
Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European		Information and consumer rights. Legislation referred to procurement of services, car park.

Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJEU 22.11.2011 N° L 304/64).		Immovables are excluded: lease of housing, but not of premises.
Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) N° 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJEU 18.12.2009 N° L 337/11).	10 July 2012 Act: Wet houdende diverse bepalingen inzake elektronische communicatie (Belgisch Staatsblad 25 July 2012)	Consumer protection in the procurement of communication services.
Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJEU 01.05.2009, N° 110/30).		Collective injunctions infringements of Directives Annex I.
Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJEU 27.12.2006, N° L 376/21).	6 April 2010 Act: Wet betreffende marktpraktijken en consumentenbescherming (Belgisch Staatsblad, 12 april 2010) Act: Wet van 14 juli 1991 betreffende de handelspraktijken en de voorlichting en bescherming van de consument (Belgisch Staatsblad, 29 August 1991)	Misleading advertising and unfair business-to-consumer commercial practices.
Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) N° 2006/2004 of the European Parliament and of the Council (OJEU 01.6.2005 N° L 149/22).		
Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJEC 04.06.1997 N° L 144/19).	Repealed by Directive 2011.83/EU	Contracts relating to immovables are excluded, except from lease.
Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJEC 21.04.1993 N° L 095).	Repealed by Directive 2011.83/EU	Unfair terms

Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJEC 31.12.1985 N° L 372/31).	Repealed by Directive 2011.83/EU	Information and consumer rights. Legislation referred to procurement of services. Contracts on immovables are excluded.
HOUSING-LEASE		
Regulation (EC) N° 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations - Rome I (OJEU 04.07.2008 N° L 177/6).		Law applicable (art. 4.1.c and d and 11.5)
Council Regulation (EC) N° 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJEC 16.01.2001 N° L 12/1).		Jurisdiction (art. 22.1)
Commission Regulation (EC) N° 1920/2001 of 28 September 2001 laying down detailed rules for the implementation of Council Regulation (EC) N° 2494/95 as regards minimum standards for the treatment of service charges proportional to transaction values in the harmonised index of consumer prices and amending Regulation (EC) N° 2214/96 (OJEC 29.9.2001 N° L 261/46).		CPI harmonization. Art. 5 includes estate agents' services for lease transactions.
Commission Regulation (EC) N° 1749/1999 of 23 July 1999 amending Regulation (EC) N° 2214/96, concerning the sub-indices of the harmonized indices of consumer prices (OJEC 13.8.1999 N° L 214/1).		CPI harmonization. Subscript 4: Lease, housing preservation and repair, water and other services.
Council Regulation (EC) N° 1687/98 of 20 July 1998 amending Commission Regulation (EC) No 1749/96 concerning the coverage of goods and services of the harmonised index of consumer prices (OJEC 31.07.1998 N° L 214/12).		
Commission Regulation (EC) N° 2214/96 of 20 November 1996 concerning harmonized indices of consumer prices: transmission and dissemination of sub indices of the HICP (OJCE 21.11.1996 N° L 296/8).		
Recommendation 65/379/EEC: Commission Recommendation of 7 July 1965 to the Member States on the housing of workers and their families moving within the Community (OJEC 27.07.1965 N° L 137/27).		Discrimination on grounds of nationality. Equality in granting housing, aids, subsidies, premiums or tax advantages to workers who have moved within the EU.

DISCRIMINATION		
Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJEU 21.12.2004 N° L 373/37).	19 December 2012 Act: Wet tot wijziging van de wet van 10 mei 2007 ter bestrijding van discriminatie tussen vrouwen en mannen wat het geslacht op het gebied van goederen en diensten en van aanvullende regelingen voor sociale zekerheid betreft (Belgisch Staatsblad, 25 Januari)	Discrimination on grounds of sex.
Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJEC 19.07.2000 N° L 180/22).	Act: 10 May 2007 Wet ter bestrijding van bepaalde vormen van discriminatie (Belgisch Staatsblad, 30 mei 2007) Act: 10 May 2007 Wet tot wijziging van de wet van 30 juli 1981 tot bestraffing van bepaalde door racisme of xenofobie ingegeven daden (Belgisch Staatsblad, 30 mei 2007)	Discrimination on grounds of racial or ethnic origin.
IMMIGRANTS OR COMMUNITY NATIONALS		
Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJEU 18.06.2009 N° L 155/17).	Act: Wet tot wijziging van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen (Belgisch Staatsblad, 15 May 2012) Royal Decrees: Koninklijke besluiten van 17, 3 en 15 Augustus (Belgisch Staatsblad 31 augustus 2012)	Equality of treatment with housing (art. 14.1.g.) However, Member States may impose restrictions (art. 14.2).
Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) N° 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJEU 30.04.2004 N° L 158/77)	25 APRIL 2007 Act: Wet tot wijziging van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen (Belgisch Staatsblad, 10.05.2007)	Discrimination on grounds of nationality. Free movement for European citizens and their families.
Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJEU 23.01.2004 N° L 16/44).	Amended by Directive 2011/51 EU. It will amend the Vreemdelingenwet	Equal treatment in housing (art. 11.1.f.)
Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJEU 03.10.2003, N° L 251/12).	Act: Wet van 15 september 2006 tot wijziging van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen (Belgisch Staatsblad, 6 December 2006)	The reunification applicant shall prove to have an habitable and large enough dwelling (art. 7.1.a).

Regulation (EEC) N° 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJEC 17.04.1964 N° L 257/2).		Equal treatment in housing and access to the housing applicants' lists (Art. 9 and 10.3).
INVESTMENT FUNDS		
Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) N° 1060/2009 and (EU) N° 1095/2010 (OJEU 01.07.2011, N° L 174/1).		Real estate investment funds

8 Typical national cases (with short solutions)

1. “The right to decent housing”

Brief sketch⁸⁷²

A accredited social housing landlords (*sociale huisvestingsmaatschappij*; SHM) claims the eviction of two children of full age who have lived in the dwelling for approximately fifteen years with their mother. He left the rented dwelling after receiving a notice of termination. The SHM claims the eviction of the children. The children wishes to reside in the dwelling during a at least certain period of time.

Solution

The justice of peace decided that the principles of good governance apply to SHMs, which implies that the prolonged contractual relationship provides housing security. Consequently, the SHM's claim for mediate eviction was rejected.

2. “The Housing Rent Act’s applicability”

Brief sketch⁸⁷³

Tenants rent a bungalow in a recreation area. In this area only secondary residence are allowed. Registration with the municipality was, therefore, not accepted. The landlord states that the bungalow was rented as a secondary residence. The contract does not exclude to possibility to rent the dwelling as a primary residence, nor does it describe where the tenants have their primary residence.

Solution

The justice of peace decided, therefore, that the tenants may legitimately expect that the dwelling was designated as their primary residence.

3. “State of the rented property”

Brief sketch⁸⁷⁴

Parties have entered into a tenancy contract in April 1991. The tenant gave birth to three children in August 1992. The question is whether the landlord is liable under Article 2 Housing Rent Act, if the dwelling is not suitable as a result of family expansion.

Solution

The landlord cannot be held liable, as long as the dwelling is delivered in proper and acceptable conditions. The conditions to which the leased property must be assessed is the moment of renting the dwelling.

4. “State of the rented property”

Brief sketch⁸⁷⁵

⁸⁷² Vred. Leuven 16 April 1996, *Huurrecht* 1996, note C. van der Elst.

⁸⁷³ Vred. Zelzate 13 June 1995, *Huurrecht* 1996, note J. van Belle.

⁸⁷⁴ Vred. Gent 15 juni 1994, *T. Vred.* 1997, 125 note B. Hubeau.

A rented dwelling was declared unfit for habitation. The tenant had to leave his dwelling and claimed the paid rent.

Solution

A dwelling which does not meet the minimum safety and health conditions may not be rented out. A tenancy contract concerning such a dwelling can be set aside. For this reason, the landlord has to refund the rent.

5. “Diplomatic clause and short term tenancy contracts”

Brief sketch⁸⁷⁶

Generally, early termination clauses concerning short term tenancy contracts are null and void. In this case, parties included a diplomatic clause in their tenancy contract, which states that the tenant may early terminate the contract if he has to leave Belgium for ‘professional reasons’. Furthermore, he has to pay a compensation. Is such a clause valid?

Solution

Such a clause is valid.

6. “Early termination of a short term tenancy contract”

Brief sketch⁸⁷⁷

A short term contract included an early termination clause. The landlord has accepted the early termination notice, under the condition that the tenant would pay the rent until she found a new tenant. She regretted her decision and demanded additional damages.

Solution

Damages cannot be awarded to landlords who have accepted an early termination in cases which they did not have to accept it.

7. “Early termination of a short term tenancy contract”

Brief sketch⁸⁷⁸

Parties have included the possibility of early termination in their short term tenancy contract. The tenants gives notice to his landlord for early termination. The landlord rejects the notice by stating that the aforementioned clause is null and void.

Solution

According to the justice of peace, the early termination clause in a short term is valid.

With respect to early terminations of short term contract, reference is made to Section 6.6 May the tenant terminate the agreement before the agreed date of termination

⁸⁷⁵ Vred. St.-Niklaas 20 mei 1996, *T.Huur*, 1997-98, 228, note J. van Belle.

⁸⁷⁶ Rb. Brussel 19 September 1996, *Res.Jur. Imm.* 1996, 211.

⁸⁷⁷ Vred. St.-Niklaas 3 February 1997, *R.W.*1997-98, 960.

⁸⁷⁸ Vred. Brasschaat 22 november 1994, *T. Vred.* 1996, 74.

(especially in case of contracts limited in time); if yes: does the landlord then have a right to compensation (or be allowed to impose sanctions such as penalty payments)?'

8. "Termination and temporary default"

Brief sketch⁸⁷⁹

The tenant does not pay the rent during the termination period. Furthermore, several neighbours have signed a petition which states that the tenant's excessive noise. Is this sufficient to have the contract set a side?

Solution

This is not sufficient to have the contract set a side. The last month of the contract had started. Furthermore, such a petition is not sufficient evidence as is it not clear under which circumstances the petition was signed.

9. "Contract extension"

Brief sketch⁸⁸⁰

An elderly tenant gave notice to early terminate the tenancy contract. She regrets her decision and invokes Article 11 Housing Rent Act, which states that in exceptional and the tenant has certain statutory prolongation right to extend the tenancy contract for an additional period of time difficult circumstances. The landlord disagrees.

Solution

In this case, the tenant did not success in producing evidence that her health condition has worsened since the day she gave notice. Consequently, her claim was rejected.

10. "Contract extension"

Brief sketch⁸⁸¹

A landlord gives notice to terminate the tenancy contrast. Because of the tenant's age and the movement which has to take place in the winter, the tenant claims the statutory prolongation right to extend the contract.

Solution

The justice of peace decides that the contract will be extended until after the winter.

⁸⁷⁹ Vred. Roeselare 1 March 1996, *R.W.* 1997-98, 1054.

⁸⁸⁰ Vred. Elsene 5 November 1993, *T.Vred.* 1996, 61.

⁸⁸¹ Vred. Elsene 6 March 1995, *T.B.B.R.* 1996, 296, note B. Hubeau.

9 Tables

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9.3 Abbreviations

AES

Algemeen Eigenaars en Mede-eigenaars Syndicaat

AIS

Agences Immobilières Sociales

ALS

Association du Logement Social

AWCCLP

Association Wallonne des Comité Consultatif des Locataires et Propriétaires

BGHM

Brusselse Gewestelijke Huisvestingsmaatschappij

BFHV

Brusselse Federatie van Huurdersverenigingen

BRoW

Brusselse Bond voor het Recht op Wonen

Brussels Housing Code (Brusselse Huisvestingscode)

Ordonnantie van het Brussels Hoofdstedelijk Gewest van 17 juli 2003 “houdende de Brusselse Huisvestingscode”, Belgium Official Journal 9 September 2003

CC

Civil Code

ECHR

European Convention for the Protection of Human Rights and Fundamental Freedoms.

FéBUL

Fédération Bruxelloise de l’Union pour le Logement

Flemish Housing Code (Vlaamse Wooncode)

Decreet houdende de Vlaamse wooncode, Belgisch, Belgium Official Journal 15 July 1997.

Framework Social Rent (Kaderbesluit Sociale huur)

Besluit van de Vlaamse Regering van 12 oktober 2007 tot reglementering van het sociale huurstelsel ter uitvoering van titel VII van de Vlaamse Wooncode, which was amended by: het Besluit van de Vlaamse Regering tot wijziging van diverse bepalingen betreffende het woonbeleid, Belgium official Journal, 13 December 2013.

FSVK

Federatie van de sociale verhuurkantoren van het Brusselse Gewest

GDP

Gross Domestic Product

GewOP

Gewestelijk Ontwikkelingsplan

GFC

Global Financial Crisis

KAEV

Het Koninklijk Algemeen Eigenaarsverbond vzw

LTV

Loan-to-value

OCMW

Openbaar Centrum voor Maatschappelijk Welzijn; Public Centres for Social Welfare

OVM

Openbare Vastgoedmaatschappij

RBDH

Rassemblement Bruxellois pour le Droit à l'Habitat

RFDH

Rassemblement fédéral pour le droit

SHM

Sociale huisvestingsmaatschappij

SLSP

Sociétés de Logement de Service Public

SNP

Syndicat *National* des Propriétaires

SVK

Sociale Verhuurkantoren

SWL

Société Wallonne du Logement

The 26 September 1996 Decision of the Brussels-Capital Region

Besluit van de Brusselse Hoofdstedelijke Regering van 26 september 1996 houdende de regeling van de verhuur van woningen die beheerd worden door de Brusselse Gewestelijke Huisvestingsmaatschappij of door de openbare vastgoedmaatschappijen

The 6 September 2007 Decree of the Walloon Government

6 Septembre 2007 Arrêté du Gouvernement wallon organisant la location des logements gérés par la Société wallonne du Logement ou par les sociétés de logement de service public

TFEU

Treaty on the Functioning of the European Union

VAT

Value Added Tax

VHM

Vlaamse Huisvestingsmaatschappij

VHP

Vlaams Huurdersplatform

VIVAS

Vereniging van Inwoners van Sociale Woningen

VOB

Vlaams Overleg Bewonersbelangen

VMSW

Vlaamse Maatschappij voor Sociaal Wonen

Walloon Housing Code (Code Wallon du Logement)

Code Wallon du Logement, Belgium Official Journal 4 December 1998

VSH

Vereniging voor Sociale Huisvesting