



Landlords in Europe

A Comparative Analysis

This analysis is based on the information provided by twelve National Property Owner Associations and brings together details on the rental laws, tax regimes and planning policies which govern the private rented sector in twelve case study countries across Europe.

September 2013



The International Union of Property Owners – Union Internationale de la Propriété Immobilière A.S.B.L. (UIPI) is the leading organisation for individual property owners and private landlords in Europe.

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The UIPI promotes solidarity, cooperation and the exchange of information between the property owners associations of Europe.

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Special thanks to Mme France Bauvin for her vision and belief in this endeavour and her valuable work on collecting and collating the material for this analysis; to David Cox for his extensive work on the linguistic editing of the report; to Dr. Kai Warnecke for the design and publication; and to Mme Emmanuelle Causse for her continued support and assistance during its creation.

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Preface

What does it mean to be a landlord in Europe? Is investing in rental property a good prospect for European households? Are there European countries that have more favourable legal, taxation or planning regimes for this type of activity? Has the position changed since the financial and economic crisis? These are valuable questions that any potential investor in the private rented sector should consider before investing in real estate.

It is very likely the growth in demand for rented homes will continue in the medium to long term across Europe. Therefore, whilst the property market might be seen as a safe option, there are numerous factors that need to be taken into account when considering real estate investment.

The result of the recent financial crisis has been to prevent unwise investments by landlords through tightening the rules on access to capital. Therefore, we need to consider how this same principle is applied to national budget deficits. The answer is simple: An increase in taxation. Over the last few years, almost every country in Europe has substantially increased property taxation. This has been particularly apparent in the taxation of the private rented sector, where property has become the most taxed asset and renting property the most taxed business in Europe. This is unlikely to change in the present European climate and within the context of the European Semester.

In addition, many countries are increasing regulatory obligations on tenancy agreements, health and safety and construction as well as energy and environmental standards. This puts additional constraints on property owners and is particularly burdensome on individuals for whom their property business is not their main professional activity or source of income.

The private rented sector plays a crucial part in the economy and private landlords play a key role in housing European citizens. Therefore, Governments as well as the institutions of the European Union must pay much closer attention to the legislative and tax regimes in Member States' or risk ever increasing and overly onerous burdens being placed on the housing market.

In order to create favourable conditions for a thriving and much needed private rented sector, Governments must create housing policies that foster housing development and balance the needs of owner-occupiers, social housing and the private rented sector. Favouring any one sector over the others will only serve to distort the housing market and be detrimental to all the people of Europe.

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Background

In 2011, the French property owners association (Union Nationale de la Propriété Immobilière) decided to devote part of its monthly publication to the rental markets in other European countries. Building on this initiative, the International Union of Property Owners (UIPI) chose to explore this further and compare the private rented sectors in a number of European countries; each with their own legislative frameworks and socio-economic backgrounds.

The relevance of such a comparative analysis for the private rented sector is reinforced by the current European macroeconomic climate, with the European Commission believing that a stable and functioning private rented market is both beneficial and essential¹; especially when we consider that European economic governance through the European Semester is, in many cases, advocating the shift away from income-based taxation to property-based taxation as it is viewed that this is less detrimental to the economy². This analysis will contribute to the larger debate.

The focus of this analysis will be on the main characteristics, strengths and weaknesses of national legislation in our case study countries. There have been many scholarly papers on this topic over the last few years and therefore our intention is not to provide another piece of academic research but rather look at the private rented market in Europe from a practitioner's point of view; highlighting the key issues which landlords and their businesses face. We hope to improve the understanding of the legislative frameworks in Member States and provide a clear picture of the private rented sector in Europe. The analysis looks at Austria, Belgium, the Czech Republic, France, Germany, Greece, Ireland, Italy, Norway, Slovakia, Spain and the United Kingdom³.

In order to simplify the comparison, the report is divided into three chapters. The first part focuses on the legislative framework in both the residential and commercial sectors. The second chapter discusses the taxation that landlords face and the concluding chapter is dedicated to planning policies; including the issue of expropriation.

1. Legislative Frameworks

1.1 Introduction

The common perception of 'renting' is a contractual agreement whereby the ownership and use of a property is separated between two parties; the landlord and the tenant. As a result, a tenancy can be seen as gaining the temporary use of a property⁴. In many countries this concept is known as a 'lease'.

1 Quarterly Report on the Euro Area, DG ECFIN European Commission, Volume 10 No° 3 (2011)

2 Possible reforms to Real Estate Taxation: Criteria for Successful Policies, Occasional Papers 119, October 2012, European Commission

3 References in the analysis to the United Kingdom refer to the legislative framework in England and Wales only. Differences exist in Scotland and Northern Ireland

4 Kenneth M. Eades et. Felicia C. Marston: 'Incentives for Leasing: Evidence from the Largest U.S. Lessees and Lessors', University of Virginia, Working Paper Series No. 04-03, at p. 1. More at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=301552

However, the contractual nature of a lease is subject to debate. Therefore, before we turn to the comparative discussion on renting arrangements in the case study countries, we need to clarify the theoretical difference between a civil law and a common law lease. In order to do so, we need to look at the *numerus clausus* of property rights (i. e. a closed list of property rights). This legal doctrine provides a framework that decides which legal relationships create property rights and which do not in civil law jurisdictions.

Lists of property rights exist in both civil law and common law. However, the difference is that the list provided by common law is far longer for real estate⁵ and explains why the definition of a lease of land in common law countries is “a document creating an interest in land for a fixed period of certain duration, usually in consideration of the payment of rent⁶”. This is to be considered as a full property right in common law as the burden of the lease runs with the land and the rights of the lessee are capable of binding successors in title⁷. Therefore, when we discuss ‘leasehold, lease or leasing’, there is a need for the careful use of terminology and an initial understanding of the effects (i.e. rights and obligations) that might be imposed on the parties. What is a contractual arrangement, (i.e. in personam) in one country, does not necessarily mean the same in other legal systems and although ‘a lease’ in civil law countries is nothing more than a contractual arrangement between two parties, ‘lease’ or ‘leasehold’ in the UK’s common law system has a full proprietary effect comparable to an ownership.

Nevertheless, the purpose of this analysis is to focus on the aspects of a tenancy in twelve case study countries. We will explore rental legal framework in both the residential and commercial sectors hoping to open a debate on the best provisions for contemporary, effective and stable private rented regulation. However, it is important to note that the emphasis of rental legislation in the residential sector is focused on the main residence of the tenant, which is due to the existence of considerably diverse rules regarding other forms of tenancies.

1.2 Rental Legislation in the Residential Sector

1.2.1 General Information on Rental Markets

In 2011, an estimated 70.4 % of the EU-27 population owned their homes (i. e. only 29.3 % of Europeans were renting the property in which they lived). Yet, only 18.1 % of these households were paying rent at a market rate (private rented sector); with 11.2 % either given a household for a reduced-rent (e.g. social housing) or were living rent-free⁸.

5 Sjeff Van Erp et Bram Akkermans (eds.): *Cases, Materials and Text on National, Supranational and International Property Law*, Oxford, Hart Publishing, 2012, at p. 302

6 Barbara Pierre : ‘Classification of property and conceptions of ownership in civil law and common law’, *Droit Comparé*, p. 257

7 Sjeff Van Erp et Bram Akkermans (eds.): *Cases, Materials and Text on National, Supranational and International Property Law*, Oxford, Hart Publishing, 2012, at p. 315

8 <http://appsso.eurostat.ec.europa.eu/nui/show.do>

Table 2: Tenure Statistics in 2011⁹

Country	Home Owner	Rental Market	Market Rate Rent	Reduced ¹⁰ Rate or free Rent
Austria	57.5 %	42.5 %	26.2 %	16.3 %
Belgium	71.8 %	28.2 %	18.9 %	9.3 %
Czech Republic	80.1 %	19.9 %	13.0 %	6.9 %
France	63.1 %	36.9 %	19.1 %	17.8 %
Germany	53.4 %	46.6 %	39.9 %	6.7 %
Greece	75.9 %	24.1 %	17.2 %	6.9 %
Ireland (2010)	73.4 %	26.6 %	11.9 %	14.7 %
Italy (2010)	71.9 %	27.1 %	13.3 %	13.8 %
Norway	84.0 %	16.0 %	10.5 %	5.5 %
Slovakia	90.2 %	9.8 %	8.0 %	1.7 %
Spain	82.7 %	17.3 %	9.0 %	8.2 %
United Kingdom (2010)	70.0 %	32.1 %	13.3 %	18.8 %

The lowest rate of homeowners is in Germany and Austria where the share of owner-occupiers is below 60 %. Conversely, the Czech Republic Norway, Slovakia, and Spain can be characterised as countries of homeowners with rates reaching over 80 %¹¹. It is therefore fair to conclude that Europe is a continent of owner-occupiers.

Tenancies therefore serve as a secondary residential market; except in Germany where the private rental sector accounts for almost 40 % of total households. The German situation can be explained in part by an historical subsidy system which did not distinguish between private and public sector investors. Therefore the foundations of a strong private rented market were created. Even initially subsidised properties, which were owned by private investors, often passed into the private rented sector when the commitment period determined by the regulation governing the subsidy had lapsed. Also, a right of pre-emption, which is a common part of tenancy agreements in other countries, is lacking in Germany. Therefore, subsidised housing rarely becomes owner-occupied without first entering the private rented sector¹².

1.2.2 The Form of Tenancy Agreements

Member States have many different requirements for the creation of a legal tenancy contract; such as the requirement for written contracts or even registration. One of the most stringent requirements exist in Belgium where the long term tenancy contract (of nine

9 Source: Eurostat 2011

10 According to the Eurostat definition, reduced-rate renters would include those: (a) renting social housing; (b) renting at a reduced rate from an employer; or (c) in accommodation where the actual rent is fixed by law

11 Source: Eurostat 2011

12 'The Private Rented Sector in the New Century – A Comparative Approach,' Med dansk sammenfatning, University of Cambridge, September 2012, p. 140

years duration)¹³ must not only be written and include annexes on the summary of legislation as well as region and federal standards of habitability but the landlord is also responsible for registering the tenancy within two months of signature. Failure to undertake this requirement allows the tenant to end the tenancy at any time without the need to pay any compensation to the landlord; which otherwise would have to take place. Similar requirements exist in Ireland.

Table 3: Formal Requirement for the Creation of Legal Tenancy Agreements

Country	Written Form	Registration	Additional Requirements
Austria	YES	NO	NO
Belgium	YES ¹⁴	YES	Annex (a detailed check-in inventory)
Czech Republic	YES	NO	NO
France	YES	NO	Annex (a folder giving details of the technical state of the property and an inventory of the property including equipment)
Germany	YES	NO	NO
Greece	YES	YES	NO ¹⁵
Ireland	YES	YES	NO
Italy	YES	YES	YES
Norway	YES	NO	NO
Slovakia	NO	NO ¹⁶	NO
Spain	YES	YES ¹⁷	NO
United Kingdom	NO	NO	Yes (local licensing) ¹⁸

In Germany, any tenancy contract that lasts more than a year must be in writing¹⁹. In contrast, until recently rental agreements in Greece did not need to be in writing (i. e. oral arrangements could form a legally binding tenancy contract according to the Civil Code). However, recent tax legislation now requires a written contract to be signed by both par-

13 In Belgium there is also a short term, three-year contract, which is less formal and highly recommended for landlords

14 Failure to provide a written tenancy agreement will treat the tenancy as a nine year contract

15 Soon there will be a requirement for electronic submission

16 Landlords have a duty to register with the local tax authority

17 This only applies in some regions or autonomous communities. A tenancy agreement can also be created by a Public Notary. However, this is not widely used in the residential sector as an oral agreement will suffice in judicial proceedings as it is not a legal requirement to have a written tenancy agreement

18 Licensing can be either Additional (for HMOs – houses in multiple occupation – two or more floors, let to three or more unrelated people, forming two or more households with shared amenities) or Selective (for every rental property within a geographical area)

19 <http://www.globalpropertyguide.com/Europe/Germany/Landlord-and-Tenant>

ties and registered with the tax authority within 30 days of signature otherwise the contract will not be valid should any judicial proceedings become necessary.

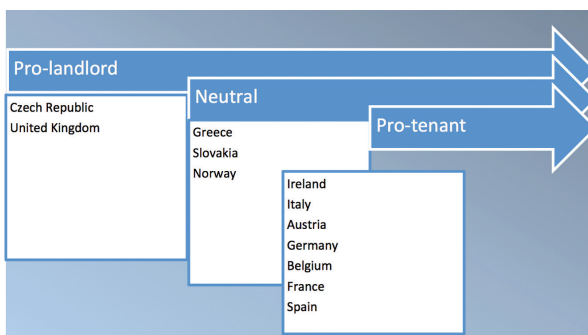
In both the UK and Slovakia there is no requirement for written contracts. However, the Slovakian Civil Code expressly states that where no written contract has been prepared, a written statement must be issued; identifying the key terms of the tenancy agreements. The aim is to avoid ambiguity in case there is a dispute between the parties. This does not mean that written contracts are not used in these countries. Indeed in the UK, best practice is to provide written tenancy agreements and most landlords do so.

1.2.3 The Ability to Negotiate Clauses

The ability for the parties to freely negotiate terms is the fundamental principal on which all contracts are based. However, this is curtailed in many countries for tenancy agreements. Contractual freedoms for tenancy agreements are greatest in Ireland, Greece, Norway, Slovakia and the UK. Greater restrictions on a landlord's ability to freely negotiate the terms of a tenancy agreement can be found in countries where the legal framework is strongly tenant-focused. For example, regulations in Germany and Spain make it almost impossible for landlords to freely negotiate the terms of rental agreements as most aspects of the contract are governed by legislation. In these countries, where provisions which have been freely negotiated between the parties are not in strict accordance with the legislation, such clauses are deemed void and replaced by the provisions stated in the respective legislation (most commonly in the Civil Codes).

It is therefore reasonable to conclude that in countries where there are fewer opportunities to freely negotiate the terms of the contract, the detailed regulations that have been put in place to govern tenancy agreements have been done so to protect tenants (as the weaker party to the contract). However, in countries that have either a neutral or a pro-landlord legislative framework, there is more flexibility for the parties to exercise discretion when agreeing their respective legal obligations. Whilst this might sound less tenant-friendly, this model is based on the negotiation and agreement of the contractual terms between the parties. In turn, this serves to provide a better starting point for both parties should any conflicts arise which need to be determined through a mediated negotiation in the form of State-mandated Alternative Dispute Resolution Procedures (ADR).

Table 4: The Characteristics of Europe's Residential Rental Legislation²⁰



²⁰ Source: Global Property Guide <http://www.globalpropertyguide.com/Europe>

1.2.4 Contractual Duration

The ability to freely regulate the duration of tenancy agreements should be considered another key contractual freedom. However, again, some Member States strictly regulate the duration of tenancy contracts. The most extreme case is found in Germany where it is deemed unlawful to agree a contract for a limited period²¹; the contract must be for an unlimited duration. Conversely, in the Czech Republic, Slovakia and the UK it is up to the parties to determine the duration of the contract. In these countries, landlords are free to set the duration for either a limited period (subject to certain limitations such as a minimum of six-months in the UK) or for an indefinite period of time. It should be stressed that regulations on 'indefinite' tenancies are often much more protective toward tenants. Consequently, the most common form of tenancy is for a limited period of time in order to allow landlords flexibility and the ability to regain possession of the property if the tenant breaks the terms of the tenancy.

Table 5: Duration of Residential Tenancy Agreements

Country	Indefinite Period	Fixed Term	Duration	
			Minimum Period	Automatic Renewals
Austria	Yes	Yes	3 years ²²	Only if no Termination Notice was given (initially for another three years and then subsequently for an unlimited duration)
Belgium	No	Yes	9 years ²³	Another three years if the landlord has failed of give the Termination Notice
Czech Republic	Yes	Yes	No	No ²⁴

21 Contracts can only be limited for good reason; e.g. that the landlord needs the property for himself or his family at the end of the contract or renovations need to be undertaken. There is no maximum period for 'limited' agreements, but they are in theory not renewable (a proviso intended to protect tenants). See more at: <http://www.globalpropertyguide.com/Europe/Germany/Landlord-and-Tenant>

22 If the duration of a contract is shorter than three years, the tenancy will be deemed unlimited irrespective of whether the tenancy agreement is in accordance with the legislation

23 Landlords have the option to offer either a long term or a short term tenancy. If the landlord opts for a long term agreement, then the minimum duration of the tenancy will be set at nine years. There is no minimum duration for short term tenancy agreements, but a maximum duration of three years applies

24 This information relates to renting apartments and condominiums. When it comes to any other property, the following provisions apply: If the tenant continues living in the property, the tenancy will be extended for the same period as the initial agreement. Currently, such provisions need to be clearly stated in the tenancy agreement for the letting of apartments and condominiums but from 1 January 2014 the rules governing the rest of the rental sector will apply to apartments and condominiums. However, this should not be understood as an automatic renewal; as is the case in other countries. In the Czech Republic, the landlord will need to let the tenant remain in the property even after expiration of the contract; which means in practice, the tenant will either leave the property or the landlord will need to regain possession through the Courts.

France	No	Yes	1 year (furnished apartment), 3 years (if landlord is an individual), 6 years (if landlord is a company)	Yes; for the same duration as the initial contract provided no Termination Notice was given by either party
Germany	Yes	No ²⁵	No ²⁶	No
Greece	No	Yes	3 years if the property is the tenant's main residence	No
Ireland	No	Yes	No	Unless terminated, an initial six-month tenancy will be automatically renewed for a further three and a half years (Part 4 tenancy). This will be followed by a further four year tenancy if the process is repeated
Italy	No	Yes	4 years (or 3 years for subsidised tenancies)	Unless terminated, renews for either a further two or four years
Norway	Yes	Yes	3 years (1 year – exception)	No
Slovakia	Yes	Yes	No	No
Spain	No	Yes	3 years if the property is the tenant's main residence	Yes; for one year provided no Termination Notice was given
United Kingdom	Yes	Yes	No ²⁷ /6 Months	Only when failing to terminate or renew (the tenancy will become a Statutory Periodic Tenancy)

It is possible to have fixed term tenancies in Norway. Before 2000, fixed-term contracts were restricted to furnished dwelling. However, this has now been abandoned and all contracts can be of a fixed duration; subject to certain limitations such as a minimum three-year duration. Exceptions are given to landlords who rent their own home for at least a year, provided they have a specific reason for shortening the minimum tenancy duration. The minimum period in both cases can be breached if the landlord wants to live in the property himself.

²⁵ Certain exceptions apply

²⁶ In Germany it is unlawful to set a minimum duration for a tenancy

²⁷ Additional rules apply for contracts of seven years or longer

In Ireland, landlords and tenants are free to decide on the length of the tenancy and normal practice is to offer tenancies of one year's duration. However once a tenant is in a property for six months, they can remain in the property for a further three and a half years. This is called a 'Part 4 tenancy' under the Irish Residential Tenancies Act 2004.

In Spain, the duration of the contract is freely established by the parties; subject to the limitations established in the Act on Urban Rentals 29/1994 as amended²⁸. If the initial term is less than three years, when it expires, the tenancy contract is automatically extended on an annual basis until three years from the start of the tenancy. After the first six months of a tenancy, the tenant may notify the landlord of their intention to leave the property by giving the landlord at least 30 days' notice before the expiry of the initial term or an automatic renewal. This gives the tenant, rather than the landlord, the choice about whether the short term contract would stand for the whole period of five years. However, Spanish law states these rules do not apply for properties that are not the tenant's main residence but instead used for vacations, studies or job transfers.

In Italy, parties may enter into tenancy agreements for a minimum of four years which are then renewed every four years unless terminated. This provision applies to 'free' or market-rent tenancy agreements. However, Italian law provides for 'subsidised' tenancies as an alternative. Such tenancies have a pre-determined rent, contractual terms and tenancy duration based on local agreements between the representative bodies of landlords and tenants. These tenancies cannot be for less than three years²⁹; although certain short-term contracts can be agreed where there is a specific and temporary requirement; such as student tenants or where a property owner is moving for work for a short period and wants to rent out their home until they return.

In Greece, the minimum tenancy for a tenant's main residence is three years, after which the contract is considered to be "unlimited" meaning that either party can bring the contract to an end without any compensation or notification. For tenancy agreements relating to properties which will not become the tenant's main residence; such as secondary residences and student lets, there are no limitations placed on the duration of the contract.

The longest minimum tenancy period in our case study countries exists in Belgium which has a minimum duration of nine years. However, in Belgium, landlords can choose to create a short-term contract instead which has a shorter duration but cannot be terminated by either party. Short-term contracts can be prolonged or renewed on the same terms and by the agreement of both parties in writing. However, the total length of the tenancy (combining the initial term and any renewals) cannot exceed three years. If a tenant remains in a rented property on a short-term contract for longer than three years, the contract will automatically become a nine-year tenancy (that will be deemed to have begun at the start of the initial short-term contract).

1.2.5 Determination of the Rent and Other Costs

In most countries, the initial amount of the rent can be freely agreed between the landlord and the tenant. However, the determination of future rent increases (or decreases) differs from country to country and is often restricted by legislation; even in pro-landlord jurisdictions.

28 The last amendment was from Law 4/2013 which came into force on 6 June 2013

29 In this case, any renewal is automatically fixed at two years

Table 6: Determination of the Initial Rent and Future Rent Increase

Country	Determination of Rent	
	Initial Rent Freely Agreed	Regulated Increase In Rent
Austria	YES (within scales set by the local authority)	YES
Belgium	YES	YES (annual increases are automatic and full redetermination is possible at the end of each three-year period in a nine-year tenancy) ³⁰
Czech Republic	YES	NO
France	YES (subject to considerable limitations) ³¹	YES (tenancies have an annual rent increase clause based on indexation. Rent can also be increased on renewal of a contract where the landlord can demonstrate that the current rent is below market value)
Germany	YES (subject to certain limitations)	YES (a graduated rent increase clause or an indexation clause is included in all tenancy agreements)
Greece	YES	NO
Ireland	YES (with limitations) ³²	YES (annual adjustments)
Italy	YES ³³	YES (cap on increases)
Norway	YES (but “unreasonably high rents” are unlawful) ³⁴	YES (subject to limitations during the first three years)
Slovakia	YES	NO
Spain	YES	NO ³⁵
United Kingdom	YES	NO

In Belgium, parties set the rent level when they agree the contract. Annual changes (‘indexation’) are provided by operation of law once a year in accordance with changes to the

30 It is not possible for landlords to increase the rent where existing tenants renew or prolong short term contracts

31 When a property is first rented out (for a newly-built dwelling) there is a specific State support scheme that for landlords. The rent level is then capped under the conditions of the scheme for landlords who choose to participate

32 The initial rent must not exceed the market rate. ‘The Private Rented Sector in the New Century – A Comparative Approach,’ Med dansk sammenfatning, University of Cambridge, September 2012, p. 162

33 Subsidised” tenancy contracts have pre-defined rents set within a specified range

34 “Unreasonably high” is generally held to mean in excess of average rents for comparable units in the same area. See in ‘The Private Rented Sector in the New Century – A Comparative Approach,’ Med dansk sammenfatning, University of Cambridge, September 2012, p. 157

35 This change has been brought in by Law 4/2013 and came into force on 6 June 2013

cost of living³⁶. However, it only applies to tenancy contracts where the property is the tenant's main residence and in practice is not often used by all landlords. A redetermination of the rent can be then requested by either the landlord or the tenant between the sixth and ninth month before the end of each three-year period of a nine-year tenancy if there has been change in circumstances. If there is a disagreement between the parties³⁷, a civil judge, the "Juge de Paix", has the authority to settle any dispute. The judge can order either an increase or decrease of between 10 – 20% of the rent previously agreed³⁸.

A comparable system exists in Spain. Following the setting of a market rent at the beginning of the tenancy, the parties can change the rent on an annual basis during the first three years of the contract as they agreed. However, if such a clause is not included in the contract, then the rent increase will be adjusted in accordance with changes to the Consumer Price Index (Indice de Precios al Consumo, IPC). In addition, the landlord must notify the tenant in writing of any increase in the rent. However, once the five years have elapsed, the rent may be freely adjusted by the parties. Similarly, in Italy rent may be freely negotiated at the beginning of a tenancy, but cannot be increased by more than 75% of the cost of living after the initial four-year term³⁹.

In Norway, during an agreed tenancy period the rent can be increased annually but only in accordance with the Consumer Price Index. When changing from one tenant to another, the landlord is free to set a new rent for the new tenant. However, rent must be considered reasonable and should follow local market rates. After three years, both parties can ask for the rent to be adjusted in accordance with market conditions. Irish law allows the rent to be reviewed and adjusted by market valuation once a year.

Austrian law still applies regulated rents (Richtwertmietzins) with the standard rent (Richtwert) being fixed every second year. Furthermore, rent increases depend on whether a tenancy is for a limited or unlimited duration. In the case of unlimited tenancies, rent increases can only be revised during the first three years. Fixed term tenancies, however, can be reviewed for up to ten years.

The situation in Germany is considered strongly pro-tenant and has many regulations relating to the rent a landlord can charge. Although initial rents can be freely negotiated and agreed between the parties, landlords can face criminal charges for demanding a rent in excess of 20% above the rent charged for comparable premises⁴⁰. All tenancy contracts contain either a 'graduated rent increase' or an 'indexation' clause. If the contract contains an 'indexation' clause, a landlord benefits from annual rent increases but cannot raise the rent within the initial 12 months of a tenancy and must comply with other obligations. As a result, such clauses are not commonly used. Whereas, 'graduated rent increase' clauses allow landlords to require tenants to accept rent increases to a level comparable with other properties in the area; provided that an increase in rent has not taken place in the last 12 months and that it has not increased by more than 20% in the last three years.

36 Once a year, on the anniversary of the tenancy, a proportional adjustment of the rent may be applied by the landlord if stated in the contract and is based on the cost of living index for the month preceding the annual due date according to the following formula: basic rent x new index / basic index (the index of the month during which the agreement was signed)

37 This applies to both increases and decreases in the rent and can be invoked by either party

38 <http://www.globalpropertyguide.com/Europe/Belgium/Landlord-and-Tenant>

39 <http://www.globalpropertyguide.com/Europe/Italy/Landlord-and-Tenant>

40 'The Private Rented Sector in the New Century – A Comparative Approach', Med dansk sammenfatning, University of Cambridge, September 2012, p. 142

However, the amount by which a landlord can increase the rent is currently very limited because rents are falling across 90 % of Germany. As a result, negotiation on the rent at the beginning of a contract is immensely important.

In France, rent increases during a tenancy cannot exceed the increase in the Rent Reference Index (IRL). However, parties can agree on a fixed date from which the indexation will be calculated or alternatively agree for it to take place at the end of each contractual year. Furthermore, there are two ways of increasing the rent when the tenancy contract is coming to an end. When the contract is renewed and the same tenant stays in the property, the rent is linked to the IRL and the only way for a landlord to avoid this limitation is to prove that the property is under-valued when compared with equivalent dwellings in the locality⁴¹. Since 1 August 2012 the same rules apply even when a new set of tenants take over the property; but only in 38 specific urban areas⁴². Under the new legislation three exceptions are provided for landlords. Firstly, if the rent falls below the average for the area, the owner can raise the rent above the IRL and the increase can be equal to 50 % of the difference between the IRL increase and the average market rate. The second and third exceptions relate to the renovations of the dwelling. If the landlord has completed renovations which equate to at least half of the last year's rent, then they can increase the rent by up to 15 % of the costs of the renovations (VAT included). If the cost of the renovation work is above the last yearly rent income, the landlord is free to fix a new rent.

Neither British, Czech, Greek nor Slovakian law regulates initial rents or increases. In Greece, if there is no agreement for the second and third year, the landlord is entitled to ask for an increase equal to the three-quarters of the annual official Consumer Price Index. In the UK, landlords can freely revise the rent either once a year or at the end of a fixed term Assured Shorthold Tenancy. In addition, a landlord is allowed to alter the rent even during the fixed term Assured Shorthold Tenancy however mutual agreement by both parties is needed. In the Czech Republic, if the tenant does not agree with a proposed rental increase, the landlord may seek a determination of the Court. The judge will then rule on rent increases for a landlord (and rent decreases if the case is initiated by the tenant) depending on the current market rate⁴³. Slovakian law does not regulate rent increases for the housing stock outside of the scope of "rent regulation". This means there is only the ability to raise the rent by mutual agreement of both contracting parties. It is important to bear in mind favourable "rent increase clauses" when drafting the initial contract. However, rent regulation still exists where residential premises are built, obtained or financed from State or Municipal funds. Such rents are regulated by the respective Ministries in order to protect tenants in apartments built post-nationalisation under the communist regime. After 1989, these dwellings returned to their original owners at market rent rates through restitution. Owners of such properties have long criticised the regulated rent system, as it is much lower than market prices which consequently limits their ability to

41 The owner must provide evidence that the property is undervalued. Depending on the level of the increase, this evidence must demonstrate that the property has been undervalued for a period of time (up to 10 years). In addition, there are specific rules applicable in Paris in order to prevent rent increases in the Capital

42 These areas have seen rent increases above 3.2 % since 2002 and are where average rents exceed € 11.1/m². It includes Paris, Lyon and Marseille as well as smaller cities such as Forbach (Moselle), Menton (Alpes-Maritimes) and Annemasse (Haute-Savoie)

43 From 1 January 2014 the parties can agree on the annual rent increase. However, if the parties do not agree on such provisions in the tenancy agreement, the landlord is able to increase the rent to the market rate as long as this does not represent more than a 20 % increase over three years

cover repair and maintenance costs. This has been recognised by State authorities and so the regulatory regime will only remain effective until 2016; after which the private rented sector will be solely based on free market economics⁴⁴.

1.2.6 Security Deposits

Security deposits are widely used by residential landlords and have become the source of much dispute and litigation over recent years. Many countries, therefore, have chosen to regulate the maximum amount of the deposit and the landlord's entitlements to withhold tenant security deposits after tenants move out.

In the Czech Republic, Germany and Italy, the security deposit must not exceed the equivalent of three monthly rent payments and the landlord must place the deposit in a bank under the tenant's name (with the exception of the Czech Republic). On top of that, Italian deposits are given back to the tenant with interest at the end of the contract. In Spain and Ireland, a cash deposit should be equivalent to one month rent; however a Spanish landlord must file the deposit with their local authorities Housing Department as a security. In Norway, a landlord can ask for a deposit up to a maximum of six month's rent to be placed in a bank under the name of the tenant; however it cannot be withdrawn from the bank without the landlord's prior permission.

Table 7: Deposits

Country	Deposit		
	Maximum Amount	Regulated Deposit Schemes	Other Available Forms of Guarantee
Austria	6 months	YES (required saving account)	—————
Belgium ⁴⁵	2 months	YES (bank account)	Bank endorsement, securities and personal surety or insurance (up to three month's rent).
Czech Republic	3 months ⁴⁶	YES (additional rules apply)	Non-possessory pledge
France	1 month ⁴⁷	NO	Surety, insurance on unpaid rent and parent's bond on rent or other unpaid amounts
Germany ⁴⁸	3 months	NO	The deposit must be kept separate from the landlord own money

44 Rental flats acquired using State funds will remain subject to regulation

45 The rule applies only for a tenants' main residence

46 From 1 January 2014, the maximum amount of a deposit must be less than six months' rent

47 Rent only (charges are excluded) with no indexation

48 Excludes utility charges

Greece	1 – 2 months	NO	_____
Ireland	2 – 3 months	_____	_____
Italy⁴⁹	3 months	_____	_____
Norway	6 months	YES (bank account)	_____
Slovakia	NO	NO	Non-possessory pledge
Spain	1 – 2 months ⁵⁰	YES (registration with the local authority authority)	YES
United Kingdom	No restriction ⁵¹	YES (four Government- authorised Tenancy Deposit Protection Schemes)	_____

Nonetheless, there are further instruments that serve to secure the rent payments of the tenants. For instance, in Belgium, even bank endorsement, securities without limit and personal sureties are allowed as long as they do not exceed two months' rent.

1.2.7 Maintenance and Repairs

As a general rule, landlords are obligated to ensure the property is habitable at their own cost and that the building is in a safe condition throughout the tenancy. It is also a tenant's responsibility to inform the landlord about any defect in a timely manner.

However, there are minor differences in certain countries when handling small defects. For example, in Spain a tenant is responsible for all minor repairs caused by the ordinary use of a dwelling. In Germany, responsibility for painting the flat can be passed to the tenant as part of the tenancy agreement. In France, routine maintenance and repairs are the responsibility of the tenant. There is also a prescribed list of costs incurred for the common areas of apartment buildings which can be recovered from the tenant by the landlords if they were paid by the landlord in advance (lighting, security, elevator operation)⁵².

In Slovakia, tenants are expected to cover minor repairs at their own costs; but this can be waived by agreement between the parties⁵³. However, due to the contractual freedoms given to both parties when negotiating the terms of the contract, in Czech and Slovakian tenancy agreements it is possible to pass all the repair and maintenance costs to the tenant. However, in practice tenants do not normally agree to this and so market forces make it almost impossible for landlords to include such clauses.

In Belgium, only defects caused by force majeure (chance occurrence or unavoidable accident) must be rectified solely at the landlord's expense. For all other maintenance and repairs, the parties are free to negotiate who will be responsible.

Interestingly in Italy, Confedilizia, on behalf of landlords, and the major tenant's unions (CGIL, CISL, UIL), have signed an agreement which creates a scheme designed to decide on the division of costs between both parties for maintenance and repairs.

49 <http://www.globalpropertyguide.com/Europe/Italy/Landlord-and-Tenant>

50 The maximum deposit amount is dependent on whether or not the money is deposited with the Public Administration Office

51 Deposits in excess of two month's rent become 'premiums' which give tenants additional rights and makes regaining possession of the property more difficult

52 Decree of 1987

53 <http://portal.gov.sk/portal/sk/default.aspx?catid=41&etype=2&aid=981>

1.2.8 Termination

There are many different legal regimes which regulate the termination of tenancy contracts across Europe. The most common method for a tenancy to an end is the expiration of a fixed-term contract. However, in certain countries tenants have the right to extend such contracts on expiration, or the tenant is allowed to bring the contract to an end for no specific reason. The termination of indefinite contracts can be burdensome for landlords as they are not afforded the same termination abilities that are available for fixed-term contracts.

Table 8: Termination

Country	Reasons required for early Termination		Termination Notice	
	Landlord	Tenant	Fixed Term Contracts	Indefinite Contract
Austria	YES	NO	As agreed in the contract	As agreed in the contract
Belgium	YES	NO	3 months for tenants and 6 months for landlords in the case of 9-year contracts. Three months for both parties in case of a short term contract	Not applicable
Czech Republic	YES	NO ⁵⁴	NO	3 months
France	YES ⁵⁵	YES ⁵⁶	6 months	Not applicable
Germany	YES	NO	Not applicable	Between 3 and 9 months
Greece	YES	NO	NO	NO
Ireland	YES ⁵⁷	NO ⁵⁸	NO	Depends on the length of the contract
Italy	YES ⁵⁹	NO	6 months	Non applicable
Norway	YES	NO	NO (or 3 months)	As agreed in the contract
Slovakia	YES	NO	NO	3 months

54 From 1 January 2014 tenants will only be able to terminate a fixed-term tenancy if their circumstances change and they will need to provide a justifiable reason for the early termination

55 Reasons are required for a landlord to refuse the automatic continuation of the contract

56 Providing reasons for the termination shortens the notice period from three to one month

57 Only in situations where there was no fixed term tenancy in place

58 Only in situations where there was no fixed term tenancy in place

59 Reasons are required for a landlord to refuse the automatic continuation of the contract

Spain	YES	YES	1 month	Not applicable
United Kingdom	NO	NO	1 month for tenants and 2 months for landlords	Not applicable

In Spain, failure to pay rent, damage caused by the tenant, use of the property for immoral purposes, subletting without permission from the landlord or causing a serious nuisance to the local residents are reasons for the landlord to legally terminate the contract⁶⁰. In Ireland, the dwelling must not be overcrowded which means that if a tenant lets more people occupy the dwelling than was stipulated in the contract the landlord has lawful grounds to terminate the contract. Further, if a landlord decides to change the use of the property, they are able to bring the contract to the end. Tenants are also entitled to give notice at any time without giving a reason⁶¹. However, regardless of the reasons for the termination, notice periods depend on the length of the tenancy and are specified in the Residential Tenancies Act 2004.

Contracts can only be terminated at the end of a fixed-term tenancy in Greece. Landlords cannot request the property back and tenants cannot abandon the property without providing compensation to the landlord to the value of all the rent due under the tenancy. In Norway, landlords and tenants can enter into a fixed-term tenancy agreement that comes to an end without either party providing notice. However, the parties have the ability to include a specific clause in the agreement and set the length of a notice period. In that case, the notice period is often three months. For indefinite contracts, the tenancy runs until terminated by an agreed Termination Notice.

In Italy, during the first four-year contractual term, a landlord may only refuse to renew a contract for reasons expressly permitted in law and by notifying the tenant in writing at least six months before the tenancy is due to expire. Therefore, in Italy, the reasons for refusing to renew a contract are more important than the reasons to terminate a contract. Likewise, French landlords need to provide reasons why they intend to terminate the contract (or do not intend on renewing a contract) and must give the tenant at least six months' written notice. Legitimate reasons include where the landlord wishes to use the property as their (or a member of their family's) main or primary residence or where they plan to sell the property. Three specific situations might occur when dealing with tenancy renewals in France. Firstly, if the landlord takes no action, the tenancy will continue automatically; neither the landlord nor the tenant will need to sign any additional documents and the tenancy will continue using the same terms and conditions. Secondly, the landlord can offer a new tenancy of between one and three years. In this case, the landlord needs to inform the tenant and provide reasons why a short-term tenancy is being offered; for example, retirement or that the landlord will need the property as their (or a member of their family's) main residence. This has to be done at least six months before the end of the contract. Further, before the new tenancy expires, the landlord will need to confirm that the reasons given for the short-term tenancy have actually occurred; otherwise the tenancy will be automatically renewed for a further three-year period. Such confirmation needs to be sent either by registered letter with an acknowledgment of receipt or by a bailiff at

60 See more at: <http://www.globalpropertyguide.com/Europe/Spain/Landlord-and-Tenant>

61 See more at: <http://www.globalpropertyguide.com/Europe/Ireland/Landlord-and-Tenant>

least two months before the end of the new tenancy. Finally, the landlord may, subject to the very strict conditions set out in Chapter 1.2.5 above, propose a rent increase. If the tenant refuses to accept the rent increase, then the landlord has to initiate court action where a judge will fix the new rent level. It should also be noted that in this situation, a landlord cannot ask for any deposit paid by the tenant at the beginning of the tenancy to be increased. Another interesting rule in France relates to a tenants ability to terminate a tenancy agreement. In ordinary circumstances, a tenant must give three months' notice. However, in certain circumstances such as a job transfer or the loss of a job, or the health conditions of a person over 60 years of age, the tenant is allowed to provide one month's notice. Further, whilst a landlord is only allowed to terminate a tenancy at the end of the contract, a tenant can do so at any point in the tenancy.

In Germany, a landlord is only allowed to terminate a tenancy agreement if the landlord needs to use the property as their main residence or if the building needs to be demolished. In exceptional circumstances, landlords have the right to terminate a contract due to the tenant's breach of the terms; such as the failure to pay the rent.

In Austria the notice period for termination can be agreed by the parties. However, landlords can only terminate a tenancy under one or more of the grounds established in legislation. Belgian law allows tenants to terminate the nine-year contract at any time by providing three months' notice. However, if the tenant terminates the contract during the first three years, then they are liable to pay compensation of three, two or one months' rent depending on whether the tenancy ends in the first, second or third year. This rule only applies if the tenancy has been registered. If it has not been registered, then the tenant is free to terminate the contract at any point and is not liable for any compensation. Landlords can terminate a tenancy agreement at any time if they need to use the property as their (or a member of their family's) main residence provided they give six months' notice. At the end of each three-year period, a landlord can also give six months' notice if they intend on undertaking renovations and where the costs of the works will be the equivalent of three years rental income. If the renovation works concern several rented properties in the same building, the value element is reduced to two years' rent. At these junctures, landlords may also terminate the contract without reason but will be liable to pay compensation equivalent to either six or nine months' rent depending on whether there are three or six years left on the tenancy. The situation is slightly different for short-term contracts where three months' notice applies to both parties.

In the UK, landlords and tenants can only end fixed-term tenancies when the term expires. If nothing is done, the tenancy will automatically become a Statutory Periodic Tenancy which may be terminated by either the tenant giving one months' notice or by the landlord giving two months' notice.

In the Czech Republic and Slovakia, tenancy agreements expire without the need for any notice of termination at the end of the fixed-term. However, if the parties continue the contract beyond expiry, the tenancy would be automatically renewed for the same length of time and under the same conditions⁶². In case of indefinite tenancies, Czech and Slovakian landlords may terminate the contract by providing three months' written notice⁶³ but

62 This rule does not apply when renting apartments or condominiums in Slovakia. In these cases, contracts must be expressly extended by both parties

63 The same termination period applies irrespective of whether the tenancy is for a fixed-term or indefinite duration

only under one or more of the grounds established in legislation; which are similar to the reasons for termination in Spain and Germany. However, Czech law recognises two types of termination grounds; one set of grounds where reasons set out by the landlord are sufficient to end the contract, and the second set of grounds where the reasons set out by the landlord requires judicial approval before the landlord can serve the Termination Notice on the tenants. Both types of termination require specific reasons for the landlord to end the tenancy. Tenants can also terminate the contract by providing three months' notice in writing but do not need to provide reasons.

1.2.9 Regaining Possession through the Courts

When tenants refuse to leave the property at the end of a fixed-term tenancy or after the valid service of a Termination Notice, landlords need to regain possession of their property through the Courts; commonly called 'Eviction'. This process can be lengthy and expensive in many countries. Indeed, a landlord's ability to regain possession of their property at the end of a tenancy is a crucial factor for investors in deciding whether to enter the private rented market; and can be used as a barometer for the efficiency and effectiveness of a country's rental regulation.

Usually, a Court Order must be obtained for a landlord to successfully regain possession of their property when a tenant refuses to leave voluntarily. However, this should not be mistaken for termination at the end of a contract. Courts only become involved in the termination of a tenancy to confirm when a tenant either refuses to leave or contests the legality or validity of a Termination Notice.

Table 9: Eviction Procedures

Country	Eviction Procedure			
	Court Order	Bailiff	Special Procedures for the Non-Payment of Rent	Length
Austria	YES	NO	NO	From 6 months
Belgium	YES	YES	NO	From 2 – 3 months
Czech Republic	YES	YES	NO	From 6 months
France	YES	YES	YES	Around three years and no evictions during winter
Germany	YES	YES	YES	Up to 36 months in case of a tenant's main residence
Greece	YES	YES	YES	Approximately 2 months in the case of rent arrears and 12 months for termination

Ireland	YES	YES	YES	In excess of 2 years
Italy	YES	YES	YES	2 years approximately
Norway	—————	—————	NO	90 days
Slovakia	YES	YES	NO	11 months
Spain	YES	—————	YES	Up to 5 months
United Kingdom	YES	YES	YES	6 months

In order to regain possession of their properties, landlords must follow a two-stage process of (1) obtaining Court Order followed by (2) its execution by a Bailiff, in every case study country. However, in many countries, this is far from a simple process.

Landlords face considerable obstacles in France and can only regain possession of their property for rent arrears. However, before they can begin Court proceedings they must first request a Payment Order from a bailiff. This is coupled with a ‘grace period’ of up to one year for a tenant to repay the outstanding rent and landlords are banned from evicting tenants during the winter months. This makes regaining possession of their properties extremely difficult for landlords in France.

In Germany possession proceedings are very slow and extremely expensive for landlords. Court action can only begin two months after the termination of the contract and it can take up to 18 months to get a Court Order; and longer for cases of possession based on the non-payment of rent. That Court Order must then be served on the tenant by a bailiff. It has been noted that certain tenants take advantage of this over-protective legislation by moving into apartments and never paying the rent; moving to a new apartment just before the bailiff arrives to evict them. In order to prevent this, the Bundestag passed a law that will come into force in summer 2013 to provide a fast-track procedure for cases relating to the non-payment of rent. It is hoped that this will allow the Courts to process such cases and despatch bailiffs in a matter of weeks rather than months or years.

There is already an accelerated possession procedure for the non-payment of rent in Italy. However, whilst this process is quicker than ordinary possession proceedings which can take over two years; it is still very slow.

All disputes need to be resolved with the Private Residential Tenancies Board at formal hearings in Ireland where legal representation is not necessary. However, all enforcement orders must be issued through the Courts which means this process may take over two years. In Spain, landlords can apply to the Courts to both evict a tenant and to demand the payment of outstanding rent and other sums (costs accumulated during the eviction procedure itself). Tenants can avail themselves of the “interruption procedure” where they can avoid eviction if they pay all outstanding money owed to the landlord. However, this procedure can only be used once during a tenancy.

In Greece, a landlord’s ability to regain possession of their property for the non-payment of rent was significantly accelerated in 2012. The procedure can now start after one month of non-payment by the tenant with the landlord officially informing the tenant that they have 15 days to pay the rent. If the tenant pays the rent in those 15 days, then the procedure comes to an end. If the tenant does not pay the rent, the landlord can ask the Court

for an Eviction Order. The Order will be issued within a few days and without the need for a hearing. It can be executed 20 days after it has been served on the tenant. To follow this procedure the landlord must possess a written and registered rental agreement and be certified by the tax service that the rent has been declared in the landlord's annual income declaration (see Table 3).

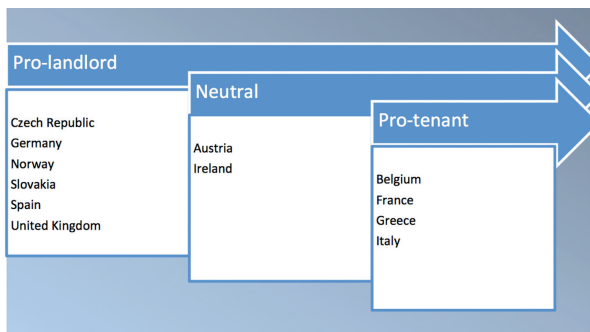
In the UK, landlords are able to take advantage of an accelerated possession procedure and gain a Court Order for Possession without needing to give a reason for the termination of the tenancy; known as "No Fault Possession". This can only be used at the end of a fixed-term tenancy or when a Statutory Periodic Tenancy is in existence. If a landlord wishes to regain possession of their property during a fixed-term tenancy, they must demonstrate that one or more of the 17 grounds established by Section 8 of the Housing Act 1988 have been met. Landlords can also reclaim outstanding rent through this process but it takes several months longer than the accelerated procedure. Irrespective of which process is used, once a Court Order has been obtained and served on the tenant, they have 14 days to leave the property. If the tenant does not leave, the landlord must return to Court and get an Order for Eviction where a Bailiff will come and forcibly remove a tenant from the premises. This can take up to a further two months to take the total length of time to regain possession to over six months.

Belgium's possession procedures are smoother and quicker than in most other countries and Court Orders can be obtained in around three months. However, landlords cannot pass the costs of the proceedings onto tenants (they have to cover all of costs themselves) which can make it an expensive process.

1.3 Rental Legislation in the Commercial Sector

In most case study countries, the rules on commercial leases are considerably more liberal as the perceived need to protect the weaker party is not required for business to business transactions. Instead, both landlord and tenant are seen as equally strong partners. It is presumed that both parties understand the law and have equal power when negotiating the terms and conditions of the agreement. However, this liberal approach does not exist in all case study countries.

Table 10: Characteristics of Europe's Commercial Rental Legislation



Belgium, France, Greece and Italy all have legislation which protects commercial tenants. In Belgium, the tenancy has a minimum duration of nine years and tenants are entitled to request up to three renewals (i.e. up to 36 years)⁶⁴. The landlord's right to refuse a renewal of tenancy requires the same procedure and reasons irrespective of whether it is commercial or residential tenancy (see Chapter 1.2.8 for more details). Such strict rules also apply for both rent reviews and annual increases.

The same rules apply in France⁶⁵. However, in addition to the requirements in Belgium, Greece and Italy, if a landlord wishes to refuse the renewal of a tenancy at the end of the nine-year contract, they must serve a six-month Termination Notice on the tenant through a bailiff and pay compensation to the tenant equal to the value of the business operated from the property⁶⁶. It should be noted, that the landlord cannot regain possession until the tenant has received this compensation. Where no action is taken by either the landlord or the tenant at the expiry of the term, tenancies will automatically be renewed for a further twelve years under the same terms and conditions as the initial tenancy. Further, commercial tenants can terminate tenancy after the first three years by serving a six month Termination Notice on the landlord through a bailiff. However, if the tenant terminates the contract, they are not entitled to any compensation. Therefore, it can be concluded that in France and Belgium, regulation on commercial tenancies are even stricter than on residential contracts.

In Greek law, landlords have two options: Either they can provide a tenant with a 12 year contract which would be automatically renewed unless the landlord pays the tenant 24 months' rents in compensation or landlords can offer 16 year contracts where there is no need to pay compensation if the tenancy is not renewed. Nevertheless, landlord can terminate contracts for either a personal need (such as the landlord or a family member needing the property) or if the building is being demolished. Parties are free to agree on the rent level at the beginning of tenancies and on rent increases. If the parties cannot agree on rent increases, regulation states that annual increases will be 75 % of the rise in the cost of living for that year. However, this is expected to change shortly, and move towards freely agreed new rentals and the gradual deregulation of existing tenancies.

Table 11: Commercial Rent Regulation

Country	Rent		Duration		Termination	
	Initial Rent	Rent Increases	Minimum duration	Right of Renewal	Tenant	Landlord
Austria	Free	Regulated ⁶⁷	NO ⁶⁸	NO	No information	No information

64 Tenants must request a renewal between 18 and 15 months before the tenancy expires

65 Rent increases on renewal are capped in the same way as during the initial tenancy

66 Only premises which are designated for commercial use by the local authority can subject to a commercial tenancy

67 There are two types of commercial tenancies in Austria: regulated and non-regulated

68 Commercial tenancies have no minimum duration in Austria. However, if the contract is for a fixed-term then the rent value of the property is reduced by 25 %

Belgium	Free ⁶⁹	Regulated ⁷⁰	9 years	YES (up to 36 years)	At the end of each 3-year period (with 6 months' notice)	At the end of the ninth year but only when providing a reason for refusing the contract's renewal and/ or by providing the tenant with compensation
Czech Republic⁷¹	Free	Free	NO	NO	3 months' notice	3 months' notice (for indefinite contracts without the need to provide a reason) ⁷²
France	Free	Regulated	9 years	YES	At the end of each 3-year period	At the end of ninth year paying compensation to the tenant
Germany	Free	Free	NO	NO	Notice without the need to provide a reason	Notice without the need to provide a reason
Greece	Free	Free	12 years (to 16 years)	NO	3 months' notice but only after the tenancy has completed its first year	For two reasons: demolition or personal use. Landlords must pay compensation to the tenant
Ireland	Free	Free	5 years (can be opted out)	YES (but can be waived)	Freely agreed	Freely agreed

69 Parties are free to agree on the rent for an initial commercial tenancy and any subsequent renewal. If the parties are unable to reach an agreement on rent levels for a renewal, a Judge will determine the increase, taking into account the current rent level on similar tenancies and other circumstances such as the tax value of the premises and its sales value. Judges cannot set rent levels above what was asked by the landlord or below what was offered by the tenants

70 After each three-year period, either party can request a rent review. Where agreement on the new rent level cannot be reached, such reviews can only go before a Judge for determination where there has either been a change of circumstances (in either party) or where the request amounts to either an increase or decrease of more than 15% in the rent

71 Provisions on commercial lease in the Czech Republic are currently contained within Law No. 116/1990 Coll. However, from 1 January 2014 this Law will be replaced by provisions incorporated in the Civil Code

72 Reasons must be provided to prematurely terminate a fixed-term tenancy in the Czech Republic. From 1 January 2014, a termination notice for indefinite commercial tenancies will be extended to six months

Italy	Free	Regulated	6 or 9 years	YES (6 or 9 years)	Six months' notice	6 months' notice and only for the reasons that are expressly allowed in law
Norway	Free	Free	NO	NO	—————	—————
Slovakia	Free	Free	NO	NO	3 months' notice for indefinite contracts	3 months' notice for indefinite contracts without needing to provide a reason ⁷³
Spain	Free	Free	NO	NO	—————	—————
United Kingdom	Free	Free	NO	NO	Upon expiry of a fixed-term contract	Upon expiry of a fixed-term contract or for any breach of tenancy agreement

In the Czech Republic, Germany, Norway, Slovakia, Spain and the UK, the situation is considerably different. The landlord and tenant are free to negotiate all of the terms and conditions of the tenancy. There are no restrictions on the length of a tenancy. The parties are free to negotiate any rent increases. Neither the landlord nor the tenant needs to provide reasons or meet any regulatory requirements to terminate a tenancy and the notice periods are the same for both parties.

However, as the Czech Republic and Slovakia operate both fixed-term and indefinite commercial tenancies (in the same way as they do for residential tenancies), as long as they can provide one of the reasons stipulated in law, either party can terminate a fixed-term tenancy early by providing the other party with three months' notice. The parties are also entitled to include specific clauses on termination in tenancy agreements.

Irish and Austrian regulations fall somewhere in the middle. Irish law offers the ability for the parties in commercial tenancies to opt out of the stricter rules which are applicable to residential tenancies. Austrian law however creates two types of commercial tenancy: regulated and non-regulated. It is not possible to increase the rent in non-regulated tenancies whereas rent increases for regulated tenancies are linked to the Consumer Price Index (but capped at 5%). Therefore, it is beneficial for landlords to create regulated tenancy agreements as they have more flexibility in adjusting contractual provisions in the future.

1.4 Conclusion

1.4.1 Rental Legislation in the Residential Sector

A lot has been said about the housing market having a considerable impact on the economy as a whole, which is the reason why the European Commission decided to closely monitor

⁷³ Reasons must be provided to prematurely terminate a fixed-term tenancy in Slovakia

the market in each Member State. The European Commission also came to the conclusion, especially from the latest recession, that in order to bring back sector stability, the housing market will need some structural reforms to overcome the danger of housing bubbles.

Currently, only 18.1 % of European households⁷⁴ live in the private rented sector. This means that Europe is a continent of home owners. To change this, is beyond the scope of European Union competence. Especially since the concept of ownership, fiscal incentives, mortgage market regulations and rental law is so varied across Europe⁷⁵.

This chapter has focused on the regulatory framework for the residential rented sector and aimed to analyse the legislation in the twelve case study countries⁷⁶, and provide an overview of their relative strengths and weaknesses. Germany has the largest private rented market. In Slovakia and Spain, the private rented sector barely reaches 10 % of the housing stock and Norway's is only slightly larger. There are many reasons for the difference in size of the sectors across the European Union. The historical subsidy system in Germany has offered a stable private rental market whereas the housing policies of post-communist countries can explain high ownership rates in Central and Eastern Europe. Nevertheless, the focus of this chapter was to understand the differences in the rules regulating relations between landlords and tenants in order to start a debate on the best provisions for contemporary, effective and stable private rented regulation, which would enable owners to offer their premises to tenants without losing their fundamental right to own property. Since the relationship between landlords and tenants is created by an agreement between the two parties, this chapter started by exploring concept of contractual freedom and the regulations imposed on the terms within tenancy agreements. We have found that all countries; except Greece, Slovakia and the UK require a written contract. Registration is also required in Belgium, Ireland and Italy. However, additional requirements on the contents of tenancy agreements are also common features in many countries; for example, prescribed annexes or the licencing of landlords. Contractual freedom as a whole is much wider in the Czech Republic, Greece, Ireland, Norway, Slovakia and the UK but limited in France and Germany where it is hard to depart from legal provisions. Even though in both Germany and France regulation is strict, the difference between their market shares in private rental sector is quite significant. Therefore, strict regulation in Germany might not serve us as the most appropriate explanation for its housing stability.

When it comes to determination of the rent, there are two main aspects which were observed. Firstly, we considered whether there are limitations on determining the initial rent when agreeing a tenancy contract. In most case study countries, the parties are free to agree on such terms. Only in Austria, Germany, Ireland and Norway are there certain limitations that need to be taken into consideration. To be specific, in Austria rent regulation still applies. Therefore, even though the parties are able to initially negotiate the rent, tenants can nevertheless request an assessment of the rent at any time during the contract with the landlord liable to pay back any excess over the assessed rent, with interest, up to a maximum of three years⁷⁷. In the remaining countries, limitations are set as to the maximum rent level; it needs to be 'decent' in Norway, not 'exceed open-market rates' in Ireland and not 'exceeding 20 % of the rent charged for comparable properties in Germany.

74 <http://www.hypo.org/Objects/6/Files/HYPOSTAT%202011.pdf>

75 Quarterly Report on the Euro Area, DG ECFIN European Commission, Volume 10 No° 3 (2011)

76 Austria, Belgium, Czech Republic, France, Germany, Greece, Ireland, Italy, Norway, Slovakia, Spain and the UK

77 More at: <http://www.globalpropertyguide.com/Europe/Austria/Landlord-and-Tenant>

Secondly, we considered the ability to raise rents during tenancies and two trends have emerged. Namely, there are countries which initially set no restriction on rent increases. Therefore, it is common in the Czech Republic, Greece, Slovakia, Spain and the UK for mutual agreement on rent increases. If the parties cannot agree in the rent increase, Czech, Greek and Spanish rules allow landlords to increase rent either by following market values (the Czech Republic) or by considering the annual Consumer Price Index (Greece and Spain).

In the seven remaining countries, there are distinct regulations governing rent increases. Again two tendencies have been observed. Firstly, landlords have the ability to increase the rent annually using the Consumer Price Index as the benchmark. The second is to allow rent increases based on market conditions. This second ability is generally only allowed within specific time periods (on a three-year basis in many countries). For example in Germany, such rent increase can only take place once a year provided the rent does not increase by more than 20 % in any three-year period.

In order to secure regular payments of rent, tenancy deposit schemes have been established in many countries by strict Government regulation. Legislation governs setting a maximum amount of deposits which landlords can request and regulating a landlord's access to the specific bank account where the money is held; which is usually created in the tenant's name. The maximum amount set for deposits ranges from one to six months' rent; except Slovakia, where there is no legal restriction. Other available forms of guarantees are in place in Belgium, the Czech Republic, France, Slovakia and Spain.

It is common to see regulations stipulating the minimum duration of tenancy agreements, reasons or clauses under which the contract may be terminated and the length of notice periods necessary to terminate tenancy agreements. Those provisions serve to ensure security of tenure for tenants. Under indefinite contracts, we see a landlord's right to terminate a tenancy restricted to specific reasons and only after complying with minimum notice periods.

When we consider the minimum duration of tenancy agreements, two main trends have emerged. The Czech Republic and Slovakia offer indefinite contracts where there is no further need to stipulate the minimum duration of a tenancy in order to guarantee stability in the sector. Germany does not even allow landlords to create fixed-term tenancies unless there are exceptional reasons. On the other hand, in Belgium, France, Greece, Italy, Spain and the UK fixed-term contracts are available. Governments tend to state at minimum duration where tenants have security of tenure. However, there are exceptions in Austria and Norway where both methods are present.

In order to terminate contracts, conditions imposed on landlords also serve to provide tenants with added security of tenure. Tenants are usually able to end tenancies easier and without providing a reason. Landlords in most Member States must provide a legitimate reason to end a tenancy. Those reasons are commonly established in law (often incorporated in Civil Codes). In France and Italy reasons to refuse the renewal of the contract have replaced reasons for termination as landlords do not have the ability to regain possession of their property during the tenancy period. Likewise, Greek landlords can request the property back only when the tenancy expires.

Minimum notice periods are also shorter for tenants. This is particularly evident in Belgium, France and the UK. However, regulation in this area is very diverse; partly caused by the fact that not every case study country operates both fixed-term and indefinite

contracts. Some countries do not require any notice periods for terminating short term contracts. This is the case in the Czech Republic, Ireland, Norway and Slovakia where they only regulate the length of notice periods for indefinite contracts (usually three months). In cases where tenants are not willing to leave the premises following the legitimate termination of tenancy, landlords need to regain possession of their properties; through a process commonly termed 'eviction'. In most countries, this requires a Court Order. Ireland is an exception as the Government have now passed tenancy disputes from the Courts to the specialist Private Residential Tenancies Board. Following a landlord obtaining a Court Order, it is common for the courts to appoint bailiffs to execute the eviction. This is common practice across all case study countries. However, it is interesting to compare the differing treatment of tenants who fail to pay the rent. One could foresee that such a breach of contract should be easily and quickly resolved. This is the case in Norway even though there are general rules on eviction procedure applicable for non-payment cases as well. The procedure is not only quick but tenants have to pay all outstanding rent (because they were the ones who breached the contract). However, if a Norwegian landlord is able to re-let the property at equal or higher price, then the obligation on the tenant is waived. Thus, a balance has been created where landlords are protected from tenants who breach the contract but not unjustifiably enriched by getting the same rent twice; in form of rent by a new tenant and compensation from the old tenant. At this point it is also worth noting that the maximum deposit allowed in Norway is six months' rent. Therefore, Norwegians are well protected against non-paying tenants. In comparison, French legislators have made it overly onerous for landlords to regain possession of their property from those tenants who do not pay their rent. Here, landlords need to firstly a request payment order from a bailiff⁷⁸ and only after that can they apply to the Courts for an Eviction Order. Clear, unambiguous and effective rental legislation will provide property owners with the certainty and legislative safeguards to feel comfortable renting out properties. Legislation should be designed to ensure that tenants are protected from abuses by landlords (for example, economic evictions) but not to support them if they do not pay their rent and protect them from being evicted for such serious breaches of contract. Therefore, as non-payment of rent is the most common reason why tenants breach their tenancy contract, this should be the first issue taken into account when drafting tenancy regulations. This will serve as cornerstone for the creation of a stable, effective and efficient private rented market.

1.4.2 Rental Legislation in the Commercial Sector

There is vast difference between how the Governments of our case study countries regulate residential and commercial tenancies. Residential tenancies are often the subject of protective provisions designed to help the weaker party, the tenant, in contractual negotiations with their landlords. Commercial tenancies on the other hand are much more liberal with greater contractual freedoms for both parties. In Germany, the contrast between the rules on residential and commercial tenancies is significant. Germany is one of the most pro-tenant countries when it comes to residential

78 This is extra step in addition to the ordinary eviction procedure which only applies in cases involved the non-payment of rent

tenancies. However, it is one of the most liberal when it comes to commercial contracts. Thus, there is a clear and sensible rationale; commercial tenants are in a much stronger position in tenancy negotiations than residential tenants and therefore residential tenants need additional legislative protections. The Czech Republic, Norway, Slovakia, Spain and the UK all follow the same principle for commercial leases and therefore have chosen not to overly regulate commercial tenancies; leaving it up to the parties to negotiate the terms of the tenancy.

Even though the minimum length of a Greek commercial tenancy is the longest of all our case study countries, landlords still have the ability to freely negotiate their rent increases and have two specific reasons for an early termination. However, two countries, Belgium and France, stand out by providing even stricter rules on commercial tenancies; especially in regard to the duration of the tenancy, options available for termination and that early termination cannot occur without compensation. Therefore, regulation in Greece, Belgium and France can be considered as pro-tenant and significantly restrictive.

2. Taxation of the Private Rented Sector

2.1 Introduction

It has often been considered that the social and economic benefits of owning property should be transferred to society through the economic, administrative and social policies of Government and Municipalities'. This is at the expense of the property owners⁷⁹. Therefore, it is not surprising that in some countries, land and buildings have become the asset class most burdened by taxation⁸⁰. For example, in France there are more than 40 different taxes levied on property; from construction taxes to acquisition taxes, rental taxes and then sales tax. Over time, such burdens can reach 80 % of the property's value.

Our case study countries show that there are several approaches when nations design their property taxation regimes. One of the main features of a property taxation system is that ownership of a house involves both an investment decision and the on-going use of resources⁸¹. Hence, property is often burdened with capital taxes on the investment itself (based on the property's value) and consumption taxes for goods and services used at the property (tax on rental income, Value Added Tax (VAT) on maintenance and other services as well as taxes for the provision of local services).

Therefore, this chapter will focus on the tax systems that exist in our case study countries; what taxes do landlords pay, how much tax do they pay and how is it apportioned between investments taxes and consumption taxes. In particular, we will focus on the taxation of revenues from rental income, Capital Gains Tax, transaction taxes and recurrent property taxes.

However, it should be noted that there are several other additional taxes (such as inheritance and donation taxes, VAT, solidarity taxes on wealth and taxes on vacant dwellings), which although not taken into consideration in this analysis, nonetheless considerably increase the taxation burden placed on landlords and property owners.

A special focus will be given to taxes imposed on the transfer of ownership in order to understand whether there is a need for the European Union to consider shifts within Member States' property taxation regimes as part of its European macroeconomic governance strategies contained within the European Semester.

2.2 Taxation on Rental Income

Income received from letting residential property is taxed as either "unearned income" (Ireland and the UK), "capital income" (Norway), or "rental income" (Germany, Slovakia) and added to the other income of the landlord at the standard personal Income Tax rates.

79 Possible reforms to real estate taxation: Criteria for successful policies, Occasional Papers 119, October 2012, European Commission, p. 9

80 Tassos Vappas: A Comparative Study on Real Estate Property Taxation in Europe, UIPI Publication, Vienna, 2011, p. 8

81 Tax reforms in EU Member States: Tax policy challenges for economic growth and fiscal sustainability, 2012 Report, Directorate General for Taxation and Customs Union and Directorate General for Economic and Financial Affairs, p. 84

Tax is usually based on the rent itself but in some countries, cadastral income is also included (for instance in Belgium) and certain expenses incurred in letting property can usually be offset against the rental income for tax purposes. For example, in the UK, expenses such as interest paid on mortgages, publicity and advertising, letting or managing agent fees, repairs to the property and insurance costs can all be offset against Income Tax. In Ireland, deductions are only allowed where the property is the tenant's main residence and deductions are capped at 75 % of Income Tax liability. In Austria, there are only three types of tax deductible expenses: renovations, maintenance and repairs.

Table 12: Taxation on Rental Income

Country	Tax Base	Tax Rate		Deductibles	
		Personal	Corporate	Types	Caps
Austria	Whole income	36.5 – 50 % ⁸²	25 %	Renovations, maintenance and repairs	The total cost of repairs each year and then maintenance and renovation costs split over ten years
Belgium	Indexed cadastral income + rent on furniture ⁸³	25 – 50 % ⁸⁴ Furniture: 15 % or 25 % ⁸⁵	24.25 – 33 %	Mortgage interest ⁸⁶	Yes
Czech Republic	Whole income	From 15 %	19 %	Maintenance and repairs	Based on real expenses or by general deduction of 30 %
France	Whole Income	Up to 49 % ⁸⁷	33.33 %	Interest on loans, borrowing costs, fees, miscellaneous and maintenance expenses	Based on real expenses

82 € 11,000 – € 25,000 by 36.5 %, € 25,000 – € 60,000 by 43.2143 %, above € 60,000 by 50 %

83 There two separate taxes in Belgium: one on the rental income and another on furniture (for furnished rentals)

84 Up to € 7,900 by 25 %, € 7,900 – € 11,240 by 30 %, € 11,240 – € 18,730 by 40 %, € 18,730 – € 34,33 by 45 %, above € 34,330 by 50 %

85 Depending on whether the tenancy began before or after 1 May 1990

86 http://ec.europa.eu/taxation_customs/tedb/taxSearch.html

87 Since 2012: Up to € 5,963 is exempt, € 5,963 – € 11,896 by 5.5 %, € 11,896 – € 26,420 by 14 %, € 26,420 – € 70,830 by 30 %, from € 70,880 – € 150,000 by 41 %, € 150,000 to € 250,000 by 45 %, € 250,000 – € 500,000 by 48 %, above € 500,000 by 49 %. The introduction of a 75 % tax rate on incomes above € 1 million was rejected by the Constitutional Court

Germany	Rental Income	14 – 45 % ⁸⁸	15 %	Mortgage and loan interest, donations	Based on real expenses or capped
Greece	Rental income	11 % for the first €12,000, 33% for anything above + 3.6 % (Stamp Duty) + Solidarity Income Tax ranging from 1 – 4 %	20 % (personal companies) and 25 % (capital companies) + 3.6 % (Stamp Duty) + Solidarity Income Tax ranging from 1 – 4 %	Insignificant	Insignificant
Ireland	Unearned (rental) income	20 % or 42 %	12.5 %	Mortgage/loan interest, tenancy registration, property taxes, maintenance, advertising, insurance, agents fees	75 % of mortgage/loan interest
Italy	Contractual rent minus 5.0 % or cadastral income ⁸⁹	23 – 43 % ⁹⁰ + from 0.9 – 4 % (regional tax) + up to 0.8 % (municipal tax) + 2.0 % or € 67 (registration tax) ⁹¹ Alternatively 19 % or 21 % ⁹²	27.5 %	—	No information
Norway	Net rental income (capital income)	28 %	28 %	Negative net income from rent is deductible from the owner's tax bill	—

88 http://ec.europa.eu/taxation_customs/tedb/taxSearch.html

89 Whichever is higher

90 First € 15,000 by 23 %, €15,000 – €28,000 by 27 %, € 28,000 – € 55,000 by 38 %, € 55,000 – €75,000 by 41 %, above € 75,000 by 43 %

91 Whichever is higher

92 The "single proportional tax on rents" was introduced in 2011 and operates as a voluntary, alternative regime for those who chose to use it. A reduced rate of 19% is available for subsidised and short term tenancies

Slovakia	Whole income (as other income)	19 % (up to € 34,401.74) or 25 %	23 %	All costs incurred in advertising, insurance and maintenance	No ⁹³
Spain	Net rental income	24.75 – 52 % ⁹⁴	30 %	Depreciation	3 % of cadastral value of the property
United Kingdom	Whole income (as unearned income)	20 %, 40 % and 45 % ⁹⁵	24 % (main rate) and 20 % (small profit rate)	Mortgage interest, publicity, advertising, repairs, insurance costs, letting or managing agent fees	Based on real expenses

In Norway, there is the ability for owners to let out part of their principal residence tax free; as long as less than half the house is used by the ‘lodger’. On the other hand, a landlord with five or more units is treated as a business for taxation purposes and must pay the corresponding business taxes.

Greek tax law changed considerably recently with the introduction of a separate taxation on rental income at 11 % for the first € 12,000 of annual income, jumping up to 33 % for anything above; plus 3.6 % Stamp Duty and a Solidarity Income Tax ranging from 1 – 4 %, depending on the landlord’s other income.

In Italy, on top of being taxed on rental income, landlords must pay an additional fee to the regions and municipalities as well as a fee for the tenancy to be registered with the local authority. However, under certain circumstances, subsidised tenancies (such as student tenancies) benefit from preferential tax treatment. There is also a new single proportional rent available for owners or holders of proprietary right of tenure (e.g. usufruct) which was introduced in 2011 and replaces the usual rental income tax with its additional charges and registration fee.

In Spain, three types of rental income tax rates are in place depending on whether the landlord is a resident, non-resident or corporation. In addition, Value Added Tax (VAT) is applied to rental income from commercial tenancies. VAT is not applied to residential tenancies.

In both Belgium and France taxation is dealt with differently depending on whether the property is furnished or unfurnished. In Belgium, rental income generated from unfurnished properties is based on “indexed cadastral income” whereas in France even this taxation is still split into two categories. Firstly, there is a system of “micro-land” available to landlords who have a total gross property income that does not exceed € 15,000 per annum. In this scheme, landlords are taxed on 50 % of the rental income and, under cer-

93 The 40 % “General Expense Claim” was abandoned on 1 January 2013

94 There are certain reductions available when renting to young people

95 £ 34,370 by 20 %, £ 34,371 – £ 150,000 by 40 %, above £ 150,000 by 45 %

tain conditions, any income from their main residence is exempt. The second scheme is either for those landlords with rental portfolios which fall outside the scope of the micro-land scheme or those who opt for the scheme voluntarily. This scheme limits taxation to 70 % of the rental income and allows the landlord to deduct expenses incurred in running their rental business from Income Tax. These deductions include maintenance, repairs and improvement costs, insurance premiums, interest charged on loans and even certain other taxes. The same rules apply to the renting of furnished properties in France; although the micro-land system is extended to a gross property income not exceeding € 32,600 per annum⁹⁶.

In Belgium on the other hand, landlords must pay an additional tax for furnished properties on top of the cadastral indexed income tax system. Here, the landlord will need to pay extra tax on the furniture based either on the contractual share of the rent providing the contract has been registered (the tenancy agreement will specify what proportion of the rent is for the furnishings) or 40 % of the total rent (in cases where there is no such specification in the tenancy agreement or the contract has not been registered).

Tax rates are generally progressive; except in Norway where there is a flat rate of 28 %. This was also the case in Slovakia where landlords were able to offset up to 40 % of the rental income on 'general expenses' without the need to provide evidence of these expenses. However, since 1 January 2013 new legislation has come into force which required landlords to itemise all deductions. Czech law provides for the deduction from Income Tax of all maintenance and repair costs on rented property. However, if part of the property is used by the owner without any rent being charged (i.e. the owner or a member of their family lived in part of the property or used it for business purposes), the corresponding share of the costs must not be subtracted from the rental income.

2.3 Transaction Taxes

Transaction taxes are levied in the almost every case study country (except Slovakia). Many consider them to have negative effects on the housing market; through reducing the number of transactions and by having a distortionary effect of the price of properties that are close to a Stamp Duty threshold. In addition, it is argued that Stamp Duty negatively impacts labour mobility and discourages transactions which might allow the housing stock to be allocated in a more efficient manner; for example, people selling larger properties' once their children have left home and they no longer need the extra rooms.

These arguments have recently been considered by the European Commission in their analysis of the possible impact of European Semester Country-Specific Recommendations to move from taxes on residential property transfers to recurrent property taxes.

96 € 81,500 for tourist cottages, furnished summer dwellings and B&Bs

Table 13: Transaction Taxes⁹⁷

Country	Type	Basis	Rate
Austria	Transaction Fee (Grunderwerbsteuer)	Purchase price	2 % (between relatives), 3.5 % (all other cases)
Belgium	Registration Fee	Purchase price or market value ⁹⁸	10 % (Flanders) and 12.5 % (rest of Belgium)
Czech Republic	Transaction Tax	Purchase price	3 % ⁹⁹
France	Registration Fee	Purchase price + all related costs and expenses of the seller	5.09 % (departmental + local + withholding tax) or a reduced rate of 0.175 % ¹⁰⁰
Germany	Transaction Tax (Grunderwerbsteuer)	Purchase price	3.5 – 5.5 %
Greece	Real Estate Transfer Tax	Cadastral value (or purchase price if higher)	8 – 10 % (+ 3 % ¹⁰¹)
Ireland	Stamp Duty (Conveyance Duty)	Purchase price	1 % (2 % over € 1 million) or 2 % (non-residential property)
Italy	Registration Tax	Market value of the property	0.5 – 15 % (3 % for first-time buyers)
Norway	Registration Tax	—————	2.5 %
Slovakia	NO	NO	NO
Spain	Transaction Tax ¹⁰²	Purchase price	6 % – 11 %
United Kingdom	Stamp Duty Land Tax	Purchase price	1 – 5 % ¹⁰³

The types of transaction taxes vary considerably between our case study countries. They include a Transaction Tax in Austria, the Czech Republic, Germany, Greece and Spain; Registration Fees Belgium, France, Italy and Norway and Stamp Duty in Ireland and the UK. However, irrespective of their name, they all fall due when a property is bought. Therefore, it should be safe to assume that the purchase price is the basis for these taxes. However, this is not the case. In Italy and France the tax is based on the value of the property, whereas in Greece, the tax is based on the highest of either the purchase price, the market value of the property or an independent valuation.

97 More in "Taxes in Europe Database": http://ec.europa.eu/taxation_customs/tedb/taxSearch.html

98 If the purchase price is considered to be below the market value by the local authority

99 This will shortly increase to 4 %

100 Applicable for buildings still under construction

101 8 % on the first €20,000 and then 10 % on the rest plus an additional 3% on top, in a municipal tax. It is expected this will soon be reduced; potentially by as much as half

102 If the purchaser is below 32 years old, they benefit from a deductible youth allowance

103 The First £ 125,000 (£ 150,000 in the case of non-residential property) is exempt, £ 125,001 – £ 250,000 by 1 %, £ 250,001 – £ 500,000 by 3 %, £ 500,001 – £ 1 million by 4 %, £ 1 million – £ 2 million by 5 %, over £ 2 million by 7 % (or 15 % if purchased by a corporate body)

Tax rates also vary substantially between case study countries; from 0.5 – 15 %. In Austria, Belgium, the Czech Republic, France, Germany and Norway fixed tax rates apply (with Austria having preferential tax rate for transactions between family members). The rest of the case study countries have progressive tax systems.

As transaction taxes are considered detrimental, if they are to continue, low rates should be set. Therefore, strong consideration should be given to lowering these taxes by countries such as Belgium and Greece where their transaction taxes are still very high.

2.4 Taxation on Capital Gains

Capital Gains Taxation is a common feature in all of our case study countries. Although slight differences exist, the basic principle is that after depreciation, maintenance costs and interest payments, the net return on investment (the capital gain) is taxed; either at personal income tax rates or other, specifically designed taxes.

Table 14: Capital Gains Tax

Country	Base	Rate	Exemptions
Austria	Capital gain (or purchase price) ¹⁰⁴	25 % (or 15 % + 3.5 % of the purchase price) ¹⁰⁵	_____
Belgium ¹⁰⁶	Capital gain ¹⁰⁷	16.5 % or 33 % (undeveloped land) ¹⁰⁸ 16.5 % ¹⁰⁹	Main residences where the property has been owned for at least five years. Where property is acquired following donation and transferred (1) within three years of donation and (2) within five years of acquisition by the donor. Where a property is constructed and the building works start within five years of the purchase and the whole property is sold less than five years after it is initially occupied.
Czech Republic	Capital gain (as Income tax)	From 15 %	Where a property is used as a main residence for at least two years or owned for at least five years

104 Only applicable where (1) land was purchased and subsequently developed into housing; (2) the land purchase took place after 1 January 1988 and (3) the purchase of the newly built property occurred before 1 April 2002

105 15 % of the price paid for the land and 3.5 % of the newly built property

106 There is also a “communal additional percentage” of a rate decided by the Commons

107 In Belgium, a “capital gain” is defined as the “selling price, minus cost occurred in the sale (such as advertising or commission to a real estate agent), minus the initial purchase price (which is increased by 25 % and then by an additional 5 % for each year the property was owned”

108 33 % if the undeveloped land is sold within five years of purchase; or 16.5 % if sold between five and eight years after purchase

109 16.5 % if exemptions do not apply

France	Net capital gain + deductions ¹¹⁰	19 % (flat rate) + 15.5 % social charges + 2 – 6 % ¹¹¹	Main residence or 30 years of ownership or where the property/land is worth less than € 15,000
Germany	Capital gain (as Income tax)	14 – 45 % ¹¹²	Main residence or where the property has been owned for more than ten years
Greece	Capital gain	20 %	Small gains of less than € 25,000 or if the property has been owned for at least five years
Ireland	Capital gain	33 %	Main residence
Italy	Capital gain (as other income tax)	23 – 43 % ¹¹³	Inheritance or gift if the donor owned the property for at least five years or urban housing units used as the owner's main residence
Norway	Capital gain (as income tax)	28 %	One year of ownership and at least one of the two last years of residency
Slovakia	Capital gain (as other income)	19 % (up to € 34,401.74) or 25 % above that for residential premises and 23 % for commercial premises	Where a property is used as a main residence for at least two years or owned for at least five years ¹¹⁴ Inherited properties where the new owner has owned the property for more than five years Property reclaimed through restitution
Spain¹¹⁵	Capital gain	First € 6,000 by 21 %, € 6,000 – € 18,000 by 25 %, above by 27 %	_____
United Kingdom	Capital gain	18 % (below an income of £ 34,370) ¹¹⁶ or 28 % (above an income of £ 34,370) ¹¹⁷	Main residence or an exemption on the first £ 10,000 capital gain for rental properties per year

110 Deductions depend on the duration of ownership: 2 % for 0 – 17 years, 4 % for 18 – 24 years, and 8 % for over 25 years

111 There is an additional tax of between 2 – 6 % on capital gains in excess of €50,000

112 http://ec.europa.eu/taxation_customs/tedb/taxSearch.html

113 First € 15,000 by 23 %, from € 15,000 – € 28,000 by 27 %, from € 28,000 – € 55,000 by 38 %, from € 55,000 – € 75,000 by 41 %, above € 75,000 by 43 %

114 This exception applies only to property acquired before 31 December 2010

115 In addition to Capital Gains Tax, there is also a municipal tax on capital gains in urban areas

116 If the landlord's total annual earned or unearned income (excluding any capital gains) is below £ 34,370

117 If the landlord's total annual earned or unearned income (excluding any capital gains) is above £ 34,370

There are significant differences in Capital Gains Tax exemptions in our case study countries. In the UK for example, Capital Gains Tax is not paid on a person's main residence but only on the sale of a secondary residence and any properties which are rented out. A similar regime exists in Germany but goes further by exempting secondary residences and rental properties where they have been owned for more than ten years.

Similar exemptions exist in Belgium, the Czech Republic, France, Italy, Norway and Slovakia. However, in Italy and the Czech Republic only five years need to have elapsed since the purchase of the property before it becomes exempt from Capital Gains Tax. Italian law also allows for inheritance and "Urban Housing Units" exceptions.

Norwegian law effectively exempts all owner-occupiers as Capital Gains Tax is not paid if the owner has owned the property for more than a year and resided in it for at least one of the preceding two years. Whereas, exemptions in Slovakia are limited to restitutionary claims and inheritance; providing the property has been owned for more than five years.

In France, capital gains acquired on the sale of a person's main residence is exempt from tax (although when the property was purchased is relevant in some circumstances), as are capital gains on properties which have been owned for longer than 30 years. There is also no Capital Gains Tax paid where any transfer of land or buildings is for less than € 15,000. Capital gains on transfers worth more than € 15,000 will be taxed at 34.5 % (19 % flat rate plus 15.5 % social charges) minus deductions based on the period of ownership (see above).

In Belgium, exceptions are dependent on whether the property is undeveloped land, a building under construction, an existing dwelling or acquired through donation. For existing buildings, exemptions take effect five years after purchase. In the case of undeveloped land, exemptions come into force eight years after purchase. Where property is acquired following donation, exemptions take effect when the property has been donated for at least three years and at least five years after its purchase by the donor. However where a building is under construction, the rules get more complicated. If construction begins within five years of the land being purchased and the new building is then sold less than five years after it is initially occupied, Capital Gains Tax is payable.

It should be noted that a significant number of case study countries impose higher rates on medium-term investments but provide a diverse range of exemptions for long-term ownership. Only three countries (Belgium, Germany and the UK) apply exemptions to all properties that are used as an owner's main residence.

As for the tax base and rate, the differences lie in whether or not legislation treats capital gains as income. If they do (Austria, the Czech Republic, Germany, Italy, Norway, Slovakia and Spain) the tax rate will be the same as personal or capital income tax. It should be stressed that this is the model currently supported by the European Commission¹¹⁸. Nevertheless, in some countries, capital gains are taxed at different rates to other income (Belgium, Ireland and the UK).

118 Possible reforms to real estate taxation: Criteria for successful policies, Occasional Papers 119, October 2012, European Commission

2.5 Recurrent Property Taxation

Property taxation is usually regarded as a payment for the provision of local public services. As such, in most countries, it is levied on property owners by local authorities. The exception is Council Tax in the UK, where the occupier, rather than the owner, of the property is liable. This difference can be explained by the UK's historical roots and common law tradition. However, in France, two forms of property tax exist. Landlords pay a property tax linked to their ownership and the tenants pay an Inhabitancy Tax. Nevertheless, in every case study country, property tax is an annual tax calculated on the estimated property value or rental income.

Table 15: Recurrent Property Taxation

Country	Tax Base	Rate	Taxpayer	Additional Taxes
Austria	NO	NO	NO	Second home tax ¹¹⁹
Belgium	Indexed cadastral revenues	35 – 45 % (depending on the additional municipal tax)	Main residence – owners Other cases – owners/tenants ¹²⁰	Tax on unoccupied dwellings Second home tax ¹²¹
Czech Republic	Land: The actual area of the land in m ² Buildings: The built-up area ¹²² in m ² Apartments: The occupied space in m ² multiplied by 1.2	Land: 0.25 – 0.75 % (depending on the type of land) multiplied by between 2 – 5 % (depending on the Municipality) Buildings: from 2 – 10 CZK per m ² multiplied by between 2 – 5% (depending on the Municipality) Apartments: 2 CZK per m ² multiplied by between 2 – 5 % (depending on the Municipality)	Owners	—————

119 This varies depending on the region and federal republic

120 Owners are entitled to re-claim the property tax they have paid from tenants if the property is not the tenants main residence

121 This is a municipal tax required by most local authorities

122 The 'built-up area' is the area of the building constructed above ground level (i. e. basements and cellars do not count towards this calculation)

France ¹²³	Cadastral rental value ¹²⁴	Depends on the regional and departmental tax (average rate = 16.22 %) ¹²⁵	Owners ¹²⁶	Vacant dwellings tax (as long as they are empty for more than 5 years)
	Cadastral rental value ¹²⁷	Depends on the regional and departmental tax (average rate = 14.3 %) ¹²⁸	Residents	_____
Germany	Legal tax value	Local rates	Owner of the land	Second-home tax
Greece	Cadastral value of the property	0 – 2 % (State Property Tax for personal owner) 0.6 – 1 % (State Property Tax for corporations) + 0.25 – 0.35 % (Local Property Tax) + 15 % special annual property tax for offshore companies	State Property Tax – Owner Local Property Tax ¹²⁹ – Owner	Special property taxation on the electricity bill for the years 2011 – 2013, equal to approximately 2 months' rent per year
Ireland	Self-assessed market value ¹³⁰	0.18 % up to € 1 million, and 0.25 % on any excess	Owner (but tax deductible)	_____
Italy	Cadastral rental value of the property combined with an adjustable multiplier based on the property's characteristics ¹³¹	0.4 % +/- 2 % (in case of main residence and depending on the Municipality) 0.76 % +/- 3 % (in case of other buildings)	Owner	_____

123 The first line relates to Property Tax and the second to Inhabitancy Tax

124 Based on rental values in 1970 but updated by national property valuation indexes

125 For example 4.51 % in Paris or 29.6 % in Aisne (determined at a local authority level)

126 In a residential tenancy, the owner is not entitled to a tax refund from the tenant (except for waste collection). However, in a commercial tenancy, the landlord can claim all taxes paid on the rented property.

127 Based on rental values in 1970 but updated by national property valuation indexes

128 Between 9.6 % and 16.2 % (determined at a local authority level). National authorities increase the indexation more than property price evolution in order to prevent local authorities from increasing their tax rates. However, this does increase local authority incomes as most of the revenue collected from property taxes (around 90 %) go to local authorities

129 Collected through electricity companies

130 From July 2013

131 The characteristics and multipliers are set by local authorities

Norway	25 % of market value (main residence)	1.1 % (with first 750 NOK tax free)	Owner	Local Property Tax – up to 0.7 % of the property's market value
	40 % of market value (all other cases)			
Slovakia	Area of the land, building or apartment in m ²	Area in m ² multiplied by 0.25 % € 0.033 for each m ² in case of buildings	Owner	_____
Spain	Cadastral value	0.4 – 1.1 % (depending on the local authority)	Owner	Local tax on services (e. g. rubbish collection)
United Kingdom ¹³²	A – G valuation bands ¹³³	Set by each local authority	Resident	

This table demonstrates that whilst recurrent property taxes are a common theme across Europe and broadly designed to pay for the same services, there are no real trends in how countries go about implementing these taxes. This might explain why the European Commission is focusing more of its work on recurrent property taxation¹³⁴.

Analysing each taxation model, a property in the UK is placed into one of seven valuation bands (based on what the property would have been worth in 1991). From July 2013 in Ireland, the Local Property Tax will be charged at a flat rate depending on which of the 11 bands the property falls into (the bands are based on the property's value, e.g. € 0 – € 100,000, € 100,000 – € 200,000).

In Italy, Spain, Germany, the Czech Republic and Slovakia property tax is based on ownership and defined, within a certain scope, by local authorities. Its calculation, however, varies depending on either legal tax value (Germany), cadastral rental value (France and Italy) or cadastral value of the property (Spain). In Belgium, the tax is calculated on the indexed cadastral revenue with the proceeds being shared between the regions, provinces and municipalities (each of them has its own rate).

State property taxes only exist in Greece and Norway. In Greece, where property is very heavily taxed, on top of the State Property Tax – FAP (with different rates for individuals and companies), there has also been an annual property taxation collected through the electricity bills since 2011, a local property tax and a special annual property tax for assets

¹³² This tax is paid by the occupiers of the property, not the property owner.

¹³³ Based on the property's value when Council Tax was introduced in 1991

¹³⁴ Possible reforms to real estate taxation: Criteria for successful policies, Occasional Papers 119, October 2012, European Commission

owned by off-shore companies! In Norway, local authorities can decide on whether to impose local property taxes; with around half choosing not to. The National Property tax is based on the property's value and then depends whether the property is occupied as a person's main residence (with a reduced rate) or in another way (with an increased rate). Very rare situations exist in the Czech Republic and Slovakia, where property taxes are based on the size of the property; and in Austria where recurrent property taxes do not exist.

2.6 Conclusion

Economic consolidation programmes in many countries have intensified the debate on taxation reforms; particularly in the field of property which is already extensively taxed as both an investment and for the provision of local services. It is not only property owners but also landlords who are exposed to such far-reaching tax burdens. This chapter's purpose was to explore tax regimes in our twelve case study countries to further understand the main taxation duties imposed on landlords in each participating country.

Whilst we have focused on the direct taxes imposed of landlords in the running of their businesses; taxation of rental income, transaction taxes, Capital Gains Tax and recurrent property taxes; it should be noted that there are many other taxes applicable to property which are not included in this report. Value Added Tax (VAT) whether on buildings or rent has not been addressed. Austria, Belgium, France Germany and the UK all apply extra taxes on vacant dwellings and second homes and other solidarity taxes on wealth are common. In France, the wealth tax (ISF) considerably penalises property owners as it is based on the market value of their properties¹³⁵. Lastly, taxes on inheritance and donations have not been included in this report as, although a consideration for property owners, they do not form part of the day-to-day running of a lettings business.

In every case study country, revenues received from rental income are effectively taxed as part of the whole income tax with rates depending on whether the landlord is an individual or corporate entity. However, there are differences in determining the tax base, special allowances, deductions and limitations.

The common approach to determining tax is to base it on the rent itself. From there, landlords in most countries can deduct certain common expenses; maintenance costs, repairs, loan or mortgage interests, insurance. Such deductions are either capped (allowing a fixed sum or fixed percentage to be deducted) or based on real expenses which need to be proven (Slovakia and the UK). In Germany and the Czech Republic, landlords may choose to either deduct a lump sum (with no need to provide any evidence) or to deduct the total of the expenses incurred in running their business.

Two countries, Spain and Norway, take a different approach. They use the net rent as the tax base (i.e. the difference between rental income and expenditure on acquiring or maintaining the property, fixtures, fittings and furniture). This means that expenses which would be normally deductible from a landlord's tax liability are taken into consideration before calculating tax liability; hence there are no further allowances. Nevertheless, in

¹³⁵ The tax rate for personal wealth of between € 1,300,000 – € 3,000,000 is 0.25%; anything above is taxed at 0.5%.

Spain, depreciation by 3 % of the cadastral value of the property is still deductible and in Norway, negative value of net income from rent can as such be deducted from the owner's other taxable liabilities.

Belgium is another exception with the tax base for rental income which consists of an indexed cadastral income which is then increased by 40 %. That sum is then taxed at either the personal or corporate Income Tax rate.

There are also many additional taxes that need to be considered when assessing Income Tax for rental properties. These range from a separate Income Tax on furniture provided by the landlord in rental properties in Belgium, to Registration Fees in Italy, to regional and municipal taxes (Belgium and Italy) and Stamp Duty in Greece. This provides a complex set of rules which landlords are required to follow.

We then considered transaction taxes on the purchase of a property. These often take the form of a Registration Fee (Norway, Belgium, France and Italy) or Stamp Duty (Ireland and the UK). When looking at transaction tax, two main trends emerge. Firstly, most countries take the purchase price of the property as the basis for taxation. The second option, as seen in Italy and France, is where the price agreed upon between the parties is irrelevant, and the transaction tax is based on the value of the property. Similarly in Belgium, if a property is bought for below the market value, local authorities can set their own approximate market value for the purpose of the transaction tax in order to make sure that the tax due is based on the full value of the property. As transaction taxes are considered detrimental and can distort housing markets, Governments in countries such as Belgium and Greece where their transaction taxes are particularly high, should strongly consider reforms that will make it cheaper for property owners to buy and sell properties; which in turn will allow for a more efficient use of housing stock.

Thirdly, we looked at Capital Gains Tax. In some countries, these gains are treated as income, which means that they come under the same tax regime as other forms of earned or unearned income. This is the case in Austria, the Czech Republic, Germany, Italy, Norway, Slovakia and Spain. Among these countries, fixed rates are used in Norway (28 %) and Austria (25 %) and progressive rates are used in the remaining countries; with some further differences between residential and commercial properties. Conversely, in Belgium, France, Ireland and the UK, Capital Gains Tax is treated independently; allowing the Governments to designate specific tax rates for gains made in the selling of property.

Most countries offer significant exemptions on Capital Gains Tax; particularly for properties that are occupied as the owner's main residence. However, whilst this is not directly relevant to landlords, it is worth noting. In Belgium, Germany and the UK, this exception applies to an owner's main residence. In other countries, exemptions are based on the duration of ownership with time scales ranging from one (Norway) to ten years (Germany). Lastly, the report considered recurrent property taxes. Designs based on ownership range significantly between case study countries and therefore it is difficult to observe any general trends. This may be a reason why many have argued that significant reforms are needed to the recurrent property tax regimes in most case study countries.

Having addressed the basic differences in twelve taxation systems, it is important to highlight the urgency of this topic in light of the current economic climate and activities within the European Commission. The need for economic and fiscal consolidation, together with better competitiveness, swift growth and job creation, are the key aspects of the new system of European macroeconomic governance; known as the "European Semester". Ta-

xation is an integral part of this process and a competitive tax system in Member States is a key priority. Many changes are forthcoming through the European Semester; including the movement away from labour-based taxation to property-based taxation. However, it should be noted that the changes will not focus on tax rates. Rather, they are expected to provide objectives to guide national tax reforms with the aim of simplifying the tax system; through methods such as reducing the number of exemptions and avoiding tax regimes which place households in increased debt. Implemented through Country-Specific Recommendations, the European Semester will focus on tailor-made solutions to the specific problems in each Member State and are likely to allow progress to be made much quicker than if they had been left to the regular EU tax policy decision-making process; which requires unanimity.

It is crucial that European decision-makers are made aware of the taxation burden imposed on property owners across Europe.

It needs to become common knowledge at an international level that land and property is the most taxed form of capital¹³⁶. As illustrated throughout this chapter, property is taxed in multiple ways. Both investment and consumption based taxes are used to create taxable liabilities for any form of interaction with property. Promoters of higher property taxes claim the current burden is negligible. This chapter clearly proves the opposite.

136 Tassos Vappas: *A Comparative Study on Real Estate Property Taxation in Europe*, UIPI Publication, Vienna, 2011, p. 8

3. Planning and Zoning

3.1 Introduction

Planning policies were initially developed and introduced to correct problems caused by cities expanding spontaneously. Today, the key purpose of planning is to create an enjoyable environment for those living and working in an area. This involves dealing with issues such as how a town should look, the location, style, and the impact of different types of buildings, as well as transportation, health, education, environmental protection, population density, natural and industrial risks and energy consumption. It is therefore a very diverse field incorporating engineering, the social sciences, policy implementation and management. As legislation and regulation increases, urban planning is becoming immensely complex. From initial proposal to construction, landlords and developers face a myriad of obligations at every stage in the process. In this chapter, we will explore the similarities and differences in planning policy across our twelve case study countries. We will principally focus on how the private sector is involved in planning policy, requirements around the construction or renovation of buildings and expropriation.

3.2 Urban Planning Regulation

Control over planning policy is decentralised in most countries and subject to regulation at a regional or local level. This is particularly true in Austria and Belgium¹³⁷ where there are no national provisions on planning policy as it is entirely within the purview of the Regions (Belgium) or the Federal States (Austria).

In other case study countries, local authorities have very wide scope to implement policies that meet the needs of the municipality. However, local planning policies must comply with a broad set of planning regulations established at national level (in some countries, regional planning rules sit between national legislation and local implementation). National programmes also exist, in the form of Government Guidance, instead of (or in addition to) formal legislation in some countries; such as the UK. This guidance is prepared in the context of broad national legislation but provides a more detailed framework to ensure that local authorities operate in a consistent manner whilst still allowing them scope to make policy based on local needs.

Greece has an extremely complex planning system which can involve State, local and archaeological authorities as well as environmental committees, Government Ministries and even Presidential Decree. Local rules vary greatly across Greece, making construction projects exceedingly complex and offering private landlords and developers very limited scope in design. However, Greece's strict planning laws and buildings regulations are understandable as the country lies on a tectonic fault line and therefore every building has to be able to resist earthquakes. As a consequence of these strict rules, an earthquake the size of the one that almost razed Kefalonia to the ground in 1953 had very little effect in 2006.

¹³⁷ The Regions regulate broad planning frameworks and the Communities then enjoy extensive autonomy on their own planning policy. Such regulation then consists of binding "plans" and indicative "schemes".

Table 16: Planning Policy Creation

Country	Decentralised Planning		Centralised Planning	Private Sector Involvement
	Local Municipalities	Regions ¹³⁸		
Austria	NO	YES	NO	—————
Belgium	YES	YES	NO	NO
Czech Republic	YES	YES	YES	YES
France	YES ¹³⁹	YES ¹⁴⁰	YES ¹⁴¹	YES (limited)
Germany	YES ¹⁴²	YES ¹⁴³	YES ¹⁴⁴	YES
Greece	YES	YES	YES	NO (subject to certain exceptions) ¹⁴⁵
Ireland	YES	NO	—————	YES (limited)
Norway	YES (Local Assembly)	NO	YES ¹⁴⁶	YES
Slovakia	YES	YES	YES	YES (public consultation)
Spain	YES ¹⁴⁷	NO	YES ¹⁴⁸	YES (public hearings)
United Kingdom	YES ¹⁴⁹	NO	YES	YES (public consultation)

138 Länders in Germany and Austria

139 The “Local Development Plan” (PLU – Plan local d’urbanisme) serves as the main planning policy document at the municipal level which is used to impose conditions on building permits. It defines the land use, land rights, access, roads and conditions on the construction of buildings such as the height, appearance, parking availability, external spaces, public utility easements, public areas etc.

140 The “Territorial Coherence Scheme” (SCOT-schéma de coherence territoriale) aims to ensure consistency in planning policy across issues such as housing, travel, commercial activities and public facilities on a larger geographical area (several municipalities). They also aim to improve energy efficiency and reduce greenhouse gas emissions. Local PLUs must comply with the SCOT who are subordinate to the PIG

141 Pursuant to the Act governing the right to build under the Urban Planning Code, the Projects of General Interest (the PIG) designate which developments and construction or protection projects are deemed a public utility. The PIG creates a framework for the operation of public or general interest projects in the fields of heritage (natural or cultural), risk prevention (natural or industrial), natural resource development, agricultural facilitation or the maintenance of ecological diversity.

142 Bebauungsplan is a special urban plan providing highly detailed permissions for the use of land; specifying its use for different kinds of housing, the number of properties that can be built on the land, as well as the height and characteristics of the buildings

143 A regional planning policy by either the city or a group of villages (giving detailed information on land use for agriculture, housing, commercial and industrial purposes) and a State (Länder) wide land use plan (including planning for nuclear power stations, motorways, airports)

144 A national land use plan (including nature reservations)

145 Construction outside city boundaries is generally prohibited.

146 For example, national parks and military installations

147 Plan Ordenacion Urbanistica Municipal (POUM) is the municipal planning policy which defines the pattern of urban development and Programa de Actuación Urbanistica (PAU) the Urban Action Programme which specifies the planning policy for land and housing within the municipality

148 An Urban Master Plan which establishes guidelines for coordinating the planning of an urban area in the supra municipal sphere

149 Each local authority creates its own Local Plan which details all planning regulations, conservation areas, health, education and transportation infrastructure in the locality.

Two trends can be observed in the table about the involvement and participation of private sector stakeholders in the creation of planning policy.

Firstly, in some case study countries (Norway, the Czech Republic and Slovakia) the authorities in charge of planning policy are required to coordinate with both the public and private sectors. This means the private sector is more than merely involved in the policy decisions; they can initiate proposals and amend existing planning policies to fit their private interests. However, such close public-private involvement in planning policy is only available in a small number of countries.

Secondly, all documentation regarding planning policy, planning applications and planning decisions must be made available to citizens. Furthermore, public hearings can be requested, where citizens are able to share their views on policies and planning applications. Public consultations can also be launched, where citizens can express their ideas on local development. For example in Ireland, local councils make planning decisions and objections can be made by any person, organisation or company; irrespective of whether they are affected by a particular application or policy. Decisions of a local council can also be the subject of an appeal to the Central Planning Board, which can conduct either public or private hearings. The involvement of the private sector is generally limited to these consultations, objections and appeals.

In France, private sector involvement in planning policy creation is only possible through recognised representative groups. These groups are members of the advisory bodies involved in the development of the Territorial Coherence Scheme (SCOT) and Local Development Plans (PLUs). However, in practice they only have limited influence. Individual landlords can only express their opinion at public hearings; which only take place when sensitive projects of a high public interest are being decided.

There is also limited private sector influence over planning policy in Germany; particularly as policies are complex and not easily understood by landlords. However, over recent years, landlords with properties in areas that are declining have started to demand involvement in planning policy. Therefore, a new approach, known as *Kooperation im Quartier 'KIQ'* (Cooperation in the Neighbourhood) has been launched by the federal government and *Haus & Grund Deutschland* to allow greater coordination in planning policy between the municipalities and property owners.

However, whilst International Conventions¹⁵⁰ and European Directives¹⁵¹ are in force which guarantees members of the public access to all documentation relating to planning policy (and particularly those relating to the environment), property owners often have considerable difficulty in accessing such documentation and therefore are prevented from expressing their opinions on planning policy. This problem was highlighted recently in a ruling against Slovakia by the European Court¹⁵².

150 The Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1) ('the Aarhus Convention')

151 Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 (OJ 2003 L 156, p. 17) ('Directive 85/337'), and of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26), as amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 (OJ 2006 L 33, p. 1) ('Directive 96/61')

152 Case C-416/10 *Jozef Križan and Others v Slovenská inšpekcia životného prostredia*, 15 January 2013

3.3 Obtaining Planning Permission

Local authorities must decide all planning applications made by people or organisations who wish to construct or renovate buildings in line with local planning policies. Therefore, it is very important for property owners and developers to understand the local planning policies before embarking on construction or renovation projects in order to ensure that money is not wasted on preparing plans that are not in accordance with these policies.

Table 17: Planning Application Procedures

Country	New Building	Renovation	Involvement of Local Residents	Relevant Authority
Austria	YES	—————	—————	—————
Belgium	YES	YES (renovation/division/extension)	NO (subject to certain exceptions) ¹⁵³	City Council (Local Authority)
Czech Republic	YES (permission/notification) + First occupancy permit	YES (permission/notification)	YES	City Council (Urban Planning Authority)
France	YES	NO	YES	City Hall
Germany	YES	Depends on the scale of the work	NO	Local Authority
Greece	YES ¹⁵⁴	YES (although not for small scale works)	NO	Planning authority
Ireland	YES (permission/outline permission)	Depends on the scale of the work	YES	Local Council/ Central Planning Board
Italy	YES	YES	—————	Municipality
Norway	YES	YES (except minor alterations)	YES	Local Assembly
Slovakia	YES (permission/notification) + First occupancy permit	YES (permission/notification)	YES	City Council (Urban Planning Authority Office)
Spain	YES + First occupancy/business start permit	YES (reconstruction/division/extension)	NO	City Council
United Kingdom	YES (permission)	YES (Extensions)	YES	Local Authority

153 In some cases it is necessary to undertake a public inquiry or study on the environmental impact of the works

154 Construction outside city boundaries is generally prohibited except where the plot is at least 4,000 m²

In most case study countries permission and/or permits are required for the construction of new buildings, the renovation or extension of existing properties and for the change in use of either a building or a piece of land. There are exceptions; such as in France where permission is not required for the renovation of an existing building¹⁵⁵. In Germany and Ireland, permission is dependent on the scale of the works being undertaken. Certain minor alterations are also exempt in Norway and Greece.

In the Czech Republic and Slovakia there are two separate procedures in place requiring either permission from the local authority or simple notification depending on the planned works. Therefore, for many renovation projects, owners may begin the work without having to wait for permission from the City Council; simple notification will suffice.

Interestingly, in Ireland, owners can apply for 'Outline Permission' from the local authority before a construction or renovation project is started. This allows them to submit outline proposals without the need for expensive and detailed preparatory plans. If outline permission is granted, the developer then has three-years to submit the detailed documentation for full planning permission before starting construction. This method allows property owners and developers to find out whether planning permission is likely before spending large sums of money on detailed architectural drawings and plans.

In some countries (the Czech Republic, Slovakia and Spain) obtaining a building permit only constitutes part of the process for building a new dwelling or renovating an existing one. Once the work is completed, the owner or developer then needs to request a further approval in order to use the finished building.

Another trend has been observed in the involvement of local residents in the planning application/building permit procedure. It is mandatory the Czech Republic, Norway, Slovakia and the UK to inform local residents about planning applications. Local residents can object to both the construction of a new building and renovations of an existing building in order to protect their property interest. However, tenants are not allowed to object to planning applications (except in the UK) even if they are next door to the property in question; only the landlord can object.

In Ireland, local residents can view plans and either support or object to them through both the local and central system. In theory, the final arbiter is a Court, but in practice, planning cases rarely go to Court.

In Germany, all construction works must strictly adhere to the planning policy framework¹⁵⁶ in order to ensure the property rights of local residents are guaranteed. As a result, even though there is no active participation by the private sector in the creation of planning policy, there is still no need for local residents to become involved in planning applications as planning policy is designed to protect their property rights. Nevertheless, local residents can challenge local authority planning decisions, but only if they argue their property rights have been infringed by the authority itself.

It is also important to remember that many supplemental documents are often required before property owners and developers can obtain planning permission/building permits which add time and expense to construction projects. These include detailed drawings (by authorised architects), health and safety plans and environmental impact studies.

155 There are rare exceptions where a property is within a protected area

156 There is an exception for the construction of a 'standard' house

3.4 Expropriation

Under very strict conditions¹⁵⁷, some governments (for example Austria and Norway) have a right to take private property for public purposes; commonly known as ‘Expropriation’. For example, Governments may need to acquire land in order to build roads, railways, power stations or airports.

However, the mere existence of a public need is not sufficient for Governments to expropriate private property. On the contrary, Government’s must demonstrate that the public need is so great that it outweighs the fundamental right of property owners to be free from the fear of the arbitrary confiscation of their property by the State.

Expropriated property owners also have the right to fair compensation and due legal process. The definition of compensation varies across our case study countries (just, appropriate, complete or fair) but in most cases it is based on the market value of the property following a professional valuation. Nevertheless, assessment of compensation remains a hotly contested topic by many expropriated property owners. Governments must also guarantee that expropriation is exercised timely and adequately.

Therefore, in summary, expropriation can only take place where a public interest outweighs the private right to ownership, where fair compensation is provided and only if the Government acts in a timely manner.

Table 18: Expropriation

Country	Compensation		
	Definition	When level of compensation is Determined	Compensation on Voluntary Agreement
Austria	Appropriate (Regulated rates on compensation and professional valuation)	Beginning of the procedure	_____
Belgium	Fair and Complete		
	End of the procedure	YES (if proposed by the Committee of Acquisition)	
Czech Republic	Market value, based on professional valuation + reimbursement of all costs caused by the expropriation	Beginning of the procedure	YES
France	Just (professional valuation) + additional compensation	Trial at First Instance	YES
Germany	Appropriate (Regulated rates on compensation and professional valuation)	Beginning of the procedure	YES

157 Conditions are outlined in various documents including the Universal Declaration of Human Rights, the European Convention on Human Rights and Member State legislation

Greece	Court decision based on property price	Court decision	YES
Ireland	Market value, based on professional valuation	Compulsory Purchase Order	YES (optional)
Italy	Fair (based on the characteristics of the buildings but disregarding any improvements) ¹⁵⁸	Time of sale or the publication date of the decree on expropriation	YES
Norway	Fair, based on professional valuation	Time of sale	YES
Slovakia	Market value, based on professional valuation	Publication date of the expropriation decision	YES
Spain	Appropriate, based on professional valuation	Beginning of the procedure	YES
United Kingdom	Market value, based on professional valuation with the potential for additional compensation	Compulsory Purchase Order	YES (optional)

Some of our case study countries circumvent the ordinary expropriation procedure in urgent circumstances. However, there are many examples where this urgency rules are becoming the standard procedure. In Belgium for example, the “extreme urgency” process, which should only be used in exceptional cases is becoming common practice. Further, if there is a delay in the process (which is quite frequent in the case of expropriation for public works), the use of the property is frozen and its value depreciates. This is particularly detrimental to property owners as compensation is paid on the value of the property at the end of the expropriation procedure (i. e. the Government assesses the value of the property after depreciation rather than market value had the expropriation not occurred)¹⁵⁹. However, compensation for the losses caused by expropriation (such as the costs of moving to a different dwelling) is also available but many expropriated property owners question the fairness of the amount offered.

Likewise, in Italy, the expropriation decree can be executed based on urgency and in these cases expropriation will take place without the usual investigation or due legal process.

As for regulations governing the setting of compensation, it is interesting to observe that most case study countries provide an ‘expropriation settlement’. Often this is seen as a voluntary attempt by the Government to reach agreement with the expropriated party on the amount of compensation. However, in the Czech Republic, Slovakia and Spain this process is mandatory. In these countries, the first step in the expropriation procedure is an attempt by the Government to reach an agreement on the amount of compensation.

158 Since a ruling of the Constitutional Court in 2007, compensation for expropriation must be the full value of the property. However, where expropriation is for socio-economic reform measures, compensation is reduced by 25%. However, if the parties come to a voluntary agreement, or could not come to agreement for reasons unrelated to the property owner, or when the provisional compensation is less than 8/10 of the ultimate compensation, then compensation can be increased by 10%.

159 The Government cannot take possession of the expropriated property until they have paid the compensation. However, it is important to distinguish between taking possession and transferring ownership. Transfer of ownership can take place prior to the payment of compensation.

If this fails (as is frequently the case), then the relevant public authority is charged with determining an appropriate amount of compensation. Interestingly, in Italy, if a voluntary agreement on compensation is achieved, the final award is increased by 10 %; creating an additional financial incentive for Italian property owners to reach a settlement.

The determination of suitable compensation causes many issues in Norway. Property owner's state that land earmarked for expropriation is often re-classified to a land use class of lower financial value and then compensation is paid at that much lower price. These actions have caused many property owners to lose significant sums of money as a result of expropriation.

In Greece there are two additional types of expropriation without compensation: "contribution in land" and "contribution in money. When an area is integrated into a "City Plan", the property owner must give up a part of their property to the municipality, for the construction of roads, squares, public buildings etc. without compensation. In addition, the same property owner must also pay a "contribution in money", based on the value of their remaining property, to cover the costs of constructing the infrastructure of the area. Another interesting concept is how our case study countries deal with delayed payments of compensation. In France, if the payment of compensation is overdue, the expropriated party is entitled to either interest on the unpaid compensation or to have the amount revised. Further, the French Expropriation Code requires that compensation has to also cover direct and certain material damages. As a result, the Judge will make a ruling on both the main compensation (value of the property) and the additional compensation (for example, expenses which relate to the acquisition of another property, legal fees and moving costs) and the Government can only take over possession of the expropriated property in the month after the compensation is paid.

Similarly, in the Czech Republic the expropriated party is able to claim reimbursement of all costs caused by the expropriation. However, the most appealing aspect of Czech law is that the decision on expropriation sets deadlines for both the payment of compensation and by when the public works must begin. If deadlines are missed then the property owner is entitled to request that the expropriation is cancelled.

There are countries (Germany and the United Kingdom), where expropriation is very rare. German law establishes a very complex and lengthy¹⁶⁰ legal process which is easily challengeable on the grounds of human rights. Therefore, the State will typically buy out the property at market value (or even above) in order to guarantee the swift acquisition of the land.

3.5 Conclusion

Planning policies represent one of the tools which local and national governments can use to ensure an active and well-functioning private rented sector. However, few countries take advantage of this and rules remain overly complex and place an unnecessary burden on property owners.

Planning policy sets the underlying rules which local authorities use when deciding on planning permissions and building permits. Owners, landlords and developers need to fol-

160 The procedure can take 20 years

low these rules and therefore, it is essential their voices are heard when planning policies are created. However, in too many of our case study countries, the private sector plays little or no part in planning policy formulation.

On a positive note, planning policy is predominantly decentralised, with local authorities able to determine their own policies based on the needs of the local community. However, only three countries have demonstrated the active involvement of their citizens in planning policy creation beyond public hearings and consultations (or actions through recognised representatives). It is only in Norway, the Czech Republic and Slovakia where citizens can initiate proposals and amend existing planning policies proposed by the local authority. Whilst theoretically sound, this process has been difficult to implement in Slovakia where citizens have had difficulty gaining access to the relevant documentation and are therefore deprived of their right to express an opinion on projects which may substantially hinder their own property rights. Moreover, such rights are guaranteed in all Member States of the European Union and in the countries which signed the Aarhus Convention¹⁶¹; provided environmental protection is at stake. Therefore, when it comes to environmental projects (works which could be detrimental to the environment) all participating countries should guarantee active participation of citizens in the planning policy formulation and local planning applications.

The active involvement of local residents in planning applications is another method of guaranteeing that property owners' voices are heard. Yet, this ability only exists in a limited number of countries (the Czech Republic, France, Ireland Norway, Slovakia and the UK) and is not always sufficiently influential. For example in France, local residents can only object after planning applications have been decided, meaning their ability to get actively involved in the process is significantly diminished.

Finally, expropriation still exists in many European countries and remains problematic for many property owners. This is despite strict rules governing expropriation which are enshrined in key international legal texts such as the Universal Declaration on Human Rights and the European Convention on Human Rights.

For instance in Belgium, the process for determining the amount of compensation is under scrutiny as the length of time it can take between expropriation and valuation of the property for compensation purposes can lead to property owners losing significant amounts of money. In addition, it has been noted by many property owners that the public works which initiated the expropriation of their property were never completed.

Another example has been observed in Norway where common practice is to re-regulate the property so that it has a lower value and then begin the expropriation process; and although in most cases an agreement is found to save both time and money for both parties, these are still serious practical problems.

Conversely, in Germany and the UK, the Government buys privately owned property at market prices (or above) in order to avoid using any powers of expropriation. This serves both the Government and the property owner as the process is swift and an agreement is generally to the satisfaction of both parties and without the need for any formal court action.

161 The Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1)

