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19 PROMOTING THE RIGHT TO HOUSING AT EU LEVEL

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What can be done at European Union level to foster adequate housing conditions in European cities? This *Policy Brief* draws mainly on the international seminar “Promoting the Right to Housing at the EU level: challenges and policy proposals” held at CIDOB – Barcelona Centre for International Affairs on March 5th 2019. The seminar was organised by CIDOB, Barcelona City Council and United Cities and Local Governments’ (UCLG) Committee on Social Inclusion, Participatory Democracy and Human Rights. It brought together experts, practitioners and policy-makers to discuss what supranational institutional tools and frameworks are required to tackle the housing problems experienced in Europe’s main urban areas.

The discussion pivoted around a draft version of “European Cities for Adequate Housing: Municipalist Declaration of European Local Governments for the Right to Housing and the Right to the City”, which outlines a number of demands made to the EU by city governments. It seeks to operationalise at EU level the “Cities for Adequate Housing” declaration presented at the High-Level Political Forum at the United Nations in New York in July 2018 and endorsed by more than 40 local authorities.¹ This paper also makes a documentary analysis of the main right-to-housing initiatives that have been launched at EU level in the past year. It aims to provide a critical overview of the principal legal and policy proposals put on the table, as well as of the broader political and economic context in which they are embedded. The text concludes by indicating a role for the EU as the enabler of different housing solutions.

1. <https://citiesforhousing.org/>

Shared but heterogeneous urban housing problems in a (in)competent EU

The similarities and differences between cities in the EU simultaneously point towards the urgent need and great difficulty of advancing proposals at EU level in the field of housing. The increasing centrality of cities in the new geographies of economic development, the global integration of real estate markets and prolonged fiscal austerity, amongst other trends, underpin shared housing problems across the continent. Rising housing prices, particularly in global cities (IMF, 2018) and shrinking public investment in social and affordable housing are two important factors undermining housing affordability and accessibility (Pittini et al., 2017). Cities are facing issues such as gentrification, increased spatial segregation and homelessness. This common problematic, however, manifests itself differentially in the varied political economies, housing systems and tenure regimes that characterise Europe’s nationally and locally diverse urban landscape. Seeking unity within this diversity, in terms of right-to-housing agendas is a challenge in and of itself.

The EU, moreover, has no direct competence in housing policy. It does have competences, however, in areas that directly and indirectly affect housing conditions in European cities, such as state aid law, fiscal law and competition law. EU-stewarded market harmonisation and integration measures, for example, constrain public spending in affordable housing policies, as well as the forms of public intervention over the private housing market. These types of measures are largely deployed through “hard law”, such as treaties, regulations and directives – meaning they are accompanied by enforcement mechanisms. The development of housing rights

at EU level, in contrast, has largely taken shape through “soft law”: through administrative measures, recommendations, communications, and other instruments that are not strictly binding and enforceable. As jurist Padraic Kenna (2005) has noted, the mainstreaming of housing rights within EU governance has taken a comparatively “downgraded” form. Consequently, whereas both EU market integration and housing-related “soft” measures shape housing conditions, the former has an overriding force over the latter.

Multiple right-to-housing initiatives directed at EU institutions

It is in this setting that the “European Cities for Adequate Housing” declaration asks the EU to further develop shared frameworks and take measures towards granting more resources and competences to cities for them to provide adequate housing for their citizens. Promoted by UCLG and the Barcelona City Council, it reflects the perspectives of city governments and their demands for a larger role in line with the principle of subsidiarity. This principle is included in EU treaties to ensure that powers are exercised as close to the citizen as possible. The declaration is one of a number of initiatives driven by different public and civil society actors that seek to shape the EU agenda in relation to housing. With the backdrop of pressing housing problems across Europe and elections to the European Parliament, some of the other recent initiatives include:

- “The Housing Partnership Action Plan”, **Urban Agenda for the EU**, December 2018.

The Housing Partnership was established within the framework of the Urban Agenda for the European Union. It is comprised of representatives of selected EU member states, cities, housing providers and tenant organisations, as well as EU institutions and programmes. The action plan, presented at the “Housing for All” conference in Vienna on the 4th of December 2018, proposes 13 substantial actions and recommendations at EU level focused on affordable public housing, state aid rules and general housing policy to achieve better regulation, better funding and better knowledge in this area.

- “The Action Plan for Affordable Housing in the EU”, City of Strasbourg, **Housing Europe and Union Sociale pour l’Habitat**, January 2019.

An international conference at the European Parliament in Strasbourg on January 17th and 18th concluded with an action plan suggesting a roadmap for EU institutions, MEPs and national and local authorities to collectively address housing needs in the EU.

- “Housing for All”, a **European Citizens’ Initiative** registered by the European Commission in March 2019.

This initiative has been promoted by the “Europeans for Affordable Housing – *Für bezahlbares Wohnen in Europa*” association, with the backing of multiple civil society groups, such as the Platform of People Affected by Mortgages (PAH in its Spanish acronym) and the International Alliance of Inhabi-

tants. It seeks to collect 1 million signatures across at least seven member states demanding that the European Commission promote legislative changes at EU level to facilitate access to housing.

Key legal and policy proposals

With the draft “European Cities for Adequate Housing” declaration as the baseline document for discussion, but drawing also on the aforementioned right-to-housing initiatives, the key legal and policy proposals put on the table during the seminar at CIDOB can be broadly classified into four strategies: (i) improving current EU instruments; (ii) adding to housing-related EU “soft law”; (iii) “hardening” housing-related frameworks at EU level; and (iv) “softening” EU fiscal and market integration rigidities. The following section provides a critical overview of these strategies.

I. Improving current EU instruments

Proposals aimed at building upon and improving existing EU tools and instruments focus on the provision of more and better funding for public and non-profit housing, the improvement of data and the strengthening of peer-to-peer learning programmes and projects. These are all seen as necessary, yet not sufficient, steps in boosting the EU’s responsiveness to the current housing problematic.

Improving EU financing in relation to public and non-profit housing is a widely shared demand. Both the “Housing for All” Citizen’s Initiative and the “European Cities for Adequate Housing” declaration insist that investment in affordable housing should be further supported by financial institutions such as the European Investment Bank and the Council of Europe Development Bank. The Action Plan launched in Strasbourg also proposes creating a European Investment Platform dedicated to affordable housing within the framework of the future Cohesion Policy 2021–2027. The “Housing Partnership Action Plan”, moreover, emphasises the importance of improving capacity building for practitioners and legislators in this field at city level. As Ruth Owens, policy coordinator at FEANTSA, highlighted at CIDOB, capacity is often weakest where need is greatest and important stakeholders often find it difficult to access EU funding opportunities. In addition to these difficulties, the prospect of EU funding fully making up for EU fiscal restrictions upon member states’ funding capacity remains questionable.

Broad consensus does exist regarding further EU support of knowledge production and exchange. Improved and expanded data reflecting housing market conditions at different scales and establishing standardised databases would help inform housing policies with a comparative outlook. Peer-to-peer learning through initiatives such as URBACT and Urban Innovative Actions and other exchange programmes also require boosting as well as further integration into policymaking processes. Better available information may or may not directly translate into better housing policies and practices, but it is a resource that can be used by stakeholders to hold policymakers and practitioners to account.

II. Adding to housing-related EU “soft law”

Given that the EU does not have a direct mandate on housing, proposals seeking more explicit positioning on the matter at this scale often rely on the further development of “soft law” measures such as recommendations, guidelines and communications. These are not strictly legally binding, but can nevertheless influence policy in less formal ways and can have an impact in practice.

Further grounding of housing within the EU’s “open method of coordination” is a case in point. Both the Housing Partnership and the action plan launched in Strasbourg propose ways of improving the European Semester procedure that has delivered country-specific recommendations addressing issues related to housing since 2011. These proposals aim at instituting a technically more rigorous process that is adapted to the particularities and social character of the housing sector to deliver improved policy recommendations.

Requesting the European Commission emit recommendations about housing-related issues is another strategy being pursued. The “European Cities for Adequate Housing” declaration asks the Commission to recommend member states recognise local government’s powers to regulate the real estate market in a variety of ways. These include the authority to set rent controls, to enforce inclusionary zoning, to restrict, sanction and/or tax vacant land and housing and other non-residential uses of housing, to introduce punitive measures against substandard housing and energy poverty and to limit no-fault evictions. Other demands include the Commission recommending member states provide a minimum percentage of affordable housing units in every city by 2030 and invest at least 1.5% of their GDP in affordable housing.

As Ivan Tosics from the Metropolitan Research Institute in Budapest suggested at CIDOB, such statements can be used as benchmarks by municipal authorities and other stakeholders to exert pressure upon national governments. Municipal staff and representatives present at the seminar **generally concurred with the political utility of such reference points**. This strategy, however, carries two associated risks. Firstly, it is unclear where these benchmarks will be set and what their content will finally be. Secondly, once these benchmarks are set, they can be used both to pressure actors that are lagging behind and to pressure those that are ahead to cut back on their efforts. Potential benefits and risks should be evaluated on a case-by-case basis.

III. “Hardening” housing-related frameworks at the EU level

Proposals seeking a harmonisation of enforceable norms across the EU stir up both optimism about the new possibilities of acting at this scale and scepticism about top-down encroachment upon national and local competences. Whereas such a strategy might mainstream what are perceived as right-to-housing “best practices” across the continent, it could equally operate in an opposite sense. The normative and operative power of the EU can be exerted in different directions and allowing it to intervene more directly in new policy areas may be an opportunity, but is also a high risk.

Taxation is one of the areas in which various proposals see room for further EU intervention. The “Housing for All” Citizens’ Initiative, for example, suggests developing a new directive focused on short-term leases to facilitate tax collection, amongst other issues. The Strasbourg municipal councillor, Syamak Agha Babaei, suggested during the CIDOB seminar that setting up an EU taxation system in this field could be a solution to the national tax-evasion practices of digital platforms. In relation to other actors, the “European Cities for Adequate Housing” declaration also proposes developing a common taxation framework for real estate investment trusts (REITs) so as to avoid regulatory “races to the bottom” amongst member states to attract investment.

Other more exploratory proposals point towards further developing existing EU legal frameworks in new directions. During the CIDOB seminar, Héctor Simón, from the UNESCO Housing Chair at the Universitat Rovira i Virgili, suggested building upon the notion of the social function of property. This is implied in the Charter of Fundamental Rights of the EU and could be used to anchor punitive measures against disused land and housing. Marta Ortega, associate professor of EU Law at the University of Barcelona, also raised the possibility of developing European consumer law so as to protect tenants against abusive pricing in rental housing.

With a more ambitious outlook, Juli Ponce, professor of Administrative Law at the University of Barcelona, pointed out that article 352 of Treaty on the Functioning of the European Union (TFEU), which allows the EU to act in areas where EU powers have not been explicitly granted, could be activated in relation to housing. This clause has facilitated EU interventions in the past, for example, over pressing environmental issues. Alternatively, Ponce suggested a directive could be drawn up bringing together all the different elements that currently impact upon housing provision in dispersed fields (energy efficiency, consumer protection, competition laws, etc.) in a way that upholds the principle of subsidiarity and proportionality.² The latter strategy could facilitate a more integrated and unitary regulatory framework within current EU competences.

Despite these proposals, scepticism runs high about further empowering EU frameworks in housing governance, not least because the EU’s historical track record is not seen as particularly favourable to right-to-housing agendas. Elena Szolgayová, coordinator of the EU Urban Agenda Housing Partnership, underscored at CIDOB that current EU dynamics point towards the prospects of regressive rather than progressive measures. Sven Bergensträhle, President of the International Union of Tenants, also expressed concern about EU interference on delimiting the scope of social housing efforts and the types of rent stabilisation and control measures to be deployed. The diverse housing realities that characterise EU urban areas call for flexible and tailored institutional responses rather than “one-size-fits-all” policies.

2. These proposals are further discussed in an unpublished report written by Dr Juli Ponce for Barcelona City Council.

Nevertheless, the establishment of common frameworks in certain areas to temper regulatory races to the bottom and better govern transnational actors seem to be worth further consideration. These frameworks could consist of implementing minimum, rather than maximum, standards, so that potentially more ambitious regulatory efforts are not curtailed. As with “soft law” measures, however, the risk remains that any official minimum standard could be used politically to justify limiting or undoing more ambitious proposals. The risks and benefits of advancing such measures should again be evaluated on a case-by-case basis.

IV. “Softening” EU fiscal and market integration rigidities

Proposals to bolster national and municipal sovereignty and the principle of subsidiarity in housing policy come up against some of the existing “hard laws” at EU level. Empowering local governments and national institutions to produce differentiated responses to the housing question, in line with the different political, economic and social conditions present across cities and states, requires flexibility to be introduced to key EU-wide rules and regulations.

State aid and competition laws are often cited as interfering in the range of housing policies and practices national and municipal authorities can deploy. In particular, competition norms linked to the status of “services of general economic interest” (SGEI) and the application of state aid rules. These have challenged the institutional trajectory of affordable housing sectors that catered for a broad population, such as municipal housing in Sweden and housing associations in the Netherlands. In both countries, financial government support for these sectors was accused of creating unfair competition towards commercial landlords (Elsinga and Lind, 2013). There is a strong consensus that fully recognising SGEI state aid status for social housing and deleting the narrow definition of its target social group are steps towards overcoming these types of challenges and legal uncertainties. Susanne Bauer, chair of the Eurocities Working Group on Housing and senior housing researcher of the City of Vienna, argued at CIDOB that such modifications were an important step towards promoting universal access to decent and affordable housing for all EU citizens.

EU competition law, the Services Directive and the e-Commerce Directive are also at the heart of contestations between online short-term rental platforms and municipal governments. Lobbyists for tourist accommodation platforms have pressured the Commission for as strict an interpretation of EU rules as possible to challenge regulations in cities such as Berlin, Barcelona, Brussels and Paris (Haar, 2018). The “European Cities for Adequate Housing” declaration demands that local authorities should have the power to restrict touristic and other non-residential uses of housing units and that these regulations comply with EU law as long as they apply to all EU citizens and businesses equally.

When it comes to general fiscal restrictions enforced by the EU, these continue to constrain public investment in affordable housing. Even if the aforementioned proposals geared towards increasing EU funding towards public and affordable housing prospered, they arguably would not compen-

sate for EU limitations upon the public spending that national governments could mobilise. In this sense, the “Housing for All” Citizens’ Initiative demands the non-application of the Maastricht criteria to public investment in affordable, public and social housing, while the “European Cities for Adequate Housing” declaration requests that it be considered for exemption from the corrective and preventative arm of the Growth and Stability Pact. These demands link to wider debates regarding the impact of EU-sponsored austerity upon welfare state regimes and could be used as a cue to engage in broader reflections on the forms of EU integration.

Freedom of capital flows within the EU is another obstacle to the national regulation of an increasingly transnationalised housing market. Putting in place specific taxes and/or restrictions upon real estate acquisitions by non-resident investors, in line with measures enacted in countries like Canada, Australia and New Zealand, for example, could go against the TFEU and the Treaty on the European Union (TEU). Exemptions to these norms do exist, however, such as Protocol No. 32 to the TEU, which allows Denmark to restrict the acquisition of second homes by non-nationals and Protocol No. 6 to the Act of Accession 2003, which permits Malta to restrict the acquisition of secondary residences. The possibility of facilitating similar opt-outs and flexible arrangements for other member states that might request them is another avenue that could be further explored. This would provide additional powers to locally regulate the real estate market.

Towards a new role for the EU in housing: from straightjacket to enabler?

Given the heterogeneity between housing sectors from city to city and country to country, empowering local actors to produce tailored responses to their different contexts should be a priority for the EU. In this sense, the current role of EU superstructures should be reversed: from limiting the national and local institutional room to manoeuvre to enabling, facilitating and expanding it. This requires “softening” the rigidities linked to the EU’s core market and fiscal rules so as to allow universalist housing policies to be pursued, unleashing large-scale investment in public housing where urgently needed and deploying robust protections of residential space under touristic and speculative pressures. This strategy also requires “hardening” of EU structures in domains beyond the reach of local actors; so as to avoid both regulatory races to the bottom between public authorities, as well as regulatory avoidance by transnational private capital. These Europe-wide norms, however, should enforce minimum standards, rather than set maximum limits so that local policies are not easily undermined by those of their neighbours, yet are not necessarily constrained by them either. Finally, the EU should further channel its financial clout in redistributive directions, towards under-resourced and under-funded public authorities and non-profit housing sectors.

Whereas some of these legal and policy proposals can be advanced within existing EU frameworks, several require piecemeal changes and others imply more structural modifications. The sheer magnitude of housing challenges across European urban areas suggests that an ambitious “shift”

(to paraphrase the UN Special Rapporteur on the right to housing)³ is required. The political conditions that might enable such an agenda are still to fully take shape, yet the rising politicisation of housing issues across the continent may potentially open up new horizons. So too might the crisis-ridden nature of the housing market itself. Housing was at the centre of the last global financial and economic crisis in 2007–8, and as European Central Bank supervisor Danièle Nouy suggested last September 2018, Europe’s next economic crisis is likely to originate in the real estate market again (*Reuters*, 2018). If crisis can be a catalyst for change, might recurring housing crises be a lever for advancing right-to-housing agendas? For the moment, proposals are being put on the table, and an increasing number of public and civil society actors are coalescing around them.

References

Haar, Kenneth. *UnFairbnb*. Brussels: Corporate Europe Observatory, 2018. (Online.) [Accessed on 14.05.2019]: <https://corporateeurope.org/sites/default/files/unfairbnb.pdf>

Kenna, Padraic. “Soft law and housing rights in the European Union system”, Irish Human Rights Commission Conference, Dublin, 10 December 2005. (Online.) [Accessed on 14.05.19]: <https://www.ihrec.ie/documents/dr-padraic-kenna-soft-law-and-housing-rights-in-the-european-union-system-10-december-2005/>

Marja Elsinga & Hans Lind (2013) The Effect of EU-Legislation on Rental Systems in Sweden and the Netherlands, *Housing Studies*, 28:7, 960-970, DOI: 10.1080/02673037.2013.803044

International Monetary Fund (IMF). “House price synchronisation: what role for financial factors?”, *Global Financial Stability Report: A Bumpy Road Ahead*. Washington, DC, April 2018, pp.93–133.

Pittini, Alice; Koessler, Gerald; Dijol, Julien; Lakatos, Edit & Ghekiere, Laurent. *The State of Housing in the EU*. Brussels: Housing Europe, 2017.

Reuters, “Real estate market could lead to Europe’s next crisis, ECB says”, September 5th 2018. (Online.) [Accessed on 13.05.2019]: <https://uk.reuters.com/article/uk-eurozone-banks-ecb/real-estate-market-could-lead-to-europes-next-crisis-ecb-says-idUKKCN1LL0N3>

3. <http://www.unhousinggrapp.org/the-shift>