



**How are urban social and affordable housing practices affected by EU policies? Two case studies.**

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*In the memory of Angelica Bertini Schuldt*

*Dedicated to Dieter Otto Schuldt*

# Abstract

The European Union does not have a housing policy; however, it has managed to exert influence over national housing policies of its Member States, apparently showing bias for market-oriented approaches and residualist social housing systems. This research attempts to bring an update as to the current state of discussions concerning housing in the European Union. It will also look into how urban social and affordable housing financing strategies have been affected by EU policies, and particularly, what effect European Union State aid regulation had on provision of social and affordable housing based on the case studies of the Netherlands and Sweden. Both countries had universalist social housing models that have been challenged before the European Commission leading to policy changes in the respective countries as of 2011. This research analyzes the consequences of these cases for the Netherlands and Sweden from a policy and housing provision perspective, as well as changes of behavior of public housing providers. It shows the different forces at play, the variety of opinions according to the EU body and other compatible options of State aid that can to a certain extent be an alternative to SGEI.

*Keywords: State aid, social and affordable housing, European Commission, Sweden, the Netherlands*

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# 1. Introduction and problem statement

Even though the European economy has shown signs of recovery after the 2008 global financial crisis (GFC) and the recovery in housing prices is seen by many as positive, in general salaries have not increased as fast and housing needs have only increased since then, affecting no and low-income population and vulnerable groups, as well as middle-income population, although to a lesser extent (EU Housing Partnership 2018, 10). In addition, costs related to housing are increasingly becoming the most significant item of household expenditure, with an increased number of people who spend more than 30% of their income on housing and related costs. However, this has not translated into an increased investment in social and affordable housing and on the contrary, although the diversity of groups affected by the crisis has grown, States have been narrowing down the beneficiaries targeted by their programs.

Meanwhile, States that are members of the EU need to comply with a set of rules that affect States' discretion in defining their policy on different topics. This leads to the question as to what extent the European Union influences national and local housing policies and in what direction it has been exerting its influence. Considering the housing crisis in various countries in the EU and especially in high-demand areas, this question is important because there are indications that the EU has rather been steering towards a market-oriented approach to housing policy in detriment of the satisfaction of the housing needs of Member States' citizens.

Although the European Union does not have a specific housing policy, other regulations have had influence over housing systems, the most notable being State aid regulation (regulating competition), but there are also recommendations through the European Semester, European funding mechanisms and policies on labor, amongst others.

Despite the fact that there is vast literature on this topic in general, this research attempts to complement the existing literature, looking at the topic from various perspectives such as policy, governance, economy and to a certain extent planning. The objective is to have a comprehensive picture of how the topic of State aid regulation in relation to housing has evolved since the appearance of the first cases related to services of general economic interest (SGEI) in the 2000s to nowadays, analyzing the effects in the long-term that can be identified in specific countries as a result of the introduction of a target group to the definition of social housing by the European Commission.

But this research does not intend to look into SGEI in isolation, but also relate it to the European Semester and relevant discussions that have been carried out in connection with the Urban Agenda for the EU and more specifically the Housing Partnership. It intends to illustrate the different forces at play through the examples of the Netherlands and Sweden, as well as the variety of voices coming from EU bodies and initiatives.

This research is meant to be the base for a broader study on the effects of European Union policy over national and local housing strategy, with the intention to see how countries, which did not have specific complaints brought against them, have been or could be affected by the existing cases. This is the situation for instance of Denmark and Austria, which also had/ have models with wider target groups than the one suggested by the European Commission, though so far there are no cases against them. In addition, the broader study would support the Housing Partnership and other stakeholders' efforts in search of an EU role in housing issues that fosters the realization of the right to housing or at least does not hamper it.

The decision to focus on the Netherlands and Sweden is based on the fact that those are the two cases on State aid that seem to have resulted in major changes to housing provision at policy level, at least.

Among other contested issues, Netherlands and Sweden followed the so called "universal" model in terms of beneficiaries of social housing, meaning that not only the most destitute would be considered for social housing, but also medium class and even higher income people. State aid cases were brought against both countries based on the belief that those universalist systems were not compatible with the exceptions for provision of state aid by EU Member States. Netherlands chose to reduce the target group of its social housing programs and Sweden chose to keep the target group but not describe the assistance as SGEI, thus reducing special conditions given to the public housing companies constructing and managing them.

The case studies emphasize that even in Western European countries with similar socio-political systems and welfare state forms (such as the Netherlands and Sweden), the blend of publicly provided social rights and private initiative differ (Esping-Andersen 2013), impacting their social housing policies. This points to the dangers of having a single definition of both social or affordable housing.

But most of all, the case studies show the extent in the long term of policy changes in the two countries as a result of the State aid cases and the impact of these over the behavior of housing providers, as well as effects over households' affordability and housing provision in general.

### **1.1. Research question**

This thesis will focus on how urban social and affordable housing strategies are affected by EU policies. And more particularly, what effect European Union State aid regulation had on provision of social housing based on the case studies of the Netherlands and Sweden. In addition, it will attempt to demonstrate how EU policy has supported a market-oriented approach to housing policy in the EU, in contrast to an approach based on access to housing for those in need.



Even though cities use a variety of tools<sup>1</sup> in the attempt to stabilize the housing market, which go beyond its social and affordable housing financing policies, analyzing all of the different tools in addition to the European perspective for both countries would not be possible in the scope of this masters and therefore, the remaining tools will only be discussed if related to the research question.

It is not an objective of this research to enter in a detailed discussion of “social mix” because on its own it is already a complex topic<sup>2</sup>. Thus, it will only be mentioned whenever necessary to describe governmental policies and arguments provided by different stakeholders to justify certain policies.

## **1.2. Methodology and structure of the study**

This study is mostly descriptive, but with the aim to provide explanations to the issues at stake. The qualitative part of the description relied heavily on European Union documents such as decisions, regulations, communications and letters with decisions on State aid cases by the European Commission, resolutions by the European Parliament, opinions by the Committee of the Regions, the Action Plan and other material produced by the Housing Partnership and decisions of the Court of Justice of the European Union<sup>3</sup>, as well as existing literature (journal articles, books, reports from various organizations). In addition, there is a more limited quantitative part, which relies as applicable on statistics from Eurostat, the Dutch Central Agency for Statistics and Sweden Statistics, amongst other.

Difficulties were encountered concerning the analysis of statistics, as the precise method and type of data collected change from country to country. However, in any case, an exact comparison between Netherlands and Sweden was never the objective, as the idea was rather to observe the varied ways in which European policy can influence countries’ housing policy.

The right to adequate housing as a part of the right to an adequate standard of living is recognized in innumerable international Conventions and also in European law (as will be seen in more detail in Chapter 2.1). Thus, this thesis will start with the description of the normative context and a general overview of the trend of financialization and commodification of the housing market in Europe, despite the protection on paper of the right to adequate housing (Chapter 2.1).

After the context description, this thesis will concentrate on the overview of social housing financing and European Union policy. Chapter 3 will take into consideration the developments in the last few years with the establishment of the Urban Agenda for the EU and its Housing Partnership. Then, it will go on to describe EU State aid regulations and the notion of SGEI. In addition to SGEI, the

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<sup>1</sup> Rent regulation, housing allowance, authorities’ right to be the first to buy dwellings being sold, limitations on holiday homes, reduction of the validity of construction permits, leasing of land by authorities instead of selling it, taxation, community land trusts, amongst others.

<sup>2</sup> For an interesting discussion on “social mix” refer for instance to Costarelli, Kleinhans, and Mugnano 2019.

<sup>3</sup> Comprised of the General Court and the European Court of Justice. Refer to [https://curia.europa.eu/jcms/jcms/Jo2\\_6999/en/](https://curia.europa.eu/jcms/jcms/Jo2_6999/en/) and [https://europa.eu/european-union/about-eu/institutions-bodies/court-justice\\_en](https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_en)

thesis will also describe other possibilities of compatibility with State aid that might be applicable in connection with the provision of social and affordable housing. Concrete cases will be mentioned.

Chapter 4 will then concentrate on the most emblematic cases related to State aid, which involve the Netherlands and Sweden. This Chapter will also look into how these cases affected social housing policy in the two countries.

Finally, Chapter 5 will analyze what has been described throughout the dissertation and thereafter this research will attempt to come to some conclusions.

## 2. Context: Social and affordable housing approaches in Europe

Before going into the details of the Swedish and Dutch models it is important to understand the international and European regulation regarding the right to housing, as well as the complexities around the definition of social and affordable housing. This will help one understand, amongst others, the challenges of having the European Commission unilaterally defining social housing.

### **2.1. Normative background: the right to housing**

The right to adequate housing is recognized in international human rights law as part of the right to an adequate standard of living. It was first mentioned in the Universal Declaration of Human Rights<sup>4</sup>, being later addressed in several other international instruments<sup>5</sup>, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>6</sup>. According to ICESCR, which has also been ratified by all EU Member States, States parties

“recognize the right of everyone to an *adequate standard of living* for himself and his family, including *adequate* food, clothing and *housing*, and to the continuous improvement of living conditions”.

However, “the right to adequate housing does not require the State to build housing for the entire population” (OHCHR Fact Sheet No. 21, 6). This means that people without housing cannot automatically demand a house from the Government and the Government is not obliged to construct the country’s whole housing stock. The right to housing involves rather the prevention of homelessness, prohibition of forced evictions and discrimination, attention to the most vulnerable groups, guaranteeing security of tenure and adequate housing. This might involve also building houses or providing housing allowances, especially for the most vulnerable. And it might also mean ensuring “that the actions of private actors and investors are consistent with the State’s obligation to fulfil the right to housing” (e.g. requiring investors to produce affordable rather than luxury housing) (Special Rapporteur on adequate housing 2018, § 121).

ICESCR Committee’s General Comment Nr. 4 (§ 8) defines adequate housing according to:

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<sup>4</sup> Article 25: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and

<sup>5</sup> International Convention on the Elimination of All Forms of Racial Discrimination (article 5 (e)(iii)), Convention on the Elimination of All Forms of Discrimination Against Women (article 14 (2)), Convention on the Rights of Persons with Disabilities (article 9 and 28), Convention on the Rights of the Child (article 27 (3)), Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (article 43), Declaration on Social Progress and Development (article 10), Vancouver Declaration on Human Settlements (Section III (8)), Declaration in the Right to Development and the ILO Recommendation Concerning Workers’ Housing, 1961 (No. 115, article (1)), amongst others.

<sup>6</sup> Article 11(1).

- Legal security of tenure<sup>7</sup> : legal protection against forced eviction, harassment and other threats, no matter the type of tenure.
- Availability of services, materials, facilities and infrastructure: facilities essential for health, security, comfort and nutrition.
- Affordability: requires States to ensure that the percentage of housing-related costs is proportionate with income levels and that tenants be protected against unreasonable rent levels or rent increases. It also means that *costs associated with housing should not threaten or compromise the attainment and satisfaction of other basic needs* such as food, education and access to health care (OHCHR Housing Toolkit).
- Habitability: provides adequate space and protects “from cold, damp, heat, rain, wind, or other threats to health, structural hazards and disease vectors.”
- Accessibility: requires providing sustainable access to all, but in particular disadvantaged groups<sup>8</sup> to adequate housing, taking into account their special housing needs and ensuring them with some degree of priority consideration in access to housing.
- Location: “allows access to employment options, health-care services, schools, childcare centres and other social facilities”.
- Cultural adequacy: enable the expression of cultural identity and diversity of housing.

Affordability will surely be the main topic during this research, however, all characteristics of adequate housing are important and interconnected.

As for other international commitments, ‘affordable housing’ is expressly mentioned in Sustainable Development Goal 11.1<sup>9</sup> and the UN Geneva Charter on Sustainable Housing emphasizes the benefits of decent, healthy and affordable housing across the region. In addition, the UN New Urban Agenda with its “Housing at the Centre” approach attempts to make housing a priority in the debate around sustainable urban development, which means making it a central element of social and economic policies, integrating it with the framework of national urban policies and urban planning (UN Habitat 2015, 8, 16). According to this UN document, to position housing at the center of cities and urban planning practice, several guiding principles must be considered, amongst which: housing is an integrating element of urban planning; place matters and urbanization will not be inclusive without providing access to housing, services and livelihood for

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<sup>7</sup> “Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property” (ICESCR Committee’s General Comment Nr. 4, § 8 (a)).

<sup>8</sup> The following are considered disadvantaged groups by the Committee: “the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups”.

<sup>9</sup> SDG 11 states: “...Making cities sustainable means creating career and business opportunities, safe and affordable housing, and building resilient societies and economies...”. Target: “By 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums”.

all; and urban planning and legislation should contribute to maximize affordability of housing and spatial inclusion.

The right to housing is also recognized in European legislation. The Charter of Fundamental Rights of the European Union<sup>10</sup> speaks of the right to housing assistance, establishing that:

“In order to combat social exclusion and poverty, the Union recognises and respects the *right to social and housing assistance* so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.”

The revised European Social Charter<sup>11</sup> also explicitly recognizes that “everyone has a right to housing”. And apart from committing to promote access to housing of an adequate standard, States agree to make the price of housing accessible to those without adequate resources.

In addition, the 2017 European Pillar of Social Rights<sup>12</sup> includes specifically the right to access to social housing for those in need. The importance of social housing policies is also recognized in connection with objectives of social cohesion and integration in cities and urban areas for its contribution to stability in the neighbourhoods (*Leipzig Charter on Sustainable European Cities* 2007, 5). Moreover, as part of its Urban Agenda, the EU has designated the Housing Partnership just to look into housing, particularly social and affordable housing.

Several institutional actors recognize the central importance of housing and how it is interrelated with other fundamental factors. The European Committee of the Regions (CoR)<sup>13</sup>, for instance, “highlights the direct link between housing costs and the ability of individuals and families to invest in private consumption and spend on education, health and retirement, all of which are factors for economic and social well-being” (CoR 2017, § 15). In connection with that, the World Health Organization (WHO) “points to severe health distress that may result from inadequate housing” and also “stresses that poor and deteriorating housing conditions lead to increased spending on health” (UNECE 2015, 29, 34). Moreover, the Economic Commission for Europe (2017, 4) points to the need to further acknowledge that high housing costs exacerbate inequalities in education, health, employment and earnings, having the capacity to permanently impede social

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<sup>10</sup> Article 34. Refer also to Article 36.

<sup>11</sup> Article 31 of the revised Charter; refer also to Articles 16 and 30. The Charter treaty system is considered one of the most widely accepted human rights set of standards within the Council of Europe, having been ratified by 43 out of the 47 member States of the Council of Europe (<https://www.coe.int/en/web/european-social-charter/about-the-charter>).

<sup>12</sup> Principle 19.

<sup>13</sup> The European Committee of the Regions is composed of 350 members who are regional presidents, mayors or elected representatives of regions and cities in the 28 Member States of the EU. Since the entry into force of the Lisbon Treaty it has to be consulted throughout the European legislative process. It aims to ensure that “European policy developments uphold the principles of subsidiarity and proportionality and promotes economic, social and territorial cohesion in the EU through autonomy for regional and local authorities, encouraging decentralisation and cooperation at a regional and local level” (Eurostat 2017, 29).

mobility and to “translate these differences into the built environment, resulting in spatial segregation”.

In practice, the situation is clearly different. One has observed the consistent financialization of housing<sup>14</sup> -described as the expanding dominance of financial markets and corporations in the housing sector (Special Rapporteur on adequate housing 2017, § 1). This refers to housing being “treated as a commodity, a means of accumulating wealth”, disconnected from its social function of providing a place to live in security and dignity. The Special Rapporteur (SR) on adequate housing has been consistently tackling this issue in her reports:

“Massive investment of capital into housing markets and rising prices should not be confused with the production of housing and the benefits that accrue from it. The bulk of real estate transactions of that sort do not create needed housing or long-term secure employment. When rented homes or mortgages are owned by remote investors, money mostly flows out of communities and simply creates greater global concentration of wealth. The new corporate interest in developing rental properties from homes sold in foreclosures has also raised concerns that there is a greater incentive to pursue foreclosures rather than modify a loan agreement to avoid an unnecessary eviction.” (Special Rapporteur on adequate housing 2017, § 28)

“Many States have been too deferential to the dynamics of unregulated markets and have failed to take appropriate action to bring private investment into line with the right to adequate housing<sup>15</sup>. By providing tax subsidies for homeownership, tax breaks for investors, and bailouts for banks and financial institutions, States have subsidized the excessive financialization of housing at the expense of programmes for those in desperate need of housing.” (Special Rapporteur on adequate housing 2017, § 76)

It is argued that after the 2008 GFC, governments and international institutions spent disproportionately more on bailouts of banks and financial institutions than on assistance to the victims of the housing crisis, and in addition, many national governments even made substantial cuts to their housing programs (Special

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<sup>14</sup> For more information on the impact of finance policies on the right to housing, refer also to the Reports of the Special Rapporteur on adequate housing from 2009, 2012 and 2018.

<sup>15</sup> Amongst other problems caused by financialization of housing is that it is difficult to know who is accountable for human rights when the owners of housing are bondholders, public stockholders or others with no direct connection to the properties. Tenants with this kind of landlords have complained of “sharp increases in rent, inadequate maintenance and conditions as a result of substandard renovations that have been undertaken quickly to flip the home into rentals, and an inability to hold anyone accountable for those conditions” (§ 33). In addition, corporate landlords have been known for increasing the problem of vacant apartments, as the housing is valuable whether it is vacant or occupied (§ 30), as well as for concentrating on the production of unneeded luxury housing. But a few governments in Europe even offer permanent residence or even citizenship (‘golden visa’) to foreign investors who invest a minimum amount in property (e.g. Euro 500,000 in Spain, Euro 300,000 in Portugal and Euro 250,000 in Greece), which can contribute to housing affordability problems for local residents (§ 23).

Rapporteur on adequate housing 2017, § 67). And as pointed out by the SR on adequate housing, in 2017 the World Bank was still promoting “financial liberalization” instead of focusing on active intervention in housing provision.

Meanwhile, as stated by Holm (2014, 31), the logic of the market is not one that will naturally result in the construction of housing in the low-price segment, because although the risk not to rent out the dwellings is low, the profit margin is also much lower than in the high- or middle-price segment. Thus, Holm argues, it is hard to expect that the market will build cheap apartments out of its own will, which is why the State has to intervene (Holm 2014, 31).

## **2.2. Social and affordable housing in Europe**

In 2017, a 10.4 % share of the EU-28 population lived in households that spent 40% or more of their disposable income on housing, but considering only low-income households, this number increases to 37.9% (refer to Table 1 below). The table shows how different the situation is amongst EU countries, as well as inside the same country between low-income households and the total of the population. This data is only meant to give a general overview, as there are considerable differences inside countries between cities. Moreover, it only considers the overburden (over 40%), leaving out all those paying more than 30% of their income on housing (OECD benchmark), which is also a debated percentage, with some critics defending that households should not pay more than 25% of income on housing.

**Table 1. Housing cost overburden<sup>16</sup> in the EU**

Countries	Housing cost overburden of low-income households <sup>17</sup>		Housing cost overburden in total	
	2010	2017	2010	2017
<b>European Union - 28 countries</b>	37.2	37.9	10.8	10.4
<b>Belgium</b>	37.9	34.4	8.9	9.1
<b>Bulgaria</b>	20.2	50.1	5.9	18.9
<b>Czechia</b>	49.4	44.2	9.7	8.7
<b>Denmark</b>	71.1	75.4	21.9	15.7
<b>Germany</b>	42.2	48.5	14.5	14.5
<b>Estonia</b>	26.2	18.4	6.0	4.8
<b>Ireland</b>	23.1	19.9	4.9	4.5
<b>Greece</b>	67.7	89.7	18.1	39.6
<b>Spain</b>	35.2	36.5	9.7	9.8
<b>France</b>	22.1	20.1	5.1	4.7
<b>Croatia</b>	48.4	26.2	14.1	5.8
<b>Italy</b>	29.7	32.9	7.7	8.2

<sup>16</sup> The housing cost overburden rate is defined as the share of the population that is living in a household where total net housing costs were greater than 40 % of disposable income (Eurostat 2018, 188).

<sup>17</sup> Considering households with 60% of median equivalised income.

<b>Cyprus</b>	10.9	10.3	3.1	2.8
<b>Latvia</b>	31.9	25.6	9.8	6.9
<b>Lithuania</b>	38.5	26.8	10.6	7.2
<b>Luxembourg</b>	24.4	37.4	4.7	10.0
<b>Hungary</b>	36.7	49.4	11.3	10.7
<b>Malta</b>	13.3	5.6	3.7	1.4
<b>Netherlands</b>	43.4	40.9	14.0	9.4
<b>Austria</b>	36.6	40.3	7.5	7.1
<b>Poland</b>	30.5	30.4	9.1	6.7
<b>Portugal</b>	15.9	26.0	4.2	6.7
<b>Romania</b>	40.0	36.3	15.8	12.3
<b>Slovenia</b>	20.6	26.7	4.3	5.2
<b>Slovakia</b>	35.2	38.9	7.6	8.4
<b>Finland</b>	16.4	18.2	4.2	4.3
<b>Sweden</b>	41.9	38.8	7.8	8.4
<b>United Kingdom</b>	54.9	40.8	16.5	12.4

Source : Eurostat

Despite different attempts, there is no common definition of social or affordable housing because its meaning varies from one country to another according to historical traditions (UNECE 2015, 14). UNECE's<sup>18</sup>, for instance, interprets social housing as referring to the part of a country's housing system "that is aimed to satisfy the housing need, that is supported by the State and distributed through administrative process distinct to their local contexts".<sup>19</sup> Other definitions will be seen below.

Social housing systems vary based on different characteristics, such as type of beneficiaries it is allocated to, tenure<sup>20</sup> and its providers/ owners<sup>21</sup>, as well as the funding and finance<sup>22</sup> it receives (UNECE 2015, 15). The European Commission, as will be seen later in more details, focuses on a target group, on defining the beneficiaries.

In relation to beneficiaries, this study bases itself on the categorization of allocation models proposed by CECODHAS in 2007, which has been used by UNECE, as well as other institutions/ authors. Following this model, social housing can be divided in universal/ universalistic or targeted. Universal or universalistic social housing systems are those that are open to the whole population regardless of income or other limits (subject though to registration on the public housing waiting list). Targeted systems limit their beneficiaries and can be divided into generalist and residual systems. Generalist systems allocate social housing based

<sup>18</sup> United Nations Economic Commission for Europe.

<sup>19</sup> For more information refer to the Guidelines on Social Housing by UNECE.

<sup>20</sup> The most common form of social housing is social housing for rent, but there are others: low-cost home ownership, co-operatives, shared ownership, right of occupancy dwelling, and private-rented (UNECE 2015, 14-15).









<sup>21</sup> National and local authorities, public companies, non-profit and not-for profit, limited profit associations and companies, cooperatives, charities, private-for-profit developers and investors (UNECE 2015, 16 citing CECODHAS). For a different classification refer to Gibb 2010, p. 6.

<sup>22</sup> Demand-side subsidies (or people subsidies) and supply-side subsidies (building subsidies) (UNECE 2015, 17).




on established income levels, while residual systems cater only to the most vulnerable part of the population, namely to no/ low income, vulnerable or disadvantaged groups (UNECE 2015, XIII, 18 and 21).

**Table 2. Approaches to social housing provision in EU Member States**

Size of the social rental housing sector, %	UNIVERSALISTIC	TARGETED	
		Generalist	Residual
>=20%	The Netherland 	Austria	
11% - 19%	Denmark 	Czech Republic	United Kingdom
	Sweden 	France*	France
		Finland*	Finland
5% - 10%		Belgium*	Belgium
		Germany* 	Germany
		Poland 	Estonia
		Slovenia	Ireland
		Italy 	Malta
0% - 4%		Luxembourg	Hungary
		Greece 	Cyprus
		Spain 	Portugal
		Slovakia*	Slovakia
			Bulgaria
			Lithuania
			Latvia
		Romania	
			Estonia

Multiple sources: UNECE 2015 p. 26, citing interviews, CECODHAS 2011 and Ghekière 2007.

 Trend in the policy development

(\*) Countries are listed twice as they have two lines of policy: one serving the general population and the other serving special groups

All three countries that followed the universal social housing system (Netherlands, Sweden and Denmark) - refer to Table 2 above- have been departing from it (though to different extents) even if not on paper, but at least in practice. The Dutch and the Swedish systems have been questioned before the European

Commission for their non-compliance with EU State aid regulations. This thesis will describe this problematic more in detail in Chapter 4 below.

As for the Danish model, middle-class households have favored homeownership to renting and the political discourse also changed and started giving preference to allocating social housing “to those who cannot afford homeownership or pay private sector rents” (Poggio and Whitehead 2017, 8). However, the current system seems to have shortcomings even for this group. As put by Poggio and Whitehead, as housing association must set cost-rents but are not allowed to equalise revenues between estates, “relatively cheap old dwellings are concentrated in centrally located estates and more expensive new ones in suburban or rural areas”. And as only well-off households can afford to queue for several years, this means that lower income and vulnerable households end up in suburban or rural areas. The situation is similar in Sweden.

As can be seen in Table 2 above, the majority of EU Member States gravitate in practice toward the residual social housing allocation model. This trend began in the period between the 1980s and 2000s, when there was almost unanimous support for homeownership in the region (UNECE 2015, 27; Economic Commission for Europe 2017, 7; Poggio and Whitehead 2017, 3). In some places, access to mortgage was made relatively easy, in others, public housing was privatized (eastern countries). Overall, direct investment in the provision of social housing for rental has been reducing since the 1980s, with several countries giving preference to subsidizing homeownership and housing allowances.

According to UNECE (2015, 27,28), countries with a “mature social housing sector” decreased their stock by reducing construction, selling and demolishing the stock for replacement by mixed income neighborhoods. In countries with an “emerging social housing sector”, social housing policies were introduced in the 1990s and were in the early stages of development and implementation when hit by the 2008 crisis<sup>23</sup>. In those countries, the public housing stock was sold even faster than in “mature social housing sectors”, keeping only small reserves of public housing for the very poor and vulnerable, which has deteriorated due to lack of maintenance<sup>24</sup>.

Since the GFC, affordability problems have worsened in all countries and home ownership is more difficult to achieve<sup>25</sup> (Poggio and Whitehead 2017, 3; UNECE 2015, 30). Therefore, the need for social housing for rental has been growing fast (UNECE 2015, 30). However, lack of funding and limited access to finance<sup>26</sup> and to a certain extent political will, have been halting the process of new construction of social housing. Thus, in practice even generalist systems (e.g. France) have in times behaved as residual models.

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<sup>23</sup> Ibid, p. 27.

<sup>24</sup> Ibid, p. 28.

<sup>25</sup> Due to reduced availability of credit and increased job insecurity (Economic Commission for Europe, 7).

<sup>26</sup> This takes different forms such as as general funding cuts (e.g Greece), higher demand for social housing (e.g. France), limited funding for new social housing policies (Slovenia) (UNECE 2015, p. 23).

The Housing Partnership emphasized the positive budgetary effect of public investment in infrastructure (construction and retrofitting of social and affordable housing) however, it rather observes the decrease of such investment in favor of expenditure in housing allowances (Housing Partnership 2018, 71). The National Housing Federation<sup>27</sup> shows that the total expenditure on housing development in the EU has declined by 44% between 2009 and 2015, while expenditure on housing allowance has increased 48% in the same period (National Housing Federation 2017)<sup>28</sup>.

According to Poggio and Whitehead (2017, p. 4), residualisation comes with two challenges. One is the sustainability for social landlords, unless they receive proper income related allowances or State provided guarantees, due to the lower income of tenants and the higher risk of insolvency (e.g. Sweden). The other is the trade-off between targeting social housing and keeping a social mix in the sector (e.g in Belgium, Italy, Sweden and the Netherlands).

The table below shows in more detail social housing as a proportion of overall housing stock in some European countries in 2015:

**Table 3. Social housing stock in European countries**

Country	Social rental housing stock, %, 2015
Netherlands	34.1
Austria	26.2
Denmark	22.2
France	18.7
United Kingdom	17.6
Finland	12.8
Ireland	8.7
Poland	8.3
Slovenia	6.4
Malta	5.5
Norway	4.6
Hungary	4
Germany	3.9
Portugal	2

<sup>27</sup> Referring to data from Eurostat on *General government expenditure by function (COFOG)*.

<sup>28</sup> Amongst the reasons given for this shift presented by the National Housing Federation (citing Kemp 2007) are: “access to housing has increasingly been treated as an income rather than a housing (supply) problem”; “shift from universalist to targeted welfare regimes” (housing allowances regarded as the more targeted approach as it is usually means-tested); “increased emphasis and reliance on market-led solutions: the believe was that governmental (supply-side) subsidies were an interference in the market, whilst housing allowances would provide low-income households with access to market housing”; and “there has also been a growing view that housing allowances would provide more consumer choice and be less paternalistic in providing (social) homes” (National Housing Federation 2017).

<b>Luxembourg</b>	1.6
<b>Estonia</b>	1.4
<b>Czech Republic</b>	0.5
<b>Latvia</b>	0.2

Source: OECD (<https://www1.compareyourcountry.org/housing/en/3/all/default>)

Shortcomings, however, plague all models and even the poorest are not properly catered for or receive places that are inappropriate from a quality and location perspective, for instance. This applies to Denmark and Sweden, as seen above, but also to several generalist and residualist systems. In Hungary (residual), not even the homeless and other excluded social groups are properly taken care of, while municipalities continue to privatize the existing stock and exclude poor families (Poggio and Whitehead 2017, 7). In Italy (generalist moving to residual), a new model of mixed public-private funding for investment in “affordable housing” target especially mid-income households, while the publicly owned social rented sector does not receive sufficient resources either for maintenance of the existing stock nor for new construction<sup>29</sup>.

One further issue that varies across Europe is the relative importance of different levels of governance – state, region, municipalities- and their degree of cooperation (Poggio and Whitehead 2017, 2). Local governments are usually the ones with legal responsibility for meeting housing needs and are also the ones that should have the better overview of those needs. However, the local level is also “more permeable to local stakeholders’ interests” and sometimes inhibits the development of new social housing or allocates in ways that are detrimental to the poorest and most vulnerable<sup>30</sup>. One example is that of the Czech Republic, where the majority of the social housing stock was privatized by local authorities at below-market prices, while “special schemes supporting the development of dwellings for rent by cooperatives have been transposed into speculative homeownership initiatives”<sup>31</sup>. The new Czech Social Housing Act is expected to provide for the re-centralization of many functions.

In addition to the complexities of social housing, what was said above shows also the lack of clarity concerning the difference between social and affordable housing<sup>32</sup>. In 2017, the EU Housing Partnership - which will be explained in more details below- examined how its own members interpret the term “affordable housing” based on submissions received from them<sup>33</sup>. The result showed great variety of interpretations and that the large majority of the assessed countries have “no official, legal or statutory definition for the term ‘affordable housing’ in their constituency” (Rosenfeld 2017, 7). In addition, the study showed that several members use the term affordable housing as a synonym for social housing or

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<sup>29</sup> Ibid.

<sup>30</sup> Ibid, p. 4.

<sup>31</sup> Ibid, p. 6.

<sup>32</sup> Czischke’s study (2018, 3) for instance adopted the working definition of “affordable housing” as “rental housing that is below-market rent and open to a broader range of household incomes than social housing”. Refer to this study for more information on the topic.

<sup>33</sup> For more information on the Housing Partnership and its members refer to Chapter 4.2. below.

consider social housing as one of the affordable housing options available in their constituency<sup>34</sup> (Rosenfeld 2017, 5).

Based on the submissions received, it was identified that the term 'affordable housing' is loosely associated with several common categories:

- Ratio measurements: This addresses the proportion of the household's income that is being used on housing costs. Three ratio measurements were identified: simple 'housing-cost-to-income' ratio, fixed ratio with a benchmark (e.g. 30%) and refined ratio measures, which in addition to rent /mortgage costs, also consider other essential costs such as energy, taxes, charge fees. Several<sup>35</sup> Housing Partnership members measure affordability based on these measurements. Ratio measurements have attracted criticism<sup>36</sup>, especially as to how affordability benchmarks are set.

Some members use OECD<sup>37</sup>'s operational definition, which relates to "a proper housing unit with an appropriate size and number of bedrooms for a specific family, with a rent not higher than 30% of that family income"<sup>38</sup>.

- Tenure related interpretations: Two options were mentioned: affordable rent and affordable home ownership. EIB and the Scottish Cities Alliance, for instance, use the term affordable housing to describe "housing available for rent at prices that are lower than those in the private market, but higher than those in the social housing sector within a specific local housing market"<sup>39</sup>. The target group is people with higher incomes than those eligible for social housing. For some members, this category of "affordable housing for rent" for middle-income groups is missing in their constituencies, despite its need. As for "affordable home ownership", the Scottish Cities Alliance has 'shared ownership' as one of the affordable options and the City of Vienna has "schemes for homes available for purchase at lower prices for population groups on lower incomes".

Linking housing affordability with tenure has also been criticized, because what is considered relevant is the effect of housing on housing costs and not the tenure. However, national legislation (funding and finance) has been found to be closely linked with tenure, which means that "housing options may be eligible or excluded from specific support (e.g. funding, finance, grants, guarantees, tax breaks, etc.) on the basis of tenure to which they belong"<sup>40</sup>.

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<sup>34</sup> Slovenia, Slovakia, the Netherlands, Lisbon, Riga, Poznan, Vienna, Eurocities and Scottish Cities Alliance.

<sup>35</sup> The Netherlands, Slovakia, Lisbon, Riga, AEDES and the European Commission.

<sup>36</sup> "The common points of criticism relate to: concerns about how affordability benchmarks are set; applying a single measure across all tenures, locations and household types; failing to account for issues of housing quality and overcrowding; methods for accessing housing costs (what is considered a housing cost); and income (i.e. gross household income vs disposable income)" (Rosenfeld 2017, 11).

<sup>37</sup> [www.oecd.org/els/family/HC1-2-Housing-costs-over-income.pdf](http://www.oecd.org/els/family/HC1-2-Housing-costs-over-income.pdf)

<sup>38</sup> Rosenfeld 2017, 9.

<sup>39</sup> Ibid, 5.

<sup>40</sup> Ibid, 14.

- Integrative concept: Points to the complexity of the term affordable housing. As considered by AEDES, affordability, accessibility and quality of housing are strongly interrelated. It is a challenge, but it is also crucial to combine them. Unfortunately, this is often disregarded. As for affordability, Eurocities calls for an integration of the three pillars of sustainability in the field of housing, namely environmentally sound, economically viable and socially inclusive. URBACT focuses on the importance of considering housing associated costs such as utility bills and the indebtedness of households as the result of these costs.

In conclusion, this section attempted to illustrate the complexity and variety of definitions of both social and affordable housing, focusing on models based on type of beneficiaries (classification in universalist, generalist and residualist), as further reference will be made to them throughout this study. One could observe that all three models face important challenges, although the European Commission mostly focuses on challenges presented by the universalist models.

### 3. Social housing policy and the European Union

Although the European Union has no specific competence in the area of housing policy, in practice, national housing policies can be impacted by the implementation of various EU policies. One such policy with potential for considerable impact over national housing systems is competition through State aid regulation. However, there are also others, such as the Urban Agenda for the EU, country-specific recommendations under the European Semester, the VAT system, energy policy, expenditure benchmark<sup>41</sup>, amongst others<sup>42</sup>. This thesis will describe briefly the Urban Agenda for the EU and the European Semester but will focus primarily on State aid regulation. It will not be possible to describe the remaining policies in here.

#### 3.1 Urban Agenda for the EU

The idea of an EU Urban Agenda started being developed in 2014 in initiatives of the European Commission<sup>43</sup>. The themes that would finally be part of the Urban Agenda were decided in a participative way based on a survey carried out with Member States and representatives of urban and regional authorities in 2015<sup>44</sup>, as well as thematic workshops<sup>45</sup> (*Urban Agenda for the EU: Pact of Amsterdam 2016*, iii). A final agreement on the Urban Agenda for the EU was reached in 2016 with the Amsterdam Pact, which foresees the development of 12 priority themes<sup>46</sup> as Partnerships between different stakeholders. Included are themes such as housing, sustainable land use; public procurement, the inclusion of migrants and refugees, and urban poverty.

The Urban Agenda for the EU is described as the 'umbrella' for all urban policy initiatives<sup>47</sup>. It has a strong focus on promoting the involvement of cities in EU policymaking, improving access to and utilization of European funds (structural and investment) and improving the "EU's urban knowledge base" through increased cooperation and practice sharing amongst cities (Eurostat 2018, 20).

As mentioned above, the work of the Urban Agenda for the EU was designed to flow through Partnerships, which are groups of experts from European

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<sup>41</sup> The expenditure benchmark is imposed by the EU in a 1997 agreement called the Stability and Growth Pact, which requires Member States to have a debt below 60% of GDP and a yearly deficit below 3% of GDP. As per MacGuill in the FactCheck, according to EU rules, Member States are constrained "from increasing public spending from one year to the next, above the rate the economy is expected to grow in the medium term" (MacGuill 2016). This does not only apply to housing, but also to other areas of public spending.

<sup>42</sup> CoR 2017, §§ 2 and 10.

<sup>43</sup> CITIES forum and European Commission Communication *The urban dimension of EU policies — key features of an EU urban agenda* (COM (2014) 490).

<sup>44</sup> The initiative was organised by the Netherlands and under consideration of the Commission Staff Working document ('Results of the Public Consultation on the key features of an Urban Agenda for the EU, SWD (2015) 109 final/2, published on 27 May 2015).

<sup>45</sup> This was organised by the European Commission in September 2015.

<sup>46</sup> Other topics are: air quality; the circular economy; jobs and skills in the local economy; climate adaptation; energy transition; urban mobility; and digital transition.

<sup>47</sup> COM (2017) 657, 3.

institutions, EU Member States, European cities and other stakeholders<sup>48</sup>. It expresses a mix of all governance levels in every stage, in an attempt to share the responsibility for results<sup>49</sup>. For two years, the Partnerships analyzed challenges in their respective theme and their recommendations started being translated into Action Plans. Some of them were already presented in their final versions in 2018, including the one on housing. The proposals are adopted by consensus.

One relevant point to keep in mind is that the Action Plans are not legally binding and that the actions reflect the view of the Partnership and not necessarily that of the Commission, other specific EU bodies, all Member States or cities<sup>50</sup>. However, the different EU bodies, as well as other stakeholders should examine how to implement the actions falling into their competence.

### **3.1.1. Housing Partnership**

The unprecedented housing needs and the increasing number of European households that face difficulties in accessing adequate and affordable housing, which deteriorated considerably in the aftermath of the 2008 GFC, set the ground for the work of the Housing Partnership<sup>51</sup> (*Housing Partnership 2018*, 5). The objective set for housing in the Pact of Amsterdam was therefore to have affordable housing of good quality, focusing on “affordable public housing, state aid rules and general housing policy” .

According to the Housing Partnership, the increase in housing needs in Europe has not led to an increase in support for social and affordable housing, but in the contrary, State support has declined in the last decade, especially in the form of public investment in social and affordable housing (*Housing Partnership 2018*, 18). Despite not ignoring the connection between the instability of financial frameworks and low rates of return as a factor in decreasing investment, the Housing Partnership also points out to the “perceived legal uncertainty that stems from complex state aid rules”. Despite the 2011 SGEI Package, the Housing Partnership understands that there is still significant need for clarification and guidance on how to use EU regulations on State aid, in order to increase State support for social and affordable housing<sup>52</sup>.

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<sup>48</sup> “Participating Member States and cities have been proposed by Member States, the Committee of the Regions, Eurocities, the Council of European Municipalities and Regions as well as the URBACT Programme and have been selected by the Directors-General Group on Urban Matters” (COM (2017) 657, p. 4). The Directors-General Group on Urban Matters is composed of all Member States, the Commission and city representatives (Committee of the Regions, Eurocities, Council of the European Municipalities and Regions). This group is co-chaired by the country holding the EU Presidency and the Commission.

<sup>49</sup> COM (2017) 657, 3.

<sup>50</sup> COM (2017) 657, 7-8.

<sup>51</sup> The Partnership on Housing brings together Member States (Slovakia, Latvia, Luxembourg, the Netherlands, Slovenia plus Czech Republic and Sweden as observers); cities (Vienna, Poznan, Riga, Lisbon, Scottish Cities Alliance, EUROCITIES); stakeholders (Aedes, Housing Europe, International Union of Tenants), EU institutions and programs (European Investment Bank, the European Commission (DG REGIO with contributions from DG ENER, DG EMPL), URBACT), and experts (Faculty for Urban Studies, Science Po-Paris Institute of Political Science) (*Housing Partnership Action Plan 2018*, p. 13).

<sup>52</sup> COM (2017) 657, 6.



The Partnership has suggested 12 actions and recommendations on good policies, governance and practices, which can be found in Annex 1. The actions are divided in those directed to improve legislation, knowledge and governance<sup>53</sup>, as well as funding. Focus will be given specially to: revision of the SGEI decision with regard to the narrow target group of social housing (Action 3), recommendations on EU funding of affordable housing (Action 11) and recommendations on the European Semester and affordable housing (Action 12).

### Revision of the SGEI decision with regard to the narrow target group of social housing

The Partnership recommends that Decision 2012/21/EU be reviewed, and the definition of social housing as limited to “disadvantaged citizens or socially less advantaged groups” be deleted, “in order to enable the implementation of sustainable goals such as ‘social mix’ and ‘social cohesion’ as valid public policy objectives” (*Housing Partnership* 2018, 19). It considers that the concentration of vulnerable groups has proven counterproductive in curbing social segregation, thus policies that lead to social mix should be facilitated and not made more difficult<sup>54</sup>.

The Partnership also justifies its recommendation on the fact that “the scope of social housing can vary from one Member State to another, from one city to another, depending on the history and culture of public intervention in each Member State and on the prevailing economic and social conditions” (*Housing Partnership* 2017, 3). The definition of a target group for social housing by the Commission might differ considerably from “definitions at local, regional and national levels, leading to even less clarity” and increasing “legal uncertainty for investors, financiers, and local and national authorities” (*Housing Partnership* 2018, p. 25). Moreover, this definition is “questionable from a subsidiarity<sup>55</sup> and proportionality perspective, in the context of the wide margin in which Member States and local authorities have to organize their SGEIs”.

Already in 2013, a group of European mayors<sup>56</sup> passed the so-called *Resolution for social housing in Europe* (Large European Cities 2013), which stated that subsidised housing must be accessible for broad levels of the population, as concentrating only on low-income groups would lead in their opinion to social

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<sup>53</sup> Good practice database, brochure with policy guidance, exchange program for urban social housing professionals, monitoring system for affordable housing, exchange on affordable housing at Member State level, improvement of EU urban housing market data and of EU gender-poverty-energy nexus data.

<sup>54</sup> *Ibid*, 23.

<sup>55</sup> Under Article 5(3) TEU there are three preconditions for intervention by Union institutions in accordance with the principle of subsidiarity: (a) the area concerned does not fall within the Union’s exclusive competence (i.e. non-exclusive competence); (b) the objectives of the proposed action cannot be sufficiently achieved by the Member States (i.e. necessity); (c) the action can therefore, by reason of its scale or effects, be implemented more successfully by the Union (i.e. added value). In <http://www.europarl.europa.eu/factsheets/en/sheet/7/the-principle-of-subsidiarity>

<sup>56</sup> Amsterdam, Barcelona, Berlin, Bratislava, Brussels, Budapest, Bucharest, Copenhagen, The Hague, Dublin, Frankfurt, Hamburg, Krakow, Leipzig, Ljubljana, Milan, Munich, Nantes, Paris, Prague, Riga, Tallinn, Turin, Vilnius, Warsaw, Vienna und Zagreb.

segregation. The group requested the Commission to leave Member States to decide on the definition of social housing.

Moreover, at the same period, the Parliament had passed the resolution of June 2013 on social housing in the European Union<sup>57</sup>, which recognized that on its own the market was incapable of meeting the need for affordable homes and calling on the Commission not to issue recommendations related to the size of the social housing sector in the different countries and showing concern with the Commission's definition of social housing, which only targeted disadvantaged groups. According to the resolution, the definition of social housing should be the result of a democratic discussion process, so as to consider the different traditions in each country. It further criticized the fact that fiscal consolidation programmes and recommendation in this direction made by the Commission were resulting in some countries in taxation of social housing providers (e.g. the Netherlands).

The need for a revision of Decision 2012/21/EU has been discussed by the Housing Partnership with different decision-makers in the Commission since the beginning of 2016 (*Housing Partnership 2018*, 25). The Partnership has attempted to explain the positive impact that the deletion of the narrow target group in the SGEI decision could bring in terms of overcoming a considerable obstacle to affordable housing investment.

In April 2016, in her answer to the President of Housing Europe, Margrethe Vestager -member of the European Commission- clarified that under State aid rules, Member States do not have to notify aid measures for social housing and the European Commission "rarely adopts formal decisions regarding social housing aid schemes"<sup>58</sup>. Its role is limited to "verifying that Member States do not make manifest errors in the definition of social housing as a service of general economic interest, and that they comply with the basic conditions of the SGEI State aid rules, notably the necessity to avoid overcompensation". This does not particularly help bringing more clarity to the matter, as Member States and undertakings cannot simply go against the Commission's decision and hope that they will not be one of the rare cases that fall into the attention of the Commission. Further, in a workshop on May 2018, Directorate-General for Competition (DG COMP) Henrik Morch stated that "a revision would not be undertaken by the current Commission but acknowledged that there 'probably was a market failure in housing'" (*Housing Partnership 2018*, 25). However, the Commission could examine the issue in the frame of the REFIT<sup>59</sup> Platform or through other channels<sup>60</sup>.

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<sup>57</sup> Resolution 2012/2293 (INI), §§ 12, 14.

<sup>58</sup> Letter by Margrethe Vestager, member of the European Commission to Mr Marc Calon, President of Housing Europe, Ares(2016)1760085, 06.04.2016.

<sup>59</sup> "The REFIT Platform was set up in May 2015 to advise the Commission on how to make EU regulation more efficient and effective while reducing burden and without undermining policy objectives. It consists of a Government Group, with one seat per Member State and a Stakeholder Group with 18 members and two representatives from the European Social and Economic Committee and the Committee of the Regions." (p. 8)

<sup>60</sup> COM (2017) 657, 8.

CoR supported the extension of the target group and urged Member States and the European Commission to back-up the conclusions of the Housing Partnership<sup>61</sup> “by preparing specific proposals such as a revision of the SGEI decision”<sup>62</sup>. CoR understands that not only those with no access to housing are affected by the housing market’s inability to meet accommodation needs, but also “the occupants of housing that is hazardous to health, inadequate or overcrowded, as well as people who are paying most of their income on rent or their monthly mortgage payments”<sup>63</sup>.

But CoR also adds that this would confirm “the added value to be gained from establishing criteria for defining decent affordable housing at European level”, which has also been suggested by the Parliament. However, it is questionable whether establishing a criterion for the definition of social housing would have positive effects, exactly because of the different traditions in which social housing systems are based.

### Recommendations on EU funding of affordable housing

It is relevant to point out that EU institutions and initiatives providing funding related to housing may only lend according to the SGEI and EU State aid principles (Rosenfeld 2016, 6), thus, being dependent on the Commission’s narrow definition of social housing.

The Housing Partnership concluded that it is not clear to what extent cities and affordable housing providers have the capacity to access the different funding instruments of the EU Cohesion policy and European Investment Bank (EIB) (Housing Partnership 2018, 51). According to the Partnership, investment with EIB funding is only carried out in 18 Member States – Euro 9.5 billion in social and affordable housing in the period between 2011 and 2017 – due to the “lack of robust housing policies and regulatory frameworks, as well as financial structures such as intermediaries and aggregators of various kinds”.

One positive aspect identified by the Partnership in relation to EIB’s funds is that it only finances rental housing -no market housing or housing for sale-, thus contributing to a wider range of tenures in the housing market (Housing Partnership 2018, 70).

### Recommendations on the European Semester and affordable housing

As mentioned above, the EU does not have an official mandate in the housing field, however, the European Semester Country Specific Recommendations (CSRs)<sup>64</sup> have been addressing issues related to housing since 2011. Even though CSRs are

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<sup>61</sup> The document makes reference to the initial conclusions of the Partnership, as the final conclusions only came out end of 2018.

<sup>62</sup> COR 2017, § 36.

<sup>63</sup> COR 2017, § 29.

<sup>64</sup> “The European Semester is an EU-level framework for coordinating and assessing Member States’ structural reforms and fiscal/budgetary policy, and for monitoring and addressing macroeconomic imbalances”, so as to reach the Europe 2020 targets (*Housing Partnership Action Plan* 2018, 57). It is under the jurisdiction of the DG for Economic and Financial Affairs in the European Commission (Rosenfeld 2016, 1).

not legally binding, they may nonetheless influence the development of national housing policies (*Housing Partnership* 2018, 57).

The Housing Partnership identified the need “to improve the European Semester procedure to better reflect diverse housing tenures, fragmentation of the housing markets, housing need and support better financing conditions for affordable housing” (*Housing Partnership* 2018, 57). The European Commission, and CoR (even as early as 2011) had also previously criticized the European Semester insofar as “(i) the EU competence of some country analyses and country-specific recommendations in the field of housing was debatable in terms of subsidiarity (for example questioning of rent controls, etc.) and ii) recommendations on housing were made only from the perspective of possible macro-economic imbalances<sup>65</sup> based on national figures and proposed therefore one-size-fits-all policies that did not take into account local and regional peculiarities” (CoR 2017, § 20). The proposed policies also did not take into account social considerations and it could clearly be observed that housing was treated as a mere commodity by the European Semester (Bauer 2018, 1).

In 2018, the European Pillar of Social Rights was linked to the European Semester and the instrument of the “Social Scoreboard” was introduced in the CSR. It includes an indicator on severe housing deprivation (relating to housing quality issues), however, there is “no indicator with the capacity to address social and affordable rental housing” (*Housing Partnership* 2018, 58, 61; Bauer 2018, 1). The Housing Partnership recommended the introduction of a revised definition of housing cost overburden in combination with other indicators that take into account the realities of the socio-economic situation of EU citizens, such as rates of eviction and poverty rates. In addition, the Partnership recommended that the reference threshold of total housing costs stay below 25% of the disposable income of a household and that the strategies to achieve this goal be developed by Member States (at different levels) and not by EU bodies.

### **3.2. State Aid regulation**

There has been extensive debate about the compatibility of several aid schemes for social housing with EU competition law, and more precisely, State aid for Services of General Economic Interest (SGEI). This is so because State support to social housing is frequently seen as being in competition with the interests of the private real estate sector (Czischke 2017, 73).

One remark by Giles Chichester (PPE-DE) on his Written Question to the Commission (15 April 2003) in relation to the Swedish State aid cases exemplifies this tension:

“The development of cross-border property investment is one of the recent great breakthroughs of the internal market, reaching EUR 25 billion in just a few years. This in turn is leading to the emergence of a European property industry whose increasingly sophisticated services

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<sup>65</sup> The indicator used for housing is the Housing Price Index (HPI), which uses Eurostat as the source. On the relevance of this indicator refer to Rosenfeld 2016 (pp. 4-5).

provide important underpinning for the European economy. It is the duty of the Commission to ensure that State aid is not allowed to distort competition in the property sector.”

State aid regulation, however, can impact the structuring of social housing financing schemes (influencing e.g. the target group affected by aid and the type of assistance provided), in addition to bringing financial implications for social housing providers (Czischke 2017, 73). Thus, this tension is of fundamental importance and it is questionable that competition legislation has immediate prevalence over housing needs of the resident population. Therefore, the specificities of State aid regulation will be the focus of this chapter.

The main legislation governing State aid regulation is the Treaty on the Functioning of the European Union (TFEU<sup>66</sup>), the *De minimis* regulation and in case of services of general economic interest (SGEI), the 2011 *SGEI Package*<sup>67</sup> (or *Almunia Package*). In addition, a few cases initiated by the European Commission or brought to the CJEU also assist in giving clarity to the application of State aid regulation to housing, and particularly social or affordable housing. All this framework will be described in more details below (refer to Appendix II for a summary table on State aid in relation to support to housing).

Social housing may be considered a SGEI under certain circumstances.<sup>68</sup> The principal jurisprudential case that regulates the subsidizing of SGEI operators is the *Altmark* decision<sup>69</sup>. First, it has to be established whether the aid complies with the *Altmark*-criteria, as will be seen below. If the four rather strict cumulative criteria are not fulfilled and the remaining conditions for Article 107 (1) TFEU to apply are satisfied, then one goes on to determine whether the measure is still compatible with the internal market, in accordance with Article 106(2) TFEU<sup>70</sup>. This means, whether the undertaking is delegated with a SGEI in compliance with Commission Decision 2012/21/EU and the SGEI may therefore be exempt from the requirement of notification laid down in Article 108 (3) of TFEU.

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<sup>66</sup> Consolidated Version of the Treaty on the Functioning of the European Union [2016] OJ C 202, 7.6.2016.

<sup>67</sup> The 2011 *SGEI Package* consists of Commission Decision 2012/21/EU, Commission Regulation (EU) No 360/2012 of 25 April 2012 on *de minimis* aid granted to undertakings providing SGEI, Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (2012/C 8/02), and the European Union framework for State aid in the form of public service compensation (2012/C 8/03).

<sup>68</sup> EU competition rules do not apply to all services of general interest (SGI), but only to those that are “economic” in nature, i.e. to SGEI. Also, social services of general interest (SSGI), which can be both economic and non-economic in nature, are only subject to EU competition law where they are indeed economic (COM (2011) 146 final). According to the Commission, non-economic services are for instance traditional state prerogatives such as police (COM 2007) 725 final), justice and statutory social security schemes or air navigation safety and anti-pollution surveillance (2012/C 8/02, § 16). It is not the case of social or affordable housing.

<sup>69</sup> The judgement of 24 July 2003, *Altmark Trans GmbH and Regierungspräsidium Magdeburg*, C-280/00, §§ 89-93.

<sup>70</sup> Judgement of 22.10.2015 *EasyPay AD and Finance Engineering AD*, C-185/14, § 53; judgement of 20.12.2017, *Comunidad Autónoma del País Vasco and Other v Commission*, C-66/16 P to C-69/16 P, § 55 and case-law cited.

SGEI cases not falling under the Commission Decision 2012/21/EU must follow the rules of the European Union Framework for State aid in the form of public service compensation<sup>71</sup>. This aid has to be notified to the Commission. If the Commission considers the proposed measure incompatible with the internal market, the State would have to abolish or alter such aid<sup>72</sup>. Only the Commission can issue a statement “to preclude any risk of a sanction before the state aid is provided” (Korthals Altes 2014, 345).

If the undertaking has already received the aid, it must pay it back. The undertaking has the “responsibility to establish whether aid has been supplied in conformity with the Commission’s approval” (Korthals Altes 2014, 345).

Even though the most common path for States is to justify their assistance to social housing under SGEI, there are also cases in which support to social housing has been considered compatible with State aid under articles 107 (2) and (3) of TFEU. Thus, those will also be described below. However, these projects must be individually notified to the Commission, which is perceived as time and capacity consuming by all parties involved and therefore, “the SGEI Decision exemption remains a preferred choice, when it can cover the social housing activities at stake” (Housing Partnership 2017, 14 (L)).

### ***3.2.1. Constitution of State aid under Article 107 (1) of TFEU***

The general rule is that for a measure to constitute State aid it has to<sup>73</sup> : a) provide certain undertakings or goods, b) with an advantage, c) be granted by the State or through State resources, d) be selective, e) distort or threaten to distort competition and f) affect trade between EU Member States.

#### a) Provide certain undertakings or goods

It has been established in case-law that “any entity engaged in an economic activity is to be considered as an undertaking regardless of its legal form or the way it is financed”<sup>74</sup>. Thus, even not-for profit entities can still qualify as an undertaking, if they are engaged in an economic activity. This means, offering services and goods for which there is competition from other actors in the market.

#### b) with an advantage

If conditions laid down in Commission Regulation (EU) No 1407/2013 on “De minimis” aid applicable to services that do not qualify as SGEI are fulfilled, aid measures do not qualify as State aid (Article 3 (1)). Thus, if aid granted by a

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<sup>71</sup> 2012/C 8/03, as established in Communication from the Commission on SGEI, 2012/C 8/02, § 5.

<sup>72</sup> Article 108 (2) TFEU.

<sup>73</sup> Article 107(1) TFEU: “Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market” (Article 107 (1) of TFEU).

<sup>74</sup> C (2009) 9963 final, § 12; Klaus Höfner and Fritz Elser v Macrotron GmbH, § 21; see also Kuhnert and Leps 2015, 141, 142.

Member State to a single undertaking does not exceed 200,000 Euros in three years<sup>75</sup>, it is not considered an advantage over other competitors and is permissible. Of course, it still has to comply with other provisions of the Regulation. Commission Regulation (EU) 360/2012 has a similar provision applicable to undertakings providing SGEI. In this latter case, the aid shall not exceed 500,000 Euros.

For all aid that is higher than what was established above or does not comply with other determinations of the Regulations, it needs to be seen whether the undertaking received an economic advantage that it would not have obtained under normal market conditions. According to the European Court of Justice, “a measure cannot constitute State aid if it does not place an undertaking in a more advantageous position than it would have been in if the public authority had not intervened”<sup>76</sup>.

According to settled case-law, Article 107 (1) TFEU does not apply to State intervention which is regarded as compensation for the provision of public service obligations by undertakings, “so that those undertakings do not enjoy a real financial advantage and the measure, thus, does not have the effect of putting them in a more favourable competitive position than the undertakings competing with them”<sup>77</sup>.

However, for such public service compensation to escape classification as State aid in a specific case, the four cumulative criteria established by the European Court of Justice in the 2003 *Altmark Trans judgement* (§§ 89 to 93) must be met<sup>78</sup>:

- “The recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined”.
- “The parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner”.
- “The compensation must not exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations”.
- “Where the undertaking that is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs that a typical undertaking, well run and adequately provided with the relevant means, would have incurred”.

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<sup>75</sup> Article 3 (2).

<sup>76</sup> *Bundesverband deutscher Banken v Commission*, T-163/05, 03.03.2010, §§ 35-37, 175, 277.

<sup>77</sup> See judgement of 15 November 2018, *Stichting Woonlinie and Others*, T/202&10 RENV II and T/203&19 RENV II, §§ 72 and 73 and the case-law cited; and the judgement of 24 July 2003, *Altmark Trans GmbH and Regierungspräsidium Magdeburg*, C-280/00, § 87; also cited in Commission Communication on SGEI 2012/C 8/02, § 43.

<sup>78</sup> Commission Communication on SGEI 2012/C 8/02, § 43, refer also to Kuhnert 2015:155.

c) be granted by the State or through State resources

When a measure is adopted by the State through an act of State it is quite clear that it is imputable to the latter<sup>79</sup>. However, some cases are less clear. If a fund is set up and run by the State, serving as an instrument of State policy, it involves a transfer of State resources, even if it is financed by a general levy on private companies and not from general taxation<sup>80</sup>.

State resources can be for instance direct subsidies, loans, guarantees, and benefits in kind, but foregoing revenue or revenue-losses (e.g. tax exemptions) can also be a way of giving an advantage to an undertaking<sup>81</sup>. The Commission has also specified that “the resources of a public undertaking constitute State resources within the meaning of Article 107 of the Treaty because the public authorities are capable of controlling these resources”<sup>82</sup>.

d) be selective

In looking into whether a measure is selective, one has to establish who benefits from it. If it is limited to targeting one or a specific group of undertakings it is deemed selective<sup>83</sup>.

Laws and regulations that provide certain entities, such as not-for-profit entities or cooperatives, with particular benefits could be considered selective, as they describe the criteria an undertaking needs to fulfil in order to have the right to tax exemptions and other advantages. In the case e.g. of tax reductions, the Court has understood that for aid to be considered selective, it has to be demonstrated that the measure deviates from the common tax regime for differentiating between economic operators who are in a “comparable factual and legal situation”<sup>84</sup>.

Cooperatives differ in their operating principles from other companies, as they do not act in the interest of external investors but for the mutual benefit of their members and have special membership rules (Kuhnert and Leps 2015, 144). According to Regulation No. 1435/2003, reserves and assets may not be distributed and must be used in accordance with the common interest of the members. Also, they usually achieve only low profit margins<sup>85</sup>. The Court of Justice of the European Union concludes that housing cooperatives are in a different factual and legal situation than regular housing companies of other legal forms, provided that they act in the economic interests of their members, have a special personal relationship with their members, the members participate actively in the cooperative and are entitled to fair distribution of economic returns<sup>86</sup>.

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<sup>79</sup> State aid No E2/2005 and N642/2009, The Netherlands, Existing and special project aid to housing corporations, C (2009) 9963 final, § 16.

<sup>80</sup> C (2009) 9963 final, §§ 17, 18.

<sup>81</sup> Commission Communication on SGEI 2012/C 8/02, § 32; Kuhnert and Leps 2015, 142; *Paint Graphos and Others*, §§ 45-46 and cited case-law).

<sup>82</sup> Commission Communication on SGEI 2012/C 8/02, § 32.

<sup>83</sup> C (2009) 9963 final, §§ 15, 16.

<sup>84</sup> *Paint Graphos and Others*, § 49.

<sup>85</sup> *Ibid*, §§ 58-60.

<sup>86</sup> *Ibid*, § 61.



e) distort or threaten to distort competition

A distortion of competition presupposes that a favourable treatment granted by the State is capable of strengthening the position of an undertaking vis-à-vis other competitors, thus distorting or being able to distort competition<sup>87</sup>.

In order not to distort competition, the service cannot be in competition with other services and the aid provided cannot be used to cross-subsidize, directly or indirectly, other economic activities of the recipient undertaking. This can be excluded if the undertaking “keeps separate accounts, allocating cost and revenues in an appropriate way and ensuring that any public funding does not benefit other activities”<sup>88</sup>.

f) affect trade between EU Member States

As for affecting intra-community trade, the Commission clarified that “it is not necessary to establish that the aid has an actual effect on trade between Member States but only whether the aid is liable to effect such trade”. It then cited the Court’s ruling that “where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-[Union] trade, the latter must be regarded as affected by the aid”<sup>89</sup>. Trade can be affected by State aid even if the recipient undertaking was not directly involved in cross-border trade, as “the subsidy may make it more difficult for operators in other Member States to enter the market by maintaining or increasing local supply”<sup>90</sup>.

Due to important flows of foreign investment in the construction sector, construction and renovation subsidies are often seen to alter investment decisions between sectors and between states, thus being able to affect intra-Community trade.<sup>91</sup>

### **3.2.2. Compatibility under Article 106 (2) of TFEU - SGEI**

As seen above, in case the provision of housing as SGEI can fulfill the strict *Altmark*-criteria, the compensation provided by authorities is not considered as State aid by EU law. If that is not the case, and other conditions for a measure to constitute State aid under Article 107 (1) TFEU are fulfilled, it has to be tested whether the aid could still be compatible with the internal market based on Article 106 (2) TFEU.

TFEU recognizes SGEI’s special role in “promoting social and territorial cohesion”<sup>92</sup>. Undertakings providing SGEI are only subject to competition rules “in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must

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<sup>87</sup> C (2009) 9963 final, § 15.

<sup>88</sup> Commission Notice on the notion of State aid, 2016/C 262/01, § 188.

<sup>89</sup> Commission Notice on the notion of State aid, 2016/C 262/01, § 190 and cited case-law.

<sup>90</sup> *Ibid*, § 191.

<sup>91</sup> Paragraph 15.

[http://ec.europa.eu/competition/state\\_aid/cases/217758/217758\\_664187\\_22\\_1.pdf](http://ec.europa.eu/competition/state_aid/cases/217758/217758_664187_22_1.pdf)

<sup>92</sup> Article 14.

not be affected to such an extent as would be contrary to the interests of the Union”. Thus, according to Article 106 (2) TFEU, State aid is permissible if the aid is necessary, meaning that the lack of aid would hinder the performance of the SGEI, and proportionate in its effects on trade<sup>93</sup>.

Without specifically defining it, TFEU establishes that both the Union and Member States shall make sure that “such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfill their missions”<sup>94</sup>. In addition, it gives the Commission the task to ensure the application of the provisions above, which includes specifying under which conditions it considers the criteria of necessity and proportionality to be fulfilled<sup>95</sup>.

Following the ruling in *Altmark*, the Commission adopted the first *SGEI Package* in 2005 (also known as *post-Altmark* or *Monti-Kroes Package*)<sup>96</sup> in order to specify the above-mentioned conditions and regulate State aid in the form of public service compensation granted to undertakings operating SGEI. In 2010, the Commission conducted public consultations on the application of this package, which then resulted in the *2011 SGEI Package* or *Almunia Package* (Thana 2018: 29<sup>97</sup>).

In those Packages, Commission Decision 2005/842/EC and its replacement, Commission Decision 2012/21/EU, represent the Commission’s policy in applying the exemption of Article 106 (2) of TFEU. Thus, aid that complies with this decision is considered proportionate and necessary and therefore compatible with the internal market. Therefore, it is exempt from the requirement of prior notification laid down in Article 108 (3) of TFEU.

These criteria will be further described below, but in a nutshell, the three main compatibility criteria of the Decision are:

- The activity in question must correspond to a genuine public service task<sup>98</sup>.
- The public service must be properly assigned through an entrustment act<sup>99</sup>.
- The undertaking must not be overcompensated for the service provided<sup>100</sup>.

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<sup>93</sup> C (2009) 9963 final, § 46.

<sup>94</sup> Article 14 TFEU.

<sup>95</sup> Article 106 (3) TFEU and C (2009) 9963 final, § 46.

<sup>96</sup> The 2005 SGEI Package consisted of the following legal instruments: Commission Decision 2005/842/EC; Community Framework OJ 2005 C 297/4; Commission Directive 2005/81/EC.

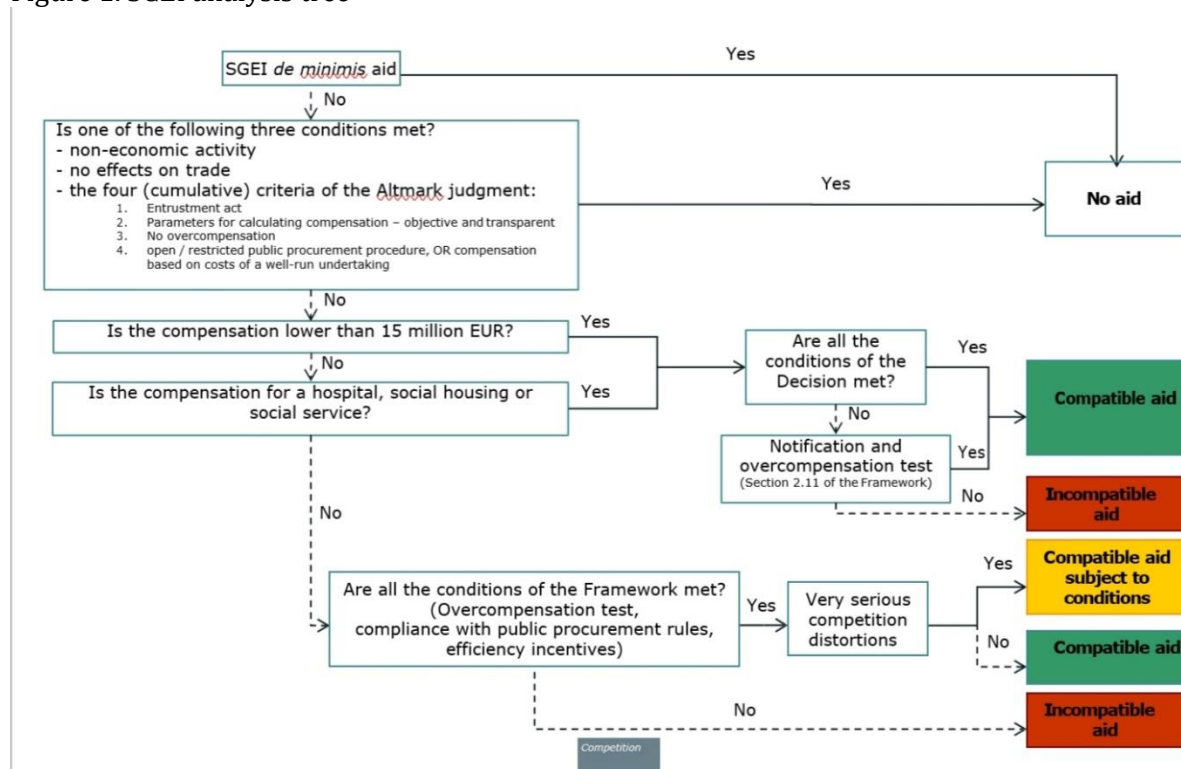
<sup>97</sup> Refer also to COM (2011) 146 final.

<sup>98</sup> Article 2 (1).

<sup>99</sup> Article 4.

<sup>100</sup> Article 5.

Figure 1. SGEI analysis tree



Source: European Commission<sup>101</sup>

The European Commission is entitled to check whether the State has made a manifest error when defining the service as an SGEI and assesses the state aid involved in the compensation<sup>102</sup>.

### Genuine public service mission/task

Member States have considerable discretion in defining, providing, commissioning and organizing what they regard as SGEI<sup>103</sup>. The only limits are those imposed by EU law in sectors that have been “harmonized” at Union level (not the case of housing) and the manifest error assessment carried out by the Commission<sup>104</sup>. There is no list of criteria provided by the Commission. This also makes sense as the scope and definition of social policies “respond to welfare regimes that have historically developed according to different models” and vary considerably, as seen in the previous chapter (Thana 2018, 34). As explained by the Commission:

“Services of general economic interest should be responsive and delivered as closely as possible to citizens and businesses. The action of the EU should respect the principles of subsidiarity and proportionality. The competent authorities of the Member States are free to define what they consider to be services of general economic interest and have broad discretion to decide how to

<sup>101</sup> [http://ec.europa.eu/competition/state\\_aid/overview/analysis\\_tree\\_en.pdf](http://ec.europa.eu/competition/state_aid/overview/analysis_tree_en.pdf)

<sup>102</sup> Communication from the Commission 2012/C 8/02, § 46.

<sup>103</sup> Protocol 26 to the Treaty of Lisbon.

<sup>104</sup> Commission Guide to the application of the EU rules to State aid, §§ 4, 6, 7.

organise, regulate and finance these services, in accordance with EU law and within the limits of manifest error.”<sup>105</sup>

However, in practice the Commission and the Court offer considerable “guidance” through the SGEI Package and their decisions on specific cases.

To begin with, the undertaking entrusted with the operation of SGEIs are considered undertakings entrusted with “a particular public service task”, which for the Commission implies “the supply of services which, if it were considering its own commercial interest, an undertaking would not assume or would not assume to the same extent or under the same conditions”, thus, applying a general interest criterion, Member States or the Union may attach specific obligations to such services”<sup>106</sup>. It then goes on to specify that if an undertaking operating under normal market conditions can or could provide an activity “satisfactorily and under conditions, such as price, objective quality characteristics, continuity and access to the service, consistent with the public interest”, it would not be appropriate to attach specific public service obligations to it<sup>107</sup>.

Moreover, the SGEI must “be addressed to citizens or be in the interest of society as a whole”<sup>108</sup>.

In addition, the SGEI needs to fall into one of the following categories (in what is pertinent to social or affordable housing):

- SGEI De-minimis aid: Applies to subsidies of up to 500,000 Euros per undertaking in three years <sup>109</sup>. Administrative requirements are considerably simplified in relation to SGEI under the 2011 Decision and Framework<sup>110</sup>. The act of entrustment under the *de minimis* Regulation only “has to entrust the provider with a specific task and make clear that the financing is granted for this task”. The State also has to make sure that the recipient undertaking is not receiving any other financing covered by the SGEI de minimis Regulation that would bring the amount of aid to surpass the 500,000 Euros in three years.
- Compensation not exceeding an annual amount of Euro 15 million gross for the provision of SGEI<sup>111</sup>. In terms of housing, this provision contains no specification regarding the need for the aid to qualify under the Commission’s interpretation of social housing. According to the Commission, “should a particular social service not be covered by the

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<sup>105</sup> COM (2007) 725 final, 9.

<sup>106</sup> Commission Communication on SGEI 2012/C 8/02, § 47.

<sup>107</sup> Ibid, § 48.

<sup>108</sup> Ibid, § 50.

<sup>109</sup> Article 2 (2) of Commission Regulation (EU) No. 360/2012- hereinafter *SGEI De-minimis Regulation*.

<sup>110</sup> 3rd Biennial Report on Social Services of General Interest, SWD (2013) 40 final, item 2.4, p. 16.

<sup>111</sup> Article 2 (1) (a) of the SGEI Decision. In the previous Decision (2005/842/EC) the annual compensation for the SGEI could be of up to 30 million Euros instead of the actual 15 million Euros and the undertaking should have had an average annual turnover before tax of less than 100 million Euros during the two financial years preceding that in which the SGEI was assigned. This limitation no longer exists.

definition of social services in Article 2(1)(c), the compensation might still be exempted from notification under Article 2(1)(a) of the Decision”, if it stays under 15 million Euros per year.<sup>112</sup>

- Compensation for SGEI meeting social needs such as social housing and the care and social inclusion of vulnerable groups, amongst others<sup>113</sup>. Services falling under this category are not limited by a maximum amount of compensation. The SGEI Decision’s recital (11) adds the widely discussed limitation to social housing: “the provision of social housing for disadvantaged citizens or socially less advantaged groups, who due to solvency constraints are unable to obtain housing at market conditions.”

The third category involves the establishment of a target group for social housing by the Commission and has been the objective of different cases with the Commission and the Court of Justice of the European Union (both the European Court of Justice and the General Court). As pointed out by the Housing Partnership (2017, § 22), social housing is the only sector in the SGEI Decision for which the Commission mentions a target group. The OECD, for instance, defines social (rental) housing based on the price it should be provided (sub-market) and the allocation mechanism (specific rules rather than market mechanisms), instead of establishing a target group (Housing Partnership 2017, § 25) and further differences can be seen in the previous chapter.

Commentators suggest that the decision-making practices of the Commission shows a preference for a selective and residual model of social housing that is in conflict with the inclusive tradition of housing policies in countries that follow the universalist social housing model, such as the Netherlands and Sweden (Braga and Palvarini 2013, 41), but eventually also some countries following the generalist model.

The Commission has analyzed State aid cases related to social housing as SGEI concerning Ireland, the Netherlands, Sweden, Belgium and France. The Irish, Belgian and French cases will be mentioned below. The Dutch and Swedish cases will be described in more details in the next chapter, due to their extension and impact.

### The Irish Case

In *State aid N 209/2001, Ireland, Guarantee for borrowings of the Housing Finance Agency*<sup>114</sup> and *State aid N 395/2005, Ireland, Loan Guarantee for social*

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<sup>112</sup> Commission Guide on SGEI in SWD (2013) 53 final, § 94; see also Housing Partnership 2017, p. 13 (G). The Commission has already specified that if the same SGEI is entrusted to different undertakings, the 15 million Euros threshold “applies only once for that specific SGEI task” (§ 91). Thus, the aggregate compensation for the SGEI paid to all undertakings must stay below 15 million Euros.

<sup>113</sup> Article 2 (1) (c) of the SGEI Decision: “compensation for the provision of services of general economic interest meeting social needs as regards health and long-term care, childcare, access to and reintegration into the labour market, social housing and the care and social inclusion of vulnerable groups”.

<sup>114</sup> In SG (2001) D/ 289528.

*infrastructure schemes funded by the Housing Finance Agency*<sup>115</sup>, the Irish authorities notified the European Commission on legislative measures that would allow the Minister of Finance to guarantee borrowings of the Housing Finance Agency (HFA), which then advances funds to the local authorities, so that they can provide housing for socially disadvantaged households, as well as for the provision of infrastructural elements ancillary to these housings (paragraph 1 of both decisions). The focus will be in the parts of the case related to the definition of social housing as SGEL.

After concluding in both cases that State aid does configure, the Commission goes on to analyze whether the aid measures could still be compatible with the internal market under Article 86 (2) of the EC Treaty<sup>116</sup>. This includes determining whether the service in question is a service of general economic interest<sup>117</sup>. In the 2001 case, the Commission considered the measure proposed by the State as compatible with Article 86 (2) of the EC Treaty because the “beneficiaries of these measures are socially disadvantaged households whose economic circumstances do not permit them to purchase or rent houses on the open market”. And in addition, “due to their poor creditworthiness, these households are generally unable to obtain a housing loan in the commercial, competitive sector at affordable rates”<sup>118</sup>.

In the 2005 case, the Commission considers that “the provision of infrastructural elements needed to ensure a good environment for social dwellings can be considered as a legitimate public task of the State”<sup>119</sup>. The Commission accepts the Irish authorities’ commitments that funds provided by HFA to the local authorities will only be used for projects related to social housing, excluding services, and that it will not be used to provide or maintain commercial shops, factories or offices<sup>120</sup>.

As the measures also complied with other elements of Article 86 of the EC Treaty, it was deemed compatible with the internal market.

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<sup>115</sup> In C (2005) 4668 final.

<sup>116</sup> Current Article 106 (2) of TFEU.

<sup>117</sup> SG (2001) D/ 289528, p. 4.

<sup>118</sup> Ibid.

<sup>119</sup> C (2005) 4668 final, § 40.

<sup>120</sup> Ibid, § 45.

## The Belgian Case

In the 2013 judgement on the *Eric Libert and Others* case, following a complaint by private real estate developers, the Belgian Constitutional Court raised questions to the Court of Justice of the EU to establish the legitimacy of certain aid measures implemented by the Flemish government<sup>121</sup>. Amongst these measures was the imposition of a social obligation over developers, according to which when a building or land subdivision authorization is granted, part of the building project has to be allocated for the development of social housing dwellings or the developer is obliged to pay a social contribution, in exchange for tax incentives and subsidy mechanisms<sup>122</sup>.

The Court considered that such requirement could indeed constitute “overriding reasons in the public interest and therefore justify restrictions”<sup>123</sup>. It left for the national court to decide whether in the given case the social obligation satisfied the principle of proportionality, meaning, whether it was necessary and appropriate to achieve the objective of guaranteeing sufficient housing for the low-income and otherwise disadvantaged people<sup>124</sup>. Both the social obligations and the compensation given to developers were later annulled by the Belgian Constitutional Court<sup>125</sup>.

## The French Case

In 2012 the French National Union of Property Owners (UNPI), acting on behalf of private developers in France, filed a complaint to the European Commission concerning subsidies granted by the French State to organizations that provide social housing (Braga and Palvarini 2013, 41). UNPI argued that part of the social housing stock in France -which is owned by the local authorities- did not provide an income threshold for access, thus not specifically targeting disadvantaged persons, as required by European State aid regulation regarding SGEI<sup>126</sup>. The Commission did not reach a conclusion on the case (Daniel 2018, 72)<sup>127</sup>.

The French Government replied to the Commission’s request for information, defending the French social housing system<sup>128</sup>. As there were indeed some inconsistencies of the French law with European legislation, in 2014, during the Ayrault government, the Alur law<sup>129</sup> was enacted, making reference to the SGEI regulation, but no changes were made concerning the key issue of the scope of

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<sup>121</sup> *Eric Libert and Others v Gouvernement flamand and All Projects & Developments NV and Others v Vlaamse Regering*, Joined Cases C-197/11 and C-203/11, judgement of 8.5.2013, § 3. See also Braga and Palvarini 2013, 41.

<sup>122</sup> *Ibid*, § 3.

<sup>123</sup> *Ibid*, § 52.

<sup>124</sup> *Ibid*, §§ 67-69.

<sup>125</sup> Decision on 7 November 2013. <https://housing-futures.org/2018/06/11/the-european-union-state-aid-and-social-housing-2/>

<sup>126</sup> Braga and Palvarini 2013, 41.

<sup>127</sup> Refer also to <https://union-habitat-bruxelles.eu/aides-detat-au-sieg-logement-social-10-contre-verites-de-la-cour-des-comptes-dans-son-refere-au>

<sup>128</sup> Aide d’Etat SA. 34751 (2012/CP) – *Note des autorités françaises en réponse à la demande d’information de la Commission suite à une plainte de l’UNPI sur les logements sociaux en France*

<sup>129</sup> *Loi n° 2014-366 du 24 mars 2014 pour l’accès au logement et un urbanisme rénové.*

social housing policies, touching neither the income ceilings or the nature of the aid granted to operators (Daniel 2018, 73). Then, in 2015, followed the Macron law<sup>130</sup>, which predicts that as of 2020 housing for middle-income population will have to be disconnected from SGEI. It remains to be seen what changes this will bring to the social housing system in France. In any case, as stated by Daniel (2018), the core of the French social housing system was not affected by European legislation, as middle-income housing was not formally part of it.

Daniel also interestingly observed that unlike the case in Sweden and the Netherlands, the French politicians did not use the “window of opportunity” offered by the European law to considerably change the social housing system, despite the pressure from property owners. Meanwhile, in the European Commission, as of 2014, Pierre Moscovici was appointed Commissioner of Economic Affairs and allegedly would have tried to delay the investigation of the French case as much as possible, apparently for being an advocate for public housing.

### Entrustment

Services must be clearly identified in an entrustment act, including the conditions for its provision and its target group<sup>131</sup>. The elements of entrustment required by the SGEI Decision are: nature and duration of public service obligations; the undertakings and territory concerned; the parameters for calculating, controlling and reviewing the compensation; as well as the arrangement for avoiding and repaying any overcompensation.

As for the period of entrustment, the general rule is that an undertaking shall be entrusted with the operation of a SGEI for a period that does not exceed 10 years. However, this period can be exceeded, if the service provider is required to make a significant investment “that needs to be amortised over a longer period in accordance with generally accepted accounting principles”<sup>132</sup>. Social housing is one of the areas in which such an investment is envisioned<sup>133</sup>.

### Compensation

The focus here is on avoiding overcompensation. The amount of compensation shall not exceed what is necessary to cover the net cost incurred in discharging the public service obligations, including a reasonable profit<sup>134</sup>. The Decision brings a general definition of what “reasonable profit” is, but EU Member States are left to decide on the exact amount. The undertaking concerned has to repay

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<sup>130</sup> *Loi n° 2015-990 du 6 août 2015 pour la croissance, l'activité et l'égalité des chances économiques*

<sup>131</sup> Article 4 of the SGEI Decision.

<sup>132</sup> Commission Decision 2012/21/EU, Article 2.2.

<sup>133</sup> Commission Decision 2012/21/EU, recital 12.

<sup>134</sup> Article 5 (1) and (5) of the SGEI Decision: “For the purposes of this Decision, ‘reasonable profit’ means the rate of return on capital that would be required by a typical undertaking considering whether or not to provide the service of general economic interest for the whole period of entrustment, taking into account the level of risk. The ‘rate of return on capital’ means the internal rate of return that the undertaking makes on its invested capital over the duration of the period of entrustment. The level of risk depends on the sector concerned, the type of service and the characteristics of the compensation.”



any overcompensation received<sup>135</sup>, which can be very burdensome for the undertaking.

Undertakings that have activities for which they receive aid and those for which they do not are obliged to keep separate accounts, subject to independent audit<sup>136</sup>. Account separation makes it possible to “identify the receipts and revenues of the public service mission” and facilitate control as “aid may be received from more than one source”.

### **3.2.3. Compatibility under Article 107 (2) TFEU**

Measures that could be considered State aid under Article 107 (1) TFEU will be compatible with the internal market if it has a social character and is granted directly to individual consumers without discrimination related to the origin of the products concerned<sup>137</sup>.

In *State aid No N 342/2008 – Czech Republic, Housing and Social Programme for problematic districts*<sup>138</sup> the overall objective of the aid scheme was to “improve the quality of life for the inhabitants of problematic housing estates” through the regeneration of dwellings in poor state of conservation, including improving the technical condition and reducing the energy demand of houses<sup>139</sup>. The Commission remarked that support granted under the proposed scheme to individuals who were the owners/occupiers and legal persons owning the residential properties did not entail State aid<sup>140</sup>.

However, the Commission then showed the difficulty in quantifying the number of recipients and the part of the budget that would correspond to these characteristics. In addition, the Commission recognized that “it cannot be excluded that the the support granted under the scheme will be used by beneficiaries, whether natural or legal persons, in relation to an economic activity such as for example property letting”<sup>141</sup>. It finally decided to examine the existence of State aid and its compatibility with the internal market under Article 107 (3) TFEU, as will be seen below. Thus, although a possibility, the Article 107 (2) TFEU is in practice a complex option.

### **3.2.4 Compatibility under Article 107 (3) TFEU**

Another way for State aid to be considered compatible with the internal market is for it to fall into one of the exceptions in Article 107 (3) of TFEU. Unlike with SGEI permissible under Commission Decision 2012/21/EU, the aid will have to be notified to the Commission though. Two of the exceptions are particularly interesting and will be described below.

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<sup>135</sup> Article 6 of the SGEI Decision.

<sup>136</sup> C (2009) 9963 final, § 70.

<sup>137</sup> Article 107 (2) TFEU.

<sup>138</sup> In C (2008) 7845 final.

<sup>139</sup> C (2008) 7845 final, § 7.

<sup>140</sup> Ibid, § 60.

<sup>141</sup> Ibid, § 61.

According to one of the exceptions, aid may be considered compatible with the internal market if it intends to “promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment”<sup>142</sup>. In *Czech Republic, Housing and Social Programme for problematic districts*, already mentioned in the section above, the Commission remarked that “the conditions in Article 87(3) (a)<sup>143</sup> are fulfilled if the region, being NUTS<sup>144</sup> level II geographical unit, has a per capita gross domestic product, measured in purchasing power standards, of less than 75% of the Community average”<sup>145</sup>, which would have been the case of seven regions covered by the aid scheme in the Czech Republic.

The provision of the article would not include, however, instruments applied equally to the whole country, such as non-profit status given to certain undertakings that would entail the right to certain subsidies and other advantages such as tax reduction/ exemption (e.g. *Wohnungsgemeinnützigkeit*), as is the case in Austria (Kuhnert and Leps 2015: 149).

The exception that has been more often used successfully is that of Article 107 (3) (c) TFEU, which considers compatible with the internal market “aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”.

Unlike aid provided as SGEI, which is defined by States, under Article 107 (3) (c) there must be a well-defined EU objective (Korthals Altes 2014, 347).

The cases below exemplify the Commission’s position concerning the application of this form of compatibility with State aid regulations. They have been chosen here for being cases with a housing component related to Sweden and the Netherlands that were considered compatible by the European Commission.

### Swedish cases

There are two Swedish State aid cases, in which the European Commission considered the state assistance to be compatible with state aid legislation under Article 107 (3)(c) TFEU. In 2006, the Swedish Government notified the European Commission of an aid scheme for the construction of special housing for elderly people, amounting to a total support of 270 million Euros between 2007 and 2011 through incentive grants estimated at around 10% of construction costs (the grant is based on a lump sum per square meter) to be given to private owners who provide such housing<sup>146</sup>. Municipal social authorities may allocate these dwellings

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<sup>142</sup> Article 107 (3) (a) TFEU.

<sup>143</sup> This corresponds to current Article 107 (3) (a) of TFEU.

<sup>144</sup> Nomenclature of Statistical Territorial Units.

<sup>145</sup> C (2008) 7845 final, § 70.

<sup>146</sup> State aid No N798/06 – Sweden, *Support for construction of special housing for elderly people*, in C (2007) 652 final, §§ 17, 19, 20. In 2011, Sweden notified to the European Commission the extension of this scheme as “due to low uptake of funds in the first years of the Scheme, a significant proportion of the budget will remain unspent when the initial period ends”, thus, they wanted to prolong the Scheme without increasing the overall budget (State aid SA.33896 (2011/N) – Sweden, Amendments to State aid scheme N 798/2006 – Support for construction of special housing for elderly people in C (2011) 9799 final, 16.12.2011). The extension was accepted.

to elderly people in need of a certain degree of daily care, who are no longer able to live by themselves. Private operators run the buildings - and the associated services- as service providers to municipalities. The aid is open to all property owners without discrimination.

The Commission recognized a need for special housing for the elderly and that the aid granted by the Swedish state was “needed to reach an objective of social equity that is otherwise not being sufficiently met by the market”<sup>147</sup>. Effects on competition were considered to be restricted to the minimum necessary, thus not adversely affecting trade conditions to an extent contrary to the common interest.

This case follows a similar reasoning as in State aid No N40/2003 – *Sweden, Measures to promote certain house building*<sup>148</sup>, aimed at construction of small rental dwellings in Sweden’s growth regions and of student accommodation at college and university sites in an estimated cost of around 184 million Euros granted through VAT return<sup>149</sup>.

#### Apeldoorn case – The Netherlands

In the *Apeldoorn* case<sup>150</sup>, the Dutch authorities notified the Commission that the City of Apeldoorn wanted to redevelop a brown field site by developing social housing for rent, social housing for sale, free market houses and a public space<sup>151</sup>. The area forms a barrier, dividing the city’s residential area in a western and eastern part. The municipality and two corporations owned about 90% of the area and the remaining 10% would be acquired by the municipality through expropriation and then transferred to the *grondexploitatie* (common budget established for the project). The land would be made ready for construction (former industrial site) and transferred to the corporations, who would then develop and exploit the real estate, while the plots identified for public space would be transferred to the municipality<sup>152</sup>. As the development cost exceeded the expected revenues - due to the high acquisition costs of the plots of land and the costs of remediation of contaminated sites- all parties would have to make a financial contribution to the *grondexploitatie*. The project was allegedly not viable without contributions of the municipality and the province.

As for the land sales, the Commission concluded that no advantage was conferred onto the *grondexploitatie*, because according to an independent expert “all transactions took place at conditions and prices that are at a market conform level”<sup>153</sup>. However, in relation to the partial coverage of the project deficit, the Commission considered the measure to contain all elements of State aid under Article 107 (1) of TFEU. Here, the most important aspect is that the Commission stated that when a project cannot be realized without the compensation provided

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<sup>147</sup> C (2007) 652 final, § 19, 21.

<sup>148</sup> [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_N40\\_2003](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_N40_2003)

<sup>149</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2003:284:FULL&from=EN>

<sup>150</sup> State aid No SA.31877, The Netherlands, *Land sale and housing development in Apeldoorn*, in C (2011) 4940 Final.

<sup>151</sup> C (2011) 4940 final, §§ 4, 6.

<sup>152</sup> *Ibid*, § 7.

<sup>153</sup> *Ibid*, §§ 28, 29.

from State resources, a direct distortion of competition is created in the housing market and State aid is configured, as new houses are added to the housing market that otherwise would not exist<sup>154</sup>.

To establish whether the aid was compatible with Article 107 (3) (c), the Commission considered whether the aid was aimed at a “well-defined EU objective”, as well as whether the aid was “well-targeted, necessary, and proportionate” to the objective<sup>155</sup>.

The Commission interpreted “the improvement of the urban environment and the quality of life in the area” as capable of “strengthening economic and social cohesion”, a well-defined EU objective<sup>156</sup>. The project would achieve that through the integration of the residential area of Appeldoorn -separated in East and West by the brownfield- and improvement of the traffic connections, as well as through de-contamination of land plots<sup>157</sup>. In addition, putting the brownfield into proper use would reduce the need for an urban expansion, which would benefit the urban environment<sup>158</sup>. Thus, the physical, economic and social regeneration of available urban space was considered to serve a public interest and an EU objective<sup>159</sup>. This means that, as put by Korthals Altes, “urban development that involves the development of new housing can contribute to a well-defined EU objective” (Korthals Altes 2014, 345).

In a nutshell, due to the development of positive integration in the EU, even though a measure constitutes State aid for resulting in the production of new housing that would not have been built without the aid, it is permissible because it is in accordance with the well-defined EU objective of strengthening economic and social cohesion through the “improvement of the urban environment and the quality of life in an area” (Korthals Altes 2014, p. 342).

### JESSICA cases

Another example of aid considered by the Commission to be compatible with the internal market on the basis of Article 107 (3) (c) of TFEU is described in the JESSICA (Joint European Support for Sustainable Investment in City Areas<sup>160</sup>) cases (Korthals Altes 2014, 346). In the case of Bulgaria, for instance, the Social Inclusion Memorandum signed with the European Commission, listed housing policy as one of the issues that could be addressed through JESSICA funded Urban Development Projects (UDPs) and that complied with EU objectives of social

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<sup>154</sup> Ibid, § 33; also Korthals Altes 2014, 342.

<sup>155</sup> Ibid, § 46.

<sup>156</sup> Ibid, § 47 and Articles 3 and 174 TFEU.

<sup>157</sup> Ibid, § 49.

<sup>158</sup> Ibid, § 50.

<sup>159</sup> Ibid, §§ 51, 52.

<sup>160</sup> JESSICA was set up by EU bodies (Commission in partnership with the European Investment Bank (EIB) and Council of Europe Development Bank) and it uses “revolving funds as loans, equity and guarantees to promote urban development” (Korthals Altes 2014, p. 346).

inclusion and cohesion<sup>161</sup>. State aid decisions on Spain<sup>162</sup> and Greece<sup>163</sup> also mentioned housing as an activity that was supported in terms of pursuing “cohesion and social development objectives”.

### Negative decision

The Commission prohibited the real estate transfer tax exemption in case of merger and acquisitions for housing companies in Berlin<sup>164</sup>. At that time, there was oversupply of housing in Berlin and the objective was to redevelop the housing market. The Commission understood that since the scheme was not targeted at “pockets of deprivation” but covered the whole of Berlin, the tax exemption was “disproportionately wide”, not justifying the resulting distortion of competition.

In the press release explaining the decision, it was recognized that “tackling physical deprivation and regeneration of deprived urban areas is an increasing political priority in the European Union” and that the Commission had approved aid schemes on the basis of Article 87 (3) EC (now Article 107 (3) TFEU) “under the Community objectives of economic and social cohesion which aims at the reduction of disparities between different areas. However, since the proposed scheme would apply to all housing companies owning real estate in Berlin, but only certain districts needed regeneration, the scheme was considered not to be proportionate to the objective. Consistent with this understanding, the Commission did approve those parts of the scheme that were restricted to areas in East Germany (*Neue Länder*).

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<sup>161</sup> State aid SA.35040, Bulgaria, *JESSICA Holding Fund Bulgaria*, 19.12.2012, in C (2012) 9446 final, § 47.

<sup>162</sup> State aid SA.32147 (2011/N), Spain, *Jessica Holding Fund Andaluca*, 19.10.2011 in C (2011) 7296 final.

<sup>163</sup> State aid SA. 34405, Greece, *JESSICA Holding Fund Greece*, 19.12.2012.

<sup>164</sup> State Aid C40/2004, Germany, *Real Estate Transfer Tax Exemption for Housing Companies in the Neue Lander*, IP/05/1465.

## 4. Case study: Social housing models and EU policy

After understanding the functioning of State aid regulation and the general trends of the influence of EU regulations over national housing policies, this research now intends to concentrate on the State aid cases that allegedly were responsible for in depth changes of national housing policies. After description of the main aspects of housing policy in the Netherlands and Sweden and understanding the important aspects of the State aid cases, the study will look into changes in housing policy, as well as certain aspects of the current situation in these countries in terms of housing provision (including possible effects over households) and the changes in behaviour of housing associations (the Netherlands) and municipal housing companies (Sweden).

### **4.1 Netherlands**

The social housing sector in the Netherlands is in its majority formed by private, not-for-profit housing associations assigned with the public task of providing housing and just very few municipal companies. Not-for-profit housing associations in the Netherlands are called *woningcorporaties* (*wocos*) and will be further referred to in this research as simply housing associations (with the exception of certain citations). As not-for-profit providers, housing associations have their activities defined by national housing law and must reinvest their revenues entirely in the development of housing – the system acts essentially as a revolving fund (AEDES 2016, 6).

Between 1950 and 1990 housing associations' share of social rental sector increased from 10% to 40% (Hoekstra 2017, 32). This is explained by the fact that in order to deal with the shortage of housing after the Second World War, the Dutch central government provided generous subsidies to housing associations, keeping however strong control over these associations, which acted as implementing bodies of the central government. After the 1980s the government subsidies reduced, and the housing associations gradually became financially independent, operating more as private entities.

The rent market in the Netherlands is strictly regulated, with only about 8% of rents that are above the “liberalization level”, meaning that they are not subject to rent ceilings (FEANTSA and Fondation Abbé Pierre 2018, 85). In the controlled rental market, since 2013, the rates of increase for controlled rents have been dependent on incomes, meaning that rents can increase between 1.5% and 4% above inflation, according to the households' income<sup>165</sup>. In the non-controlled private market, increases to the base rent (additional services and charges

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<sup>165</sup> A maximum basis rent increase applies to all dwellings, which is equal to the annual percentage change of the consumer price index (CPI). Click on the „information“ window in CBS Statline. <https://opendata.cbs.nl/statline/#/CBS/en/dataset/83162ENG/table?dl=230B2>

excluded) also can only take place once per year and have to comply with clauses in the rental contracts.

Housing allowances<sup>166</sup> are available for low-income households in both the private and social sector for rents below the “liberalization level”. Level of assistance depends on taxable income, age, household composition and rent.

Some events, facts and legislation are relevant to better understand housing policy in the Netherlands and the European Commission State aid case, as well as its consequences. Reference will be made to political parties in power at certain periods in order to attempt to connect them to certain changes in policy in the following chapter.

Period	Important Events/Facts/Legislation
1901	<ul style="list-style-type: none"> <li>Through the 1901 Housing Act (<i>Woningwet</i>) housing associations’ housing activities were not restricted to socially disadvantaged people, even though they had to give priority to persons who for financial or other reasons found it difficult to access housing in the market<sup>167</sup>. And in the case of overcapacity, housing companies were allowed to rent apartments to people with relatively high incomes. Housing associations were entitled to municipal loans.</li> </ul>
1971	<ul style="list-style-type: none"> <li>Introduction of a points system of rent regulation, which is then applied to all rented housing<sup>168</sup>. It does not apply to rents over the “liberalization” level.</li> </ul>
1977	<ul style="list-style-type: none"> <li>Coalition between the Christian Democratic Appeal (CDA) and the conservative liberal People’s Party for Freedom and Democracy (VVD) comes into power and stays almost uninterrupted until 1989<sup>169</sup>.</li> </ul>
1980s	<ul style="list-style-type: none"> <li>Public policies promote access to home ownership by providing tax relief on mortgage interest, with distorting effects over the market, as it encourages households to spend more on home-ownership than they can actually afford.<sup>170</sup></li> </ul>
1989	<ul style="list-style-type: none"> <li>Center-left coalition between CDA and the social-democratic Labour Party (PVDA)<sup>171</sup>.</li> </ul>
1993	<ul style="list-style-type: none"> <li>Netherlands is one of the founders of the EU<sup>172</sup>.</li> </ul>
1994	<ul style="list-style-type: none"> <li>Coalition government between PVDA (prime-minister Wim Kok), VVD and Democraten 66 (D66). Stayed until 2002<sup>173</sup>.</li> <li>Reform of rent regulation through the liberalization of the most expensive segment of the rental market<sup>174</sup>.</li> </ul>

<sup>166</sup> Entitled to receive housing allowances are one-person households receiving up to 22,100 Euros per year or two or more persons households receiving up to 30,000 Euros per year. The monthly rent limit for housing allowance is of 720.42 Euros in 2019 (<https://www.government.nl/topics/housing/rented-housing>).

<sup>167</sup> *Stichting Woonlinie and Others*, § 87.

<sup>168</sup> Treanor 2015, 64: “Dwellings are given points on the basis of their size and quality (heating, insulation, and facilities) and access to local amenities (trains, shops, etc.). Based on the number of points, a maximum rent is determined, although landlords can charge less. The government sets the maximum percentage increase permitted each year” (usually according to inflation), which “applies to all regulated rents even where they are well below the maximum. Rents up to a ‘liberalisation level’ (142 points) are regulated”.

<sup>169</sup> Norsk Senter for Forskningsdata:

<https://nsd.no/european-election-database/country/netherlands/introduction.html>

<sup>170</sup> FEANTSA and Fondation Abbé Pierre 2018, 86.

<sup>171</sup> Norsk Senter for Forskningsdata.

<sup>172</sup> It was also one of the six founders of the European Coal and Steel Community in 1952 and the European Economic Community, predecessors of the EU.

<sup>173</sup> Norsk Senter for Forskningsdata.

<sup>174</sup> O’Sullivan and Decker 2007, 100.

<b>1995</b>	<ul style="list-style-type: none"> <li>• “Grossing and balancing operation” gave housing associations financial autonomy<sup>175</sup>. Subsidies for housing construction were discontinued and the housing sector was supposed to function as a revolving fund<sup>176</sup>. The aid it then received from the State was through access to the Guarantee Fund for social housing that is backed by the government to get guarantees for loans”. Housing associations started selling part of their housing stock. They became wealthier due to low interest rates and rising house prices and increased non-social housing related investments, such as public purpose buildings and commercial real estate, as well as risky investments (speculation with financial products)<sup>177</sup>. Housing associations allegedly became dependent on commercial activities to generate income to cross-subsidize the social housing stock<sup>178</sup>. Salaries of directors increased considerably, and cases of mismanagement and fraud became known.</li> </ul>
<b>2002</b>	<ul style="list-style-type: none"> <li>• Dutch authorities notify to the European Commission the general support system in favor of housing associations<sup>179</sup>. When the Commission concluded that the Dutch social housing support system could possibly be considered as state aid, the Dutch authorities withdrew their notification.</li> </ul>
<b>2003</b>	<ul style="list-style-type: none"> <li>• Coalition formed by CDA (prime-minister Jan Peter Balkenende) and LPF in 2002 collapsed and in 2003 CDA stays in power in a center-right coalition with VVD and D66<sup>180</sup>.</li> </ul>
<b>2005</b>	<ul style="list-style-type: none"> <li>• The European Commission classifies the support scheme to housing associations as existing aid and expresses doubts as to its compatibility with the common market<sup>181</sup>.</li> </ul>
<b>2006</b>	<ul style="list-style-type: none"> <li>• Coalition collapsed but CDA remains in power until 2010 with a new coalition with PVDA and Christian Union<sup>182</sup>.</li> </ul>
<b>2007</b>	<ul style="list-style-type: none"> <li>• In April 2007, the Association of Institutional Investors in the Netherlands (IVBN) complains to the European Commission about alleged distortions in the Dutch housing market<sup>183</sup>. Vesteda Groep BV, a private housing investor, joined the complaint in June 2009.</li> </ul>
<b>2008</b>	<ul style="list-style-type: none"> <li>• Global Financial Crisis. As a consequence, construction dropped.</li> </ul>
<b>2009</b>	<ul style="list-style-type: none"> <li>• Letter from the Dutch government to the Commission from 3 December 2009 made commitments related to State aid to housing associations.</li> <li>• Decision from the European Commission from 15 December 2009 confirmed mutual agreements on how to deal with the Dutch State aid to housing associations<sup>184</sup>.</li> </ul>
<b>2010</b>	<ul style="list-style-type: none"> <li>• Housing associations appeal the Commission’s decision at the General Court and IVBN requests to intervene on behalf of the Commission’s decision<sup>185</sup>.</li> <li>• Right-wing coalition between VVD and PVV<sup>186</sup>.</li> </ul>

<sup>175</sup> One of the goals of the new strategy was to clear the debt the State had contracted for the housing associations in order to facilitate compliance with the European convergence criteria determining the accession to the euro zone (Daniel 2018, 68).

<sup>176</sup> Elsinga and Lind 2013, 965.

<sup>177</sup> Hoekstra 2017, 32.

<sup>178</sup> Mullins, Milligan, and Nieboer 2018, 570.

<sup>179</sup> *Stichting Woonlinie and Others*, § 2.

<sup>180</sup> Norsk Senter for Forskningsdata.

<sup>181</sup> Letter of 14 July 2005, known as “the Article 17 letter”, aid measure E 2/2005.

<sup>182</sup> Norsk Senter for Forskningsdata.

<sup>183</sup> Its intention seems to have been to accelerate/ put pressure over negotiations between the Dutch government and the Commission, which started in 2005 (Daniel 2018, 67).

<sup>184</sup> State aid No E2/2005 and N642/2009, The Netherlands, *Existing and special project aid to housing corporations*, C (2009) 9963 final, 15.12.2009.

<sup>185</sup> *Stichting Woonlinie*, *Woningstichting Volksbelang et Stichting Woonstede* appealed under reference T-202/10 and *Stichting Woonpunt*, *Woningstichting Haag Wonen et Stichting Woonbedrijf SWS.Hhvl* appealed under reference T-203/10. The cases were later joined as *Stichting Woonlinie and Others v Commission*, T/202&10 RENV II and T/203&19 RENV II.

<sup>186</sup> Norsk Senter for Forskningsdata.



2011	<ul style="list-style-type: none"> <li>The new housing allocation rules were implemented with a new ministerial decree from November 2010<sup>187</sup>.</li> </ul>
2012	<ul style="list-style-type: none"> <li>Coalition falls apart and after new elections a government is formed out of the coalition between VVD and PVDA<sup>188</sup>.</li> </ul>
2013	<ul style="list-style-type: none"> <li>Introduction of income dependent rent increases on households that did not belong to the new target group of housing associations<sup>189</sup>.</li> <li>Introduction of the Landlord Levy (<i>verhuurderheffing</i>). Those renting more than 50 dwellings in the regulated sector for a rent on or below the rent allowance limit, must pay a landlord levy, which is a percentage of the value of the rented houses<sup>190</sup> (see more information below).</li> </ul>
2014	<ul style="list-style-type: none"> <li>The Parliamentary Committee of Inquiry into Housing Associations investigated the entire system and presented a very critical final report at the end of October 2014. The Hoekstra Committee had already investigated the supervision of housing associations in 2012.</li> </ul>
2015	<ul style="list-style-type: none"> <li>The new Housing Law (<i>Woningwet</i>) came into force in July 2015 (more details below). Since then, new regulations and updates to existing schemes are regularly appearing.</li> </ul>
2016	<ul style="list-style-type: none"> <li>“Appropriate allocation” or “fair housing allocation” measure (<i>passend toewijzen</i>) comes into force in January 2016 (more information below).</li> </ul>
2017	<ul style="list-style-type: none"> <li>Coalition between VVD, D66, CU (Christian Union), and SGP (Reformed Political Party)<sup>191</sup>.</li> </ul>

Source: Timeline assembled by the author of this research based on cited bibliography.

#### 4.1.1. The State aid cases related to housing in the Netherlands

*Stichting Woonlinie and Others* (judgement of 15 November 2018) and State aid No E2/2005 and N642/2009, *The Netherlands, Existing and special project aid to housing corporations*<sup>192</sup> refer specifically to aid given to housing associations in the Netherlands for the construction of social housing, following the universalist model.

In 2007, the Association of Dutch Institutional Real Estate Investors (*Vereniging van Institutionele Beleggers in Vastgoed*, or IVBN) complained to the Commission that housing associations were building considerably more dwellings with state aid (2,3 million) than the number of households entitled to housing allowance (1,2 million) (Czischke 2017, 82). For IVBN this meant that they were expanding their activities in the non-social housing rental market, thus getting in competition with private companies that did not receive State aid.

The Netherland’s 1901 Housing Act provided that housing associations had the task of giving priority to persons who, by reason of their income or other circumstances found it difficult to access suitable housing<sup>193</sup>. The housing activities were not restricted to socially disadvantaged people. In the case of

<sup>187</sup> Regulations of the Minister of the Interior and the Kingdom from 3 November 2010, n° BJZ2010028548.

<sup>188</sup> [https://en.wikipedia.org/wiki/2012\\_Dutch\\_general\\_election](https://en.wikipedia.org/wiki/2012_Dutch_general_election)

<sup>189</sup> Hoekstra 2017, 34.

<sup>190</sup> <https://business.gov.nl/regulation/landlord-levy/>

<sup>191</sup> [https://en.wikipedia.org/wiki/2017\\_Dutch\\_general\\_election](https://en.wikipedia.org/wiki/2017_Dutch_general_election)

<sup>192</sup> In C (2009) 9963 final.

<sup>193</sup> *Stichting Woonlinie and Others*, § 87.

overcapacity, housing companies would even rent apartments to people with relatively high incomes.

Housing associations would rent out dwellings to individuals, rent out public purpose buildings or commercial premises, and work in construction and maintenance of local infrastructure, including in the construction of owner-occupied homes (Priemus and Gruis 2011, 90). For all these activities, they were considered to be in competition with private landlords and developers<sup>194</sup>.

The benefits received by the housing corporations were the following: a) State guarantees for their borrowings from the Social Housing Guarantee Fund (*Waarborgfonds Sociale Woningbouw*, hereinafter "WSW"), which reduced borrowing costs; b) direct grants and loans from the Central Housing Fund (*Centraal Fonds Volkshuisvesting*, hereinafter "CFV") under more favourable conditions than those available on the market<sup>195</sup>; c) sale of public land by the municipalities at price below market value; and d) right to borrow from the Dutch Municipality Bank (Bank Nederlandse Gemeenten hereinafter "BNG"), a special purpose public bank with a good credit rating, from which only public bodies and housing associations could borrow<sup>196</sup>. Commercial banks "incur higher refinancing costs because their assets do not consist predominantly of guaranteed loans" and therefore "the special State-backed status of BNG allows it to offer lower interest rates for the *wocos* than a normal bank would be able to offer"<sup>197</sup>.

Housing associations were considered by the European Commission to be undertakings, receiving selectively an advantage from the State, for carrying out services that could be provided by the market - thus capable of distorting competition- and "given the high level of cross-border investment in real estate and the significant role of the housing associations in the Netherlands" the aid measures were liable to affect intra-community trade. The *Altmark* case did not apply because when the undertakings were not chosen through a public procurement procedure, the amount of aid must be based on the analysis of the cost of an "average well-run business" (Priemus and Gruis 2011, 91), as seen above. The Dutch government did not claim nor prove this to be the case. Thus, the measures were considered State aid according to Article 107 (1). It was then analysed whether aid would qualify as SGEI and therefore whether it could be considered social housing.

The Commission explained that the term social housing itself already limited the scope of the public service to housing "provided on the basis of social criteria", not applying to housing in general<sup>198</sup>. It interprets that "social housing" should be read taking into account the 2005 Decision's recital, which defines the target group of social housing, as being "housing for disadvantaged citizens and socially less

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<sup>194</sup> C (2009) 9963 final, § 12.

<sup>195</sup> The CFV is financed through charges collected from all social housing organisations (Thana 2018, 17).

<sup>196</sup> C (2009) 9963 final, §§ 9, 15, 16, 20.

<sup>197</sup> *Ibid*, § 22.

<sup>198</sup> C (2009) 9963 final, § 54.

advantaged groups, who due to solvency constraints are unable to obtain housing at market conditions”<sup>199</sup>.

For the Commission, the provision of social housing may qualify as SGEI if it is restricted to the above-mentioned target group. This means that the wide margin Member States have relates to the size of the target group and the exact modalities of applying the system based on a target group<sup>200</sup>.

The Commission considered there to be a manifest error in the definition of public services in the Netherlands because the definition was not clear enough in their opinion <sup>201</sup>. It noted, in addition, that the Dutch authorities’ mechanism of classifying social housing by setting the rents below the rent ceiling did not solve the problem. According to the Commission, since the public service was of a social nature, the definition of the activities of housing corporations should have a direct link with socially disadvantaged households and not only with a maximum price for housing<sup>202</sup>.

According to the Court, the Dutch authorities had to demonstrate that the definition of the mission conferred on the housing companies was in conformance with the 2005 SGEI Decision and that it was “necessary and proportionate in relation to a real public service need”<sup>203</sup>. The Dutch authorities, however, in its letter of 6<sup>th</sup> September 2005, did not dispute the Commission’s assessments.

The following were the measures the Commission considered the Dutch authorities had to undertake to be in compliance with State aid rules<sup>204</sup>:

- “Limitation of social housing to a clearly defined target group of disadvantaged citizens or socially less advantaged groups”
- “Any commercial activities by the *wocos* should be carried out on market terms and should not benefit from State aid. Public services activities and commercial activities should follow the rules of separation of accounts and adequate controls.”
- “The offer of social housing by the *wocos* should be adapted to the demand from disadvantaged citizens or socially less advantaged groups.”

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<sup>199</sup> Former Commission Decision 2005/842/EC, recital 16, which later became Commission Decision 2012/21/EU, recital 11.

<sup>200</sup> C (2009) 9963 final, § 55.

<sup>201</sup> Ibid, § 88.

<sup>202</sup> Ibid, § 90.

<sup>203</sup> *Stichting Woonlinie and Others*, §§ 97 and 100.

<sup>204</sup> C (2009) 9963 final, § 40.

#### ***4.1.2. Consequences for the Netherlands***

This section will look into policy changes directly linked to the agreement with the Commission, later policy changes, questions related to public opinion and political will, general figures related to the current housing situation in the Netherlands, as well as effects over housing provision.

##### *Policy changes as a result of the commitments with the European Commission*

In its letter of 3<sup>rd</sup> December 2009, the Dutch authorities made commitments to revise the functioning of housing corporations and the support given to them. The new rules were then later implemented in January 2011 through ministerial decree. All the main requests that had been made by the Commission were met<sup>205</sup>:

- Proposal of a new definition of the target group of socially disadvantaged households as “individuals with an income not exceeding EUR 33,000” per year. This definition covers approximately 43% of the Dutch population. Moreover, the Dutch authorities guaranteed the allocation of 90% of housing units of each housing corporation to “individuals belonging to the target group at the moment of allocation”. The remaining 10% would be allocated according to an objective criterion that prioritizes persons with incomes above the ceiling but who may nevertheless be considered as requiring social support, such as large families and other categories defined in the regulations. The exceptions are limited in scope and time. The Dutch authorities envisaged this mechanism in the interest of social mixity and social cohesion<sup>206</sup>.
- Maximum rent established at EUR 647.53 (with annual indexation)<sup>207</sup>.
- Although there are exceptions foreseen (e.g. the possibility to set a lower percentage in a given regional housing market for a period of four years set by a government decree), overall the supply of social housing would be adapted to the demand, avoiding overproduction of housing and thus the need to rent to higher income persons.
- Any commercial activities performed by the housing associations shall be separated from the public service activities and shall no longer benefit from aid. Control mechanisms and transparency shall be enforced. Accounts for public services activities and commercial activities shall be held separate.
- Aid can only be provided to infrastructure that is “strictly ancillary to social housing, e.g. public utilities and roads that connect the dwellings to the main road”. Other infrastructure will be subject to normal tendering procedures.
- As for the construction and renting out of public purpose buildings, “only establishments that truly serve a public purpose and contribute to the liveability of neighbourhoods, for example neighbourhood centres, community centres, youth centres etc, qualify for aid”. These buildings will be rented to tenants at a rent that is lower than the market rent. Housing

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<sup>205</sup> Ibid, § 41.

<sup>206</sup> Ibid, § 58.

<sup>207</sup> For more information on the points system for rent regulation refer to the year 1971 on the chronologic table above, including note. In 2016 the ceiling was 710,68 Euro (Hoekstra 2017, 33).

associations would have to conduct a tendering process for the construction of the buildings.

The Commission accepted the Dutch authorities' commitments. As for the definition of the target group, the Commission understood that as the average income in the Netherlands was approximately 38,000 Euros per year, the suggested income ceiling corresponded to a clearly defined target group, allowing one to separate the socially less advantaged households from those outside the target group.<sup>208</sup>

As for the allocation of 10% of the dwellings to be rented out to higher income groups, the Commission considered that the proportion of tenants from higher income groups would be limited to a small number, the 10% would be allocated based on an "objective criteria with element of social prioritisation", and the exceptions were temporary and contained "sufficient safeguards to ensure that the allocation of housing remains focused on the target group". It then concluded that "in view of these limitations and the legitimate public policy objective the existence of this social mix mechanism can therefore be accepted as valid within the public service definition"<sup>209</sup>. Before 2011, according to Hoekstra (2017, 34), 75% of the vacant social rental dwellings were allocated to the target group, thus the Dutch commitment meant an increase of 15% of allocations in that target group – or a reduction of 15% in social mix.

Applicants' in *Stichting Woonlinie and Others* argued that, by accepting the Dutch Government's proposal of allowing 10% of social housing to be rented out without a ceiling on income, the Commission would have acknowledged that it was not possible to require housing corporations to house exclusively (and not primarily) disadvantaged persons<sup>210</sup>. For the General Court that argument is based on a misreading of the Commission's preliminary assessment. It interprets that the Commission did not consider that the definition of the SGEI contained a manifest error, because it did not provide that housing companies were to rent "exclusively" housing to disadvantaged persons nor that the manifest error in the definition of the SGEI resulted from the absence of a specific income limit (revenue cap), but that it was imprecise, because it provided for priority renting to persons who had difficulties in finding suitable housing, without this target group of disadvantaged persons being defined. Classifying dwellings as social housing by setting the rents below the rent ceiling was not considered a satisfactory criterion<sup>211</sup>. According to the Court, it cannot be excluded that the Commission would also have approved a definition of SGEI proposed by the Dutch authorities based on a criterion other than a limitation of income, if that definition had been sufficiently clear and established a link with disadvantaged people<sup>212</sup>.

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<sup>208</sup> C (2009) 9963 final, § 57.

<sup>209</sup> Ibid, § 58.

<sup>210</sup> *Stichting Woonlinie and Others*, §103.

<sup>211</sup> Ibid, § 133.

<sup>212</sup> Ibid, § 137.

### 2015 Housing Act and later policy

The new Housing Law (*Woningwet*) came into force in July 2015, after years of discussion in the parliament<sup>213</sup>. This law included the new allocation rules and remaining commitments that had been made to the European Commission (e.g. separation between social and commercial activities, the latter being allowed only under a strict market test and under market conditions), as well as stricter rules for governance and supervision of the rental sector (e.g. establishment of a new housing authority<sup>214</sup>, performance agreements<sup>215</sup>).

The allocation rules were slightly changed in relation to what was agreed with the Commission. It was established that at least 80% of the social rental housing should be allocated to households with an income below the national income threshold (36,798 Euros per year in 2018)<sup>216</sup>. In addition, 10% could be allocated to middle income households with an income of up to 41,056 Euros (2018 price level), which is already a greater percentage than what had been originally agreed with the Commission. Finally, the remaining 10% of the housing stock could be allocated freely by housing associations, but in any case, priority must be given for people with difficulty in accessing housing suitable to them (e.g. due to physical or mental disabilities, students, the elderly, refugees).

However, what could have been gained in terms of social mix through the 10% that could be distributed to middle-income households and the 10% to be distributed more freely was set back by the “fair housing allocation” or “appropriate allocation” measure (*passend toewijzen*)<sup>217</sup> that came into force in January 2016. Social housing households with incomes under certain limits<sup>218</sup> are entitled to housing allowances when their rents are relatively high, but below the 720.42 Euros SGEI threshold. According to the “appropriate allocation” measure, households with incomes below this housing allowance limit should be assigned a dwelling with rents below the so called “capping limits”<sup>219</sup> (AEDES Vereniging van Woningcorporaties 2019)<sup>220</sup>. At least 95% of vacant social rental dwellings must be assigned according to these limits. The objective is to make poorer people rent cheaper dwellings, thus reducing government spending on allowances at the expense of social mix.

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<sup>213</sup> <https://www.aedes.nl/artikelen/corporatiestelsel/woningwet-in-de-praktijk/wet/wetteksten-woningwet.html>

<sup>214</sup> The Housing Association Authority shall assess the management and the financial situation of the housing associations and their subsidiaries.

<sup>215</sup> These agreements are reached between the municipality, the tenants organisation and the housing associations. Refer also to AEDES. *Dutch Social Housing in a Nutshell: Examples of social innovation for people and communities*. April, 2016. In: <https://www.aedes.nl/algemeen/over-aedes>.

<sup>216</sup> <https://www.government.nl/topics/housing/rented-housing>

<sup>217</sup> According to AEDES 2019, a similar “suitability standard” used to exist in the past and was abolished in 2008.

<sup>218</sup> This limit is 22,700 Euros for single-person households and 30,825 for multi-person households.

<sup>219</sup> The “capping limit” is 607.46 Euros for single and double-person households and 651.03 Euros for three-person and multi-person households.

<sup>220</sup> Refer also to Hoeckstra 2017.

The 2013 “Landlord levy” seen in the chronology above has been the exchange for the housing associations receiving the authorization to increase rents annually with a rate above inflation (Hoekstra 2017, 35). It was instituted while the conservative party VVD was in charge and amounted to 1.7 billion Euros in 2017. The same party remains in charge since the 2017 elections, thus despite opposition of other parties, this levy is expected to remain for now. Housing associations blame this levy for a sharp decrease in their construction activities in 2014 (AEDES 2016, 6). The Housing Europe Observatory also attributes to this levy a negative impact over investments in social housing<sup>221</sup>.

As claimed by Czischke and van Bortel (2018), as a result of the fear that the “Landlord levy”<sup>222</sup> be applied above the SGEI threshold (so far it is only below) private landlords have been hesitant to invest in affordable housing and when they do, the dwellings are priced far above the SGEI threshold. Thus, the levy apparently is affecting to a certain extent new construction both in the social and affordable housing segments. And even though construction does take place, demand is still much higher.

As mentioned by Czischke and van Bortel (2018), in relation to affordable housing there is no national allocation or eligibility rules and catering for this segment depends on local market circumstances (in those local housing markets in which middle-income households can acquire a home, the affordable rental segment is less requested), as well as local policies. Amsterdam, Rotterdam, Utrecht and The Hague have developed programs and subsidy schemes to support housing for moderate-income housing<sup>223</sup>(Czischke and van Bortel 2018, 14).

In September 2018, in order to deal with the gap in provision of housing for middle-income people, the government presented to the House of Representatives a bill facilitating requirements for housing associations to build rental dwellings for this income group (European Semester Netherlands 2019, 35)<sup>224</sup>. These however will be rent at mid-prices and not social housing prices, falling under the non-SGEI tasks of housing associations. It remains to be seen what this might bring. In addition, since 2017, municipalities can include a minimum percentage of affordable private rental dwellings in their zoning plans. However, it is said that municipalities make higher revenues developing and selling land for new construction in the owner-occupied segment (constrained supply and high demand due to high mortgage interest deductability pushes increase in prices, see below) and therefore may not be motivated to incentivize private rental supply<sup>225</sup>.

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<sup>221</sup> <http://www.housingeurope.eu/resource-1001/a-state-of-housing-map-of-europe>

<sup>222</sup> According to Czischke and van Bortel (2018), the levy means paying around 2 months’ rent annually per dwelling.

<sup>223</sup> Eligibility rules can apply for these programs.

<sup>224</sup> *Wet maatregelen middenhuur*. Refer to the National Reform Programme presented by the Netherlands to the European Semester in 2019, p. 11.

<sup>225</sup> National Reform Programme presented by the Netherlands to the European Semester in 2019, p. 11.

### Public opinion and political will

It is relevant to bring up that in the decades after dealing with the housing shortage that followed the Second World War several attempts were made to go back to “less government influence and a more market like housing market” (Elsinga and Lind 2013, 965). The “grossing and balancing” operation that began in 1995, started an endless political discussion on the issue (see more information in the chronology table above). Under debate was “the unclear position of housing associations between market and state, the question if housing associations operate efficiently and whether the supervision on the social rental sector” was adequate. This is also a reference to cases of mismanagement and fraud, which have kept housing associations at the focus of discussion in the 1990s and 2000s and culminated in 2012 with the scandal surrounding Vestia, an important housing association<sup>226</sup>. Thus, both amongst the public opinion and in political circles, this bad image of housing associations led to the belief that more control was needed (Daniel 2018, 68).

As for political will, Daniel (2018, 68) and Elsinga and Lind (2013, 966) point out interesting correlations between those in power in the Netherlands and in the Commission in the course of the State aid case. When in 2005 the European Commission sends its letter to the Dutch authorities asking for clarifications on the Dutch social housing financing system, the minister for housing was a liberal from the VVD party (Sybilla Dekker), who had been willing to reduce the size of the social rental sector and was in line with the Commission’s reasoning. In addition, the DG COMP from the European Commission, which had decided to instruct the case in 2005, was headed by Neelie Kroes, a Dutch politician also affiliated to VVD and who had previous ties to the Dutch commercial real estate sector, amongst other big businesses. However, the housing minister did not manage to get social housing actors and the parliament to accept changes to national housing policy, thus discussions with the Commission dragged until 2009 (Daniel 2018, 68). In 2009, Eberhard van der Laan from the social-democratic PvdA became minister of housing and is said to have unilaterally negotiated an agreement with the Commission. Apparently, the government wanted the Commission to authorize a new construction aid scheme in disadvantaged neighborhoods in return for the social housing reform (Daniel 2018, 68<sup>227</sup>).

Other associations with specific parties in power will be made in the discussion, based on all that was mentioned in this section, with assistance of the chronology above.

### General figures related to the current housing situation in the Netherlands

Expenditure on housing development (0.2 – 0.1%) and housing and community amenities (from 0.5% to 0.3%) as a percentage of GDP have slightly decreased in the Netherlands in the years 2008 and 2017 (Eurostat<sup>228</sup>). This applies for both

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<sup>226</sup> Vestia had accumulated a debt of more than two billion euros related to the subscription of financial derivatives (Daniel 2018, 68).

<sup>227</sup> In relation to this allegation, no other source was found in the course of this research, apart from the testimonials cited in Daniels 2018.

<sup>228</sup> In General government expenditure by function (COFOG).

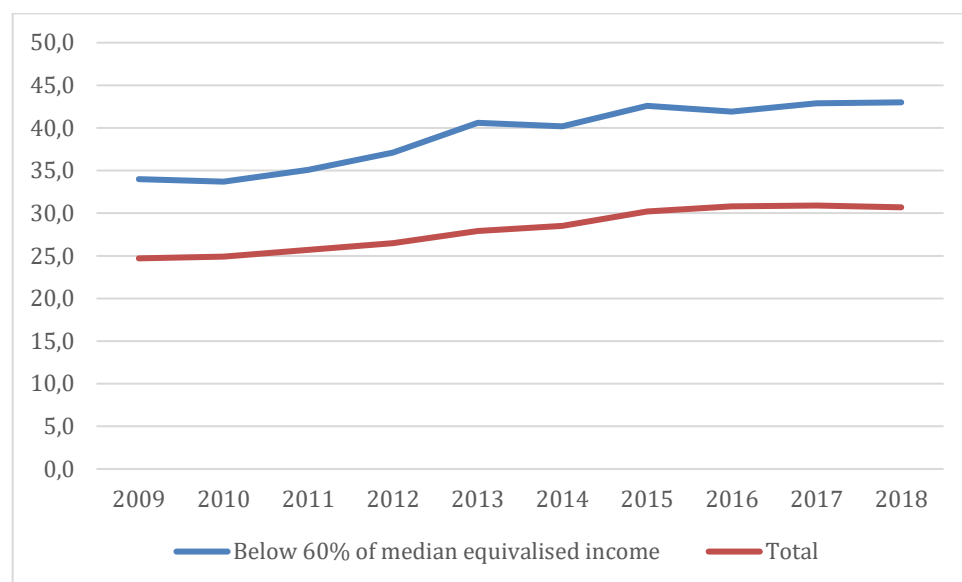


general and local government. In the EU considering the 28 countries the decrease has been similar for housing development (0.3% to 0.2%) and sharper for housing and community amenities (from 0.9% to 0.6%)

The population in the Netherlands in 2017 was 17,181,084. The increase between 2000 and 2010 has been of 4% and from 2010 to 2017 3.15%<sup>229</sup>. Meanwhile, in Amsterdam the increase was of 6 and 9.5%, respectively, and in Rotterdam 3% and 4.64% (CBS)<sup>230</sup>.

Figure 2 below shows the considerable increase in the share of rent in the disposable household income of households below 60% of median equivalised income (from 34% to 43%) and the total number of households (from 24.7% to 30.7%) between 2009 and 2018. One can see that the increase became clear as of 2011 and has been in a growing trend ever since, despite two oscillations. Values for the Netherlands are also considerably higher than the EU 28 general percentages (in the same period the change was from 36.4% to 36.6% for low-income households and from 24% to 24.7% for the total number of households).

Figure 2. Share of rent in disposable household income in the Netherlands, EU SILC survey



Source: Eurostat (updated on 16.07.2019)

Considering specific percentages of rent increases per year in the period between 2015 and 2018, although increases are happening in the whole country, particularly striking are the values for Amsterdam municipality, where since 2015 rent increases above inflation have oscillated between 2.5% and 3.3% for rents including harmonization<sup>231</sup> and 1.5% and 2.1% without harmonization (CBS)<sup>232</sup>.

<sup>229</sup> The population in the Netherlands in 2000 was 15,987,075, in 2010 16,655,799.

<sup>230</sup> Total population in Amsterdam 734,594 in 2000, 779,808 in 2010 and 854,047 in 2017. Total population in Rotterdam in 2000 was 595,255, in 2010 610,386 and in 2017 638,712.

<https://opendata.cbs.nl/statline/#/CBS/en/dataset/37259eng/table?ts=1563488795068>

<sup>231</sup> Rent harmonization can be explained as the rent increase if a dwelling is rented out to a new tenant (Jonkman, Janssen-Jansen, and Schilder 2018).

<sup>232</sup> <https://opendata.cbs.nl/statline/#/CBS/en/navigatieScherm/thema?themaNr=5360>

As for rent increases per type of rental (Table 4 below – no information available on municipalities or regions), between 2015 and 2018, those have been reducing for social rental and increasing for liberalized rents (rents with or without harmonization follow the same trend, with the exception of the increase without harmonization in social rental in 2018). Thus, clearly those who are not entitled to social rental and have new rental contracts have been facing the highest increases in rent and quite considerable ones. This includes most of the middle-class in rental dwellings.

Table 4. Rent increase in the Netherlands per type of rental (%)

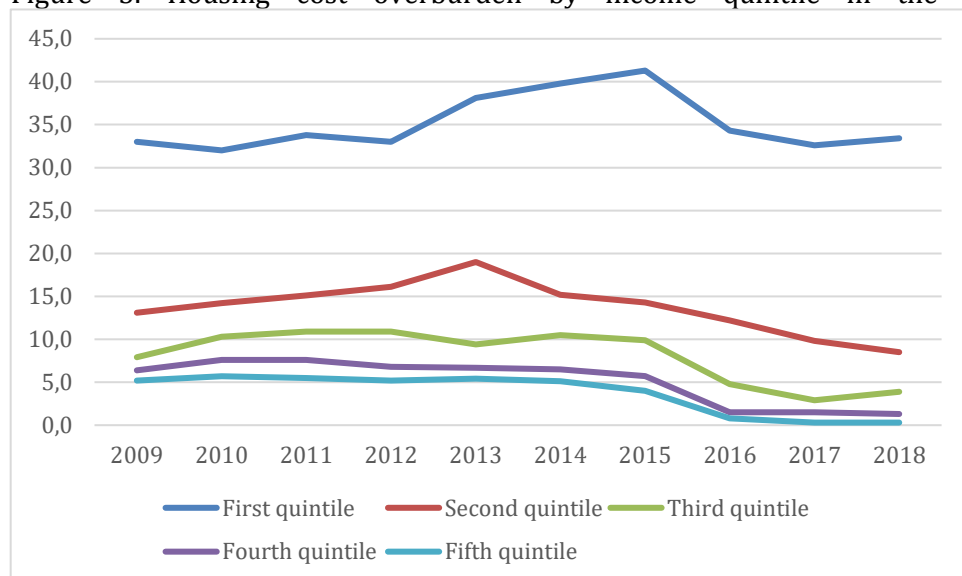
Period	Rent increase incl. rent harmonization			Rent increase excl. rent harmonization		
	Liberalized rental	Social rental	Total	Liberalized rental	Social rental	Total
2015	1.8	2.6	2.4	1.6	1.9	1.9
2016	2.2	1.6	1.9	1.6	1.0	1.4
2017	2.3	1.1	1.6	1.7	0.6	1.2
2018	3.1	1.7	2.3	2.0	1.4	1.8

Source: *Centraal Bureau voor de Statistiek* (CBS – Central Agency for Statistics), table assembled by the author of this thesis

In the absence of data of share of rent in the disposable household income per quintile, Figure 3 below on housing cost overburden per quintile shows that the greatest increase has been for the first quintile as of 2013 (from 33 to 38.1%) reaching its peak in 2015 (41.3%), but it then reduced to almost the same position as in 2009 (33.4%). The second quintile had some increase, reaching its peak in 2013 (19%) but values in 2018 were at its lowest since 2009 (8.5% in comparison to 13.1%). The remaining quintiles, after small increases, considerably decreased. Eurostat information on housing cost overburden for households below 60% of median equivalised income show a harsher increase between 2010 and 2015 (from 43.4% to 51.4%) and by 2018 it had decreased to (41.3%).

This is in contrast with the information shown in Figure 2 above on share of rent in the disposable household income of households. The information on overcrowding may contribute to the explanation, however, questions remain.

Figure 3. Housing cost overburden by income quintile in the Netherlands

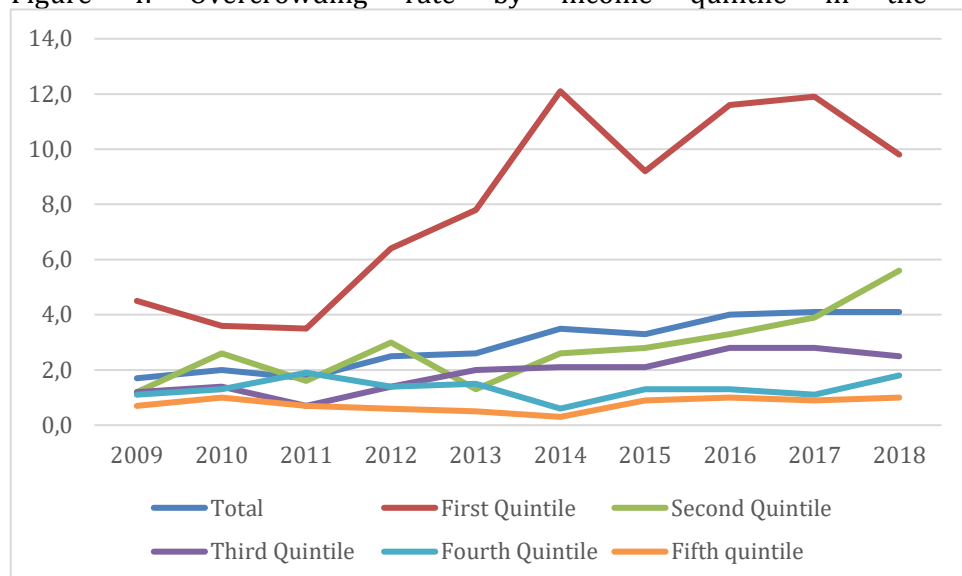


Source: Eurostat (updated on 16.07.2019)

As shown in Figure 4 below, the overcrowding rate for the total number of households rise between 2009 and 2017 (1.7% to 4%) and was stable in 2018. Looking into the first quintile, there has been a considerable rise from 2011/ 2012 until 2014 and the rate has been oscillating slightly since then but has stayed at twice its value from 2009 (4.5%) in 2018 (9.8%). Overcrowding in the second quintile also went through oscillations but has been rising rather steadily since 2013, though more stable since 2016 (1.3% to 5.6% in 2018). Overcrowding has risen for all quintiles, just with much lighter increases for the third, fourth and fifth quintiles.

This data might be an indication that due to difficulty in finding affordable housing, people especially in the first and second quintiles have been resorting to increasing the number of people in one dwelling. Fondation Abbé Pierre and FEANTSA show in their report that the overcrowding rate in housing in the Netherlands has increased by 151.7% between 2007 and 2017 in the case of low-income households (below 60% of median equivalised income) and 115.8% for all households. This is the highest increase in the whole European Union – the numbers of comparison for the EU 28 being negative 11.7% and negative 11.3% respectively.

Figure 4. Overcrowding rate by income quintile in the Netherlands



Source: Eurostat (updated on 16.07.2019)

Overcrowding rates are also higher for tenants in dwellings at reduced prices – increase from 2.7% in 2009 to 15.3% in 2018, with considerable oscillation in between (Eurostat database). Those are followed by tenants in dwellings at market price – overcrowding growing steadily from 4.3% to 10% in the same period.

The data above shows indications that at least the lower part of the middle-income group has been facing problems in the rental market, as well as low-income households. In addition, various authors and the European Semester are concerned about middle-income households in the Netherlands, recognizing that the private rental market is often not affordable for these households, while middle-income households are also not eligible for social housing (European Semester Netherlands, 35). It suggests the solution lies in supporting the private rental segment, which is debatable.

In any case, waiting times for social rental housing in Amsterdam can run from three to more than ten years. It depends mainly on location and type of residence<sup>233</sup>.

The total housing stock increase between 2012 and 2017 was of 4.29% in the Netherlands as a whole, 4.68% in Amsterdam and 1.13% in Rotterdam. In the same period, considering housing stock by ownership (Table 5 below) one can observe that owner-occupied dwellings represent the majority of dwellings when considering Sweden as a whole (56.51%), but it is also slightly declining, while the private rent sector is the only one growing, notwithstanding still representing 13.86% of total dwellings. For Amsterdam and Rotterdam, the trends are different, to a certain extent. The share of owner-occupied dwellings is lower (29.79% and 35.24% respectively) but rising and dwellings with social rent still represent the

<sup>233</sup><https://www.woningnetregioamsterdam.nl/Help%20en%20uitleg/Huren%20of%20kopen/Sociale%20huurwoning>

biggest share (41.90% and 44.44% respectively) though decreasing. Following the national trend, dwellings in private rental are increasing in both municipalities (28.31% and 20.32%, respectively) and represent a greater share of the total stock than at national level. In any case, construction is falling short of demand (Housing Europe Observatory<sup>234</sup>).

Table 5. Housing stock by ownership in the Netherlands and in the municipalities of Amsterdam and Rotterdam

Ownership	Netherlands		Amsterdam (municipality)		Rotterdam (municipality)	
	2012	2017	2012	2017	2012	2017
<b>Owner occupied</b>	4,190,996	4,343,185	114,824	127,525	107,112	109,136
	56.87%	56.51%	28.08%	29.79%	34.98%	35.24%
<b>Private rent</b>	895,332	1,064,987	106,115	121,156	54,900	62,937
	12.15%	13.86%	25.95%	28.31%	17.93%	20.32%
<b>Social rent</b>	2,283,119	2,278,006	187,951	179,354	144,209	137,620
	30.98%	29.64%	45.97%	41.90%	47.09%	44.44%
<b>Total</b>	7,369,447	7,686,178	408,890	428,035	306,221	309,693

Source: Rijksoverheid<sup>235</sup>, table assembled by the author of this thesis

Since 2012, the European Semester’s recommendations have put great focus on the Dutch housing market and more specifically on the need to modify the high mortgage interest deductability, restructure social housing in a more limited manner, alter the rental regulation system so as to make it more market-oriented and support the growth of the private rental sector (European Semester 2019, 13). This is also echoed by the OECD in its Economic Survey of the Netherlands 2018. Both the OECD and the European Semester (European Commission) have a strong focus on economic stability and a market-oriented approach related to housing, with reduced attention given to social aspects.

Mortgage debt is subsidised by the deduction of mortgage interest from personal income taxes (mortgage interest deductability). This favourable tax treatment of homeownership contributes to higher household debt bias <sup>236</sup>. The Dutch government has decided on the reduction of the mortgage interest deductability (as of 2020), but it will not be phased out. According to the 2019 European Semester, despite decline, household debt still represents 105% of GDP and 211% of household disposable income in 2017. These are higher than the numbers for the euro area, which correspond to 57% and 93% respectively.

Czischke (2017, 84) defends that the “years of heavy subsidization of home ownership, and particularly debt financing, which pushes prices up”, also a main concern of the European Semester, as just seen, is the main problem of the housing market in the Netherlands, and not the role and size of the social rental sector.

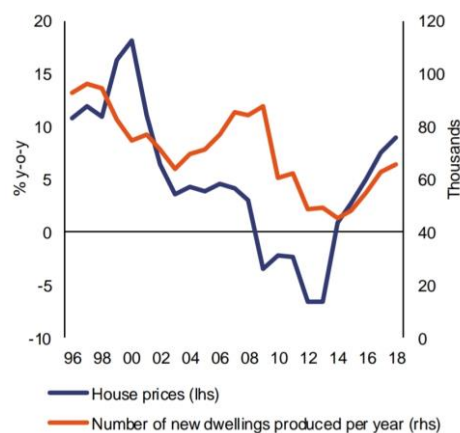
<sup>234</sup> <http://www.housingeurope.eu/resource-1001/a-state-of-housing-map-of-europe>

<sup>235</sup> [https://vois.datawonen.nl/jive/jivereportcontents.ashx?report=cowb\\_framework](https://vois.datawonen.nl/jive/jivereportcontents.ashx?report=cowb_framework)

<sup>236</sup> The European Commission (through the Semester) and other experts believe that this subsidy gives households an incentive to take on debt, influencing the decision to buy or rent (p. 14).

Housing market prices have increased, apparently rather due to a real lack of supply combined with high mortgage interest deductability<sup>237</sup> than to overvaluation<sup>238</sup>. The number of existing dwellings for sale has decreased by more than 70% between 2012 and 2018 (European Semester Netherlands 2019, 30<sup>239</sup>), affecting all provinces, though more noticeable in larger cities. According to the European Semester 2019, the number of new dwellings being constructed decreased in 2009 (connection to the GFC) but started recovering in 2015. In order to address housing shortages, the Dutch governments' target is of 75,000 new dwellings per year until 2025, but this target has not been met, either in 2017 (70,000) nor in 2018 (66,000).

Figure 5. House prices and development of new dwellings in the Netherlands



Source: Statistics Netherlands in European Semester 2019

### Effects over housing provision

#### Change in behaviour of housing associations

In a research carried out in two different moments, 2010/2011 and 2013/2014, Nieboer and Gruis observed that Dutch housing associations have been reducing their field of operations, shifting away from commercial activities and focusing much more on traditional social housing tasks<sup>240</sup> - particularly the provision of rental housing for low-income households (Nieboer and Gruis 2016, 292). At the same time, the second wave of research showed a shift from social return to financial return, meaning a more “businesslike attitude”, resulting in an increased focus on “budget savings and efficiency”. The challenge is then to combine this

<sup>237</sup> This increases the number of households willing to buy, which combined to supply-constraints leads to higher prices (European Semester Netherlands 2019, 35).

<sup>238</sup> However, the ratio of average prices to income is already at a higher level than in the rest of the euro area (European Semester Netherlands 2019, p. 29).

<sup>239</sup> Citing data by NVM.

<sup>240</sup> About the shift of housing associations towards the traditional role of housing manager, Niboer and Gruis listed: " The developments in the years 2010–2013 clearly indicate a movement in the sector towards the traditional role of housing manager: less involvement in non-housing activities, less emphasis on the development of new products, more focus on the development and management of real estate, more focus on the physical state of the housing stock, fewer commercial activities and more emphasis on low-income groups alone" (Nieboer and Gruis 2016, 285).

efficiency with a “satisfying level customer support and service” (Nieboer and Gruis 2016, 293).

According to the research, the most significant shifts in the behaviour of housing associations have not taken place just after the 2008 GFC, but rather in the period between the two research waves (Nieboer and Gruis 2016, 292). In addition to the financial crisis, the housing associations identify as the causes for their changing behaviour a larger tax burden and stricter allocation rules (as a consequence of Dutch commitments to the European Commission to comply with State aid regulations).

In addition, the research identified as the main concern “the tension between the necessity to increase rental income on the one hand and growing concerns about affordability on the other, combined with a more stringent focus on low-income households” (Nieboer and Gruis 2016, 293)<sup>241</sup>.

It further makes reference to the risk of affordable housing shortage for middle-income households and to whether private investors would replace the role of the housing associations in providing housing in the market for middle-income households. For Czischke and van Bortel (2018, 15), this remains inconclusive and so far, private investment in affordable housing for middle-income households has taken place when there is lack of attractive investment opportunities in the owner-occupied housing sector. Since the recovery of the housing market, there has been indications of private sector cutback from the rental sector. The authors also emphasize that the Dutch taxation system does not contribute to stimulate a different behaviour, as it favours owner-occupied over rental housing.

For Elsinga and Lind (2013, 970), and other authors, the middle classes come out as the losers in the Netherlands because they are above the income limits for social housing, but have difficulties in entering the ownership market due to having lower incomes than what is demanded by the banks and end up competing mostly for private rental, where annual rent increases are greater.

### Cooperatives

Czischke and van Bortel (2018, 15) have pointed to the pilot project launched in 2016 for the establishment of cooperatives catering for the affordable housing segment (for middle-income households). According to the authors, cooperatives have obtained legal status in the Netherlands with the 2015 Housing Act. It is expected to offer an intermediate form between home ownership and renting.

### Black market / sub-locations

In cities like Amsterdam, where the market is more constrained, people with cheaper rent contracts have been sub-renting their apartments at higher prices.

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<sup>241</sup> Refer also to Elsinga and Lind 2013, 968.



## Increase in segregation

This is specially related to the system of *passend toewijzen*, mentioned in the same section above.

### **4.2. Sweden**

Instead of the concept of social housing, the Swedish describe the housing sector as *allmännyttta*, meaning “for the benefit of everyone” (Hedman 2008, 7), corresponding to the universalist model of social housing, as seen above. This is one of the main characteristics of the Swedish public housing model, it is not directed to a specific target group (no restriction in terms of income or any other barrier). Apartments are usually allocated according to time spent on the waiting list (Lind 2017, 151).

Another main characteristic is the negotiation of rental prices in collective-bargaining-style negotiations between landlords (representatives from the municipal housing department and nowadays also from the private sector) and the Swedish Union of Tenants, which tend to lead to below market rent levels, as well as the “utility value principle”, which means that rent prices in municipal housing companies’ (MHCs) dwellings serve as benchmark for all other prices (Hedman 2008, 28<sup>242</sup>). The rent control system is organized in such a way that rent increases can only take place if all parties agree, which gives each party a veto power (FEANTSA and Fondation Abbé Pierre 2018, 8; Daniel 2018, 75).

Since the 1990s, State housing loans and preferential tax treatments for MHCs were abolished, while greater importance was given to the allocation of housing allowances to low-income households, which represented a shift towards a market oriented housing policy and the reduction of risk for the State (Termer Center for Housing Innovation 2017, 4).

In order to better understand the state aid cases against Sweden and the current situation related to housing, it is important to know some important events, facts and legislation that affected Swedish housing policy history until the enactment of the 2011 Act on MHCs.

Period	Important events/facts/legislation
1942	<ul style="list-style-type: none"><li>• Rent negotiation<sup>243</sup>: a consultation is organized annually at municipal level to decide on changes to rents in the public sector. Negotiations used to be between the municipality/MHCs – as representatives of the landlords – and representatives of the Tenants Union at local level<sup>244</sup>. This was changed in 2011 to include also representatives from the private sector.</li></ul>
After the Second	<ul style="list-style-type: none"><li>• Introduction of the notion of a public housing model “for the benefit of everyone”.</li><li>• Both municipalities and non-profit housing companies under municipal control could be granted loans of as much as 100 percent of their initial expenditure, which was smaller for cooperatives and other borrowers<sup>245</sup>.</li></ul>

<sup>242</sup> Refer also to SWD (2019) 1026 final, 30.

<sup>243</sup> It is applied differently from municipality to municipality.

<sup>244</sup> FEANTSA and Fondation Abbé Pierre 2018, 8.

<sup>245</sup> Law SFS 1946:551. See Hedman 2008, 13.



<b>World War</b>	<ul style="list-style-type: none"> <li>Increasing integration of different income/ social groups was a relevant objective from the start<sup>246</sup>.</li> </ul>
<b>1965</b>	<ul style="list-style-type: none"> <li>Decision to implement the “million dwellings programme”, which constructed just over one million dwellings between 1965 and 1974<sup>247</sup>.</li> <li>The key players in achieving this goal were the MHCs and the housing cooperatives.</li> </ul>
<b>1968</b>	<ul style="list-style-type: none"> <li>Rent control was dismantled and the “utility value” (<i>bruksvärdessystem</i>) system was introduced, determining how a dispute was to be settled by the Regional Rent Tribunal<sup>248</sup>. If the landlord and the tenant disputed the size of the rent, the rent should be set at a reasonable amount. To arrive at this “reasonable amount”, one would refer to the “utility value” principle, according to which two dwellings with the same characteristics should have approximately the same rent<sup>249</sup>. This does not take location so much into account<sup>250</sup>.</li> </ul>
<b>Early 1970s</b>	<ul style="list-style-type: none"> <li>The country’s economy slowed down and, in some cities, like Stockholm, the population decreased, however, construction continued until the million dwellings that had been planned were built, resulting in growing numbers of empty flats.<sup>251</sup></li> <li>The program’s dwellings started to concentrate disadvantaged populations, often immigrants<sup>252</sup>.</li> <li>Tenure mix becomes a national policy <sup>253</sup>.</li> </ul>
<b>1975</b>	<ul style="list-style-type: none"> <li>Abandonment of the principle of subsidy-free loans (with interest guarantees) and introduction of interest subsidies<sup>254</sup>.</li> <li>Requirement of full municipal ownership and control for recognition as a non/profit housing company<sup>255</sup>. This applied until 1996<sup>256</sup>.</li> <li>The law stipulates that rents in non-profit municipal housing serve as benchmark for rents in general<sup>257</sup>. Thus, the rents established in two-partite negotiations between municipalities/MHCs and the Swedish Union of Tenants at local level served as a benchmark also for the older built private rental sector<sup>258</sup>. This led private property owners to feel discriminated against</li> </ul>

<sup>246</sup> Hedman 2008.

<sup>247</sup> Ibid, 14.

<sup>248</sup> Proposal 1968:91. As explained by Hedman (2008, 9), “the comparison rent was to be sought among the highest rents for flats with a similar utility value in the same area, not taking single examples of very high rents into account. It was not to be sought among average rents as it was believed that this would preserve the existing rent structure and ‘counteract a desirable flexibility in the setting of rents’ (Proposition 1968:91, Annex A, pp. 53-54)”.

<sup>249</sup> Chapter 12 of the *Jordabalken* (Swedish Land Law) 1970:994 and and Braga and Palvarini 2013, 40.

<sup>250</sup> European Commission SWD (2019) 1026 final, 30.

<sup>251</sup> Baléo 2018, 5. This meant reduced rent revenues for MHCs that to some extent depended up to 100 percent on loan financing for construction programs (Hedman 2008, 16). The programme was criticized for design and finishing shortcomings in many of the multi-dwelling blocks.

<sup>252</sup> Demand for single family homes began to increase and a considerable share of those in the “Million Dwelling Program” homes started to buy and move (Hedman 2008, 16).

<sup>253</sup> Wimark, Andersson, and Malmberg 2019, 5.

<sup>254</sup> Law SFS 1974:946. The state paid the difference between the low guaranteed interest rate and the market interest rate in the form of interest subsidies (Hedman 2008, 16).

<sup>255</sup> Law SFS 1974:946. See Hedman 2008, 8.

<sup>256</sup> Law SFS 1996:1435.

<sup>257</sup> See Proposition 1974:150 and the Rents Act/ Land Code.

<sup>258</sup> Eliasson 2010, 1; Baléo 2018, 7; Elsinga and Lind 2013, 362. The negotiations are not applicable to rents in new built private rental dwellings, which are exempt from rent control for 15 years after

<b>1981</b>	<ul style="list-style-type: none"> <li>• Start of the transition between construction and management<sup>259</sup>.</li> </ul>
<b>1991</b>	<ul style="list-style-type: none"> <li>• Social Democrats lost power to a center-right coalition<sup>260</sup>.</li> <li>• State housing loans were abolished, and interest subsidies were reduced<sup>261</sup>. Financial risks were then transferred from the state to municipalities. These changes were not reverted when the Social Democrats returned to office in 1996.</li> <li>• Real estate and banking crisis resulting in recession.<sup>262</sup></li> <li>• As a result of recession and cut subsidies, construction decreased considerably<sup>263</sup>. There were many vacancies on the rental housing market at that time.</li> <li>• In the 1990s, the majority of MHCs were reorganized into non-profit limited liability companies but remained municipally owned and controlled<sup>264</sup>.</li> </ul>
<b>1992</b>	<ul style="list-style-type: none"> <li>• Local decision-making concerning conversion of public rental housing into market forms was allowed<sup>265</sup>. This led an increasing number of municipalities to start selling all or parts of their housing stock to private rental companies or to cooperatives.</li> </ul>
<b>1994</b>	<ul style="list-style-type: none"> <li>• Social Democratic government took power<sup>266</sup>.</li> </ul>
<b>1995</b>	<ul style="list-style-type: none"> <li>• Sweden joined the EU.</li> </ul>
<b>1996</b>	<ul style="list-style-type: none"> <li>• Full municipal ownership of non-profits was no-longer required, introducing the possibility of broadened ownership, where municipalities were to continue to exercise the “decisive influence” or control<sup>267</sup>.</li> <li>• Introduction of a mechanism that intends to make it more difficult for MHCs to sell their stock<sup>268</sup>. If MHCs were to sell any dwellings from their stock, the interest subsidies for the sold properties would be cancelled, as well as the interest subsidies paid out for the rest of the properties the housing company owned.</li> </ul>
<b>1999</b>	<ul style="list-style-type: none"> <li>• Further legislative measures were taken in an attempt to halt the selling of housing stock by MHCs<sup>269</sup>.</li> </ul>
<b>2001</b>	<ul style="list-style-type: none"> <li>• “Three-party Agreement” (more details in the section below)</li> </ul>
<b>2002</b>	<ul style="list-style-type: none"> <li>• The European Property Federation (EPF) filed its first complaint with the European Commission concerning state aid for MHCs in Sweden.</li> </ul>

construction (FEANTSA and Fondation Abbé Pierre 2018, 8). This explains rent disparities between old buildings and recent built buildings in areas with a competitive market.

<sup>259</sup> The Swedish Association of MHCs (SABO)(the central organization of non-profit housing companies since 1950) started a new management policy for MHCs, which was focused on decentralization, good financial management and the establishment of contact between companies and tenants (Hedman 2008, 17).

<sup>260</sup> Hedman 2008, 17.

<sup>261</sup> Law SFS 1991:1932. The law came into force in 1992.

<sup>262</sup> The Swedish banking rescue followed a housing bubble in Sweden that deflated during 1991 and 1992 and resulted in a severe credit crunch and widespread bank insolvency.

<sup>263</sup> Emanuelsson 2015, 50.

<sup>264</sup> Hedman 2008, 18 and 22.

<sup>265</sup> Andersson and Turner 2014, 7. “In some Swedish municipalities, predominantly those having a Social Democratic majority, this decision had no or small effects on the housing market”.

<sup>266</sup> Andersson and Turner 2014, 7.

<sup>267</sup> Law SFS 1996: 1435. See Hedman 2008, 8.

<sup>268</sup> Law SFS 1996:1435. See Hedman 2008, 26.

<sup>269</sup> Interest subsidies were so low that their cancellation did not serve as a deterrent, thus SFS 1999:608 added a temporary measure under which the general state grant would also be reduced if the MHC paid a dividend that exceeded “reasonable returns” (Hedman 2008, 26).

	<ul style="list-style-type: none"> <li>The Swedish government replied to the Commission in October 2002<sup>270</sup>.</li> </ul>
<b>2003</b>	<ul style="list-style-type: none"> <li>In January 2003, the Swedish government notifies the Commission of proposed state measures concerning the housing market in Sweden.<sup>271</sup></li> <li>Entry in to force of the Act on Non-Profit Housing Companies<sup>272</sup>, meaning that a housing company that is not owned or controlled by a municipality could also be defined as a non-profit housing company, if it fulfilled two conditions: be not-for-profit (limited distribution of dividends) and principally manage rental dwellings<sup>273</sup>.</li> </ul>
<b>2005</b>	<ul style="list-style-type: none"> <li>Second complaint filed by EPF on state aid against Sweden.</li> <li>Appointment of a Commission of Inquiry on the Conditions for Municipal Housing</li> </ul>
<b>2006</b>	<ul style="list-style-type: none"> <li>Center-right government takes power again. Restrictions on municipalities to sell their housing stock is removed<sup>274</sup>.</li> </ul>
<b>2008</b>	<ul style="list-style-type: none"> <li>GFC leading to new decrease in housing construction, but also to low interest rates<sup>275</sup>.</li> </ul>
<b>2011</b>	<ul style="list-style-type: none"> <li>New Act on Municipal Housing Companies (more details below).</li> </ul>
<b>Since 2014</b>	<ul style="list-style-type: none"> <li>Government formed by coalition of Social Democratic Party and Green Party<sup>276</sup>.</li> </ul>
<b>2016</b>	<ul style="list-style-type: none"> <li>The government started implementing in 2016/2017 (retroactive to 2015) a new subsidy program designed for small, "climate smart" apartments<sup>277</sup>.</li> </ul>

Source: Timeline assembled by the author of this research based on cited bibliography.

#### **4.2.1. The State aid cases related to housing in Sweden**

In 2002 and 2005, the European Property Federation (EPF), acting on behalf of the real estate industry, including the Swedish Federation of Property Owners, presented two complaints to the Commission<sup>278</sup>, which then challenged the Swedish universal model of social housing (Braga and Palvarini 2013, 40). In 2002, MHCs were said to have received indirect public subsidies in the form of purchase of non-viable housing from MHCs for conversion to other uses and provision of MHCs with equity capital and loan guarantees<sup>279</sup>. In addition, it was argued that since municipalities did not ask MHCs to maximize their profit rate, they did not behave like ordinary shareholders, and therefore provided indirect

<sup>270</sup> Answer given by Mr Monti on behalf of the Commission to the written question E-1381 by Giles Chichester (PPE-DE) to the Commission.

<sup>271</sup> Ibid.

<sup>272</sup> Law SFS 2002:102.

<sup>273</sup> Hedman 2008, 8 and 24.

<sup>274</sup> Hedman 2008, 19.

<sup>275</sup> Lind 2017, 154.

<sup>276</sup> <https://sweden.se/society/political-parties-in-sweden/>

<sup>277</sup> Hansson 2019, 16.

<sup>278</sup> CP115/02 'Financial Support Granted to Swedish Municipal Housing Companies', in 2002 and 2005.

<sup>279</sup> Written Question E-1381 by Giles Chichester (PPE-DE) to the Commission. There is different information concerning the amount of these indirect subsidies. In the cited source it says 300 million Euros, but Baheru (2017, 9) mentions 12 billion SEK (over a billion Euros).

assistance to MHCs<sup>280</sup> (Daniel 2018, 71). As MHCs were not purely focused on providing housing for disadvantaged population, altogether this was considered by real estate developers to distort market competition and bring a disadvantage to them, who were unable to match similar rents, as requested by the “utility value” system seen above.

However, according to some authors, indirect subsidies was not the real reason for the complaint. Daniel (2018, 71) argues that what the real estate developers intended was to permanently weaken the national rent regulation system. Elsinga and Lind (2013, 962) explains that in 2001, in a “Three-party agreement” between the Swedish Association of Municipal Housing Companies (SABO), the Swedish Tenant’s Union and the Swedish Federation of Property Owners, the Tenant’s Union agreed to negotiate a yearly rent increase in order to avoid losing the collective bargaining system. It involved negotiating yearly rent increases. It is said that at that time, the Tenant’s Union, especially in Stockholm, was under pressure to accept changes to rent regulation.<sup>281</sup> However, the agreement was not being implemented in Stockholm, where the local Tenant Union allegedly refused to follow the agreement (Elsinga and Lind 2013, 962; Baheru 2017, 9). Despite the apparent lack of relevance of the agreement, the fact that it did not work is pointed by Elsinga and Lind as a possible reason to resort to the European Commission for leverage against the Tenant’s Union.

In 2005, the Swedish government appointed a Commission of Inquiry on the Conditions for Municipal Housing<sup>282</sup> with the task of looking into possible conflicts between Swedish housing policy and EU-legislation, amongst other<sup>283</sup>. The Minister responsible for housing policy, Monah Sahlin (Social Democrats), instructed the Inquiry to develop a policy that would “protect the public housing sector without violating EU law” (Eliasson 2010, 2). However, with the change of governments in 2006, the new Minister responsible for housing policy, Mats Odell (Christian Democrats) instructs the Inquiry to review all issues, including the rent regulation system (Daniel 2018, 71).

In its 2008 report (*EU, the public housing companies and rent setting*), the committee concluded that “EU competition law does not allow a system where the rent in the municipal housing companies determines the rent in the private sector” (Elsinga and Lind 2013, 962). It identified two options. The first was that MHCs should behave in the same way as private owners in terms of maximizing profits (Eliasson 2010, 2). The second, called the “social housing” option, would have meant reducing the target group of MHCs’, focusing on renting for “people with low incomes that have difficulties finding housing on the open market”(Elsinga and Lind 2013, 963) in order to make the aid compatible with SGEI regulations.

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<sup>280</sup> Strategy developed by Ernst & Young.

<sup>281</sup> As explained by Elsinga and Lind (2013, 962), in the early 2000s, increased demand and gap “between the negotiated rent levels and market rent levels created strong incentives for turning rental housing into condominiums” (also called tenant-owned dwellings), which resulted in increases in queues and black market and as a consequence brought the rent regulation into the political agenda.

<sup>282</sup> M 2005:04.

<sup>283</sup> Directive 2005:116, Directive 2007:18 and Directive 2007:73.

The Swedish authorities did consider the possibility of defining their own SGEI tasks. In this process they came up with four refutable arguments against the identification of SGEIs: “*first*, tax finance services cannot be regarded as economic for the purpose of EU law; *second*, there is no need for SGEI in sectors where the use of procurement excludes the occurrence of State aid; *third*, there are no clear SGEI tasks in the housing sector, and *fourth*, the SGEI concept and rules are subject to legal uncertainty” (Thana 2018, 50–52; Wehlander 2015, 17–19). In any case, the “social housing” option did not get any political support because it would mean the end of their system of housing for all.

The Commission of Inquiry did not adopt a formal position in favour of one of the alternatives. The Government (since 2006 a centre-right coalition) continued looking for an alternative that could be broadly supported in the Parliament. The text of the new proposal was finally largely based on a 2009 joint proposal of SABO and the Swedish Union of Tenants, as will be seen in the next section.

#### **4.2.2. Consequences for Sweden**

This section will look into consequences from the SGEI cases for Sweden, including policy changes, general figures related to the current housing situation in Sweden, as well as issues related to housing provision.

##### Policy changes

The European Commission never reached a written conclusion on the 2002 and 2005 Swedish cases<sup>284</sup>, but as a consequence of the complaints and the discussions generated<sup>285</sup>, in 2009 a proposal for a new Municipal Housing Companies Act was presented, which came into force in 2011<sup>286</sup>. The fact that the Commission never positioned itself in relation to the arguments presented in the complaint, means that there is no clarity on their validity. Meanwhile, the main changes brought by the new regulation were the following:

- MHCs would still have a social responsibility and have to aim to “promote public benefit and the supply of housing for all kinds of people”<sup>287</sup>, but were forced to operate according to a ‘businesslike principle’, meaning no State aid of any kind to MHCs from either central or local government

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<sup>284</sup> With the changes in legislation in 2011, the authors withdrew the complaint and the European Commission never made a public statement about Swedish policy (Elsinga and Lind 2013, 962).

<sup>285</sup> One example is the formal notification that the Swedish government sent on January 2003 to the Commission proposing state measures concerning the housing market in Sweden (Answer given by Mr Monti on behalf of the Commission to Written Question E-1381 by Giles Chichester).

<sup>286</sup> Bill on municipal housing companies, *Allmännyttiga kommunala bostadsaktiebolag och reformerade hyressättningsregler*, proposition 2009/10:185. The bill was approved on 22 June 2010 and came into force on 1 January 2011.

<sup>287</sup> According to the new Act, MHCs are supposed to operate “in the public interest”, but this was interpreted differently according to the stakeholder. Some hoped that the “public interest” part would guide the “businesslike principle”, but this does not seem to be the case (Elsinga and Lind 2013, 963). Some understood it as meaning that MHCs would promote the supply of housing and offer tenants some degree of influence, as well as act with social responsibility, as long as it is profitable on the long term (Eliasson 2010, 4), watering down the importance of the public interest.

(Czischke 2017, 81). Municipalities as owners were asked to demand a “market rate of return” on their capital and take payment for guarantee commitments (Elsinga and Lind 2013, 963; Eliasson 2010, 4). And MHCs would no longer apply the cost-rent principle, but instead charge market rents with a certain profit margin, though with no requirement to maximize profits (Czischke 2017, 81). Relevant to notice that direct subsidies to housing construction had already been abolished with the financing rules that began to apply in 1992, thus the support given to MHCs at the time of the new Act was already limited (Hedman 2008, 28).

- The rent-setting system was also modified. In cases of rent disputes, the Regional Rent Tribunal started to be able to compare rent levels with apartments of private landlords, as well as those of MHCs, as long as in the former case the rent of the comparison apartments had been determined through negotiation (Eliasson 2010, 4). Thus, rents were still set through negotiations between the landlord and the Tenant’ Union, but rents set by MHCs ceased to act alone as benchmark for rents in the private sector (Czischke 2017, 81). As a safeguard to tenants, it was then established that a major increase in rent would always be spread over several years. Rents would continue to be determined through collective bargaining (no market rents would be introduced)(Eliasson 2010, 4).
- The new Act on Municipal Housing Companies decided that housing supply shall not be characterized as SGEI, not even in cases that it could qualify as social housing and thus benefit from the 2011 Decision (Wehlander 2015, 18). This understanding has been reaffirmed in a governmental report<sup>288</sup>. The apparent objective of this was to reduce influence of the EU over Swedish housing policy and thus, allow it to maintain its universalist system.

### General figures related to the current housing situation in Sweden

Between 2008 and 2017, expenditure on housing development (0.2%) and housing and community amenities (0.7% to 0.8%) as a percentage of GDP in Sweden have remained stable (Eurostat<sup>289</sup>). This applies for both general and local government. Expenditure in housing development is the same as the average of the 28 EU Member States but slightly higher than the latter in relation to housing and community development -which decreased from 0.9% to 0.6%.

The population in Sweden in 2018 was 10,230,185. The increase between 2011 and 2018 has been of 8%<sup>290</sup> (Statistics Sweden). Meanwhile, in Stockholm the increase was of 11 % and in Gothenburg 10%<sup>291</sup>.

As one can see from the figure below, unlike in the Netherlands, the share of rent in disposable household income for low-income households (below 60% of median equivalised income) decreased between 2009 and 2018 (from 48% to

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<sup>288</sup> *EU and Municipal Housing Policy* (SOU 2015, 58).

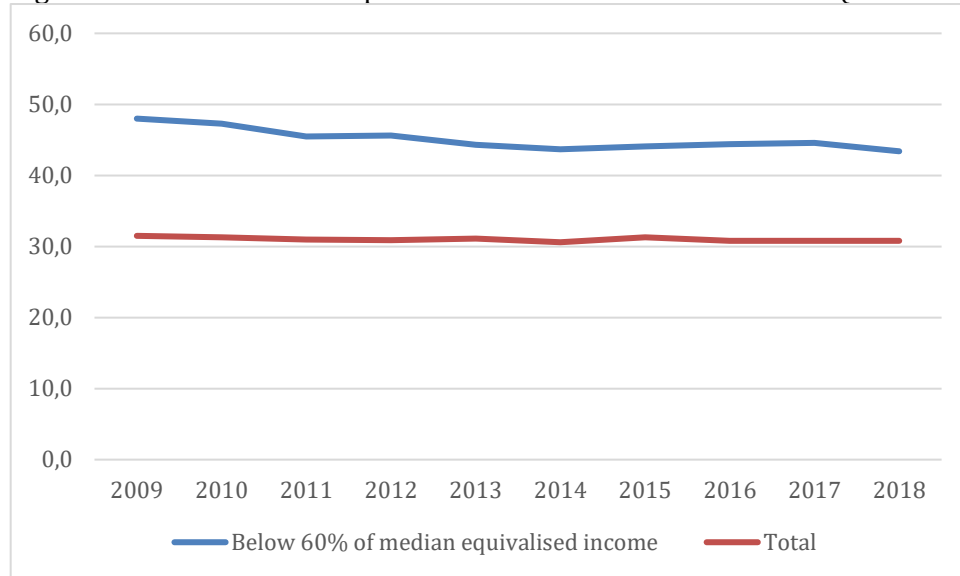
<sup>289</sup> In General government expenditure by function (COFOG).

<sup>290</sup> The population in Sweden in 2011 was 9,482,855.

<sup>291</sup> The population in Stockholm in 2011 was 864,324 and in 2018 962,154, while in Gothenburg it was 520,374 in 2011 and 571,868 in 2018.

43.4%). The share related to the total number of households also decreased though only slightly (from 31.5% to 30.8%). However, there is still a considerable difference between the two.

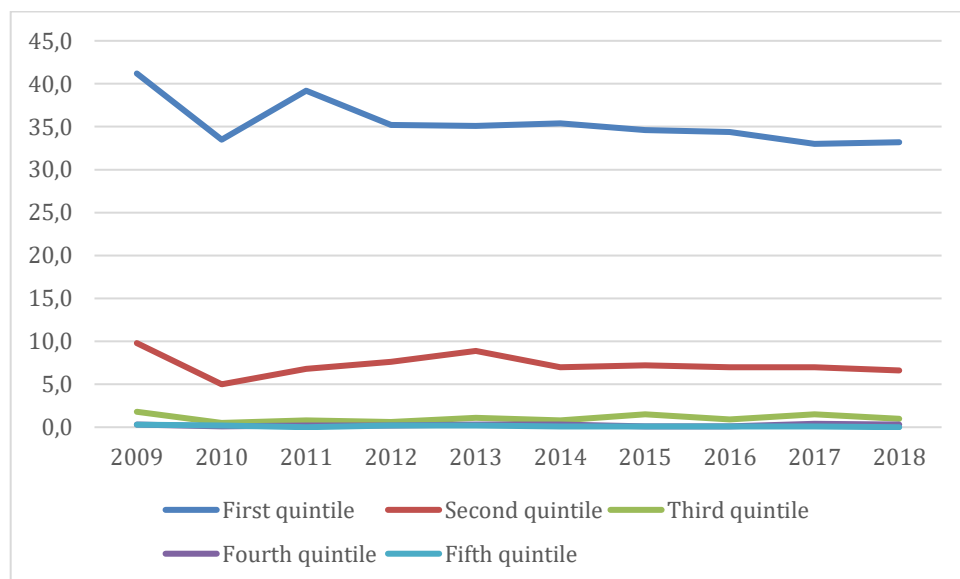
Figure 6. Share of rent in disposable household income in Sweden (SILC survey)



Source: Eurostat

Looking into housing cost overburden per quintile in Figure 7, one observes a decrease for all quintiles during the period 2009-2018. It is not clear why both the overburden and the share of rent in disposable household income in Sweden has been decreasing, but it could be related to a recovery from the 2008 crisis, coupled to a stronger economy and higher salaries.

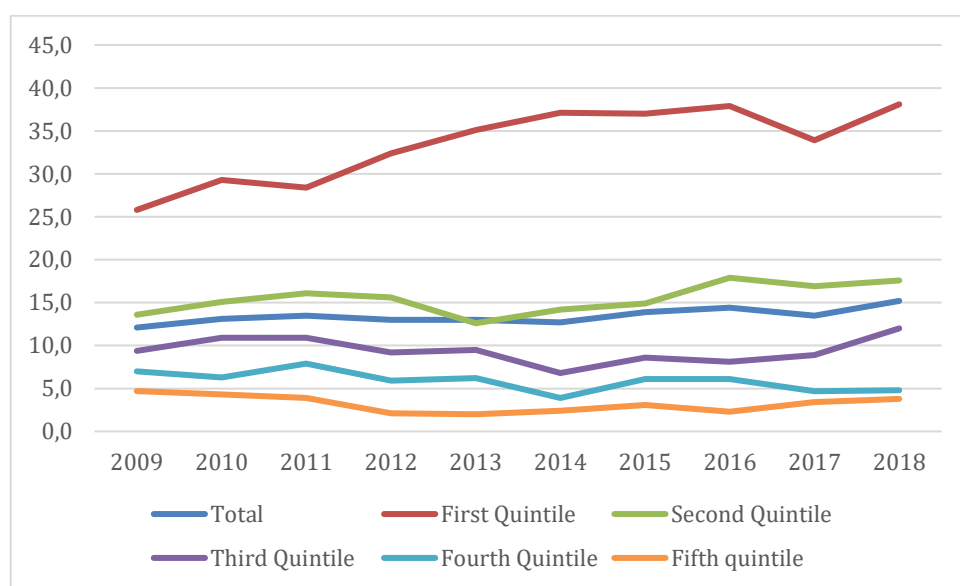
Figure 7. Housing cost overburden in Sweden per quintile in Sweden



Source: Eurostat

On the other hand, overcrowding has been on the rise (12.1% in 2009 to 15.2% in 2018). There have been increases in all first three quintiles and reductions for the last two. In relation to the first quintile, after a slight drop, a more accentuated increase began in 2011, but it is not clear whether that has any relation with the new legislation. According to Fondation Abbé Pierre and FEANTSA (2019, 71), the overcrowding rate in housing in Sweden has increased by 19.7 % between 2007 and 2017 in the case of low-income households (below 60% of median equivalised income) and 35% for all households. This is the fifth highest increase in the whole European Union – the numbers of comparison for the EU 28 being negative 11.7% and negative 11.3%, respectively.

Figure 8. Overcrowding rate by income quintile in Sweden



Source: Eurostat

In addition, considering overcrowding per tenure status, there was significant growth for tenants with rents at market prices (27% in 2009 to 34% in 2018) and for tenants with rents at reduced prices (20% in 2009 to 29.9% in 2018), which means mostly those in MHCs (Eurostat).

The current housing situation in Sweden is considered worrying both by the European Commission (through the European Semester CSRs and recommendations to the Council) and the OECD. The two have considerable parts of their reports related to housing problems in Sweden. Sweden is considered to experience rapid and persistent house price growth driven by substantial tax treatments of home ownership that encourage household indebtedness/mortgage debt, favourable credit conditions together with relatively low mortgage amortisation rates, as well as an ongoing housing supply shortage<sup>292</sup>.

Since constructions slowed down in the 1990s, it took over 20 years for the authorities to restart investment. According to the country's National Board of Housing, Building and Planning (Boverket), 255 of Sweden's 290 municipalities

<sup>292</sup> COM (2017) 526 final, §§ 2, 7; OECD Sweden 2019, 37.



were reporting a housing shortage in 2017<sup>293</sup>. Between 2015 and 2017 alone, the number of municipalities reporting shortages increased by 72. There seems to be consensus among all major political parties in Sweden since 2014 that 250,000 new dwellings must be constructed by 2020 (Hansson 2017, 7). In Stockholm that means about 8,000 new dwellings a year and in Gothenburg around 3,000-5,000 per year.

The European Commission links the housing shortage to weak competition in the construction sector (COM (2017) 526 final; Emanuelsson 2015, 62). Further problems cited include “tight rental regulations preventing an efficient use of the existing housing stock and discouraging mobility, inefficient land-use planning and low incentives for municipalities to encourage development holding back housing supply and lack of competition in construction pushing up construction costs” (OECD Economic Surveys Sweden 2019, 37). Hansson (2017, 3) attributes it to a number of factors such as population growth, organisation<sup>294</sup>, urban planning<sup>295</sup> and land allocation<sup>296</sup>. Emanuelsson includes, amongst other mentioned above, decline in state subsidies reducing investment in new construction (especially rental properties)<sup>297</sup>, as well as greater profitability for construction companies when building tenant-owned (cooperatives) and single-family dwellings than in building rental properties<sup>298</sup>.

In order to deal with the housing shortage, the European Semester country report on Sweden 2019 (prepared by the European Commission) suggests that a more market-oriented rental housing sector could help increasing construction in certain locations and market segments<sup>299</sup>. The European Semester keeps requesting that the rent-setting system (rent controls) be made more flexible and for Sweden to cut interests over capital gains at the moment of selling a property in order to increase homeowner mobility. Both can be considered market-oriented measures.

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<sup>293</sup> Roden, Lee. “The story of Sweden’s housing crisis”. In: TheLocal.se [online], 28.10.2017.

<https://www.thelocal.se/20170828/the-story-of-swedens-housing-crisis>

<sup>294</sup> In Stockholm, a “construction general” was appointed in 2015 in order to communicate with developers and improve coordination of municipal duties, while housing coordinators were appointed at the city departments for urban planning, city development, traffic and environment (Hansson 2017, 8).

<sup>295</sup> Hansson links the length of the urban planning process and appeals against plans and building permits as main obstacles to construction of new housing (Hansson 2017, 9).

<sup>296</sup> Direct land allocation is the main method both in Stockholm and Gothenburg. Apparently, the lack of transparency and clear price-setting methods are suspected of limiting and distorting competition (p. 10). A law on the guiding principles of municipal land allocation was introduced in 2015, but its effectiveness is being doubted because it does not provide for penalties. The other issue is price. The price of land is determined based on the tenure deemed appropriate for a specific property, thus, valuations for rental housing or other prioritised concepts tend to result in land being sold at lower prices because it is less profitable (p. 11).

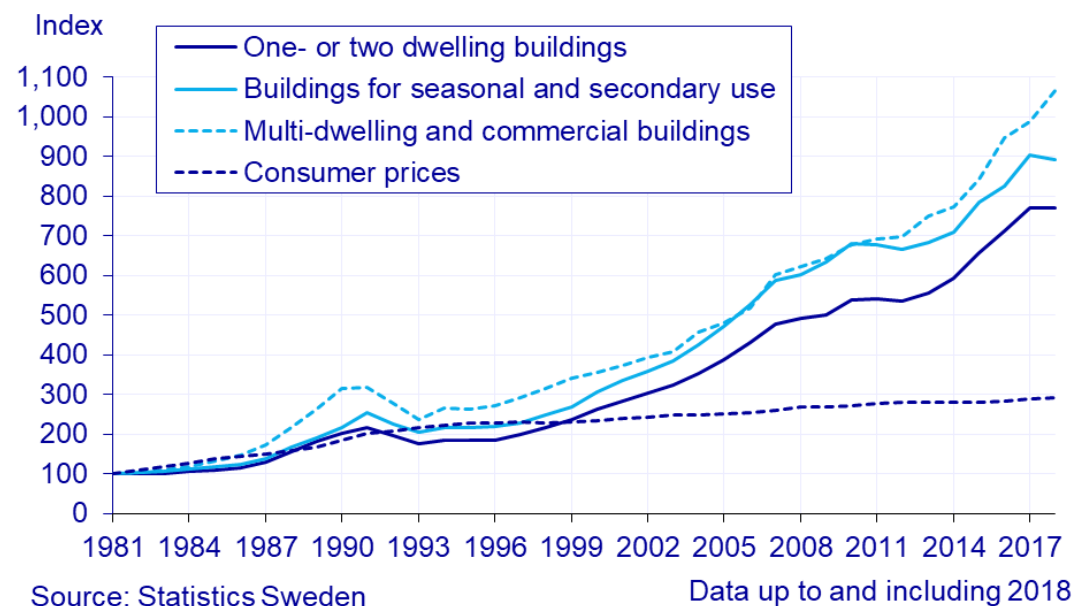
<sup>297</sup> Emanuelsson cites data from the Swedish Construction Federation that shows that housing subsidies declined from 3 per cent of GDP in 1991 to 0.7 per cent in 2003 (p. 64).

<sup>298</sup> Emanuelsson 2015, 65.

<sup>299</sup> SWD (2019) 1026 final, 4, 5.

Sweden is attempting to promote construction with the “22-point plan” for the housing sector, which was launched in June 2016<sup>300</sup>. The plan does not seem to include increased assistance for the construction of social housing specifically. However, SABO designed *Kombohus*, which is a standardised method aimed at the production of dwellings 25% below the market price, eight times faster than normal housing and with limited energy consumption (Baléo 2018, 12). As Baléo explains, it is expected that due to its simplified architecture and uniformity, those dwellings will not be attractive to higher-income households and will be rather used for low-income people. This method is being applied by MHCs in around 100 municipalities. In addition, Stockholm, for instance, is focusing in low-cost, series-built modular housing for refugees, students, and young people, amongst others (Baléo 2018, 11).

Figure 9. Real estate price index in Sweden in comparison to the consumer price development<sup>301</sup> (Index 1981=100)



As one can see from the table above, the consumer price index shows that especially since early 2000s, property prices started disconnecting themselves considerably from consumer prices. Real estate prices have been growing almost continuously since the mid-1990s, with the exception of some deacceleration surrounding the 2008 crisis. Especially in relation to multi-dwelling and commercial buildings, followed by buildings for seasonal and secondary use.

In 2017, however, even though prices were considered to be still overvalued, there was a fall of close to 10% on average in housing prices of one-or two-dwelling and buildings for seasonal and secondary use<sup>302</sup>. Prices already stabilized in 2018 and

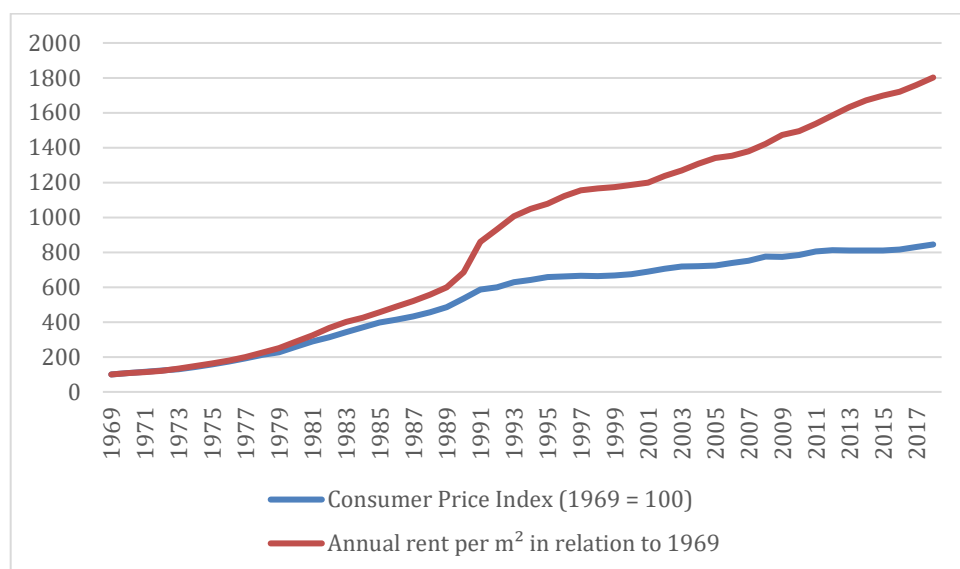
<sup>300</sup> Ibid, 20. This includes “initiatives to increase developable land availability, reduce construction costs and shorten planning process lead times, as well as some specific rental market reforms”.

<sup>301</sup> <https://www.scb.se/en/finding-statistics/statistics-by-subject-area/housing-construction-and-building/real-estate-prices-and-registrations-of-title/real-estate-prices-and-registrations-of-title/pong/tables-and-graphs/real-estate-price-index-annually-1981100/>

<sup>302</sup> SWD (2019) 1026 final, 26.

2019, but the European Semester from the European Commission expects this fall to reduce construction of new houses<sup>303</sup>. Some of the new construction has allegedly been attracting limited demand, which has left the construction sector weary that prices could fall further and led to a reduction of 20% of new housing starts across Sweden and 35% in Stockholm in 2018<sup>304</sup>. It is feared that this may increase the housing shortage even further.

Figure 10. Rents and general price level 1969-2018 in Sweden



Source: Statistics Sweden<sup>305</sup>

From this graphic one can see a more accentuated increase in rental prices since the early 1990s and a growing disconnection since then between the rise in annual rent per m<sup>2</sup> and consumer prices. Between 2010 and 2017 for instance, years where the largest difference lie, the housing costs grew around 12% more than consumer prices. One fact that is worth remembering here is that in 1991 a change in legislation resulted in the end of construction subsidies for MHCs and beginning of the 1990s was also when Sweden was going through a recession.

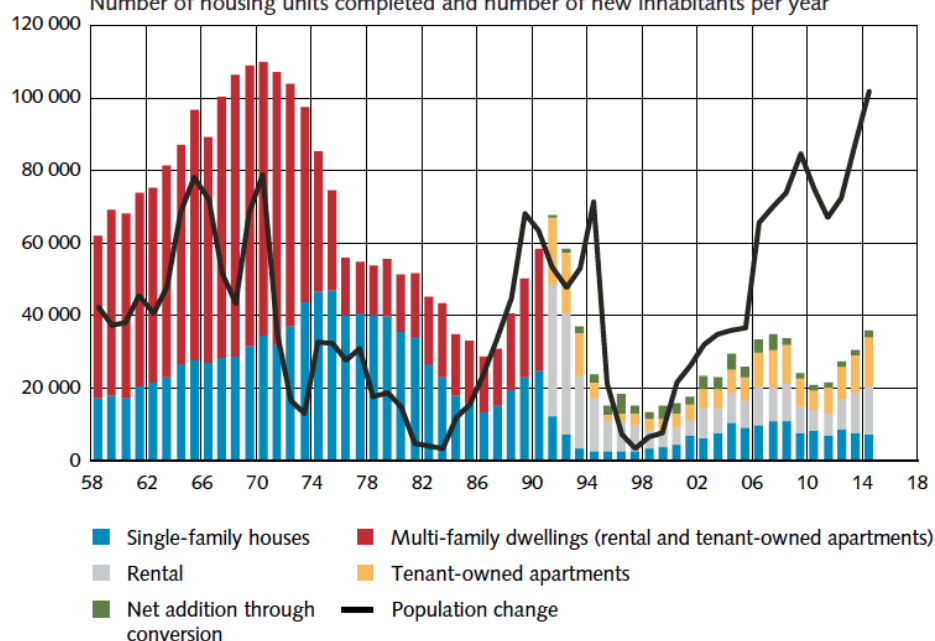
Figure 11 below illustrates the number of dwellings completed, and the population increase between 1958 and 2014 in Sweden. One can observe the sharp decrease in both in the 1990s, as well as the increase in population in the 2000s, which is not matched in terms of construction. There is some increase in construction, though much inferior to the population increase.

<sup>303</sup> Ibid, 4.

<sup>304</sup> Ibid, 28.

<sup>305</sup> <https://www.scb.se/en/finding-statistics/statistics-by-subject-area/housing-construction-and-building/housing-and-rent-data/rents-for-dwellings/pong/tables-and-graphs/rents-and-general-price-level-1969---2018/>

Figure 11. Housing construction and population changes in Sweden  
Number of housing units completed and number of new inhabitants per year



Source: Emanuelsson 2015

### Housing provision – Access to affordable housing

The policy changes mentioned above were allegedly taken in order to maintain the universalistic model of social housing without violating State aid regulation. Sweden is “the only European country without defined subsidized actors on the rental market” (Grander 2017, 339). However, in areas where the market is less tense and people have choices, studies have shown that public housing is becoming the domain of lower income groups, though with no access to the advantages offered to SGEIs (Elsinga and Lind 2013, 969; Grander 2017, 340; Andersson and Turner 2014, 15). This is so, as due to higher rents, middle- and higher-income groups seem to be preferring home ownership or cooperative housing, amongst other reasons.

Nonetheless, this does not mean that there is enough space for low-income households, as dwellings are being converted and also due to population increase. Low-income groups seem to be the most-affected ones in terms of unmet housing demands in Stockholm and Gothenburg, although it does affect all types of households (Hansson 2017, 5). Amongst the specially vulnerable are young people, retired, single-parent families and refugees (Baléo 2018, 10; 2018, 10).

As per Hansson (2019, 16), noticing the gap in provision, the central government started implementing in 2016/2017 (retroactive to 2015) a new subsidy program designed for small, “climate smart” apartments that are supposed to offer rents below a certain threshold. In addition, the city of Gothenburg is negotiating an inclusionary housing pilot project and Örebro might be next<sup>306</sup>. Hansson explains that in Gothenburg, half of the 1,100 planned rental dwellings are expected to be low-rent, and rents will be fixed for 15 to 20 years. Developers will be supported

<sup>306</sup> No such discussion was known for Stockholm at the time of writing.

through a number of incentives, such as municipal land allocation at below-market rates, priority in the urban planning process, the possibility to set 25% of rents (exceptional in the case of the Swedish rent-setting system), amongst others (Hansson 2019, 17). Eventually, the pilot project will also be eligible under the 2016/2017 subsidy program (it did not yet exist when developers were selected by the city).

### Change in behaviour of housing associations

A research project (2013–2015) launched and financed by SABO between 2013 and 2015<sup>307</sup> found that higher demands on market adaptation brought by the 2011 MHCs Act have not had any direct effect on MHCs social responsibility in what concerns “creating a good social relationship between tenant and landlord” and “the so-called area-based projects the companies engage in, such as school projects, employment activities, and small-scale, local urban regeneration”(Grander 2017, 342).

However, the effects are more visible when it comes to housing provision. Mostly because the new expectation of yield results in higher rents in certain areas, thus making it harder for people with lower income to remain in the apartment, as well as higher thresholds for entering public housing, as MHCs become more interested in tenants who are more likely to be able to pay the rent (Grander 2017, 342). According to the research project, “MHCs impose strict [financial] requirements on who may sign a new rental contract”<sup>308</sup> and “these requirements are regulated in the MHCs’ rental policies”. Thus, the rental policies seem to be showing selectivity against the most vulnerable. For the study, these requirements have become increasingly common after the 2011 MHCs Act. Amongst the commonly excluded are “people who are dependent on social benefit, housing allowance or have irregular employment”(Grander 2017, 343; Lind 2017, 155).

Meanwhile, “individuals who do not pass the thresholds to public housing are either directed to private landlords with lower thresholds or can apply for apartments through the system of the secondary housing market”, also called social contracts (Grander 2017, 346; SWD (2019) 1026 final, 31). Municipalities sign a primary rental contract with the MHC or even private actors and sublet to the tenant<sup>309</sup>. For the tenant this means restricted and temporary contracts with low probability of being transformed to ordinary rental contracts (Grander 2017, 349).

In addition, as argued by Daniel (2018, 78) the fact that MHCs have to operate under commercial principles allows them to use the new law as justification to refuse requests by municipalities to build housing for specific low-income groups such as migrants, saying that commercial developers would not choose such risky

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<sup>307</sup> The project is called ‘Nyttan med allmännyttan’ in Swedish. For more details on the methodology of the project refer to Grander 2017, p. 341.

<sup>308</sup> According to the research’s data, financial requirements are imposed by 183 out of 184 MHCs that replied to the survey.

<sup>309</sup> For the moment, these contracts represent only around 1% of national rentals, but the number has increased 74% between 2008 and 2013. And in the same period, the number of municipalities with a secondary housing market increased from 205 to 260 out of 90.

investments. Thus, justifying the strategy to move away from social housing to more profitable market segments.

### Conversion of municipal housing stock into tenant-owned housing

The high interest of middle-class and high-income households in buying and high housing prices have led to an increased number of municipal housing stock being turned into condominiums. In fact, this conversion had already started even before the change in legislation in 2011. As put by Emanuelsson (2015, 57), between 1991 and 2010, for every rented home built in Stockholm, three were converted into tenant-owned housing. For the whole of Sweden, the number was of around 201,000 new rented homes built and 181,000 converted to tenant-owned housing<sup>310</sup>. Already between 1990 and 2012, the percentage of dwellings from cooperative housing was increasing almost in the same proportion as the percentage of housing in public housing was decreasing (Wimark, Andersson, and Malmberg 2019, 6). Thus, it is clear the trend started before the change in legislation.

In the table below one can observe that after the new legislation the trend simply continued and repeats itself both at national level and in the two chosen municipalities, Stockholm and Gothenburg. The percentage is small, but the public housing stock<sup>311</sup> has continued to reduce in the period 2013-2018 and so did the stock of private persons, in even higher proportion. On the growing side are the stocks of housing cooperatives and joint-stock companies.

Table 6. Percentage of dwellings per ownership in Sweden and in the municipalities of Stockholm and Gothenburg

Ownership	Sweden <sup>312</sup>		Stockholm <sup>313</sup>		Gothenburg <sup>314</sup>	
	2013	2018	2013	2018	2013	2018
State, municipal, county council	1.27	1.22	0.26	0.12	1.99	1.89
Municipal housing companies <sup>315</sup>	17.76	16.75	17.04	16.87	26.98	26.26
Cooperative tenancy compound	0.19	0.22	1.58	1.53	0.01	0.01
Housing cooperatives	22.14	23.27	46.56	48.05	27.01	28.73
Private persons <sup>316</sup>	43.38	41.52	14.24	12.39	22.45	20.83
Swedish joint-stock companies <sup>317</sup>	11.51	13.50	13.49	14.00	8.53	9.71
Other owners	3.74	3.53	6.83	7.04	13.02	12.58

<sup>310</sup> Wimark et al (2019, p. 6) also gives numbers on conversion at national level but refers to the total number of new housing and not only housing for rental.

<sup>311</sup> Mostly MHCs, as other State/municipal/county/council dwellings represent only a very small part of the public stock.

<sup>312</sup> The total housing stock in Sweden increased from 4,629,948 in 2013 to 4,922,974 in 2018.

<sup>313</sup> The total housing stock in Amsterdam increased from 458,167 in 2013 to 490,360 in 2018.

<sup>314</sup> The total housing stock in Gothenburg increased from 268,693 in 2013 to 282,818 in 2018.

<sup>315</sup> "Municipal housing companies" means joint-stock companies, economic associations or foundations whose activities mainly manages properties with apartments on tenancy rights and previously approved as a municipal housing company (Statistics Sweden).

<sup>316</sup> "Private persons" includes estates of deceased persons (Statistics Sweden).

<sup>317</sup> "Swedish joint-stock companies" are excluding municipal housing companies operating as joint-stock companies (Statistics Sweden).



Source: Statistics Sweden, table assembled by the author of this thesis (last updated 25.04.2019)<sup>318</sup>

Based on the tenure division in the table below, one can also observe that both the percentage of rented dwellings and that of owner-occupied dwellings has been decreasing, in favour of tenant-owned dwellings (cooperatives).

Table 7. Dwellings per tenure in Sweden and in the municipalities of Stockholm and Gothenburg

Tenure	Sweden		Stockholm		Gothenburg	
	2013	2018	2013	2018	2013	2018
<b>Rented dwellings (both public and private)</b>	38.24	38.03	45	43	55	54
<b>Tenant-owned dwellings</b>	22.14	23.41	47	49	27	29
<b>Owner-occupied dwellings</b>	39.62	38.56	9	8	18	17

Source: Statistics Sweden, table assembled by the author of this thesis (last updated 25.04.2019)<sup>319</sup>

In the case of central Stockholm, Wimark et al (2019, 18) - introducing the tenure type landscape as a tool for analysing housing market change- contest political arguments that tenure conversions can create areas that are more tenure mixed, reducing segregation<sup>320</sup>. They show that “tenure conversions from public rental to other tenures have resulted in fewer public rental neighbourhoods, but these have to a large extent remained homogeneous as they have become dominated by cooperative neighbourhoods”.

#### Longer time spent on waiting lists

An indicator that has been rising steadily since 2010 is the number of years one has to wait to have access to dwellings. This is so for the whole of Sweden (Lind 2017, 154). Waiting time varies according to several factors such as attractiveness of the neighbourhood and apartment sought, as well as the kind of rent one can afford.<sup>321</sup> Usually one will need a longer time queue for an apartment in the city centre or surrounding suburbs, which means that lower-income usually cannot afford to wait for older apartments in central locations and move further away to less popular suburban areas. This in turn is said to result in more social segregation. In Swedish rent regulation system “the rent level primarily reflects the year the house was built and if there has been a major renovation or not” (Lind 2017, 151). So, as location and demand do not affect much the rent, there are long queues for older apartments in central locations (Andersson and Turner 2014, 15).

<sup>318</sup> <http://www.statistikdatabasen.scb.se/sq/73387> and <http://www.statistikdatabasen.scb.se/sq/73390>

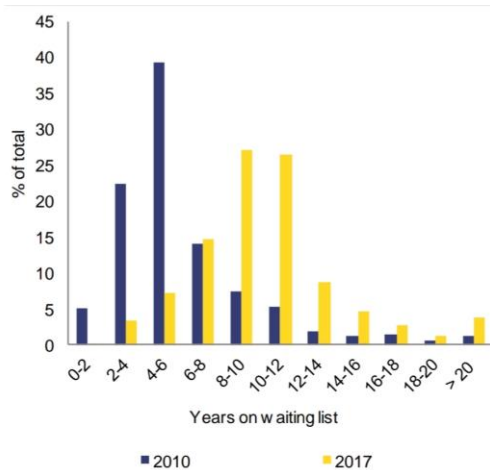
<sup>319</sup> <http://www.statistikdatabasen.scb.se/sq/73389> and <http://www.statistikdatabasen.scb.se/sq/73391>

<sup>320</sup> Refer also to Andersson and Turner 2014.

<sup>321</sup> <https://bostad.stockholm.se/english/>

In Stockholm, according to data of the municipal housing agency, Bostadsförmedlingen<sup>322</sup>, in 2010, the majority of applicants had to wait between 2 (two) and 6 (six) years in order to get an apartment, while in 2018 this number had increased to between 8 (eight) and 12 years<sup>323</sup>. Not everyone in the queue is actively apartment-hunting though.

Figure 12. Time on waiting list before obtaining primary tenancy in greater Stockholm



Source: Stockholm Housing Agency (Bostadsförmedlingen) and SWD (2019) 1026 final, 30

It is also relevant to point out that since public housing apartments are given away principally based on the time spent on the waiting list and contact plays an important role, low-income households who are new to a city have difficulty even in finding an apartment in the least desired suburban areas (Lind 2017, 154; Andersson and Turner 2014, 16).

### Growth of the black market

The increase of apartments being traded in the black market is a further problem. People with first-hand contracts with a relatively low rent (e.g. people who have the same apartment since early 1990s) sublet it illegally at high rents (low risks for those who do it), amongst other practices (Lind 2017, 155). One of the consequences of this is that fewer apartments are returned to the landlord and to public waiting list systems.

### Home-ownership not an option for low-income persons

Considering the high rents, the constantly growing housing prices, together with low interest rates, relatively low housing costs and relatively cheaper apartments in the suburbs lead many to consider buying an apartment a good option. However, as put by Lind, low-income households have almost no access to this

<sup>322</sup> Bostadsförmedlingen is part of the Stockholms Stadhus AB Group, which is owned by the City of Stockholm.

<sup>323</sup> <https://www.scb.se/en/finding-statistics/statistics-by-subject-area/housing-construction-and-building/housing-and-rent-data/charges-rents-for-newly-constructed-dwellings/pong/tables-and-graphs/annual-rents-charges-per-dwelling/>



option, because the buyer has to make a down payment of 15% and be able to pay the bank an interest rate of 6-7%, meaning that low-income households cannot get a big enough loan (Lind 2017, 154).

## 5. Findings/ Discussion

The information in this chapter has already been explained in more detail in the chapters above. The objective here will be to analyze what has been said and relate the situation in the Netherlands and in Sweden with the European Union, as well as to each other, as much as possible, in the sense of showing different ways of addressing similar obstacles/ problems.

### **5.1. Main effects of European Union policy on social housing financing**

The direct relationship between the State aid cases and changes that took place in the Netherlands and Sweden is not always straightforward, especially when observing statistics, as they imply a variety of factors. One example is that the 2008 GFC also had its effects on the housing market, having a share of responsibility in changes related to reduction in construction, overcrowding, risk of poverty, amongst others. Then, there is the fact that even though both in Sweden and in the Netherlands the new legislation came into force in 2011, effects are not always immediate, which makes an analysis in terms of direct effects over households and construction less evident. However, this section will attempt to systematize the findings as much as possible.

#### ***5.1.1. Policy changes***

In relation to policy there has been a clear change both in Sweden and in the Netherlands, apparently as a result of the State aid cases started by the European Commission, though there are nuances. This research will look further into some of these changes. Please refer also to the comparative summary table on housing policy in Appendix III below.

In the case of the Netherlands, the Commission's reasoning is known through its letter of December 2009<sup>324</sup> and further clarifications were later made by CJEU in *Stichting Woonlinie and Others v Commission*. In relation to the definition of social housing as an SGEI, for the Commission and CJEU, the manifest error lies in the fact that the Dutch definition provided for priority letting to persons who had difficulties in finding suitable housing, without defining precisely this group. The fundamental point was to make a link with disadvantaged groups and not to a ceiling for rental prices, as well as making the definition so clear that one must be able to identify the difference between those who are part of the target group and those who are not. The Commission did not request housing associations to rent exclusively to disadvantaged people nor that an income ceiling be established.

So, finally it was the Dutch government that proposed a definition based on income and suggested that the income ceiling be of 33,000 Euros (to be adjusted annually)<sup>325</sup>. But independently from whether another definition of target group would have been accepted or not, this does not change the fact that in order to

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<sup>324</sup> C (2009) 9963 final.

<sup>325</sup> There is no information available as to whether other proposals were made and rejected before this agreement was reached.

consider the aid to housing associations under SGEI – the Swedish chose not to – the Dutch had no other option but to depart from its historical universalist system of housing provision.

Apart from setting a target group based on income, the agreement also meant the acceptance of a system of allocation of up to 10% of the housing associations' dwellings to people with higher income than the target group – though following an objective criterion, with priority given to those requiring social support. The Commission, thus, leaves a small possibility open for keeping social mix, relevant in the Dutch housing system. In addition, commercial activities performed by housing associations had to be separated from public service activities and no longer benefit from aid, amongst others (for further agreed upon policy changes refer to page 44 above).

Nonetheless, some of the policy changes that took place after 2011 were not related to the agreement between the Dutch Government and the European Commission and to a certain extent were stricter or more controlling than what had been agreed. Amongst these are the introduction of the “landlord levy” and the “appropriate allocation” measure (all already described above). On the other hand, the 2015 Housing Act increases flexibility in terms of social mix in relation to the 2009 agreement by establishing that at least 80% of the social rented housing should be allocated to households under the income target, with 10% being allocated to middle-income households, and the last 10% allocated as per the 2009 agreement.

In Sweden, with the changes in legislation in 2011, the authors withdrew the complaint and the European Commission never made a public statement about Swedish policy. This also means that the legal value of the arguments of the complaint was not clarified by the Commission.

In terms of changes in policy, Sweden was not obliged to take the course it took. It could for instance, like the Netherlands, have opted to define social housing as SGEI, establishing a specific target group. However, there was no political support for this option, which would have contrasted considerably with the Swedish tradition of a housing system for everyone, with not even a definition of social housing. Thus, it is understandable to a certain extent that the Swedish authorities opted for keeping the universalist system.

In addition, in the early 1970s, over-construction as part of the “million dwellings program” combined with design shortcomings from these dwellings and a slower economy contributed to a concentration of disadvantaged populations in the program's dwellings. This experience seems to have considerably increased the importance of social mix in national housing policy.

According to the new legislation, MHCs have to operate according to the “businesslike principle”, which implies treating MHCs like commercial companies: MHCs can no longer receive indirect subsidies (e.g. free-of-charge guarantee commitments, loans at preferred rate of return) and have to charge market rents with a certain profit margin (no requirement to maximize profits though). In addition, the rents in MHCs no longer serve alone as benchmark for the rents in

the private market and private landlords can participate in collective negotiations of rents.

As much as the State aid cases did bring direct consequences in terms of policy, both in the Netherlands and in Sweden, a more market-oriented approach was gradually being applied especially since the 1990s. In Sweden, in 1991 State housing loans were abolished and interest subsidies were reduced. The context was one of financial crisis/ recession and increasing vacancy in the rental housing market. Construction reduced considerably. In 1992 local decision-making was allowed in relation to conversion of public rental housing into market forms (such as tenant-owned or owner-occupied dwellings), leading many municipalities to start selling parts of their housing stock. The power of municipalities over MHCs was also gradually reduced in the 1990s (no more full ownership necessary). When social-democrats regained power, they put in place measures to make it more difficult for municipalities to sell their stock, but restrictions were completely removed in 2006, when they lost power again.

A similar path had been taken by the Netherlands, where public policies – already since the 1980s - promoted access to home ownership through tax relief on mortgage interests (this is still the case) and a change in legislation in 1995 discontinued subsidies for housing construction and gave more financial autonomy to housing associations, leading them to start selling part of their housing stock.

### ***5.1.2. Change of behavior of public housing providers***

According to the Niboer and Gruis' study in the Netherlands, housing associations clearly identified a larger tax burden (Landlord Levy) and stricter allocation rules (consequence of the 2009 agreement) as the causes for their shift in behavior from social to financial return, with an increased focus on budget savings and efficiency, as well as a reason for the shift away from commercial activities and greater focus given to low-income groups.

The Netherlands still has the largest social housing sector in the EU (29.64% in 2017), despite reductions. Between 2012 and 2017, one could observe the decrease in the social rent dwellings, the clear increase in private rental dwellings and a slight decrease in the owner-occupied segment at national level, with increases however in the municipalities of Amsterdam and Rotterdam. One could also notice from the data that the stock is decreasing in numbers, not only in percentage, which is related to selling and not only reduced construction. However, as seen above, these are trends that already started in the 1990s, and not a particularity of the new housing policy.

The European Semester has been referring with concern to the shy representativeness of the private rental sector, but it refers to national level (13.86%), without taking into consideration that at least in two of the most desired municipalities, the proportion of private rental is far greater and rising (28.31% in Amsterdam and 20.32% in Rotterdam).

Thus, in the Netherlands, the change in policy seems to have meant augmented financial pressure for housing associations, both through increased taxation, and through reduction of cross-subsidy strategies due to changes in allocation rules (higher concentration on low-income households).

In Sweden, the research project launched by SABO shows a clear effect of the 2011 policy change in relation to housing provision. The new expectation of profits has two main results: in one hand it leads to higher rents in certain areas, making it more difficult for people with lower-income to stay in the apartment and on the other hand it raises thresholds (strict financial requirements and bias against people dependent on social benefits, housing allowance or with irregular employment) for tenants entering public housing, as companies are more concerned whether the tenant can pay or not. This is allegedly leading a higher number of households in vulnerable conditions to resort to the system of secondary housing market (social contracts) resulting in a precarization of conditions for these tenants. The obligation to operate under commercial principles has apparently served as an excuse for many MHCs not to concentrate on the lower-income sector.

The significant increase in time spent in waiting lists also disproportionately affects low-income households, leading them to move to least desired suburban areas, as they cannot afford to wait for dwellings in better locations.

What remains unclear is what is the role of keeping public housing companies under these conditions. On the positive side, as seen above (Chapter 4.2.2), overcrowding is higher amongst tenants paying market prices than those paying the reduced prices offered by MHCs and prices in the SABO *Kombohus*, for example, are expected to be 25% cheaper than market price. However, first that difference in price does not apply to all of MHCs' stock and the new rules seem to be discouraging MHCs from building and renting affordable housing for those most in need.

In terms of housing stock per ownership, MHCs represent 16.75% of the total housing stock in Sweden, a decrease of 1% in relation to 2013. There are differences at municipal level in relation to the share of MHCs' stock -with MHCs still holding on to a larger share of the housing stock in Gothenburg (26.26%), for instance- but the trend is one of reduction in the whole country. The stock of private persons has also reduced, while housing cooperatives and joint-stock companies are increasing their share in the housing market. In terms of tenure, data shows the increase in tenant-owned dwellings, while rented dwellings and that of owner-occupied dwellings has been decreasing. Unlike the case in the Netherlands, in Sweden the housing stock of MHCs continued to increase between 2013-2018, but it lost in terms of share of the total increase.

### ***5.1.3. Direct effects over households' affordability***

The statistical data found is not conclusive in terms of clearly proving effects of the new legislation over households, especially because the causes can be various and in addition part of the data found considers the countries as a whole and not the specific situation of the different cities – and high-demand areas are more

affected than other areas. However, it is still worth commenting the data shown by both countries, also in comparison to the EU as a whole.

In the Netherlands, between 2009 and 2018, there has been a 9% increase in the share of rent in the disposable income of households below 60% of median equivalized income and 6% in relation to all households, meaning that though the poor population is the most affected, others are also generally more affected. This is not necessarily only related to the new regulations, though the sharper increase did start in 2011 and the second one was in 2013. In 2013, the income dependent rent increases were introduced on households that did not belong to the new target group established for housing associations. In Sweden there was a reduction in the share of rent in the disposable income of households of a bit over 4% considering poorer households and less than 1% for the total of households (this might be related to an increase in overcrowding as discussed below). Although the trend between 2009 and 2018 is the opposite, values in Sweden (43.4% for low-income groups and 30.8% for the total population) for 2018 are very similar to those in the Netherlands (43% and 30.7%). Meanwhile, numbers for the EU 28 have remained relatively stable, with increases of less than 1% and lower than the values in the two countries (in 2018 36.6% and 24.7%). This can show that factors contributing to the high share of rent in the disposable income of households in these countries are less related to international or regional conjunctures than to specificities of the two countries.

Looking more generally into the housing cost overburden, data on the Netherlands does not follow the same increasing trend as for share of rent over the disposable income of households. Although it also points to a greater increase between 2012 and 2013, particularly in relation to the first and second quintiles. In Sweden the decreasing trend of the share of rent over household incomes is confirmed in relation to housing costs overburden. The differences between the first and second quintile is considerable though. Still, for both countries, the overburden is slightly below the EU 28 level. At least, when observing it at country level, as this can vary considerably at local level.

Most striking are the figures related to overcrowding, which have been on the rise for both countries. In the Netherlands all quintiles are affected, although the two first quintiles were the most affected. And while the first quintile is in a decreasing trend since 2017, the second quintile is still rising. In Sweden the increase concerns the three first quintiles only, being considerably more expressive for the first quintile. What is most impressive in the Netherlands is the increase in overcrowding in 151.7% between 2007 and 2017 in the case of poor households and 115.8% for all households (highest increase in the EU 28). And in Sweden this increase is of 19.7% and 35% (fifth greatest increase in the EU 2008), respectively, while in the EU 28 overcrowding has decreased 11.7% for poorer households and 11.3% for the total of households. This can indicate that in the Netherlands and Sweden the housing cost overburden is not increasing because amongst other factors people are resorting to overcrowding, which also seems to be the strategy to deal with the housing shortage.

## **5.2. Does EU policy favor a market-oriented approach to housing policy in detriment of social and affordable housing?**

Based on all that has been said above, this research concludes that the answer to this question is rather positive, but not so straightforward. It identified three relevant points, which it will analyze in more details below: the different forces at play, the different positioning according to the specific EU body and the existing alternatives to SGEI.

### ***5.2.1. Forces at play***

Before the start of the State aid cases, the Netherlands and Sweden had the following housing policy points in common: both followed the universalist model of housing provision – thus, not being limited to providing housing to disadvantaged people<sup>326</sup>- and had strong rent control mechanisms coupled to a notion of utility value (which in Netherlands is the points system) that do not particularly consider location as a price increasing factor. As seen above, there are differences between the two regulation systems, however, in both cases, the strict rent control mechanisms were – and still are- strongly contested by the real estate industry and the European Commission, amongst others.

In the case of Sweden, it was the European Property Federation, fostered by the Swedish Federation of Property Owners that brought the complaint to the Commission in 2002 and 2005. As for the Netherlands, Dutch authorities notified the Commission of its aid system in favor of housing associations (2002) and withdrew the notification when its compatibility with State aid legislation was contested. Thereafter, the Commission opened procedures under aid measure E2/2005, which is later joined by complaints from the Association of Institutional Investors in the Netherlands (IVBN) (2007) and a private housing investor (2009). Thus, in both cases there was strong interest and participation of the real estate sector in the State aid cases before the European Commission.

There are indications that the governments in the Netherlands and Sweden did not go to great lengths in defending their housing policies. In the Dutch case, for instance, the government did not claim nor try to prove that the amount of aid was based on the analysis of the cost of an “average well-run business”, as requested by the *Altmark* criteria. In addition, as mentioned in Stichting Woonlinie and Others, the Dutch authorities did not attempt to demonstrate that the definition of the mission bestowed upon housing associations was according to the SGEI Decision, as well as “necessary and proportionate in relation to a real public service need”. In the case of Sweden, the reference made to a reply by Sweden to the Commission relates to a proposal to amend its support to MHCs, already in 2003. No reference was found of an attempt to defend the housing system at the time.

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<sup>326</sup> Although in the case of Sweden, the provision of housing was always clearly open to everyone with no concept of social housing and the main prioritization system being time spent in the waiting list, while in the Netherlands housing associations had to give priority to disadvantaged people but in case of overcapacity could rent to people of higher incomes.

Sweden and the Netherlands did not only limit themselves to analyzing how to comply with European legislation. In both countries, the cases sparked discussion related to the housing system as a whole, almost as if the cases had just opened a political opportunity to change something that certain political and other actors already wanted to change for years.

In the Netherlands for instance, after an agreement had already been reached with the European Commission in 2009, the supervision of housing associations was investigated by the Hoekstra Committee in 2012 and in 2014 the Parliamentary Committee of Inquiry into Housing Associations investigated the entire system. This had not been requested by the Commission. In the case of Sweden, an Inquiry was first appointed just to analyze how to “protect the public housing sector without violating EU law”, but then after a change of government, the Inquiry was instructed to review all issues, including the rent regulation system.

In addition, observing the parties in power when certain decisions were made is an interesting exercise, when not necessarily a conclusive one. Netherlands had a center-right coalition in power (CDA, VVD and D66) when the European Commission sent the letter questioning the assistance to social housing associations in 2005. And, coincidentally or not, at this time, the DG COMP in the European Commission was headed by the Dutch politician Neelie Kroes (VVD). However, finally, it was the negotiation of a social-democratic housing minister with the Commission that resulted in the 2009 agreement and, as seen above, the motivation to negotiate was allegedly based on a trade-off for an authorization for another housing project in poorer neighborhoods. In addition, some rather strict measures in relation to housing associations (described in the previous chapter and further analyzed below) were interestingly adopted while a coalition between the conservative liberal party VVD and the social-democratic party PvdA was in power. Thus, in order to reach more precise conclusions, one would have to investigate in detail the role of the social-democrats in these coalitions, which is not the objective of this thesis.

Nonetheless, the information already available here sheds some light over the different forces at play, showing that the application of State aid is not just a mechanical process of applying legislation to the concrete case.

Moreover, another factor had an important role in the Netherlands, which is that housing associations were not enjoying the best of reputations since mid-nineties. As seen above, after gaining financial autonomy, housing associations started selling part of their stock, getting involved in risky investments, questionably increasing salaries of their directors and there were increased cases of fraud and mismanagement. This brought parts of public and political-opinion against them. A reform seemed genuinely necessary, though it did not necessarily need to lead to the specific changes at hand. Thus, it seems that their bad image was also instrumentalized nationally by those who wanted to see their influence over the housing market reduced.

In Sweden, when the complaints were received, there was a coalition of Christian- and Social-democrats, but this changed in 2006, during the work of the Inquiry. One can argue that in any case the Inquiry did not change much, as neither of its



suggestions (maximization of profits or concentrating on social housing) were followed-upon. However, it was after the change in government that the mandate of the Inquiry was widened to include the public housing system as a whole, thus opening a discussion over issues that were not even being questioned by the European Commission.

When comparing the Swedish and Dutch cases with the French case (Chapter 3), one can see that it is possible to have a different outcome to a certain extent, when there is will on the side of the government accused of State aid to defend its system.

Essentially, what one can see is that the European Commission offers the framework and acts as a lever for governments willing to reduce their social housing sector. In the two cases at hand there were forces at national level that were in favour of further liberalization of the housing system and had not been able to achieve all the desired changes on their own, due to national opposition by other political parties and tenants' associations, as well as by housing associations in the case of the Netherlands at least. Those who wanted to see further liberalization of the housing market found in the European Commission a lever. Governments in neither of the two countries offered a clear and united counter-pressure to the Commission or attempted at length to justify their policies.

### ***5.2.2. The European Union bodies do not speak in unison***

One can observe that there are different positions inside the European Union bodies concerning the Commission's strict definition of social housing, as well as more widely on the topic of housing.

The Commission, through its position on State aid and in the European Semester – amongst others- has favoured more market-oriented behaviour. The Commission's position in relation to the definition of social housing as a SGEI has been described and discussed vastly throughout this research. There is just two more points from Chapter 3 to be remembered. TFEU<sup>327</sup> gives public authorities freedom to determine how their social housing sector is organized and funded, as long as it respects the principles of necessity and proportionality. The limited definition of social housing as "housing for disadvantaged citizens or socially less advantaged groups" is given by the European Commission (in the SGEI Decision) and not by TFEU<sup>328</sup>. The Commission could review its position. In addition, EU institutions and initiatives providing funding related to housing can only lend according to SGEI and EU State aid legislation, showing one further effect of the Commission's limited definition of social housing.

Analysing in detail the European Semester was not the objective in this thesis. What was endeavoured was to illustrate based on concrete cases that State aid legislation is not the only way through which the Commission and the Council

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<sup>327</sup> Article 14 and Protocol No. 26.

<sup>328</sup> Although the treaty does give the Commission the competence to specify under which conditions the criteria of necessity and proportionality are considered to be fulfilled – for aid to be compatible to EU legislation on State aid.

attempt to influence Member States' housing policy, despite the fact that the EU does not have a housing policy.

Both in the case of Sweden and the Netherlands, the European Semester has dedicated a considerable part of its analysis to the housing market, showing the weight it gives to the topic. However, even though the CSR is considered by some critics (e.g. Housing Europe) to have improved in 2019 since it was linked to the European Pillar of Social Rights (2018), in the specific cases of Sweden and the Netherlands, it still adopts a market-oriented approach. The concern is mostly related to tax incentives and indebtedness related to mortgages, rental regulation as a burden for the private rental sector and housing prices. These might be relevant issues, but the social perspective is only mentioned so far as it is relevant for the general economy. Issues like affordability and housing shortage are viewed from a competition perspective, with solutions focused on rent deregulation and on stimulus for the private rental sector. In the case of the Netherlands, the Semester continues to criticize the size of the social housing sector, despite the fact that the sector is already reducing, and this does not seem to be the main problem nor the solution of the Dutch housing system.

It seems that until more specific indicators on social and affordable rental housing are included, the addition in the CSR of social scoreboard indicators and social inclusion indicators will be of limited value. In addition, including the indicator in a table does not seem enough; the Semester would also have to give it relevance in its analysis, which did not seem to be the case in relation to Sweden and the Netherlands.

In any case, these measures would eventually make the Semester less bias towards the market in housing issues, however, EU Member States should first decide to what extent the European Commission should be discussing housing issues altogether and what is the added-value and risks of doing so.

Meanwhile, as seen in Chapter 3 above, CoR, the Parliament and the Housing Partnership have been defending that the limited definition on social housing given by the Commission in the SGEI Decision be reviewed and the subsidiarity principle fully respected. These institutions see the risk of segregation if programs focus exclusively on low-income households and recognize that social housing policies vary amongst others according to the country's history and culture of public intervention and that definitions may vary even inside the same country, in addition to clearly changing from country to country. They have called on the Commission not to issue recommendations (CSR) related to the size of the social housing sector in individual countries and criticized taxation of social housing providers that have been a consequence of fiscal consolidation programmes and recommendations made by the Commission<sup>329</sup>.

The Housing Partnership also emphasized the positive budgetary effects of investment in supply (construction of affordable housing), recognizing, however,

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<sup>329</sup> European Parliament resolution of 11 June 2013 on social housing in the European Union (2012/2293 (INI)); 2016/C 065/04.

the reality that there is rather increasing investment in supporting demand (through housing allowances, which is believed by experts to only drive prices up).

In any case, one point the different EU bodies seem to have in common is a growing interest in housing issues, though from very different perspectives – the Commission being clearly more market-driven, while CoR and the Parliament do show interest for social aspects of housing.

### ***5.2.3. Exploring other alternatives to SGEI***

As mentioned in Chapter 3, State aid for housing is not only acceptable as SGEI<sup>330</sup>. The option of compatibility under Article 107 (3) (c) TFEU has successfully been used in a few occasions, including by both the Dutch and the Swedish governments.

Sweden received authorization for the construction of housing for elderly people, small rental dwellings in growing regions and student accommodations at colleges and universities. The approval was given based on the need to reach an objective of social justice that was not being met by the market.

In the Dutch case, authorization was given for the authorities to make financial contributions in a project of redevelopment of a brownfield site – that was dividing the city’s residential area in two- through development of housing for rent, social housing for sale, free market houses and a public space. The details can be found above, but the important point here is that approval was given based on the fact that the aid was considered to be aimed at the “well-defined EU objective” of strengthening economic and social cohesion through “improvement of the urban environment and the quality of life in an area”. This was achieved in this case through the integration of the divided residential area, the cleaning of the brownfield, the reduced need for sprawl through the use of the brownfield site and the improvement of traffic connections.

As the analysis would have to be made based on concrete cases, it has not been possible to analyse to what extent these countries could make further use of this option and whether there are obstacles to it being used more often by them. Of course, they differ in terms of situations in which they are applicable (in relation to SGEI as social housing) and involve notification to the Commission, being thus more administratively burdensome. However, they represent an option, that could potentially be used more often.

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<sup>330</sup> Other options are provided for in Articles 107 (2) and 107 (3).

## 6. Conclusion

Overall, one could say that the State aid cases against the Netherlands and Sweden resulted in real changes in policy, but in a way served rather as a lever for policies that centre-right governments had not managed to implement on their own in their periods in power, despite following a liberalization course since the 1980s/1990s. Subsidized loans had already been discontinued in both countries. The Commission did not impose on neither country the exact course that they chose to follow. However, State aid regulation according to SGEI Decision 2005 (and later SGEI Decision 2011), which introduced the limitation of social housing as housing for “disadvantaged citizens and socially less advantaged groups”, made it difficult for these countries to keep their universal systems intact.

It is understandable that the Netherlands opted for abdicating from the universalist system and defined social housing as SGEI, following the definition from the Commission. Their housing system was already acquainted with the idea of social housing, as housing associations were obliged to give priority to disadvantaged people, although they were allowed to provide dwellings also to higher income households in case of over-production. In addition, after the cases of fraud and mismanagement and increased involvement in commercial activities since mid-1990s, there was the feeling amongst many in public and political opinion that control over housing associations should be regained and that they should go back to focusing as a priority on low-income population.

Meanwhile, Sweden never had a housing policy based on a prioritization system for low-income households. Their system was always opened to everyone. Moreover, experience with the “million dwellings program” in the 1970s, which eventually led to segregation, increased even more the importance of the idea of social mix. Thus, it is understandable that it would have been politically difficult to choose the option of focusing on social housing.

This is an interesting point because it shows in practice the influence of countries’ tradition and past experiences in choosing their housing policies and how difficult – if not undesirable- it is to aim for any sort of standard definition of social and affordable housing. Even if this would be attempted by States through democratic procedures instead of by unilateral decision of the Commission.

Considering the measures that had clearly been requested by the Commission to the Netherlands, one observes that in general the Dutch authorities went beyond what had been requested by increasing taxation of housing associations (Landlord Levy) and reintroducing the “appropriate allocation” measure, which forces housing associations to give cheaper dwellings to the lowest-income people, thus decreasing the use of housing allowances, but also decreasing social mix.

In the case of Sweden, no clear agreement had been reached with the Commission, thus there were no clear request to compare with and unfortunately also no positioning of the Commission in relation to the questionable legal argument that had been advanced by those opening the complaint, the European Property

Federation – which includes the Swedish Federation of Property Owners. Two of the main changes brought by the new housing policy were related to rent regulations, exactly the topic that had been advanced several times by property developers with little success. This was apparently the real focus of the complaint on the first place and not the indirect subsidies. In addition, the “businesslike principle” that had been put in place years before was made stricter, meaning that MHCs had to operate like market actors with no subsidies of any kind and acting for profit, although with no obligation to maximise profits.

In terms of effects over housing associations, in the Netherlands the change in policy apparently resulted in increased financial pressure for them due to increased taxation and the new allocation rules (higher concentration on low-income households). Moreover, the social housing stock has reduced, both due to selling and less construction. In Sweden, the new policy has led to MHCs requiring stricter financial requirements from its tenants and bias against the more vulnerable, such as people dependant on social benefits, housing allowance or with irregular employment. These households have been resorting increasingly to the “black market” or to social contracts. Waiting list have also increased considerably. MHCs became increasingly more interested in a higher income market. It is unclear what is the function of Swedish MHCs in the new system and lower-income people seem to be considerably affected.

Generally, in the Netherlands, between 2009 and 2018, the share of rent in the disposable income of households has increased both for low-income and the total of households, though the increase is greater for the former. Overcrowding has increased 151.7% between 2007 and 2017, which is by far the largest increase in the overcrowding rate in the European Union. The two first income quintiles are the most affected by overcrowding, which is an indication that they are using overcrowding as a strategy to deal with housing shortages and higher rents. In Sweden the share of rent in the disposable income is decreasing as a whole (might be explained by an increase in income), but overcrowding is also increasing considerably.

One further point that has been observed in Chapter 4 above is that in both countries governments have later started new programs with the intent to provide housing for those who have been facing difficulties in the housing market since the enactment of the new policies – middle-income households in the Netherlands and low-income households in Sweden. This seems to indicate the shortcomings of the previous policies.

One could also observe that the different bodies of the European Union do not speak with one voice. The more socially oriented position of the Parliament and CoR, as well as that of the Housing Partnership (refer to Chapter 3 for its composition) might bring in some level of counter-balance to the rather market-oriented position of the Commission, but so far it has not been able to revert the market-oriented trend in the EU.

Finally, one can see a clear influence of different forces at play in the process of the cases against Sweden and the Netherlands. The fact that the cases started and ended at similar periods of time is probably also no coincidence, rather indicating

some type of cross-influence between them. All in all, it showed that the application of competition law is not a pure mechanical procedure but seems to be influenced by many factors.

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### **Actions and recommendations of the Housing Partnership<sup>331</sup>**

#### **Better legislation**

##### **Action 1: Guidance on EU regulation and public support for housing**

*The action aims to provide clear guidance on the use of state aid support for social and affordable housing in European cities. Its key output is the analytical position paper of the Housing Partnership.*

##### **Action 2: Capacity building for the application of state aid rules in the affordable housing sector at a city level**

*The action aims to provide capacity building for the application of state aid rules in the affordable housing sector for practitioners and legislators at a city level.*

##### **Action 3: Revision of the SGEI decision with regard to the narrow target group of social housing**

*The action elaborates a proposal to revise the definition of the term 'Social Housing' in the regulation on the Services of General Economic Interest (SGEI) including the option to delete the definition of the narrow target group.*

#### **Better knowledge and governance**

##### **Action 4: Affordable housing good practice database**

*The action proposes the design of an online database gathering the best practices of the social and affordable housing sector, in order to foster learning and knowledge exchange about the provision of affordable housing in European cities.*

##### **Action 5: Policy guidance for the supply of social and affordable housing in Europe**

*The aim of this action is to develop housing policy guidance that provides examples of the ways that social and affordable housing can be supplied by cities and affordable housing providers.*

##### **Action 6: Exchange programme for urban housing professionals**

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<sup>331</sup> Housing Partnership. *Action Plan*. December 2018, p. 7 and 8. In: <https://ec.europa.eu/futurium/en/housing/housing-partnership-final-action-plan-0>.

*The aim of the proposed action is to create an exchange programme for urban housing professionals in European cities.*

**Action 7: Monitoring system for affordable housing in the European Union**

*This action aims to establish a system for regular and systematic monitoring and securing of housing properties at national, subnational and city levels in the EU.*

**Action 8: Exchange on affordable housing at member-state level**

*This action aims to re-establish the Housing Focal Points and the informal Ministerial Meetings in Housing to allow for structural and continuous exchange on housing at a high political level.*

**Action 9: Recommendations on improvement of EU urban housing market data**

*The aim of this action is to improve and expand housing market data at regional and city levels, and to establish an EU database mapping housing prices (rent and purchase) on the subnational levels (regions and cities) in the EU.*

**Action 10: Recommendations on the improvement of EU gender-poverty-energy nexus data**

*The aim of this action is to advance knowledge on the gender-energy-poverty nexus by developing gender disaggregated data and making it available to inform policy development.*

**Better funding**

**Action 11: Recommendations on EU funding of affordable housing**

*This action addresses the capacity of cities and affordable housing providers to access the different funding instruments of the EU Cohesion policy and EIB. The overall aim is to increase the supply of affordable housing in Europe with EU funding and EIB financing instruments and explore constraint through exemplary cases studies in a first step.*

**Action 12: Recommendations on the European Semester and affordable housing**

*This action aims to improve the European Semester procedure to better reflect diverse housing tenures, fragmentation of the housing markets, housing need and support better financing conditions for affordable housing.*

**Recommendations on good policies, governance and practices**

**Good housing policy and governance at local, regional, national and EU level**

In addition to the actions, the Housing Partnership also provided a set of recommendations that focus on priority areas for policy development in the affordable housing sector:

- Protection of vulnerable groups
- Anti-speculation
- Renovation and energy efficiency
- Co-ownership, co-management and co-design
- Spatial planning
- Rent stabilization and control
- Land use and building ground
- Security of tenancy

#### **Good practice**

- ERHIN – European Responsible Housing Initiative

#### **Themes for the future**

- Long-term investment in partnership with cities
- Social, environmental and economic impact assessment in affordable housing production
- Responsible construction sector

## Appendix II

**Summary table on measures that configure State aid and compatible State aid in relation to housing<sup>332</sup>**

Legal reference	Description/ criteria	Notification requirement - Article 108 (3) TFEU
<b>Can the measures be characterized as State aid?</b>		
<b>Fulfilment of conditions in Article 107 (1) TFEU <u>AND</u></b>	<ul style="list-style-type: none"> <li>-Undertaking (entity engaged in an economic activity)</li> <li>- Receives an economic advantage that it would not have obtained under normal market conditions (also connected to <i>De minimis</i> aid and the <i>Altmark Trans</i> criteria)</li> <li>-From the State or through State resources</li> <li>-Selective</li> <li>-Distorts or threatens to distort competition</li> <li>-Affects trade between Member States</li> </ul>	Yes
<b>Non-fulfilment of Altmark Trans cumulative criteria</b>	<ul style="list-style-type: none"> <li>-Entrustment act with clear definition of public service obligations</li> <li>-Parameters for calculating compensation (objective and transparent)</li> <li>-No overcompensation (takes into account relevant receipts and reasonable profit)</li> <li>-Public procurement procedure, OR compensation based on costs of a well-run undertaking</li> </ul>	Yes
<b>Non-qualification as <i>De minimis</i> aid (Commission Regulation (EU) No 1407/2013)</b>	EUR 200,000 to a single undertaking in three years	No
<b>Non-qualification as SGEI <i>de minimis</i> aid (Commission Regulation (EU) 360/2012)</b>	EUR 500,000 to a single undertaking in three years	No
<b>If yes, State aid can still be compatible with EU legislation if one of the following apply:</b>		
<b>Services of General Economic Interest – Article 106 (2) TFEU <u>AND</u> <i>Almunia Package</i> (especially Commission Decision 2012/21/EU)</b>	The competence of Member States to define social housing as SGEI remains subject to the principles of necessity, proportionality and the absence of any manifest error.	No
	<ul style="list-style-type: none"> <li>-Genuine public service task (compensation not exceeding an annual amount of 15 million Euro OR meeting social needs such as SOCIAL HOUSING and the care and social inclusion of vulnerable groups, amongst others)</li> <li>-Entrustment act</li> <li>-No-overcompensation</li> </ul>	No

<sup>332</sup> Table assembled by the author of this research based on the bibliography cited in Chapter 3.2.

<b>Article 107 (2) TFEU</b>	Measure that have a social character and are granted directly to individual consumers without discrimination related to the origin of the products concerned.	Yes
<b>Article 107 (3) (a) TFEU</b>	Aid that intends to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment (not applicable to instruments applied equally to the whole country)	Yes
<b>Article 107 (3) (c) TFEU</b>	Aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest (there must be a well-defined EU objective - e.g. strengthening economic and social cohesion- and the aid must be well-targeted, necessary, and proportionate to the targeted objective)	Yes

## Appendix III

**Comparative table on housing policy in the Netherlands and in Sweden<sup>333</sup>**

	Netherlands	Sweden
<b>Former Housing provision models</b>	<ul style="list-style-type: none"> <li>- Universalist</li> <li>- Housing associations had to give priority to disadvantaged people but in case of overcapacity could rent to people of higher incomes.</li> </ul>	<ul style="list-style-type: none"> <li>- Universalist</li> <li>- The provision of housing was always clearly open to everyone with no concept of social housing and the main prioritization system being time in the waiting list, with few exceptions.</li> </ul>
<b>Changes carried out before the State aid cases</b>	<ul style="list-style-type: none"> <li>-In the 1980s, policy of prioritization of home-ownership through tax relief on mortgage interest.</li> <li>-In 1995, end of subsidies for housing construction by housing associations.</li> <li>-Focus on housing allowances.</li> </ul>	<ul style="list-style-type: none"> <li>-1991 State housing loans were discontinued, and interest subsidies reduced.</li> <li>-Because of financial crisis/ recession and eventually the lack of subsidies, construction drops sharply.</li> <li>-MHCs start selling part of their stock as of 1992.</li> <li>-Policy of prioritization of home-ownership.</li> <li>-Focus on housing allowances.</li> </ul>
<b>Policy changes requested by the European Commission</b>	<ul style="list-style-type: none"> <li>- A link with disadvantaged groups and making the definition so clear that one could identify the difference between those who are part of the target group and those who are not.</li> <li>-Adaptation of the offer of social housing to the demand from disadvantaged citizens or socially less advantaged groups, so as to avoid overproduction and the need to rent to higher-income groups.</li> <li>-Limitation on the development of real estate for non-commercial purposes (schools, community buildings, public libraries, reception centres, etc.).</li> <li>-Separation of commercial and public service activities of housing associations, so that the former no longer benefit from aid. Separation of accounts and adequate controls.</li> </ul>	<ul style="list-style-type: none"> <li>-No clear request made by the Commission.</li> </ul>
<b>Policy changes carried out by the government</b>	<ul style="list-style-type: none"> <li>-Definition of social housing based on income and established a ceiling of 33,000 Euros adjusted annually.</li> <li>-Allocation of 20% of housing associations dwellings to people with higher income than the target group (10% for middle-income and 10% free).</li> <li>-Limitations on the development of real estate for non-commercial</li> </ul>	<ul style="list-style-type: none"> <li>-No definition of social housing as SGEI.</li> <li>-MHCs would have to operate according to the "businesslike principle": they could no longer receive indirect subsidies (direct subsidies had already been cut in the 1990s) and would have to charge market rates with a certain profit margin for their dwellings.</li> </ul>

<sup>333</sup> Table assembled by the author of this research based on the bibliography cited in Chapter 4.

	<p>purposes (schools, community buildings, public libraries, reception centres, etc.).</p> <ul style="list-style-type: none"> <li>-Separation by housing associations of commercial and public service activities, so that the former no longer benefit from aid.</li> <li>-Income dependent rent increases on households that are not part of the target group.</li> <li>-Introduction of a tax on housing associations (Landlord levy).</li> <li>-“Appropriate allocation” measure forcing housing associations to give the cheaper dwellings to the lowest-income people (in 95% of cases), so as to reduce the amount of housing allowances handed out.</li> </ul>	<ul style="list-style-type: none"> <li>-Rents in MHCS no longer serve alone as benchmark for rents in the private sector.</li> <li>-Participation of private landlords in the collective negotiation of rents.</li> </ul>
<p><b>Situation of providers of public housing after policy changes</b></p>	<ul style="list-style-type: none"> <li>- Housing associations<sup>334</sup> (wocos)</li> <li>- Focus on low-income households.</li> <li>- Receive indirect subsidies (especially related to receiving state guarantees and loans at better conditions than available in the market, sale of public land to housing associations below market prices).</li> <li>- Augmented financial pressure for housing associations, both through increased taxation, and through reduction of cross-subsidy strategies due to changes in allocation rules.</li> <li>- Shift to a more “businesslike attitude”, resulting in an increased focus on “budget savings and efficiency”.</li> </ul>	<ul style="list-style-type: none"> <li>- Municipal housing companies</li> <li>- In general, no real prioritization system, but in practice, preference seems to be given to stable households that can prove that they can pay the rent (strict financial requirements and bias against people dependent on social benefits, housing allowance or with irregular employment).</li> <li>- Do not receive subsidies.</li> </ul>

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<sup>334</sup> Have to reinvest revenues entirely in the development of housing – system works as a revolving fund.