

Issues with defining social housing as a service of general economic interest (SGEI)

EESC public hearing of 30th October 2012

The vision of the European Property Federation (EPF) and the European Union of Developers and House Builders (UEPC)

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Overview

- ✓ Background of this EESC own-initiative opinion
- ✓ Many valuable thoughts and considerations ...
- ✓ ... but some are difficult to reconcile with well-established European principles
- ✓ Case law and State aid practice
- ✓ The rationale of this limitation
- ✓ The subsidiarity principle is not at risk
- ✓ Proposal: the creation of a genuine level-playing field
- ✓ Conclusion



Background of this EESC own-initiative opinion

- ✓ Information Memo of 29th March 2012: *“It is therefore important to define the concept of social housing in relation to the single market rules and free competition, and not to restrict its relevance to the most disadvantaged population groups, especially in view of the diversity of EU countries and the subsidiarity principle”*
- ✓ Preliminary draft opinion of Mr Raymond Hencks of 22nd October 2012
- ✓ *“Why the European Commission needs to change the game?”*



Many valuable thoughts and considerations ...

- ✓ The recognition of the universal right to housing
- ✓ The recognition of Member States' wide margin of discretion as regards the organisation of their national (social) housing markets with respect to the specific needs and characteristics within their territory
- ✓ The recognition of housing policies in implementing the Europe 2020 strategy
- ✓ The need for legal certainty



... but some are difficult to reconcile with well-established European principles

- ✓ Article 34.3. of the Charter of Fundamental Rights of the European Union: *“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 Union law and national laws and practices”*
- ✓ Recital 11 of the SGEI Decision: *“Accordingly, undertakings in charge of social services, including the provision of social housing for disadvantaged citizens or socially less advantaged groups, who due to solvency constraints are unable to obtain housing at market conditions, should also benefit from the exemption from notification provided for in this Decision, even if the amount of compensation they receive exceeds the general compensation threshold laid down in this Decision”*

Case law and State aid practice ^(1/2)

- ✓ See para. 27-28 of the Judgment of the CJEU of 1st October 2009 in C-567/07:
27. *Thus, such a scheme seeks to ensure that approved institutions invest, in accordance with their statutes, in projects in the interests of public housing in the Netherlands, in particular for the purpose of ensuring an adequate supply of accommodation for persons on low incomes or for other categories of less fortunate members of the population. There is also a concern to prevent the financial facilities available to those institutions by virtue of the objects laid down in their statutes being diverted to other economic activities, thereby jeopardising the effectiveness and the financing of the public housing policy.*
28. *With regard first of all to the derogations allowed by Article 58 EC, suffice it to say that, even if it is accepted that the need for a Member State to promote social housing can constitute a fundamental interest of society, public policy cannot be invoked in the present case, inasmuch as the putative failure of approved institutions to comply with obligations under their statutes and the possible diversion of the funds they receive to activities other than social activities cannot amount to a genuine and sufficiently serious threat to that fundamental interest (see, to that effect, Case C-54/99 *Église de scientologie* [2000] ECR I-1335, paragraph 17 and the case-law cited).*

Case law and State aid practice ^(2/2)

- ✓ See the speech of European Commissioner László Andor at the European Parliament plenary session on 18th May 2010: *“However, as the term ‘social housing’ suggests, what is involved here is not housing in general, but housing provided on the basis of social criteria. This is why the recitals in the [SGEI] decision refer to housing for disadvantaged citizens or socially less advantaged groups which, due to solvency constraints, are unable to obtain housing at market conditions. The Member States must therefore define a target group for social housing to allow social housing to be allocated in a transparent way and to prevent those most in need from being excluded.”*
- ✓ See the annulment procedures against the Commission Decision of 15th December 2009 relating to State aid E 2/2005 and N 642/2009 (C-132/12 P and C-133/12 P)

The rationale of this limitation

- ✓ To avoid that Member States, whether or not under the guise of fostering an appropriate 'social mix', would grant aid to publicly or semi-publicly owned housing companies for the provision of activities that compete with those of private constructors and developers
- ✓ To protect competition on the market of real estate services
- ✓ To enable both public and private providers to develop more and better housing
- ✓ To prevent those most in need from being excluded
- ✓ To incentivise all market players, both public and private, towards the overarching goal to provide quality housing at affordable prices for all European citizens



The subsidiarity principle is not at risk

- ✓ Member States hold a wide margin of discretion to define social housing as a SGEI
- ✓ The definition of social housing should however be defined with direct reference to people who are disadvantaged, hereby taking into account the current situation and the diversity of housing needs as expressed on local housing markets
- ✓ The European Commission's competence in this respect is limited to checking whether the Member State has made a manifest error when defining the service as a SGEI and to assessing any State aid involved in the compensation, under the auspices of the CJEU
- ✓ In this regard: see the Dutch case on housing corporations ("*woningcorporaties*")



Proposal: creation of a genuine level-playing field

- ✓ Closed systems, which are based on definitions of 'social housing' that limit such activities to a limited number of publicly or semi-publicly owned housing companies rather than focus on the target population, are no longer pertinent or acceptable
- ✓ State aid and/or subsidies should be limited to a target group of disadvantaged citizens or socially less advantaged groups, who are unable to obtain housing at market conditions and may not be used to finance activities outside the scope of the core SGEI
- ✓ State aid and/or subsidies that are given directly to the citizens must be rigorously focussed on promoting affordable housing, no matter what the legal status of the provider is



Conclusion ^(1/2)

- ✓ The European legal framework for social housing seems to strike a right balance
- ✓ Member States wishing to provide a public service compensation to social housing corporations must remain within the limits of the SGEI Decision, so that State aid can only be granted insofar as the social housing programmes are specifically aimed at disadvantaged citizens or socially less advantaged groups, who due to solvency constraints are unable to obtain housing at market conditions
- ✓ Member States are free to reflect the diversity of the national housing needs and market conditions when defining the target group of their housing programmes
- ✓ The creation of a genuine level playing field would further enhance the objectives of social housing

Questions and/or comments?

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Thank you

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