



EPF

Memo Member Boards – September 2013

THE IRISH ASSOCIATION OF INVESTMENT MANAGERS JOINS EPF

Frank O'Dwyer, IAIM Chief Executive and **Niall Gaffney**, CEO, Irish Property Unit Trust, said "EU regulation and Eurozone integration have a big and increasing impact on Irish real estate. Through our membership of EPF, we look forward to helping shape EU policy. In our relations with both the EU and Irish authorities, our strength stems from representing the investor side of real estate and including all property investment companies, not just funds."

John Frederiksen, Joseph Houlihan and Michael MacBrien, President, Chairman of the Managing Committee and Director General of EPF said "IAIM brings us many major Irish investors and is a very attractive forum for all Irish property investment protagonists. We look forward to working with IAIM and, through it, with the Irish component of European government."

Dublin, Brussels, 26 June 2013

IAIM is the representative body for Institutional investors in Ireland. Its members manage assets of approximately € 250 billion on behalf of domestic and international clients.

EPF IN THE PRESS

Europe Has a Gameplan and Real Estate Is Part of It... Article by Michael MacBrien, EPF Director General, in May/June issue of **I&P Real Estate** www.epf-fepi.com

EUROPEANISATION OF NUCLEAR LIABILITY FOR LOSS OR DAMAGE TO PROPERTY

The EU regulates the safety of nuclear reactors but not the liability/compensation fallout, which remains national. The European Commission is now asking governments and interested private parties whether this aspect should be Europeanised and if so, how.

Fukushima was a property market value wipeout, so clearly, as the Commission implicitly recognises, the real estate industry is a prime party here.

Coverage, degree of operator liability and the limit of financial security all vary between member states. The key question is whether these should be Europeanised. There are two reasons why EPF members might opt for an EU solution:

1. Fear that the national territory could be affected by nuclear fallout from another country and that this could render compensation much more difficult in a non-harmonised situation
2. The prospect that broad European shoulders could significantly increase the pool of money available for compensation – all the more interesting in that the Commission shows that the compulsory financial securities provided under current member state law fall far short of the damages caused by Fukushima or Chernobyl.

Deadline for input to EPF Secretariat: 19 September. Commission deadline for response: 22 October.

**EU ECONOMIC GOVERNANCE – EUROPEAN SEMESTER REAL ESTATE RESULTS**

Compared to last year, the most significant changes are:

- The requirements to rationalise planning and zoning law and the related specific requirement to loosen up retail authorisation procedures now target eight and five-possibly six countries respectively whereas last year it was only five and two.
- The requirement to increase property tax is now completely focussed on recurrent tax and there is a strong new emphasis on either updating the cadastral value underpinning the tax or, ‘better still’, switching to a market value basis.
- The requirement to reform housing markets and rent regulation has almost doubled from four to seven countries.

Progress in Portugal shows that EU Economic Governance can pack major rental market reform into a couple of years. Here’s what was required of Portugal in 2011-2012:

“Portugal shall implement legislation on the housing rental market to further balance the obligations of tenants and landlords, to increase incentives for renovation and to make the market more flexible and dynamic.” – *Council Implementing Decision 2011/344/EU*. “The Government will present measures to amend the New Urban Lease Act law 6/2006 to ensure balanced rights and obligations of landlords and tenants, considering the socially vulnerable. [Q3-2011] This plan will lead to draft legislation to be submitted to Parliament by [Q4-2011]. In particular, the reform plan will introduce measures to: i) **broaden the conditions under which renegotiation of open-ended residential leases can take place**, including to limit the possibility of transmitting the contract to first degree relatives; ii) introduce a framework to improve households’ access to housing by **phasing out rent control mechanisms**, considering the socially vulnerable; iii) **reduce the prior notice for termination of leases for landlords**; iv) **provide for an extrajudicial eviction procedure** for breach of contract, aiming at **shortening the eviction time to three months**; and v) strengthen the use of the existing extrajudicial procedures for cases of division of inherited property. – *Memorandum of Understanding on Specific Economic Policy Conditionality of 17 May 2011, p. 31*

Here’s the result:

“**A comprehensive reform of the housing rental market** entered into force in November 2012. The new legal framework should make the housing market more dynamic. It balances rights and obligations of landlords and tenants and **phases out** within a transitional period of maximum 5 years **the old system of open-ended leases** signed before the 1990s **in which rents were frozen and contracts could not be terminated by landlords**. It also provides for an updating of rents and **more flexibility in the choice of contract duration**, sets better incentives for renovation and provides a **new and fast extrajudicial eviction procedure**. A new law which **simplifies administrative procedures for renovation works** was adopted as part of the same package.” *Assessment of National Reform Programme, p. 13*

Planning & zoning law reform is equally promising and a new EPF Economic Governance Planning Reform Committee chaired by Liz Peace, Chief Executive of the British Property Federation, has been set up to take this forward and meets on 19 September.



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Table of Council of Ministers Economic Governance Real Estate ‘Recommendations’ – July 2013

WJPR Withholding Judgment Pending Reform

✓ Council satisfied with progress

	Rationalise Planning & Zoning Law	Remove Barriers to Retail by Tackling Lengthy or Discriminatory Authorisation Procedures	Instate or Increase Recurrent Property Tax	Update Cadastral Value on which Recurrent Property Tax is Based or Reassess Tax Base	Rationalise and Liberalise Housing Market and Rent Regulation	Increase Construction Competition or Simplify Construction Law Procedures
Austria			x	x		
Belgium		x				
Bulgaria						
Croatia	x		x		x	
Cyprus	x		x		x	
Czech Rep.			x			
Denmark		?		End freeze		x
Estonia			(a)	(a)		
Finland	WJPR		WJPR			
France		x				
Germany		x	x	x		x
Greece	x			x		
Hungary		x	(b)			
Ireland			✓	✓		
Italy			x	x		
Latvia			WJPR	x		
Lithuania			x	✓		
Luxembourg				x		
Malta			x			
Netherlands	x				x	
Poland			✓			x
Portugal	x		x		✓	
Romania			x	x		x
Slovakia			x	x		
Slovenia			WJPR			x
Spain		x	x		x	
Sweden	x		x		x	x
UK	x		x	x	x	

(a) Commission notes negatively the abolition of the land tax (on small and medium-sized plots of primary residences) based on outdated land registry values but stops short of recommending tax reversal or registry update

(b) but postpone until housing market gains momentum



EUROPEAN RETAIL ACTION PLAN

It took a massive campaign in 2010-11 to get the European Commission to back off from its plans to regulate against “retail property market malfunction”. Now the Commission is wisely concentrating on obstacles to cross-border shopping centre investment and competition problems in the retail food chain. It was therefore not good to see the European Parliament’s Rapporteur Cornelis de Jong proposing to “encourage Member States to introduce specific rules to guarantee a diversity of shops”.

On 28 August, EPF countered by pointing out to the other key Members of the European Parliament, Anna Maria Corazza Bildt, Morten Løkkegaard and Malcolm Harbour that:

- One of the ground rules of shopping centre property development and management is that increasing and shifting product areas are critical to shopping centre performance. In particular, fashion retail cannot be the repository of excessive area, as imbalances in the merchandising mix generate unhappy tenants. *The priority for successful landlords is to promote diversity by devoting any spare area to the integration of stores from activities that are not present in the shopping centre.*
- Most shopping centre owners actively try to manage the best mix for their centres. They know that the best retail areas offer variety and will try and orchestrate some new retailers in their mix. These will often not be independents, but successful ‘foreign’ retail concepts from other member states. *Diversifying for the sake of local independents could be at the expense of cross-border trade.*
- Decisions on tenant mix are in fact highly complex, involving many factors such as security of tenure. As for *defining* diversity, this is a difficult exercise at which some local authorities have not proved particularly adept.

EPF suggested that the introduction of specific rules to guarantee a diversity of shops should not be a priority either for EU action or for European Parliament ‘encouragement’ to member states.

EUROPEAN COMMISSION SUSTAINABLE BUILDINGS CONSULTATION

The question is whether to extend EU regulation beyond energy efficiency to wider sustainability to:

- “address” different national reporting requirements on environmental performance of buildings
- “support” increased uptake of better environmental performing buildings via voluntary or mandatory European frameworks for core indicators, benchmarks
- “stimulate” demand for better performing public and private, residential and non-residential buildings via a label/certification based on a European framework

EPF and allies need to consider the obstacles raised in going beyond the national regulatory and leasing context and come to a conclusion about whether it is worthwhile doing that.

Meeting of EPF and allied experts on 29 August. Deadline for input to the Commission: 1 October



ENVIRONMENTAL IMPACT ASSESSMENT DIRECTIVE

The European Parliament and the Council of Ministers have given us almost everything we want, sometimes with our own wording, but both have rejected our request that for development consent for projects with significant adverse environmental effects monitoring should not be automatic but rather considered according to case:

Article 1, paragraph 8 replacing EIAD Article 8

EHHA, ELO, EPF, TEGoVA, UIPI	Parliament A7-0277	Council 9391
<p>2. ...</p> <p>If the competent authority decides to grant development consent, it shall ensure that <i>consider whether</i> the development consent <i>should</i> include measures to monitor the significant adverse environmental effects, in order to assess the implementation and the expected effectiveness of mitigation and compensation measures, and to identify any unforeseeable adverse effects.</p>	<p>2. ...</p> <p>If the competent authority decides to grant development consent, it shall, <i>in accordance with the relevant legislation</i>, ensure that the development consent includes measures to monitor the significant adverse environmental effects, <i>during the construction, management, demolition and post-closure phases</i>, in order to assess the implementation and the expected effectiveness of mitigation and compensation measures, and to identify any <i>unforeseen</i> adverse effects.</p>	<p>2. Where it is proposed to give consent to a project despite the identification of significant adverse effects on the environment, the competent authority shall ensure that such effects are monitored and appropriate mitigation and compensation measures are implemented. The developer shall provide information on the effectiveness of the measures, including any unforeseen or unintended consequences of such measures.</p>

EPF and allies had used the following argument:

“Monitoring should not be imposed across the board by EU law, as it is very necessary in many cases but not all, and competent authorities should retain the power to exercise flexibility where warranted by the specific local situation.

For example, if deforestation has been authorised in order to create housing, there may be significant adverse environmental effects, but the decision is made and the housing built. There is therefore no practical use in monitoring this irreversible situation.”

In the first draft of the Coalition Position the EPF Secretariat had put:

- **Is that example watertight?** Obviously the housing that has been built will not be torn down, but if monitoring reveals worse adverse effects, mitigation can perhaps be carried out by reforestation or some other green measure close by. The question of who should be paying for the monitoring is another matter. Here we are saying that the monitoring itself is useless. Is that strictly true? **One bad argument weakens all the others.**

Those who responded said it seemed fine to them. Subsequently, face-to-face with officials and MEPs, selling this proved difficult.

What do we do now? We can either drop it or come up with something more convincing.



GREEN PAPER ON A 2030 FRAMEWORK FOR CLIMATE AND ENERGY POLICIES

Summary of common response of 2 July by European Historic Houses Association (EHHA), European Landowners' Organization (ELO), EPF and The European Group of Valuers' Associations (TEGoVA)

To achieve its headline energy efficiency goals, the Union should adopt binding targets – without changing the Kyoto 1990 baseline – and harness all the policy instruments at its disposal including to:

- Continue the successful experience of EU/national government/stakeholder energy efficiency administration through the Energy Efficiency Action Plans;
- Review existing energy efficiency legislation with a view to identifying and addressing the inevitable flaws, in particular the vagueness of the concept of cost-optimality, especially with a view to ensuring that energy efficiency investments benefit those who make them, *sine qua non* for serious take-up by stakeholders, but avoiding more detailed requirements;
- Harness all EU policies to the energy efficiency cause, for instance reduced rates of VAT;
- Find innovative ways to overcome the limitations of legislation by Directive by extending EU-guided voluntary solutions such as the Energy Performance of Buildings Directive's common voluntary non-residential EPC or other forms of guidelines to other domains such as pan-European reference levels for energy efficient equipment and building components;
- Increase the leverage of the energy efficiency component of EU Economic Governance by promoting:
 - ✓ the longer leases required for cost-effective energy efficiency works
 - ✓ modulating the level of property tax according to the energy performance of the building
 - ✓ effective national energy efficiency financing obligations
 - ✓ simplified administrative procedures for renovation
 - ✓ elimination of national rules punishing energy efficiency investment
 - ✓ inclusion of energy efficiency works among productive investment discounted from economic imbalance calculations;
- Ensure that national support for energy efficiency does not fall victim to EU state aid rules as is the case for example concerning low UK VAT rates for energy efficient building materials;
- Plan for funding up to 2030 because step-change in the real estate and building economy requires confidence in continuing financial support beyond 2020 [Ndlr: the EU financial framework 2014-2020 provides substantial EU funding for energy efficiency in housing];
- Encourage research to distinguish between building-related and user-related energy consumption.