

# **Implementation of European Standards in Romanian Housing Legislation**

## **Final Report**

- **Part A – Existing Housing Legislation  
and Housing Policy**
- **Part B – European Best Practice**
- **Part C – Regulations**
- **Part D – Housing Law Annotation Report**

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commissioned by the  
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## IMPLEMENTATION OF EUROPEAN STANDARDS IN ROMANIAN HOUSING LEGISLATION

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# PART A

## EXISTING HOUSING LEGISLATION AND HOUSING POLICY

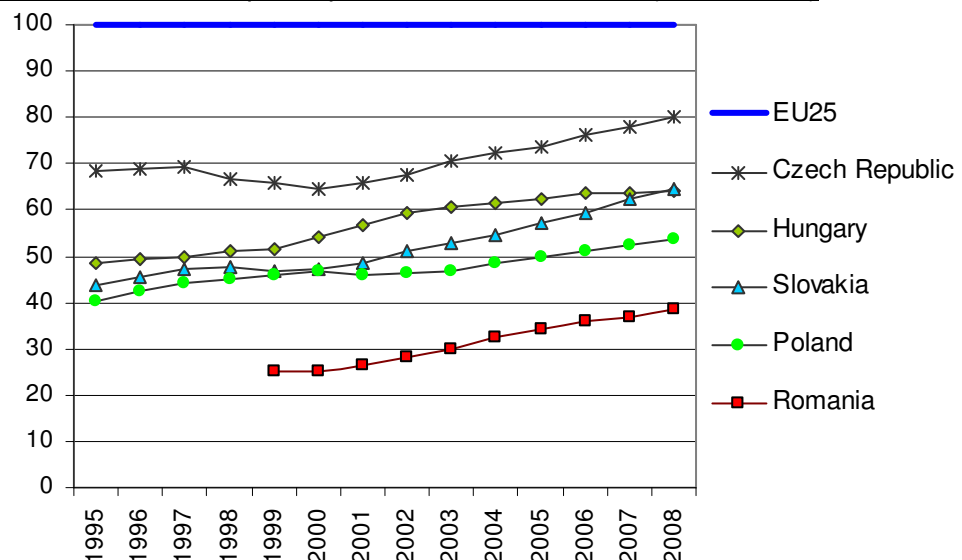
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### A.1 GENERAL ECONOMIC BACKGROUND

#### A.1.1 MACROECONOMIC CHARACTERISTICS

After Romania's Communist regime was overthrown in late 1989, Romania experienced a decade of economic instability and decline, led in part by an obsolete industrial base as well as a lack of structural reform. Starting from 2000, however, the economy was transformed into one of relative macroeconomic stability, high growth, low unemployment and increasing foreign investment, and is currently among the most developed in South Eastern Europe. Economic growth since 2000 has averaged 4-5%, rising to 8.3% in 2004, 4.1% in 2005, 7.7% in 2006 and is estimated at around 6% in 2007. This has characterised Romania as a boom economy and one of the fastest growing in Europe. Romania was granted in October 2004 the much desired 'functional market economy' status by EU officials, and joined the EU in January 2007. Romania's per-capita GDP, calculated by purchasing power parity has been around € 8 800 by 2006. The national budget is € 38.1 billion (2006), which represents 33.1% of GDP of € 97 billion.<sup>1</sup>

Figure 1: Gross Domestic Product per capita in relation to the EU (EU-25=100)



Source: Eurostat, Housing Statistics in the EU

Strong aspects of Romania are the technologically advanced market economy with substantial Government participation. Having its own natural resources, Romania has intensively developed its agricultural and industrial sectors over the past 20 years. Romania is largely self-sufficient in food production. Clothing and textiles, industrial machinery, electrical and electronic equipments, metallurgic products, raw materials, cars, military equipment, software, pharmaceuticals, fine chemicals, and

<sup>1</sup> Eurostat.

agricultural products (fruits, vegetables, and flowers) are leading exports. Romania possesses extensive facilities for oil refining and semiconductor fabrication.

Inflation in 2004 was registered at 9.3%, 8.5% in 2005 and fell to 4.8% in 2006. Unemployment in Romania is at 5.2%, which is very low compared to other large European countries such as Poland, France or Germany.

Since the late 1990s, there have been several economic reforms, spurred on by the country's bid to join the EU, including the liquidation of large energy-intensive industries and major reforms in the agricultural and financial sectors. As of 2005, a significant amount of Romania's major companies have been privatised, including the majority of banks, the largest oil companies Petrom and Rompetrol, energy distributors and telecommunication companies. In comparison to its neighbours, Romania has a high number of small and medium sized enterprises (SMEs). Foreign investment has increased significantly since 2003, reaching € 5.2 billion in 2005 and estimated € 9 billion in 2006. The biggest foreign direct investment so far is the purchase of the Romanian Commercial Bank by the Austrian Erste Bank. Austria is the leading investor's country.

### **A.1.2 DEMOGRAPHY**

Rumania is with its 21.6 million inhabitants (2006) the largest country of South Eastern Europe. Economy and population are strongly focused on the capital Bucharest with its two million inhabitants. The second largest city Brasov has hardly 300.000 inhabitants. Romania suffers from strong emigration. Since 1997 the population has decreased by one million. A further decrease of one million inhabitants is forecasted for the next ten years. There are very strong migration flows to the capital city. The population group between 16 to 25 years is with 15.5% of the total population stronger than e.g. in Hungary, Czech Republic or Austria.

### **A.1.3 TAXATION**

In January 2005, Romania's new Government imposed major fiscal reforms, replacing Romania's progressive tax system with a 19% flat tax on both personal income and company profit. Romania now has one of the most liberal taxation systems in Europe and it is expected that this, along with increased foreign investment and a combat against corruption and the grey economy, will boost economic growth in the coming years. The tax cuts have led a 12% jump in household consumption, which was also boosted by a 13% rise in wages (2006).

For the housing sector taxation is applicable only if the property was acquired within three years prior to sale. Owner-occupied and investment properties are treated in the same way.

Value Added Tax (VAT) of 19% is payable on sale of real estate. However transfers from an individual to a company or between individuals are exempt. From January 2005 taxable persons registered as VAT payers are no longer required to pay VAT on sale-purchase transactions involving land, buildings or parts of buildings. State-funded housing is exempt.

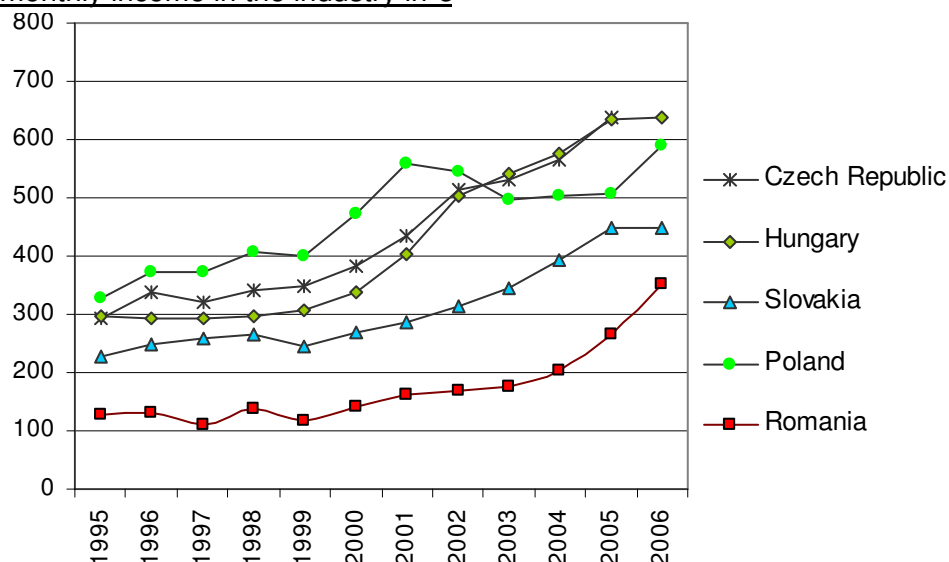
Rented flats have a VAT of 19% (for legal persons). Maintenance costs and energy have a VAT of 19% as well. Property tax is 0.2% annually for individuals in urban areas and 0.1% in rural areas. Companies pay 0.5% to 1.0%. If the building has not been re-valued within three years, the rate increases to 5% - 10%. Net rental income for landlords is also taxed at 16% after a deemed expenses deduction of 25%.



## A.1.4 WAGES

The average gross wage per month in Romania is 1 232 RON(1/2007). This equates to € 378, based on international exchange rates. The average net salary per month is 918 RON (€ 282). Obviously the wages are catching up to CEE countries and even are likely to overtake them.

Figure 2: Gross monthly income in the industry in €



Source: UNECE, Eurostat, N.I.S., WIIW, IIBW

Figure 3: Economic key data

	2003	2004	2005	2006	2007	2008
GDP	70 Bn €	77 Bn €	86 Bn €	97 Bn €	96 Bn € (est.)	110 Bn € (est.)
GDP (% real change pa)	+5.3%	+8.3%	+5%	+7.7%	+6% (est.)	+6% (est.)
GDP per capita (€ )	2 350 €	2 600 €	3 100 €	4 000 € (est.)	NA	NA
GDP per capita (€ at PPP)	6 500 €	7 400 €	8 000 €	8 800 €	9 500 €	10 300 €
GDP per capita (EU-25=100)	30	33	34	36	37	38
Inflation	14%	9.2%	8.5%	4.87%	4%	2.5%
Minimum wage	285 RON =82 €	310 RON =89 €	330 RON =95 €	360 RON =105 € (est.)		
Medium gross wage <sup>1</sup>	765 RON =220 €	870 RON =250 €	995 RON =285 €	1 145 RON =335 € (est.)	1 300 RON	1 800 RON
Unemployment	6.4%	6.3%	5.6%	5% (est.)		
FDI	3.9 Bn €	5.1 Bn €	6 Bn €	9 Bn € (est.)		
Foreign-exchange reserves (bn€ )	14 Bn €	16 Bn €	20 Bn €	30 Bn € (est.)		

Source: N.I.S., Eurostat

<sup>1</sup> ≠ Gross monthly income in the industry (Figure 2)

## A.2 HOUSING IN ROMANIA

### A.2.1 HOUSING STOCK

Romania has a housing stock of 8.2 million units (2006). This are around 380 dwellings per 1 000 inhabitants. About 88.4% from the total housing stock is occupied. The average household consists of 3 persons, which is relatively big, compared to the EU-27 average of 2.4 Persons per household. As a result of the extensiv privatisation of public rental dwellings, the owner occupation quote has raised up to above 97%.<sup>1</sup> Between 1990 and 2004 as much as 2.2 million dwellings have been privatised, which is 27% of the total housing stock. Hardly 3% of the stock has remained social rental housing. Due to tenancy and the technical quality of the buildings, housing refurbishment is a paramount challenge.

Bucharest has a total housing stock of 784 000 units of which 97% are private.

The evolution of the economy during the transformation period determined changes also in the housing sector policy:

- Privatisation – which contributed to the reinforcement of the ownership rights, but determined a drastic decrease of the public housing stock and led to some major problems related to housing provision and social cohesion.
- Decentralisation – which encouraged the private sector, but at the same time determined a drastic decrease in the public funds invested in housing construction and infrastructure. A big number of municipalities are incapable of independently dealing with the housing problem of socially disadvantaged groups.
- Restitution – which is still underway, provoked many disturbances, mainly because of corruption and insufficient housing supply for compensation.

Figure 4: Specific housing figures

	1992	2002	2005	2020
Population in 1 000	22 810	21 834	21 659	20 300
Household size	3.07	2.92		
Dwellings per 1 000 in habitants	336	374	377	
Average rooms per dwelling	2.5	2.6	2.6	
Living area dwelling m <sup>2</sup>	33.8	37.6	38.0	
person m <sup>2</sup>	11.6	14.3	14.4	

Source: N.I.S., Eurostat, Housing Statistics in the EU

The decrease of the number of inhabitants and the ageing society should reduce the housing demand, but the increased number of homeowners and the small living space per person maintain a significant demand for new dwellings.

Almost 67% of the existing housing stock was built after 1960. These buildings suffer from poor thermal quality and ongoing deterioration. The housing privatisation has made rehabilitation become more difficult, as few of the new owners realised their homes were indeed valuable assets. Most of them have faced serious financial problems concerning the maintenance of their dwellings. It is also worth noting that many owners still think the state should provide the much-needed support as it used to be. In other words, they like to enjoy the benefits of private ownership but reject the responsibility adherent to such a status.

<sup>1</sup> Figure 19, p. 55, shows a share of rental dwellings of 19%. The difference is the big number of rented condominiums.

Figure 5: Age of the housing stock (mill)

Period of construction	Total		Urban		Rural	
< 1945	1.246	15%	481	11%	765	20%
1945 – 1960	1.436	18%	387	9%	1.049	27%
1961 – 1970	1.589	20%	760	18%	829	22%
1971 – 1980	1.932	24%	1.411	33%	521	14%
1981 – 1990	1.292	16%	958	23%	333	9%
> 1990	612	8%	262	6%	350	9%
	8.107	100%	4.260	100%	3.848	100%

Source: N.I.S.

The biggest part of the multi storey housing stock is linked to district heating. But the heating web is partly in a poor condition. There is a tendency to other heating systems, particularly in new construction.

## A.2.2 HOUSING PROVISION

The average useful floor space per capita is ca. 20m<sup>2</sup>, which is far below the EU-25 average of 36m<sup>2</sup>. This issue of “overcrowding” can only be solved by new residential construction, but the private sector is unable to compensate the diminution of public funds allocated to housing construction. Figure 6 compares the respective data for CEE countries and Romania.

Figure 6: Comparative indicators on housing provision 2005

	housing stock in 1 000	household size	Ø useful floorspace per capita	housing comple- tions per 1 000 inhabitants
Czech Republic	4 400	2.5	29 m <sup>2</sup>	3.2
Hungaria	4 200	2.6	28 m <sup>2</sup>	4.1
Poland	12 900	3.1	22 m <sup>2</sup>	3.0
Romania	8 200	3.0	ca. 20 m <sup>2</sup>	1.5
Slovakia	1 900	3.1	18 m <sup>2</sup>	2.8
Slownia	800	2.6	30 m <sup>2</sup>	3.3
EU-25	205 200	2.4	36 m <sup>2</sup>	4.8

Re.: Housing stock: Slovenia as per 2003. Household size and useful floorspace as per 2003, housing completions EU-25 and Slovenia as per 2003.

Source: National statistical offices, UNECE, Housing Statistics in the EU, ZOE Baumarktberichte

Housing provision is strongly determined by the extensive privatisation within the previous 20 years, the low construction rates and the insufficient investments in the housing stock. Anyhow, privatisation contributed to affordability of housing, at least for the sitting tenants. Quite the contrary is the case with households that enter the housing market today. Three household groups suffer particularly from shortages in affordable housing: the young, the mobile and the poor.

## A.2.3 HOUSING MANAGEMENT

As in all countries in transition the exhaustive privatisation of rental dwellings led to a very difficult situation in housing management. The public not only transferred the physical dwellings to the tenants but as well the responsibility for the maintenance of the buildings, particularly its common parts, for collecting the fees for running costs and energy and for decision making of the owners in organisational

matters. As a result the buildings remained practically unmanaged for several years. With the Law no. 114/1996 the general conditions of condominium housing were established, including regulations for housing management (see below, chapter A.4.4, p. 29). Law no. 230/2007 has established new regulations on owners associations and housing management (see p. 30 ff.). Today already a big part of owners associations has appointed housing managers, in most cases one of the owners. It is estimated that by 2010 all owners associations will be organised in this way. Professional housing management companies are not widely established yet.

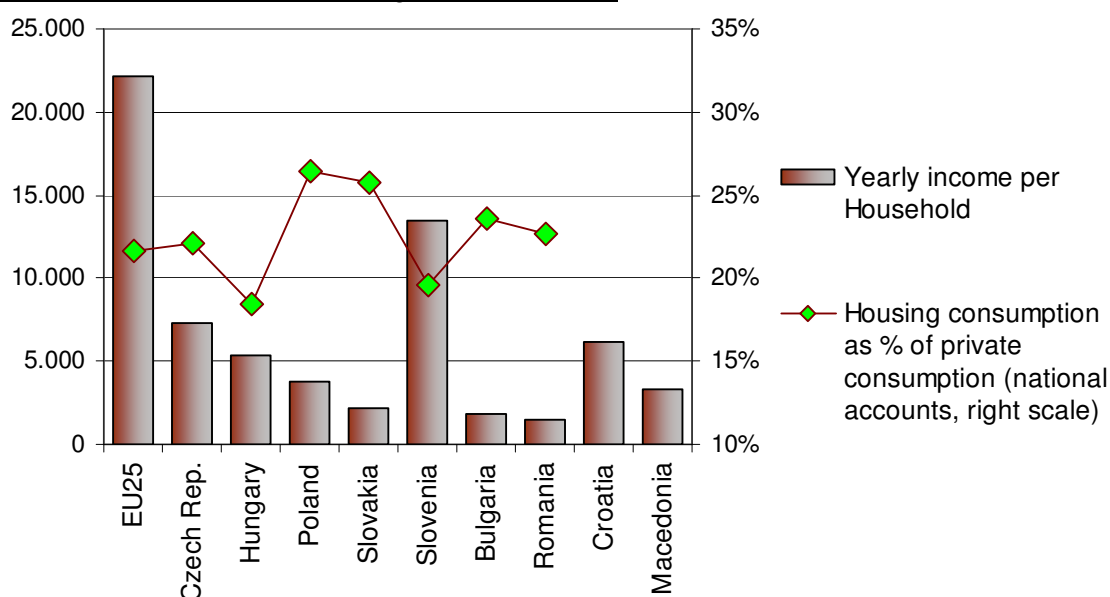
#### A.2.4 HOUSING COSTS

It is necessary to distinguish between housing costs, which comprise all sitting households, and market prices, which apply only new contracts. Of course housing costs are much lower than market prices.

Romanian households spend some 23% of private consumption on housing including energy (2003). This is only slightly above EU average. This is because of the low housing costs of many sitting tenants. But the share of housing costs has increased by 3,5 percent points since 1998. This is alarming, as a further increase seems inevitably, given the present market dynamics and the growing mortgage financing of condominiums. It seems questionable whether incomes will catch up with the dynamics of housing expenditure.

As seen in Figure 7, in the new Member and Candidate States moderate expenditure for housing consumption of 20-25% allow for some sort of equilibrium in the face of household incomes far below the EU-15 level (even though in %of private consumption they have already reached Western European levels). The housing costs will inevitably increase, given that the mortgage financing of owner occupied dwellings is strongly increasing and market rents are a multiple of the stock costs. Increasing housing costs might be political dynamite.

Figure 7: Household income and housing cost 2003/2005



Source: Eurostat, PRC (2005), Garcia (2005), I•IBW

## A.2.5 MARKET PRICES

Housing costs increase particularly because of the strong dynamics with new contracts. Condominium prices in Bucharest have doubled from 2004 to 2005 up to 1 250 €/m<sup>2</sup> (2005). In other cities the level is lower, but not the dynamics. In Brasov prices for condominiums have increased from 450 €/m<sup>2</sup> (2004) to 650 €/m<sup>2</sup> (2005). According to CEPI, rental dwellings cost around 4 €/m<sup>2</sup> in Bucharest and 3 €/m<sup>2</sup> in Brasov (2005). Market prices for rental dwellings have decreased in 2005. That is to say that housing markets in Romania are highly volatile. According to UBS an unfurnished 3-room rental dwelling in Bucharest near the centre costs € 1 010 per month. That are similar prices as in Brussels or Zurich!<sup>1</sup>

Rents on private markets are enormously more expensive than rents in the existing stock. Figure 8 shows data on CEE countries compared with Romania. Other data sources, e.g. the Global Property Guide, indicate even higher market rents and prices for condominiums. The split rental markets cause a lot of problems.

Figure 8: Indicators on housing markets 2005

	privatisations 1990-2004 absolutely and in %	Ø costs of a dwelling in stock	market rents in capital city	market prices of condominiums in capital city
Czech Republic	526 000 (12%)	€ 78,-/month	€ 790,-/month	€ 1.310,-/m <sup>2</sup>
Hungaria	620 000 (15%)	€ 58,-/month	€ 870,-/month	€ 1.110,-/m <sup>2</sup>
Poland	2 309 000 (18%)	€ 65,-/month	€ 610,-/month	€ 1.200,-/m <sup>2</sup>
Romania	2 208 000 (27%)		€ 1.010,-/month	€ 1.250,-/m <sup>2</sup>
Slovakia	598 000 (31%)	€ 67,-/month	€ 490,-/month	
Slowenia	182 000 (23%)	€ 113,-/month	€ 670,-/month	€ 2.000,-/m <sup>2</sup>

Re.: Costs of dwelling in stock: average monthly costs of all dwellings in total housing stock. Market rents (UBS (2005)): unfurnished 3-room dwelling, medium price level, erected in 1980, including maintenance costs, customary comfort, near the centre. Market prices of condominiums (CEPI): 150m<sup>2</sup>, age of at least 10 years, good condition, middle class district, without taxes.

Source: PRC Bouwcentrum International (2005), UNECE, Housing Statistics in the EU (2005), UBS (2006), CEPI

Taken the average monthly net income of RON 1 100,- (2006, = ca. € 320,-), a modest apartment costs approximately 15 times a person's annual income. This factor is not bigger than 4 or 5 in most EU-countries.

The massive privatisation of social housing resulted in an excessively high ownership rate and, on the other hand, to a degeneration of the rental markets. The impacts are severe:

- The "manoeuvring mass" of former social dwellings is missing. This is harmful particularly for young households (which did not benefit from privatisation any more), for migrants to the cities and of course for low income households.
- It results in extremely unequal market sectors with much too low rents in the remaining social housing sectors and rents on international level on private market sectors.
- Insufficient housing supply already starts to impede economic development, particularly in metropolitan areas.

<sup>1</sup> Housing Statistics in the EU, CEPI, UBS (2006). Definitions see Figure 8.

## A.2.6 HOUSING FINANCE

The Romanian mortgage market had an explosive evolution over the last few years. At the end of 2002, the volume of residential mortgage loans amounted to 0.7% of GDP. In the following years this level doubled each year to approximately 2.6% of GDP in 2006, which is still far below the EU average of 47% of GDP. The market is thus significantly below its potential. The mortgage rate will further accelerate because the National Bank of Romania cancelled its restrictive lending conditions early 2007. Most of the mortgage loans (85%) are provided in foreign currency (with interest rates ranging from 7.5% to 10%), only 15% from the loan portfolio being in the local currency RON (with interest rates from 8.6% to 13%). If in early 2000 the National Housing Agency was the only institution providing mortgage loans for a period of up to 25 years, now there are more than 17 commercial banks, 3 mortgage loan companies and 2 "Bauspar"-Banks which compete on the increasingly attractive mortgage market.

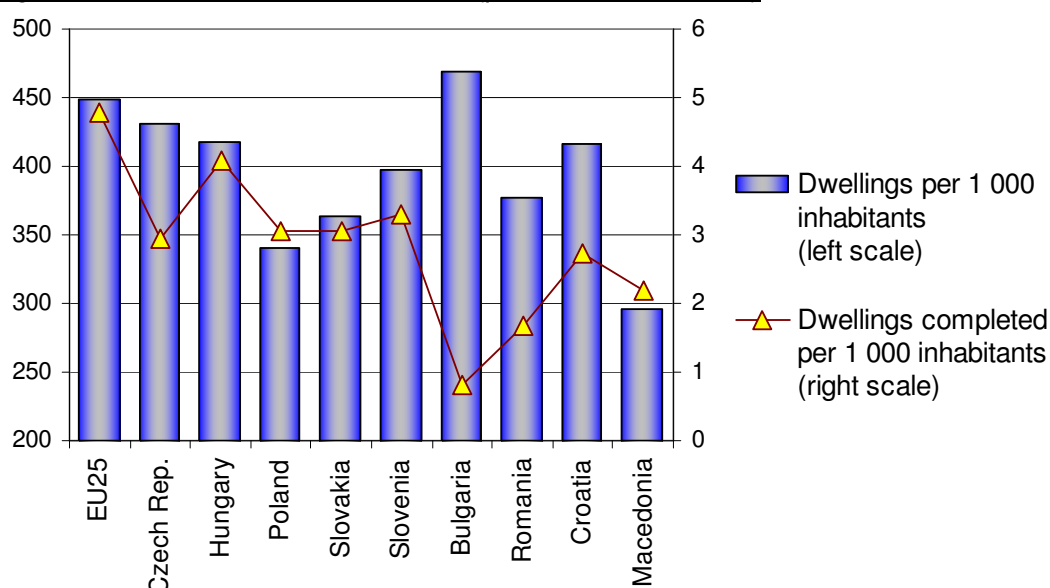
Figure 9: Growth of outstanding mortgage loans

	2003	2004	2005	2006
Residential loans outstanding (mill. € )	500	823	1 500	2 300
% of GDP	0.7%	1.1%	1.7%	2.6%

Source: N.B.R., IIBW

Currently the Romanian financial institutions fund their mortgage loan activities with their own resources, short term deposits and financial facilities provided by International Financing Institutions (EBRD, IFC, DEG), so that the Romanian mortgage market lacks adequate financing/refinancing alternatives. Taking into account the necessity to diversify the existing financing sources, the new legal framework necessary for the creation and development of a secondary mortgage market - which contains the Mortgage Banks Law, the Mortgage Bonds Law and the Securitisation of Receivables Law - has passed the Parliament early in 2007. Building a sustainable secondary mortgage market with viable refinancing instruments, will address the risks faced by lenders.

Figure 10: Housing stock and new construction 2006 (per 1000 inhabitants)



Re.: Data for EU-25, Slovenia and, Bulgaria, Croatia and Macedonia as for 2003

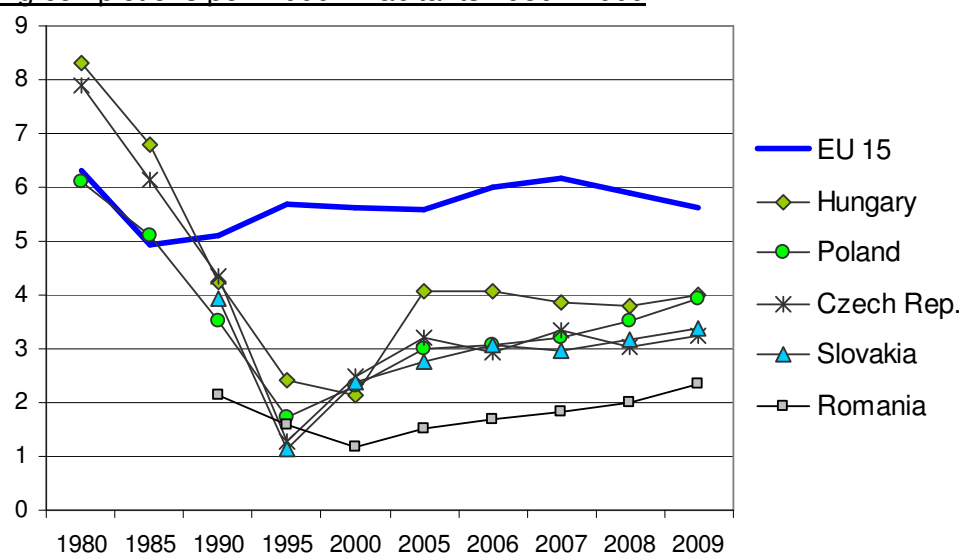
Source: National statistical offices, Housing Statistics in the EU (2005, 2006); UNECE; PRC (2005), IIBW

## A.2.7 NEW CONSTRUCTION

As seen in Figure 10 and Figure 11 the housing construction rate (completion per 1 000 inhabitants) in the CEE-countries currently equals only 60% of the EU-15 average, in Romania only 30%.

In Romania some 30 000 dwellings were completed in 2004, in 2006 the number grew to some 39 000. This is 1.7 housing completions per 1 000 inhabitants. The EU-25-average is 4.8. The European average is regarded as minimum to cover the urgent housing demand. In a EU-wide survey a housing demand of 220.000 dwellings for the period of 2004-2013 was forecasted.<sup>1</sup> This number seems to be by far too low. A major precondition for an increase of housing construction seems to be new financing models for middle income groups.

Figure 11: Housing completions per 1 000 inhabitants 1980 - 2009



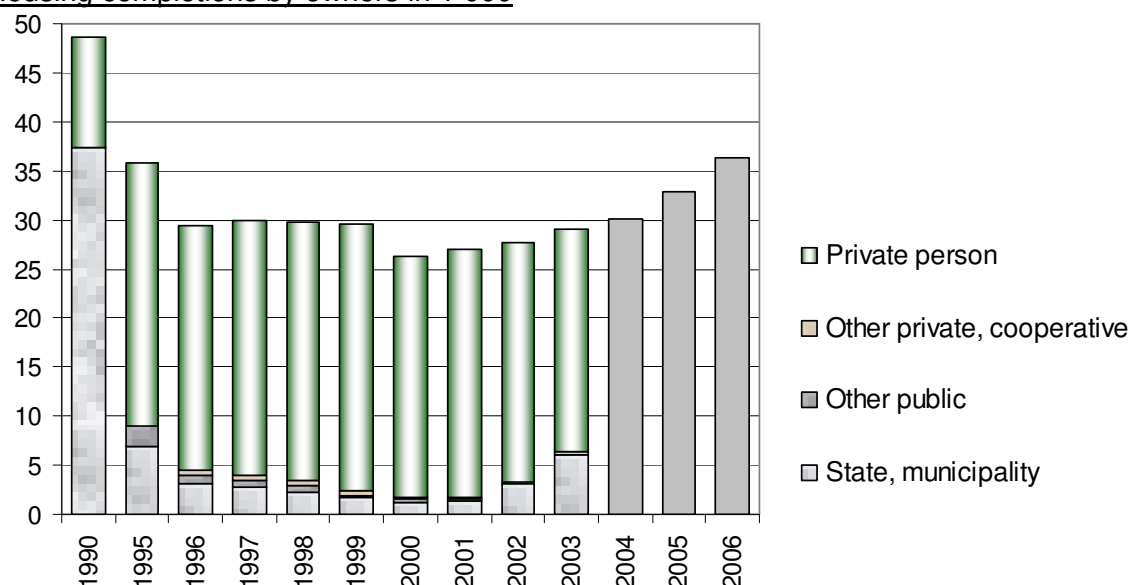
Source: Housing Statistics in the EU (2005); Euroconstruct 12/2006, Romanian Statistical Yearbook, IIBW

As seen in Figure 12 by far the biggest part of completions is done by private persons. The vast majority of new construction is single family houses and condominiums. New rental construction is almost inexistent. In the past this was quite different. In 1991 only one quarter of completions was done by private persons. Its share grew up to 90% by the end of the 1990ies and is today at around 80%. The second big player is the public (state and municipalities), which used to be responsible for 75% of completions. Its share decreased down to only 5% in 2001 but has recovered in the meantime with a share of 20%. This increase shows the reestablishment of social rental housing, which is mainly done by ANL. With support of international financing sources some grand projects with remarkable planning and construction quality were executed.<sup>2</sup>

<sup>1</sup> PRC Bouwcentrum International (2005).

<sup>2</sup> Romanian Statistical Yearbook, UNECE, PRC Bouwcentrum International (2005), IIBW-Schätzungen.

Figure 12: Housing completions by owners in 1 000



Source: UNECE, IIBW estimate

The number of building permits is increasing year by year. In 2006 more than 51 000 building permits have been issued, that is +17.3% compared with 2005.

In Bucharest the construction rate is lower than in the national average, representing 1.1 new units per 1 000 inhabitants (see Figure 13), due to various factors, including restitution issues.

Figure 13: New housing construction in Bucharest (completions) in 1 000

	2003	2004	2005	2006
Total	1.4	1.7	2.2	2.0
Private	1.2	1.3	1.2	1.8
Public	0.2	0.4	1.0	0.2

Source: N.I.S.

83% of new housing units are financed from private funds, almost all single family houses are self-build and, in most of the cases, without a long term mortgage loan.

Figure 14: New housing construction (completions) in Romania in 1 000

	1990	1994	1997	2000	2002	2003	2004	2005	2006	2010
Total	48.6	36.7	29.6	26.3	27.7	29.1	30.1	32.9	39.6	45
private	5.8	25.9	26.1	24.7	24.2	22.7	25.0	27.3	34.7	
public	42.8	10.8	3.5	1.6	3.0	6.1	4.9	3.8	4.8	

Source: N.I.S., IIBW estimate

The only way to achieve the urgently needed construction output and refurbishment volumes is through an integrated housing policy system based on efficient promotion models and effective models of Public-Private-Partnership. Without social rental housing in significant quantities it seems impossible for countries as Romania to catch up with the Western European production numbers (Figure 11). The



examples from many Western European countries show that a well established social housing sector is an important stabilising factor in the housing production. The housing construction furthermore offers significant steering effects, especially regarding economic, social, environmental and regional policy aspects. The supply of adequate housing construction is a basic requirement for controlled, economic driven migration. The housing stock should be seen as a critical infrastructure issue for Romania and therefore as a security factor. A failure of this infrastructure has serious social consequences. Housing policy is therefore social and economic policy.

Consequence of the insufficient supply of affordable housing are split housing markets with cheap stock prices and very high market prices (see chapter B.2.1, p. 42 ff.), an extremely low labour mobility and often simply unacceptable housing conditions.

## **A.2.8 INSTITUTIONAL SETTING**

### MINISTRIES

The Ministry of Development, Public Works and Housing is responsible for the design, promotion and implementation of housing policy and housing programmes in Romania. Its main objectives are:

- developing housing construction and new residential areas;
- improvement of the existing housing stock;
- improvement of the legal, regulatory and institutional framework.

For the housing sector, competences of the Romanian Government are dispersed across five ministries: the funding of housing programmes as well as the technical and physical management of the housing stock is assigned to the Ministry of Development, Public Works and Housing. The Ministry of Administration and Internal Affairs is authorised to provide subsidies for energy consumption to low-income families, formulates and implements regional development policies, ensures the coordination between the state and local Government interests. Issues related to energy use are decided by the Ministry of Economy and Commerce. The Ministry of Justice is responsible for the Real Estate Register. The Ministry of Agriculture manages land matters.

In developing a Romanian Housing Strategy, the Ministry of Development, Public Works and Housing has so far focused on the following priorities:

- relieving genuine housing emergencies, for example the reconstruction or relocation of dwellings damaged by natural disasters;
- the completion of a large number of previously uncompleted pre-revolution buildings;
- to stimulate the housing construction sector and promote the market supply of new housing;
- designing and implementing the legal framework as a foundation and prerequisite for the operation of a housing sector based on market principles.

### LOCAL AUTHORITIES

Local authorities have responsibilities for preparing development plans and ensuring the provision of infrastructure to support development. That is why development of private residential projects is still minimal. The absence of land use and development plans couldn't facilitate further investments. The lack of basic amenities seems to be one of the most disturbing aspects of housing quality in Romania.

## ANL – THE NATIONAL HOUSING AGENCY

The Agentia Nationala pentru Locuinte (ANL) was established under Law 152/1998 in September 1999 as a self-financing institution of public interest. Its main objective is to ensure the development of the housing market. Since its establishment, this institution has been regarded as a practical solution to existing housing problems and an adequate channel, through which the State may provide assistance to its citizens. At present ANL operates under the authority of the Ministry of Development, Public Works and Housing. It has a national network of territorial offices and collaborates with builders, financial institutions, local and central administration authorities and foreign organisations. The two main ANL programmes focus on a) mortgage-financed new residential construction (privately-owned residential units) and b) provision of rental residential units for young people.<sup>1</sup>

The initial mortgage lending programme – focused on mortgage lending for various housing-related purposes and the construction of new residential units whose building works was supervised by the Agency – underwent structural changes in early 2003. As a result of a successful public-private partnership established between ANL and several banks, ANL stopped its lending activities, as its pilot programme has accomplished a pioneer catalyst role. ANL is now responsible for new residential construction on sites provided by the local authorities for this purpose. The banks grant mortgage loans to eligible applicants who are registered in the ANL database and wish to purchase new residential units built through ANL. At the end of 2006 some 1 400 mortgage-financed residential units were completed and other 1 500 were under construction. In 2005 the subsidies for new construction of privately-owned dwellings has been cancelled because of its interference with private market activities. A new law passed early 2007 for providing a subsidy of up to 20% of the house value, but not more than € 10 000, for entitled people who build their house with an authorised developer or construction company.

The programme for rental housing construction has been gradually implemented throughout the country. By end of 2006 some 17 600 new rental dwellings were handed over to the beneficiaries and other 5.200 were under construction.

According to the latest amendments to Law no. 152/1998 on the establishment of the National Housing Agency, the Agency's objectives are:

- Conclusion of financial agreements.
- Attraction and management of financial resources for construction, purchase, rehabilitation, consolidation and extension of dwellings, including rental dwellings.
- Promotion and development of programmes concerning the construction of rental housing units for young people, the construction of social and emergency dwellings, the construction of other dwellings owned by the state or territorial-administrative units as well as interventions to existing buildings, for the implementation of measures established by Government programmes, all of them at a sectoral and national level. The Government programmes and their financing sources are approved by the Government at a proposal of the Ministry of Development, Public Works and Housing. The investments are financed from the state budget and/or the local budgets, as well as from domestic/foreign loans and other legally constituted sources.
- Acquisition of adequate plots of land for housing construction and, as the case may be, monitoring of programmes regarding the completion of the related infrastructure.

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<sup>1</sup> For further informations on ANL see below, p. **Fehler! Textmarke nicht definiert..**

- Initiation and/or development of programmes concerning the construction of privately-owned mortgage-financed housing units under market conditions. The construction is financed from the beneficiaries' own sources and/or from mortgage loans granted to them by banks and other financing institutions authorised according to the law.
- Conducting market surveys on the real estate market (housing demand and supply, sites, costs etc.).

#### UNIVERSAL BANKS AND MORTGAGE COMPANIES

Almost all of the mortgage loan activities in Romania are supplied by commercial banks that are licensed, regulated and supervised by the National Bank of Romania (NBR).

As a result of privatisation, hyperinflation and various economic and banking crises, almost all of the commercial banks in Romania are foreign-owned. With the privatisation of Romania's largest bank – Banca Comerciala Romana (BCR) – completed in 2005, 27 of Romania's 31 commercial banks, with 80% of total bank assets, are by the majority foreign-owned. Foreign bank branches have also a significant presence with about 8% of the bank assets.

Commercial banking is fairly concentrated, the 5 largest commercial banks hold 62% of all assets and 61% of deposits as per June 2004, with BCR accounting for 29% of total assets.

Most lenders offer mortgage loans as well housing (or real estate) loans in local and foreign currency with various tenures. With rates declining for RON-based mortgages and hard currency rates also declining, fixed rates are not popular. Housing (or real estate) loans can be offered with more flexible terms than mortgage loans, the main difference being that the loan purpose do not have to be related to housing. Under NBR norms, guarantees or security equivalent up to 133% of the loan value are required.

There is little information on mortgage portfolios. The average loan sizes are estimated between € 35 000 and 40 000, the Loan to Value Ratio (LTV) between 60% and 65%.

The main sources of funds for commercial banks, and thus for mortgages, are own deposits, to a much smaller extent capital from their parent foreign banks and in some cases international lending institutions like the EBRD and the IFC.

The new mortgage market legislation has just been approved, aiming to facilitate mortgage bonds issuance and securitisation. However, the possible investors for such bonds – pension funds, insurance companies and mutual funds – are not well positioned yet in Romania.

It should be noticed that foreclosure for residential mortgages is largely untasted, and the Credit Bureau, owned and established by banks with 27 members, has been set up as a private fee-based service.

The Romanian Appraisers Association ANEVAR accredits all appraisers and adopted uniform methods of appraisal that conform with the EU association, TEGOVA and North American practices.

## CONTRACT-SAVINGS BANKS IN ROMANIA

As other CEE countries, Romania has adopted the German and Austrian system of contract-savings banks for housing, Bausparkassen. These institutions are designed to collect deposits at a below-market rate and recycle the low rate on their funding side into low rates on their loan side.

The contract-savings banks may prove popular in Romania, both because the subsidy is significant and because the potential profitability of these banks could be attractive, thus inducing the entry of several competitors and extensive marketing efforts.

The Romanian building society system can be summarised as follows:

Main act:	October 2002, first operations in June 2004.
Regulations:	Ministry of Development, Public Works and Housing / Ministry of Finance regulation / supervision of premium payment. Central Bank regulation / supervision of the building societies, following certain special regulations and restrictions, following mainly German models.
Yearly premium:	In 2004-2005, 30% of savings but limited to the monthly average gross salary per contract. Starting with 2006, 15% of savings but limited to € 120. For persons under 35 years or with kids, the premium may vary between € 135 and € 150.
Minimum saving period:	18 months to get a housing contractual loan (currently at 6%) if 40-50% of contracted sum is saved. Interim loans are available at a market rate. Saving for five years required to cash the premium without use for housing.
Housing purpose requiring:	Housing purpose required to withdraw savings and premium, except after five years. Loans are only for housing purposes as demonstrated by justifying documents.

Other relevant aspects of the system include:

- Interest and premium on savings exempt from taxation (interest on regular deposits is subject to taxation).
- Starting with the new 2007 fiscal code physical persons can deduct up to 300 RON from the annual taxable income.
- Parameters of the state premium embedded in law, with Parliament action needed to change it.

The first contract-savings bank in Romania was set up in 2004 and the second immediately afterwards in 2005. Both of them have German and Austrian Bausparkassen participation.

## **A.3 EXISTING HOUSING POLICY STRATEGIES**

### **A.3.1 POLICY STRATEGIES RELATED TO HOUSING**

Romania has no long-term housing sector policy for the moment, so there is no document that formulates long-term objectives and priorities for the national housing policy, as well as evaluation and measurement criteria for the implemented programmes.

The only official policy document is the Governmental Programme for the period 2005-2008 approved by the Romanian Parliament by 2004. This document provides a description of the Governmental housing sector programmes and their implementation priorities.

The main housing policy programme continues to be the construction of rental housing for young people up to 35 years. Started in 2001 and developed by the National Housing Agency, more than 17 000 dwellings have been completed by now all over the country. It should be noticed that after 2004 the number of completed dwellings decreased significantly, maybe because of the floods effects of 2005.

Starting with 2006 the Government started programmes addressing the existing housing stock for refurbishment against seismic risk and thermal rehabilitation. The legislative framework has been improved significantly, but a public campaign for increasing the awareness and coordinate the actions of all the stakeholders involved, is still missing.

All the existing Governmental programmes are described in A.4.1, p. 22 ff..

### **A.3.2 POLICY STRATEGIES ON URBAN DEVELOPMENT AND LAND**

#### SPATIAL SETTLEMENT DEVELOPMENT

- Regulation of spatial settlement development with specific provisions for each urban function and activity, including housing, in relation with the territorial development of the counties and the National Territorial Development Plan (including the Section I regarding the national transportation networks – Law no. 71/1996, revised and submitted for approval, Section III regarding the protected areas – Law no. 5/2000 and Section IV regarding the settlements network – Law no. 351/2001).
- General information regarding the housing structure at national level as a basis for the foundation of the housing policies.

23 of the total 41 counties have County Territorial Planning Plans, while other 4 are in process of approval and 4 are in process of revision and updating. Regulations have been elaborated concerning each of the approved Sections of the National Territorial Development Plan. Since 2001 6 regulations regarding Section I, 7 regarding Section III, 7 regarding Section IV and 98 other regulations concerning urban and territorial planning activities have been completed.

The existing regional and urban development plans are regarded insufficient in quality and number, particularly regarding the necessity of such plans to acquire European funds for housing.

#### TOWN PLANNING CONTROL

Romania is divided in 41 counties plus the Municipality of Bucharest and more than 2 500 communes. Altogether there are eight development regions. Town planning activities are regulated by the Law on territorial and urban planning – Law no. 350/2001. 100% of cities and towns and 99% of the communes have general urban plans and urban regulations approved. An updating process started with priority on Pan-European road corridors implementation. During the last 4 years 532 urban documentations have been advised by the Government concerning the inner city developments, revitalisation of historical centers, new housing developments etc., while according to the law the approval is decided at local level.

#### PROTECTION OF NATURAL RISK AREAS

- Specific regulations for the development of the natural and built environment exposed to natural risks (earthquakes, floods) with impact on the development of residential areas within the human settlements, Section II regarding the water ways (Law no. 171/1997) and Section V regarding the natural risk areas (Law no. 575/2001).

### **A.3.3 HOUSING POLICY STRATEGY FROM 2005**

In 2005 the US consultant Douglas Diamond from the Urban Institute worked out a “Housing policy and subsidy review with recommended specific policy reforms”. The document was prepared for the MTCT and financed by the World Bank.

His identification of possible goals of a Housing Strategy includes:

- Promotion of new construction;
- Homeownership opportunities for young families;
- Rental opportunities for young families;
- Rental opportunities for poorer people;
- Long-term maintenance of panel block buildings;
- Development of the housing and housing finance markets.

All these goals seem eligible and are incorporated in the present study.

## **A.4 EXISTING HOUSING LEGISLATION<sup>1</sup>**

### **A.4.1 LEGAL DEFINITIONS**

#### OWNERSHIP ON DWELLINGS

A significant portion of the Romanian population currently dwell in condominiums. The Romanian Constitution only restricts non-Romanians from owning land in Romania – it does not prevent foreigners from owning buildings constructed on land in Romania. It is therefore perfectly possible for non-Romanians to purchase flats in Romania. The Romanian Housing Law was adopted in the year 1996 (Law no. 114/1996) and modified nine times since then. The Housing Act was inspired by the French Law of 6.7.1989. The sale-purchase agreement for dwellings or land is regulated by the Romanian Civil Code from 1864. For the seller there is a legal obligation to pay taxes on the transfer of immovable propriety and there is a buyer obligation to register the new legal situation in the Land Registration Book.

Definition on different kinds of dwellings can be found in art. 2 of the Romanian Housing Law. According to this paragraph a dwelling exists of one or more rooms, with outbuildings and necessary utilities fulfilling the housing requirements of a normal person or family.

More than that, the Romanian legislation defines specific types of dwellings:

- Social housing: Dwellings with subsidised lease, allocated to individuals or families, whose financial situation otherwise would not allow them to access to tenements leased on the market. Social dwellings are public property of the local authorities.
- Official residence: Dwellings for public servants or employees of certain institutions or businesses, allocated under the employment contract, which may be financed by the State, local authorities or by companies.
- Intervention dwelling: For employees of companies who, by their employment contract, perform activities or jobs requiring their presence permanently or in case of emergency, inside or in close proximity to the business premises, built under the same conditions as those stipulated for official residences.
- Protocol residence: Tenement for persons elected or appointed to certain posts or public positions, exclusively for their term of office. Protocol residences are state property.

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<sup>1</sup> This chapter is written by Ciprian Paun, one of the responsible authors of the new Condominium Law (chapter C 3).

- Emergency dwelling: Intended as temporary accommodation after natural disasters or accidents, or where homes have been demolished to permit the construction of public utilities, or rehabilitation work which cannot be undertaken while homes are occupied. Emergency dwellings are financed and built under the same conditions as social housing.
- Holiday residence: A dwelling temporarily occupied as a secondary residence, for rest and leisure.

#### PRIVATISATION OF HOUSING

Decree-Law 61/1990 enabled the privatisation of housing units built with State funds by selling them to tenants who could make a down payment and sign the purchase contract backed by a loan. Persons not citizens of Romania wishing to settle in Romania could purchase a housing unit with foreign currency. Legally, repatriated Romanian citizens had priority if they purchased a dwelling with foreign currency.

#### OWNERSHIP ON LAND

The property right is of a fundamental nature in any democratic society, and it is the State to ensure its preservation. Therefore its fundamental features must be regulated by the Constitution (as also resolved upon by the Constitutional Court of Romania by Decision no. 4/19921). The general regime of property in Romania was established with the revision of the Constitution in 1991, adopted in 2003. Prior to the revision of 1991 the Constitution did not explicitly guarantee for private property. The constituent legislator made no distinction between the forms of property, namely between private and public property, with respect to this matter. Thus, the Constitution generically provided that "The right of ownership, as well as the claims over the state, are secured", or that "Private property is equally protected by the law, irrespective of the owner" or that "The State protects the property". After the revision, new provisions were added to the Constitution, and some of the initial provisions were restated, which resulted in an exhaustive and clearer regulation of the private property right.

Under the provisions of Article 44 of the Romanian Constitution, foreign citizens and stateless persons are allowed to own land in Romania, subject to conditions resulting from the integration of Romania into the European Union and resulting from other international treaties which Romania has joined a party on reciprocity basis under terms and conditions stipulated by internal laws. With respect to EU member states citizens and legal entities, Law no. 312/2005 states that they can acquire land in Romania, under the same terms and conditions as Romanian citizens and legal entities, as soon as Romania has entered the EU. However, the enactment provides some transitory provisions : (I) Non-residents may buy land for residential purposes or for setting up secondary homes only 5 years after Romania has joined the EU. (II) Agricultural and forestry land (except for farmers acting as commercial entities) may be acquired only 7 years after Romania has joined the EU. The limitation stipulated by the Romanian Constitution also applies to foreign citizens residing in Romania, as a prerequisite to own land in Romania is the Romanian citizenship.

The limitations only concern land. Foreign citizens may own buildings whilst they have only a right of use for the land on which the building is located (the so-called "superficies" right). Additionally, foreign citizens may hold usufruct and usage rights over land located in Romania. The above mentioned limitations do not apply to ownership on land by means of inheritance.

#### OTHER OWNERSHIP RIGHTS

Except for the ownership right, land may be also subject to related rights, among which the most frequently encountered are the usufruct and „superficies" rights. Usufruct is the right to use a distinct real estate and collect its proceeds, whilst the owner of the land is left only with the right to dispose the asset.

By law, the usufruct right is limited to a period of 30 years in case of legal persons. For individuals it may not be granted for a period longer than the beneficiary's lifetime. Being a right in real property the usufruct offers a more stable status to its holder than lease. The „superficies” right is twofold, comprising an ownership right on buildings or other constructions located on a land belonging to another person, and usage rights that the „superficiary” enjoys on this land for the period of the existence of the building or construction. Foreign citizens and foreign legal persons may own constructions and enjoy the „superficies” rights on the land underneath the construction.

#### CONSESSIONS

The Emergency Ordinance no. 54 of 28 June 2006 regarding the regime of public assets concession contracts regulates the juridical regime of contracts for public asset concessions, which are defined as contracts between a public authority, called the grantor, and another party, called the grantee, who acts at his own risk and liability, regarding the rights and obligations to exploit a public asset in exchange for royalties.

Plots of land in the private property of the State or local authorities, which are destined for construction purposes, may be granted under concession, as per Law no. 50/1991 regarding the authorisation of construction works, by public tender and with the observance of urbanism and land planning documentation. By way of exception, the concession over the private property land may be granted without public tender, by payment of a royalty, if, inter alia, the following activities are envisaged:

- a) Buildings for public utility or social objectives, with no commercial interest;
- b) Residential buildings by the National Housing Agency;
- c) Residential building for beneficiaries aged under 35 years;
- d) Expansion of existing constructions.

Concessions on land in public property may be granted only for construction purposes pertaining to objectives of public interest.

### **A.4.2 DEVISION OF AUTHORITY IN HOUSING BETWEEN STATE, COUNTIES AND MUNICIPALITIES**

#### LEGAL SOURCES

Law no. 152/1992 amended by the Government Ordinance no. 105/2005 and approved by the Law no. 10/2006; Law no. 215/2001 about public administration amended by several legislative acts, Law no. 562/2004, Law. no. 341/2004, Emergency Government Ordinance no. 130/2004.

#### HIERARCHY OF LEGISLATION

Romanian legislation is structured in the following hierarchy of legistic instruments:

1. Constitutional Laws;
2. Organic Laws (to be decided with simple majority of all Members of Parliament) for matters of superior importance, such as electoral legislation or organisation of political parties;
3. Simple Laws (to be decided with simple majority of all present Members of Parliament);
4. Government Ordinances, on the basis of enabling acts, in force only for limited periods of time;
5. Decisions of the Government;
6. Directive of Ministers;
7. Decisions of Ministers.



The new Romanian Housing Law proposed in the study in hand (Part C) recommends the application of Simple Laws. Detailing shall be designed as Decisions of the Government and, for particularly flexible regulations, as Decisions of the Minister of Development, Public Works and Housing.

#### COMPETENCES OF MINISTRIES

The executive institution in implementing housing policy is the Romanian Government. After the reorganization of the structure of the Government in 2007 the Ministry of Development, Public Works and Housing is considered to be the “line ministry”. Of big importance is as well the Ministry of Finance and Economy that facilitates the financing of the sector through budget allocation. The Ministry of Justice is superintends the legal conformity of new proposals.

#### NATIONAL HOUSING AGENCY

A main instrument of State competence in housing is the National Housing Agency, which was established by Law no. 152/1998. It operates under the authority of the Ministry of Development, Public Works and Housing.<sup>1</sup>

#### MUNICIPALITIES

Law no. 215/2001 regulates the general regime of local autonomy as well as the organisation and functioning of the local public administration.

The Law defines in its first articles the notions of social and community administration, urban agglomerations, inter-community development associations, deliberative and executive authorities, local councils, bodies providing public services and public utility services in the local or county interest, territorial administrative subunits and metropolitan areas.

The major authorities of local Councils in the field of housing are:

- Administration of public and private property of communes, towns and municipalities;
- Management of the public services provided to citizens;
- Internal and external institutional cooperation;

Securing the economic and social development of communes, towns and municipalities.

The Law entitles the local councils to establish and run, within the limits of their own financial means, institutions and public services of local interest according to local needs. The Law introduces important provisions concerning public assets and works.

Public domain assets may be capitalised by entrusting them to public corporations or public bodies of administration, by lease or hire. The final decisions regarding this matter shall rest with the local or county councils, as appropriate. Likewise, local and county councils shall be allowed to decide on the acquisition of assets or the sale of assets from their private property. The sale, lease or hire shall be performed by public tender.

According to Art. 38/6/17, the local Councils provide the general framework for social housing and have to make available the financial means to promote social housing construction.

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<sup>1</sup> For further informations on ANL see above, p. 18.

Local authorities should be involved in drafting Strategic Housing Investment Plans and link them to urban development tools. The Strategic Housing Investment Plan should provide details on the location of current development and should identify any constraints (ownership, infrastructure, contamination, planning, access, or funding), steps to be taken to mitigate them and lead responsibilities. The Strategic Housing Investment Plans should include an estimate of the likely costs of the proposed developments and should indicate the anticipated sources of funding.

### **A.4.3 EXISTING LEASE LEGISLATION**

#### LEGAL SOURCES

Romanian Civil Code, Law no. 114/1996 on housing, Emergency Ordinance no. 40/1999.

The general private law stems from Romania's Civil Code, which was elaborated in 1864 on the basis of the French Code Napoleon (with its amendments), the project for an Italian Civil Code, the Belgian mortgage legislation (from 1851) and old Romanian Civil Laws (Codul Calimach, Codul Caragea). The third title of the third book of the Romanian Civil Code (articles 942-1204) constitutes the *ius commune* for contract law. The general rules on the lease contract contained in the seventh title of the third book of the Civil Code may also be qualified as *ius commune*. The aforementioned title dedicates its second chapter to special rules common for the lease of buildings and rural land. The third chapter provides for specific rules for renting housing and has to be regarded as *lex generalis* with respect to the Housing Act.

The Civil Code does not require the written form for a lease contract, but explicitly rejects evidence by witnesses in case of an orally concluded contract that has not been carried out (executed). Sub-lease is allowed, if it is not expressly forbidden in the contract. Rights and duties of both landlord and tenant are prescribed by dispositive norms.

Regarding the period of the contract, it may be limited and the contract will be considered terminated at the end of the time limit, without the need for further notice. In case of a contract unlimited in time, the Civil Code gives the right to cancellation to both parties, under the condition of the observance of the time limits imposed by local customs. If, at the end of the time limit of the contract, the tenant remains and is allowed to have the possession of the dwelling, the lease will be considered renewed (*tacita reconductio*). The Civil Code further stipulates that the contract does not end with the death of the landlord, nor that of the tenant and has to continue even in the case of subsequent purchase of the tenement by a third person, if the parties to the lease contract had not agreed to the contrary.

Chapter 3 of this title enumerates in a more detailed way the rights and duties of the parties to a lease contract. The Civil Code regulates also another form of "lawful possession" of dwellings: the habitation right – a real property right, having a similar legal regime as the usufruct right.

Consumer protection legislation does not interfere with private lease law. The Romanian legislation in this field (Ordinance no. 21/1992 concerning consumer protection, amended and extended by Ordinance no. 58/2000) applies to the "commercialisation" of products and services, thus eventually it may be used in cases of commercial housing lease.

The lease contract for real estate (the owner being a natural person) shall be registered with the taxation office in charge. The lease contract signed at the taxation office is on a typed-form, for any special clauses the parties have the possibility to conclude an additional deed. If the lease contract is concluded

with a legal entity (the owner) it is a commercial relation and therefore not necessary to register with at the taxation office.

The following documents are necessary for the lease contract:

1. For the owner as natural person: deed of property, plan of the building (apartment), identity papers.
2. For the owner as legal entity: deed of property, plan of the building (apartment), certificate of incorporation, fiscal code, by-laws, authorised signature.
3. For the tenant as natural person: passport, employment certificate.
4. For the tenant as legal entity: certificate of incorporation, fiscal code, by-laws, authorised signature.

Romanian law does not impose limits regarding the duration of the lease. However, if the lease is concluded for a period longer than 3 (three) years, the law provides for the obligation to register the lease with the relevant land registry, for third parties ostensibility purposes.

#### PARTIES' OBLIGATION ACCORDING TO THE HOUSING LAW

Lessor's obligations:

The lessor has the obligation to ensure to the lessee the use of the real estate for the entire duration of the lease. To this end, the lessor must hand over the asset in a state fit for its normal use. In the case of a building or construction lease, the lessor should perform the necessary repairs during the lease, as well as the overall repairs and the repairs entailed by the normal use of the real estate. The lessor is liable for any hidden flaws of the real estate and bound to guarantee the lessee against any disturbances that could impair its use, under terms and conditions similar to those applicable to the sale-purchase contract.

Lessee's obligations

Basically, the lessee has the obligation to use the asset as a diligent owner and according to the destination of the asset, established in the contract or derived from the circumstances of use. Any breach of such obligations, via unauthorised alterations or inappropriate use (especially in the case of constructions), entitles the lessor to request the termination of the lease with a compensation for the restoration of the asset to its initial state. The obligation to use the real estate as a diligent owner implies the obligation to maintain the asset in a usable state, as it was initially handed over. Therefore, the lessee has the obligation to make small repairs, for the mere maintenance of the real estate. The lessee must pay the lease under terms and conditions and within the deadlines stipulated in the lease contract. As a rule, the lease has to be paid periodically, at regular time intervals (usually monthly), but exceptions are allowed upon mutual agreement of the parties. Should the lessor sell the leased real estate, the purchaser is bound to observe the lease concluded before the sale, if the lease was concluded in an authentic form or under private deed with certified date, prior to the date of the sale-purchase contract.

#### SOCIAL HOUSING

The lease regime for dwellings owned by the State and local authorities is regulated by emergency ordinance no. 40/1999 and is based on the constitutional norm that ascribes to the State the function of guaranteeing measures of social protection and ensuring a decent standard of living.

The Government Emergency Ordinance 40/1999 was introduced as a consequence of problems associated with the restitution of dwellings. It established the protection for tenants and determined rent levels. Thus, rent contracts for housing units are valid for five years - a provision which applies in cases where dwellings are subject to restitution to former owners or their heirs. A tenant's non observance of

the Emergency Ordinance allows the owner to apply to the court for non-conditional eviction of the tenant and payment of damages and interest. Similarly, the owner's non-observance of the Ordinance's provisions can result in the prolongation of the rent contract prior to the signing of a new contract, and the owner is not able to evict the tenant for non-payment of the rent. The two parties can also agree freely to extend the contract for a longer period. Local councils are obliged to offer suitable accommodation to tenants, who have lost their homes in this way, within one year – as to anyone with a right for social housing – if the average monthly gross income per family member is lower than the national average. The landlord has to provide an alternative dwelling in the same settlement or elsewhere with a minimum living space of 15 m<sup>2</sup> per person. The tenant does not need to accept the offer if the conditions do not correspond with those stipulated in the Ordinance.

The Housing Act created a new concept of “public housing”, owned by the local authorities, but not subject to sale to the tenants. It can be created by new construction (zoned accordingly in town plans) or by the purchase and rehabilitation of existing buildings. The present tendency is to purchase dwellings on the market and let them at social rents.

The law stipulates minimum norms for floorspace and facilities. It also specifies renting to families with low disposable income and who benefit from social security. The tenant's contract is for five years, with the possibility of renewal on the basis of written proof of income. The law also specifies the contract's provisions and conditions of cancellation. In allocating public housing, the local authorities have to give priority to specific groups: young married couples (each below 35 years of age), young people leaving social care establishments (after 18 years of age), first and second degree disabled persons, other people with handicaps, pensioners, veterans, war widows and others. At present, overall priority is given to persons losing their homes through restitution. The law stipulates the kinds of family and person who cannot benefit from public housing. Public housing is financed from local budgets in accordance with Law 189/1998. The State assists in the construction of public housing by transfers from the national budget. Individuals or businesses may also assist in the construction of public housing through donations or financial aid.

#### RENT REGULATION

Rent levels are determined by the same Governmental Ordinance – giving a monthly tariff by category, settlement, zone, etc. – and calculated considering local taxes and fees added to the basic rent. The basic monthly rent is updated on 31 January each year, depending on the annual inflation rate. The maximum rent for public or private housing units (including office dwellings and hostels for the employees of commercial and State organisations) must not exceed 25% of a family's monthly gross income, or of the national average, whichever is the lower. Tenants are required to inform the owner of income changes (conditions where the landlord can request additional information on a tenant's family income are not foreseen in the legislation). Where a tenant is recognised as eligible for social housing, the maximum rent equals 10 per cent of the family's monthly gross income, calculated over the past 12 months: the difference with the property's nominal rent is then subsidised by the local authority.

New rental contracts are to be registered with the local authority. Contract termination and evictions due to disagreements over rent increases are prohibited: any disputes between the parties are submitted to the courts. Homeowners whose property is occupied by tenants paying a smaller rent than calculated by the Emergency Ordinance are exempt from real estate and land taxes for that property during the period of the rental contract.

#### **A.4.4 EXISTING CONDOMINIUM LEGISLATION**

##### LEGAL SOURCES

Law no. 114/1996, Law no. 230/2007 regarding the establishing, organisation and functioning of homeowners associations.

By privatising blocks of flats in Romania and selling them to sitting tenants, the State created conditions for the new owners to establish their mutual interests, and hence to engage in the joint management and maintenance of common parts of the buildings, structures and facilities. "For this purpose, the owners shall form an association with the capacity of a legal person", as the Act states. The Act's definition of an homeowners association is a nonprofit company for improving and managing the block. Under the Housing Act, condominiums may be managed by natural or legal persons, associations, public agencies, or specialised companies. In each case, however, the management is to be appointed by and under the control of the joint owners, in whose interest it operates.

The members of the homeowners association have the right to participate and the right to vote in the general meeting, the right to put up their candidacy, to run for, to choose and to be elected in the organisational structure of the homeowners association. The revenues from the use of the common parts belong to the homeowners association. These revenues are added to a special funds of the association for repairs and investments regarding the common parts and are not paid to the owners. The owner has the duty to maintain his individual property in a good condition, on his own expense. No owner can break, affect or harm the individual or common property right of other owners.<sup>1</sup>

The major obligations of the housing manager of a multi-apartment block are to:

- Administer the goods and funds;
- Prepare the contracts with all suppliers of services;
- Inform all inhabitants in the block of the regulations governing their cohabitation;
- Represent the owners' interests in contracts signed with the public authorities and
- Fulfil any other legally contracted responsibilities.

The first version of the Housing Act required owners associations to be established in all privatised blocks within 12 months from the date at which the legislation came into force. This deadline was omitted from later enactments, even though these associations are still considered the only recognised institutional entity for residential buildings.

According to the official regulations, the benefits for the owners of creating owners' associations are:

- The association will act as a legal person on the market-place, representing the owners as a body. To attain the status of a legal person, the statutes, an association agreement and the minutes of the general meeting have to be applied and registered with the local financial authority.
- Each owner (representing the household) can participate in planning investments and works on the premises and judge the effectiveness of these expenditures. All owners have the right to check the financial status of the association, to vote for different priorities, budgets, and financing.
- Options for services and regulations may be decided.
- On the other hand ownership entails certain responsibilities and restrictions: Every owner and household is for himself and collectively responsible for the technical repairs and quality of the building and for any jointly accepted obligations. In sharing the premises and common spaces, all

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<sup>1</sup> Art. 13,14.

residents have to follow the relevant rules and regulations guaranteeing normal social relations. All obligations are subject to a contract, and every party has to be informed of their cost (otherwise the parties are not responsible for them).

The Law no. 230/2007 establishes precise regulations regarding the formation, organisation, and functioning of owners associations. The owners association, at its first meeting, must elect an executive committee which will represent the association in its operations with public authorities and service providers. The general assembly must determine the number of committee members.

The general meeting of the homeowners association has the following tasks:

- a) Election and demission of the chairman, the members of the executive committee and the supervisor of the members of the supervisory board of the homeowners association;
- b) Adoption and modification of decisions;
- c) Adoption and modification of the revenues and budgets;
- d) Authorisation of the executive committee represented by the chairman of the homeowners association to hire or dismiss an administrator or a utility company;
- e) Other attributions that were given through the statutes, through association agreements or through the vote of the associated owners.<sup>1</sup>

The executive committee, represented by the chairman of the homeowners association, has the following tasks:

- a) Fulfills the decisions of the general meeting and takes care that the legal provisions of the statutes and the agreements of the homeowners association are respected;
- b) Gives off, if it's necessary, written decisions for rules that need to be obeyed in order to fulfill the decisions of the general meeting and for respecting the legal provisions and the association agreement and also other decisions regarding the homeowners associations activities;
- c) Makes a projection of revenues and cost budgets and prepares general meetings;
- d) Regulates the use, maintenance, reparation, replacement and modification of common parts;
- e) Makes or proposes measures and activity plans and sees for their fulfillment;
- f) Supervises all activities inside the homeowners association, specially the situation of monthly collection and paying of costs;
- g) Signs and cancels contracts for the homeowners association;
- h) Takes obligations for itself or for the members of the homeowners association in the interests of the building;
- i) Sues or defends in his name or in the names of the members of the homeowners association, the interests of the building;
- j) Settles a system of penalties for debts posted on the payment sheet for the homeowners association costs, according to the legal provisions;
- k) Signs the homeowners association documents;
- l) Assures the up to date completion of the technical book of the construction;
- m) Assures the follow-up of the behavior of the construction, during its whole existence;
- n) Manages exceptional or critical situations;
- o) Carries on any other attributions that the decisions of the general meeting gave to it.<sup>2</sup>

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<sup>1</sup> Art.27.

<sup>2</sup> Art.30.

The executive committee is ultimately responsible for ensuring the physical integrity of the building(s) operated by the owners association. These responsibilities include facilitating the adoption of a management plan, ensuring adherence to the plan, ensuring that the building and adjacent territories are well maintained, and contracting with service providers.

For important tasks in economic use, maintenance, reparation, consolidation, rehabilitation and modernisation of common parts, the owners association can acquire, in the name of the owners and each of them signing, mortgage loans or any other way of crediting, according to the legal provisions.<sup>1</sup>

Constructive modifications and the utilisation of parts of the building for other purposes, such as advertising, can be done only through the approval of the executive committee and with the agreement of the owners that are directly affected.<sup>2</sup>

The change of use of apartments, as well as of spaces with other destination than living, can be done only with a notice from the executive committee and the agreement of the neighbouring owners.<sup>3</sup>

The common parts can be used by a third party only with an agreement of the majority of members of the owners association and the neighbouring owners, through a contract of rent, use or concession.<sup>4</sup>

The financial year is the calendar year. The executive committee has to prepare an annual budget of revenues and costs, sufficient to cover homeowners association costs, including the necessary funds needed for it to organize and to function. The owners are obligated to approve an annual reparation fund for common property. The executive committee will prepare an annual forecast for filling up this fund. Payments for reparations or improvements on common property will be provided from the reparation fund. The owners can approve any other special funds.

#### **A.4.5 REGULATIONS ON HOUSING MANAGEMENT AND MAINTENANCE**

##### LEGAL SOURCES

Law no. 114/1996 (republicata M.O. no. 331/26.11.1997), Law no. 145/1999, Governmental Ordinance no. 85/2001, Law no. 234/2002, Governmental Ordinance no. 400/2003, Governmental Ordinance no. 781/2006, Governmental Ordinance no. 1.386/2003, Governmental Ordinance no. 5/2001, Law no. 295/2002, Governmental Ordinance no. 142/2002, Law no. 5/2003.

The General legislation on housing management and maintenance is supplemented by comprehensive specific regulations.

In Romanian language the correct term used instead of “housing management” is “housing administration”. A housing estate is self-managed by the executive committee of the owners association, by a property management company or by a hired on-site manager employed by the association.

For the administration, that includes activities of technical administration, accounting and pay office, the homeowners association can hire a physical person licensed as administrator or can sign a contract of management with judicial persons specialised and authorised, that have as main activity the building

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<sup>1</sup> Art.43.

<sup>2</sup> Art. 41.

<sup>3</sup> Art.42.

<sup>4</sup> Art.39.

management payable by tariff or by contract.<sup>1</sup> In order to protect the interests of the owners and of the owners association against the risks of the management activity, the administrators can sign insurance policies of civil professional responsibility.

The administrator has the following main tasks:

- a) Professional provision of services;
- b) The management of physical assets and financial funds;
- c) signing any necessary documents for hiring the providers of utilities for the economic use and maintenance of the building;
- d) Assuring that everyone knows and respects the rules regarding common property;
- e) The fulfillment of any other duty provided by the law.<sup>2</sup>

The property manager is responsible for the on-site general administration and physical operations . He will manage the on site staff and assure that the management programme is properly executed. The property manager will be responsible for an effective operation and cleanliness of the buildings; for ensuring performance of established preventive maintenance programmes of the buildings and equipment; for hiring, training, and supervision of qualified, competent personnel; and for the establishment of excellent relations with residents. The property manager reports to and answers to the executive committee. He is authorised to operate within the limitations of the approved budget. He organises the completion of work in response to service requests by residents or staff for unexpected maintenance or repairs. This refers to maintenance or repair such as a plumbing problems, sudden roof leak etc. The association has the responsibility of maintaining the common areas, but not the individual units or parts of units.

The municipalities assign licences for the management of residential buildings. Housing managing licences are assigned unlimited. The management and maintenance responsibility is usually limited to the common property. The own dwelling is usually maintained by the owners themselves.

The basic housekeeping chores include: mowing the grass; trimming shrubs and trees; vacuuming and sweeping halls; cleaning common areas, driveways, sidewalks, etc.; snow removal; cleaning light fixtures and changing the light bulbs; washing common area windows.

The homeowners association costs are the following:

- a) Costs per number of persons that live or have any activity in the individual property;
- b) Costs for individual consumptions;
- c) Costs for ownership fraction, divided according to the useful floor space of the individual property;
- d) Costs for utility providers, for individual services of the owners, but financially managed through the homeowners association;
- e) Costs for technical services;
- f) Costs of other nature.

The homeowners association can settle its own system of penalty for debt of the owners against the association, showed on the payment list. The penalties will not be higher then 0,2 % for one day delay and can only be applied after a 30 days period of delay from the settled term of payment. The total of

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<sup>1</sup> Art 35.

<sup>2</sup> Art.36.



penalties cannot go over the total amount of the amount taken into consideration. The homeowners association has the right to sue any owner who didn't pay the homeowners association costs of the homeowners association for more than 90 days from the settled term. The homeowners association has a privileged lien on the individual property, as well a privilege for all the mobile goods of a owner, for the amounts that are costs of the homeowners association and for the court costs of all the debtors. The privilege is written down in the advertising register of real estate of the court, at the demand of the homeowners associations chairman, on the account of the last payment list of the costs that are a debt.<sup>1</sup>

The Law no. 230/2007 regulates the registration of housing managers. An applicant has to be licensed by the mayor, at the proposal of a specialized department of the local public administration authority, on the base of a local council decision.

#### **A.4.6 CADASTRE AND LAND REGISTRATION**

Romanian land registration was conducted in various ways, the main two systems being the transcriptions-inscriptions register and the land books. Beside of these two major systems, other intermediary systems have been regulated: a land registration book system – with limited applicability – for Bucharest and several adjacent areas, and a land recording book system, applicable in certain areas in Transylvania. The Civil Code and the Civil Procedure Code regulate the recording methods by the transcriptions-inscriptions registers in Muntenia, Moldavia, Oltenia and Dobrogea. The land registration system based on the transcriptions-inscriptions register has as a particular character, that the person and not the immoveable is recorded. The system consists of two registers, one for transcriptions in which the transmissions and rights are reproduced, and the other for inscriptions, including notes as to privileges and mortgages. According to these registers it is difficult to determine who is the real owner of an immoveable and the existence of charges, since an analysis has to cover the past 30 years for transcriptions and 15 years for mortgages.

The Law Decree no. 115/1938, applicable in Transylvania, Banat and north of Moldavia has established the land registration system based on land books. This is an effective system of recording, considering both the immoveable and the most precise method for its identification. Using this system an integral land registration is effected, meaning that it imposes the mandatory inscription in the land book of all legal acts and deeds as to real estate. The superiority of the land book system was unanimously admitted and as a proof the Law of Cadastre and Land Registration no. 7/1996 was elaborated, based on which the land registration system based on land books is extended at country level.

In August, 2004 the National Agency of Cadastre and Land Registration was created by the reorganisation of the National Office of Cadastre, Geodesy and Cartography and by taking over the land registration activity from the Ministry of Justice. This institutional reform took place according to the commitments made by Romania regarding the accession to the European Union.

The main tasks of the new organisation are those of regulating, coordinating and controlling the execution of cadastre, cartography, topography, geodesy, photogrammetry and remote sensing works, as well as of ensuring the registration of immoveables in land registration registers, at country level.

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<sup>1</sup> Art. 45-51.

## **A.4.7 OTHER RELATED REGULATIONS**

### RESTITUTION

The new Constitution adopted in 1991 (art. 44) sets out a number of guarantees with respect to the private ownership right, so that the content and limits of these rights are set out under special laws. The Constitution expressly provides that the private ownership right is equally guaranteed and protected by the law, regardless of the holder of such right.

Regardless of the method by which the real estate properties were taken over by the State or by other legal entities, the takeover is legally considered abusive. Under Law no. 18/1991 regarding the land fund, approximately 90% of Romania's arable land, previously held by agricultural cooperatives, was transferred into private ownership of individuals. With respect to residential buildings, the ones erected with state funds (generally after 1950) could be occupied by their holders pursuant to the payment of rent to the state. The sale prices for such buildings, scheduled for payment over long periods (usually 25 years) reflects, in fact, the rent already paid by the lessees, as well as the physical condition of the respective buildings. Law no. 10/2001 regulates the legal status of the right of ownership over real estate properties (lands and buildings) abusively taken over by the state during the period from 1945 - 1989, as well as the method of re-acquisition of such right. Nationalisation, as a method of acquiring ownership rights, as well as "any other methods of coercive transfer of certain goods into public property", on the basis of discriminating criteria, are prohibited by the new Constitution. Law no. 247/2005 regarding reforms in the fields of ownership and justice, as well as certain adjacent measures amended and supplemented the laws regarding ownership (namely Law no. 10/2001, Law no. 18/1991, Law no. 1/2000 for the reestablishment of the right of ownership over agricultural and forest lands, Law no. 7/1996 regarding land survey and real estate publicity).

Persons who (until 2005) lodged a return petition with the mayor's office in the respective locality are entitled to such return. The petition had to be addressed to the authority that held the real estate property. The specifications of the law with respect to the compensation method are clearly focused on the principle of in-kind return. In the case of (partly) demolition of the real estate properties to be restituted, in-kind return is addressed to the vacant land and to the constructions remained non-demolished. Demolished constructions and occupied land shall be compensated.

### OTHER RELEVANT REAL ESTATE LAWS

According to Law no. 34/2006, a mortgage loan for real estate investments may be granted exclusively by universal banks and mortgage banks, the National Housing Agency, mortgage companies and any other entities regulated by special laws to grant mortgage loans for real estate investments. Several provisions of Law 190/1999 were abrogated. Provisions regarding mandatory clauses in a mortgage contract, mandatory insurance contracts and the assignment of mortgage claims have also been amended.

## **A.5 SUBSIDY PROGRAMMES**

Each identified housing programme is characterised by a set of evaluation indicators regarding targeting, transparency, administration, cost effectiveness and other typically reported indicators; detailed rent calculation procedures shall be provided.

## **A.5.1 SUBSIDY PROGRAMMES FOR HOME-OWNERSHIP**

### COMPLETION OF UNFINISHED RESIDENTIAL BUILDINGS

Construction of private housing units through the completion of unfinished residential buildings whose construction commenced before January 1, 1990.

Legal framework: Governmental Ordinance no. 19/1994.

Financial sources: private funds, central and local budgets.

The Ministry approves and coordinates the annual programmes. Local authorities select the applicants under social selection criteria:

- Young married couples, under 35 years;
- Disabled persons (I, II degree);
- Handicapped persons;
- Affiliates of those deceased in the Revolution of December 1989;
- Individuals and families changing their domicile from towns to countryside and work in agriculture or forestry;
- Qualified staff in education and health care.

Only this groups of population are entitled to a single subsidy of up to 30% of the dwelling's contract purchase price.

### NEW CONSTRUCTION OF OWNER OCCUPIED HOUSING

Construction of new privately owned residential units financed through mortgage loans granted by banks.

Legal framework: Law no. 152/1998 regarding the establishment of the Romanian National Housing Agency with later modifications and completions. Methodological Norms for the application of the Law no. 152/1998 regarding the establishment of the Romanian National Housing Agency with later modifications and completions. The Emergency Governmental Ordinance no 148/1999 regarding the regulation of the legal status of the land meant for the housing construction through the Romanian National Housing Agency, with later modifications and completions.

Financial sources: private funds (the down payment) and residential mortgage loans granted by local banks to eligible applicants who are registered in the ANL database and wish to purchase a new residential unit built through ANL.

ANL is responsible for coordinating new residential construction on sites provided by local authorities for this purpose and managing Governmental subsidies (a 20% subsidy from the house price) granted to borrowers who have never benefited from state support. In 2005 this subsidy has been cancelled.

A new law no. 12/2007 passed early this year for encouraging the construction of new privately owned housing units for young people up to 35 years without any residential property, homeless people because of flood effects and other natural disasters, evacuated people from retrofitted properties. For this categories of population the State is providing a subsidy of up to 20% from the housing value but not more than € 10 000, if the housing unit is built by an authorised developer/construction company. Local authorities receive the subsidy applications and pay it to the entitled persons after the construction works are finished. Therefore, ANL has no preferential involvement for developing new privately owned housing units anymore.

## SAVINGS FOR HOUSING PURPOSES

Support for development of the collective saving-crediting system for housing purposes.

Legal framework: Law 541/2002 with its amendments and completions.

## **A.5.2 SUBSIDY PROGRAMMES FOR SOCIAL RENTAL HOUSING**

### NEW CONSTRUCTION

Construction of new social and necessity rental housing.

Legal framework: The Housing Law no. 114/1996, republished, with later modifications and completions. The Methodological Norms for the application of the provisions of the Housing Law no. 114/1996, republished, with its later modifications and completions. The Governmental Decision regarding the approval of the norms for the establishment of the quota from the state budget that might be accorded to the categories of persons stipulated at the article 7 of the Housing Law no. 114/1996.

Purpose:

The construction of social housing for the categories of persons whose income level does not allow access to housing in private property or private rental dwellings.

Financial sources: Local and central budget.

Programme development:

The allocation of the dwellings is decided by the local councils, considering the proposals of the social commissions that analyse the housing applications at local level. Households with average monthly income per family member under a minimum income limit have access to social housing. These income limits are adjusted annually by Governmental Decision. The social housing stock is owned and managed by the local authorities and are not for sale. The necessity housing will be temporary rented to persons and families whose dwellings became improper and only until the removal of the effects that made their dwellings unusable; the allocation of these dwellings is not bound to income limits. The necessity housing is financed and realised on conditions established for social housing. The difference between these types of dwellings are the post-utilisation conditions. The social and necessity housing may be realised by new construction or rehabilitation of existing buildings. Rents for social dwellings are fixed by the local authorities. They exceed hardly 1/10 of the market level.

### NEW CONSTRUCTION FOR YOUNG PEOPLE

Construction of new rental housing units for young people up to 35 years whose financial means do not enable them to buy or rent a house on market conditions.

Legal framework: The Law no. 152/1998 regarding the establishment of the Romanian National Housing Agency with its later modifications and completions. The Methodological norms for the application of the provisions of Law no. 152/1998 regarding the establishment of the Romanian National Housing Agency.

The Governmental Emergency Ordinance no. 148/1999 regarding the regulation of the legal status of land for housing construction through the Romanian National Housing Agency, with its later modifications and completions.

Financial sources: local and central budgets and foreign loans (CEB - Council of Europe Development Bank, Deutsche Bank AG).

Programme development:

The programme addresses the needs of young people who cannot afford to buy an apartment or rent a privately-owned housing unit.

The housing units are built on sites provided by the local authorities to the National Housing Agency, according to the law, in observance of the legally approved town planning documentation. The necessary infrastructure (sewage, water supply, roads, electricity, gas) is also provided by the local authorities, its costs being covered from their local budgets.

The local authorities assign the housing units built through the National Housing Agency taking into account the applications submitted. These applications are analyzed by the social committees of each local authority on the basis of the criteria established by law.

#### RENTAL HOUSING UNITS FOR YOUNG DOCTORS

The sub-programme to the programme related to the rental housing units for young people focuses on the construction of rental housing units for young doctors and other young specialists.

The sub-programme is targeted to young doctors and young specialists whose income does not enable them to purchase or rent a house. Those who are interested may submit an application to the local authority, which is in charge for the area, in which the hospital of the applicants is situated.

### **A.5.3 PROGRAMMES FOR HOUSING REFURBISHMENT**

#### REFURBISHMENT AGAINST SEISMIC RISK

The multi-levelled residential building consolidation programme for decreasing the seismic risk.

Legal framework:

Government Ordinance No 20/1994 regarding measures for seismic risk decrease of the existing buildings, republished in 2001, completed and amended through Law no 460 / 2001 and G.O. no 62 / 2003 approved by Law no 504 / 2003. Methodological norms approved through Government Decision No 1364 / 2001.

Financial sources:

The necessary funds for financing the costs related to the technical examination of privately owned houses shall be ensured by state budget transfers within the limits of the approved annual funds from the Ministry. The owners of the apartments in multi-storeyed buildings classified in I class of seismic risk, benefit as follows:

- Annual allocation of funds from the Ministry for financing the costs related to the designing and execution of the consolidation works.
- Reimbursement, upon the consolidation works completion of the amounts.
- Paid in advance from the state budget for the execution of the consolidation works, paid in monthly instalments with a reimbursement term of up to 25 years from the date of taking over the consolidation works.

- Exemption of the home owners from the monthly instalment payments as long as the monthly net average income per family member lays under the national average.

Programme development:

Between 1992 and 2003 some 3 000 residential buildings in 26 counties and Bucharest have been examined technically,. Among the buildings examined almost 600 buildings have been classified in the I class of seismic risk out of which 350 are located in Bucharest. Bucharest City is the European capital most vulnerable to earthquakes.

Thus, the main activities of the programme are targeted to the central area of Bucharest.

Between 2001 and 2004 some 40 buildings have been chosen through the annual action programme approved by Government Decisions, out of which 34 in the City of Bucharest.

At the moment, the situation is as follows: for 7 multi-storeyed buildings the consolidation works have been finalised, (6 buildings in Bucharest and 1 building in Targu Mures), for 11 multi-storeyed buildings the consolidation works are still in the process of execution, (8 buildings in Bucharest, 1 building in Braila, 1 building in Suceava and 1 building in Roman), 22 multi-storeyed buildings have the consolidation projects finalised or in various stages of elaboration (20 buildings in Bucharest, 1 building in Galati and 1 building in Bacau).

It should be noticed that the owners are very reluctant in mortgaging their property.

#### THERMAL REFURBISHMENT OF MULTI-STOREY RESIDENTIAL BUILDINGS

Legal framework:

Emergency Governmental Ordinance no. 174/2002 (approved through Law no. 211/2003) with its later modifications and completions. Methodological Norms from 06/12/2006 for applying the Emergency Governmental Ordinance no. 174/2002. Emergency Governmental Ordinance no. 187/2005 (approved through Law no. 260/2006). Law no. 372/2005 regarding building energy efficiency.

Financial sources:

- 34% from the State budget;
- 33% from the local authorities budget (+ERDF);
- 33% from funds of the owner associations (+ERDF).

With this strong support from public funds the necessary investments of the private owners is only around € 1 000 to 1 700 for an average 60m<sup>2</sup> apartment, but only for measures on the common parts of the building (without windows).

Programme development:

A pilot programme started in 2003 for the thermal rehabilitation of 12 buildings intended for social housing, located in cities from the four climatic areas in Romania (Buhusi, Botosani, Braila, Sf. Gheorghe, Targu Jiu, Iasi, Tg. Mures, Campulung Moldovenesc, Zimnicea, Barlad, Baia Mare, Slatina).

The financing has been accomplished with the amount of ROL 64 billion (MTCT) from a Swiss Counterpart Fund. The programme was finalised by end of 2004.

Two other buildings intended for social housing located in Piatra Neamt have been rehabilitated in 2004 from MTCT budget.

Only one private residential building has been rehabilitated within this programme by now (end 2006), mainly because of organisational, financial, social or informational gaps. For 2007 some 670 residential buildings with more than 25 000 housing units are included in the Programme.

Figure 15: Public programmes coordinated by MTCT, Annual housing units completions

	2001	2002	2003	2004	2005	2006
Rental housing for young people (N.H.L. program)	106	2 096	4 937	4 272	3 435	2 773
Social rental housing (Law 114/1996)	441	607	1 339	926	190	242
Necessity housing (Law 114/1996)						
Privately - owned housing (G.O. 19/1994)	1 096	788	430	819	182	201
Privately – owned housing through mortgage loans granted by banks (N.H.L. program)	295	512	142	313	107	94
Total Units	1 938	4 003	6 848	5 758	3 914	3 310
Total mill. ROL	1 614	3 588	4 327	4 724	2 703	2 584

#### A.5.4 SPECIAL PROGRAMMES

##### RECONSTRUCTION OF HOUSING UNITS AFFECTED BY THE HEAVY FLOODS FROM 2005

In order to remove the effects of the heavy floods in 2005, the Romanian Government and private donors reconstructed some 7300 housing units either directly through N.H.L. (1376), or by supplying construction materials to local authorities. Also, about 6300 units have been consolidated with construction materials paid by N.H.L. from central budget allocations.

Financial sources: RON 152.4 mill. (2005) and RON 83.9 mill. (2006) from the state budget.

##### GRANTING LAND TO YOUNG PEOPLE FOR HOME OWNERSHIP

State support provided to young people (up to 35 years) for building privately-owned housing units by granting land to them (250 – 500 sq.m. max.).

Legal framework: Law 15/2003.

##### GRANTING LAND TO YOUNG PEOPLE IN RURAL AREAS

State support provided to young people who live in rural areas or wish to take residence in rural areas by granting land to them (maximum 1 000m<sup>2</sup>) free of charges to build their own home.

Legal framework: Law 646/2002.

There are no relevant figures for this last two programmes.



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- Monthly Statistical Bulletin – N.I.S.: <http://www.mt.ro>
- Real estate law Romania 2006 – Survey:  
<http://www.lp-legal.com/pdf/Chapter%2031%20-%20Romania.pdf>
- Romanian Constitution: <http://www.cdep.ro/pls/dic/site.page?id=371>
- Romanian General Law System: <http://www.nyulawglobal.org/globalex/Romania1.htm>
- Romanian High Court of Justice: [http://www.scj.ro/monogr\\_en.asp](http://www.scj.ro/monogr_en.asp)
- Romanian Housing Agency: <http://www.anl.ro>
- Tenancy law of Romania (study):  
<http://www.iue.it/LAW/ResearchTeaching/EuropeanPrivateLaw/Projects/TenancyLawRomania.pdf>
- The Housing Stock 2007 – N.I.S.: <http://www.insse.ro>
- Romanian National Bank: <http://www.bnro.ro>



# PART B

## EUROPEAN BEST PRACTICE

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### B.1 PRELIMINARY NOTE

Comparative legal research is underdeveloped as a scientific topic. There is only few recent literature available, particularly in the field of housing law. Only few lawyers and legal experts are proficient in the legal systems of different countries. It is different only in segments of law with transnational relevance, such as company law. But for all segments of law with only national significance, such as housing, the driving force for international comparisons is missing. The industries in the field do not demand for comparative legal advice and hence the legal experts did not develop competence. Even at the universities law is a discipline with particular reference on national developments, mostly disregarding international developments. This is evident in the activities of the European Network for Housing Research (ENHR), a cooperation of more than 1000 international housing researchers. Within this network it is well visible, which scientific disciplines in housing research are strongly internationally linked, such as housing economy, geography, sociology and urban geography, and which are not. Amongst the latter is legal research. Among the more than two dozen working groups only one is related to law.<sup>1</sup>

For this reason it turned out to be difficult to identify European best practice in the different fields of housing law. From the very beginning it was clear that the study in hand cannot provide a comprehensive overview on all fields of housing law all over Europe. Regarding the very limited resources and the very tight time schedule it was necessary to concentrate on comparative legal schemes that are regarded as models for a new Romanian Housing Law. The selection of best practices described in this chapter was a decision for models applicable for Romania.

This results in a documentation of best practice for the fields of housing law in different depth:

- Rent law in Europe is well documented in a study of the International Union of Property Owners: "Immovable Property in Europe: Report 2003 about Protection of Property, Taxation, Rentals, Technical Requirements & Services for Property Owners" (UIPI, 2003, see Appendix), and in the Austrian study "Mietrecht in Europa" (Stabentheiner, 1996).
- For condominium law a most recent French study on "Co-ownership in Europe" is available (Association des Responsables de Copropriété, 2007) as well as the UNECE "Guidelines on condominium ownership of Housing" from 2000 and a German study on the topic (Behring/Helbrecht, 2002).
- A Third Sector in Housing between state and market is promoted on the basis of a comprehensive overview on different approaches of non-profit and limited-profit housing all over Europe. Most important sources are publications of CECODHAS, i.e. the European Liaison Committee for Social Housing, Löffler/Bovaird (2005) and own sources of the authors.
- Models of housing maintenance and management legislation is described on the basis of several articles of Martin Lux, Vincent Gruis, UNECE and Literature on Austrian experience.
- The wide field of housing finance and housing promotion refers particularly on studies of IIBW, mainly the feasibility study for a "Housing Finance Agency for Countries in Transition" (Amann e.a., 2006), the UNECE-study on "Housing Finance Systems for Countries in Transition" from 2003 and others.

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<sup>1</sup> The Working Group "Legal aspects of housing, land and planning", coordinated by Jane Ball (GB), Juli Ponce (E) and Wolfgang Amann (A), was founded only in 2006.

- Further descriptions of legal aspects in European housing are found in the two voluminous books of Christian Donner “Wohnungspolitik in der Europäischen Union” (2000) and “Wohnungspolitik in Mitteleuropa” (2006). Further sources on the topic may be found in chapter B.9, “References”, p. 92 ff..

But before going into detail some general aspects of housing policy and housing law in Europe have to be analysed. In chapter B.2 “Housing policy systems in Europe” a brief classification of political positioning in housing policy is attempted. Even though the authors have a clear preference for a distinct housing policy scheme to be implemented in Romania, it is necessary to be aware of the variety of models. In chapter B.3 “Efficiency of social housing policies” (p. 44) benchmarks for the evaluation of housing policy schemes are designed and applied on existing systems in Europe. Deriving from this analysis conclusion can be drawn regarding a new Romanian housing policy scheme. Whatever will be designed today has to pass this kind of reality check in the future. Essentially for a new housing policy scheme in Romania is its compliance with EU law. From the analysis of “EU positions in housing policy and housing finance” (chapter B.4, p. 49) conclusions are drawn regarding the most advantageous scheme for Romania fully in line with EU requirements. These general chapters are followed by analysis on best practice in rental housing law (p. 54), in condominium law (p. **Fehler! Textmarke nicht definiert.**), in PPP Housing (p. 66), in housing management and maintenance (p. 85) and finally in housing finance and housing promotion (p. 86).

## B.2 HOUSING POLICY SYSTEMS IN EUROPE

### B.2.1 DETERMINATION OF POLICY SCHEMES

Jim Kemeny has, in several articles, developed a classification to distinguish national housing policy schemes based on the relation between private and social rental markets in a country.<sup>1</sup> Even though it focuses on only a fraction of the housing market, this classification allows instructive conclusions. The treatment of social housing markets in relation to the private market gives a good impression of the overall housing policy of a country. Kemeny distinguishes between three types:

- a) Countries with dual rental markets, where the state successfully shields the private market from competition of the social sector. The social sector is reserved for low income households and functions as a residual safety net. The private market, on the other hand, is characterised by high rents and insecure rental contracts.
- b) Countries distinguished by a unitary rental market, where the rent level is determined by competition between private and social housing providers. The limited-profit sector does more than “housing the poor” and is directed towards larger population groups, preventing marginalisation of its tenants.
- c) Countries with integrated rental markets, which have gone a step beyond unitary rental markets. The social sector has matured and its companies have become stable and established. Owing to this and a to high market share, the social sector is able to compete with the private sector with no or low subsidies and without the need for invasive regulation.

The three types of rental markets are particularly distinguished by the difference in rent levels, the volume of social housing<sup>2</sup> and the allocation to low income groups.

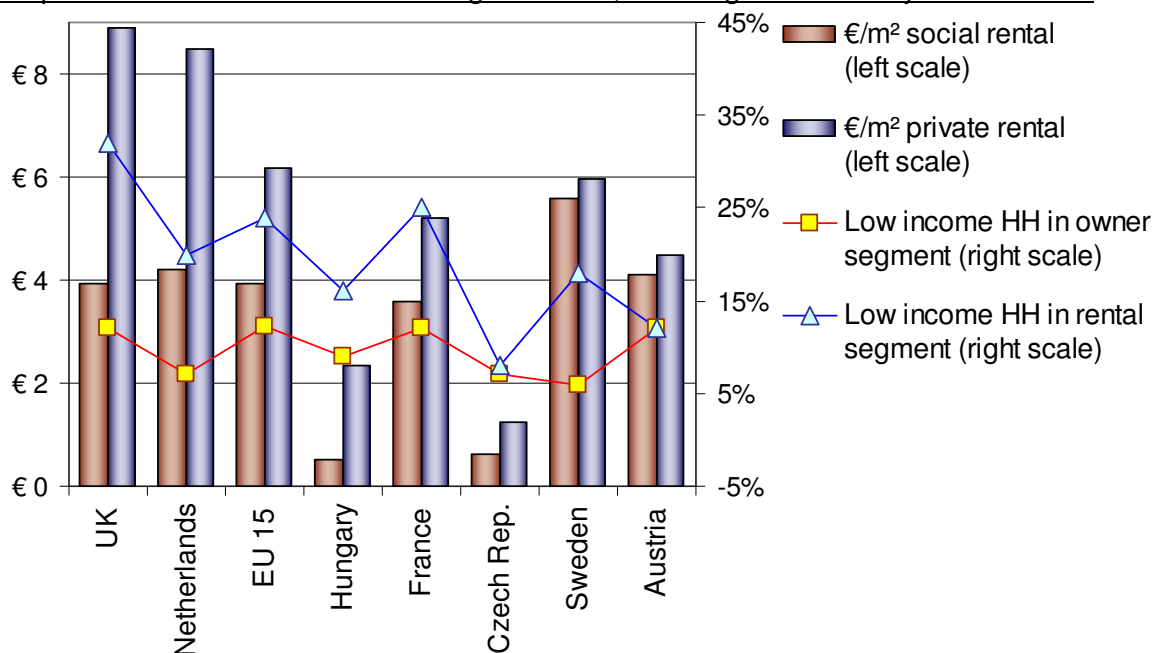
Dual rental markets are to be found, for example, in Ireland, the United Kingdom and the USA. CEE and SEE countries are also currently committed to this type of market as well, even though both the social

<sup>1</sup> Kemeny, J. (1995), Kemeny et al. (2001), Kemeny et al. (2005).

<sup>2</sup> For the volume of rental markets in different countries, see Figure 19, p. 55.

and private rental markets are largely underdeveloped. Unitary or integrated rental markets are predominant in the countries of Austria, Finland, The Netherlands, Sweden and Switzerland.

Figure 16: Comparison of Private and Social housing rent levels, indicating dual or unitary rental markets



Source: Housing Statistics in the EU (2005)

## B.2.2 STATE EXPENDITURE FOR HOUSING

The EU-15 countries have, on average, state expenditure on housing of 1.7% of their GDP. The number varies from below 1% in some Southern European countries up to above 2% in Great Britain, Denmark and France. Some countries significantly reduced state expenditure on housing within the previous decade. Denmark and Finland cut some 30% between 1997 and 2003, Sweden even 60%. Finland and Sweden have now reached an expenditure of no more than 1.1% of GDP (Lujanen, 2004). In Austria, some 80% of new housing construction is co-financed by the public. Still, total housing expenditures only amount to 1.1% of GDP (2005). This is below most other western European countries and even the USA.<sup>1</sup>

## B.2.3 SOCIAL HOUSING CONSTRUCTION

The superior housing supply and higher construction numbers in Western European countries (Figure 11, p. 15) are only partially a result of the higher purchasing power. Responsible are in particular efficient housing policy models. All of which are employing subsidies. Respective legal parameters secure the interests of tenants, buyers, owners, developers and investors. A Third Sector in Housing combines the strengths of the markets with a governmental backing and in return generates public services (PPP – Public Private Partnership). Social housing ensures affordable rents in sufficient quantities as well as affordable ownership. The subsidies are ideally designed to secure optimal financing conditions for social housing construction through the capital markets as well. Through the interaction of these effects it is possible for social housing to reach a noteworthy market strength over the construction industry and the financing sector. An example is Austria, where the limited profit housing associations (LPHA)

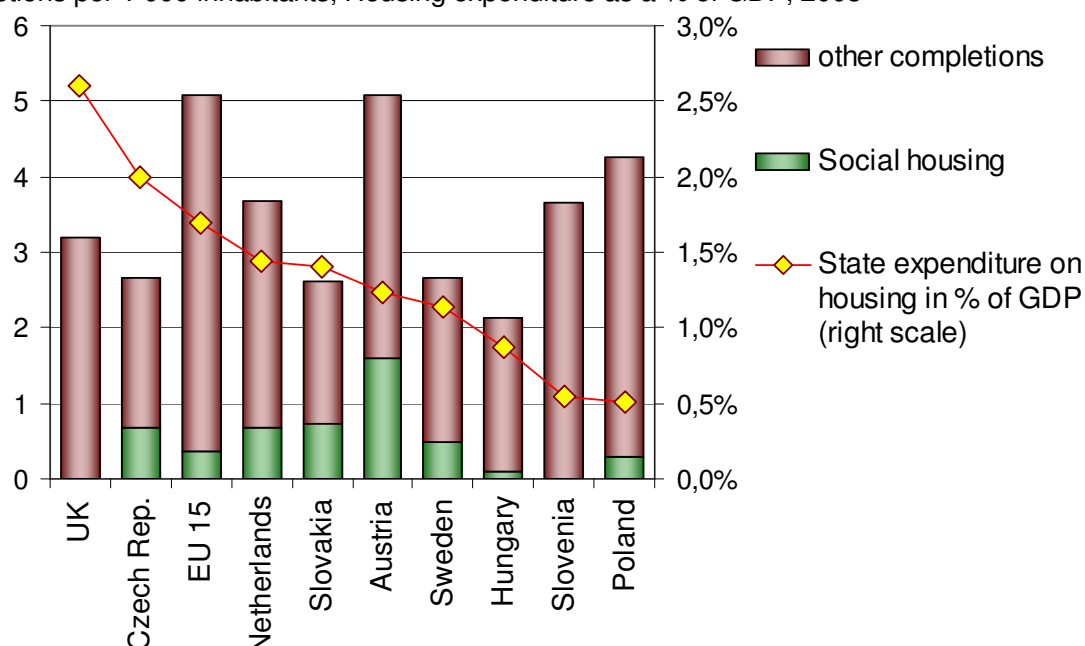
<sup>1</sup> Ball (2005); PRC Bouwcentrum International (2005); Lujanen (2004); de la Morvonnais (2004).

efficiently utilise their strong position in the housing stock and new construction to cushion construction and financing costs for the benefit of the tenants.<sup>1</sup>

The share of social housing in total housing construction varies widely, ranging from zero in some Southern European countries and Great Britain up to more than 30% in Denmark and Austria. CEE countries have partly caught up with the EU-15. Slovenia and Poland have reached housing completion rates above some EU-15 countries, while Slovakia and the Czech Republic have got state expenditure rates on housing close to or even above the EU-15 average.

Figure 17: Social housing construction and state expenditure for housing

Dwelling completions per 1 000 inhabitants, Housing expenditure as a % of GDP, 2003



Re.: State expenditure on housing for Czech Republic, Slovakia and Slovenia are estimates on the basis of a 50% government expenditure rate. State expenditure on housing for Hungary as for 2005. State expenditure on housing for UK as for 1997.

Source: Housing Statistics in the EU (2005), IIBW

### B.3 EFFICIENCY OF SOCIAL HOUSING POLICIES

Measuring the efficiency of housing policy schemes is difficult for several reasons. Firstly, the housing models are not designed on the basis of identical determining factors. As the starting positions differ, it is difficult to define a measurement to treat all candidates equally. All national systems have been developed independently for decades and decades. Even within the European Union there has been no formal attempt of unification. Changes in housing policy have been the result of overall trends, not of a common policy. In this way housing policies in the Member States aim at quite different targets. Moreover, housing policy schemes are political concepts. Therefore they are not only designed with the objective of scientific efficiency, but reflect quite significantly the political philosophy behind them.<sup>2</sup> Continental conservative welfare models are different in nature from Anglo-Saxon liberal models or Scandinavian social-democrat models of housing policy.

<sup>1</sup> See chapter B.6.7, p. 70.

<sup>2</sup> See Kymlicka (1990).

Secondly, we face serious data problems. We have access only to a very limited set of indicators with sufficient quality and comparability. To get a comprehensive image of the differences between housing policy schemes we need to include qualitative in addition to quantitative benchmarks.

The following attempt of evaluation may at the same time be seen as a guideline for the development of a new housing policy strategy in Romania. The new Housing Law, as designed in Part C and D, can be seen as a corner stone for such a housing policy strategy. But the one should not be taken for the other. A new Housing law may establish a stable underlying structure. But housing policy is living day-to-day politics.

### **B.3.1 PREVIOUS ATTEMPTS OF EVALUATION**

Priemus & Boelhouwer (1999) have defined seven criteria of comparison and evaluation:

- a) macro rentable value quota (trying to measure tenants' housing expenses);
- b) volume and composition of Government support to the social rental sector;
- c) structure and relative size of the social sector;
- d) forms of public control;
- e) sources of funding (and their closeness to market funding);
- f) risks and guarantees;
- g) relative interest rate advantage of the social housing sector compared to the public and commercial sector.

In Kemeny's distinction of contrasting models of rental markets, an implicit evaluation of a nation's housing policy is embedded. Comparing dual and integrated rental markets, a clear preference for countries aiming for an integrated market is enclosed: "The advantages of the integrated rental market include tenure diversity, housing choice, low housing costs, and as a buffer against wild and extreme swings in housing prices." (Kemeny *et al.* 2005, p.871). Also, Kemeny's ideal form of a unitary market is able to dispense with much housing aid: Through the process of maturation – in which the solidity of the non-profit stock increases – in the long run the non-profit sector is able to provide a mature stock of a broad range of dwellings in terms of age, location and quality, catering for the whole population without the necessity of continuous public support. Kemeny's evaluation of a nation's social housing market is therefore based on its closeness to the ideal form of an integrated market, the advantages of which are principally rectified with reference to indicators of the macro and institutional level of evaluation, also applied by Priemus and Boelhouwer (1999).

### **B.3.2 A SET OF BENCHMARKS BASED ON AVAILABLE DATA**

The first decision about an evaluation scheme for social housing policy may already be controversial. We believe that social housing policy should follow multi-dimensional targets. It should not only aim for social policy goals, but for economic, regional planning or environmental policy goals as well. Therefore multi-dimensional benchmarks should be applied. Relatively well-defined are economic policy benchmarks and social policy benchmarks. It is more difficult to value all the other effects of social housing policy.

The selection of benchmarks is based on the following considerations:

- Significance of results;
- Availability of data: benchmarks need to be measurable, therefore comparable data for several countries is needed;

- Selection and weighting of data should not predetermine the results in favour of one political philosophy;
- Data alone hardly give a comprehensive picture of housing policy schemes, it needs precise analysis.

### **B.3.3 ECONOMIC POLICY BENCHMARKS**

The relationship between input (state expenditure) and output (number of dwellings, affordable dwellings etc.) is definitely a core criteria.<sup>1</sup>

#### PRODUCTION OUTPUT

Data set: Housing construction in relation to housing stock; social housing construction; dwellings per 1000 inhabitants; useful floor space per capita (see Figure 10, p. 14 and Figure 11, p. 15);

Significance: High construction rates are positive only if there is respective demand (dwellings per 1000 inhabitants, useful floor space per capita etc.).

Availability of data: Good.

#### PUBLIC EXPENDITURE

Data set: Public expenditure for housing (see Figure 17, p. 44).

Significance: The cost of the systems is one of the core evaluation criteria.

As a matter of fact there is no clear result that policy schemes which focus on demand-side subsidies work cheaper than others. Nor do states with high public expenditures in housing necessarily produce more social dwellings (Figure 18).

#### UTILISATION OF MARKET FORCES

Data set: qualitative information on the introduction of market mechanisms.

Significance: The effective utilisation of market forces in housing development and financing proves to be a key factor for total housing policy efficiency.

#### CONTINUITY, STABILISATION OF MARKET FLUCTUATION

Data set: Production output by type of building owner; market indices to prove anti-cyclical effects of housing promotion schemes; long term stability of instruments (see Figure 11, p. 15).

Significance: Real estate is usually highly volatile. This contradicts with the interests of tenants. Housing promotion schemes may be able to provide an insurance function by stabilising production and cost development.

The high volatility of real estate is partly founded in the specific nature of the product with its long production period. After changes in demand it takes a long time until supply can close ranks. At that point in time the demand has often enough changed again, so that supply amplifies a cyclic

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<sup>1</sup> Promising attempts to measure the economic efficiency of housing promotion schemes have been developed in Austria, e.g. Amann / Oberhuber et al., 2005, see also Tsenkova, 2005, p.7.

development. As it is hardly possible to forecast the cycles, anticipatory housing policy should avoid reacting to short-term changes in demand but instead be pursuing a long-term strategy.

#### TENURE DIVERSITY AND CONSUMER CHOICE

Data set: Housing tenure (see Figure 19, p. 55); market indicators.

Significance: The benchmark is based on the well-founded assumption that a variety of options on the housing market will lead to higher utility in housing consumption.

Kemeny<sup>1</sup> stresses the importance of a large social rental sector for improving consumer choice. Macro-economic arguments connecting the existence of a rental alternative with increased labour-mobility go along the same lines.

#### PREVENTION OF MALPRACTICE

Data set: Qualitative information.

Significance: Control and supervision are crucial aspects of a well functioning social housing sector. They may contribute to sound financing conditions.

The importance of an efficient supervisory structure has frequently been emphasised<sup>2</sup> and can be confirmed e.g. for the Austrian Limited Profit Housing Sector<sup>3</sup>: It is regarded as a success story that within the previous fifty years not a single customer of LPHA has lost his or her money because of malpractice. This fact contributes considerably to the creditworthiness and rating of the LPHA.

#### COMPLIANCE WITH EU-LEGISLATION

See chapter B.4, p. 49 ff.

Data set: Qualitative information.

Significance: Compliance with European standards is critical for the long-term survival of social housing schemes. The ongoing unification of social housing standards is a great chance to develop the sector.

It has to be underlined, that the ideal model of an integrated rental market in Kemeny's sense would hardly comply with EU-legislation, since a selective public advantage granted to non-profit providers is the precondition of the ideal form of an integrated market. The designed model for Romania (PPP Housing Law, Housing Promotion Law) considers this specific difficulty.

### **B.3.4 SOCIAL POLICY BENCHMARKS**

#### HOUSING PROVISION

Data set: Useful floor space per capita, quality of the housing stock, dwellings per 1 000 inhabitants etc. (see Figure 6, p. 11).

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<sup>1</sup> Kemeny et al., 2005.

<sup>2</sup> Priemus & Boelhouwer, 1999; Gibb, 2002, p. 333.

<sup>3</sup> See chapter B.6.7, p. 70 ff.

Significance: All other indicators, as affordability or public expenditure, only make sense, if interpreted in comparison to the housing provision.

#### AFFORDABILITY

Data set: Private consumption for housing (national accounts); price and rent indices to compare social with private market segments (see Figure 7, p. 12).

Significance: Affordability is the *raison d'être* of the social housing sector. Anticipatory housing policy may use its instruments to attain affordability in all market segments.

The household expenses for accommodation are rather difficult to define. A reliable source is private consumption within the national accounts (Figure 7), even though this source is not based on empirical evidence of individual households and their real expenditures. Following this index household expenditure in Austria has been stable for the last decade at slightly below 20%, but recently grew up to 21% (2005). This is still one of the lowest shares in a European wide comparison given that the EU-25 average is ca. 22%.<sup>1</sup> In an environment of rapidly growing housing costs all over Europe, the stable development within Austria resulted in a substantial decrease of its relative position. Housing costs stood at 6% above EU-15 average in 1995, but decreased to 6% below average in 2002.

#### SOCIAL INCLUSION

Data set: Housing provision of low income households and the extremely poor; problems with segregation or gentrification; social quality of settlements and environment.

Significance: Social inclusion, prevention of segregation and integration of vulnerable groups are unanimous goals of European social policy. Nevertheless, social housing sectors in several countries hardly contribute to these goals but rather seem to be the cause of the problem themselves.

Indicators of social inclusion are significant for the identification of dual or unitary markets in the context of Kemeny's theories. Figure 16 (p. 43) shows the rent levels in social and private rental market segments and the share of low income households within the rental and the owner segment. We can easily identify unitary markets like Austria by the small differences between the rent levels of social and private market segments. The low level of private rents in Austria as a result of the competition with social housing indicate an integrated market, following Kemeny's classification.

According to van der Heijden<sup>2</sup> all over Europe the share of low-income families living in the social sector is increasing. Czasny<sup>3</sup> studied the concentration of low income households and ethnic minorities in bad housing quality segments and the social rental sector within the EU. By calculating the degree of overrepresentation of the lowest income quintile in the cheapest social rental stock, he found that Austria was within nine countries of the EU, included in the analysis, the one with the lowest share. A residualisation of the social sector and a regional segregation of low income families in poor housing quality stock is prevented due to several reasons: Firstly, an attraction of the social sector to middle income households is assured through the high quality of its housing stock. Secondly, many low income families live in the private rental market segment, due to historic rent-regulated contracts with unlimited tenancy.

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<sup>1</sup> Eurostat, Housing Statistics in the European Union, 2005; Bauer, 2005; Priemus & Dieleman, 2002, p. 194.

<sup>2</sup> van der Heijden (2002), p. 333.

<sup>3</sup> Czasny (2004a), p. 57; (2004b), p. 41.



Thirdly, the price and cost reducing effect of competition between private and social market segments and the general public policy towards price reduction lead to affordable general housing prices.

### **B.3.5 ENVIRONMENTAL AND REGIONAL POLICY BENCHMARKS**

Data set: Share of thermal insulation in different segments of the housing stock; CO<sub>2</sub> emissions for air condition in housing; regional disparity.

Significance: Housing is a major policy field to meet the ambitious goals of the Kyoto Protocol. Important steering effects are given in regional and urban policy as well.

## **B.4 EU POSITIONS IN HOUSING POLICY AND HOUSING FINANCE**

At the EU level there is no legal basis for a common design of housing policies. Therefore this political area is generally the responsibility of the individual Member States. Decision makers of the EU do not get tired to stress the non-responsibility of Brussels regarding housing issues.

The Union has so far not developed a housing policy position that would satisfy the specific character of housing as an integrated policy field within economic, social, environmental and regional policies. Many Western European countries employ housing policy models which warrant a high level of supply, efficiency and comprehensive steering effects. They are a vital expression of the European social model. But today those longstanding and time-tested best practice examples are not collected, edited and provided to all Member States on an institutional basis yet. Particularly the new Member States would benefit from such a tool as a source of information and as a clue.

For quite some time the EU legislation has influenced the housing policy of the Member States, examples would be the Directive on the Energy Performance of Buildings<sup>1</sup> or measures taken for urban renewal and regional development. But only recently has a coherent EU judicature for social housing been introduced. This approach, however, is still a fair bit away from being a pro-active legislative attempt. Such attempt is noticeable by the opening of the Regional Fund (ERDF) for housing and recent financing programmes by the European Investment Bank (EIB).

### **B.4.1 SOCIAL HOUSING AND EU-LEGISLATION**

There is fundamental support from EU bodies for social housing policy measures within the Member States: "Social housing is fully in line with the basic objectives of the EC Treaty. It is a legitimate element of public policy and as it is limited to what is necessary it is in the interest of the Community that social housing is supported".<sup>2</sup> In a more specific context, social housing activities have to be in line with EU State Aid policy as governed by Articles 87-89 of the EC Treaty, by the later Decisions of the Commission on the matter<sup>3</sup> and by several rulings of the European Court of Justice.<sup>4</sup>

For all public subsidies in housing policy matters (subject- and object-side subsidies, such as loans, interest subsidies, grants, guarantees and tax exemptions), this means they must qualify as State Aid exemptions as specified in Art 87 (2) and must be considered compatible with the common market,

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<sup>1</sup> Directive 2002/91/EC.

<sup>2</sup> European Commission Decision 209/2001.

<sup>3</sup> Especially on N 497/01, N 239/02, C 515/02, N 209/01, L 312/69/2005, see Appendix.

<sup>4</sup> Especially ECR 1-7747 2003.

subject to the Commission's scrutiny as laid down in Art 87 (3). Alternatively, they must be considered as compensation of a public service obligation in the sense of Art 86 (2).<sup>1</sup>

The provision of social housing may most certainly be defined as a service of general economic interest by the Member States, which leads to the possibility of compensating these services by the public. As for the question of the legitimate height of public service compensation, the famous judgement in the "Altmark" case<sup>2</sup> has established a general framework. Here, the Court of Justice held that, in the field of public service compensation, in order to escape the State Aid regime of Article 87, four cumulative criteria have to be met:

- 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 compensation is calculated, must be established in advance in an objective and transparent manner.
- The compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit.
- The undertaking which is to discharge public service obligations, in a specific case, should be chosen pursuant to a public procurement procedure that allows for the selection of the tenderer capable of providing those services at the least cost to the community. If that is not possible, the level of compensation must be determined on the basis of an analysis of the costs which a typical undertaking, well-run and adequately provided with appropriate means so as to be able to meet the necessary public service requirements, would have incurred (in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations).

The Altmark case judgment, therefore, established the general case for evaluating state subsidies: where subsidies are regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations, they do not constitute State Aids and are, therefore, legitimate.

For social housing as a particular field in the common market, the Commission's Decision of 28.11.2005<sup>3</sup> brought further clarification of the Altmark ruling and established a special treatment of social housing within Competition Law: "Social housing undertakings (...) have specific characteristics that need to be taken into consideration" and "the intensity of distortion of competition in those sectors is not necessarily proportionate to the level of turnover and compensation".<sup>4</sup> The Decision is applicable to compensation of less than EUR 30 million per year provided its beneficiaries have an annual turnover of less than EUR 100 million.

The following definitions and rules were established:

- The target groups of social housing measures are "disadvantaged citizens or socially less advantaged groups, which due to solvability constraints are unable to obtain housing at market conditions."
- For the compensation of social housing services, a general exemption from notification to the Commission was provided irrespective of the amounts involved. This will enable specific and targeted support for social housing, which is essential for e.g. urban regeneration, without the need for a separate notification to the Commission.
- Overcompensation for the fulfilment of a public service obligation may be tolerated as long as it stays within a certain threshold and is carried forward to the next period: "The revenue of undertakings entrusted with the operation of services of general economic interest in the field of social housing may vary dramatically, in particular due to the risk of insolvency of leaseholders. Consequently, where

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<sup>1</sup> See Appendix for specification.

<sup>2</sup> ECR I –7747 2003.

<sup>3</sup> L 312/69.

<sup>4</sup> Commission Decision of 28.11.2005, L 312/69, (16).

such undertakings only operate services of general economic interest, it should be possible for any overcompensation during one period to be carried forward to the next period, up to 20% of the annual compensation” (10). Any overcompensation amounting to more than 20% of the annual aid granted will count as an infringement of EU rules.

- The new package also stipulates that if an undertaking receiving State Aid to deliver services of general interest is also active in other markets, separate accounts must be kept.
- This Commission’s Decision also lays down clear guidelines for the calculation of adequate public services compensation and stipulates which costs should be taken into consideration. The Decision allows for a reasonable profit to be included, which “shall take account of all or some of the productivity gains achieved by the undertakings concerned during an agreed limited period without reducing the level of quality of the services entrusted to the undertaking by the State”.<sup>1</sup> A clarification of the term ‘reasonable profit’ is also provided in order to facilitate the calculation: “For the purposes of this Decision ‘reasonable profit’ means a rate of return on own capital that takes account of the risk, or absence of risk, incurred by the undertaking by virtue of the intervention by the Member State, particularly if the latter grants exclusive or special rights. This rate shall not normally exceed the average rate for the sector concerned in recent years. In sectors where there is no undertaking comparable to the undertaking entrusted with the operation of the service of general economic interest, a comparison may be made with undertakings situated in other Member States, or if necessary, in other sectors, provided that the particular characteristics of each sector are taken into account. In determining what constitutes a reasonable profit, the Member States may introduce incentive criteria relating, in particular, to the quality of service provided and gains in productive efficiency”.<sup>2</sup>

Furthermore, the Commission’s Framework<sup>3</sup> specifies the conditions under which compensation not covered by the above-mentioned Decision is compatible with state aid rules. Such compensation will have to be notified to the Commission due to the higher risk of distortion of competition. Compensation that exceeds the costs of the public service is incompatible with the Treaty’s state aid rules.

#### **B.4.2 EU POSITION ON PUBLIC-PRIVATE-PARTNERSHIPS (PPP)**

It has become general European practice for local authorities to assign the supply of infrastructure services to partnerships between the public sector and the private sector. The public-private partnership (PPP) is generating growing interest as it allows the local authorities to benefit from private funds and to improve the effectiveness of the action through the expertise of private operators. The Green Paper on public-private partnerships and Community law on public contracts and concessions adopted in 2004, defines the PPP as a form of cooperation between public authorities and the world of business which aims to ensure the funding, construction, renovation, management or maintenance of an infrastructure, especially in the transport, health or education sector, or the provision of a service especially at local level.”<sup>4</sup>

In considerations of these benefits, the Member States and the European Commission recognize the growing importance of PPP-models. In order for them to be in line with EU legislation on State Aid and Competition, the Commission generally considers the following to be essential:<sup>5</sup>

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<sup>1</sup> Article 5 (1).

<sup>2</sup> Article 5 (4).

<sup>3</sup> Community Framework (13 July 2005) for State Aid in the form of public service compensation, OJ C 297, 29.11.2005, p. 4-7.

<sup>4</sup> COM(2004) 327.

<sup>5</sup> cf. EC DG Competition (2006): p.8.

- The arrangements for financing the PPP may or may not result in a transfer of state aid to one or more of the private partners. State aid could be involved if there is over-compensation of the costs of the private partners.
- For all types of PPPs, private partners must be chosen in accordance with EC rules on public procurement, where these rules apply. A properly conducted tender procedure will provide reasonable assurance that private partners will be remunerated in line with market conditions. In the absence of a tender procedure, the Commission will look at the detailed arrangements of the PPP and the safeguards put in place to avoid overcompensation in order to determine if state aid is involved.
- The contractual arrangements between the parties must be compatible with Community anti-trust rules (i.e. conditions in a PPP as regards the prices to be charged to consumers).

In order to create higher legal certainty in the establishment of successful PPPs the Communication from the Commission on PPP of 15 November 2005<sup>1</sup> can be seen as an important step. The Commission is currently preparing an interpretative communication on institutionalised PPPs and Community law on public procurement. This document should be available by the end of 2007.<sup>2</sup>

### **B.4.3 CURRENT ACTIVITIES OF EUROPEAN PARLIAMENT, EUROPEAN COUNCIL AND COMMISSION**

Since 2006 EU institutions have started several initiatives in housing. Starting point was on the one hand the deficient housing situation in some new Member and Candidate States, on the other hand the turmoil in some French Banlieux, which showed the failure of housing and urbanistic concepts of the past.

- a) In April 2006 the „URBAN-HOUSING“ Intergroup of the European Parliament has adopted a proposal of a “European Charter for Housing” with focus on social, environmental and urbanistic aspects of housing: right to housing, affordability, cohesion, integration, reduction of emissions. Only partly covered are economic aspects as questions on organisation and financing of affordable housing. The Intergroup intends to update the document without an explicit time-frame (see the full text in the Appendix).
- b) Based on the activities of the „URBAN-HOUSING“ Intergroup the Committee on Regional Development of the European Parliament has prepared an initiative report on “Housing and regional policy”<sup>3</sup>. With a wide attempt the presently available financing instruments are supported (resolution of a European Charter for Housing, operationalisation of ERDF- and JESSICA-funds, see below) followed by requirements in procedures (focus on research, improvement of horizontal and vertical coordination) social policy (right to humane and affordable housing), regional planning and energy policy.
- c) The European Council has specified its Common Position on the Directive on services in the internal market regarding the general exclusion of “social housing” in 2006.<sup>4</sup>
- d) The Commission has launched the topic of social housing within the process of implementation of the Lisbon Programme. To clarify the societal function and competitive position of „social services of

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<sup>1</sup> Communication from the Commission on Public-Private Partnerships and Community Law on Public Procurement and Concessions, COM(2005) 569 final.

<sup>2</sup> cf. EC DG Competition (2006): p.8.

<sup>3</sup> Working document on housing and regional policy, Rapporteur: Alfonso Andria, from 8.11.2006. Draft report on housing and regional policy (2006/2108(INI)), Rapporteur: Alfonso Andria, from 9.1.2007.

<sup>4</sup> Common Position adopted by the Council with a view to the adoption of a Directive of the European Parliament and of the Council on services in the internal market (10003/06), Article 2 “Scope” (2), lit. j).

general interest“ (in delimitation to the “services of general economic interest”)<sup>1</sup> the Commission has published a Communication,<sup>2</sup> followed by a procedure of open consultation of the Member States. A research project assigned by the Commission<sup>3</sup> shall provide the relevant facts. Within this research project the topic of Housing is covered by CECODHAS, the European Liaison Committee for Social Housing. The research project and the consultation shall result in a Communication of the European Commission on a “Strategy for social services” in autumn 2007.

#### **B.4.4 REGIONAL FUND AND EUROPEAN FINANCING INSTITUTIONS**

- e) With a regulation from July 2006 the European Regional Development Fund (ERDF) has been opened for measures in the field of housing in the new Member States (7/06).<sup>4</sup> The first-time financial commitment of the EU for housing and the restriction to new Member States is regarded as paradigm shift. The funds may be employed for urban renewal, but as well for new housing construction within the framework of integrated urban development operations. The total volume of ERDF in Romania is around 800 million €. Only 2% (16 million € per year) is dedicated to housing activities.
- f) In autumn 2006 JESSICA (Joint European Support for Sustainable Investment in City Areas) has started, a financing instrument developed by the Commission in cooperation with the EIB (European Investment Bank) and the CEB (Council of Europe Development Bank) with the goal to contribute to the cohesion policy of the EU<sup>5</sup> on a regional level and to operationalise the opening of the ERDF for housing. With grants from the Structural Funds and loans from the Development Banks Urban Development Funds (UDF) shall be established. Within the framework of integrated urban renewal and development plans refurbishment and new construction shall be financed by these revolving funds. With the reduction of the necessary employment of equity by the municipalities, urban renewal projects may be fostered. The new Romanian Housing Law shall set the framework for the implementation of these funds on regional level.

#### **B.4.5 RELATED TOPICS**

- g) The Seventh Research Framework Programme, which has started in January 2007, offers slightly better conditions for housing related research than former Framework Programmes, e.g. in the fields of energy or security.
- h) Implementing the Energy Performance of Buildings Directive,<sup>6</sup> certificates of energy consumption should have been introduced for all new housing construction in all Member States by 2006. The implementation delays in several countries.

The decade long more than hesitant attitude of the EU to engage in housing policy seems to be a thing of the past. Obviously, the European institutions have recognised the importance of housing as a European topic. And they try to set a course within the existing possibilities, without putting the Subsidiarity Principle in question.

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<sup>1</sup> As per Art. 16 and Art. 86 (2) of the Treaty.

<sup>2</sup> Communication from the Commission COM(2006) 177.

<sup>3</sup> European Centre for Social Welfare Policy and Research.

<sup>4</sup> Regulation (EC) No 1080/2006 from 5.7.2006.

<sup>5</sup> Council Decision from 6.10.2006 on Community strategic guidelines on cohesion (2006/702/EG).

<sup>6</sup> 2002/91/EC.

#### B.4.6 EUROPEAN FUNDING FOR HOUSING CONSTRUCTION AND REFURBISHMENT IN ROMANIA

For all new EU Member States expenditure on housing is eligible on the conditions defined in Article 7 of the ERDF Regulation. Hence expenditure within the framework of an integrated urban development operation or priority axis is eligible. The expenditure is limited to multi-family housing or buildings owned by public authorities, non-profit or PPP operators (for use by low-income households or people with special needs). The regions selected to benefit from these measures must satisfy certain criteria relating to the social and physical characteristics of the housing. The budget allocated to the housing expenditure amounts to a maximum of 3% of the ERDF allocation to the OPs or 2% of the total ERDF allocation.

JESSICA provides support for the development of financial engineering instruments in the field of sustainable urban development. This initiative allows the managing authorities of the ERDF, and in certain cases the ESF, to invest Structural Funds in urban development funds, in the context of integrated urban development plans. This initiative aims to achieve a leverage effect with the financial resources and allows the managing authorities to benefit from the expertise of financial institutions. The "recovered" funds must be reinvested in urban development funds or reallocated to the managing authority to support other urban projects.<sup>1</sup>

### B.5 BEST PRACTISE IN RENTAL HOUSING LAW

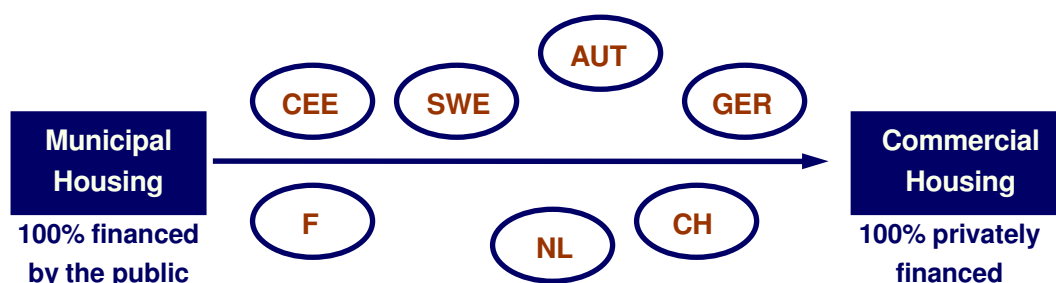
#### B.5.1 MODELS OF SOCIAL RENTAL HOUSING

European countries have developed a wide variety of models of rental housing promotion, the most important of which are:

- Municipality housing: mostly 100% financed by the public,
- Housing allowances for tenants in private or social dwellings: mostly dependent on household income,
- Supply side subsidies for private or social landlords: public loans, annuity or interest grants, guarantees,
- A legal and economic framework for non-profit or limited-profit housing associations.

Almost all Western countries have introduced Public-Private-Partnerships in housing. In particular, this is because there are affordability problems for the middle classes and not only for low income groups, hence public housing turns out to be too expensive for the state to provide. PPP models have been developed both for financing and organisational aspects. They prove to be efficient by combining the efficiency of the markets with the backing of the state.

Figure 18: Public Private Partnerships in housing



Source: IIBW

<sup>1</sup> EC - Interservice Group on Urban Development (2007), p. 13/14.

## B.5.2 BACKLOG IN RENTAL HOUSING IN CEE/SEE COUNTRIES

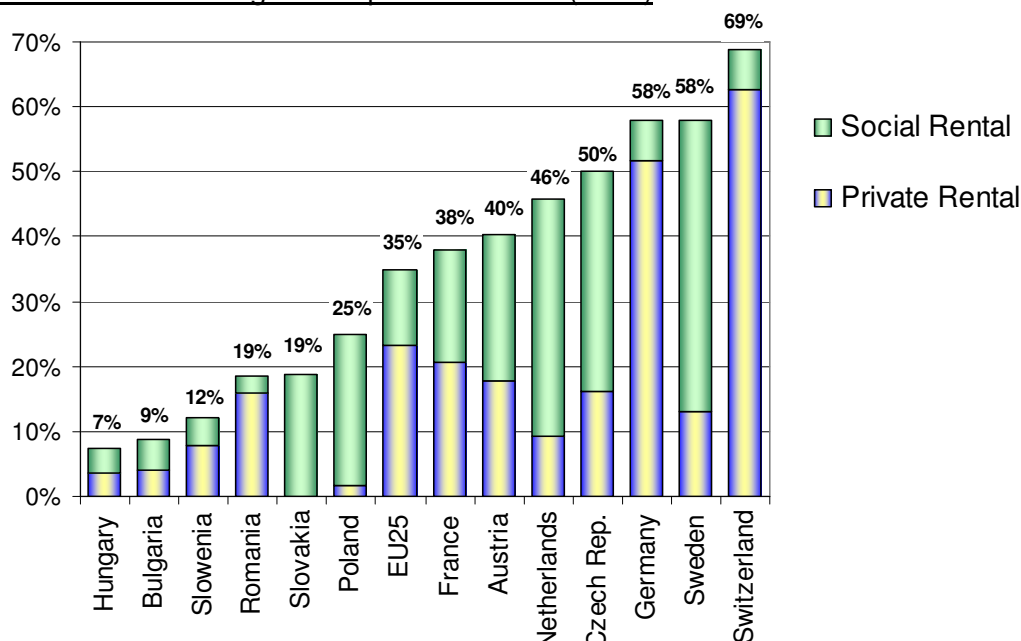
Although construction of owner-occupied flats has recovered, this is not the case for rental housing. The strong preference for owning property is not particularly determined by the national character of people. It is rather rooted in economic reasons. Property is regarded as a security against trouble of any kind, above all, future income insecurity. People have experienced that property has kept its value when savings have been lost and tenancy rights have appeared to be insecure. Second, there is little choice for people regarding investments. In countries with an underdeveloped banking sector, people tend to convert their savings directly to bricks and mortar. Third, property is a way to pool the economic resources of several family members, including relatives who work abroad. Thus, investment in real estate promises a double dividend by providing accommodation with low running costs and an asset that increases in value.

The sharp decline in public housing in the nineties did not recover at all. Municipalities are only considerably active in housing construction in a few countries (e.g. Poland). Generally, the public sector tries to avoid being involved once more in housing construction, as it disposed of owners' obligations by privatising big parts of the rental stock.

Rental housing is not competitive today. As long as it is cheaper to finance property privately, renting an apartment is not attractive. For this reason, there is no supply of rental flats and hence no market, which could develop into a vicious circle.

The profession of rental housing developers is not established in CEE and SEE countries. Currently, housing developers are often subsidiaries of construction companies. Their primary interest is to employ their own construction division and to get returns on investment as soon as possible. Long term investments are neither their core business nor in their interest. Rental housing developers in contrast must have a long term perspective. There are well functioning models for these all over Europe.<sup>1</sup>

Figure 19: Shares of rental housing in European countries (2003)



Source: Housing Statistics in the EU, PRC Bouwcentrum, UIPI (2003), I<sup>1</sup> IBW

<sup>1</sup> See below, chapter B.6, p. 66.



Mortgage systems do not provide adequate financing as yet. Even though mortgage financing is developing rapidly, it is focused on retail finance, whereas for institutional financing (financing of companies, owners associations etc. for rental housing or refurbishment) there is still a shortage. Development of financing instruments is closely related to institutional development in the housing sector, i.e. the establishment of housing developers.

### **B.5.3 RENT REGULATION IN EUROPEAN COUNTRIES<sup>1</sup>**

Rent regulations are interventions in the working of markets by law, the shaping of prices and supply by order of an authority or by legal provisions.

The extent of regulation has always been significant of the political and economic system of a country or a national economy. The free play of supply and demand is characteristic of a market economy; massive intervention and rigid rules are frowned at in today's Europe, at least in the Europe of the EU 25. They are associated with the Communist doctrines of former times.

Repugnance against every kind of market regulation is especially strong in former Communist countries. This also applies to regulation of the housing market – in this field, the negative reaction against such measures is almost automatic. A survey of the legislation of EU countries shows, however, that the housing market is generally regarded as a thing apart and that specific regulations apply to it in almost all of these countries.

The following types of regulations are possible:

- Time limits;
- Limitations regarding termination of tenancies;
- Limitations as to the amount of rent.

Regulations may be applicable:

- area-wise;
- depending on the category of the landlord (individual landlords, private or public building associations);
- depending on the date of construction.

Moreover, many countries have introduced legislation that makes tenancies of dwellings quasi-hereditary, as landlords must accept the tenant's heirs or certain members of his/her family as new tenants on the terms of the original tenancy.

In 2003, the U.I.P.I. (Union Internationale de la Propriété Immobilière) published a study about market restrictions in 14 European countries and about the most important economic parameters. An abstract of this study is to be found in the appendix, its most important results are summarized in the following chart.

It must be emphasized that partial regulations, if they were to pass a certain limit), will influence the entire housing market.

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<sup>1</sup> Chapter B.5.3 to B.5.7 is written by Walter Tancsits, the responsible author of the new Rent Law (chapter C 2) and Housing Management and Maintenance Law (chapter C5).



Figure 20: Indicators of rent control in Europe

	Total rental share of total stock	Social rental	Ø housing consumption €/month	Characteristic of rent control	Return on investment
Austria	40%	23%	€ 210	No regulation on privately financed dwellings. Strict regulations for dwellings built before 1945 (~10% of stock), many exemptions, reinvestment de facto compulsory. Integrated housing markets with a strong PPP-Housing Sector that influences the price level on the private market. Optional rent limitation of 3 +3 years.	~5%
Belgium	29%	7%	€ 267	No regulation on new rents. Period of contract 3 years or 3 x 3 years with increase bound to CPI. Early eviction only with high compensation. Long procedure of eviction in the case of breach of contract.	~4%
Cyprus	32%	18%	€ 174	All dwellings built before 1999 regulated, unlimited period of contract, difficult and time consuming eviction with high compensation.	
Denmark	48%	28%	€ 304	All rents regulated. They must not exceed the back-flow of the purchase value and operational costs (similar Switzerland). Unlimited contracts, long eviction process. Obligation for immediate rent out.	~7%
Finland	36%	0%	€ 297	Rents free for privately financed dwellings. Rent increase by CPI. Regulations for subsidised dwellings. Contract period of 1 year or unlimited.	8%
France	38%	17%	€ 283	Free rents for new and refurbished dwellings according to local level. Rent increase by construction index. Strict regulation for rents in central Paris.	4-5%
Germany	58%	6%	€ 270	Regulation of all rents via market with a local rent comparison list. Precondition for the functionality of the model is the big rental market and the reliable database on rents.	~7%
Great Britain	10%	0%	€ 252	Rent regulations for the private market abolished. Prevalent and high housing allowances. Sub-market housing of regulated housing associations.	7%
Greece	20%	0%	€ 130	Rent regulation has been abolished. Minimum 3 years duration of contracts.	~6%
Ireland	18%	7%	€ 262	Rent regulation for private rental dwellings abolished. Half of leases for max. 1 year.	7,5%
Italy	19%	6%	€ 230	Free contracts for 4+4 years, no rent regulation. Controlled contracts for 3+2 years, landlord and tenant associations define the rents in local agreements.	
Netherlands	46%	37%	€ 184	No regulation on private market, but competition from the stock of rent-regulated housing associations within an integrated market. Unlimited contracts. Difficult termination of tenancy.	7%
Norway	22%	0%		No regulations on private market with minor exemptions. Leases >3 years.	5-7%
Slovenia	9%	7%	€ 113	No regulations for new dwellings. But the biggest part of dwellings is regulated old stock.	6-7%
Sweden	58%	45%	€ 340	Rents both for private and housing associations are regulated by municipalities, which results in strongly different rent levels.	~6%
Switzerland	65%	14%		Regulation for almost all rental dwellings in the way of back-flow of purchase value + operational costs. Max. period of contract 4 years.	8%

Source: UIPI (2003), IIBW, „Total rental” and “Social rental” see Figure 19, p. 55, “housing consumption”: Housing Statistics in the EU 2005.

Austria can be quoted as an example for this phenomenon. Of all the rented dwellings in the whole country, only those which were built before 1945 are subject to strict regulation. Communal and co-operative housing, which amounts to another 23 % of all dwellings, is also regulated as to the amount of rents, which are limited on the principle of the so-called "Kostenmiete" (rent which covers costs). Together, they have a dampening effect on prices in the entire housing market.

It must be emphasized that partial regulations, if they were to pass a certain limit, will influence the entire housing market.

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As to European court decisions, the European Court of Human Rights (ECHR) tolerates intervention in the working of the market if this appears to be necessary to safeguard the coherence of a country's society.

The following outline of the decisions of the ECHR is based on a study by Professor. Helmut Ofner which is reprinted in full in the appendix.

The ECHR's decisions definitely tend to favour the tenants; in the opinion of many experts, this tendency is contrary to the fundamental right to own property. It shall now be illustrated by a few examples.

#### L & M MELLACHER VS. AUSTRIA, ECHR DECISION OF DEC. 19TH, 1989

An apartment was rented in 1978; the rent was reduced to a third of the original amount by the decision of an Austrian court in 1982. According to the ECHR; this decision did not constitute an expropriation, it was made in pursuance of a legitimate goal, and it was not disproportionate. The ECHR also stated that the decision contributed to the balancing of social inequality and that the maintenance costs of the building in question were covered by the new rent.

#### SPADEA & SCALBRINO VS. ITALY, ECHR DECISION OF SEPT. 28TH, 1994

In 1982 the plaintiff bought two apartments which were subject to rent control by the authorities. In 1983 the tenants were given notice to quit. A postponement of the eviction from 1984 to 1986 was decreed by the authorities. Between 1987 and 1989 several unsuccessful attempts at eviction were made. The ECHR ruled that the intervention by the state was legitimate and in accordance with the law. At the same time many tenancies expired all over Italy; the carrying-out of all these evictions might have led to considerable social unrest.

In a similar case,

#### IMMOBILIARE SAFFE VS. ITALY (ECHR DECISION OF JULY 28TH, 1999).

the ECHR considered the intervention of the Italian court to be legitimate, but disproportionate and undifferentiated, because an eviction did not take place for 11 years.

#### HUTTEN-CZAPSKA VS. POLAND (ECHR DECISION OF JUNE 19TH, 2006)

According to Polish law, the landlord cannot terminate the tenancy; the owner of a building is obliged to maintain it in a good state of repair without any subsidies from the state, and there are fixed maximum rents.

The ECHR considered this to be in conformity with the law. The goal of these provisions, namely to protect less well-to-do tenants, was found to be legitimate. However, the ECHR also stated that this situation was disproportionately disadvantageous to the landlord if he was not reimbursed.

All these cases show that the ECHR accepts very far-reaching limitations of the rights of house owners if a state justifies such limitations as a means to achieve social balance. Only measures which were blatantly disproportionate were judged to be inadmissible. This means that even a strict regulation of the entire housing market is compatible with European standards.

Several important options in the field of regulation shall now be outlined by a short description of the rental law of France, Italy, the Netherlands and Germany.<sup>1</sup> In almost all European countries the old “Civil Codes” dating from the era of classic Liberalism, which were based on the idea of contractual freedom, form the basis of an essentially unrestrained functioning of the rental market. However, many countries later introduced limitations of contractual freedom in order to create a balance between landlords and tenants. This often happened in times of social upheaval connected with a war or the aftermath of a war, as in Austria in 1917 and in Germany and France in 1948, because in such a situation the housing market is always “overexcited” and certain elementary needs, such as the need for housing, have to be satisfied.

#### **B.5.4 FRANCE**

The present-day rental law in France is the result of a development which took place in the last fifty years. During that time the contractual freedom laid down by the Code civil of 1804 was subjected to a series of ever stricter limitations. The reason for this was a lasting crisis of the housing market caused by wartime destruction, the increase of the population during the 1950s, the large number of repatriates after decolonisation, migration from rural districts to the towns, the influx of foreign workers, etc. This permanent crisis of the housing market caused repeated intervention by the legislators; therefore, the rental law relating to dwellings does not form a unity, but consists of several sets of rules which exist side by side. Leaving aside the law relating to public housing (HLM – habitations à loyer modéré) and rental housing built with Government subsidies, two important stages in the development of rental law can be distinguished: the years immediately after WW II marked by the law of Sept. 1st, 1948, and the 1980s with the laws of 1982, 1986 and 1989.

Since 1989, French legislators seem to have realized that a series of reforms following each other too quickly brings more disadvantages than a less than perfect law. The system of rules created by the reforms is amazingly complex.

In order to ascertain which set of rules applies to the rental of a given dwelling, a large number of factors has to be taken into account: the date when the dwelling was built, whether it is vacant or inhabited, its geographical situation, its standard, the date of the first tenancy agreement regarding that dwelling, the time of expiry of the current tenancy agreement etc.

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<sup>1</sup> See Johannes Stabentheiner (ed.), *Mietrecht in Europa*, Vienna 1996. This work includes contributions by Christian Pisani on French law (pp.69-82), by Paolo Pedrazzoli on Italian law (pp.97-107), by Rutger V.H.Jonker on Dutch law (pp.109-116), and by Wolfgang Ott on German law (pp.117-124). The following outline is based on these texts.

### THE LOI MERMAZ-MALENDAIN OF JULY 6TH, 1989

This law formulates certain basic principles which are declared to be rules under public law; they are binding on the parties and cannot be abrogated by the terms of a contract.

### THE RIGHT TO HOUSING

Article 1 states that the right to housing is a fundamental right which is exercised within the framework of the relevant laws. This might be regarded as a purely theoretical statement, but it is not without practical consequences because the courts refer to it when interpreting the law.

### THE PRINCIPLE OF BALANCE IN TENANCIES

This principle is also formulated by Article 1; the courts use it as a guideline to the interpretation of other rules. For example, a tenant who has gotten into financial difficulties is granted a respite with reference to this principle.

### PUBLIC-LAW CHARACTER

Article 2 states that the rules of the first section of the law have public-law character. As this first section contains all the rules concerning the rental of dwellings (general rules, term of a tenancy, amount of rent etc.), those rules are "jus cogens", i.e. they cannot be modified by the terms of a contract.

### RANGE OF APPLICATION

The range of application of the law of July 6th, 1989 is contained in its Article 2. Three types of tenancy agreements are to be distinguished: first, agreements to which all the rules of the law of July 6th, 1989 apply; second, agreements to which only some of its rules apply; third, agreements which are excepted from this law and to which the relevant provisions of the Code civil apply.

### FORMAL REQUIREMENTS, MINIMUM CONTENTS OF THE AGREEMENT

The tenancy agreement must be concluded in the form of a public or private document.

It must contain the following specifications:

- name and address of the landlord
- type and purpose of the rooms rented
- indication of the space rented, of the fittings destined for the use of the tenant alone and of the common facilities
- amount of the rent and provisions for its adjustment and payment
- amount of the deposit
- condition of the rooms

The law does not designate a penalty in case these requirements are not met with. It states, however, that the landlord cannot consider the agreement to be void if the required data are missing, and that all parties to the agreement can at any time demand the setting-up of a contract which is in accordance with the law.

### TERM OF THE TENANCY

The law differentiates between the original contract (i.e. the first agreement between landlord and tenant concerning the dwelling in question) and the renewed contract (agreed upon after the expiry of the preceding contract). Certain minimum periods apply in each case.

The minimum period of the original tenancy depends on whether the landlord is a natural person or a legal entity. If the landlord is a natural person, the minimum period of the tenancy is three years. If the landlord is a legal entity, the minimum period is six years.

Should a tenancy be renewed (either tacitly or by way of an offer to renew) the new tenancy shall be for a minimum period of three or six years respectively, depending on whether the landlord is a natural person or a legal entity.

#### AMOUNT OF RENT

Here, too, the law distinguishes between the original tenancy and the renewed tenancy.

Only if the dwelling is new (newly completed) or if the landlord has made extensive improvements, the parties are free to agree to any amount of rent. In all other cases the amount is regulated by law.

When a tenancy is renewed, the rent can only be raised if it is “clearly undervalued”. It is up to the landlord to prove this; he has to communicate new “comparative rents” to the tenant.

#### TERMINATION OF CONTRACT

The tenancy can be terminated by the landlord as well as by the tenant. The law, however, does not treat both parties equally.

The tenant can terminate the contract at any time by giving three months’ notice; he does not have to give a reason for so doing. The period of notice is reduced to one month if the tenant is leaving because of a transferral by his employer or the loss of his job or because of ill-health if the tenant is over sixty years old.

The landlord can terminate the tenancy only in case of expiry; in this case he shall observe a period of notice of six months and give the reason for termination. Such reasons are the owner’s personal needs, a sale of the dwelling and other justifiable and important reasons.

### **B.5.5 ITALY**

Article 1571 of the Italian Civil Code (Codice civile) gives a definition of a tenancy agreement: “A tenancy agreement is a contract under which one party undertakes to grant the other party the use of movable or immovable goods for a certain time and for a specified compensation.”

According to this provision, contractual freedom is practically unlimited regarding tenancy agreements. The Codice civile of 1942 only contains a number of basic rules most of which can be modified by the parties. Also, the Codice civile frequently refers to local manners and customs; thus, only a few of its provisions regarding tenancies are to be viewed as “jus cogens”, e.g. Article 1573 which states that the maximum period of time for a tenancy is thirty years.

However, further obligatory provisions (jus cogens) were later added; certain matters could no longer be freely decided upon by the parties to a tenancy. These provisions automatically replace provisions in a contract. The first intervention of this kind was the law no. 253 of May 23rd, 1950, which was the first regulation of the housing market regarding the period of time for tenancies and the amount of rents. Its effect was a freeze-up of rents.

#### RULES CONCERNING “ADEQUATE RENT” (EQUO CANONE)

The period of time of a tenancy is fixed by law; it must not be less than four years. The period is considered to be tacitly extended by four more years unless either of the parties has stated that he/she does not wish to continue with the tenancy; this statement must be made not later than six months before the expiry of the tenancy.

The tenant has the right to give notice before expiry if there are important reasons for a termination or if the right to terminate forms part of the agreement. The landlord does not have a corresponding right to terminate the tenancy.

#### SUBLETTING

The tenant has the right to partly sublet the rooms; he has only to notify the landlord of this. If he wants to sublet the entire property or to pass on his rights under the tenancy to a third party, the consent of the landlord is required.

#### AMOUNT OF RENT

However, the regulation of rents on the basis of certain factors is the most important and the most characteristic element of the new legislation.

The calculation of the rent is based on floor space and several coefficients linked with the following factors:

- standard of the dwelling
- number of inhabitants of the municipality
- location within the municipality
- age and condition of the building
- situation of the dwelling within the building

When an apartment is let furnished, the sum total of the rent must not exceed 130 % of the basic rent.

### **B.5.6 NETHERLANDS**

The basic provisions relating to tenancies concerning dwellings are to be found in the Civil Code which was subjected to far-reaching changes as from Jan.1st, 1992. Specific provisions are contained in the Housing Law which regulates the assignment of dwellings by the municipal authorities, and the Rent Law, which regulates the admissible amount of rent.

The legal provisions relating to tenancies are “jus cogens”, i.e. the parties cannot modify them by agreement.

Under Dutch law, the tenant enjoys a degree of protection which is almost unbelievable.

As a rule, tenancies are open-ended, and an agreement by the parties regarding a fixed term to the tenancy is void. The same thing applies to clauses under which a tenancy ends automatically if a certain event occurs.

It might be said, somewhat pointedly, that the tenant will have the use of the dwelling for his lifetime if only he makes no improper or detrimental use of it and if he pays his rent on time. The landlord can only terminate the tenancy for a number of reasons stated specifically by law.

In almost all cities in the Netherlands, there are regulations under the Housing Law regarding the assignment of accommodation. Persons seeking accommodations can register with the local authorities which can assign a dwelling to them. Landlords are obliged to notify the authorities of dwellings falling within certain categories of equipment. If the authorities assign a dwelling to a person, the owner of the dwelling must accept him/her as a tenant and he must enter into an agreement with him/her.

Contractual “freedom” is further limited by legal provisions on co-tenancy and home swap.

The Rent Law determines the amount of rent for tenancies concerning dwellings. The regulation is based on a points system; points are awarded according to floor space and conveniences. All circumstances that might be advantageous or disadvantageous are taken into account, e.g. the location of a dwelling, noise, central heating, a balcony or a garden. The provisions of the Rent Law are implemented by a Rental Commission consisting of real estate agents, officials of housing cooperatives and a full-time director who has had legal training. The commission settles disputes between landlords and tenants concerning the admissible amount of rent.

Every year, the Ministry of Housing issues guidelines concerning maximum rents; there are also local guidelines which help adapting the system to local conditions. This is generally achieved by so-called “point books” which evaluate the influence of nuisances (e.g. noise) according to the local situation. A decision by the Rental Commission can be appealed against before the local courts.

Three months after the beginning of any tenancy, the amount of rent can be submitted to the Rental Commission for assessment. The Commission will then ascertain whether the amount of rent agreed upon between the parties is admissible according to the points system. In many cases, this leads to a substantial reduction of the rent.

Another duty of the commission consists in deciding on the validity of annual rent increases. A rent increase is fixed by the Ministry of Housing every year; it lies between 3 and 5.5 percent. Tenants can oppose the increase if overdue maintenance work has been left undone by the landlord.

### **B.5.7 GERMANY**

German rental law is mostly contained in §§ 535 ff. of the Civil Code (Bürgerliches Gesetzbuch or BGB). Besides, there is a large number of specific regulations, e.g. the so-called Law on the Amount of Rent, the “Wohnungsbindungsgesetz” and the Second Provision for the Calculation of Maintenance Cost.

Tenancies concerning dwellings in the former GDR were included in the West German legal system by the “Mietenüberleitungsgesetz” of June 6th, 1995. The bulk of the German rental law, however, is contained in the BGB.

The amount of rent for a newly-rented dwelling built without subsidies is not regulated. The possibility to freely agree upon a rent is only limited by the rules on “rent usury”. The term “rent usury” applies if there is a striking disproportion between the amount of rent and the dwelling. According to court decisions, the

rules on usury apply if the rent agreed upon exceeds the so-called “adequate rent” by more than 50 %. This “adequate rent “ is determined by the court with the help of experts’ opinions and rental tables.

The Law on the Amount of Rent applies when the original rent is raised by the landlord. The tenant must accept the increase only if the rent does not exceed the customary rent for a comparable dwelling and if the rent has not been raised by more than 30 % (in some cases, 20 %) over a period of three years. Under the Law on the Amount of Rent it is also possible for the parties to agree beforehand upon fixed rent increases for a period of up to 10 years.

The effect of all this is that rents in long-termed tenancies are lower compared to new tenancies because the possibilities to raise rents are limited. Compared with other countries which have stricter rent regulations, it is to be noted that at least for dwellings in relatively new buildings, the obtainable rent in Germany is not so far below the customary local rent as to make investment in housing unattractive in the long run.

As to the period of time, contractual freedom is limited in so far as, in case of a fixed- term tenancy, the tenant can demand a continuation (renewal) of the tenancy as an open-ended tenancy unless the landlord has a justifiable interest in the termination of the contract.

The owner’s personal needs constitute the most important reason for the termination of the tenancy by the landlord.

If the tenant of a dwelling dies, his/her spouse and/or other members of his/her family who have been members of his/ her household can take over the tenancy if they wish to do so. (§ 569 BGB).

If the landlord disposes of a dwelling by selling it or giving it away, this does not affect the tenancy.

The situation on the housing market is also indirectly influenced by the law of taxation and the law of subsidies. These mechanisms may create an incentive for the creation of more housing; thus, as the supply of dwellings is increased, rents are reduced.

#### **B.5.8 ECONOMIC POTENTIALS OF RENTAL HOUSING**

Compared to CEE and SEE countries, in most Western European countries, a much bigger part of the housing stock is for rent (see Figure 19, p. 55). But housing policy has changed during the 1980s and early 1990s. Governments in several countries, among them The Netherlands and Germany, strived towards an increase in owner-occupation. Among the reasons has been the strong trend towards reducing the involvement of the state in economic affairs. Yet, still the level of rental accommodation in these countries is considerably high. The endeavour to cut down rental housing has since cooled off. The realignment of housing policy in Central and Eastern Europe towards extensive privatisation took place at a time when the emphasis on owner-occupation had reached a peak.

Today, the following functions are attributed to social and private rental housing in Western European countries:



- In countries with unitary or integrated rental markets (Scandinavia, Netherlands, Austria)<sup>1</sup>, social rental housing is considered an instrument against poverty and social exclusion. It is of specific importance for young households and migrants.
- Only a housing market with a supply of different kinds of tenure can be efficient regarding variable consumer choices. Even if the majority of the population prefers to own property, it is economically efficient to serve the demand for rental housing as well. A prerequisite for efficient consumer choice is the supply of affordable rental dwellings. Many EU countries have unitary or integrated rental markets with an attractive supply of rental dwellings for middle income groups. A choice of a rental apartment only makes sense if it is cheaper than a privately financed property.
- A big part of the population has, because of insufficient security, no access to credit and hence to financing for the ownership of property. For them, a sufficient rental supply is a socio-political necessity.
- There are several macroeconomic advantages of a well developed rental sector. A major benefit is that it allows for labour mobility. As rents in social housing are usually limited, the sector can be used as an instrument to influence total housing expenditure and to abate inflation. In countries with integrated rental markets, such as Austria, the social housing sector is able to even influence the price level of the private rental market, due to its quantity and accessibility for the majority of consumers.<sup>2</sup>
- Rental housing offers institutional investment opportunities of rapidly growing importance. Due to risk spreading, rental housing is in growing demand by real estate funds.

The high and stable rate of rental housing in many Western European countries shows clearly its political significance.

There are a few striking reasons for promoting rental housing in Romania:<sup>3</sup> Democratic maturation is likely to produce more complex policy strategies. The potential of housing as a multi-layered policy field may be tapped fully alongside this development. Governments are well advised to utilise housing with its tremendous spin-off effects regarding economic, social and environmental targets and regional planning. As shown for Western countries, rental housing has a much larger potential to be utilised for different policy targets, compared to owner-occupied housing. Rejecting an emphasis on rental housing policy will inevitably cause even further rises in owner-occupancy rates, frozen mobility for low and middle income groups, a decline of housing consumption (living space per capita) and, in the long run, stagnating construction output.

If the Romanian Government intends to emphasise rental housing, it should bear in mind some basic considerations:

- Social housing only for low income groups, with means-tested access, inevitably leads to dual rental markets. There is a strong tendency towards “poor services for the poor”. Settlements with particularly poor tenants are in serious danger of degrading and becoming ghettos. It proves to be advantageous to have mixed social structures. This assumes accessibility for middle income groups to social housing. In the face of limited budgets, it seems favourable to cover a smaller part of demand for lower and middle income groups, instead of social housing for the poorest only.
- Unitary rental markets appear advantageous compared to dual rental markets. The major criteria is rent costs that do not crowd out other market segments (private rental, owner-occupation). Therefore,

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<sup>1</sup> See chapters B.2.1 (p. 42), B.6.2 (p. 67), B.6.3 (p. 68) and B.6.7 (p. 70).

<sup>2</sup> Amann / Mundt (2006).

<sup>3</sup> Instructive is a current realignment of The World Bank towards rental housing, as shown in the publication of Dübel/Brzeski/Hamilton (2006) on “Rental Choice and Housing Policy”.

rents in the social housing sector should be calculated to be affordable for middle income groups. Low income groups should be supported by means-tested individual allowances.

- Housing is a very long-lasting product with a long period of production. Therefore, it is of major importance to warrant lasting stable conditions in terms of legal security and financing. The establishment of institutions (e.g. a limited-profit housing sector) in this respect seems to outweigh the introduction of programmes. Programmes may easily be dropped under altered political conditions. By contrast, institutions have a strong tendency to last.
- Public Private Partnerships (PPP) in housing are an applicable model to combine public interest with the efficiency of the markets.

But is it true that starting a rental housing scheme is only possible with heavy state expenditure? There is evidence that the necessary support for a social housing sector is inversely proportional to its size.<sup>1</sup> In some countries, though, extended social housing sectors with solid and matured non-profit housing companies work with very little state support and hardly invasive legislation. Matured social housing sectors prove that by utilisation of the capital market and market forces in defined stages of the production process, it is possible to realise affordable housing with low public expenditure. The authors believe that the promoted models are transferable to premature housing markets, with similar beneficial effects.

## **B.6 BEST PRACTISE IN PPP HOUSING**

This chapter dedicates attention to the role of limited-profit housing providers and operators, and the potential of such for CEE and SEE countries. A “Third Sector” in-between public and commercial housing is understood as a specific form of Public-Private-Partnership. First, a description of functioning models of non- or limited-profit housing in some EU countries, namely Austria, France, the Netherlands and Sweden, is carried out to provide possible examples of viable structures. Subsequently, some of the few attempts at a Third Sector in CEE countries are mentioned, namely efforts in Poland, Slovakia and the Czech Republic. Chapter B.6.9 (p. 74) “Limited-profit housing within ongoing models of public utility management and good governance” is of particular importance for the proposed new PPP Housing Law (chapter C 4), as it is designed by the same authors.

### **B.6.1 HLM IN FRANCE<sup>2</sup>**

The social rented sector in France is centred around the concept of subsidised rent projects, called “low-cost housing” (Habitations à Loyer Modéré: HLM). The associations providing HLM vary in legal form, ownership and management. Yet, some general features of HLM providers can be distinguished:

- HLM organisations can take various legal forms: HLM Public Offices, HLM Public Planning and Construction Offices (both are affiliated to local authorities who, in turn, are responsible for their creation and management of their finances and tasks) and privately-run HLM (capital companies, subject to commercial law - they are the result of initiatives by private companies, financial institutions, the Chamber of Commerce and Industry and the Office for Family Loans). Some HLM also take the form of Semi-public Companies, Foundations and Cooperatives, part of which focus on home-ownership.
- They receive supply-side subsidies for building new dwellings or buying and refurbishing existing ones, but no subsidies to cover operating costs.

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<sup>1</sup> Kemeny et al. (2005), Turner/Birgersson (2006).

<sup>2</sup> Cecodhas (2004), Ball (2005).

- The social rental housing supply is financed mainly through off-market long-term loans, with the aid of State subsidies and local authorities.
- Guarantees are provided by local authorities or a mutual fund.
- The State defines the instruments and objectives of social housing organisations. Public loans are channelled through the Regional and Departmental authorities. Regions and Departments may invest additional funds for upgrading, renovation or modernisation.
- HLM are designed in a way that a sound financial balance is maintained. They are managed according to public accountancy standards, with (in the case of privately-run HLM) profit limited to a certain share of capital invested.
- Rents are regulated through State decree.
- The allocation of HLM dwellings is subject to housing conditions, family circumstances and income. Local authorities are allocating a percentage of the housing stock according to their access criteria.
- Rental contracts have no time limits but a supplement to the rent is charged if income ceilings are exceeded.

From these general concepts it is quite clear that the system of HLM in France has many similarities with the Austrian Limited-Profit Housing Associations, as described in the previous section. The HLM-scheme was used as a model when introducing the TBS system in Poland.<sup>1</sup>

HLM organisations are financially and legally controlled by the Ministries of Housing and Finance, and they are monitored so that their activities conform to their social objectives. The Inter-ministerial social housing mission (MILOS), under the joint control of these two Ministries, assesses the financial situation of the HLM every 4 or 5 months. The MILOS may issue recommendations which, if not taken account of, may result in the MILOS issuing proposals for sanctions.

### **B.6.2 LIMITED PROFIT HOUSING IN NETHERLANDS<sup>2</sup>**

Housing organisations can take the form of either a housing association or a foundation (although these are commonly known as housing associations (“woningcorporaties”) as well). Any profits that they make must be reinvested in housing. They participate in any of six performance areas, such as providing target groups with suitable housing, maintaining the standards of homes, ensuring financial security and contributing to the quality of life in neighbourhoods.

Due to its independence from the Government, the social housing sector is subject to two ‘safety bodies’, the Social Guarantee Fund and the Central Housing Fund, which offer loans that are 1% cheaper than those available on the capital market. The WSW and the Social Housing Guarantee Fund are organisations which are financially independent from the Government and act as guarantors to housing association loans. Associations must register with the WSW and undergo a credit check. The fund is now financed by contributions from housing associations, and associations are required to set aside a certain amount if the assets of the WSW fall below a minimum level. If, for any reason, a housing association is not able to meet the financial demands of the WSW and is unable to obtain funds from them, it may be eligible for financial support from the Centraal Fonds voor de Volkshuisvesting (CFV) (Central Housing Fund). In return, associations must consent to undertake reorganisation in order to establish financial health. Once CFV support has been accorded, the association can once again apply for membership and, in turn, WSW loan guarantees. The Government outlines housing policy areas such as availability, affordability, quality, the quality of life and sustainability.

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<sup>1</sup> See below, p. 68.

<sup>2</sup> Cecodhas (2004).

An internal supervisory body advises management, monitors the work of associations and takes action where necessary. Although central Government withdrew from the field, the Minister of Housing still retained some powers of intervention. The minister will consider intervention after examining three documents produced by the associations which are (1) an annual report, (2) a review of statistics and forecasts and (3) a report on the local social housing situation, e.g. in terms of building and refurbishment. Furthermore, the advice of the CFV and the local authority are also taken into consideration. In some specific cases, the Minister of Housing also has the power to block plans by the associations that have been adopted without his prior permission. The associations endeavour to show that they act responsibly to society by promoting transparency of their policies and encouraging collaboration with others.

### **B.6.3 LIMITED PROFIT HOUSING IN SWEDEN<sup>1</sup>**

In Sweden, the state is responsible for the main housing policy. Homeowners, cooperatives and rented housing corporations borrow the capital they need on the capital market at market prices. The municipality decides when and where housing is built. The regional authorities have very little to do with the housing sector. The housing organisation decides whether to construct or renovate housing, and whether to take out a relevant loan on the market. The housing is then allocated by the housing organisation itself or by a housing association run by the municipality. Almost every municipality has its own independent non-profit housing organisation. SABO is the federation for the municipal owned housing organisations and it now includes 300 member organisations. These member organisations own and manage around 900 000 dwellings all over the country (22% of the total stock) and they can compete in the housing market on the same terms as privately owned housing. However, the SABO organisations are often set specific targets by their municipal owners. Their main tasks are to produce decent housing for all kinds of households.

In addition, there is a very particular system of housing cooperatives in Sweden. HSB and Riksbbyggen are the main actors in this sector. Housing dependant on these cooperatives is equivalent to 700 000 apartments or 17% of the total housing sector. HSB currently has close to half of this market.

The area of housing is the responsibility of the municipalities, one must add that their policies and decisions may be greatly influenced by central Government. With regards to the construction of housing, the local building authorities and building regulations ensure that homes are durable, hygienic and are of a good standard.

### **B.6.4 THE POLISH TBS-MODEL**

In 1997, Poland introduced a rental housing construction programme aimed at municipalities. Some 100 000 units have been constructed so far. The administration of this programme is carried out by the state-held BGK Bank and finance consists of long-term interest-subsidised loans (3.5% double-indexed). Construction is realised by non-profit housing associations (TBS), owned by municipalities, and by a few cooperatives. The rental flats are not exclusively aimed at lower, but at middle income groups as well. Subsidies are subject to 30% private equity funding and the remaining 70% of funds are contributed by the National Housing Fund (KFM), which is financed predominantly out of the state budget. Since 2002, the funding has been to a large part provided by state-guaranteed loans from the EIB and the CEB.<sup>2</sup>

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<sup>1</sup> Cecodhas (2004).

<sup>2</sup> World Bank (2005), p.18 f.

The large requirement for public outstanding loans amounts to a considerable problem. Also, within the political debate, insufficient targeting of the subsidies has been criticised, because objective criteria for the allocation of these very cheap dwellings are lacking.

The Polish TBS model is based on the French HLM model and is unique within the region. Similarities with the Austrian system of limited-profit housing associations are also obvious, although the Austrian system has to be credited with achieving a higher efficiency due to both high capital market funding and other aspects.

#### **B.6.5 THE SLOVAK NON-PROFIT HOUSING SCHEME<sup>1</sup>**

Only 4% of the Slovakian housing stock is constituted by municipal dwellings and 14% by cooperative dwellings. Due to the scarcity of social housing, rental contracts with the municipalities are generally limited to three years. As a result of this situation, the existing law on non-profit organisations was amplified on the subject of housing. The tax reductions that have been introduced benefit associations and cooperatives, but they do not apply to capital companies. Owners may be municipalities or private people. Nevertheless, only housing associations that are predominantly owned by municipalities may receive state subsidies. They also have to respect specific building cost caps.

After a set-up period of several years, in 2004 and 2005, the first two housing associations following this model were founded. One of them is owned by the city of Bratislava (90%) and Istrobanka (10%). The other one, based in the Northern Bohemian city of Martin, received important help from the Dutch housing fund DIGH (Dutch International Guarantees for Housing). These two associations have just begun building activity. The foundation of these associations met with considerable difficulties. Approbation from the local authorities has to be obtained. The authorities are concerned about a capital outflow and so have established excessive control mechanisms.

#### **B.6.6 COOPERATIVES IN THE CZECH REPUBLIC**

In the Czech Republic, neither social housing nor non-profit housing associations are legally defined. Yet, in 1995, special subsidy programmes for new “quasi-rental” municipal housing construction appeared, with total subsidies amounting to approximately one third to one quarter of average dwelling construction costs. The programme allowed for the creation of cooperatives (PPP) between municipalities and participants (future “tenants”): a municipality, with the help of a commercial developer, secured the state subsidies. The remaining costs of development were covered by down-payments from future tenants and by commercial mortgage loans. Though the right to buy was allowed only after 20 years from the year of completion, the share in a housing cooperative could, under valid legislation, be liquidated immediately, resulting in a quasi-ownership structure. Even though this programme helped to increase new construction considerably, it was highly criticised for several reasons. Amongst these were the emergence of a black market in rent-regulated municipal dwellings and the illegal “sale” of rental contracts on rent-regulated municipal apartments, carried out via fictitious dwelling exchanges. Also, there were no limitations concerning the maximum cost per m<sup>2</sup> or the maximum area of the dwelling and no means-testing was applied in the allocation of the flats.

Owing to this body of criticism, the system was largely amended in 2003. The cooperative form was forbidden, cost and income ceilings were introduced and the participation of private capital was further

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<sup>1</sup> Červeňová (2005); Amann/Beijer/Komendantova/Neuwirth/Roy/Schimpel/Schwimmer (2006).

encouraged. Flats constructed with this state subsidy now have to remain in the ownership of the municipality and have to be used for the purpose of housing based on a lease right. Only some income groups (lower-incomes) may become tenants in such flats, on condition that they do not own any other real estate intended for housing. The rent level corresponds approximately to cost rents. The subsidy programme for “quasi-rental” municipal housing has contributed considerably to the high rate of new construction in the Czech Republic.<sup>1</sup>

### **B.6.7 LIMITED PROFIT HOUSING IN AUSTRIA<sup>2</sup>**

Limited profit housing associations (LPHA) comprise altogether 200 housing co-operatives, private limited companies and public limited companies with a total housing stock (rental dwellings and owner-occupied flats) of some 700 000 units (approx. 19% of total, 2001). The LPHA are responsible for 31% of new residential construction. That is more than half of all multi-storey housing construction. For this task they are assigned some 33% of total expenditure on housing subsidies. The housing associations are owned by public authorities, charity organisations, parties, unions, companies, banks or private persons. To avoid moral hazard, it is prohibited for construction firms to be owners of LPHA.

In short, the limited-profit housing system is characterised as follows:

- Legal basis: limited-profit housing law.
- Control: Self control through umbrella organisation, supervision through provincial Governments.
- Social functions, therefore they benefit from company income tax relief and preferred access to housing subsidies.
- Cost coverage principle: the obligatory calculation of rents based on construction costs in combination with rent limitation defined by the subsidy schemes guarantee a low and continuous level of rents (3-5 €/m<sup>2</sup> net).
- Orientation on demand: to get a subsidy demand has to be proved.
- Limited field of action: the housing associations have to focus on housing construction, refurbishment and housing management. In fact it is an important aspect for long term success of the system that housing associations in general manage the houses they have produced before. They are allowed to develop additional commercial space. Since recently they are, under strict conditions, allowed to go abroad.
- Binding of property – limited profit: Housing associations ought to make profits. But these profits have to be reinvested: in purchase of land, refurbishment or new construction. A limited part of the profit (max. 3,5% of registered capital) may be divided to the owners or shareholders.
- Obligation to build.
- Right to buy for tenants: Tenants who contribute to construction costs with their equity (>50€/m<sup>2</sup>) have, after 10 years, a right to buy.
- Very strong legal position of tenants, established by tenancy law as well as non-profit-housing law.

The close ties given by the non-profit-housing-law, the supervision through the provincial authorities and the fact that many housing associations are owned by semi-public bodies have as a result, that housing associations are regarded as the “lengthened arm of housing policy”. They work on private market economy basis for goals strongly influenced by the public.

The present system of social housing finance in Austria provides guarantee-like effects, even without using explicit guarantees. This derives from the combination of public subsidies (low interest loans,

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<sup>1</sup> Lux (2006).

<sup>2</sup> Amann / Mundt (2006).

annuity grants), the prior role of limited profit housing associations in new construction and the effectiveness of housing banks ("Wohnbaubanken").

Limited profit housing associations are regarded as low risk borrowers due to several reasons: First, due to co-financing by housing subsidies, capital market financing has a good L/V-ratio and very low risk. Public bodies act as external supervisors controlling the financial situation of the limited profit housing associations accurately. Second, ownership constellations are very favourable to their creditworthiness. Third, their size and asset base is taken into account. These factors amount to a structure of implicit public guarantees for the loans taken out by the limited profit housing associations. Yet, no formal public underwriting or guarantee fund had to be established. This condition differs considerably to the majority of other countries. Therefore, the guarantee-like functioning of the housing subsidy scheme in all its complexity – financial support as well as control and supervision – is responsible for the very good conditions limited profit housing associations face on the capital market.

LPHA contribute significantly to the very high level of housing satisfaction and housing quality. They keep housing expenses low and guarantee a high extent of equality in housing provision. In Austria there are no ghettos, comparatively little homelessness and barely any segregation.

The following aims and intentions of limited-profit housing can be identified on the basis of Art. 11 § 1 Z 3 of the federal constitution (housing), of several decisions by the courts of justice, of the Limited-Profit Housing Act and of several ordinances based on this Act.

On the one hand, the provision of affordable housing for large parts of the population within the federal territory and consequentially the enhancement of living conditions of directly affected lodgers and housing consumers is carried out by undertakings that

- are organised according to private law,
- are exempt from corporate tax,
- are not classified as state or "charitable" undertakings (VwGH 82/12/0120),
- are limited in the extraction and distribution of profit and in their field of operation.

On the other hand, there is the aim to create a housing sector that is characterized by

- a legally defined long-term binding of the built-up capital within the housing sector,
- and the constraint to therefore reinvest in housing matters.

Due to these two requirements a stable (and less business-cycle dependent) partner within the economy is established. It ultimately aims for a self-reliant and solid system (which is decreasingly dependent on public subsidisation) and therefore improves housing conditions for a much larger, than directly targeted, group.

Despite its historical roots, the concept underlying limited-profit housing is a very modern one: Not to provide certain public services directly by the state but to assign its provision on the market within strongly regulated limits, is a concept increasingly applied in other sectors, especially within the infrastructure sector such as telecommunication.<sup>1</sup>

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<sup>1</sup> Holoubek (2001), p. 46, translated by A. Mundt.



The social housing policy scheme in Austria may be attributed to the type “integrated rental market” following Kemeny.<sup>1</sup>

#### **B.6.8 POTENTIALS OF A THIRD SECTOR IN ROMANIA**

The potential of a Third Sector in housing can be seen in two different aspects. First, it enables the installation of a functioning rental market and, second, it enforces public objectives in housing policy through the operation of non-public housing providers.

The economic efficiency of a sufficiently large rental sector is subject of sections above. Under the many advantages of an increased rental supply mentioned in that section, special attention must be paid to the resulting increase in labour mobility and the improvement in affordability of housing for young and poorer households.

Considering the relationship between entirely market-based and entirely public housing, either extreme accounts for inefficiency in housing provision: With exclusively market-based instruments, only the highest income segments in housing demand can be satisfied. Municipal housing and ANL-housing, on the other hand, show inefficiencies through its excessive requirements for public funds and the simple fact that the incentives for market-oriented behaviour are marginal. Also, it does not fall within the responsibility of municipalities or ANL to secure middle income housing. Yet this large share of middle income housing demand cannot be consigned exclusively to the owner-occupied housing supply. The question is not only about affordability and the numerous problems resulting from an excessive owner-occupation share, but also consumer-choice has to be made possible. A market economy is particularly efficient whenever consumers are able to choose from a broad variety of alternatives, according to their tastes and needs. This is also the case for the housing market. The strength of a functioning Third Sector in the housing market is, therefore, seen in its ability to supply additional housing alternatives for consumers.

#### GENERAL CONDITIONS

As the mentioned examples of limited-profit structures in the countries of Austria, France, the Netherlands and Sweden have shown, the implementation of a Third Sector in housing to secure general objectives of housing policy has attained convincing results. Particularly for low and middle income groups, the setting-up of PPP models has proven to be very effective. Combining commercial financing with public funding and backing allows for affordable costs for the tenants and owners with only moderate public expenditure.

Unlike for-profit providers, limited-profit housing providers will not exclusively focus on rental dwellings for upper incomes, but will provide housing for middle and lower income groups, supported, if necessary, by public subsidies and the legal definition of public service obligations which specifies the social goals of the housing operators. Unlike private landlords, operators in the Third Sector will not use excess demand for housing to generate economic profits from inadequate housing supply, but will act according to public goals to which they are legally bound. To finance housing, PPP models with adequate state support would, therefore, combine the strength of the markets with public goals and, at the same time, work as incentives to market-oriented behaviour.

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<sup>1</sup> See above, p. 42.



A complete legal prohibition of profits would not make sense in that context, because a reasonable yield on capital invested must be provided in order to attract capital participation. Profits are indispensable to build up equity. Subsequently, equity is not only essential as part of a structured financing of new housing construction, but it is also crucial in order to carry risks. A company with too little of its own capital will necessarily be unstable and face economic difficulties, and this, of course, influences considerably the willingness of commercial banks to co-finance construction projects. Profits should, therefore, be limited to the necessary extent and a re-investment of profits should be obligatory. EU legislation on limited-profit housing providers has recently recommended an adequate relationship between public finance providers and housing operators with public service obligations.

As described in Part A - chapter A.2.3 (p. 11) and chapter B.7.1 below (p. 86), the maintenance and management of common parts of multi-storey owner-occupied apartment blocks are a major problem in Romania. Limited-profit housing providers should combine the following functions: housing development, long term investment in the housing stock, housing management and maintenance. With the obligation to maintain the buildings and manage the common parts in apartment blocks, the danger of insufficient investment and dilapidation of the buildings can be prevented. They can provide an efficient structure to secure the necessary joint investments of all lodgers to maintain the common areas.

As in Austria, an additional advantage of PPP models in housing will be the better financing conditions, as long as social housing providers exist within a framework of checks and balances, with internal and external supervision. If limited-profit housing providers operate under risk-sharing conditions, either by public guarantees or by the implementation of funds, private capital participation will be encouraged due to low-risk and a reliable, stable yield. The potential to raise private capital for the operation of limited-profit housing providers can be further encouraged by instruments such as capital-gains-tax reductions on housing bank bonds, as practised in Austria.<sup>1</sup>

#### SPIN-OFF EFFECTS

Taking the Austrian system of limited-profit housing associations as an example, the far-reaching spin-off effects enabled by a Third Sector in housing and the concentration on bricks-and-mortar subsidies have been described.<sup>2</sup> The most important effects can be summarised as follows:

- Economic spin-off effects: equity capital substitution by public loans for developers, economic and labour market stimulus, dampening of construction and financing costs, regional economic stimulus.
- Social policy effects: reduction of poverty and social exclusion, redistribution, stabilising of housing expenditures, improvements in housing quality, integration and social quality.
- Environmental spin-off effects: upgrade of environmental standards and reduction of energy consumption, in line with the Kyoto goals.
- Spin-off effects for regional and urban development: limited-profit housing projects play a fundamental role in regional development and city renewal. They stabilize settlements and prevent segregation and the formation of ghettos.

Spin-off effects resulting from public subsidies have often been criticised in international discussion for their market-distorting effects. In the case of the Third Sector in housing, this objection does not hold, since a special housing supply segment is created that would not exist in the absence of a Third Sector and public subsidies – a drawback for the whole economy. The limitation of profits to what is necessary

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<sup>1</sup> See chapter B.6.7, p.70 and Amann/Mundt (2006).

<sup>2</sup> Amann/Mundt (2006), Amann/Oberhuber et al. (2004).

and the enforcement of capital reinvestment make public support of the Third Sector both reasonable and legally viable.

#### COMPANY HOUSING

A special field of operation of limited-profit housing with great potential is company housing. Naturally, the classic concept of workers' villages has to be redefined in a contemporary way. As an example, company housing could be built on the following fundamentals:

- Establishment of a limited-profit association in form of a joint-venture between a commercial company, a municipality, a commercial bank, if necessary, and further institutions.
- Implementation of an efficient financing structure based on moderate state subsidies and affordable rents. On the part of the commercial company, real values, especially building land, should be contributed. Risk of rent-loss is reduced to a minimum owing to stable employment.
- Characteristics of the Third Sector as stated in section B.6.7, p.70 (cost coverage etc.).
- Binding of the rental contract to employment of at least one family member at the commercial company concerned. Loss of employment may, therefore, lead to the loss of company housing rights. It is reasonable to change rental contracts to indeterminate duration after several years of stable employment at the company or at a certain age.

Modern businesses tend to limit their field of operation to core tasks. The engagement in company housing does not signify a breach with this reasoning due to the moderate utilisation of resources involved. Companies are often opposed to excessively strong ties with their region of settlement, because transaction costs of relocations should be minimised. The shutting-down of large businesses within a region always has heavy repercussions for regional labour markets and affects all aspects of life of the newly unemployed. The existence of company housing owned by the commercial company in common with the municipality and other partners would not be to the detriment of the company in this situation. For the municipality, even in the worst-case scenario, the advantages of the existence of company housing will prevail.

#### **B.6.9 LIMITED-PROFIT HOUSING WITHIN ONGOING MODELS OF PUBLIC UTILITY MANAGEMENT AND GOOD GOVERNANCE<sup>1</sup>**

The concept of limited-profit housing based on the Austrian or Dutch examples has shown to be very compatible with ongoing definitions of "Good Governance". In addition to "New Public Management" these approaches try to open a new understanding of the relationship between policies and administration.<sup>2</sup>

"Governance International", a London based institute which consults and informs public administration bodies all over the world, provides the following definition:

"Good governance involves public authorities and agencies working together with multiple stakeholders to improve the quality of people's lives. This requires the active collaboration of citizens, their associations and organisations with other players (businesses, voluntary sector, the media)."<sup>3</sup>

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<sup>1</sup> This chapter is written by Andreas Sommer and Theo Österreicher, the responsible authors of the PPP Housing Law (chapter C 4).

<sup>2</sup> Löffler/Bovaird (2005), p. 35, all following citations translated by A. Mundt.

<sup>3</sup> <http://www.governanceinternational.org/german/fabout.html>

Based on this understanding Elke Löffler and Tony Bovard have developed a "Model of 10 Propositions" which aims to create a better balance between policies and their administration as well as between political parties and citizens.<sup>3</sup>

#### THESIS 1: GOVERNANCE THROUGH MULTIPLE PLAYERS

"Governance signifies the collective action of policy makers, administration bodies, citizens, political parties, the media and further players that, depending on the topic and the context, are variably involved in the preparation, implementation and evaluation of policies. Governance is concerned with the ultimate impacts on communal life not with the outcomes of a singular administrative act. Not exclusively policy makers and administration bodies but a variety of players from different fields have a (positive or negative) role to play in forming these impacts."<sup>1</sup>



#### Present state in Austria:

A variety of players are engaged in Austrian limited-profit housing:

- Within the public sector: the federal state legislator, the Federal Ministry of Economics and Labour by issuing ordinances and as legal custodian of the Limited-Profit Housing Act, the departments of regional Governments as authorities executing Public Law, the courts in their judgments on housing laws, eventually the Federal Ministry of Finance and its subordinated tax authorities.
- Within the limited-profit housing sector: the Austrian Federation of Limited-Profit Housing Associations in its function as lobby and Audit Association, the singular Housing Associations and their members.
- On the demand side: the housing consumers and their numerous lobby-groups and representatives.
- Other stakeholders: the Austrian regions in assigning housing subsidies, municipal administration bodies within the provision of building land, construction and financing industries, as well as political parties and the media as mediators of this socially and economically important topic.

All of these "players from different fields" have "a (positive or negative) role to play" in forming the "ultimate impacts on communal life".

#### Recommendations for Rumania:

In order to achieve the necessary continuity of a PPP-housing-model it is recommendable to legally establish it at constitutional level (ideal) or at least on a permanent normative basis. This way a structure can be created that is independent of short-dated day-to-day discussions and also enables a practically feasible implementation of the "Right to Housing" which is broadly considered in Europe. This right aims at generally holding the state responsible for the quality of citizens' living conditions.

The fact that Rumania has less diversification of state-level responsibilities than Austria will facilitate a nation-wide solution.

If the creation of self-reliant administrative bodies is unwanted, we recommend execution in line with the Rumanian tax authorities, especially as tax deductibles in some form may constitute an element of the system.

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<sup>1</sup> Löffler/Bovard (2005), p. 36.

In order to keep administrative costs low, the sector as such should establish an audit association and finance it independently.

The PPP-housing associations should be set up exclusively in accordance with Civil Law, whereas they may choose as legal form limited-liability companies as well as foundations, trusts, funds, associations etc.

Owners of these housing associations might be:

- national or international undertakings, doing business in Rumania, that have an interest in their employees' living conditions,
- the municipalities in the fulfilment of their communal responsibilities,
- dwelling owner associations, or more generally: owners interested in the collective administration and management of collectively owned parts of buildings,
- the finance industry and insurance companies.

## THESIS 2: VALUES IN SOCIETY

"Governance is concerned with various important social values and not just economic concepts of efficiency. How these values are specified and how they relate to each other depends on different ideological backgrounds. In order to guarantee the collective action of several players, the definition of common "rules of the game" is as necessary as the consideration of social values. The process of agreeing on these rules is an inherently political one. It makes the participation of political parties and a variety of other players mandatory." <sup>1</sup>



### Present state in Austria:

The framework of Austria limited-profit housing is laid down in the Limited-profit Housing Act (WGG). It specifies everything from the administrative and formal concession of the "Public-utility" status to a certain housing association up to the termination of this status. Primarily, limited-profit housing is based on the field of competence classified as "Volkswohnungswesen"<sup>2</sup>, meaning "housing for the whole population." A term that clearly carries a certain social value which was later substantiated by the Constitutional Court's classification as: "the responsibility for the provision of small and medium size apartments as predominantly used for the satisfaction of housing needs of large parts of the population."<sup>3</sup>

The "process of agreeing on these rules of the game" has ever been an "inherently political one" which continues to make "the participation of political parties and a variety of other players mandatory."

### Recommendations for Rumania:

The concession of PPP-housing association-status should be affected by an administrative act such as a written notification by the executing authority. It entails a prior formal, legal and statutory inspection of the necessary preconditions as well as of the financial capacity. The status should initially be granted on a fixed-term basis (i.e. 3 years) in order to be able to monitor the actual business activity up to its consistency with the rules of limited-profit housing.

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<sup>1</sup> Löffler/Bovaird (2005), p. 36.

<sup>2</sup> Art. 11 Abs. 1 Z 3 B-VG.

<sup>3</sup> VfSlg 3378/1958, vgl. VfGH K II-2/91.

### THESIS 3: INITIATIVES OF A VARIETY OF PLAYERS

“Governance requires not only political leadership of parties and administration, but depends on the initiative from part of the citizens, the economy and other sectors.”<sup>1</sup>



#### Present state in Austria:

Limited-profit housing arose from initiatives that set in almost simultaneously in the first half of the 20th century:

- Self-help: Socially less well-off population groups started several initiatives to construct affordable dwellings with the help of building societies. The guidelines were self-help, self-organisation, upgraded creditworthiness and better access to the capital market.<sup>2</sup>
- State: Glaring housing distress forced the state to unfold supporting action.<sup>3</sup>
- Businesses: Business enterprises became active in the field of company and workmen housing in the sense of top-down social self-reliance.<sup>4</sup>

These historical roots are still visible within limited-profit housing today: Out of approx. 200 limited-profit housing associations, about half are classified as housing co-operatives (in collective ownership of inhabitants), the other half are private limited companies (in the ownership of private enterprises or the public and semi-public sector). Up until now, many co-operatives recruit their leaders from amongst their own housing consumers, a procedure which is also reflected in the boards of the Federation of Limited-profit Housing Associations. Additionally, politicians (throughout or after their political career) are active in the management or in the supervisory boards of LPHA and personal ties naturally also exist with the finance industry, insurance companies and other business sectors. Furthermore, there were various attempts to "activate" the broad range of occupants by way of models of participation.

#### Recommendations for Rumania:

From our point of view, for a successful implementation of a PPP-housing sector it is necessary to thoroughly include political parties, sympathizing business enterprises and the general public:

- Within the competition of election campaigns political parties are able to demonstrate their expertise and problem-solving capacity in the field of housing.
- The business sector should be well aware of the diverse economic impacts (increased construction activity, financial and insurance services).
- As impetus for the PPP-housing sector politically mature, self-responsible citizens are required (in contrast to state-dependent social housing supplicants or entirely market-reliant housing consumers).

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<sup>1</sup> Löffler/Bovaird (2005), p. 36.

<sup>2</sup> Rüsç (1991), p. 225.

<sup>3</sup> Sommer (2001), p. 1070.

<sup>4</sup> Rüsç (1991).

"Governance requires strategic management. In times of tight budgets strategic management signifies above all the courage for setting priorities. Often "emergent" strategies have to be realized."<sup>1</sup>



#### Present state in Austria:

Limited-profit housing did not derive from one common ideological background of all players but rather evolved through mutual adaptation in a process of "emergence". (Emergence in the sense of "the whole being more than its components"). Their diverse ambitions - self-help of housing consumers, social engineering of the state, business sector's interests - converged into a pattern which was finally expressed within the Limited-Profit Housing Act of 1940. After freeing it from ideological extra weight, this Act became the basis for the success-story of limited-profit housing in (West) Germany and Austria after the war. The high extent of regulation within this field of law and of the limited-profit housing sector as a whole has been criticized. Yet, it has to be underlined that the dynamics arose from the activities within the sector and not merely out of the eagerness of legislators.

This condition is caused exclusively by the Limited-profit Housing Act's "Janus-faced" attribute: On the one side the Act is part of Civil Law in the sense that it regulates the interaction between the associations and their lodgers. On the other side, the Act also pertains to Public Law (as special purpose Trade Law) as it defines the organisational and financial framework of the LPHA as business companies. The execution of the Act lies in the first case with the courts and in the second case with the regulatory authorities. The two sides correspond with a focus on consumer protection and with commercial and economic aspects respectively. This "Janus-faced" attribute also shows in the historical formation of the Limited-profit Housing Act (propositions 3 and 8) and in its nature as a model of consensual politics.

#### Recommendations for Rumania:

- The strict object-related calculation of prices and rents laid down originally in the Limited-profit Housing Act in its 1979 form has multiply shown to be a restraining factor of over-regulation and therefore had to be replaced by regulations that allow certain forms of rent-pooling on the level of individual associations.
- For the case of the Rumanian PPP-housing model, we therefore propose to enable the housing associations to deploy a balancing solidarity within their (new-built/bought/brought-in) housing stock by means of price-calculations based strongly on the level of individual associations. If cost-calculation is narrowly object-related, also housing consumers might face disadvantages due to the exposure of certain projects to the variability and randomness of diverse financing and management specifications.
- The objective of the proposed PPP-model are housing prices and rents that lie decidedly underneath the market level (market-prices minus a defined "public-utility bonus" as upper limit).
- The extent of this "public-utility bonus" should clearly reflect possible tax exemptions and housing subsidies available to LPHA. This aspect has to be substantiated under strict application of EU Law on State Aid and Public Services compensation.

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<sup>1</sup> Löffler/Bovaird (2005), p. 36.



## THESIS 5: DIVIDED AUTHORITY

"Policy makers have to accept the fact that other players also have a legitimate role to play in a process where resources are used for obtaining societal goals. This means that all stakeholders have to share authority. No single player can raise the claim to exclusively understand and represent public interest and utility."<sup>1</sup>



### Present state in Austria:

"Divided authority" is a substantial attribute of limited-profit housing in Austria. Limited-profit housing associations are enterprises that are, on the one hand, privileged (tax-exempt), on the other hand, bound to far reaching regulations. As a "Third sector" in-between business-oriented and profit-driven housing providers and public housing provision, they operate in-between state and market. Therefore they are exposed to market-competition and at the same time have to adopt to publicly defined and much stricter standards than exclusively commercial companies.

The "Third Sector" comprises - depending on various definitions and understandings - a range of concepts: Civil Society, public-utility structures and structures of common interest, various types of associations and trusts, NPOs and NGO etc. In Austria there are more than 100 000 entities and undertakings that operate in practically all fields of day-to-day life including housing. Examples for the many: voluntary fire brigades, emergency medical services, research organisations, religious groups, trade union, political parties, outsourced public entities subject to Civil Law, hospitals, cultural initiatives and eventually entities in the field of housing.

In an ideal form, the "Third sector" is assigned tasks for "obtaining societal goals" where the state has shown to be too inflexible, inefficient or expensive, and also where the market did not unfold any or sufficient activity. Institutions within the Third sector share a statutory or legally defined functional orientation which is combined with statutory or legally defined obligations concerning the re-investment of capital and the binding of property. As a form of compensation the state provides indirect (tax) or direct subsidies.

The area of housing is characterized by a range of aspects that include challenges in the field of social policy, consumer protection, fiscal policy, state expenditure and increasingly also ecology.

According to this reasoning the Austrian "Third Sector" unfolds a broad range of activities:

- Help for the homeless: Over 30 associations, initiatives and NPOs have a fundamental role to play in the achievement that in Austria with a total population of over 8 mill. there are only 20 000 homeless people. In EU 15 there are over 3 million!
- Consumer and tenants protection: Numerous facilities provide legal arbitrage on-site, help to increase housing satisfaction, and encourage the practical application of technological and ecological standards. As examples for the many: the Association for Consumer Information, tenants and owner associations, energy-use helpdesks etc.
- Within the field of housing and housing policy, LPHA are without doubt the economically most important players of the "Third Sector". This shows not only in objective statistics on economic activity but also measuring tenants satisfaction. Taking a EU-wide comparative perspective, while Austrian

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<sup>1</sup> Löffler/Bovaird (2005), p. 36.

households already are on average "quite satisfied with their actual living conditions", within the rental segment, tenants of LPHA even show the highest level of satisfaction.<sup>1</sup>

### Recommendations for Rumania:

In addition to the legally defined minimum requirements of PPP-housing associations as counterpart to state subsidies (and possible tax exemption), it is necessary to encourage on the side of the associations a specification of the public-utility mandate by means of self-binding, statutory regulations: For instance by implementing special benefits to certain groups of housing consumers or tenants (members of certain companies, of certain professions, etc.).

## THESIS 6: FINAL DECISION BY POLICY MAKERS

“Due to their special legitimisation through elections, policy makers have a claim on the final world within a public decision-making process, as long as they can guarantee to know other players' opinions and to have included them in their considerations.”<sup>2</sup>



Present state in Austria:

Under this consideration certain difficulties arise that are connected to a large extent to the federal structure within Austria: National state level regulations on entrepreneurial margins were partly off-set by the regions' housing-subsidy schemes. This unclear separation of responsibilities between different state levels does not fit to the guidelines of "good governance". Preoccupation and irritation within the housing field cause diverse political claims (usually by opposition parties) to provide housing at very low costs or even free of charge as soon as financing loans are repaid. Sometimes even the transfer to sitting tenants is called for. These populist conceptions prove a wrong understanding of "social market economy" in general and limited-profit housing in particular.

### Recommendations for Rumania:

- It is vital to clearly distinguish (also by laws) between the political responsibility for the legal framework, within which PPP-housing operates, and the operational management within the associations. In contrast to the historically developed model in Austria, it may prove as an advantage to exclude political parties from the ownership of PPP-housing associations.
- At this point we want to restate the advice to enter into discussion with potential investors, owners, and business-partners at a very early stage of the law-making process.
- It would be possible, for example, to incorporate industries with a long-term perspective and an interest in a stable housing sector and provision into (political) marketing-strategies.

<sup>1</sup> Czasny/Stocker (2006), p. 12 f.

<sup>2</sup> Löffler/Bovaird (2005), p. 36f.



## THESIS 7: DELEGATION (CHECKS AND BALANCES)

"Good Governance" signifies that politicians have to be prepared to delegate certain decisions partly or entirely to other players that show a higher expertise in a specific area. The delegation of decision-making capacity to specified organisations of interest has to be surveyed continuously. For this reason, a system of "checks and balances" should be established."<sup>1</sup>



### Present state in Austria:

The objective of a public-utility sector is the "fulfilment of tasks of general public interest by means of disburdening public administration through legal entities outside the state-run execution apparatus."<sup>2</sup> The legal background of this understanding consists in § 1 (2) of the Limited-profit Housing Act. It states that LPHA "will direct their activity towards the fulfilment of tasks in public interest within the sphere of housing, will apply their capital resources towards solving such tasks, and will control and supervise their business activity continuously."

Following this general guideline there is a range of special regulations: Concerning the legally approved field of business activity (distinguishing between corporate tax exemption and no exemption, between activities which require special approval by the regulatory authority or not, etc.), concerning Civil-Law specifications on rents, selling-prices and administration of real-estate (cost-coverage), concerning long-term binding of capital (limits to profit distribution, limitation of capital-withdrawal, obligation to re-invest, interdiction of mergers and divisions, etc.), concerning supervision and control (the Audit Association that revises accounting and financial practices, the Departments of the Regions that function as state-run supervisory authorities). The aggregate of these regulations amounts to a complex system of "checks and balances" as a counterpart to the advantages LPHA draw out of tax-exemption and state subsidies to rental housing construction.

### Recommendations for Rumania:

- According to the understanding we expose throughout this report, "Private Public Partnership" signifies that the state is confined to define the legal framework and at best functions as direct stakeholder of PPP-housing associations. In other respects, PPP-housing associations should represent business enterprises that are self-responsible in their operational decisions and unfold their activity on the market according to general business principles.
- Put differently: The politically influenced objectives should not and can not absolve PPP-housing associations from their commercial responsibilities (from business-related necessities up to the management's liabilities). In fact, a certain unaffected "room to manoeuvre" concerning the attainment of objectives has to be secured (Investment decisions, choice of business-partners).
- The before-mentioned obligations, on the other hand, legitimise certain privileges concerning tax-exemption and access to housing subsidies: Limitation of business activity, binding of property, limitation of profit ("public-utility bonus" as opposed to market prices).
- In the long run, the public sector can best be disburdened by a PPP-housing sector if property capital of the associations is allowed to increase continuously. This will be achieved by limited, but decidedly acceptable, profit-orientation (in combination with limited capital-withdrawal).

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<sup>1</sup> Löffler/Bovaird (2005), p. 37.

<sup>2</sup> Raschauer (1994), p. 315.

- There needs to be control at several levels: at the level of singular building projects (control of subsidy scheme regulations), at the level of the sector (which self-responsibly has to set-up and finance an Audit Association in order to control business-activity to be commercially sound, adequate and economizing), and finally at the level of a state-run supervisory authority to complete an efficient structure of supervision.
- Throughout this supervisory process, the ascertained credit rating of the individual associations may be used for the future granting of housing subsidies. This may guarantee the efficient assignment of public funds.

## THESIS 8: DIVERSIFICATION OF POLITICAL PARTIES

"Within the political process, the diversified positions of elected politicians have to show clearly in order for voters to conceive for who they vote and for what reasons. "Good Governance" requires diversification of political parties. In contrast to most players within civil society, political parties embrace a multitude of challenges and not only pursue matters of "particular interest", may they be legitimate or not." <sup>1</sup>



### Present state in Austria:

From the very beginning of co-operative housing in the early 20th century, social-democrat and cristian-social influences have existed pluralistically next to each other. The codification of the Limited-Profit Housing Law under the political regime of 1940 has clearly intended to roll back these foundations. After the war, it was sought to re-connect to earlier traditions, by means of enabling a socio-political compromise within the structure of limited-profit housing. This tradition is still kept up today.

The development of modern limited-profit housing in Austria followed in its main lines the principles of "continuity, consensus and patience". Yet, a considerable break with the principles can be seen in the amendment of the Limited-Profit Housing Law of 2001 when entirely public-owned Limited Profit Housing Associations were given the possibility to terminate their "limited-profit housing"-status and be sold after hidden reserves were largely dissolved. It is interesting to note that only the federal state level as owner of five LPHA decided to part with them and their housing stock of over 60 000 rental apartments - the regions and the municipalities did not.

### Recommendations for Rumania:

The mentioned principles within housing policy of "continuity, consensus and patience" signify the following for Rumanian PPP-housing:

- Housing provision should be carried out by enterprises subject to Civil Law!
- The state has to supply direct and/or indirect subsidies, otherwise it won't work! Nowhere in the world it works without any form of subsidies!
- Furthermore, the state has to guarantee that the subsidisation-effect is effective at the intended level: the level of housing consumers!
- In order to secure this, there have to be clear "rules of the game"!
- Additionally, the state has to supervise the compliance of these rules!

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<sup>1</sup> Löffler/Bovaird (2005), p. 37.

## THESIS 9: CONSENSUS ON (AND TRANSPARENCY OF) POLITICAL OBJECTIVES



"In practice, strategic goals of governments always amount to a compromise with coalition partners and other stakeholders. For this reason, strategic goals and the strategic master-plan based on them does not necessarily reflect priorities of all political parties and groups concerned. In consideration of the "Good Governance"-goal of "participation" it nevertheless makes sense to include as many players as possible. Another "Good Governance"-goal, transparency, demands that the strategic plan should be disseminated to the largest extent. In fact, it corresponds to the "Good Governance"-goal of "consensual collaboration" that all members of a coalition may bury their differences for the time being and fully indulge in the implementation of the strategic plan." <sup>1</sup>

### Present state in Austria:

**Instruments:** In day-to-day housing policy, the two instruments of Limited-profit housing and housing subsidy schemes are thoroughly connected. This applies even if they legally stand within the fields of competence of two different entities (national state level/level of the regions) and only partly address the same recipients. This strong connections shows, for example, in the fact that in many regions the granting of housing subsidies and the supervision of LPHA is carried out by the same regional departments.

**State:** The objectives of national state level, regions and municipalities coincide to a large extent (yet cf. Thesis 6).

**Political parties:** Essentially, this also applies to political parties (with the difference of their pertaining to government or opposition). In contrast to the German case, where limited-profit housing was brought to a sudden ending in 1990<sup>2</sup>, in Austria there still is a very broad political consensus on the advantages of this housing policy instrument.

**Owners and inhabitants:** Yet, inbuilt differences arise out of the variability of ownership-constellations of LPHA (private owners vs. municipalities vs. charitable organisations), and out of the antagonism between landlord vs. tenant and buyer vs. seller. Yet, "it can hardly be seen as a coincident that the Limited-profit Housing Act was passed in the national assembly on the exact same day as the Consumer Protection Act (March 8th 1979)."

**Critical remarks:** Moreover, it should not be concealed that there exist certain massive objections and reservations towards the system of limited-profit housing. These objections found their way into the present-day discussions about "state and administration reforms". For example, the final report of the Reform Commission of 2001 recommended "...a phasing-out of the Limited-profit Housing Law which may allow to reduce connected costs of administration for nation state and regions."<sup>3</sup> The reason for this recommendation lies within the understanding that "limited-profit housing, within the present-day economic circumstances, is no longer mandatory ", because through the regulations of the Limited-profit

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<sup>1</sup> Löffler/Bovaird (2005), p. 38.

<sup>2</sup> Sommer (2001), p. 1072.

<sup>3</sup> Aufgabenreformkommission (2001), p. 95.

Housing Act, "a flexible activity on the market is impeded" and additional supervisory expenses for the regional authorities arise. However, detailed studies about feasible options and costs of "phasing out" of limited-profit housing are lacking in the report. Meanwhile, intentions to debilitate the arguments underlying this criticism were successful (cf. the 10 propositions on hand). Likewise, the criticism on "excessive subsidies", "heating-up of construction costs" and "excessive reserves and equity capital" could be repudiated. Only one third of Austrian housing subsidies accrue to LPHA. The rest is granted to private households, municipalities and commercial builders. LPHAs' construction costs clearly lie underneath commercial builders'. Equity ratio of LPHA lies with 16.5% under the average level of Austrian companies. Furthermore, equity capital of over bn 5 € is invested on a long-term basis in buildings and building plots and contributes to keeping living expenses low for housing consumers.<sup>1</sup>

#### Recommendations for Rumania:

Taking a comparative view on the German and Austrian situations, it is obvious that the break-up of limited-profit housing in Germany has in no way contributed to improve the situation in comparison to Austria.

#### THESIS 10: POLITICAL INTERESTS

"Policies are evaluated regarding their repercussions on living conditions. Therefore, administrative reforms will only be of interest up to the point they contribute to improve living conditions of potential voters."<sup>2</sup>



#### Present state in Austria:

According to a simulation model, the system of limited-profit housing produces a rent-reducing effect of approx. 44%. In case of "increasing the lower part of public-utility rents up to private market rents" one may calculate with massive "negative ramifications on the Austrian economy" (decline in national output, job losses). The outcome of this study confirms the housing-policy related appreciation of limited-profit housing given by Karl Korinek, to date president of the Austrian Constitutional Court: "Today, the task of housing provision for upper income households can be effected by the market. For parts of the population with very low incomes support by the community is necessary - there are still important tasks to be carried out by municipal housing or by heavily subsidized Limited-profit Housing Associations. In the field of middle incomes there is room for the activity of LPHA. With moderate public funds and in competition to commercial builders they are able to unfold the mandatory building activity."<sup>3</sup>

The assignments of the limited-profit housing sector are therefore multiple: On the one hand, it secures affordable housing provision for "large parts of the population". On the other hand, it unfolds "an important contribution for the stabilization of growth and employment". With on average 15 000 new-built dwellings the public-utility sector accounts for more than a third of new construction and to around two thirds of multi-storey new-built and therefore has considerable impact on employment.<sup>4</sup>

<sup>1</sup> Amann/Götzel (2005), p. 25. Pressemitteilung der OENB von 10.6.2006.

<sup>2</sup> Löffler/Bovaird (2005), p. 38.

<sup>3</sup> Korinek (1992), p. 67.

<sup>4</sup> Czerny/Weingärtler (2007), p. 4. WIFO – Presseaussendung vom 27.6.2006.

Consequently, limited-profit housing bases its political strategies, the guideline of the sector and its strategic and operational goals on the "improvement of living conditions" for a very large group of potential voters of diverse political parties.

In the process of the most recent government formation the two coalition parties, Social-democrats and People's Party, have expressed a clear commitment to limited-profit housing: "Housing is just like work and health a basic human need. Housing needs to be affordable and of high quality standards. In order to achieve this goal, an operational limited-profit housing sector needs to be supported."<sup>1</sup>

#### Recommendations for Rumania:

The aims of the proposed PPP-housing model are:

- for housing consumers:
  - the growing diversification of available affordable housing options in new-built housing and the existing housing stock.
  - the increasing quality of new-built dwellings as well as the continuous improvement of the existing stock (with efficient regulations on management and refurbishment)
  - predictable price-calculation and tenants-protection.
- for business-partners of PPP-housing associations: increased creditor protection, because a stable housing construction sector guarantees stable business-relations and work relations
- for investors and (part-)owners of PPP-housing associations the aim is not "quick profit" but long-term, solid business orders, for instance for the financing industries or insurance companies.
- for municipalities: trust-worthy partners for the provision of a an ample range of housing options according to objective criteria. This extends to the ambition to have a pool of housing options at hand, that can be mobilised rapidly (in Austria, for instance, after flood disasters).
- for policy makers: a market-conform housing policy instrument in line with EU-regulations which, if necessary, may be used for brisk fiscal policy impulses.

## **B.7 BEST PRACTISE IN HOUSING MANAGEMENT AND MAINTENANCE**

The general problem lies in the fact that municipalities are responsible for local public housing administration, but, in many of the countries considered, they do not feel responsible for the quality of the existing housing stock. After privatisation to the sitting tenants, the responsibility of long-term maintenance of the common parts in multi-family buildings passed on to the new owners. As many of them have only low incomes, there is no chance to get agreements for a comprehensive investment programme.

The efficient organisation of a regular and timely repair schedule for common parts in multi-owner buildings is a very well-known problem in housing policy and has led to the implementation of various housing policy instruments in Western Europe (legal requirements, rehabilitation subsidies, housing cooperatives, owner associations etc.).

The introduction of working schemes for refurbishment of multi-storey buildings is regarded as an even greater challenge than raising the level of rental housing construction. A precondition for a solution is a comprehensive policy framework (legal, financial and institutional) and capacity building by home-owners associations, housing management companies and municipalities.<sup>2</sup>

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<sup>1</sup> Regierungsprogramm zur XXIII. Legislaturperiode (2007), p. 149 f..

<sup>2</sup> Alle Elbers, from PRC Bouwcentrum International, in an unpublished paper 1/2006.

### **B.7.1 NEED FOR REFURBISHMENT IN ALL EU COUNTRIES**

A study by the Dutch PRC Bouwcentrum International<sup>1</sup>, made for the 16<sup>th</sup> Housing Ministers conference in March 2005 in Prague, shows clearly the backlog in maintenance and repair of multi-family dwellings in the new EU Member States. The investment needed is expressed most significantly by the employment that would be involved. For the whole EU-25, the realisation of the necessary investment would involve 16 million jobs. The share of EU-10 in this figure is over 60%. For several years, most CEE countries have had programmes in place to support refurbishment. Due to the considerable under-investment in maintenance of the housing stock, the need for investment will further increase. The authors of PRC conclude that, for the new Member States, there is an urgent need for a considerable intensification of refurbishment programmes. It is partly as a result of the 16<sup>th</sup> Housing Ministers conference in Prague that, in 2006, the decision was taken to open the EU Regional Funds for housing refurbishment.<sup>2</sup>

Referring to the experience of the housing fund DIGH – Dutch International Guarantees for Housing<sup>3</sup>, it seems that municipalities are in general more interested in new construction (independent of tenure) than in solutions for the existing housing stock. The multi-storey housing estates are regarded as an increasing burden, because of:

- increasing backlog in maintenance,
- poor energy efficiency of houses, which is a growing issue in times of rising energy prices and the Kyoto treaty,
- a lack of responsibility for the creation of solutions.

But because of the quantity of housing involved, there is absolutely no alternative to refurbishing the bigger part of the existing housing stock!

## **B.8 BEST PRACTICE IN HOUSING FINANCE AND HOUSING PROMOTION**

### **B.8.1 ELEMENTS OF AFFORDABLE HOUSING FINANCE<sup>4</sup>**

Overriding reasons for creating efficient housing promotion instruments are to reduce project financing costs and to facilitate the financing of a housing project even with low levels of equity, as well as to give incentives for cost-efficient construction and social behaviour.

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<sup>1</sup> PRC Bouwcentrum International (2005).  
Elbers, A. (2006)

<sup>2</sup> See above, chapter B.4.4, p. 53.

<sup>3</sup> Amann/Beijer/Komendantova/Neuwirth/Roy/Schimpel/Schwimmer (2006).

<sup>4</sup> Amann/Beijer/Komendantova/Neuwirth/Roy/Schimpel/Schwimmer (2006).

To achieve affordable prices or rents, different principal strategies can be used:

Figure 21: Principal strategies for affordable housing

		applicable for	Rental	Owner-occupied flats	Refurbishment
a)	Complete financing from the budget or housing funds (ANL)	Municipal housing is often financed outside the banking system. This is done either from the budget (without depreciation) or by low interest public loans. This kind of financing is usually linked to social rents far below the market level. + Low rents. - High cost for the public.	+		+
b)	Commercial financing combined with demand side subsidies	This model can often be found in liberalised market systems. By raising the purchasing power of the consumers, market forces are not disturbed. The subsidy is usually income-related. + Compatible with private market. + Well targeted. - Subsidies tend to lift the market price level.	+	+	++
c)	Mixed financing with supply side subsidies	Housing is financed by different sources (commercial loans, public loans) and/or subsidised by interest grants, annuity grants and backed by guarantees. This model is typically linked to cost rent. + Efficient use of the strengths of public and commercial sources. + Lower cost per dwelling than a) and b). - Creation of dual rental markets (see p. 42).	++	+	+
d)	Mixed financing with both supply and demand side subsidies	The same as c). Supply side subsidies produce affordable housing for middle income groups. Vulnerable groups may be supported by demand side subsidies. + Affordability for all income groups attained. - New construction for lowest income groups economically not sustainable.	++	+	+

Source: IIBW

#### PUBLIC GRANTS AND LOANS

By providing capital, the public may fully finance municipal housing or support mixed financing of housing construction. Financing municipal housing is a heavy burden for state budgets. Mixed financing seems to be more efficient, as the total costs for the public are much lower than with municipal housing and the resulting costs for tenants are still reasonable. The specific role of public capital in mixed financing schemes is to substitute the equity of the developer and to cover first losses. With equity and public capital, a reasonable Loan to Value Ratio may be attained.

Grants are regarded as state expenses following the EU Maastricht Criteria; loans are not, as long as interest on the loans is collected.

#### GUARANTEES

Owing to the fact that public funds are constrained, guarantees are becoming a more crucial factor in securing cheap financing of housing. Providing public guarantees for housing finance has the advantage that public balances are not affected. Investors benefit from the creditworthiness of the public sector, without public expense being incurred.



Even though in some Western countries, public guarantees have lost some of their former importance, well developed housing sectors can themselves provide sufficient security to obtain good financing conditions. Also, housing subsidy schemes in many countries comprise inherent guarantee structures. This is the case for the U.S. MBS scheme and for the Austrian model of social housing finance. Guarantees should be provided only for institutional finance. Guarantees for private persons may cause negative effects on payment behaviour.

Public guarantees do not affect the EU Convergence Criteria, despite the possibility of irrecoverable liabilities.

#### HOUSING FUNDS

Some Western European and a growing number of CEE/SEE countries use the instrument of housing funds. A particularly successful example is the Dutch Waarborgfonds Sociale Woningbouw (Social Housing Guarantee Funds). A housing fund may issue loans, grants or guarantees. It may work more efficiently than public administration, presuming that its mandate and control are properly regulated.

For such a fund, public guarantees may be an appropriate and cheap way of public commitment, but, at the outset, direct public funding seems to be indispensable. The effectiveness of such a fund is dependent on its size.

#### EQUITY OF DEVELOPERS

It is not appropriate to state a certain general percentage of equity contribution either from the builder or the future tenants, since this percentage will depend on the project structure as a whole. In the case of a fully publicly guaranteed project, the percentage of equity can certainly be quite low. The provision of land free of charge from the municipality is not always necessary and again depends on the project structure.

#### EQUITY OF TENANTS

Some social housing finance models work with rather high shares of equity provided by the tenants (in Vienna the entire land costs and 12% of construction costs). This eases financing of projects considerably, but reserves access to middle and high income groups. High equity contributions from tenants should be combined with a right to buy.

#### COMMERCIAL LOANS

The total interest rate is a sum of the following components:

- Mortgage loans for creditworthy borrowers with a favourable L/V-ratio may be financed by Euribor + 50 BP. They are calculated with default rates of 0.5-1% and, in the long term, of 1-2%.
- Junior Loans with higher default risk may be financed by Euribor + 150 BP.
- Mezzanine capital as equity substitute may be financed by Euribor + 350 BP.
- The resulting interest rate may be further influenced by different risk positions (country risk, risk of developer, project risk).

Guarantees can reduce the interest rate considerably. Financing in Euros with a guarantee from a AAA rated institution results in interest rates on the level of Euribor.



## B.8.2 AUSTRIA

In the context of housing the nine Austrian provinces (Vienna being one of them) have legislative competence over their housing subsidy schemes. These factors may be decided autonomously: subsidy models (loans, grants or allowances), terms of subsidies (interest rates, pay back, tenure of loan, income limits etc.), financing aspects (maximum rents, minimum equity of builder, maximum equity of tenants, limitation of capital market interest rates, limitation of construction cost etc.), quality standards (e.g. minimum energy performance), and even definition of recipients (e.g. inclusion of commercial developers).<sup>1</sup>

In general and throughout the provinces, Austrian social housing finance focuses on supply-side subsidies. Only some 8% of total expenditures are classified as housing allowances. This focus on the supply-side offers ample spin-off and steering effects (in economic, environmental, social, regional and urban policies). All housing promotion schemes work as mixed financing models, combining own equity, public and commercial financing, utilising the specific strengths of all options.

Long-term loans are still applied as the fundamental subsidy instrument, which marks a distinction to many countries in the European Union, where other subsidy instruments - e.g. interest subsidies - are preferred.<sup>2</sup>

A typical social housing project may be financed as follows:

- |                                                    |         |
|----------------------------------------------------|---------|
| • Capital market loan: 20 years, Euribor + 0-30 BP | 40-60%  |
| • Public loan: 30 years, 1% fix                    | 30-40%  |
| • Equity of developer (mostly for land purchase)   | ca. 10% |
| • Equity of future tenants                         | 0-10%   |

In addition to the public subsidy schemes of the provinces, capital market funding has major significance. Mortgage loans are, as anywhere, an important product of commercial banks. The conditions are very favourable for LPHA. Today housing construction by LPHA with high creditworthiness is financed as low as Euribor + 0-30 BP.

LPHA are regarded as low risk borrowers due to several reasons: Firstly, due to co-financing by housing subsidies, capital market financing has a good L/V-ratio and very low risk. Public bodies act as external supervisors controlling the financial situation of the LPHA accurately. Furthermore, ownership constellations are very favourable to their creditworthiness. Thirdly, their size and asset base is taken into account. These factors amount to a structure of an implicit public guarantee for the loans taken out by the LPHA. Yet, unlike the situation in many other countries,<sup>3</sup> no formal public underwriting or guarantee fund had to be established in Austria. This implies that the guarantee-like functioning of the housing subsidy scheme in all its complexity – financial support as well as control and supervision – is responsible for the very favourable conditions LPHA face on the capital market.

For refinancing the commercial banks a special finance vehicle was designed in the early 1990s, the “Wohnbaubanken” - Housing Banks. With the aim to raise money for housing construction housing banks issue special housing construction convertible bonds (HCCB), which enjoy preferential public

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<sup>1</sup> Amann, 1999.

<sup>2</sup> Priemus & Boelhouwer, 1999, pp. 633 and 637.

<sup>3</sup> Foundation Homeownership Guarantee Fund *et al.*, 2004; Priemus & Boelhouwer, 1999; Whitehead, 2003

treatment in two ways: Firstly, a capital income tax relief is granted for the first 4% of returns. Therefore, HCCB can be issued below market rate as the yield after taxes stays competitive. They save mortgage borrowers around 0.75% in interest costs.<sup>1</sup> Secondly, an incentive to the demand side of the market has been designed by considering an HCCB purchase as a special expense when assessing income tax. In addition to these privileges, a tight legal framework for the operation field of housing banks was created: Money raised through the issues of HCCB has to be attributed to new housing construction programmes which are eligible for additional object-side subsidies by the provinces. Also, funds raised have to be assigned to Austria-based construction projects within a period of three years. This way private funds raised by the housing banks can be channelled towards projects which the public considers worth funding. A leverage effect is thereby created. The housing banks operating in Austria today have been very successful in raising construction money. Virtually all multi-storey housing constructions within the housing subsidy schemes, as well as a considerable part of refurbishments, is co-financed by housing banks. These are some 18 000 units per year.<sup>2</sup>

In Vienna a number of ambitious development projects were realised within the last ten years, such as Donau City, Gasometer City, Millenium City. Most of them were financed in a similar way. Even though offices and shopping malls are predominant they contain a large number of subsidised rental dwellings, mostly realised by LPHA. The commercial developers went into this cooperation not only because of the low risk, but also because of financial concerns. Including 200-400 subsidised dwellings, 15-20% of total costs of the development were covered by subsidised loans. The municipality of Vienna agreed to have these loans collateralised on the second rank behind commercial loans. Only with this commitment this kind of large scale development projects became bankable.

### **B.8.3 H!FACT – A HOUSING FINANCE AGENCY FOR COUNTRIES IN TRANSITION**

All CEE/SEE countries urgently need an increase in housing construction, particularly for lower and middle income groups. The focus until now on owner-occupation has not yielded satisfactory results for either of these groups in terms of housing affordability. Although housing policy and the housing sector are making progress, there are only a few persuasive strategies in evidence for increasing the extremely low share of rental housing and facilitating housing management and refurbishment.

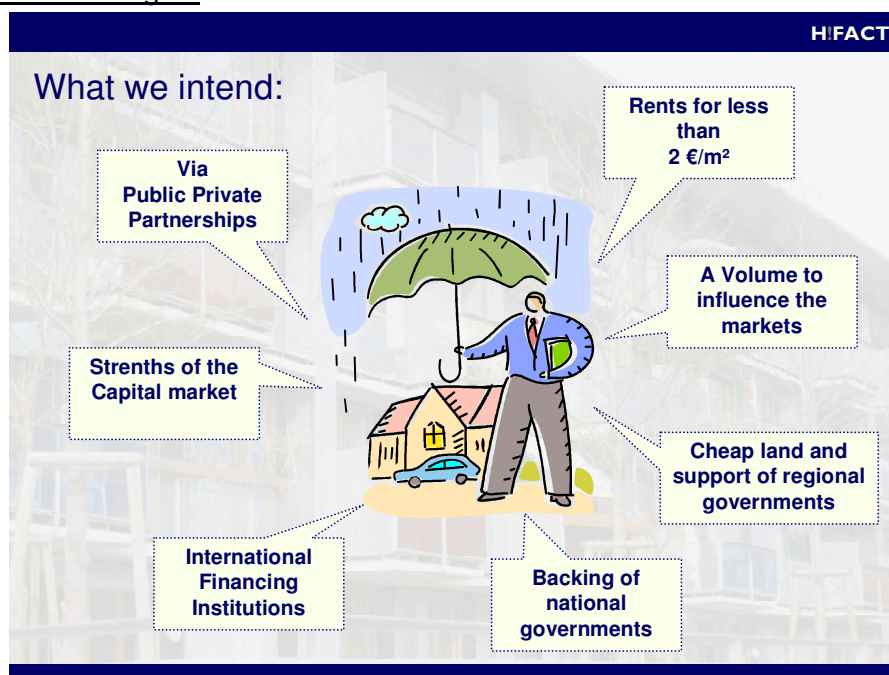
H!FACT as a multilateral instrument for housing finance may respond to existing deficiencies by utilising current opportunities. The company is a joint venture to be established by the Austria based consultancy company IIBW – Institute for Real Estate, Construction and Housing and the Dutch Fund DIGH – Dutch International Guarantees for Housing. H!FACT will assist national governments, municipalities, housing management institutions and IFIs in establishing financing schemes for housing and providing financial resources. H!FACT is designed as an instrument to execute EU positions on housing (explicit and implicit) for CEE and SEE countries. It is particularly applicable as an intermediary to bridge the gap between investment supply of EU Structural Funds or IFIs on the one hand and financing demand of single housing projects in CEE/SEE on the other hand. The H!FACT financing models are in line with EU legislation on Competition and State Aid. Furthermore, H!FACT activities may result in an increase of competition in the construction and financing sector. In general, improvements in housing provision contribute to prosperous economic and social development in the region.

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<sup>1</sup> Ball, 2005, p. 29.

<sup>2</sup> Amann & Bauernfeind, 2003; Amann *et al.*, 2005.

Figure 22: H!FACT targets



Source: H!FACT

The difficult situation of housing finance in CEE/SEE may be tackled by learning from best practice PPP models in Western countries and by utilising all possibilities of funding and increases in efficiency. For the financing models described in a Feasibility Study<sup>1</sup> it is shown that, for the whole period of financing (calculated in real terms at present value), they may work with a public contribution of, at most, 30% of total costs. Public participation must be higher in an environment of generally low wage levels, high construction costs and high interest rates, and may be lower in well-developed economic surroundings. H!FACT is targeted on lowest possible subsidies according to national priorities. Due to the potential volume of housing finance, it may contribute considerably to the economic development of a region.

H!FACT is regarded as intermediary, which may contribute considerably to the improvement of housing provision for low and middle income groups as well as to the establishment of a rental housing sector in SEE countries. National and local authorities are core partners for H!FACT. The described objectives are only attainable by mutual trust and cooperation. A financial commitment is indispensable.

#### B.8.4 EU PREREQUISITES IN HOUSING FINANCE

The following rules have to be considered:<sup>2</sup>

- The operator has to be entrusted with the clearly defined operation of services of general economic interest in the field of social housing. For this reason, target consumer groups are legally defined by means of setting income limits or specifying allocation procedures for the future apartments.
- Public subsidies may amount only to what is necessary to cover costs incurred to discharge these public service obligations and are, therefore, considered a compensation for these services. This results in the implementation of the limited-profit principle for the operations concerned and the specification of the admissible rent levels or sales prices. EU Law allows for a reasonable profit as a rate of return on own capital in consideration of the particular risks incurred. Any overcompensation of

<sup>1</sup> Amann/Beijer/Komendantova/Neuwirth/Roy/Schimpel/Schwimmer (2006).

<sup>2</sup> See above, chapter B.4, p. 49 ff..

up to 20% of the annual compensation granted may be carried forward to the next period without infringement of EU Law.

- If an undertaking receiving compensation to deliver services of general economic interest is also active in other markets, separate accounts for commercial and social housing activities must be kept in order to facilitate transparency and control.
- In order to determine the undertaking most eligible for the fulfilment of the tasks and the level of compensation needed to discharge the public service obligations, a public procurement procedure should be implemented and the parameters on the basis of which the compensation is calculated must be established in advance. Alternatively, the level of compensation may be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with appropriate means, would have incurred.

If these requirements are met, commercial builders in addition to limited-profit housing associations may participate in the fulfilment of public service obligations. For commercial operators, the most efficient way to do this is to set up special purpose vehicles such as project companies for social housing activities. This not only enables increased transparency, as required by EU Law, but also improves risk-allocation to special projects and can make use of better financing conditions resulting from easier access to investment and equity capital.

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# PART C

## REGULATIONS

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The English version of the report contains only brief descriptions of the contents of the single paragraphs. This method was chosen because of the difficulties of translation of legal contents from one legislative system to another one. Due to the different legal traditions, legal formulations in one language do not necessarily have the same meaning as its translation into another language. As a result, the legal design was concentrated on the Romanian version of the text with precisely defined formulations.

### C1 - HOUSING LAW

#### EXPLANATORY STATEMENT

The Romanian Housing Law consolidates all hitherto existing regulations related to housing and supplements them with European Best Practice to a comprehensive canon on housing regulations. The systematic approach in creating this new Law allows for a specific feature in different respects:

a) SOLIDITY IN STRUCTURE – FLEXIBILITY IN DETAILING:

The six single Laws that constitute the Romanian Housing Legislation are designed in a most concentrated way. The regulations focus on general determinations. After coming into force they need not to be amended frequently. These regulations are decided as „Simple Laws”. For future requirements any of these Laws may be amended individually. But due to the explicit systematics of contents (see b)) it will be avoided that changes in one law contradict to regulations in others. In this way a undesirable casuistic future development of Housing Legislation can be prevented. Details are determined by “Decisions of the Government” and – for particularly flexible aspects – as “Orders of the Minister of Development, Public Works and Housing”. These regulations may be adopted in a most flexible way in the everyday legislative practice. The six single Laws follow the methodology defined in Law nr. 24/2000.

b) CLEAR PATTERNS:

Each of the single Laws covers a highly specified field of regulation. The specification follows the context of regulation, but as well the differing target groups of the Laws. Laws that address consumers (Rent Law, Condominium Law) have to use an easier understandable language than laws that address professional bodies (PPP Housing Law, Housing Subsidy Law). Main regulative contents of the single Laws are:

- The **Housing Law** (C1) is a framework law that states the legal consistency of all six Laws. Furthermore it contains regulations which are common for all single Laws, e.g. definitions.
- The **Rent Law** (C2) resolves present deficits in the relation between tenants and landlords. It decrees the written form of lease contracts and gives incentives to register them legally. Duration and termination of tenancy are regulated in a similar liberal way as rent control. There is rent regulation, but following some of the most liberal models in Europe. This Law supplements respective regulations in the Civil Code and replaces Chapter III of Law 114/1996.

- The **Condominium Law** (C3) is designed to cover the whole regulating requirements on the topic and not only the aspect of homeowners associations as the Law nr. 230/2007. A specific focus is consumer protection in housing purchase.
- The **PPP Housing Law** (C4) introduces a new type of housing provider that has proved outstanding operativeness in several European countries. It combines the functions of a housing developer, an investor and a housing administrator and is particularly eligible for rental housing construction, the takeover of social housing stocks and the refurbishment of existing residential buildings. The introduction of such a scheme requires substantial efforts. But it promises to solve some of the most burdensome problems of present housing in Romania.
- The **Housing Management and Maintenance Law** (C5) merges all respective regulations of existing Laws (particularly chapter V and VI of L 230/2007) combined with substantial improvements in the field of housing operation, administration, accounting, maintenance and refurbishment. It provides simple regulations for the whole housing stock, because the ownership regimes have been reduced to one (condominium property in all buildings, see below).
- The **Housing Subsidy Law** (C6) defines a legal basis for all activities of the State in (co-) financing housing construction, refurbishment, housing allowances and related activities. For this Law detailing with “Decisions of the Government” or “Orders of the Minister” is particularly relevant. The law considers the strict requirements from EU legislation regarding housing subsidies (“State aid ban” and others). A major task is the new orientation of ANL as a key player in structuring of financing, acquiring of EU funds and supervision of the new PPP housing sector. The law replaces the chapters II, V, VI, VII and VIII of the Law 114/1996.

c) INNOVATIONS ON BASIS OF EUROPEAN BEST PRACTICE:

The Romanian Housing Law introduces a number of new approaches, which might increase the efficiency of the Romanian housing markets and housing provision substantially. Some of them are:

- The introduction of **extra-judicial arbitration** will ease the access to legal rights for the citizens.
- With the creation of **condominium property in all buildings** it becomes possible to have one single legal regime for the whole housing stock (rent regulations, administration, maintenance, refurbishment, subsidies etc.).
- The proposed **rent regulation scheme** is, compared to European Best Practice, a most simple and liberal one. By contrast to existing models it works with one single price mechanism to be applied for the big stock of rented condominiums (built before 1990) and social rental dwellings.
- The scheme of comparative rents with the newly developed tool of **rent comparison lists** will be a big challenge in implementation. New technologies may be applied in collecting consensual market informations, e.g. with web-based Wiki-Software.
- The **PPP Housing Law** takes the example of the best European models of limited-profit social housing and turns it into a model applicable to the specific environment in Romania. It combines the strengths of the markets (privately run companies) with the backing of the state (previlged access to subsidies, public control). In this way it is expected to develop a strong sector in providing affordable housing.
- **Maintenance, adminstration and refurbishment** for all sectors of housing is regulated in one integrated Law. This allows for simple procedures for all buildings. A particular target of this Law is the enforcement of big scale thermal refurbishments.
- The **housing subsidy scheme** is designed as executive of a housing strategy, implicit in the Romanian Housing Law. Similar to the other Laws it is based on a long term strategy. Strategic regulations and funding need to be concentrated on state level. But implementation takes place on

regional and municipal level. Particularly social policy measures in housing need to be allocated on a municipality level.

- **A Housing Policy Board** in the same political composition as the Parliament, but staffed with experts, is installed to decide about the allocation of subsidies and housing policy reforms.
- **ANL** will be developed to a key player in improving the financing tools for affordable housing. For this reason it shall be established as **Holding Funds** to acquire loans from national and international sources (e.g. the Jessica Programme of EIB/CEB).
- In combination, these innovations have a strong impact on **urban and regional development**.

d) IMPLEMENTATION OF EU REQUIREMENTS:

The Romanian Housing Law is to implement the following EU directives, initiatives or standards:

- The EU Directive on **Energy Performance of Buildings** (2002/91/EC) with the regulation on the submission of energy performance certificates (Art. 6 Housing Law).
- Regulations in the Rent Law follow **decisions of the European Court of Human Rights**, even though they do not go to such lengths in state interventions into valid contracts.
- The **PPP housing sector** is designed fully in line with European positions. The European Union has communicated quite plainly its support for the establishment of social housing sectors in the new Member States. PPP housing companies execute public service obligations. Therefore subsidies are qualified as State Aid exemptions.
- The Housing Subsidy Law is regarded as a core instrument to implement the National Strategic Reference Framework of Romania in order to implement EU cohesion policy in terms of financing housing measures.
- The Housing Subsidy Law is designed to make the **acquisition of European funds** (ERDF, Jessica Programme of EIB/CEB) operative. State subsidies may be designed in a way that they are not classified as State expenditure regarding the “Maastricht-Criteria”.

e) DIVISION OF AUTHORITY BETWEEN STATE AND MUNICIPALITIES:

The centralised organisation of the State allows for simple and transparent housing regulations. The State covers the biggest part of regulatory authorities. For some regulatory items, e.g. the execution of the Housing Subsidy Law, State authority is represented by local agencies. The municipalities have clearly defined authorities, particularly in terms of social policy items and the execution of State competencies. They shall install Boards of Arbitration, announce annual rent comparison lists, execute the housing subsidy scheme etc..

f) INTEGRATION OF OPERATIVE EXISTING REGULATIONS:

The Romanian Housing Law is designed to maintain operative existing housing regulations, particularly the Law Nr. 114/1996, the Law Nr. 230/2007 and the Law Nr. 152/1998 (ANL Law). Nevertheless, the systematic approach of the new Laws contradicts to a subordination under the fairly casuistic previous Laws. Still, many previous regulations, which have proved operativeness, became part of the new Laws. But the biggest part of regulations with proved operativeness will be integrated as “executive ordinance”: Detailing of the new Laws have to be implemented as “Decisions of the Government” or “Orders of the Minister”. In this way it will be easy to maintain tools, procedures and standards that became already common and beneficial. The Law 230/2007 was introduced to a time when the development of the new Romanian Housing Law already was far advanced. Its possible integration with the new Law has to be examined in detail.

g) CONSUMER PROTECTION:

Several regulations are specifically targeted to protect consumer interests, particularly regulations on the protection of tenants (Art. 7 and Art. 10 ff. Rent Law), chapter 7 of the Condominium Law ("Consumer protection in housing purchase"), chapter 6 of the Housing Management and Maintenance Law ("Accounting of rents and operating costs"), the implementation of extra-judicial arbitration (Art. 3 and 4 Housing Law) and rules about the information of parties (Art. 5 Housing Law). The PPP-sector as a whole is targeted on consumer protection.

## **C1 - CHAPTER 1: GENERAL PROVISIONS**

**Art. 1.** The present law regulates social, economic, technical and legal aspects of the construction and use of dwellings. Housing Law includes the following regulative contents:

- It assigns that the the following independent legal entities constitute one integrated Romanian Housing Law:
  - C1 - Housing Law,
  - C2 - Rent Law,
  - C3 - Condominium Law,
  - C4 - PPP Housing Law,
  - C5 - Housing Management and Maintenance Law,
  - C6 - Housing Subsidy Law.
- The Housing Law consists of all regulations which are common for all parts of the Romanian Housing Law.

## **C1 - CHAPTER 2: DEFINITIONS**

**Art. 2.** Housing Law lists up definitions that are applicable to all parts of the Romanian Housing Law:

- (1) Dwelling
- (2) Social dwelling
- (3) Service dwelling
- (4) Intervention dwelling
- (5) Protocol dwelling
- (6) Necessity dwelling
- (7) Holiday dwelling
- (8) Subsidised dwelling
- (9) Realty
- (10) Unit of use
- (11) Condominium
- (12) Ownership fraction
- (13) Condominium owner
- (14) Partnership in property on housing
- (15) Organiser of housing property (housing developer, housing administrator)
- (16) Applicant for housing property
- (17) Owners association
- (18) Agreement of association
- (19) Accessory to housing property
- (20) Common property

- (21) Useful floor space
- (22) Built area
- (23) Standard interior
- (24) Housing developer contract
- (25) Energy performance certificate
- (26) Household
- (27) Household income
- (28) Principal residence
- (29) Secondary residence
- (30) License of the administrator

## **C1 - CHAPTER 3: SOCIAL DWELLINGS**

**Art. 3.** Housing Law regulates the housing stock and new construction of dwellings through municipalities supplementing the new PPP housing sector.

**Art. 4.** Housing Law regulates necessity dwellings.

## **C1 - CHAPTER 4: SERVICE DWELLINGS, PROTOCOL DWELLINGS**

**Art. 5.** Housing Law regulates service dwellings and intervention dwellings according to the previous Law no. 114/1996.

**Art. 6.** Housing Law regulates protocol dwellings according to the previous Law no. 114/1996.

## **C1 - CHAPTER 5: EXTRA-JUDICIAL ARBITRATION**

**Art. 7.** Housing Law defines the scope of application for extra-judicial arbitration, e.g. for the creation of rent comparison lists.

**Art. 8.** Housing Law decrees that municipalities shall install boards for extra-judicial arbitration within two years after this law has come into effect, if possible filled with representatives of tenants and landlords.

## **C1 - CHAPTER 4: INFORMATION OF PARTIES**

**Art. 5.** Housing Law regulates formal requirements for the information of owners associations to the owners, accounting of running costs to owners and tenants, summons to proceedings of extra-judicial arbitration and the like. Differentiated by action, information of parties may take place by application in the building, postal transmission, electronic transmission or registered mail.

## **C1 - CHAPTER 5: SUBMISSION OF AN ENERGY PERFORMANCE CERTIFICATE**

**Art. 6.** Housing Law regulates legal aspects of the energy performance certificate in the following way. By sale of any unit of use the vendor has to hand out a energy performance certificate to the customer. This certificate must not be older than 10 years. It may be calculated on the distinct unit of use, on the whole building or on a similar unit of use. Exemptions may be decided by the Government. If no certificate is handed out, a energy performance is presumed that is typical for the kind of building.

## **C1 - CHAPTER 6: CREATION OF CONDOMINIUM PROPERTY IN ALL BUILDINGS**

**Art. 7.** Housing Law includes regulative contents on the creation of property on the whole housing stock and to substitute the different ownership regimes with a single one. Running rent contracts are not affected of this measure.

## **C1 - CHAPTER 7: RECOMMENDATION OF EUROPEAN OR NATIONAL STANDARDS**

**Art. 8.** Housing Law allows to substitute legal regulations with European or national standards, if they proof to be eligible.

## **C1 - CHAPTER 8: FINAL CLAUSE AND TRANSFORMATION ORDINANCE**

**Art. 9. to 13.** Housing Law decide on the procedure of transformation from the hitherto existing regulations to the new Romanian Housing Law.

## C2 - RENT LAW

### EXPLANATORY STATEMENT

This Law states the rights and duties of tenants and landlords toward each other and toward the public. In general, it does not interfere with the working of the housing market; regulations, if any, are considerate.

Time limits for tenancies concerning dwellings can be fixed at will by the parties to the contract. The law allows fixed-term tenancies, the minimum term being six months, and open-ended tenancies. (Thus, between a time limit of six months and an open-ended tenancy, everything is possible.) A written agreement containing the most important terms of the tenancy is required by law.

The regulation regarding the amount of rent concerns only dwellings built with public subsidies, i.e. dwellings built before 1990 as well as those to be built in the future according to “PPP models”.

The rent regulation is based on an average rent according to present conditions on the housing market; rents are intended to develop according to a “comparative rent” or according to the CPI. A dampening effect on prices in the entire housing market is to be expected. On the other hand, the development of the market is taken into consideration; thus, unlike other European countries, Romania will not experience a “rental freeze”. On the contrary, this country is going to have a very liberal rental law based on the relevant provisions of the Code Civil. Landlords will be able to rely on an adequate return on investment; therefore, investment into housing construction by private enterprise can be expected to continue.

This Law also benefits families by granting the members of a tenant’s household the right to take over the tenancy after the tenant’s death.

It will be up to the local communities to ascertain the amount of the average rent, to compile a rent comparison list and to keep it up to date.

It may seem a “tall order” to achieve this within two years, but it would help to keep the rental law citizen-oriented and close to the practice of the housing market.

The local municipalities are also encouraged to create boards of arbitration for out-of-court settlement of disputes concerning tenancies. This will lead to a practicable, close-to-life interpretation of the law; it may also contribute to the strengthening of the civil society.

### C2 - CHAPTER 1: SUBJECT OF REGULATION

**Art. 1.** Rent Law includes the following regulative contents:

- It refers to the existing Code Civil and its provisions relating to tenancies.
- It limits the applicability of this law to permanent tenancies regarding dwellings.

## C2 - CHAPTER 2: THE LEASE CONTRACT

### Form of the lease contract

**Art. 2.** Rent Law includes the following regulative contents:

- By the prerequisite of a written contract, both parties to the agreement are given a secure legal position.
- A written contract is also a prerequisite for taxation as well as for the compilation of rental tables by the local communities.

### Duration of tenancy / Termination of tenancy / Reason for irregular dismissal

**Art. 3.** to 5. Rent Law include the following regulative contents:

- The principle of contractual freedom is established regarding the term of the tenancy. The minimum term of six months emphasizes the fact that a certain permanency is aimed at.
- Within the time limit the landlord can only terminate the tenancy for the reasons specified in Art. 5. When a tenancy is terminated by reason of the landlord's own needs, it will ultimately be up to the courts to consider the facts of each case and to decide whether a termination is justified.
- As the tenant's position in the market is less strong than the landlord's, his right to terminate the tenancy is restricted only by time limits, i.e. he can terminate the tenancy without giving a reason.

## C2 - CHAPTER 3: USE OF THE RENTAL UNIT

### Refurbishment of the housing space by the landlord

**Art. 6.** Rent Law facilitates certain measures aimed at modernisation and maintenance by obliging the tenant to tolerate those measures.

### Refurbishment of the housing space by the tenant

**Art. 7.** Rent Law includes the following regulative contents:

In analogy to Art. 6, the landlord must allow measures aimed at modernisation as well as energy and water saving measures by the tenant. The tenant's rights in this respect are limited only by the fact that the landlord's future possibility to use the dwelling or to turn it into cash must not be impaired.

### Fair wear and tear of the rental unit

**Art. 8.** Rent Law includes the following regulative contents:

- Art. 8 states that compensation for ordinary wear and tear – such as the darkening of whitewashed walls or similar minor signs of wear and tear – is automatically contained within the rent.
- Deterioration exceeding ordinary wear and tear must be adequately compensated for by the tenant at the current value of the damaged property.

### Ban of subletting

**Art. 9.** Rent Law includes the following regulative contents:

- The subletting of a dwelling is always subject to the consent of the landlord.
- Even if the landlord gives his consent, the tenant is liable for the subtenant's negligence.



## C2 - CHAPTER 4: TRANSFER OF TITLE AND USE

### **Sale does not end lease**

**Art. 10.** Rent Law states that tenancies, whether open-ended or fixed-term, are not affected by a change in ownership.

### **Right of pre-emption for the tenant**

**Art. 11.** Rent Law includes the following regulative contents:

- Art. 11 is to enable small earners to form a condominium or to own a dwelling.
- For the tenant's right of pre-emption the provisions of the Code Civil apply.

### **Right of entry to the contract in the case of death of the tenant**

**Art. 12.** and 13. Rent Law includes the following regulative contents:

- Under the provisions of Art. 12 and Art. 13, if the tenant of a dwelling dies, the tenant's spouse or domestic partner or the tenant's children or other members of his/her family who have been members of his/her household can take over the tenancy.
- The taking-over of the tenancy does not affect the agreement in any way.

## C2 - CHAPTER 5: PRICE MECHANISM

### **Determination of rent**

**Art. 14.** Rent Law includes the following regulative contents:

- The parties to a tenancy are free to agree on any amount of rent. Thus, Romania's is certainly one of the most liberal rental law systems in Europe. An agreement on (periodical) rent increases at a later date may also form a part of the tenancy agreement. The only prerequisite for this is that the agreement must be clear and unequivocal so as to avoid disagreements and litigation about rent increases. In practice, the parties will often agree on an "automatic" rent increase based on the CPI, which is desirable.
- The amount of rent is limited only with regard to dwellings built with public subsidies, even if they were privately owned from the first or if they became private property at a later time. The same applies to dwellings to be built in the future. This rent regulation will apply to many dwellings built up to 1989 but also to dwellings to be built by ppp-construction companies to be established in the future.

### **Comparative rent / Rent increase / Price mechanism in the PPP Housing Sector / Rent index**

**Art. 15.** to 18. includes the following regulative contents:

- For all subsidized dwellings, especially those built before 1989 and those to be built in the future, either built by private owners or privatized at a later date, the average rent of an area (a local community) constitutes a guideline. This average rent is determined by the local communities; it is modelled on the German "comparable rent". The average rent also serves as a guideline for rent increases. For the purpose of determining the average rent, rental tables are to be compiled. The partners to a tenancy can also agree on a future rent increase according to the CPI instead.
- Unlike many other countries, Romania does not propose to decree a rental freeze after years of free development of prices on the housing market. Instead, present-day market conditions are to form the basis for the future development of rents. The new legislation will have a dampening effect on rents, but the development of the housing market will be allowed to proceed according to the dynamics of

the market and of the economy as a whole. This moderate regulation will not concern the whole housing stock but a large part of it.

- Two years are regarded as sufficient for the process of transition (cf. the time limit of one year for transforming verbal tenancy agreements into written contracts).
- Further benefits for tenants in dwellings owned by ppp-construction companies are possible.

### **Service dwellings, necessity dwellings, protocol dwellings**

**Art. 19.** Rent Law includes the following regulative contents:

“Genuine” service dwellings (where the tenancy agreement is connected with the employer-employee relationship) or protocol dwellings are distinguished from “ordinary” tenancies (where the landlord just happens to be identical with the tenant’s employer). Thus, if an employer provides a low-priced accommodation for his employees, Art. 19 does not necessarily apply.

## **C2 - CHAPTER 6: FINAL CLAUSE AND TRANSFORMATION ORDINANCE**

**Art. 20.** decides on the procedure of transformation from the hitherto existing regulations to the new Romanian Rent Law.

# C3 - CONDOMINIUM LAW

## EXPLANATORY STATEMENT

The Condominium Law regulates the judicial, economical, technical aspects regarding the establishing, organizing, functioning of condominium buildings and homeowners associations, as well as the maintenance and the exploitation of buildings owned by at least three judicial or physical persons, of public right or private right, including the case when there are other spaces with other destination than living.

Particular targets of the condominium law are:

- All multi-apartment buildings have to be based on a condominium law statute.
- Condominium home owners have full protection of their property rights on the one hand and must on the other hand contribute to the preservation of the value of the building by supporting the refurbishment especially when public subsidies are provided.
- The single home owner or the minority is protected during the phase of construction and purchase.
- Home owners (the majority or the home owners association) are the opinion building and executing bodies which use professional property or facility management firms to act according to their guidelines and decisions.
- Property management rules are guiding the home owners associations and the property/facility managers.

## C3 - CHAPTER 1: SUBJECT OF REGULATION

**Art. 1.** The Condominium Law regulates the judicial, economical, technical aspects regarding the establishing, organizing and functioning of condominium buildings and homeowners associations, as well as the maintenance and the exploitation of buildings owned by at least three judicial or physical persons, of public right or private right, including the case when there are other spaces with other destination than living.

## C3 - CHAPTER 2: CREATION AND PURCHASE OF PROPERTY ON HOUSING

**Art. 2.** Condominium Law includes regulative contents on consequences of the creation of a condominium property on an existing tenancy. The legal status of the tenant remains untouched while the position of the landlord is transmitted from the former owner of the building to the owner of the flat.

**Art. 3.** Condominium Law includes regulative contents on requirements and procedure of the creation and purchase of condominium / property rights concerning a condominium housing object – flats, or spaces for commercial use - in a condominium building. Condominium is created by a multilateral contract of all owners or by a court decision.

**Art. 4.** Condominium Law includes regulative contents on court decisions to declare the binding relation of shares of home owners in a building in case of peculiarities, changes of the construction, differences between construction plan and reality.

**Art. 5.** Condominium Law includes regulative contents on documents and requirements for the registration of property rights on condominium housing in the land registry.

### **C3 - CHAPTER 3: SHARED HOUSING PROPERTY**

**Art. 6.** Condominium Law includes regulative contents on shared condominium property of two persons (married or not) with equal shares; requirements for the creation and legal consequences; rights within the community of owners and towards third parties.

**Art. 7.** Condominium Law includes regulative contents on transition of shared property rights from one of the married partners to the other in case of death.

### **C3 - CHAPTER 4: USE OF THE HOUSING PROPERTY UNIT AND THE COMMON PARTS OF REALTY**

**Art. 8.** Condominium Law includes regulative contents on regulations concerning the use of the condominium housing property and the common parts of the building; eg modernization works which are initiated by one single home owner or by a group of owners and must be accepted by the others; fair compensation has to be given to an owner when his condominium property is touched.

**Art. 9. to 15.** Condominium Law regulates further aspects of the use of the housing property unit and the common parts of realty in accordance with the previous Laws no. 114/1996 and 230/270.

**Art. 16.** Condominium Law includes regulative contents on the establishment of a statutory regulation between all owners concerning the terms of use of the building/realty, especially the common parts; such a statute can be registered in the land cataster.

### **C3 - CHAPTER 5: OWNERS ASSOCIATION, PRIVILEGED LIEN**

**Art. 17. to 36.** Condominium Law includes regulative contents on

- Legal capacity and representation of die community of owners through the home owners association or a property-/facility management company/agent;
- The establishment and the registration of the homeowners association;
- The organization and the functioning of a homeowner association;
- Decissions of the owners association;
- The Executive Committee;
- The Censor and the Financial Committee;
- The relation between the local and central public authority and the homeowners association;
- Minority rights and duty for the single owner to give notice and
- Legally privileged lien.

The regulations derive particularly from Law no. 230/2007.

## **C3 - CHAPTER 6: TERMINATION OF HOUSING PROPERTY**

**Art. 37. and 38.** Condominium Law includes regulative contents on expiration of condominium property because of degradation or demolition and on reasons for the exclusion of condominium owners.

## **C3 - CHAPTER 7: CONSUMER PROTECTION IN HOUSING PURCHASE**

**Art. 39. to 49.** Condominium Law include regulative contents on:

- Formal requirements und subject matters of a housing developer contract being a basis for the purchase of a condominium apartment, consumer protection regulations in case of lack of building permits;
- Requirements for the legally guaranteed withdrawal from the contract declared by the purchaser;
- Legally allowed reasons for withdrawals included in contracts to be used the developer/organizer of the condominium;
- Securisation of the applicant for a condominium by registration in the cataster;
- Precedence in cadaster for intended purchase;
- The case that the organizer of the condominium project is in default. In this case the purchaser is authorized to apply at the court to be registered as entitled home owner;
- The obligation of the developer to secure the purchaser by various appropriate means;
- Securisation of the purchaser with progress payment, assessment of progress of construction work;
- The liability of the housing developer and right to reclaim for the purchaser when the contract is withdrawn because of any breach of contract by the developer;
- The assignment of claims of the home owner because of breach of contract to the home owner in case of developers insolvency or bankruptcy;
- The continuation of construction in the case of insolvency of the developer.

## **C3 - CHAPTER 8: SANCTIONS**

**Art. 50. to 51.** Condominium Law include regulative contents from Law no. 230/2007-

## **C3 - CHAPTER 8: FINAL CLAUSE AND TRANSFORMATION ORDINANCE**

**Art. 52 to 55** include regulative contents on the implementation of the new Condominium Law.

# C4 - PPP HOUSING LAW

## EXPLANATORY STATEMENT

PPP Housing Associations in Romania are non-governmental housing companies organised under private law. They are limited in the realisation and disbursement of profits and in their business scope. Specific control and supervision mechanisms are applied to them. Therefore they get a privileged access to housing subsidies. By developing and managing affordable and sustainable housing they fulfill a public service obligation of general economic interest. They aim at improving the housing and living conditions of big parts of the Romanian population. The PPP Housing Law is therefore targeted at average citizens. In a formal sense, the Law addresses at qualified (PPP) housing companies and the respective authorities.

## C4 - CHAPTER 1: GENERAL PROVISIONS

**Art. 1.** PPP Housing Law includes regulative contents on general aspects of PPP housing.

## C4 - CHAPTER 2: PRECONDITIONS FOR APPROVAL

**Art. 2.** PPP Housing Law includes regulative contents on the legal form.

**Art. 3.** PPP Housing Law includes regulative contents on the supervisory board.

**Art. 4.** PPP Housing Law includes regulative contents on the minimum capital.

**Art. 5.** PPP Housing Law includes regulative contents on incompatibilities.

**Art. 6.** PPP Housing Law includes regulative contents on allowed limitation of beneficiary.

**Art. 7.** PPP Housing Law includes regulative contents on limited business activities.

**Art. 8.** PPP Housing Law includes regulative contents on sales prices and rents.

**Art. 9.** PPP Housing Law includes regulative contents on the resale of buildings.

**Art. 10.** PPP Housing Law includes regulative contents on sale of shares.

**Art. 11.** PPP Housing Law includes regulative contents on treatment of assets in the case of liquidation.

**Art. 12.** PPP Housing Law includes regulative contents on legal ineffectiveness.

**Art. 13.** PPP Housing Law includes regulative contents on economic efficiency of business.

**Art. 14.** PPP Housing Law includes regulative contents on reliability of housing management.

**Art. 15.** PPP Housing Law includes regulative contents on the affiliation to an auditing association.

## **C4 - CHAPTER 3: PROCEDURE**

**Art. 16.** PPP Housing Law includes regulative contents on the responsible authority.

**Art. 17.** PPP Housing Law includes regulative contents on regulatory decisions.

**Art. 18.** PPP Housing Law includes regulative contents on the approval procedure.

**Art. 19.** PPP Housing Law includes regulative contents on divestment of approval.

**Art. 20.** PPP Housing Law includes regulative contents on participants in the procedure.

**Art. 21.** PPP Housing Law includes regulative contents on the legal process.

**Art. 22.** PPP Housing Law includes regulative contents on trade name and registration.

## **C4 - CHAPTER 4: AUDITING AND SUPERVISION**

**Art. 23.** PPP Housing Law includes regulative contents on the auditing association.

**Art. 24.** PPP Housing Law includes regulative contents on by-laws of the auditing association.

**Art. 25.** PPP Housing Law includes regulative contents on the legal status of the auditing association.

**Art. 26.** PPP Housing Law includes regulative contents on audit and supervision.

**Art. 27.** PPP Housing Law includes regulative contents on accounting.

## **C4 - CHAPTER 5: PROMOTION OF PPP HOUSING**

**Art. 28.** PPP Housing Law includes regulative contents on the preferred access to housing subsidies for new construction and refurbishment.

**Art. 29.** PPP Housing Law includes regulative contents on the remission of fees and charges.

## **C4 - CHAPTER 6: FINAL CLAUSE AND TRANSFORMATION ORDINANCE**

**Art. 30.** decides on the procedure of transformation from the hitherto existing regulations to the new Romanian PPP Housing Law.

# **C5 - HOUSING MANAGEMENT AND MAINTENANCE LAW**

## **EXPLANATORY STATEMENT**

This law contains the basic rules for operating and managing residential buildings. It is applicable to dwellings which form part of a condominium, whether rented or not, and to dwellings of PPP construction companies. All necessary definitions (e.g. of the term “floor space”) are to be found in the General Housing Law. They, too, are applicable to all kinds of dwellings.

The setting-up of a condominium in all residential buildings in connection with the General Housing Law makes possible a simple and uniform management and operation.

The law on tenancy which is essentially a liberal one (cf. Rent Law), based on the rents paid on the present-day housing market, makes it possible to determine whether certain costs should be borne by the owner or by the tenant. The tenant has to pay costs which benefit him. He does not have to pay for improvements of the building because he will have to pay an increased rent if the dwelling is improved.

In case of improvements which benefit the tenant of an individual dwelling, exceptions are possible. Landlord and tenant can agree upon a financial contribution by the tenant. It is, however, up to the owner to find an attractive offer on the market. In these cases, “contracting” is expressly allowed by this law.

As maintenance and improvement of housing is largely dependant on a reliable and competent management, this law states the rights and duties of a housing administrator in a comprehensive way. It provides a useable legal framework for management and operating of residential buildings in all its aspects.

## **C5 - CHAPTER 1: SUBJECT OF REGULATION**

**Art. 1.** includes regulative contents on the application the Housing Management and Maintenance Law to all buildings containing dwellings to which either the Rent Law, the PPP Housing Law or the Condominium Law applies.

## **C5 - CHAPTER 2: MANAGEMENT OF THE REALTY**

### **Obligation to manage residential buildings**

**Art. 2.** - Owners of residential buildings must either manage their residential property themselves or appoint a housing administrator for this purpose.

### **Regular management**

**Art. 3. and 4.** Housing Management and Maintenance Law regulates the extent of management activities, stating that the housing administrator is responsible for the “daily business” of management.



For all decisions of (special) importance, the consent of the property owner(s) is required. In case of measures going beyond the maintenance of the building this consent must be unanimous.

## **C5 - CHAPTER 3: OPERATING COSTS OF A REALTY**

### **Operating costs**

**Art. 5.** Housing Management and Maintenance Law defines operating costs, which are:

- Running costs and public fees (to be paid periodically)
- Special expenses for common facilities
- Expenses for maintenance
- Expenses for useful improvements (refurbishment)

### **Running costs**

**Art. 6.** Housing Management and Maintenance Law gives a definition of running costs and distinguishes between running costs and the actual rent which is a price paid for the use of the dwelling. It is a characteristic of running costs that they are flow-through items (e.g. cost for water, snow clearance etc.) The communal authorities are to supply a detailed catalogue of all such items. It is to be noted that the landlord will have to be compensated for the work connected with providing a statement of expenditure.

### **Maintenance**

**Art. 7.** Housing Management and Maintenance Law defines maintenance costs and distinguishes between maintenance costs and running costs. As maintenance measures benefit the property owners, the respective costs must be borne by them. The tenant's contribution to the maintenance of the house is automatically contained within the rent except for important improvements regarding an individual dwelling under Art. 6 and 7 of the Rent Law.

### **Improvements (refurbishment)**

**Art. 8.** Housing Management and Maintenance Law is based on the assumption that as a rule, improvements are paid for by the property owners. If the improvements also benefit the tenants, they can be invited to share the costs. If a tenant notoriously refuses to agree to any improvement without giving a reason, his consent can be substituted by the court. This provision is intended to benefit other tenants even more than property owners. "Contracting" is expressly allowed by the law.

## **C5 - CHAPTER 5: HOUSING ADMINISTRATOR**

**Art. 9. to 13.** Housing Management and Maintenance Law regulates the appointment and the duties of the housing administrator. These duties remain unchanged if they are performed by the owner himself.

## **C5 - CHAPTER 6: ACCOUNTING OF OPERATING COSTS**

### **Accounting period**

**Art. 14.** Housing Management and Maintenance Law defines the calendar year as principal accounting period. Divergent agreements are possible. The tenants or owners have to be informed in time.

### **Reserve fund**

**Art. 15.** Housing Management and Maintenance Law states that it is the owner's duty to set aside adequate means (reserve fund) to maintain the building in a state of repair compatible with the state of the art (not only in statu quo). This duty in itself is an important contribution towards preventing purely speculative purchases of housing.

### **Division of costs**

**Art. 16.** Housing Management and Maintenance Law includes regulative contents, that expenses regarding a building are borne by the property owners according to their respective shares in the property as defined in the General Housing Law. Tenants must only be charged with running costs which benefit them. It is permitted to divide costs (e.g. of energy) according to the amount consumed.

### **Division of earnings**

**Art. 17.** Housing Management and Maintenance Law states that rent paid for an individual dwelling is due to its respective owner. Rents paid for common facilities, e.g. garages, are to be divided according to the respective shares in the property or according to the respective financial contributions of the owners.

### **Approval of accounting; surplus, debit**

**Art. 18.** Housing Management and Maintenance Law regulates the procedure of providing an expenditure statement. Six months after presentation of the statement, all parties concerned should be able to rely on the binding character of the statement. A surplus or a debit are to be paid within two months by tenants and owners respectively. The rules for the presentation of the statement are to be found in Art. 12 (5) of the Condominium Law.

## **C5 - CHAPTER 7: FINAL CLAUSE AND TRANSFORMATION ORDINANCE**

**Art. 14.** decides on the procedure of transformation from the hitherto existing regulations to the new Romanian Housing Management and Maintenance Law.

# C6 - HOUSING SUBSIDY LAW

## EXPLANATORY STATEMENT

The Housing Subsidy Law defines a legal basis for all activities of the State in (co-) financing housing construction, refurbishment, housing allowances and related activities. All activities of the State in promoting housing and housing construction are unified in this Law.

The State of Romania conducts the housing subsidy scheme designed in this law on the basis of civil law.

This law executes the urban dimension in Community policies following the Romanian Strategic Reference Framework (NSRF) to implement EU cohesion policy regarding the financing of housing measures.

Furthermore it regulates the cooperation between the State and the municipalities in terms of housing promotion.

The provision of subsidies follows criteria of effectiveness, assessed on the following targets:

- Affordable housing for households with need;
- Creation of budget living space not only with subsidies, but with additional measures as well;
- Creation of high quality buildings with state of the art quality standards;
- Integrative contribution to urban developments based on respective plans, particularly Integrated Urban Development Plans, with the targets of spare use of land, cutback of private transport, social and regional Integration;
- Executing the Housing Promotion Programme (Art. 5);
- Regular evaluation.

The law replaces the chapters II, V, VI, VII and VIII of the Law 114/1996. As it is a very general law, all detailing has to be decided in Decisions of the Government and Orders of the Minister. Therefore, operative regulations of the Law nr. 114/1996 and Law nr. 230/2007 may be implemented easily.

## C6 - CHAPTER 1: GENERAL PROVISIONS

### Funding

**Art. 1.** Housing Subsidy Law includes the following regulative contents:

- Financial sources are: contribution of the State, specialised funds, international sources, redemptions, proceeds;
- Municipalities should contribute with budget land and infrastructure, relief of fees and subject oriented measures;
- Redemptions from subsidised loans are earmarked for housing promotion.

### Exceptional returns

**Art. 2.** Housing Subsidy Law includes the following regulative contents:

- The state may accept deductions for the premature redemption of a subsidised loan following the concept of discounted cash value.
- Factoring of subsidised loans is excluded.

### **Housing Promotion Programme**

**Art. 3.** Housing Subsidy Law regulates the development of Housing Promotion Programmes, based on evaluations of housing demand and the available funding. It has to focus on regional planning targets, social and economic requirements and comprises a financial plan.

### **Housing Policy Board**

**Art. 4.** Housing Subsidy Law includes the following regulative contents:

- The government implements this kind of a supervisory board for expert opinions on single applications for subsidy and general questions, particularly regarding the Housing Promotion Programmes and legal amendments on the housing promotion scheme.
- The composition of the board and its chairmanship mirror the parliament. Its members are assigned by the government based on propositions of the political parties.
- There is no compensation in money for the activities in the board.
- The Government decides for by-laws to regulate the decision making process and the administration of the Board.

## **C6 - CHAPTER 2: SUBSIDIES AND FINANCIAL REGULATIONS**

### **Subsidy directives**

**Art. 5.** Housing Subsidy Law includes the following regulative contents:

- A comprehensive body of legislation is to be decided in regulations of the government and decrees of the responsible Minister. The whole scheme of regulation is to be published on internet.
- As the volume of subsidies is oriented on the funding, there cannot be a legal claim for a subsidy.
- Beneficiary households have to have their principal residence in the subsidised dwelling.
- Income limits have to be defined.
- The price of building land has to be appropriate.
- Quality standards in construction and applied construction products are obligatory.
- Limits of energy consumptions have to be reached.
- PPP Housing Associations cannot get a subsidy, if deficiencies in their financial behaviour are stated, until these deficiencies are corrected.
- There are some Exemptions of the strict subsidy directives, e.g. for integrated urban development projects.

### **Kind of subsidies**

**Art. 6.** Housing Subsidy Law lists up the possible subsidies:

- Subsidies oriented on construction (bricks and mortar), particularly low interest loans, grants and guarantees;
- Subsidies oriented on tenants (targeted), particularly housing allowances;
- Other subsidies, particularly for research and evaluation.

### **Subsidies oriented on construction**

**Art. 7.** Housing Subsidy Law includes the following regulative contents:

- Physical persons, municipalities, approved PPP housing associations, other non-profit legal bodies and profit oriented legal bodies may be subsidised in different ways for different types of new construction.
- Subsidies for refurbishment may be granted to owners, housing administrators, municipalities, PPP housing associations, other legal bodies and tenants.

### **Subsidies oriented on tenants**

**Art. 8.** Housing Subsidy Law includes the following regulative contents:

- Subject oriented subsidies (housing allowances) are to be allowed for households in object side subsidised dwellings.
- Subject oriented subsidies may be allowed for households in other dwellings.
- The eligibility has to be proved on yearly basis.
- Subject oriented subsidies in own property (single family homes, condominiums) have to be refunded in the case of sale.

### **Financing of construction**

**Art. 9.** Housing Subsidy Law lists the financing components for new construction and refurbishment and adds the following specific regulations. The Government may specify regulations on e.g. minimum equity of the building owner, conditions of capital market financing, consumer protection in condominium housing above the regulations in the Condominium Law and the consideration of additional financing sources.

### **Determination of rents**

**Art. 10.** Housing Subsidy Law defines the PPP Housing Law and the Rent Law as relevant for the determination of rents in subsidised residential buildings.

### **Option to buy**

**Art. 11.** Housing Subsidy Law defines the conditions under which a tenant may buy its apartment:

- Lump-sum payments of tenants by entering the contract above 150 RON/m<sup>2</sup> effect an option to buy after 10 years.
- The value of this lump-sum payments depreciates by 1 percent point per year.
- If the tenant quits the contract, the lump-sum payments at current value are payed off. If the tenant calls on the right to buy, the lump-sum payments at current value are included to the purchase price.
- 10 years after first time use the owner has to make a proposition to the tenant following the regulations of the Condominium Law. The purchase price is calculated as a combination of depreciated construction costs and market value. If no agreement on the price is settled, the court takes a decision.
- The option to buy may be exercised for 5 years. For another 5 years the tenant has a right for preemption. If both options are abandoned, 20 years after first time use the owner has no limitations in his property rights from this side.
- The tenancy is not affected, if the options are abandoned.

### **Remission of taxes and fees**

**Art. 12.** Housing Subsidy Law defines the remission of fees for all official acts in matters of this Law and the remission of taxes on land and buildings for subsidised buildings for 20 years.

## **C6 - CHAPTER 3: ADMINISTRATION OF HOUSING PROMOTION**

### **Procedure of subsidy**

**Art. 13.** Housing Subsidy Law includes regulative contents on the succession of actions from the solicitation of the applicant for a subsidy, followed by a written offer of the government until the acceptance of this offer, which finally constitutes a legal claim.

### **Preconditions**

**Art. 14.** Housing Subsidy Law includes the following regulative contents:

- The necessary approval of the building authority has to be on hand before the application for a subsidy.
- Financing of the project has to be assured in the case of confirmation of the subsidy.
- It is necessary to securitise subsidised loans, preferably by mortgages. The state may accept a junior securitisation of its mortgages.
- Sales of subsidised property is prohibited, except after approval by the state.

### **Data protection**

**Art. 15.** Housing Subsidy Law includes the necessary regulative contents on the topic. A minimum dissemination of personal data is ensured.

## **C6 - CHAPTER 4: DUTIES OF THE BENEFICIARY**

### **Constrictive disposability**

**Art. 16.** Housing Subsidy Law includes regulations to secure subsidies from cession, pledging or other disposal, except for purposes of the subsidy.

### **Premature termination of the subsidy contract**

**Art. 17.** Housing Subsidy Law includes the following regulative contents:

- Before payment of loans or grants the subsidy contract is to be canceled, if the applicant for subsidies misses to meet the conditions.
- The Government has to recall the loan or grant, if a reason for dismissal occurs.

## **C6 - CHAPTER 5: FINAL CLAUSE AND TRANSFORMATION ORDINANCE**

**Art. 18.** Housing Subsidy Law decides on the procedure of transformation from the hitherto existing regulations to the new Romanian Housing Promotion Law.

# PART D

## HOUSING LAW ANNOTATION REPORT

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### D.1 PRELIMINARY NOTE

The different topics of the Romanian Housing Law have been developed in a similar process:

- a) Description of status quo;
- b) Definition of specific targets (see chapter D.2);
- c) Fact finding at European models;
- d) Definition of operative existing regulations;
- e) Design of a new law;
- f) Adjustment to the existing legal background;
- g) Edition of the legal text.

The Romanian Housing Law in hand is designed in a way that it can be legally introduced within a single legal process. Nevertheless it consists of individual laws, each of them autonomously operable and open for future reforms:

- C 1 - Housing Law;
- C 2 - Rent Law;
- C 3 - Condominium Law;
- C 4 - PPP Housing Law;
- C 5 - Housing Management and Maintenance Law;
- C 6 - Housing Subsidy Law.

Law nr. 24/2000 regarding formal requirements of Romanian legislation was considered in the following way:

- The Laws are well balanced between social and economic interest, between interest of private individuals, business interests and interests of the state.
- The Laws are in line with international contracts. The implementation of EU-requirements was one major target.
- The Laws are based on the present economic, political and social situation in Romania. The long perspective is integrative part of it.
- With Part D “Annotation Report” a system of support for the interpretation of the legal regulations is provided.
- An introducing Explanatory Statement opens every Law.
- Some aspects diverge from present practice in Romanian legislation. This derive from the target to produce something new as a synthesis of European best practice.

## D.2 SET OF TARGETS

The design of a new Romanian Housing Law is based on targets which at an early stage of the project development were adjusted in accordance with the responsible policy makers. These targets may be seen as the core of the whole project in process.

### D.2.1 STRATEGIC TARGETS

- (a) The best housing law in Europe  
Taking the specific preconditions and the strategy of development of the new Romanian Housing Law it is feasible to attain the best housing law in the European Union. Benchmarks for Romanian housing policy will be the best models in Europe.
- (b) Compliance with EU legislation  
All new regulations are tested towards their compliance with EU regulations. This is particularly important regarding the Housing Promotion Law and the claim for a playing field competition.
- (c) Lean regulations  
Only the very necessary shall be regulated. As far as possible the existing general rules of the Civil Code shall be applied, e.g. regarding contractual law. Additional regulatory need is given e.g. regarding consumer protection.
- (d) A clear structure that remains, as the laws develop further  
Aging legislation inevitably becomes voluminous and complicated. Single parts of the Romanian Housing Law very likely will develop individually in the future. In this process it easily happens that connected regulations develop apart. To avoid this, the Romanian Housing Law has a systematically clear and lean structure. Any aspect of regulation is situated at exactly one place. If e.g. a future reform of the Rent Law includes changes in definitions, this has to be done in the General Housing Law in a way that the new definition fits to all other parts of the housing law. This systematic approach has proved to be a powerful strategy to allow long-term handling of legislation.
- (e) Empowerment of law – legal certainty  
A law is as good as its enforcement. The new Housing Law will be designed in a way that it will face broad acceptance. Furthermore, it shall contribute to better enforcement of adjacent laws, such as building codes, zoning, foreclosure procedure etc. The most efficient way to enforce the new Housing Law is the creation of balanced rights and obligations as well as legal certainty, both for tenants and landlords, vendors and customers, owners and housing managers.
- (f) Empowerment of markets with products for any demand  
Markets have proved to be the most efficient tool for the provision and allocation of goods. Housing is allocated by the market, but the product differs from other products. Housing is a specific good due to its very nature: long production period, extreme long period of use, very high input of natural resources, very low adaptability of supply to changing demand, no-consumption is no alternative, limited possibilities to switch to alternative products etc. From these peculiarities result specific market failures: supply cannot be infinitely increased at rising demand, insufficient housing provision, unhealthy living conditions and problems of affordability for parts of the population up to middle income groups, production cycles and market volatility that conflict with



social policy targets, heavy ecological threats etc.. Housing legislation as a part of housing policy aims to steer the markets, both to empower them to do their best for housing provision and to avoid market failures. In many European countries it has been proved efficient to promote different market sectors. Best results are attained, if the different market sectors are permeable and compete for the same consumers. This promotes the efficiency of the markets and allows optimum results for the individual housing demand.

(g) Integrative housing provision

Housing is a sphere of life where social integration shows to work or to fail. An integrative housing policy may contribute enormously to a cohesive society with all its positive consequences. This requires the provision of affordable housing for population groups facing housing needs. Social cohesion is to be enforced by securing consent of large parts of the population with housing policy measures.

(h) Striving for integrated housing markets

A major discussion on housing policy is about dual vs integrated rental markets. The treatment of different rental housing sectors – particularly private and social –seems to characterize the general tendency of a nation's housing policy. Dual rental markets appear, if the state reserves the social housing sector for the most vulnerable people and at the same time allows large differences in rent levels. Affordability is attained by broad application of housing allowances in order to improve the market position of the tenants. This used to be a preferred policy strategy, aimed at solving the housing problem mainly by the markets and reducing public expenditure. It was particularly recommended for countries in transition.

Some Nordic countries, Austria and the Netherlands have been following a different policy strategy. They aim at establishing substantial sectors of affordable housing, mainly by models of Public-Private-Partnerships. Their social housing sector is open to both lower and middle income groups. The rent levels are adequate for middle income groups. Low income groups may draw on additional housing allowances. Subsidies are directed at the social housing providers (object- vs. subject side subsidies). New data on state housing expenditure and social integration prove the advantage of the second model. Austria for example shows a particularly positive housing provision with a high degree of social integration. At the same time the public expenditure on housing is with approx. 1% of GDP one of the lowest in Europe.

Considering European Best Practices, Romanian housing policy is recommended to strive for the second model. Even with very limited resources of the state it is possible to implement this model and still meet the needs of the most vulnerable groups.

(i) Clear Structure of authorities in housing

The central state organisation of Romania is advantageous. The biggest part of legislation is in national authority. On the other hand, implementation in many cases takes place on the level of municipalities. This structure will be anticipated for the new Housing Law. There shall be no housing legislation on a regional or local level. On the other hand, municipalities play an important role in social housing policy. They e.g. might be authorised to allocate parts of the PPP housing units to households in need.

- (j) Benefits from transformation for the largest part of population  
The transformation process in Romania brought big advantages for a small group of the population. Yet, it is politically reasonable to aspire a positive change of living conditions for the vast majority of the population. Beneficiaries of the new housing scheme should therefore be all parts of Romanian population, but particularly lower and middle income groups.
- (k) Continuity for regulations with proved operational capability  
The existing Romanian housing legislation works well in several areas. These well functioning regulations shall be preserved and integrated into a consolidated new housing law. Continuity in biggest possible parts not only facilitates the transformation regulations, but also provides legal certainty. As far as possible, the new law shall be based on evolution rather than revolution .
- (l) Cheap land  
Moderate costs for building land are essential for affordable housing. Today the costs of building land differs extremely between different parts of Romania. The voluntary cooperation of municipalities probably will not suffice. It is recommendable to consider changes in the Zoning Law following models in operation in the Italian province of South Tyrol and in Germany.
- (m) Contribution to increase construction output  
The number of dwellings per 1 000 inhabitants in Romania stands at 85% of the EU27 level. Yet, the average floor space per capita is with some 20m<sup>2</sup> only 60% of the EU27 average. New construction hardly reaches 30% of the EU27 average with around 1,7 completions per 1 000 inhabitants. Confronted with insufficient investment for almost twenty years, the need for new housing construction is high above the EU average of 5 housing completions per 1 000 inhabitants. In Ireland and Spain completion rates of up to 15 have been achieved in the previous years. A new housing legislation shall contribute to an upturn in housing construction to at least European average. That signifies around 100 000 new dwellings per year in Romania. Housing consumption shall catch up with the European average. Housing construction and refurbishment have huge impacts on the general economic development. Investments of 1 Bn € create around 25.000 permanent jobs (at price/wage level of Western Europe).
- (n) Facilitating thermal refurbishment  
The Romanian housing stock suffers from a long standing underinvestment in maintenance and repair, which led to the deterioration of big parts of the housing stock. At the same time, a replacement of the old stock with new construction is unthinkable due to economic, social and political reasons. Hence, there is no alternative to big scale refurbishment. A new Housing Law aims at facilitating the necessary processes.
- (o) Quality standards in housing construction  
Quality in construction may be improved by stricter regulations, stricter enforcement and adequate incentives, altogether with a change in culture. Housing legislation may contribute substantially to such a process by implementing the following measures: avoidance of over-regulation; fast and precise lawsuits; a change of principle from recovery of costs to the recovery of damage, e.g. in the common pre-sell purchase agreements for condominiums.

- (p) Extending the investment horizon  
Investment in housing with maturities of 20 years and more is already common in retail financing. By contrast, in institutional financing of housing developers the investment horizon is still very short. The short term returns for the development of condominiums is so attractive, that longterm investment in rental housing can hardly compete. A new Housing Law may improve the legal and economic conditions for long-term investments in housing.
- (q) The housing situation of the extremely poor cannot be solved by housing policy alone, but the new Housing Law must not prevent from new approaches  
The big number of extremely poor need public support. But housing policy would be overloaded, if it should be the major field of action. Extreme poverty needs an integrative approach with programmes of education, empowerment of women, labour market initiatives, social aid and housing.
- (r) Introduction of extra-judicial arbitration in housing  
Housing is a field with a particularly high need for legal agreements. To improve legal certainty and disencumber the courts, Romania should introduce procedures of extra-judicial arbitration, following existing regulations in civil proceeding. The infrastructure for this kind of legal procedures should be installed within the municipalities. Simple cases might be conducted by civil servants. For more complicated cases a board of arbitration should be installed, consisting of (honorary) representatives of tenants and landlords. This kind of a mediation institution does not exist in Romania yet. Its introduction requires a thorough procedure of specialisation of the stakeholders.
- (s) Limits of a new Housing Law  
The scope of intended regulation is wide. But several areas related to housing shall not be covered. This is i) fiscal law (with exemption of tax reliefs for Limited Profit Housing Associations), ii) urban and regional planning law, iii) rent law for business offices (with exemption of regulations on maintenance), iv) building code, v) cadastre and registration, and vi) banking legislation (contractual saving scheme etc.), vi) the set-up of a housing court.

## **D.2.2 SPECIFIC RENT LAW TARGETS**

- (a) Filling the legal vacuum in the rental sector  
As there is no clear legal framework for rental dwellings (apart from contractual regulations from the Civil Code), landlords and tenants found their own way to agree – outside legal jurisdiction. Acting in this legal vacuum was not necessarily illegal. But this practice led to quite a diffuse situation. Today it is hardly possible to evaluate the rental sector neither quantitative nor qualitative. Following official data, private rental housing is only some 4% of the housing stock. By contrast, including all rented condominiums the private rental share is estimated at 16%. Some 70% of all rental contracts are not legally registered. This is a fiscal problem and a challenge of law enforcement. The legal vacuum needs to find an end. The new Housing Law will introduce levers to make registered legal contracts the usual practice (fiscal regulations with the same aim are not part of the project).
- (b) Introduction of a liberal regime of rent control  
Many western European countries operate with regimes of rent control even for parts of the private housing market. This is a tricky thing. Pro's are: i) consumer protection; ii) strengthening the market position of the tenants, iii) affordability, iv) cushion market volatility. Con's are: i) interfering

and disturbing the markets, ii) intervention in property rights, iii) appearance of dual housing markets, iv) problems with financing housing maintenance. European Best Practices try to meet the interests both of landlords and tenants. Central aspects of regulation are the duration/termination of rent contracts and rent limits. The introduction of a regime following these considerations seems to be legitimate and is compliant with EU law. But the best way to cut rents is to provide sufficient supply.

(c) One law, but specific regulations for all rental market sectors

The different rental market sectors need to be treated differently. This is justified because of the different degree of public support in attaining the dwellings to let.

(d) Security of investment / avoidance of excessive price dynamics

There is a way to protect consumers from excessive claims of the landlords and at the same time position rental dwellings as an option for investment. Rights out of old contracts have to be respected. However, very low rents which do not allow for proper maintenance of the buildings shall be complemented with additional maintenance fees. On the other hand a procedure shall be introduced to combat excessive rents.

(e) Privately financed construction shall remain unregulated

In order to secure investments, housing construction that did not draw on any subsidies shall remain unregulated in any case. Privatised rental dwellings are not part of this exemption.

(f) Dwellings build before 1990 are regarded as subsidised

Privatisation of big parts of the housing stock gave huge capital to the hand of people. This is regarded as a substantial opportunity. But there shall be a balance between the economic advantage of the lucky owners and the disadvantages of new clients on the rental market. Therefore it is proposed to regard all dwellings built before 1990 as subsidised. In this way a liberal rent control is legitimised.

(g) Protection of a social manoeuvring mass in housing

Efficient housing policy needs to have access to a certain housing supply based on social criteria. Taking European Best Practice it is recommended to provide a social policy influence by occupancy titles instead of public housing construction. As a compensation for public support, a certain part of subsidised housing shall be allocated by the municipalities. In this way social and regional integration may be attained. Public housing construction is regarded dispensable, but it is recommended to municipalities to join PPP Housing Associations together with private partners to have direct influence on affordable housing (see below).

(h) Promoting improvements of the stock by tenants

A huge resource to improve quality standards of rental dwellings are the tenants themselves. Their investment may contribute considerably to enhance living conditions. Legal certainty regarding investment of tenants is the most efficient way to promote it.

(i) No rent regulation for commercial lease

Waiving of rent regulation for shops and offices burdens small and traditional enterprises and even jeopardises small-scale local food suppliers. But on the other hand, commercial leases are negotiated by businessmen. Their specific legal protection is hardly arguable. Almost none of the

European countries apply regulations on commercial leases. Very well necessary is the inclusion of commercial leases into maintenance regulations.

### **D.2.3 SPECIFIC CONDOMINIUM LAW TARGETS**

- (a) Development of owner occupied housing as primary tenure  
Owner occupied housing has broad economic advantages. It is reasonable that the majority of households live in their own property. Ownership in housing shall be developed further.
- (b) Consolidation and development of the existing Condominium Law  
The existing regulations on owner occupied housing function to a large extent. Particularly for the regulations of property on common parts, on owners-associations and on housing management there is only limited need for change. Yet, all regulations need to be tied into one consolidated law.
- (c) Operativeness of associations of owners  
Property of a dwelling signifies shared property of a building. Common interests have to be decided by owner-associations: particularly the treatment of common parts of the building, assignment and control of the housing management, accounting of maintenance costs and decisions on repair and renovation. Living conditions and enhancement of property value is closely related to the owner-associations' capability to function.. Specific challenges are the necessary quora for different decisions, the treatment of absent owners and the relation to the housing manager.
- (d) Effective maintenance, repair and refurbishment  
Regarding the value of condominium property and the virtual impossibility to legally dissolve licit owners-associations it is of paramount importance to secure the maintenance of the buildings and enhance their value. Key factor for this target are well functioning owners-associations.
- (e) Handling of mixed ownership  
Residential buildings with mixed tenure of rental and owner occupied dwellings have become usual. It is crucial to keep these buildings manageable, as two (or more) tenancy regimes are in force. This is mainly a question of maintenance regulations (see below).
- (f) Transparent regulations on the establishment of condominium ownership, purchase and sale  
Based on existing regulations, simple and transparent procedures for the passage of title shall be designed.
- (g) Consumer protection in purchase of dwellings  
The new Condominium Law shall contain contractual regulations to secure deposits of buyers of condominiums. A simple and effective instrument are bank guarantees. An alternative instrument might be regular instalments in line with to progress of construction work, which has to be proved by civil engineers. Only the framework shall be legally defined. The form shall be developed by the market.
- (h) Same terms of use for all owners  
Aiming at the protection of the single owners, it is necessary that all owners have the same rights to use their dwellings and common parts.

(i) Termination of owners-associations / reconstruction

One of the most difficult aspects of condominium law is the physical end of a residential building and the association of owners. What happens, if a deteriorated building cannot be refurbished in an economically and technically reasonable way? No perfect solution has been found so far. A starting point are regulations on reconstruction, e.g. on the demolition and new construction of a building with continuity of the owners-association.

#### **D.2.4 SPECIFIC PPP HOUSING LAW TARGETS**

(a) Introduction of a new housing sector between market and state

Aiming at integrated housing markets with affordable dwellings for lower and middle income groups it is necessary to structure the institutional setting. There is a particular shortage in affordable rental housing. The private market offers growing supply of up-scale condominium housing. But prices are increasing dramatically. Municipalities on the other hand are facing heavy limitations in financing public housing out of their budgets. Furthermore, it is doubtful that municipalities are better housing developers than specialised market oriented companies. The model of PPP Housing Associations follows the European Best Practice particularly of Austria and the Netherlands with additional input from limited profit housing schemes in other countries. They work under private law as corporate enterprises, but their profit is limited. Cooperatives may be included into the legal scheme as well. They cover three major tasks in affordable rental housing supply: as developers, as investors and as housing managers. As compensation for the limitation of profit they enjoy some tax deductions and a preferred access to housing subsidies. To secure the public engagement the PPP Housing Associations are subject to stricter control than ordinary business companies. PPP in housing has a twofold function: in the organisational form and in finance.

(b) Public-Private-Partnership in the organisational form and in finance

In institutional respect, PPP Housing Associations may be organised as joint ventures of major stakeholders in local housing supply, e.g. the municipalities themselves, ANL, international partners, lobby-groups, commercial banks, companies, charity organisations or individuals. In terms of financing, affordable housing requires the support of all stakeholders, i.e. cheap building land (from municipalities or other stakeholders), state support via subsidies or guarantees, capital from International Financing Institutions, reinvestment of profits and equity participation from housing developers, eventually even from tenants, strict regulations and incentives to keep construction and financing costs down. PPP housing will burden public budgets only to a moderate extent. The capital market will play a major part in financing.

(c) Relevant target groups

Target groups for PPP housing are households with low, but stable incomes, such as civil servants and private employees. It shall focus particularly on young households and domestic migrants to the cities. PPP housing must be affordable for a well defined middle class household (e.g. the forth income decile). Lower incomes might be supported by additional housing allowances. Higher incomes (up to e.g. the sixth income decile) should have access to PPP housing by income limits to attain social integration. Income limits should be controlled when entering the rental contract. Subsequently growing incomes shall not be punished.

- (d) Affordability means 7,-/5,- ROL/m<sup>2</sup> (2,-/1,50 €/m<sup>2</sup>)  
The goal is to establish rental housing for < 7,- ROL/m<sup>2</sup> (+ maintenance cost, energy and VAT) in Bucharest and < 5,- ROL/m<sup>2</sup> in places with lower income levels. Rental housing can only be promoted if it is considerably cheaper than privately financed ownership. As a threshold, net housing expenditure should not exceed 20-25% of household income. This accrues to some 30% including maintenance costs and energy. More is unacceptable for social policy reasons and for market acceptance. This goal is attainable with the described Public-Private-Partnerships following European Best Practice.
- (e) 1% PPP housing stock after 10 years  
PPP housing needs to be visible on the markets. Only if produced in relevant quantities it shows its ability to function. 1% of total stock in 10 years are some 90 000 units. Assuming low output in the first years, this means medium term construction capacities of some 15 000 units per year.
- (f) Impact on price level on private markets  
Oriented at considerable parts of the population, the PPP housing sector shall compete with the private market sectors, such as private rents of old condominiums. This way it shall contribute to reduce price dynamics.
- (g) Right to buy  
Regarding the high prestige of property, it is recommended to implement the rental dwellings with a right to buy after a distinct period of time, if the tenant contributes to the financing of the dwelling with own equity. In Austria a right to buy is obligatory, if the tenant contributes with more than 50 €/m<sup>2</sup> of own equity at entering the contract (11-15 years after first time use). This eases the financing of construction considerably and proves to be a powerful instrument to target PPP housing.
- (h) Housing stock of municipalities and the State  
Except for rent and maintenance regulations (see chapter D.2.2 and D.2.5), the existing public housing stock does not need new regulations. It may be operated more or less as today. Nevertheless, it is strongly recommended to bring this valuable housing stock as equity into newly established PPP housing associations. In this way these new entities would be economically strong players from the very beginning. Existing rent contracts must not be changed. For future rent contracts more adequate regulations might be applied.
- (i) Enabling owners-associations to transform to PPP Housing Associations  
Many residential buildings suffer from poor solvency of their owners. Maintenance and thermal refurbishment often enough are impeded by the big number of poor owners. A change of title might be a way out. The possibility shall be opened that owners transform their association to a PPP Housing Association (cooperative) or become part of a bigger one. This would ease maintenance and thermal refurbishment and even open an option for reconstruction in the case of heavy deterioration.

## **D.2.5 SPECIFIC HOUSING MANAGEMENT AND MAINTENANCE LAW TARGETS**

- (a) One regime for all housing sectors  
The unity of regulations regarding maintenance and repair is essential for managing residential buildings with diverse legal regimes. Identical regulations are necessary for the calculation of

useful floorspace, contributions to a maintenance reserve, repair of technical equipment, payment conditions, foreclosure procedure etc..

(b) Implementation of contracting models for thermal refurbishment

“Contracting” is a new kind of service offered by providers, who finance and implement thermal refurbishments. Refinancing and profits are covered by charging constant energy bills for the time being and at the same time attain reduced energy consumption. This model is efficiently applicable if there is a big potential to save energy and a shortage of equity of the owners.

(c) Sharpening the profile of housing managers

By now, the management of owner occupied housing in Romania is well established. It is estimated that by 2010 condominium buildings all over the country will be managed by licensed persons, who are mostly one of the owners. Professional management companies did not establish yet. The role of housing managers shall be developed particularly in regard to their legal representation of the associations, decision-making processes and the organisation of thermal refurbishment.

(d) Fiscal identification

The new Housing Management and Maintenance Law will make it easier to assess housing associations for fiscal reasons.

## **D.2.6 SPECIFIC HOUSING PROMOTION LAW TARGETS**

(a) Compliance with EU regulations

The EU Treaty comprises a general ban of State Aid. The exemption of affordable (social) housing is determined in recent EU jurisdiction. Furthermore, the new conception of Social Services of General Interest and the possibility of reduced VAT rates for social housing construction will be considered. The new Romanian Housing Promotion Law will consider all EU regulations to warrant an easy notification of the Law.

(b) Steering effects

European Best Practice show that well designed housing promotion schemes may have comprehensive steering effects in terms of economic development, social cohesion, environmental protection, migration, urban development and the like. The new Romanian Housing Promotion Law shall aim at this multi-dimensional leverage.

(c) Changing tasks for the ANL

The National Housing Agency ANL today is the major developer of social housing all over the country. Taking European Best Practice it is regarded more efficient to commission PPP Housing Associations or private developers with this service of public interest. ANL should return to its original profile of an agency. Firstly it should facilitate the creation of PPP Housing Associations via joint ventures with municipalities and/or private entities. ANL will be suited to carry public stakes in housing, e.g. in PPPs. In this way it is a core function of ANL to transfer knowhow to the local level. Secondly it should organise financing of affordable housing differently to the present model via a PPP model (see above). Thirdly ANL should enfold extensive control and supervision functions.



- (d) Acquisition of international funding  
European Institutions, such as ERDF, and International Financing Institutions, such as EIB and CEB, have recognised the importance of housing for economic development, reduction of emissions, social and regional integration. Therefore they provide funds for housing construction and refurbishment. The new Housing Law will create the necessary preconditions to acquire these funds.
- (e) Minimum subsidies – maximum leverage  
An overview on European housing subsidy schemes shows a wide range of instruments with different efficiency. A set of adjusted instruments will be recommended to allow minimum costs for the public with a maximum output. One preferred instrument are public guarantees. Public support of affordable housing should be regarded as investment rather than a subsidy.
- (f) Social mix  
Housing promotion instruments shall contribute to social integration by means of accessibility for lower and middle income groups.
- (g) Promotion of housing property  
Aiming at social cohesion it is recommended to develop promotion schemes for the construction of single family houses and condominiums as well.
- (h) Competition in the provision of subsidies  
State subsidies should be provided in a competitive way as far as possible. For example, given a defined subsidy volume, the subsidies should be allocated to the construction or refurbishment projects with the best performance (economic, thermal, social).
- (i) Linkage of subsidies to quality standards  
The provision of housing subsidies shall be linked to quality standards as the following: Low energy standard, social and income criteria, obligatory connection with the district heating, if the access is available, for large scale developments architectural competitions etc.

## **D.3 ANNOTATIONS ON C1 - HOUSING LAW**

### **D.3.1 STRUCTURAL PATTERNS**

For the specific targets of the Law see above, chapter D.2 “Set of targets”, p. 120 ff..

The single parts of the Romanian Housing Law are decided as „Simple Laws”. Details are determined by “Decisions of the Government” and – for particularly flexible aspects – as “Orders of the Minister of Development, Public Works and Housing”.

C1 Housing Law is an umbrella Law. It is essential for the whole logistic approach that within this Law the brackets over all six Laws are defined. In Romanian Law there are some examples of Umbrella Laws, e.g. the Romanian Tax Code, where all relevant definitions for the whole sector are defined and each Law from the sector uses these definitions. It is a core aspect of the whole project to have 1 framework and 5 adjacent Laws.

### **D.3.2 RECOMMENDATIONS FOR ADJACENT REGULATIONS**

Regulations regarding the availability of technical infrastructure and obligations of the municipalities need to be established, e.g. within the Building Code.

### **D.3.3 ANNOTATIONS ON C1 - CHAPTER 2: DEFINITIONS (ART. 2)**

- The definitions are in a thematic order. The following definitions are identical to the Law nr. 230/2007 or Law nr. 114/1996: (1) Dwelling, (3) Service dwelling, (4) Intervention dwelling, (5) Protocol dwelling, (6) Necessity dwelling, (7) Holiday dwelling (11) Condominium, (12) Ownership fraction, (17) Home-owners association, (18) Agreement of association, (21) Useful floor space, (22) Built area, (23) License.(2) Social dwelling: Demand proven subsidies (housing allowances) are to be defined in the Housing Subsidy Law and its Norms. Norms on the Housing Subsidy Law (as Decisions of the Government or the Minister) shall contain tables with household incomes and reasonable housing costs. But this detailing is not subject of this project. The definition differs from Law nr. 113/1996 (Art. 2 c). Social housing is to be defined by specific conditions of access, not by subsidised rents.
- (8) Subsidised dwelling: This definition is of particular relevance for the Rent Law, as rented condominiums built before 1989 should be integrated into rent regulation. As a big part of dwellings built before 1989 are financed with state support and their privatisation was based on below-market prices, it seems legitimate for social aims to limit their marketability. The rent regulation scheme proposed in the Rent Law is one of the most liberal in Europe. For the big number of dwellings and particularly single family houses, which have been built without any state support, an exemption is provided. Given respective proof they are treated similar to non-subsidised dwellings.
- (10) Unit of use: The definition covers as well business space, which is subject of the Housing Management and Maintenance Law.
- (11) Condominium: Garages and parking areas are qualified for property on housing.
- (15) Organiser of housing property: The Organiser of housing property is anybody who organises housing property.
- (19) Accessory to housing property may be a storage room in the basement, a part of the garden or a roof terrace, a garage, if its use is exclusively linked to one dwelling. Balconies and other parts that are physically linked to a dwelling are part of the dwelling and not a accessory. Definition from Law no. 114/1996 is considered.

- (20) Common parts of realty: Dwellings never may be common parts of realty.
- (21) Useful floor space: The definition decides, what is part of the calculation for useful floor space and what is not part of this. The definition of minimum space related to the household size as defined in Annex to Law nr. 114/1996 is impracticable (it defines e.g. >135m<sup>2</sup> for a family of 5 persons!) and should not be maintained. Appropriate dwelling sizes may be defined in the Building Code, which is not part of the project. For new construction appropriate dwelling sizes may be defined in the Housing Subsidy Law and its Norms.
- (23) Standard interior: This is an important definition for several of the adjacent Laws. We define the technical standard with “State of the Art” (standard tehnic calitativ superior). This is a flexible link and refers to National or International Standards (see Art. 12 Housing Law). Detailed technical definitions within the Law or Appendix should be avoided. This definition goes beyond the definition of a suitable dwelling in Law nr. 113/1996 (Art. 2 b).
- (25) Energy performance certificate: See below Art. 10.
- (27) Household income: The definition of transfers to be included or excluded to the household income is an efficient way to tune income limits and housing allowances.
- (28) Principal residence: The proposed definition is better applicable than an existing definition in Law nr. 290/2005.

#### **D.3.4 ANNOTATIONS ON C1 - CHAPTER 3: SOCIAL DWELLINGS (ART. 3.-4.)**

- The regulation is targeted on the housing stock of the Romanian municipalities and the housing construction of ANL.
- It refers to Art. 38-50 Law no. 114/1996.

#### **D.3.5 ANNOTATIONS ON C1 - CHAPTER 4: SERVICE DWELLINGS, PROTOCOL DWELLINGS (ART. 5.-6.)**

- The chapter integrates the regulations for service dwellings, intervention dwellings and protocol dwellings of Law no. 114/1996 (Art. 51-54, 57-60) into the new Housing Law.
- It is essential, that all dwellings regulated in Art. 3.-6. are not exempt from Art. 11 Housing Law - Creation of condominium property in all buildings, from the Condominium Law, the Rent Law and the Management and Maintenance Law.

#### **D.3.6 ANNOTATIONS ON C1 - CHAPTER 5: EXTRA-JUDICIAL ARBITRATION (ART. 7.-8.)**

- The installation of this new legal instrument is meant to relieve the courts. The inclusion of representations of interest of tenants and landlords contributes to consensus finding and strengthens civil society. A particular duty of the boards of arbitration is related to Art. 15, 16 of the Romanian Rent Law (comparative rent, rent comparison lists).
- Art. 7 (4): It is necessary for legal certainty not to limit the access to courts, which is provided by Art. 6 of the European Convention of Human Rights.
- The new instrument differs from mediation, as defined in the Mediation Law (Law nr. 192/2006), which focuses primarily on matrimonial conflicts. Extra-judicial arbitration is a special procedure. For the implementation of Extra-judicial arbitration further preparations are required: model-projects, examination of Best-Practice examples e.g. in Germany and Austria.
- The implementation of extra-judicial arbitration requires a project-based approach on the example of a small number of interested municipalities. On this basis respective technical norms may be developed.

### **D.3.7 ANNOTATIONS ON C1 - CHAPTER 6: INFORMATION OF PARTIES (ART. 9.)**

- Information of parties is an overriding topic and not only relevant for the Condominium Law. The detailed definitions shall not be part of the Law, but, if necessary of decisions of the Government or the Minister or be decided by the courts.

### **D.3.8 ANNOTATIONS ON C1 - CHAPTER 7: SUBMISSION OF AN ENERGY PERFORMANCE CERTIFICATE (ART. 10.)**

- The regulation refers to Law no. 372/2005 that has implemented the EU-Directive on the Energy Performance of Buildings (Directive 2002/91/EC). It is recommended to proclaim this law for new within the framework of the new Housing Law.
- With par. (2) an effective sanction is introduced.
- The costs of the certificate are part of the running costs (Art. 6 Housing Management and Maintenance Law).
- The energy performance certificate is regarded crucial to reduce energy consumption in the building sector. It not only adds information to the market, but offers an undoubtful databasis for measures of thermal refurbishment.

### **D.3.9 ANNOTATIONS ON C1 - CHAPTER 8: CREATION OF CONDOMINIUM PROPERTY IN ALL BUILDINGS (ART. 11.)**

- With this regulation the different ownership regimes shall be substituted with a single one. This measure is regarded crucial to attain most simple housing regulations for the whole housing stock including social dwellings, necessity dwellings, service dwellings and protocol dwellings, particularly regarding management and maintenance regulations. Running rent contracts are not affected of this measure. Nevertheless all rent contracts have to comply with the rent regulations of Art. 14-18 Rent Law.

### **D.3.10 ANNOTATIONS ON C1 - CHAPTER 9: RECOMMENDATION OF EUROPEAN OR NATIONAL STANDARDS (ART. 12.)**

- Standards represent the recent state of technology. By referring to standards this advantage may be integrated into the Romanian Housing Law. On the other hand, such an approach is a dynamic reference, which is derogatory for legal certainty.

### **D.3.11 ANNOTATIONS ON C1 - CHAPTER 8: FINAL CLAUSE AND TRANSFORMATION ORDINANCE (ART. 13.-18.)**

- The Final clause and transformation ordinance has to be compiled by the Ministry responsible for this Law. Following the systematics of the Housing Law with its five attached laws there should be common regulations on this topic at this place.
- The six Housing Laws replace big parts of existing regulations on housing (e.g. the "Housing Subsidy Law" regarding Law nr. 114/1996). Remaining parts, which are covered by none of the new Housing Laws shall be reannounced in an appropriate form (e.g. the regulations on Savings Banks, Art. 20 Law nr. 114/1996).
- There should be an appropriate period of time for coming into effect of the new Law.
- Law nr. 230/2007 regulates in a very unspecific way that regulations of Law nr. 114/1996 are abrogated if they contradict to more recent regulations. The final clause and transformation ordinance for the new Housing Law should be more specifically.

## **D.4 ANNOTATIONS ON C 2 - RENT LAW**

### **D.4.1 STRUCTURAL PATTERNS**

For the specific targets of the Law see above, chapter D.2.2 “Specific Rent Law targets”, p. 123 ff..

The law no. 114/1996 constitutes the present-day rental law of Romania. It contains the necessary definitions and tolerates a free housing market on the private sector by granting contractual freedom including the freedom of the parties to agree on the amount of rent. It is the opinion of the authors that this law should continue to form the basis of the law relating to housing. Main contents of Art. 22-24 and 28-33 Law nr. 114/1996 (dwelling lease) are implemented.

We merely suggest the introduction of well-balanced restrictions concerning the amount of rents for dwellings built or to be built with public subsidies. This means that all dwellings built without subsidies by private contractors from 1990 on would not be subject to any restrictions regarding the period of time or the amount of the rent. A written contract would be the only prerequisite (cf. the German Civil Code, Art. 550 BGB, which irrefutably presumes an open-ended tenancy if there is no written contract).

Romania would thus receive one of the most liberal rental law systems in the EU, as tenancies concerning dwellings built without subsidies are subject to restrictions in most countries.

For subsidized dwellings we recommend the following solution:

Dwellings to be built in the future according to “PPP models” should be subject to special rules based on the idea of a “cost covering rents”. For subsidised dwellings built before 1990 (which is the major part of it) we suggest a reduction of rents compatible with the free market. It should be modelled on the example of the German “comparative rent”. The tenancy agreement would have to be in writing. We also suggest that instead of the adjustment of the rent according to the system of comparative rents, the parties should be free to agree on an adjustment based on the consumer price index.

On a European level it is discussed to implement anti-discrimination rules into housing legislation. The authors underline that anti-discrimination rules have to be considered following the Romanian Constitution. Further limitations of property in this respect is not necessary and wishful.

### **D.4.2 RECOMMENDATIONS FOR ADJACENT REGULATIONS**

Aspects of running costs, insurances of residential buildings etc. are regulated in C5 Housing Management and Maintenance Law.

### **D.4.3 ANNOTATIONS ON C2 - CHAPTER 1: SUBJECT OF REGULATION (ART. 1.)**

- Art. 1 refers to the existing Code Civil and its provisions relating to tenancies. It is designed in the same structure as Art. 1 from the Romanian Commercial Code.
- It limits the applicability of this law to permanent tenancies regarding dwellings.

### **D.4.4 ANNOTATIONS ON C2 - CHAPTER 2: THE LEASE CONTRACT (ART. 2.-5.)**

Art. 2 - Form of the lease contract:

- By the prerequisite of a written contract, both parties to the agreement are given a secure legal position.

- A written contract is also a prerequisite for taxation as well as for the compilation of rental tables by the local communities.
- Art. 2 (1) (obligatory contents of a rent contract) derives from Art. 21, Law nr. 114/1996.
- Art. 2 (2) (prohibited contents of a rent contract) refers to Art. 22, Law nr. 114/1996. It should be avoided to list up the contents which are not allowed in a rent contract as defined in Art. 22 Law nr. 114/1996. Such a list inevitably would produce legal loopholes.

Art. 3-5 Duration of tenancy / Termination of tenancy / Reason for irregular dismissal:

- The principle of contractual freedom is established regarding the term of the tenancy. The minimum term of six months emphasizes the fact that a certain permanency is aimed at.
- Within the time limit the landlord can only terminate the tenancy for the reasons specified in Art. 5. When a tenancy is terminated by reason of the landlord's own needs, it will ultimately be up to the courts to consider the facts of each case and to decide whether a termination is justified.
- As the tenant's position in the market is less strong than the landlord's, his right to terminate the tenancy is restricted only by time limits, i.e. he can terminate the tenancy without giving a reason.
- According to Romanian Law in Civil Procedure Cases the Roman Civil Procedure Code is applicable, where the competent court is defined.

#### **D.4.5 ANNOTATIONS ON C2 - CHAPTER 3: USE OF THE RENTAL UNIT (ART. 6.-9.)**

Art. 6 - Refurbishment of the housing space by the landlord:

- Art. 6 facilitates certain measures aimed at modernisation and maintenance by obliging the tenant to tolerate those measures.
- This paragraph decides only the acceptance of measures by the tenant. Questions of cost coverage are decided in §§ 6, 7 Management and Maintenance Law.

Art. 7 - Refurbishment of the housing space by the tenant:

- In analogy to Art. 6, the landlord must allow measures aimed at modernisation as well as energy and water saving measures by the tenant. The tenant's rights in this respect are limited only by the fact that the landlord's future possibility to use the dwelling or to turn it into cash must not be impaired.
- This paragraph regulates only the acceptance of measures by the landlord. The release of a detailed definition is done willingly to avoid a casuistic development. It may be defined in decisions of the Government or Ministry. Cost coverage is to be decided in the Management and Maintenance Law and the Housing Subsidy Law and related Norms.

Art. 8 - Fair wear and tear of the rental unit:

- Art. 8 states that compensation for ordinary wear and tear – such as the darkening of whitewashed walls or similar minor signs of wear and tear – is automatically contained within the rent.
- Deterioration exceeding ordinary wear and tear must be adequately compensated for by the tenant at the current value of the damaged property.

Art. 9 - Ban of subletting:

- The subletting of a dwelling is always subject to the consent of the landlord.
- Even if the landlord gives his consent, the tenant is liable for the subtenant's negligence.

#### **D.4.6 ANNOTATIONS ON D2 - CHAPTER 4: TRANSFER OF TITLE AND USE (ART. 10.-13.)**

Art. 10 - Sale does not end lease:

- Art. 10 states that tenancies, whether open-ended or fixed-term, are not affected by a change in ownership.

Art. 11 - Right of preemption for the tenant:

- Art. 11 is to enable small earners to form a condominium or to own a dwelling.
- For the tenant's right of pre-emption the provisions of the Code Civil apply.

Art. 12/13 - Right of entry to the contract in the case of death of the tenant:

- Under the provisions of Art. 12 and Art. 13, if the tenant of a dwelling dies, the tenant's spouse or domestic partner or the tenant's children or other members of his/her family who have been members of his/her household can take over the tenancy.
- The taking-over of the tenancy does not affect the agreement in any way.
- Art. 12 (1) refers to Art. 27 Law nr. 114/1996. Definitive abandonment is in practice applicable on rent contracts after divorces.

#### **D.4.7 ANNOTATIONS ON C2 - CHAPTER 5: PRICE MECHANISM (ART. 14.-19.)**

Art. 14 - Determination of rent:

- Art. 14 states that the parties to a tenancy are free to agree on any amount of rent. Thus, Romania's is certainly one of the most liberal rental law systems in Europe. An agreement on (periodical) rent increases at a later date may also form a part of the tenancy agreement. The only prerequisite for this is that the agreement must be clear and unequivocal so as to avoid disagreements and litigation about rent increases. In practice, the parties will often agree on an "automatic" rent increase based on the CPI, which is desirable.
- The amount of rent is limited only with regard to dwellings built with public subsidies, even if they were privately owned from the first or if they became private property at a later time. The same applies to dwellings to be built in the future. This rent regulation will apply to many dwellings built up to 1989 but also to dwellings to be built by ppp-construction companies to be established in the future.

Art. 15-18 Comparative rent / Rent increase / Price mechanism in the PPP Housing Sector / Rent index:

- For all subsidized dwellings, especially those built before 1989 and those to be built in the future, either built by private owners or privatized at a later date, the average rent of an area (a local community) constitutes a guideline. This average rent is determined by the local communities; it is modelled on the German "comparative rent". The average rent also serves as a guideline for rent increases. For the purpose of determining the average rent, rent comparison lists are to be compiled. The partners to a tenancy can also agree on a future rent increase according to the CPI instead.
- The local communities will draw up rent comparison lists according to the following pattern:
  - size of dwelling,
  - number of rooms,
  - equipment (bathroom, toilet),
  - central heating,
  - residential area (good, bad),
  - amount of rent (RON per month),
  - running costs (RON per month).

By stating that all tenancy agreements must be put down in writing within one year of its coming into force, the Rent Law gives the municipalities a simple means for ascertaining the data needed for drawing up rent comparison lists. The municipalities may give out questionnaires to all landlords/tenants and, in addition, make random checks. Thus, it should not be too difficult to create a basis for usable rental tables for all of Romania.

- Rent contracts concluded before announcement of this Law still are included to the new regulations.
- Unlike many other countries, Romania does not propose to decree a rental freeze after years of free development of prices on the housing market. Instead, present-day market conditions are to form the basis for the future development of rents. The new legislation will have a dampening effect on rents, but the development of the housing market will be allowed to proceed according to the dynamics of the market and of the economy as a whole. This moderate regulation will not concern the whole housing stock but a large part of it.
- A 2-year term of adoption of the rents has been chosen because a) it takes time to introduce the new instrument and b) procedures of extra-judicial arbitration are time-consuming; it shall be avoided that a decision of the board of arbitration overlaps with new claims of rent increase.
- Further benefits for tenants in dwellings owned by ppp-construction companies are possible.

Art. 19 – Service dwellings, necessity dwellings, protocol dwellings:

- Art. 19 distinguishes “genuine” service dwellings (where the tenancy agreement is connected with the employer-employee relationship) from “ordinary” tenancies (where the landlord just happens to be identical with the tenant’s employer). Thus, if an employer provides a low-priced accommodation for his employees, Art. 19 does not necessarily apply.
- Note: If service housing is supplied for free or at a reduced rent, the corresponding “comparable rent” will form a basis for the calculation of the “payment in kind”.



## **D.5 ANNOTATIONS ON C 3 - CONDOMINIUM LAW**

### **D.5.1 STRUCTURAL PATTERNS**

For the specific targets of the Law see above, chapter D.2.3 “Specific Condominium Law targets”, p. 125 ff..

It is regarded necessary for a modern Condominium Law to cover aspects as the creation and purchase of property on housing (chapter 2), shared condominium property (chapter 3), terms of use (chapter 4), the organisation of owners association (chapter 5), the termination of housing property (chapter 6) and consumer protection in housing purchase (chapter 7). The previous Law nr. 230/2007 regarding the establishment, organisation and operation mode of owners associations covers only parts of this, even though in a consistent and practicable way.

The present Condominium Law therefore compiles major parts of Law nr. 230/2007, particularly on owners associations (chapter 5), and of Law nr. 114/1996.

### **D.5.2 RECOMMENDATIONS FOR ADJACENT REGULATIONS**

- a) In Art. 11 Housing Law the creation of condominium property in all buildings is defined.
- b) Art. 33 ff. refer to the existing Land Registration Law (Law nr. 7/1996), which is not affected by the new Condominium Law.

### **D.5.3 ANNOTATIONS ON C3 - CHAPTER 2: CREATION AND PURCHASE OF PROPERTY ON HOUSING (ART. 2.-5.)**

Art. 2 - Consequences of the creation of property on an existing tenancy:

Wide acceptance of housing law legislation needs balanced rights and duties of owners/landlords and tenants. For the transition period while multi-dwelling buildings with dwellings being rented it should be clarified that the legal position of tenants is not touched when the counterpart of his lease-contract changes from the owner/group of owners of the house to the individual owner of the condominium, as it is stated in Art 7 part A - general provisions.

Art. 3 - Purchase of property on housing:

Definition of condominium follows the romanian legal tradition – law 116/1996 – underlining that common parts of a building and the land cannot be subject to individual property. Condominium is founded by a contract or a law court decision building the title for the constitution of the procedure to constitute condominium property by fulfilling the registration in the cataster. The general rules of the code civile or the administrative laws on the land register (cataster) for the transfer of property rights concerning unmoveable goods such as land or buildings from one owner to another shall apply also to the condominium. Shared condominium property should be primarily open to persons being family members and they have to act jointly and they can not divide their condominium or dispose upon their shares in an unaccorded way.

Art. 4 – Determination and change of property shares:

The ownership fraction is determined by the relation of the floorspace of the single condominium to the whole floorspace of all condominium entities of the building. This relation should be directly linked to the approved building permit planning (certificate by a licensed architect or the local authority – municipality ) and should not differ from the building as it is built in fact. If differences show up because of necessary

adaptations or changes made after founding the condominium an amendment can be applied for by any home owner affected. Unimportant, neglectable, differences up to plus/minus 3 ph of the floorspace shall not allow for any adaptation.

Art. 5 - Documents for the implementation of property on housing:

Condominium property shall not be registered without approved and detailed documents describing the land, the building and all individual parts/spaces having the technical and judicial quality of a condominium.

#### **D.5.4 ANNOTATIONS ON C3 - CHAPTER 3: SHARED HOUSING PROPERTY (ART. 6.-7.)**

Art. 6 - Shared housing property of partners:

Civil code regulations determine the legal structure of condominium. The property of the condominium dwelling and the land on which the building is constructed is linked together irreversibly. Shared condominium property should be allowed only for family members or persons living in a legal partnership. Art. 6 (1) is designed in the same structure as Art. 1 from the Romanian Commercial Code. The basics of the Romanian Condominium Law are defined in the Romanian Civil Code.

Art. 7 - Shared housing property in the case of death:

Condominium property should remain concentrated on one person or a small group of persons being linked by family relations or a legalized private partnership. Therefore a division of condominium property in case of death of the home owner of a condominium property or a share of the condominium dwelling according to legal heritage regulations is excluded.

#### **D.5.5 ANNOTATIONS ON C3 - CHAPTER 4: USE OF THE HOUSING PROPERTY UNIT AND THE COMMON PARTS OF REALTY (ART. 8.-9.)**

Art. 8 - Use, change and maintenance of the housing property unit:

Central right of a condominium property is the exclusive use of the dwelling in the building and the joint use of common parts. While using the dwelling interests of the other home owners must be obeyed damages of other objects or common parts should be avoided otherwise claims for compensation are constituted.

Art. 16 - Terms of use:

Detailed regulations concerning the use of common parts of the property (building or land) can be concluded by a written contract between all home owners and should be given appropriate publicity, because the contract is also binding for future purchasers of a condominium.

#### **D.5.6 ANNOTATIONS ON C3 - CHAPTER 5: OWNERS ASSOCIATION, PRIVILEGED LIEN (ART. 17.-36.)**

The chapter refers widely to Law no. 230/2007. Virtually all regulations of this Law, particularly the ones about the owners association, was integrated into the new Condominium Law.

Art. 18 - Legal capacity and representation of the owners association:

The community of the home owners is constituted as a legal person with limited rights and duties concerning the management of the building. The community of the home owners is represented either by the home owners association and subsequently by their elected executive bodies or an elected representative of the home owners (majority vote) and – on the next stage – by persons having a written

mandate of the representatives in charge. The legal framework in this respect is mainly the one set up by law 230/2007 with punctual amendments to clarify decision making procedures and to support decisions in favouring the refurbishment without ignoring considerable interests of minorities.

A home owners association structure shall not be mandatory but is advisable for buildings with more than ten condominium objects. For buildings with two to ten condominium objects an autonomous administration and management – if necessary with professional support for special legal, technical and accountancy issues – should be adequate.

#### Art. 19 - 22

These provisions follow the system established by the Romanian housing law 114/1996 amended and detailed by law 230/2007. Further technical specifications, eg for exemptions for small buildings up to ten condominium objects or differentiated requirements for decisions, documentation and information/publicity of decisions or annual reports and accounts shall be given by ministers ordinances.

#### Art. 35 - Minority rights and duty for the single owner to give notice:

Protection of the minority follows the concept of the Austrian Condominium Law from 2002 (WEG 2002). Homeowners have the right to ask for a decision of a law court or an extra judicial arbitration board established on municipality level, if they have founded doubts that decisions taken by the home owners association/the majority of the home owners are defective and/or damaging to the interests of the home owners community or some individual home owners.

#### Art. 36 - Legally privileged lien:

Provisions concerning the privileged lien of the home owners association claims according to existing regulations in law 230/2007.

### **D.5.7 ANNOTATIONS ON C3 - CHAPTER 6: TERMINATION OF HOUSING PROPERTY (ART. 37.-38.)**

#### Art. 37 - Expiration of property on housing; abolishment of the owners association:

Shared property of the land shall not be cancelled before the condominium of the building is cancelled.

#### Art. 38 - Exclusion of owners of housing property:

Common property rules for dwellings in a condominium must secure the good cooperation and respectful living under legally defined conditions concerning the use of the exclusive dwelling and the common parts. Severe damages of the common rules, breaches of contract or punishable acts against other inhabitants shall be also sanctioned with the exclusion of the home owner.

### **D.5.8 ANNOTATIONS ON C3 - CHAPTER 7: CONSUMER PROTECTION IN HOUSING PURCHASE (ART. 39.-49.)**

Unless there are provisions in law 193/200 concerning unfair terms in contracts concluded between commercial parties and consumers, implementing Directive 93/13/EC, regulations protecting purchasers of apartments – mainly being consumers – should be part of a integrated hosing law. Legal structure and main contents are adopted from the Austrian Condominium Law of 2002 (WEG 2002).

#### Art. 39 - Formal requirements and subject matter of the housing developer contract:

The regulation provides the minimum requirements/content of a contract concerning the purchase of a condominium object. Violations may be sanctioned according to Art 41 by punishment or by the consumer declaring the contract null and void. Law no.193/2000 concerning unfair terms in contracts concluded

between commercial parties and consumers, implementing Directive 93/13/EC, applies only to contracts concluded between commercial landlords and consumers. So far no definition of commercial landlords has been established by special norms or case law, but it is likely that courts will treat a landlord renting out more than 3 apartments and thereby making profits, as a commercial landlord. The Office for the Protection of Consumers, as well as authorised specialists of other organs belonging to public administration ensure the control of the contractual clauses. Also, the State, using frequently standard contracts, might also be considered a commercial landlord and subject to the law on unfair terms in contracts.

Art. 40 - Legal right of withdrawal for the purchaser:

Consumer/home owner or applicant for condominium property and purchaser/founder of a condominium building have rights of cancellation under certain conditions. The consumers right shall not be restricted by the contract nor should the right of the founder be expanded beyond the cases mentioned.

Art. 42 – 44:

In addition to existing regulations of the Code Civile and the land register legislation the home owners should have the possibility to make transparent to the public - or at least to other persons interested in the purchase of condominium properties - that they have signed contracts concerning the purchase of a certain condominium property that is not yet registered in the land register because of various reasons, eg the formal requirements are not fulfilled. They are registered as candidate owners.

Art. 45 - Securisation of the purchaser with bank guarantee:

The founder is obliged to secure the buyer of a condominium property against the loss of his down payments during the construction period. The founder is free in his choice which of the measures to secure the buyer/future home owner he will chose but he is obliged to integrate and describe the chosen measure in the contract.

Art. 46 - Securisation of the purchaser with progress payment, assessment of progress of construction work:

In any case except that of a contractual security such as a bank guarantee the founder is forced to mandate a trustee to watch over the compliance with the stipulated measures to protect the interests of the buyer/future home owner.

Art. 47 - Right to reclaim for the purchaser, liability of the housing developer:

The founder of condominium buildings is liable without limitation for the restitution of payments he or one of his contractor has received from the buyer of the condominium property. The buyers claim also includes an appropriate interest rate. Appropriate interest shall cover the average interest costs for consumer credits given by Romanian banks.

Art. 48 - 49:

This provisions aim at the protection of the future condominium owner in case the founder is in financial troubles. The buyer has a legal right to overtake all the contractual positions of the founder against the contractors of the founder and the majority of the buyers/future home owners may vote for the continuation of the construction by another contractor, when a insolvency procedure is opened over the founder.

#### **D.5.9 ANNOTATIONS ON C3 - CHAPTER 7: SANCTIONS (ART. 50.-51.)**

The catalogue of sanctions is adopted from law 230/2007 and supplemented with some cases from the consumer protecting provisions in Articles 29 and following.

## **D.6 ANNOTATIONS ON C 4 - PPP HOUSING LAW**

### **D.6.1 STRUCTURAL PATTERNS**

For the specific targets of the Law see above, chapter D.2.4 “Specific PPP Housing Law targets”, p. 126 ff..

A basic source for the understanding of the new PPP Housing Law is the article rendered in chapter B.7.9 (p. 74 ff.) from the same authors as the PPP Housing Law Andreas Sommer and Theo Österreicher.

PPP Housing Associations in Romania are non-governmental housing companies organised under private law. They are limited in the realisation and disbursement of profits and in their business scope. Specific control and supervision mechanisms are applied to them. Therefore they get a privileged access to housing subsidies. By developing and managing affordable and sustainable housing they fulfill a public service obligation of general economic interest. They aim at improving the housing and living conditions of big parts of the Romanian population. The PPP Housing Law is therefore targeted at average citizens. In a formal sense, the Law addresses at qualified (PPP) housing companies and the respective authorities.

### **D.6.2 ANNOTATIONS ON C4 - CHAPTER 1: PREFACE (ART. 1.)**

See Recommendations on

- Thesis 1 „Governance through multiple players“ (p. 75): political responsibility for housing;
- Thesis 8 „Diversification of political Parties “ (p. 82): establishment of regulations and public control;
- Thesis 10 „Political interests“ (p. 84): stable housing sector, based on specific legal regulations.

### **D.6.3 ANNOTATIONS ON C4 - CHAPTER 2: CONDITIONS FOR APPROVAL (ART. 2.-15.)**

Art. 2 - Legal form:

See Recommendations on

- Thesis 1 „Governance through multiple players“ (p. 75): Legal forms.

Art. 5 - Incompatibilities:

See Recommendations on

- Thesis 6 „Final Decision by policy makers“ (p. 80): exclusion of political parties from the ownership of PPP-housing associations;

It is recommended to complete the regulations with official order in the following way (to be implemented into the articles of association, statutes or by-laws):

- PPP Housing Associations only may transact with construction companies (new construction, management, maintenance), which are involved in the association institutionally or with shares, according to the following recommendations.
- This concerns any natural and legal person affiliated to the construction industry, i.e. who is institutionally involved or has important shares of a construction company.
- Members or shareholders of a PPP Housing Association may represent at most by half affiliates of the construction industry. The board of directors and the supervisory board may consist of at most one third affiliates of the construction industry.
- PPP Housing Associations only may transact with construction companies (new construction, management, maintenance), which are involved in the association institutionally or with shares, if the supervisory authority has agreed. This decision has to be taken by at least three quarters of the votes.

- With such a decision the management of the PPP Housing Association is allowed to cooperate with distinct construction companies within fixed periods of time and transaction volumes. The decision is void if a new member enters the supervisory authority.

Art. 6 - Allowed limitation of beneficiary:

See Recommendations on

- Thesis 1 „Governance through multiple players“ (p. 75): owners of PPP Housing Associations, owners associations;
- Thesis 5 „Divided Authority“ (p. 79): specific promotion of households with need;
- Thesis 10 „Political interests“ (p. 84): target to provide big parts of the population with affordable dwellings, following an objective system of allocation.

Art. 7 - Limited business activities:

See Recommendations on

- Thesis 2 „Values in society“ (p. 76): long term oriented housing sector; protection of the housing stock, steady maintenance, etc.;
- Thesis 3 „Initiatives of a variety of Players“ (p. 77): establishment of a PPP Housing sector;
- Thesis 7 „Delegation (checks and balances)“ (p. 81): Limitation of business activities;
- Thesis 10 „Political interests“ (p. 84): year after year growing supply; new construction with high quality standards; ongoing improvement of the existing stock etc..

It is recommended to complete the regulations with official order in the following way (to be implemented into the articles of association, statutes or by-laws):

- Allowed activities in housing development are:
  - a) the economic and technical development of housing construction (which is accomplished by a construction company) for own account;
  - b) the economic and technical development of housing construction (which is accomplished by a construction company) on the account of a defined third party;
  - c) the supervision of construction, accounting and other administrative works related to a) or b).
- It is not allowed to act as an executive construction company.
- Allowed activities in housing management are:
  - a) renting own residential buildings;
  - b) maintaining these residential buildings;
  - c) supervision of refurbishment of these residential buildings;
  - d) running of refurbishment facilities according to the size of the housing stock;
  - e) operation of common facilities for the beneficiary of the tenants;
  - f) construction or purchase of business space for the own administration.
- Beside of this the following activities are allowed:
  - a) transactions related to the construction, purchase or financing of buildings and facilities in a usual quantity, particularly the purchase, debit and sale of land and building concessions, interim financing and construction financing;
  - b) financing with loans or shares;
  - c) assessment of capital on accounts or in bonds;
  - d) purchase of construction products for own buildings;
  - e) shareholding or affiliation in other PPP housing associations;
  - f) shareholding in financing institutions, if necessary for the financing; cooperation with Contract Savings Banks for the financing of new construction;
  - g) construction and lease of commercial space, if it is necessary for the needs of the tenants.

Art. 8 - Sales prices and rents:

See Recommendations on

- Thesis 4 „Strategic management“ (p. 78): cost rent based on the whole housing stock of the company; „PPP-discount“;
- Thesis 10 „Political interests“ (p. 84): transparent rents.

Art. 10 - Sale of shares:

See Recommendations on

- Thesis 7 „Delegation (checks and balances)“ (p. 81): obligation of assets;
- Thesis 10 „Political interests“ (p. 84): no fast returns.

Art. 11 - Treatment of assets in the case of liquidation:

See Recommendations on

- Thesis 7 „Delegation (checks and balances)“ (p. 81): obligation of assets;
- Thesis 10 „Political interests“ (p. 84): no fast returns.

Art. 13 - Economic efficiency of business:

See Recommendations on

- Thesis 5 „Divided Authority“ (p. 79): binding statutory regulations;
- Thesis 7 „Delegation (checks and balances)“ (p. 81): obligation of assets.

Art. 14 - Reliability of housing management:

See Recommendations on

- Thesis 5 „Divided Authority“ (p. 79): binding statutory regulations.

Art. 15 - Affiliation to an auditing association:

See Recommendations on

- Thesis 1 „Governance through multiple players“ (p. 75): own system of revision;
- Thesis 7 „Delegation (checks and balances)“ (p. 81): auditing association to be established and financed by the sector itself.

#### **D.6.4 ANNOTATIONS ON C4 - CHAPTER 3: PROCEDURE (ART. 16.-22.)**

Art. 16 - Responsible authority:

See Recommendations on

- Thesis 1 „Governance through multiple players“ (p. 75): Execution.

Art. 17 - Regulatory decision:

See Recommendations on

- Thesis 2 „Values in society“ (p. 76): admission by regulatory act.

Art. 18 - Approval:

See Recommendations on

- Thesis 2 „Values in society“ (p. 76): temporary approval.

Art. 22 - Trade name and register:

See Recommendations on

- Thesis 7 „Delegation (checks and balances)“ (p. 81): specification of the public utility

#### **D.6.5 ANNOTATIONS ON C4 - CHAPTER 4: AUDIT AND SUPERVISION (ART. 23.-27.)**

Art. 23 - Auditing association:

See Recommendations on

- Thesis 1 „Governance through multiple players“ (p. 75): own system of revision;
- Thesis 7 „Delegation (checks and balances)“ (p. 81): auditing association to be established and financed by the sector itself.

Art. 26 - Audit and supervision:

See Recommendations on

- Thesis 1 „Governance through multiple players“ (p. 75): own system of revision;
- Thesis 7 „Delegation (checks and balances)“ (p. 81): auditing association to be established and financed by the sector itself; efficient supervision; basis for future subsidies;
- Thesis 8 „Diversification of political Parties “ (p. 82): assure that subsidies are allocated where they prove operativeness.

#### **D.6.6 ANNOTATIONS ON C4 - CHAPTER 5: PROMOTION OF PPP HOUSING (ART. 28.-29.)**

Art. 28 - Preferred access to housing subsidies for new construction and refurbishment:

- Subsidies are inevitably to fulfill the public service obligations for affordable housing.

Art. 29 - Remission of fees and charges:

- It needs to be resolved, whether an exemption of the company income tax is compatible with the Romanian tax system.
-



## **D.7 ANNOTATIONS ON C 5 - HOUSING MANAGEMENT AND MAINTENANCE LAW**

### **D.7.1 STRUCTURAL PATTERNS**

For the specific targets of the Law see above, chapter D.2.5 “Specific Housing Management and Maintenance Law targets”, p. 127 ff..

### **D.7.2 RECOMMENDATIONS FOR ADJACENT REGULATIONS**

In Art. 11 Housing Law the creation of condominium property in all buildings is defined. This is a major precondition for a simple and transparent Housing Management and Maintenance Law.

### **D.7.3 ANNOTATIONS ON C5 - CHAPTER 2: MANAGEMENT OF THE REALTY (ART. 2.-4.)**

The obligation to manage residential buildings concerns all owners and not only homeowners associations. Only in this way it is warranted that the regulations of the Housing Management and Maintenance Law is applicable to the whole housing stock.

### **D.7.4 ANNOTATIONS ON C5 - CHAPTER 3: OPERATING COSTS OF A REALTY (ART. 5.-8.)**

The regulations on the operating costs consider respective regulations in Law no. 114/1996.

### **D.7.5 ANNOTATIONS ON C5 - CHAPTER 4: HOUSING ADMINISTRATOR (ART. 9.-13.)**

### **D.7.6 ANNOTATIONS ON C5 - CHAPTER 5: ACCOUNTING OF OPERATING COSTS (ART. 14.-18.)**

## **D.8 ANNOTATIONS ON C 6 - HOUSING PROMOTION LAW**

### **D.8.1: STRUCTURAL PATTERNS**

For the specific targets of the Law see above, chapter D.2.6 “Specific Housing Promotion Law targets”, p. 128 ff..

### **D.8.2 RECOMMENDATIONS FOR ADJACENT REGULATIONS**

ANL needs reorganisation. It is regarded purposeful to change the ANL-Law in the sense of D.2.6 par. c) (p. 128):

- Return to original tasks as agency to organise financing for affordable housing. This includes all necessary tasks regarding state subsidies and the acquisition of EU-funds (see chapter B.4.4, p. 53 and B.4.6., p. 54). The implementation of the EIB JESSICA-Programme requires the establishment of a National Holding Fund to disburse the EIB-loans. This function would fit very well to ANL.
- With this task ANL becomes the core player for the whole Romanian subsidy scheme.
- Supervisory function for the PPP Housing sector (Art. 16 and 26 PPP Housing Law): It is advisable to establish the supervisory authority close to the authority responsible for subsidies. This makes sanctions very effective.
- Abolishment of the task of housing development for municipalities. This task contradicts to the supervisory function of ANL over the spending of subsidies. It should be taken over by PPP Housing Associations.

### **D.8.3 ANNOTATIONS ON C6 - CHAPTER 1: GENERAL REGULATIONS (ART. 1.-4.)**

Housing promotion is executed on the basis of civil law and not of public law. Subject of housing promotion may be all activities of housing construction and refurbishment. Related activities are e.g. the establishment of “Urban Development Funds”, new construction and refurbishment of health care buildings, parking areas, garages, shaping of public space, research activities, provided that these activities are directly related to housing.

The Housing Promotion Law aims at the acquisition of international funds. For this reason regulations are defined to make EFRE-funds and the programmes of International Financing Institutions (e.g. Jessica by EIB/CEB) operative.

Art. 1. – Funding, ad (1):

This regulation replaces Art. 9 Law nr. 114/1996. It is strongly recommended to create a legal basis for the volume of housing promotion funding, e.g. as a percentage of income taxes. As a superior regulation to the Housing Promotion Law this regulation might be decided as an organic law. In the average of western European countries some 1,7% of GDP is spent on housing promotion. For Romania a share of at least 1% of GDP is recommended (excluding infrastructure measures).

Funding from EFRE and programmes of International Financing Institutions (JESSICA by EIB/CEB) is integrative part of the concept.

Housing promotion is aimed at creating financing circles. This is why redemptions in any case should be reinvested in housing promotion.

ad (2): This regulation replaces Art. 11 and 12 Law nr. 114/1996. Operative contents may be integrated with Decisions of the Government or Orders of the Minister.

Infrastructure provided by the municipalities shall be: public roads, water supply and sewage networks, power networks and, as the case may be, gas, telephone and heating networks.

For a substantial contribution of the municipalities they should get a right of allocation of parts of the dwellings. For the Remission of municipality taxes and fees see Art. 14.

Art. 2. - Exceptional returns:

This paragraph is to be seen in context with Art. 1 - Funding.

Art. 4. - Housing Policy Board: The Housing Policy Board combines political allocation with expert assignment. This demands for concordance beyond political frontiers and might lead to an objectification of political debates on the topic.

#### **D.8.4 ANNOTATIONS ON C6 - CHAPTER 2: SUBSIDIES AND FINANCIAL REGULATIONS (ART. 5.-12.)**

Art. 5. - Subsidy directives:

The directives have to contain regulations at least on the kind of subsidies, the prerequisites for the respective subsidies, the evidences and documents to be provided, duties of the beneficiary, termination or dismissal of the subsidy contract and the final settlement.

The impracticability of a legal claim for subsidies goes together with the regulation in Art. 1 (1) that the government executes the housing promotion scheme based on civil law instead of public law.

Following European best practice, subsidised dwellings should be affordable without additional allowances for households of around the 4th income decile. Households with lower incomes might get additional housing allowances. Households with incomes up to around the 6th decile should have access to subsidised housing to attain social integration. There are income limits of course only for the use of dwellings, not for garages or other non-living-space. Beside of income limits other limitations on access may be the age of the household representative (see Law nr. 114/1996 Art. 7.).

Limits of energy consumption is oriented at the EU Directive on the Energy Performance of Buildings (Directive 2002/91/EC).

The exemption for integrated urban development projects aims at facilitating EU funded projects, even if they do not fit into the strict regulations of this law.

Art. 6. - Kind of subsidies:

Repayable subsidies (loans) have to bear interests, albeit very low ones. Only in this way Eurostat classifies them as loans, with the result that they are not considered as state expenditure, which is relevant facing the "Maastricht Criteria" of the EU.

Art. 7: - Subsidies oriented on construction:

ad (2) Subsidies for refurbishment are similarly applicable to complete unfinished building started before 1990 (Art. 20 Law nr. 114/1996).

Art. 8: - Subsidies oriented on tenants:

Subject oriented subsidies are related to the financial potentials of a household. It is to be avoided, that housing allowances are absorbed by increasing market prices.

Art. 9: - Financing of construction:

Affordable housing is usually based on structured financing, combining the strengths of the markets with the backing of the state. Best results are attained, if the State not only regulates the subsidies, but gives incentives for an increase of efficiency of the other parts of financing. Following European best practice,

good results are to be expected, if maximum subsidies and maximum rents are defined. On this basis the housing developer has to employ its market strength to keep construction and financing costs as low as possible.

Art. 11: - Option to buy:

The right to buy is to be applied for dwellings and other subsidised units of use.

If the option to buy and the option of preemption are abandoned, the tenant is still safe in its tenancy, see Art. 10 Rent Law.

Regarding the constrictions of property rights for a subsidised dwelling see Art. 2 Housing Law – Definitions and Art. 14 of this law.

#### **D.8.5 ANNOTATIONS ON C6 - CHAPTER 3: ADMINISTRATION OF HOUSING PROMOTION (ART. 13.-15.)**

Art. 13 - Procedure of subsidy:

The Government may authorise capable institutions with the execution of the subsidies. Such institutions may be ANL or municipalities.

Art. 14: - Preconditions:

The structure of securisation is a core aspect of financing design. The state may substantially lower capital market interest rates, if a securisation of the subsidised loans as junior loans is accepted. This policy may only be applied towards builders with particularly high solidity and controlling standards, as e.g. PPP housing associations.

## PART E – APPENDIX

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### **E.1 PROPOSAL OF A “EUROPEAN CHARTER FOR HOUSING” BY THE “URBAN-HOUSING” INTERGROUP OF THE EUROPEAN PARLIAMENT FROM APRIL 2006**

(...)

Having regard to the conclusions of the European Councils of Lisbon and Göteborg;  
Having regard to the decisions of the European Council of Nice (December 2000);  
Having regard to article 295 of the Treaty establishing the European Community;  
Having regard to the revised social Charter of the European Council;  
Having regard to the Charter of the Fundamental Rights;  
Having regard to the Universal Declaration of Human Rights of December 10th, 1948;  
Having regard to the Final Communiqué and Political Declaration of the EU Housing Ministers meeting under Belgian Presidency on October 1<sup>st</sup> and 2<sup>nd</sup>, 2001;  
Having regard to the Resolution of the Council of February 12th, 2001 (JOCE, 2001/C 73/04) regarding architectural quality in the urban and rural environment;  
Having regard to the resolution of the European Parliament of January 14th, 2004 <sup>1</sup>;  
Having regard to the resolution of the European Parliament of May 26th, 2005 on the Agenda for social Policy 2006-2010 <sup>2</sup>;  
Having regard to the resolution of the European Parliament of July 6th, 2005 on the proposal for a Council regulation laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund <sup>3</sup>;  
Having regard to the position adopted by the European Parliament on February 16<sup>th</sup>, 2006 on the proposal for an Internal Market Services Directive;  
Having regard to the Joint Report on Social Protection and Social Inclusion – adopted by the Spring Council 2005 – calling on for more attention to exclusion from housing.;  
Having regard to the draft resolution of the European Council for a dynamic housing policy, as an element of European social cohesion;

Whereas the internationalization of our societies coupled with demographic change require an integrated, multidimensional and sustainable long-term response covering all relevant policy areas within the economic, social and environmental spheres, including housing policies;

Whereas, even though housing is not a European Union skill, yet interactions between community policies and matters concerning housing are many and increasing, and show multiple dimensions;

Whereas housing is an essential component of the European social pattern since it contributes improving the life conditions; whereas it is a structuring element of the sustainable urban development of the European Union, a key factor of social inclusion and of the struggle against exclusions and discriminations, a vector for creating employment as well as a factor of competitiveness and

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<sup>1</sup> P5 – TA (2004) 0018.

<sup>2</sup> P6 - TA-PROV (2005)0210.

<sup>3</sup> P6 – TA PROV (2005) 0277.

attractiveness of the territories; whereas the role of housing in the European social pattern must be fully recognised by the Community Institutions;

Whereas, in accordance with the constitutional tradition of the Member States, the right to accommodation should be set up as a fundamental right of the European Union and integrated as such in the Charter of the fundamental rights consistent with the revised social Charter of the European Council; whereas, as such, its implementation cannot be left to the sole discretion of the market forces, since this right to housing can only be universal;

Whereas housing is at the heart of the societal problems met by all the European countries, and whereas all the Member States recognise the access to a healthy and decent accommodation as an essential condition for social integration, participation to social life and economical development, and as an indispensable vector of social cohesion;

Whereas it is necessary, within the European Union, to be able to provide decent accommodation to all people residing in Europe, either by renting or by acquiring housing, and whereas access to property must be improved, particularly for people with low or average income;

Whereas housing is an essential element to achieve the Lisbon strategy and that it is the European Union's interest that the Member States develop housing policies which fully meet the social, urban and territorial cohesion issues of the European Union; whereas the access to a decent housing for everyone has been established as a common objective by the European Council of Nice and, as such, relieves from a coordination in the frame of the European inclusion strategy;

Whereas cities should play a major role in achieving the Lisbon goals in general, and that the housing policies which are developed should be supported by the national and European policies;

Whereas housing exclusion, including severe forms such as homelessness, is a growing problem affecting an increasing part of the population, especially in big urban areas, and that it is a responsibility of all the public authorities to struggle exclusion in an efficient way and to create a solidarity mechanism destined to avoid and reduce the social and human consequences of evictions;

Whereas the lack of accommodations at a moderate price holds back competitiveness and employment since it alters professional mobility within the European Union; whereas well-balanced housing markets encourage professional mobility and contribute to the development of the financial services sector;

Whereas housing is a sector with an important labour force and constitutes a privileged employment pool, either in terms of construction, renewal and community services linked to it;

Whereas the lack of large accommodations contribute adding pressure on the availability of housing, and consequently raises the question of the adaptation of the existing housing stock to the needs of the concerned populations;

Whereas all these factors are contributing to a significant evolution in the nature of housing demand and that the resultant pressure on housing stock and availability of land has caused a rapid rise in the price of dwellings, specifically in renting in the big cities;

Whereas the emergence of a new housing crisis at a Europe level, which poses numerous problems for Council of Europe Member States, as much in terms of struggle against social exclusion and spatial segregation, resulting in an alarming erosion of their social cohesion;

Whereas improving the energy efficiency of the residential sector to meet the Kyoto requirements leads to a better quality of life for all, [a reduction of the inhabitants' vulnerability towards prices and energy resources as well as to massive employment creation and constitutes a priority of the European Union energy policy;

Whereas the housing park needs to be renewed, particularly in the new Member States where the town centres have been damaged and where the existing housing park has often become unhealthy, bringing on that a great part of the mid-classes are leaving those city centres; whereas, at the same time, self construction of a disorderly type is growing in the peri-urban areas, in contrast with the requisites of

sustainable urban development; reinforcing the risks of making worse the urban crisis and of spoiling social and territorial cohesion of the European Union;

Whereas the European Parliament has recognised in its resolutions voted on July 6<sup>th</sup>, 2005, the necessity to make expenditures related to renewal of vocational social housing eligible to Structural Funds, and that such actions play an important part in achieving the Union's objectives in terms of economic, social and territorial cohesion;

Whereas the Resolution of the Council of February 12<sup>th</sup>, 2001 (JOCE, 2001/C 73/04) regarding architectural quality in the urban and rural environment, calling on the Commission to search out the means to improve the recognition of architectural quality and the conservation of patrimony when implementing these Funds, in cooperation with the Member States and according to the Structural Funds Regulations;

Whereas it is important to encourage public and private investments in order to meet the needs of decent, sustainable and affordable accommodations;

Whereas the intervention conditions of the Member States' public authorities and of the housing actors are increasingly being supervised by the community regulations;

Whereas European standardization also aims at extending its intervention field to the services linked with housing and societal matters such as urban security and ill will prevention through construction and urbanism;

## **1.1. HOUSING AND THE EUROPEAN COHESION POLICY**

### **Article one :**

**Housing : a necessary good, a fundamental social right, component of the European social pattern**

**§ 1.** Housing is an element of human dignity, an essential component of the European social pattern and of the social protection systems of the Member States;

**§ 2.** Any person living on the territory of the European Union has the right to access a healthy, decent and affordable accommodation and, for those who have not sufficient incomes allowing a decent life, to benefit from an aid for housing, in accordance with the constitutional tradition of the Member States, as referred to in Article 34 of the Charter of the Fundamental Rights and Article 31 of the revised social Charter of the European Council.

**§ 3.** The European Union and the Member States attend to the effective implementation of these fundamental social rights in accordance with the measures of the Treaties and respecting the national regulations and practices. In this purpose, they will support the creation and the renewal of social housing or transit housing destined for people earning the lowest incomes. The Union and the Member States should also take fitted measures in order to make more attainable the renting of average housing for people with average incomes, who meet increasing difficulties in finding housing, particularly in the huge cities on one hand, and improve the access to property for people with average or low incomes, notably by making easier the lending of mortgage at conditions adapted to their situation.

**[§ 4.** The European Union and the Member States should also watch for strengthening the supervisory mechanisms relating to the right to housing by treating its genuine enforcement as a priority, particularly in cases of discrimination, eviction and continuing existence of substandard housing, on one hand, and for promoting the exchange of good practices and the development of integrated projects on the effective implementation of the right to housing and its enforceability;

## **Article 2.**

### **Housing : a key factor for social inclusion and protection of social cohesion of the European Union**

§ 1. The access for everyone to a decent and adapted accommodation is a key condition for maintaining social cohesion within the European Union.

§ 2. Exclusion from housing, homelessness and unworthy housing conditions must be struggled, being in violation with the fundamental rights of the European Union and in view of the interest of the Community. The European Union, the Member States as well as the involved public authorities should struggle exclusion in an efficient way, notably through the creation of a solidarity mechanism destined to avoid, verily to reduce, the social and human consequences of evictions.

§ 3. Access to housing is a crucial step in the struggle against poverty, particularly in the urban areas, and in aiming at the European objective of social inclusion of vulnerable people who have no access to a decent accommodation;

§ 4. All kinds of discrimination through housing are prohibited and must be punished in accordance with the Community regulations.

## **Article 3.**

### **Housing : a lever for economic cohesion of the European Union**

§ 1. As a sector with an important labour force, housing constitutes a privileged employment pool, either direct or induced.

§ 2. Tenseness in the housing markets holds back professional mobility and harms the European Union competitiveness.

§ 3. Speculative practices in the housing markets must be struggled in consideration of their negative impact on the capital markets stability and on purchasing power of people.

§ 4. The importance of needs in terms of construction and adaptation of the existing housing park linked with the market evolution should be taken into account.

## **Article 4.**

### **Housing : an inescapable component of the European Union territorial cohesion**

§ 1. The development of phenomena of spatial segregation and social specialisation of territories linked with housing conditions must be struggled in name of the European Union territorial cohesion.

§ 2. Social balance and social diversity of the territories should be a guideline for the European Union and Member States policies.

§ 3. The settlement of the Community space should integrate the goals of both balancing socially injured territories and reducing cohesion differences.

## **Article 5.**

### **A full-fledged component of the European Union sustainable urban development**

§ 1. Housing is a privileged tool for implementing a sustainable urban development in the European Union.



**§ 2.** The control of peri-urban spreading over and urban sprawl should become a Community interesting goal, in the perspective of a sustainable urban development.

**§ 3.** Housing should also become a privileged vector for controlling energy demand on a scale of both the European Union and the development of renewable energies.

**§ 4.** Community policies in the fields of energy efficiency, renewable energies, noise, pollution, health should integrate their action in favour of sustainable housing and improvement of urban environment. The European Investment Bank should be able to make loans available to the Member States for investments related with these matters, in synergy with these policies

## **1.2. THE ROLE OF THE EUROPEAN UNION**

### **Article 6.**

#### **The role of the European Union**

The European Union should make sure that its policies contribute establishing a favourable and incentive framework for the Member States housing policies, in accordance with the Community interest and having regard for their contribution to the effective carrying out of the Lisbon Strategy and the Union's objectives, notably in terms of cohesion and sustainable urban development. The European Institutions should see to the implementation of this principle and assure an even evaluation.

### **Article 7.**

#### **The cohesion policy**

**§ 1.** Housing should be integrated into the economic, social and territorial cohesion policy of the European Union respecting the European Union and the Member States jurisdictions, as well as the subsidiarity and additionality principles. In that capacity, expenditure in terms of renewal of vocational social housing, with a view to saving energy, meeting the social cohesion objective and protecting environment in the sustainable urban development context and the global quality of the citizens' environment, should be eligible to the Structural Funds.

**§ 2.** The upturn of the European Union's sustainable urban development strategy should fully integrate the housing aspect, notably in terms of sustainable urban growth, spatial planning and reduction of the energy precariousness and cohesion gaps within the cities.

### **Article 8.**

#### **The social inclusion strategy**

**§ 1.** The European social inclusion strategy should be fully integrated in the Community policies. The role of housing must be recognised thereto as it deserves. Quantitative objectives should be set to fight exclusion with a view to reinforce readability of social inclusion for the European citizens. In order to allow a coherent analysis of the housing situation in Europe, indicators common to the Member States should be defined and the European Union should promote the exchange of good practices in terms of effective implementation of the right to housing.

**§ 2.** According to Articles 16 and 86.2 of the Treaty and to the jurisprudence of the Court of Justice, the policies of the Member States aiming at promoting an offer for accommodations accessible to all, are a full part of the general interest services framework and, to this end, enjoy the clause of primacy for the achievement of their missions on the conditions of the Treaties.

**§ 3.** The procedures in effect concerning reduced VAT rates for the housing field should be maintained having regard to the necessary aspect of housing and to a significant presence of labour force in this sector and its low impact on the intra-community exchanges;

#### **Article 9.**

##### **Building on the public-private partnership**

**§ 1.** The European Union and the Member States should also encourage the private investments with a view to build and renew decent, affordable and sustainable accommodations destined for selling or rental with the aim to match the offer and the demand of housing, in order to guarantee and maintain prices attainable for all.

**§ 2.** The European Union and the Member States should encourage the renewal and construction of housing through executing mixed schemes based on a public-private partnership, with the aim to increase the offer to rent and to sale accommodations to people having difficulty to access a decent, affordable and sustainable accommodation.

**§ 3.** With a view to put again on the market empty, vacant or inadequate accommodations, the European Union and the Member States should encourage measures such as incentives for renovation, guarantee by public authorities of rent collection, tax reduction for those accommodations rented or sold within the framework of a regulation aiming at facilitating the rental or purchase of decent, affordable and sustainable housing by people having difficulty to access to a decent, affordable and sustainable accommodation.

#### **Article 10**

##### **The European Observatory for Housing**

The European Union should care for collecting information of the housing situations in terms of statistical indicators in the Member States. In that view, it should be provided with a European Observatory for Housing allowing, on the one hand, the survey of the consequences of any European decision in the housing area, and on the other hand measuring the impact of the national and European policies pursued to reach the European social inclusion objective aiming at improving the access to a decent accommodation.

#### **Article 11.**

##### **Standardization and the role of the European Parliament**

**§ 1.** Extending standardization to services, including the services related to housing, should be realised in closer association with the European Parliament in drawing up the standards.

**§ 2.** Several decisions made at the European level are likely to have an important impact in terms of housing; in view of the good implementation of these policies, it is important that the European Union should take into account the opinion of the different representative actors in the housing field at a European level.

**§ 3.** Taking these opinions into account could be done through the edition of a White Paper on the consequences for the European Housing Sector of the Union's policies, or by creating an advisory body based on the European Housing Forum.

## E.2 ABRIDGEMENT OF THE UIPI-REPORT ON RENT CONTROL IN EUROPE<sup>1</sup>

(...)

### Financial analysis

Rent regulation is usually starting either from normal market rents with no or very limited possible adjustment, reflecting the market situation, or starting from some „expert analysis“ of the needed rent for „allowable“ return for the landlord. Here is a never ending field for unbelievable variety of absurd calculations by people who do not understand the problem at all.

It should be noted right at the beginning that of course for the best functioning of rental housing market with the fastest adjustment of the offer to the need is the full freedom of rent adjustment to the situation on the market. But on the other hand excessive rents that may arise from this process may trigger serious state regulatory intervention if some unscrupulous landlords become publicly criticised for rent increases in socially sensitive cases. Reasonable rent regulation therefore represents less perfect but usually more stable and still acceptable solution.

Let us now look on the usual return on capital invested in rental housing. Historical analysis dating back even to ancient Rome show that the typical return on investment in this field used to be and is up to now somewhere between 6 and 10% of the market price of the rented property per year in case of 100% occupancy. This is the level that is typical in the free segments of the market and close to the case of reasonably regulated unsubsidised private sector.

This level of return is sufficient for allocation of reasonable amount of free capital in the construction and renovation of rental housing, providing enough new housing to meet the demand. Besides the direct cash flow, there is usually, but not always, certain capital gain in case that the investment has been made in good location. Based on this fact, many countries have adopted methods for assessment of the market value of real-estate property from the rent it generates. In Germany the value is approximately 15 times the yearly rent as well as it was in the Czech Republic.

As a part of the mystification process many new misleading concepts are introduced:

1. **Cost rent** includes only the monthly payments that cover the running cost of the building and in some cases also the appreciation of the building usually under the assumption of 50 or 100 years lifetime of the building – the cost of simple reproduction.
2. **Fair rent** is usually an unfair rent that has been calculated usually with the aim to keep it as low as possible containing usually only the cost rent or even not taking into account the appreciation of the building.
3. **Factually standardised rent** is a rent that more or less reflects the real expenses in the case of subsidised housing taking into account nearly 40% subsidy for the construction cost. Since this rent has to cover the expenses of the state or other public body, its value is derived from the value of the rented property being only some 4,5% per year thanks to the subsidies. In Czech Republic it is three times higher than the unsubsidised but regulated rent.
4. **Social rent** is a payment that usually does not have anything in common with rent but is set taking into account only the willingness of the tenant to pay something for housing.

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<sup>1</sup> UIPI – International Union of Property Owners (2003): Immovable Property in Europe: Report 2003 about Protection of Property, Taxation, Rentals, Technical Requirements & Services for Property Owners (Conference Proceedings, Berlin), p. 54-60.

5. **Usual local rent** may have very different meanings. For example in Germany it is an average local rent charged in freely agreed new leases during the last three years. In the newly prepared Czech landlord tenant law it means an average of all the regulated and some unregulated rents. Since there are less than 5% of the unregulated rents, it means it is practically equal to the regulated rent.

### **Rent Regulation Systems**

There are two systems of rent regulation, which are acceptable for both sides. They offer reasonable return on invested capital and sufficient means for proper maintenance and on the other hand can avoid excessive rents that may trigger some problems.

**The German system**, where the new leases are allowed for freely agreed rents that may be only up to 20% higher than the average local rents for similar dwellings. This system is critically dependent on the reliability of the average local rents, from which all subsidised or socially distorted rents are excluded and the data are taken only from the last three years.

**The Swiss system**, based on the one that is used in Switzerland. This concept is based on zero profit for the investor working with 100% mortgage financing. If you buy or build a house with 100% mortgage financing you have to pay an interest to the bank depending on the actual interest rate from the invested capital. Moreover you have to guarantee the proper maintenance of the house and payment of all taxes and insurances. Such average running cost of a house has been calculated in many countries and gives very similar results, being approx. 2-3% of the actual reproduction cost of the house. With mortgage interest rate of 5% this gives yearly rent equal to 7-8% of the value of the house.

Practically the same value results from the German system. The only objection to this system is that the actual market value of the rented property should be taken into the calculation instead of the once invested capital. Our observation is that the actual market value of the rented property is in the case of a free market in correlation with the rent that may be charged. This solves all the problems with renovation or modernization rent increases and dependence of rent on location and also solves the problem of similarity of apartments in the German mutually comparative system.

The Swiss system also helps to analyse the structure of the rent. The rent has to cover the cost of simple reproduction of the rented property. This is the part that covers also all the necessary payments including taxes, insurance, management and of course maintenance. This part of the rent is in fact returned to the tenant in these obligatory payments for the property he is using. The remaining part is in fact the real rent. In case of wise investment it is equal to the interest, paid to the mortgage bank from the whole market value of the rented property. Once this mortgage is replaced by the own capital of the investor, this represents the return of the invested capital. Providing thus the gross return on the invested capital of approx. 5%.

We would like to stress at this point that we are not supporting the reasonable rent regulation as best financial solution, but under the present prevailing welfare state political atmosphere we feel that a reasonable rent regulation is an acceptable solution offering a bit greater chance of stability and being necessary for persuading the governments to provide necessary social rent allowances for those in social need so that the social situation of few cannot be misused for the introduction of really severe rent regulation later.

### **Conclusions**

Rental housing is one of the most extensively deformed areas of private activities. The state interventions are based on the concept of the so called "right to decent housing", that some governments admit as part of "human rights". This miss-concept is based on new, so called positive rights like right to medical services, right to healthy nutrition, right to work, right to education for all etc. Which are not rights at all but requests for subsidies. If any government decides to recognise such a "right" it has to provide

funds to finance all the obligations it creates. If the government recognises e.g. the right to work (or more precisely right to financial subsidies) it has to provide necessary funds to cover the cost of such obligation. In the case of housing many governments tend to transfer the cost of obligations the government accepted on the landlords and try to justify this violation of the natural rights (negative rights) upon which the free democratic society of the western type is based. Once the government accepts the "right to decent housing", the decent way how to cope with this problem is to provide everyone with housing allowances enabling everyone to buy on the market housing services he needs. There is hardly any government that would try to solve the problem of right to work by running subsidised factories to provide jobs for unemployed. On the other hand in housing it is a common practise to provide very costly brick and mortar subsidies instead of supporting normal housing market with personal subsidies and fair prices for housing services.

For the situation in rental housing it is therefore essential whether in the case that the government has accepted the concept of the so called "right to housing" it has also provided funds for personal rent allowances or not. If not, you must not be surprised that it will always have tendency to transfer the burden of its decision on the landlords.

The standard methods how to do this are: rent control and legal overprotection of tenants. Both these interventions are violating the natural human right of contractual freedom and property rights. The degree to which the government decides to violate these natural human rights gives an idea on how far the government is on this way to communism. Since positive right to commercial premises is not that popular, this renting is usually basically free. Only the request for long term leases is protected in some countries.

A final conclusion is that only freedom of the market can guarantee the long term interests of both property owners and tenants.

### **The actual situation in the European countries today (based mainly on the U.I.P.I. national reports)**

#### **Austria**

Rent is regulated in approx. 10% of dwellings all built before 1945 if they are smaller than 130 square meters. Newly also dwellings in houses containing not more than two dwellings are exempt from regulation.

There are numerous exceptions set by the regulations.

Income from rents has to be invested into repair and modernisation of the house except 20%, which may be kept by the landlord as his revenue.

In case of renovation and modernisation regulated tenants have to participate on the cost of these works. Typical return on investment in rental housing: probably not more than 5%.

#### **Belgium**

380 dwellings per 1.000 inhabitants.

ca 60% owner occupied.

ca 40% rental, 25% of which belong to subsidised public companies and should serve the poor.

In the 90ties the legislation changed. The new rents can still be freely agreed and the changes concern essentially the length of the lease.

The lease term is either short-term for not more than 33 months with unlimited 3 months notice time or obligatory 3 times 3 years with approved rent adjustment after each 3 year period and indexation of the rent in the meantime according to the increase of the consumer price index.

If no notice is given at the end of the ninth year, the lease can be prolonged for another three years and the notice time is 6 months. Earlier notice is connected with substantial compensation to the tenant for

personal use by the owner. There is possibility of transferring the lease to other tenant and subletting under certain circumstances.

Typical return on investment in rental housing is up to 4% (it may be higher for low quality housing).

In case of serious breach of the contract there is no fast and efficient way of evicting the tenant. The situation is even becoming worse by the introduction of conciliation procedures.

Commercial rentals are free but the term is 9 years renewable three times and in the case of early eviction for personal use only, there is high financial compensation to the tenant.

## **Germany**

Rents are regulated by the market using the so called rent mirror, which is constructed from the freely agreed new leases. These values must not be exceeded by more than 20% even in the case of the new leases.

Typical return on investment in rental housing: 7%.

## **Greece**

447 dwellings per 1.000 inhabitants.

80% owner occupied.

20% rented – all private sector.

Since 1994 new leases without rent regulation (Since 2000 no regulated lease remained after gradual conversion of regulated leases to free ones).

Minimum duration of any house lease for permanent residence is 3 years.

Rents in summer houses and furnished apartments were always free without time limitation on the duration of the contract or the rent.

Typical return on investment in rental housing: 6%.

Commercial leases: Any initial agreed rent is valid. If there is not any agreement for future increases, the rent may be set to 6% of the tax value of the rented property per year and then increased by 75% of the consumer price index each year. Any new lease has a legal duration of 12 years and it can be terminated after 12 years with compensation of 24 months rent paid to the tenant, or after 16 years without any compensation. In case of serious breach of the contract the eviction is fast.

## **Denmark**

476 dwellings per 1.000 inhabitants.

51% owner occupied.

45% rented (19% cooperative, 24,6% private, 1,4% state owned), 4% unknown.

Rents are regulated and must not exceed the back-flow of the purchase value and the operational cost of the rented property (probably similar to the Swiss system).

Termination of the lease is possible only in case of breach of the lease contract. The eviction process takes usually 3-12 months.

The notice time for the tenant is 3 months.

Vacant apartments have to be immediately rented out.

Typical return on investment in rental housing: 7%.

Commercial leases: Rents should not exceed the usual local market rents and leases are also for unlimited time and can be terminated only when the tenant breaches the contract.

## **Italy**

Dwelling house rentals: The Italian legislation provides for two types of tenancy contracts: free contracts and controlled contracts. A free contract has a 4 years duration and is renewable for further 4 years. The

rent is defined by free bargaining of the parts. A controlled contract has a 3 year duration and is renewable for a further 2 years period. The rent is determined by local agreements mostly defined by landlord and tenant associations.

With these types of contracts both landlords and tenants have some certain fiscal advantages.

Eviction: The procedures of eviction regarding rented housing are very long and expensive for the owner. There are 3 main legal ways to evict a tenant:

- a. necessity of the owner to use the premises before the end of the contract duration (the reasons of necessity are specifically described by the law);
- b. end of the contract duration;
- c. Non payment of the rent by the tenant.

Commercial rentals: There are also two types of tenancy contracts:

- a. Contract for industrial, commercial, craftsman activities, or for accustomed professional and independent activities: in this case the contract has a 6 year duration and is renewable for a further 6 year;
- b. hotel activities, in this case the contract has 9 years duration and is renewable for further 9 years.

In these two types of contracts the rent is determined by agreements mostly defined by landlord and tenant, and the increase of the rent is linked to 75% of the ISTAT (consumer price index).

## **Ireland**

350 dwellings per 1.000 inhabitants.

Very high rate of private house construction, 4% increase per year (2.000).

81% owner occupied.

19% rented (11% private, 7% publicly owned, 1% cooperative).

Since 1982 new leases without rent regulation (today less than 4.000 dwellings still under rent regulation with no transfer rights to rent regulation).

50% of leases for max 1 year. Notice time 28 days. Execution slow, typically 6-9 months, in case of serious breach of the contract it is much faster.

Rents in the private sector are free.

Typical return on investment in rental housing: 7,5%.

Commercial leases are free, usually for 4 years and 9 months, since in case of uninterrupted lease for 5 years the tenant has the right for extension of the lease for 21 years. In case of serious breach of the contract the eviction is fast.

## **The Netherlands**

400 dwellings per 1.000 inhabitants.

53% owner occupied.

47% rented (35,2 housing associations 11,8% private).

Termination of tenancy is complicated and possible only in case of serious breach of the contract.

Rents in the private sector are free.

Rents in the subsidised sector of housing associations are regulated creating a bit unfair competition.

Typical return on investment in rental housing: 7%.

Commercial leases are free, usually for 5 years with simple possibility to terminate the lease after the lease expires.

## **Norway**

412 dwellings per 1.000 inhabitants.

78% owner occupied (including cooperative ownership).

22% rented (mainly private).

The rent market is free with some minor exceptions. Dwellings in the old pre-war housing (with 4 or more units) in central Oslo is regulated to a rent level far below the market. This regulation will be removed by the year 2010. In the case of vacancies, there is no regulations on new rents. Leases may not be shorter than 3 years except for cases where the rented dwelling is a part of the letting persons private house. The renter may leave a lease after a shorter period than 3 years. The owner can have a dwelling vacated after the end of the contract unless the contract gives him a right to prolong it.

Rents are fixed by negotiations between owner and renter. In theory market rent is the result. As an average a normal market rent would be 5-7% of the dwellings market value.

The main reason for evicting tenants is lack of payment. The eviction process is taken care of by a public body called "Namsmannen". There are formal rules as to how a tenant is first warned, then asked to move, and at the end evicted by "namsmannen".

## **Finland**

475 dwellings per 1.000 inhabitants.

70,7% owner occupied.

26,4% rented.

2,9% unknown.

Rents are free for all freely financed rental dwellings and can be indexed.

State subsidised rental dwellings have other regime of rents.

Lease term is usually either for 1 year or for unfixed term.

The landlord can have the dwelling vacated after the end of the contract. In case of notice to the tenant the reason for termination the lease must be acceptable.

The notice time is three months for the landlord if the lease was for less than 1 year and six months when it was for one year at least. The notice time for the tenant is one month. Typical return on investment in rental housing: 8%.

Commercial rentals: Rents are free and indexable. If the rent is unreasonable it may be corrected by the court. The usual term is 5-10 years and after the end of the lease the premises can be vacated. The notice time can be agreed in the contract. If not it is 3 months for the lessor and 1 month for the tenant.

## **Switzerland**

489 dwellings per 1.000 inhabitants.

31,3% owner occupied.

68,7% rented (3,4% cooperative, 62,6% private, 2,7% state owned).

All (old and new) residential as well as commercial rents are regulated in the same way. Only apartments with more than 6 rooms are free. Rents are regulated and must not exceed the back-flow of the purchase value and the operational cost of the rented property. The back-flow is given by the actual mortgage interest rate and the operational cost is between 2 and 3% of the purchase value of the rented property.

Typical return on investment in rental housing: 8%.

In the case of severe violation of the contract the tenant can be evicted. The procedure lasts at least three months. The notice time for commercial leases is 6 months compared to residential leases where it is 3 months. Maximum extension period of the contract is 6 years while for residential contracts it is 4 years.



## **Cyprus**

68,2% owner occupied.

13,9% rented.

17,9% government subsidised refugee houses, built by the state.

Land register is not properly functioning. Rents are free in all houses built after 1999. All other rents are regulated including the commercial leases. Leases are for unlimited time and evicting a tenant is very difficult and time consuming. High compensation has to be paid to the tenant when the eviction is successful.

Rents can be increased once in two years by approx. 14% (set by the government).

Commercial rentals market is partly free (rentals drawn after 1999) and controlled (all the old rentals).

## **Sweden**

480 dwellings per 1.000 inhabitants.

57% owner occupied, 43% rented.

Rents are regulated by the municipalities so that the return on investment is widely different depending on the location. The lowest return is usually in the large towns and higher in less attractive locations. Many dwellings are owned by the housing associations and offered for similar rents.

Typical return on investment in rental housing: averaged 6%.

## **Slovenia**

351 dwellings per 1.000 inhabitants.

88% owner occupied, 12% rented (0,5% state owned, 3,2% local communities, 0,36% nonprofit, 7,88% private). 80% are old rent regulated rentals with protected tenancy, the rents are approx. 1,1% of the market value per year and there is the right of transfer of the same conditions to relatives who lived with the tenant and obligation to provide equal housing for equal price in the case of certain notices allowed by the law. New rents are free and provide probably also some 6-7% yield per year of the value of the rented property. The process of evicting a tenant is very long, some three years for the court and another year for the court eviction.

Commercial rentals are free with no limitations on the term of lease. Old rentals where the tenant has invested in the premises, he can continue in the lease under the same conditions until the investment has been paid back. No fast and effective way of evicting a non-paying tenant is available.

## **France**

New and renovated dwellings may be rented for free rent representing the locally typical value and can be indexed with the cost of constructional work.

Rents are still regulated in old parts of Paris. In case of renovation in these houses the landlord may obtain governmental subsidies up to 25% of the cost of renovation.

Typical return on investment in rental housing: 4-5% in the subsidised rental sector.

## **Great Britain**

Rent is no more regulated for new leases and the introduction of the new type of leases "assured shorthold tenancies" have improved the situation so that the private rental sector has recovered from its share of less than 7% to the present exceeding 10%.

In case of renovations landlords can obtain grants covering up to 50-70% of the cost of renovation.

There is a massive system of housing allowance system very poorly designed and Housing Association housing, providing sub-market housing with heavy governmental subsidies.

Typical return on investment in rental housing: 7%

## **E.3 LIMITED-PROFIT HOUSING ASSOCIATIONS IN AUSTRIA**

### **3.1. INTRODUCTORY REMARK**

With 489 dwellings per 1,000 inhabitants, living space of 38 m<sup>2</sup> per person and a housing cost share of domestic expenditure of 19 percent, Austria has a level of housing supply that need not shy from any international comparison. With a share of roughly 30 percent of the annual volume of newly built dwellings and a real estate management portfolio of 775,000 dwellings, the limited-profit housing associations – organised as co-operatives, limited liability companies and stock corporations – have contributed substantially to making the entitlement of the people to contemporary and affordable housing a reality.

Today, the fact that every sixth inhabitant of Austria lives in an apartment built and/or managed by a limited-profit housing association indicates not only a high degree of trust on the part of the respective tenants and owners in the limited-profit housing associations, but also in the state in general in this sector.

Organised independently and on a private-sector basis, these enterprises rely on the principles of limited-profit housing in order to fulfil their task of building and managing housing at their own responsibility in competition with other players in the housing construction segment, such as commercial property developers. Their offer is geared towards a broad group of the population and is not understood to be an element of social assistance aimed solely at benefitting low-income groups.

The fundamental principles of limited-profit housing, such as covering the costs as a counter-model to the primarily profit-focused development of real estate and the appraisal of dwellings as a long-term asset that can repeatedly be made available over multiple generations with a socially oriented objective, obviously represent the justification of a specific partnership between the limited-profit housing associations and the state.

However, this partnership is likewise constituent on the state expressing its responsibility for the provisioning of housing with a corresponding material basis. The promotion of housing, for which the government spends EUR 1.78 billion each year, transferring these funds to the federal states for their use, has proven to be a powerful driving force for the affordability of living space and the implementation of social, ecological, residential and regional planning policy concepts. These funds are usually earmarked for the direct promotion of real-estate, i.e. as low-interest financing components for the construction of the properties. However, their use in this context is not focused exclusively on limited-profit projects. Indeed, more than 70 percent is distributed to municipalities, builders of private residential properties and commercial real-estate developers.

With a share of just over 20 percent of the overall housing stock and more than 40 percent in urban multi-storey buildings, the limited-profit housing associations dispose over a housing segment characterised by inexpensive rents and professional management and provide the tenants with security through unlimited rental contracts.

The following presentation, written by Professor Herbert Ludl, who expertly unites the theory and practice of this specialist field as managing director of limited-profit housing associations, functionary of the governing body of the limited-profit housing associations and long-standing

experience as a lecturer at Vienna University of Economics, is intended to illustrate the specifics of the limited-profit housing associations and their functional integration with the housing policy system of our country, particularly also for foreign experts. A cooperative venture that – as the “Austrian approach” – represents an extremely fundamental pre-requisite for the achievement and safeguarding of a high standard in the quantitative and qualitative provisioning of housing.

### **3.2. THE HOUSING POLICY SYSTEM IN AUSTRIA**

In addition to the legal instruments of housing policy – which are understood to mean all directly effective housing policy measures of the legislature, such as security of tenure or legally governed upper rental limits – the financial instrument of housing funding and the organisational instrument of limited-profit housing are also of particular importance. One special feature of the Austrian system lies in the interaction of housing funding and limited-profit housing, which must be regarded as mutually complementary and reciprocally supportive systems.

The provisioning of housing for the population requires constant state intervention. Indeed, this is also called for in light of the existential significance of quality housing. Even households with higher than average incomes are incapable of purchasing a dwelling that fulfils our social, cultural and ecological standards on their own. When distributing the building costs over the entire duration of employment, repayment of the requisite third-party funds in the case of free financing would take longer than the average dwelling seeker has available to work in their lifetime. A constant market unbalance therefore arises that can be characterised by a lack of demand. The activity of building residential property can thus only be secured for an average family and to any noteworthy extent through state intervention.

Depending on the course of action chosen, this state intervention in the economic process yields additional effects. If the funds are used in such a way that the public authorities themselves become the developer and manager of residential properties, the question of efficiency must be raised, irrespective of the fact that “official” provisioning of housing is not a contemporary provisioning instrument. If, on the other hand, the funds are used in the form of financial incentives for commercial investors, arbitrage effects must be anticipated and the usual transformation of public subventions into private capital takes place. The formation of capital that remains in the social loop and can be used in the long-term under state supervision has proven to be a convincing solution and is only ensured in the case of limited-profit housing associations who have to operate with the funding in an efficient and customer-oriented manner, as they are organised on a purely private-sector basis.

#### THE BEGINNINGS

The distressing housing conditions in the cities as of the middle of the 19th century caused by the tremendous growth in population set the stage for the appearance of housing reformers, whose ideas in turn paved the way for the birth of housing associations and limited-profit housing. The foundation of the first “Bauvereine” (housing associations) is thus closely linked both to the “issue of housing” and the “social issue”.

The unbelievably squalid living conditions of broad segments of the population, which for the most part had not been evident to date, led to a growing interest among social reformers in matters concerning housing. In many instances, they propagated cooperative ideas, patterned both after

those in England and in Germany. The ideas of Robert OWEN and Victor Aimé HUBER, as well as the activities of SCHULZE-DELITZSCH who was significantly influenced by HUBER, thus found fertile ground here in Austria.

Memories of the burning of outlying city districts during the revolution of 1848 and the fear of the increasing workforce organisation also motivated the predominantly civic-liberal housing reformers.

#### THE BIRTH OF LIMITED-PROFIT HOUSING

Historically, the idea of limited-profit housing in Austria was based on the cooperative movement and the housing reform. Some fundamental principles of limited-profit housing, such as cost coverage, tying up of assets and auditing, are of an undeniably cooperative origin.

Foreign models for building residential housing and housing estates for workers in the private sector could be found in France (in the “Cité ouvrière” by Mühlhausen and in the “Familistère” by Guise), in England (in the “Harmony” by Hampshire) and in Germany (in the “Bremerhöhe” by Berliner gemeinnützigen Baugesellschaft and in the “Colonie” by Hamburg-Steinwärder). The building of housing for workers by workers thus arose in Austria – as in other European countries – beyond the major cities, where neither profit-oriented private nor municipal housing development existed.

The oldest limited-profit housing association still active today is the “Obersteirische Wohnstätten-Genossenschaft“, founded in 1895. The first limited-profit housing development company in Austria that is likewise still active today is “Erste gemeinnützige Wohnungsgesellschaft Heimstätte“ (established in 1907). Its building activities and other enterprises organised on a private-sector basis resulted in the original, rather programmatic term of “limited-profit” becoming established in the housing development sector and thus transforming into a “trademark” of companies that saw themselves as an instrument of housing assistance, or at least wished to present themselves as such.

The public jubilee fund “Kaiser Franz Joseph I. Regierungs-Jubiläumsfonds“ established in 1908 by way of imperial sanction linked the approval of housing loans to the distribution of limited profit shares, reasonable rents, the tie-up of assets and government auditing. The term “of benefit to the public” was first defined on the legislative level with these conditions for the granting of funding. Limited-profit housing then became governed in several laws; limited-profit associations and companies then required approval by the authorities as of the year 1912.

The codification of limited-profit housing on the new basis finally came about in 1938 after the occupation of Austria by the National Socialists and the German Limited-Profit Decree and – later – the German Limited-Profit Housing Act also gained validity in Austria. The Limited-Profit Housing Act was then adopted by the Austrian legal system with the “Rechtsüberleitungsgesetz” (RüG), a transitory law of 1945, cleansed of any provisions containing “typical National Socialist thought”.

### **3.3. LIMITED-PROFIT HOUSING**

The legal definition of the Limited-Profit Housing Act (Wohnungsgemeinnützigkeitsgesetz – WGG) describes limited-profit housing associations as enterprises whose activities are directly geared towards the fulfilment of the common good in the field of housing and residential matters, whose assets are dedicated to the fulfilment of such tasks and whose business operations can be regularly reviewed and monitored. These basic provisions already cover all primary principles of limited-profit

housing: serving the common good, limitation of the scope of activities, limitation of the distribution of profit shares and the cost-covering principle, as well as the obligatory supervision and checks and balances.

Limited-profit housing associations involve the integration of private-sector economic activities for the fulfilment of tasks of existential provisioning in the public interest. However, regardless of this orientation towards the common good, limited-profit housing associations are nevertheless part of the private sector.

#### THE LEGAL BASIS

The Limited-Profit Housing Act bases its competence on “Volkswohnungswesen” as defined in the Federal Constitution, and therefore falls under the jurisdiction of the Federal Government with regards to legislation, with the provincial governments responsible for its execution. However, those provisions of the Limited-profit housing Act pertaining to the legal relationship between the housing association and those entitled to accommodation in matters related to housing, are based on “Zivilrechtswesen” – or civil law – and are therefore issues of provincial jurisdiction as concerns both their legislation and execution.

In detail, the decrees issued concerning the Limited-Profit Housing Act are as follows:

- The Prüfungsrichtlinienverordnung, a decree on the auditing guidelines to be applied to limited-profit housing associations,
- The Entgeltsrichtlinienverordnung, a decree that governs the prices for the provisioning of accommodation and real estate by limited-profit housing associations,
- The Gebarungsrichtlinienverordnung, a decree on business conduct guidelines containing rules for the proper business conduct of limited-profit housing associations and
- The Bilanzgliederungsverordnung, a decree on balance-sheet guidelines, containing more detailed provisions on how the balance sheet and income statement of limited-profit housing associations should be written up.

#### THE HEAD ORGANISATION

The “Austrian Federation of Limited-Profit Housing Associations – Audit Association” was founded in 1946 and is organised on a single tier as the head organisation of the limited-profit housing associations. Absolutely all of the limited-profit housing associations (housing associations and companies) are direct members of the federation. The existing organisational structure consists of a provincial group for each Austrian province with an advisory function. The smallest of these provincial groups is in Burgenland and comprises five housing associations, while the largest is in Vienna and consists of 69 housing associations.

The federation is headed by an executive board that governs the day-to-day business of the federation and comprises a chairman, a vice-chairman and two additional members. The director of the federation is responsible for the execution of the decisions and business administration and for heading the federation office. The supervisory board consists of 12 members, with each provincial group being represented by one member.

The conference of delegates with 53 representatives from throughout the whole of Austria convenes regularly and is responsible for opinion forming and for financial resolutions. The supreme body of the federation is the federal convention, which convenes annually.

### **3.4. SPECIAL FEATURES OF LIMITED-PROFIT HOUSING**

#### THE COST-COVERAGE PRINCIPLE

The cost-coverage principle of the Limited-Profit Housing Act stipulates that a limited-profit housing association may only charge an appropriate amount for the use of dwellings etc. that is fixed at a level neither higher nor lower than necessary to cover the costs for managing the building, taking into account a justified amount to cover the costs of managing the housing association and to form reserves, in keeping with the principles of proper business conduct. The price fixing of a limited-profit housing association is thus based on (1) expenses, (2) the costs of management and (3) the requisite formation of reserves, irrespective of the demand on the housing market, and on relinquishment of any opportunities for making profits, which result from the shortage of the commodity.

However, this does not mean that limited-profit housing associations are generally excluded from making profits, which are indeed indispensable for the formation of reserves, but only that the profits it makes and the dividends it pays out are limited by law. With respect to its building and administration activities, a limited-profit housing association thus may only charge the actual and justifiable costs which are incurred, in addition to the standard amounts laid down by law for its own services, and any additional costs it needs to cover the risks taken in the rental transaction.

The principle of efficiency also has to be considered in connection with the coverage of costs, as a consequence of which management and administration in a limited-profit housing association must allow themselves to be guided by the principle of efficiency, i.e. by profitability, economy and practicality. If in doubt, the tenants and buyers of accommodation built by a limited-profit housing association can have the cost ascertainment provided to them reviewed by a court of law.

#### TIE-UP OF ASSETS

The special handling of the assets of members of limited-profit housing associations and the shareholders of joint stock companies under the aspects of asset management law when dividends are to be paid out in the event that they withdraw as members, or in the case of the liquidation of the housing association, and the general profitability obligation are in place to ensure that the assets of a limited-profit housing association remain tied up to be appropriated for the purpose of housing.

In this context, the principle of nominal value, according to which a withdrawing shareholder or member would only be reimbursed the amount of the nominal value of his capital contribution at that time, is a fundamental element of securing assets.

The profits, which are always an indicator of the efficient employment of resources when prices are fixed, predominantly flow into the reserves of a limited-profit housing association, thus making it an enterprise which turns its profits into capital.

The tie-up of assets makes an unequivocal distinction between limited-profit housing associations and commercial developers, whose assets formed with the assistance of public subsidies are kept from the community over the long-term.

Only one amount may be distributed from the profit for the year of a limited-profit housing association. This may not exceed the permissible interest rate for shareholders' equity (currently 3.5%) in terms of the shares paid in. This principle also applies to the treatment of the shareholders and members under asset management law in the event of withdrawal or liquidation of the housing association.

The Limited-Profit Housing Act also standardises a mandatory usage for the shareholders' equity. In this context, the shareholders' equity is generally to be dedicated to housing-related tasks and used primarily for the main business activities.

Income from that shareholders' equity that is not used to cover long-term asset portfolios or for the providential cover of day-to-day business operations and the resultant financing requirements must always be subject to income taxation if it is not verifiably utilised within five years for the primary or secondary business activities of the housing association.

#### LIMITED BUSINESS ACTIVITIES

Limited-profit housing associations are extremely limited in their sphere of permissible business activities and may only conduct primary business activities, secondary business activities and so-called "connective" supplementary business activities.

Primary business activities include the construction and management of accommodation, private homes and homes in their own name, as well as the large-scale renovation and management of other limited-profit housing associations within the framework of their primary business activities. Preferably, it is this type of business that is to be undertaken and the shareholders' equity is appropriated toward these activities.

Secondary business activities may also be conducted in addition to the primary business activities and are individually specified under law. However, the scope of these activities must always remain in such a relationship to the primary business that they can still be qualified as secondary activities. They may not become the sole nor the pre-dominant part of the business activities of a limited-profit housing association.

Secondary business activities include the construction of housing, private homes and homes built for third parties, the construction of commercial premises, garages and car parks and the erection of community facilities for the residents and the residential public in general, improvements in the housing environment, special renovation activities, such as urban and village renewal, urban sanitation, and renovation for third parties, legal transactions in connection with buildings owned by the association, bank transactions in connection with the construction of housing, the purchase of building materials and furnishings, participation in other limited-profit building associations, loan associations and building societies, as well as the establishment of information offices.

Connective supplementary business activities are only permissible to a very limited degree necessary within the realm of proper business management. They may not be carried out either as primary nor secondary activities and, moreover, they require written approval of the respective provincial government.

Special case in connective supplementary business: The rendering of housing-related services and the majority holding of subsidiary companies with a support role or foreign ties is permissible without approval of the supervisory authorities, but is subject to taxation.

## ASSOCIATION AUDITING

The audit association:

The Limited-Profit Housing Act stipulates that absolutely all limited-profit housing associations be members in an associative organisation that must conduct regular mandatory audits.

The Limited-Profit Housing Act defines limited-profit housing associations as companies whose “business activities can be audited and monitored on a regular basis“. Audits conducted in accordance with the Limited-Profit Housing Act are based on the directives for the auditing of limited-profit housing associations and the articles of the Audit Association of the Austrian Federation of Limited-Profit Housing Associations.

The legal basis for the auditing of limited-profit housing associations is the associative audit with some additions and deviations resulting from the limited-profit concept of housing. This makes the tightly interwoven structure between associative principles and those of limited-profit housing clear. However, all limited-profit housing associations must, to date, belong to an audit association that corresponds to the provisions of the Association Audit Act. The Association Audit Act contains further provisions on the audit procedures, in particular the scope thereof and the assignment of an auditor.

The stringent requirements placed on the training, testing and further training of associative auditors in Austria are ensured by a test level that corresponds – under EU law – to that of an auditor and exceeds this in terms of the auditing of a company’s business conduct. This auditing standard is unique in the associative sector within the European Union.

The audit is also understood as a form of economic supervision and is used to offer limited-profit housing associations with qualified information and assistance, as well as continuous supervision and training, which professionally speaking far exceeds what a private account could provide. The expert know-how gained from the audit serves to improve the productivity and competitiveness of the member enterprises. The head federation represents the interests of the limited-profit housing associations and should, moreover, be able to benefit from the experience and expertise of its auditors, both in its counselling function for legislation and administration, as well as in its public relations work.

The association audit:

The compulsory associative examination is not only older, but also more comprehensive than the corporate audit. The audit of limited-profit housing associations also takes place in the “interest of the general public”, i.e. it is an instrument of public checks and balances

An independent auditor is in charge of the examination. He works independently and on his own responsibility, even if he is an employee of the federation.

The audit examines not only the formal and material principles of balance sheet accounting, but also the profitability of the enterprise and the expediency of the management, as well as compliance with the provisions of the Limited-Profit Housing Act. It covers a broader spectrum of control through the formal and material examination of the business conduct of all branches of the administration than the final auditing of companies.

The certification of a company’s financial statement corresponds to the audit certificate for housing associations contained in the comprehensive evaluation in the auditor’s report.



In addition to the regular examinations, special audits may also be conducted at the request of a limited-profit housing association or a supervisory authority.

Not only cooperative associations are audited. The audit covers all other legal forms of limited-profit housing associations that are subject to the Limited-Profit Housing Act.

The audit report is published to a wide audience, with the addressees comprising not only the executive board and the supervisory board, but also the general assembly. The excerpt of the audit report submitted to the provincial government is also publically accessible and contains the annual financial statement with the certification of the audit and business conduct, the names of the members of the entity, the number of dwellings managed and the number of dwellings completed within the past three years.

The audit reports are submitted to the supervisory authority. The supervisory authority itself disposes over a series of sanction options, such as the formal ordering of remedial action to remove defects, the withholding of public funds, or even the revocation of recognition as a limited-profit housing association.

#### GOVERNMENT SUPERVISION

The entire management of a limited-profit housing association is subject to continuous supervision by the public authorities. As a supervisory authority, the provincial government is justified to inspect all of the company documents, to examine the business conduct and accounts, to order remedial action to remove defects and to solicit reports on individual business transactions.

The provincial government may order remedial action against any defects and, if this order is not complied with, they can give official notice to eliminate them.

#### MISCELLANEOUS

Every limited-profit housing association also requires government recognition, must establish a supervisory board, is subject to special price-fixing regulations for the rental or sale of dwellings and is also subject to an obligation to build housing. An interruption in the building activities requires the explicit permission of the provincial government. Limited-profit housing associations are exempt from paying income tax.

### **3.5. ECONOMIC POTENTIAL**

#### NUMBER OF COMPANIES

The 101 housing co-operatives make up just over half of the members of the Federation of Limited-Profit Housing Associations. That corresponds to 52.33% of the total of 193 limited-profit housing associations. However, if these are classified according to administrative units, the housing co-operatives comprise a share of only 44.78%. In comparison with the housing co-operatives, which manage on average only 4,580 administrative units per enterprise, the limited-profit companies manage a remarkable 5,837 administrative units per enterprise. This corresponds to a long-standing trend, whereby housing co-operatives have always exhibited a lower degree of building activity when compared with limited-profit companies.

### NUMBER OF MEMBERS

The combination of the right of use and the membership in a housing co-operative always lead to a higher degree of member fluctuation than in other co-operative sectors. The legally standardised building obligation also has the additional effect of continuously raising the overall membership figures. The total membership of all Austrian limited-profit housing co-operatives amounts to 412,466 members, with an average of 4,048 members per co-operative.

Membership figures exhibit remarkable growth rates. In 1970, some 150,499 members were counted throughout Austria and the number of members has since increased almost threefold. The annual growth in recent years has amounted to roughly 8,900 members per year. This development testifies to the unbroken appeal of the co-operative form of limited-profit housing.

### HOUSING STOCK

The management portfolio of the limited-profit housing associations currently (2007) covers some 775,000 dwellings, roughly 500,000 of which are located in buildings owned by the associations and roughly 275,000 of which are located in property owned by third parties, predominantly under the ownership of local authorities, or home-ownership in condominiums.

Of the 3.5 million dwellings counted throughout Austria, the limited-profit housing associations thus manage a share of 21.8%, with 14% being owned by the associations.

### NEW CONSTRUCTION AND REFURBISHMENT

One in five dwellings built in Austria since 1945 was built by a limited-profit housing association. Indeed, in the cities – the domain of the multi-storey housing estates – it was even one in every three new dwellings.

The long-term average construction volume of the limited-profit housing associations amounts to roughly 15,000 dwellings per year, which equates to a share of some 30% of the overall volume of new constructions. The construction volume decreased slightly in recent years, but the current trend is again on the rise.

More than 25,000 dwellings are currently undergoing construction, with the trend in this context also being positive.

In addition, the modernisation and refurbishment volumes have also risen steeply. The most recently recorded volume corresponds to an equivalent of roughly 5,000 new dwellings. Each year, some 3 to 4 percent of all dwellings in the housing stock undergo heat insulation work, through which the requirement for heat is reduced by more than half.

Between the years 2001 and 2006, the entire new construction and refurbishment volume of limited-profit housing associations increased each year by an average of 2.7%.

### STAFF STRUCTURE

Limited-profit housing associations throughout Austria are staffed by roughly 8,650 employees, including 266 in executive positions and 2,138 regular staff, not to mention the 2,961 caretakers. They thus employ an average of 46 people per association.

### BALANCE SHEET FIGURES

The balance sheet figures for the limited-profit housing associations total EUR 29.7 billion and have thus increased more than eight-fold from the balance sheet figures of the year 1970 (EUR 3.6 billion). Based on the balance sheets for individual enterprises, we see that the average balance sheet figures per association amount to EUR 154,123,000.

### **3.6. GOVERNMENT PROMOTION OF HOUSING**

The objectives of housing promotion are to ensure a sufficient amount of good quality accommodation, to provide and ensure an adequate amount of investment capital for housing purposes and to reduce the burdens on end consumers caused by housing costs.

The necessity for a public system of housing promotion stems from the special importance placed on the markedly long-standing consumer commodity of accommodation, which expresses itself on the one hand in the significance of the commodity for meeting life's needs and, on the other hand, in the high degree of external effects. The presence of special features, such as lengthy completion times, high construction costs, a distant financial planning horizon, a lack of substitute options, being tied to one site, low market transparency and high transaction costs lead to the basic phenomenon of market failure and the resulting need for regulatory action. Intervention in the form of planned, continual and direct public housing promotion is therefore necessary in order to restore the market equilibrium.

In Austria, the main focus of promotion for housing is on direct property promotion. All told, around EUR 2.96 billion was recently spent for all promotion measures, including indirect measures. This value is a stable parameter, corresponding to roughly 1.25 percent of the gross domestic product and is roughly on par with the average for comparable nations.

The financing of direct housing promotion is based on the expedient commitment of an amount of budgetary funding that flows to the individual states and is supplemented by that state's own provincial promotion measures. Federal funding of EUR 1.8 billion is spent. A total of EUR 2.4 billion was recently spent for direct housing promotion measures, of which 82% was allocated to the construction of new dwellings and 18% to residential refurbishment. The lion's share of new construction expenditure (90%) was allocated to object-specific housing promotion, with only roughly 10% of the new construction expenditure being spent on subject-specific housing promotion, primarily in the form of housing subsidies.

However, housing promotion should not merely be used to continuously repair the deficits in the market, but should instead endeavour to eliminate the tendency of a necessity for "eternal aid" by setting into motion self-regulating and self-supporting projects. The longterm establishment of a self-supporting system of finance – as it results from the described functional combination between housing promotion and limited-profit housing efforts – would be an adequate solution to this problem and would likely be capable of improving the leverage of housing promotion over time. Both housing promotion as well as limited-profit housing have a long financial horizon and take into consideration the special nature of quality housing.

A distinction is also made between object-specific and subject-specific housing promotion. Subject-specific housing promotion measures can take the form of housing subsidies, housing benefits or

equity replacement loans. The usual case in Austria is represented by object-specific housing promotion. In this respect, 76% of all promoted dwellings in multi-storey housing development and 45% of the promoted homes were built with object-specific housing promotion after 1945. In contrast, subject-specific housing promotion is of lesser importance and usually combined with object-specific promotion anyway. While up to 25% of all households in other countries claim individual benefits, the figure for Austria is merely 3 to 4 percent.

#### DIRECT OBJECT-SPECIFIC HOUSING PROMOTION

Direct object-specific housing promotion is understood to involve all public expenditure and tax exemptions that are linked to the investment expenditure of a project. The measures are coupled with a specific investment volume with the goal of reducing the offer price for the respective housing. The recipients of object-specific housing promotion are municipalities and limited-profit housing associations, as well as home owners and private persons in the case of the construction of own residential property. As a price subsidy, object-specific housing promotion tends to distort the markets as prices that indicate the correct site, quality and location of a property are very difficult to establish. However, it assists construction very swiftly and, assuming a fundamental demand, allows precise determination of the effects desired by the respective regional association. The location, type and extent of the construction project are specified by the funding. Object-specific housing promotion also facilitates the social multiplication factor.

In Austria, almost 75 percent of all housing promotion funds are spent on object-specific housing promotion. This share represents the fundamental distinguishing feature vis-à-vis other countries, where subject-specific and indirect promotion are granted preference over direct promotion.

#### DIRECT SUBJECT-SPECIFIC HOUSING PROMOTION

Subject-specific housing promotion is understood to mean all periodical transfers by the government to the end consumer, be it in the form of payments or payment equivalents. The measure is usually linked to a specific level of income, in order to close the gap between the reasonable costs and the offer price. On the whole, subject-specific housing promotion forces a higher level of government transfer than, for instance, a mixture of object-specific housing promotion in new construction, combined with rental control in the housing stock. Under ideal conditions, it is market-conform and efficient, as the consumer himself can articulate his own wishes in terms of residential location, residential appointment and dwelling size and indicate this to the markets in the form of demand. However, housing subsidies stigmatise the recipients and prove to be counterproductive, because they decrease as income rises. Housing subsidies are also less suitable for eliminating bottle-necks in the offer of housing. On the contrary, they actually have a price-increasing effect on the housing stock. The "Housing construction cheque" as an additional variation of subject-specific housing promotion can only ever be more than an empty promise if the offer is sufficiently large and there are no restrictions on access. Persons seeking accommodation who are waiting on a list, however, benefit little from this variation.

#### INDIRECT HOUSING PROMOTION

Indirect promotion measures for housing are referred to when the recipient of the promotion is not identical to the renderer of the actual desired benefits; a classic example of this would be building society promotion, in which inexpensive loans for constructing housing are made possible by benefiting the saver. The system is similar in the case of building savings banks. In this context,

the provisioning of land, assumption of the development costs or the commitment of a specific share of land can also be effectively promoted in an indirect manner. Indirect housing promotion extends to all players involved in the construction activities and the utilisation of the resultant property – such as land owners, mortgage banks, the building sector or the principal. Indirect promotion of housing construction also takes place in the options for depreciating the costs of living, in the case of monument protection and in sanitation areas, as well as in tax benefits for building owner collaborations.

### **3.7. BOUNDARY CONDITIONS FOR HOUSING CONSTRUCTION: HOUSING REQUIREMENT IN THE COMING YEARS**

On account of the relatively high rates of immigration, Austria currently has a high level of population growth. While the number of inhabitants between 1991 and 2001 rose by 3.03 percent to 8.3 million inhabitants, the new – revised – population forecasts calculate growth of more than 5 percent up to the year 2011. The growth in households – which is of decisive importance to the housing demand – will be lower by the year 2011 than in the 1990s (+34,000 households/year), but will nevertheless still be very high at 8.6 percent (+28,000/year). The – revised – housing demand forecasts calculate a current demand for new construction of roughly 47,000 dwellings. Accordingly, the actual building volume of just over 40,000 completed dwellings each year is thus too low. However, significant growth rates in the construction of new dwellings are foreseeable for the coming years. The volume of newly built homes of just under 40,000 units – which itself is relatively low for Austria – corresponds to a value of almost 5.0 per 1,000 inhabitants. In an international comparison, this is still a high figure and is attributable not least to the positive impact of housing promotion measures.

The capital city Vienna (population in 2005: 1.65 million) displays a particularly high rate of population growth. Vienna's population is not only relatively young. Here, too, immigration has contributed significantly to the particularly high growth rates: while the population increased by 3 percent between 1991 and 2001, calculations based on the latest trends forecast an increase of 11 percent for the current decade. The increase in households is expected to double over the previous decade, with growth of 7,500 per year. The final – albeit still based on old data – housing requirement forecast calculates an annual requirement for newly built accommodation of some 8,500 dwellings. The actual volume of roughly 6,500 completed dwellings per year is well below this forecast. However, there are clear indications that the construction volume will rise.

### **3.8. CONCLUSION**

Justice and social equilibrium are indispensable prerequisites for social harmony, yet both elements are highly unlikely to be induced by the market economy.

Safeguarding a reasonable supply of housing, also for less fortunate citizens, is of particular importance in this context. The solution to the housing question is therefore a serious social obligation that requires the provisioning of noteworthy public funding, in order to counteract market failure.

Therefore, there is a definite necessity for government intervention, as practised for example in Austria in the form of pronounced efficiency in building and well structurable object-specific housing promotion. These public funds help to promote the inner cohesion of our society, establish positive forms of living and urbanity and favour ecologically desirable developments.

A fundamental element of Austrian housing policy is also that the players – be it the funders of housing construction and tenants, on the one hand, or owners on the other hand – are granted freedom to act independently, instead of having the supply of housing realised by the government itself.

The establishment, support and integration of a practicable limited-profit organisational instrument that is bound to limited-profit principles can be regarded as an additional indicator of the Austrian approach to housing supply.

Limited-profit associations and companies are private sector enterprises that are geared more towards fulfilling the demand than on generating profit, but which nevertheless act in an economically rational manner and are able to offer both their tenants and their members, as well as the common good, a high quality of housing, fair prices and cross-generational speculation-free limited-profit home and real-estate ownership largely because of these business qualities. Limited-profit housing associations are thus shining examples of private social responsibility and they operate on a user-oriented basis, as opposed to an investor-oriented basis.

As can be seen, the Austrian approach to housing policy relies less on individual measures for regulating the market deficits than on establishing a functional connection between rental price regulation, public promotion of housing, independent private limited-profit housing associations and landlords who are not geared towards profit maximisation and a municipal housing system.

In Austria, public intervention in rental affairs and the construction of housing is not understood as a social measure in the stricter context. The supply of housing is also awarded a high level of functional significance for the labour market and for wage and price levels and speculative elements in the housing sector are thus restricted to the greatest extent possible. Rents must be affordable and not financed through subsidies, through which households become dependent on social assistance with all of the associated negative consequences. From the social viewpoint, however, the focus is not solely on affordability and security of the rental relationship, but also on viewing housing as an integration factor and an aspect of social integration in the urban context.

Austrian housing policy focuses primarily on the following elements:

- The construction of housing through limited-profit entities with long-term commitments
- Promotion of the construction of housing with the focus on object-specific promotion while establishing a sufficiently large supply of housing
- Functional connection between object-specific promotion and limited-profit housing oriented towards the establishment of housing construction capital
- The attenuation of prices in housing construction through rental regulation and object-specific promotion instead of individual benefits
- Social orientation towards affordability and rental security for all strata of the population

When veritable swarms of investors currently sweep through Europe buying up stocks of social housing with international capital, we should not forget that this results in lasting damage that can only be rectified at great expense and with a lot of patience. As my friend Senator Jürgen Steinert, Chairman of the Expert Committee of Housing Associations in the Federal Republic of Germany, so succinctly put it: “If the seeds are eaten instead of planted, one should not be surprised when the next famine occurs“.

The problems of metropolises presented in detail on the occasion of the UN Conference HABITAT II, such as environmental pollution and crime, can only be effectively combated with the assistance of incremental solutions and decentral structures. Housing associations and citizens initiatives in the field of housing and environmental protection, i.e. organisational forms of “solidarity based housing” offer a virtually ideal organisational framework for those tasks that are often only able to be solved on a joint basis. The “integrative power” of residential districts – so often underestimated in Europe – can also be better utilised. In this respect, the social and ethnic mixing of the housing projects of limited-profit housing associations is likewise a trademark of the specific Austrian approach. In our housing developments, a company director lives next door to the craftsman. “No Go Areas”, “Ghettos” or “Slums” are virtually unknown here.

We are experiencing a period of socio-political change: hitherto unheard of unemployment figures, migratory movements, debates on whether the health system can be financed and the question of the customary state pension are creating insecurity. Although housing associations are naturally unable to compensate for faulty social developments, they can ease the fatal consequences of such to a certain degree. The limited-profit housing sector regards itself as being socially corrective, organised on a private-enterprise basis, committed to the common good and service-oriented. It is and remains a reliable bastion against contemporary neoliberalism and is thus also a guarantee for tangible social balancing. In an age of neoliberal “money-grubbing societies”, where the social commitment of owned property is seen as a burden and the egoistic striving for advantages is widespread, it possesses virtually inestimable value.

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### 3.9. DATA

#### DATA ON LIMITED-PROFIT HOUSING ASSOCIATIONS IN 2005

	CO-OPERATIVES	COMPANIES	TOTAL
Housing associations	101	92	193
Members	412.000	–	412.000
Rental dwellings	228.000	258.000	486.000
Share of LPHA dwellings in Austria			
as a whole	15 %	16 %	31 %
Owned dwellings	106.000	132.000	238.000
Share of LPHA owned dwellings in Austria			
as a whole	21 %	37 %	58 %
Total dwellings managed	334.000	390.000	724.000
= Share of total housing stock	8 %	10 %	18 %
= Share of total housing stock, multi-family-housing	15 %	18 %	33 %
New construction 2005, housing units	6.340	8.340	14.680
Investments in repairs and improvements 2005 in EUR million	211	279	490
Balance total EUR million	13,8	16,0	29,8
Employees	4.227	4.420	8.647