

HOUSING EUROPE

Feedback on the EC evaluation of State subsidy rules for health and social services of general economic interest

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Effectiveness:

🕒 To what extent have the state aid rules for SGEIs achieved their objective to facilitate the provision of health and social SGEIs adapted to the population's needs ?

The objective of the 2012 decision was to implement the EU competition policy while respecting the specific nature of the social sectors. It was necessary to provide a legal answer for the provision of those services which are essential for EU citizens and social cohesion in Europe.

Under the SGEI decision social housing is exempted from the notification obligation under Article 108 TFEU – as long as they comply with the requirements of the Decision.

- The state aid rules provided by the 2012 decision has helped providers of social housing to operate in a stable regulatory environment. This is necessary in order to gain access to predictable sources of financing. Indeed the variety of forms of public support, as well as the structural nature of the aid (in relation to the necessary continuity of public service mission) required a framework that would allow public investment while complying with the EU competition policy. Furthermore the specific treatment without 15 million € ceiling is justified by the yearly amounts involved for the building and renovation of social housing stock.
- The decision has helped to clarify the regulatory context in which the social housing providers operate and prevent the potential rise of state aid cases
- However the reference to a narrow target group in the Decision (« socially disadvantaged citizens ») seems to contradict the reference to the market failures as a legitimate criteria to define the target group of the SGEI. It is necessary to reaffirm the relevance of the market failure criteria, knowing that in many European cities an increasingly wider group of citizens are unable to obtain housing at market conditions.

🕒 To what extent are the MSs aware of the (relevance of the) rules applicable to health and social SGEIs?

- The social housing sector is among the sectors analysed by Member States in their annual reports on competition policy
- The reference to the SGEI decision has to be integrated in the national or regional housing policies

Efficiency:

⌚ What are the costs and benefits for the different stakeholders (both monetary and non-monetary) associated with the application of the requirements set by the rules for health and social SGEIs?

- the Decision aimed at creating legal certainty for public investments and reduced uncertainty linked to potential competition cases with the European Commission. While it did manage to create a framework that allowed authorities not to notify investments in SGEI, there remains an uncertainty regarding the criteria that are allowed in relation to the definition of the target group for the SGEI
- In an internal survey carried out in 2016 among Housing Europe members, we found out that All respondents find application of the Decision 2012/21/UE on State Aid to the SGEI of social housing problematic for a number of reasons. In particular: 55 % of respondents identify the main problem being with the scope of definition of the SGEI of social housing; 44% quote issues with the separation of accounts and the method to calculate overcompensation. Apparent issue among respondents of the survey is confusion over the State Aid in general. However, as explained in the previous section

Relevance:

⌚ To what extent is the approach for health and social SGEIs introduced in the 2012 SGEI Decision still justified (allowing unlimited compensation and no notification as long as the conditions of the 2012 SGEI Decision are met) in view of EU (State aid) jurisprudence since 2012 ?

⌚ How well adapted are the SGEI rules for health and social services to social policy and market developments?

The Decision has reached its objectives to provided a predictable framework for public investment in the field of social housing. It is more than ever needed at a time when investment in public and social infrastructures is far below what would be needed¹.

Therefore it is crucial to maintain the existence of a specific framework for health and social services of general economic interest such as social housing.

However the Decision needs to be adapted to the evolution of housing needs and housing markets in the EU.

The housing crisis in the EU is still a harsh reality in cities. Urban areas in many member states are faced with pressured housing markets. In many cities, it has become difficult to find affordable housing at market prices. Furthermore in some urban areas – for example Vienna - there is no sufficient supply of rental accomodation for bigger families - regardless

¹As the EIB pointed out in 2018 , « there is no recovery yet in infrastructure investment – undermining Europe's long-term potential. Infrastructure investment appears to have stabilised at 1.8% of EU GDP, down from 2.2% in 2009. » The decline is strongest in countries with the lowest infrastructure quality, pointing to a slow-down in the convergence process.-Municipalities report a significant infrastructure gap mostly in social housing, urban transport and ICT and see fiscal constraints, rather than access to finance, as the main obstacle. In the field of social infrastructures the Prodi-Sautter task force has looked the sectors of education, healthcare and housing and estimates that Europe would need an increase of 142 bio € per year to reach the objectives set by the Europe 2020 strategy (57 bio€ for housing).



of the rent level - since the market tends to provide only smaller apartments. Investors and other landlords offer dwellings in the private rental market, however the rental prices are often higher than many households can afford. There is an increase in buy-to-let constructions in cities. This has a negative effect on both the affordability and the availability of housing.

Middle income households often cannot afford market priced housing in urban areas. They face the risk of being pushed out of cities. In some member states cities are even prioritizing key workers in the allocation of housing in order to prevent a shortage of, for example, teachers, nurses or police officers².

The increasing awareness of cities of the necessity to draft local housing policies, is further underpinned by the resolution that 30 major European cities signed stating that housing, especially social housing, is a clear issue of the Member States and their local authorities demanding the current EU-legislation to be changed in line with the principle of subsidiarity³.

We welcomed the recognition of the the affordability crisis by the European Commission in the context of the European Semester. The European Commission recommended to focus investment specifically on affordable housing in Ireland, Germany, Latvia, Luxemburg and Slovakia. While it was concluded that in the urban areas of the Netherlands, the private rental sector and the owner-occupied is often not affordable for middle-income households,⁴ despite reforms of the housing market that were introduced ten years ago.

This situation calls for a better recognition of the role of the national, regional and local level in defining the needs in terms of housing policies. According to Protocol 26 of the TFEU, the performance of SGEI tasks, such as the provision of social and affordable housing, should be based on specific national, regional or locally entrusted missions that reflect the needs and proportional support to housing and communities. It is generally accepted that national, regional and local governments have a wide discretion in the definition of the scope, organisation and financing of SGEI based on their cultural, economic and democratic choices and ability to adapt to community needs. The regulatory competence of the Commission to intervene in the definition and organisation of SGEI is limited to cases where there is a manifest error. In a letter to Housing Europe, Commissioner Vestager confirmed that the scope of social housing can vary from one Member State to another, from one city to another, depending on the history and culture of public intervention in each Member State and on the prevailing economic and social conditions⁵.

However until recently, there seemed to be an uncertainty about the room of manoeuvre for relevant Member States authorities in the field of state aid to social housing.

The Woonpunt and Woonlinie cases of 15 November 2018 acknowledges that the Commission has the power to act in case of a faulty SGEI definition. The case furthermore confirms that a clear definition of an SGEI is necessary to ensure compliance and reduce the

²See for example: Woonagenda 2019-2023 by the city Den Hague

³RESOLUTION for social housing in Europe from Amsterdam, Barcelona, Berlin, Bratislava, Brussels, Budapest, Bucharest, Copenhagen, The Hague, Dublin, Frankfurt, Hamburg, Krakow, Leipzig, Ljubljana, Milan, Munich, Nantes, Paris, Prague, Riga, Tallinn, Turin, Vilnius, Warsaw, Vienna, Zagreb, October 2013, <http://www.housingeurope.eu/file/61/download>, later on Graz, Lisbon and Rome.

⁴Recommendations can be found in the Country Specific Recommendations of the mentioned countries. The assessment on middle income households in the Netherlands can be found on the Country Report of 2019

⁵Letter of EU Commissioner Vestager to Housing Europe, 6 April 2016



risk of overcompensation. But it also says, that while there is an obligation for the relevant authorities to define a public need and a target group, those authorities can choose from a wide range of criteria (not only income levels.) as long as it is relevant to define a clear public need. This clarification is important, since the wording of recital 11 referring to 'disadvantaged citizens or socially less advantaged groups' was often interpreted as an obligation to focus on low-income households. The ECJ ruling of November 2018 reaffirms that that should not be the case.

Therefore Housing Europe considers necessary to find a wording that will reflect the evolving situation of local housing markets in Europe. We suggests to include a reference to the public need as defined by the relevant Member States authorities based on relevant clear criteria.

Coherence:

🕒 How well do the 2012 State aid rules for health and social SGEIs correspond to the wider EU policy applicable to health and social SGEI, such as article 14 and 168 TFEU and Protocol 26 to the TFEU?

The state aid rules for health and social SGEIs are coherent with and necessary to the wider EU policy applicable to health and social SGEI. With regards to consistence with Protocol 26 of the TFEU, there is a need for improvement, since social housing is the only sector in the SGEI Decision for which there is a reference to a specific target group. While it is important to ensure that SGEI is provided in relation to a clearly defined public need, Protocol 26 TFEU implies that this public need should be defined by the relevant Member States public authorities in a way that reflects the evolving local housing needs and would cater for proportional support to housing and communities. This improvement is also necessary to bring the state aid rules for social housing in coherence with the European Pillar of Social Rights which states that « Access to social housing or housing assistance of good quality shall be provided for those in need».

To summarize :

In the ongoing effort of the European Commission to evaluate the SGEI decision our main recommendations are, in line with the Action Plan of the EU Urban Agenda Housing Partnership, to:

- Keep the current exemption of social housing from notification
- Keep the current exemption of social housing from the 15m aid threshold
- Clarify that the clear definition of the public need in relation to the SGEI is of the sole responsibility of the relevant Member States authorities using the most relevant criteria (and not necessarily the income level)
- Clarify that social housing may qualify as an eligible SGEI activity when households cannot obtain housing at market conditions or in case of market failure



