AK EUROPA

Position Paper
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Economic

Affordable housing: Proposed revision of state aid rules for services of general economic interest (SGEI Decision)

Executive Summary

- AK welcomes the proposed revision of the Commission Decision of 20 December 2011. A key concern of limited-profit and social housing associations, which provide affordable housing, has been addressed by the proposed extension of the exemption from state aid rules.
- Instead of new regulatory interventions, the European Union should support the expansion of social, limited-profit and affordable housing through appropriate funding instruments such as the European Investment Bank (EIB).
- The Austrian model, which is based on the principle of cost coverage and aims to provide affordable housing on a permanent basis, legally secured by the Limited-Profit Housing Act (WGG), offers a sustainable, tried-and-tested and socially effective basis for addressing this concern. It guarantees permanently affordable housing with broad social benefits and should be strengthened as a European reference structure.
- Reference should also be made to the conclusions of the European Council of 23 October 2025, which emphasise respect for the principle of subsidiarity in the field of housing.
- Since land is not reproducible and especially land in urban locations is permanently withdrawn from the general economic interest, measures to ensure the long-term provision of affordable housing are urgently needed. This is the only way to guarantee the free movement of workers and EU citizens within the Union.
- A limited provision of affordable housing should be rejected. Although it might create affordable housing in the short term, in the long term it gives profit-oriented actors (promoted through subsidies) the opportunity to permanently withdraw land from affordable housing.
- In any case, EU regulations must not be allowed to create new bureaucratic obligations, procedures and hurdles that would once again thwart the rapid availability of housing, as is particularly the case with the conditionality of “income and composition of the household” in the present draft.
- The conditions set out in the annex to the draft decision on access to affordable housing appear impractical and, insofar as they interfere with the right to property without justification in the public interest, unconstitutional. They also restrict the right to housing, as provided for in the European Pillar of Social Rights, in a manner that is neither appropriate, suitable nor necessary.

AK's Position

On the content of the draft

In response to the acute housing crisis, Dan Jørgensen was appointed Commissioner for Housing and a task force on affordable housing was set up to coordinate the Commission's work on housing. One of the most important initiatives planned is the Commission's revision of state aid rules to facilitate the financing of energy efficiency and affordable housing.

The logic of EU state aid law (Articles 106 and 107 of the Treaty on the Functioning of the EU) is based on the harmfulness of state aid and thus on a fundamental prohibition (with certain exceptions) in order to avoid competition between Member States in the form of state aid. EU state aid law is therefore not suitable for achieving the European Union's goal of quickly creating affordable housing. Rather, it jeopardises the successful model of Austrian limited-profit housing.

In order to create legal certainty for public welfare-oriented housing models at European level, a sectoral exemption in EU state aid law is necessary. The Commission is therefore presenting a draft revision of the Decision of 20 December 2011 (2012/21/EU).

Detailed comments

The following points in the draft decision are considered critical:

1.) Recitals 14, 15 and 16:

The focus of the provision of affordable housing must be on all income groups of the population throughout their lives and not just during certain stages of life. Housing is at the centre of people's lives, regardless of income. Therefore, it is not just a matter of income development in certain phases. Furthermore, affordable housing should promote inclusive coexistence and prevent segregation and creation of ghettos. For this reason, any conditions based on a specific income situation is counterproductive. „From youth to old age" must be the motto in today's dynamic times, when the economic situation of employees can change constantly. Any reference to the income of people who have access to affordable housing must therefore be left to the funding guidelines of the Member States in accordance with the principle of subsidiarity. Only at this level it can be meaningfully determined what level of income (if this is to be a criterion) can grant access to affordable housing.

The Austrian model of limited-profit housing, which is based on the principle of cost coverage and aims to provide affordable housing on a long-term basis, depends in particular on the financial capacity of tenants. They pay higher rents during the refinancing phase (after a building has been constructed) than after refinancing has been completed. In this way, tenants can make a contribution during the phase of gainful employment to the affordability of housing and profit in the phase of life after the end of gainful employment. In this sense, it would be counterproductive if those who have refinanced a building do not benefit from the reduction of rent after refinancing.

2.) Recital 22:

The definition of participation in the affordable housing market is too broad and unconditional. Speculation can be prevented by partially or completely excluding housing associations from the subsidy scheme:

- Complete exemption (without conditions regarding duration, group of persons, etc.) from limited-profit housing, as in this case, according to the ECJ ruling on Altmark C-280/00, no advantage is granted to the beneficiary associations.

- Partial exemption (with conditions) for profit-oriented developers who actually derive a profit from the subsidy. The following conditions could be considered:

  (1) Cost-based rents: Long-term rental agreements are concluded at a cost-covering level and only cover the repayment of loans and interest, operating and maintenance costs, as well as a limited surplus for building up equity capital.

  (2) Reinvestment of equity: The equity generated from surpluses must be reinvested in housing construction to ensure affordability and meet minimum energy efficiency requirements.

  (3) Limited return on nominal capital: A return on nominal capital is permitted, but limited to the interest

rates published by the European Commission for the recovery of state aid.

(4) Long-term financial sustainability: To improve affordability, loan repayments are spread over a period of at least 30 years. Equity accumulation after loan repayments is limited to 2% of total annual restoration costs, i.e. the cost of financing a new building from internal revenue.

3.) Recital 23:

The question of the duration of the subsidy for creating social and affordable housing is crucial in order to prevent speculation. The „sufficiently long period" referred to in recital 23 and the period of 20 years in Annex 1(d) are too vague or too short to achieve the objective. The new rules could therefore also hinder the construction of staff accommodation to provide affordable housing for personnel in shortage occupations, because the earmarking does not cover the duration of the tenancy. Instead, the decision should stipulate the „lifespan of the building" as the period for the provision of social and affordable housing in order to effectively rule out speculation on the building.

4.) Article 2(1) of the decision:

For the sake of clarity, it should be noted that, in the context of a permanent commitment to affordable housing based on the principle of cost coverage, the granting of low-cost loans for the construction of buildings is not to qualify as state aid, since such loans lead to the provision of more affordable housing but do not confer any financial advantage on the developer. This provision is also in line with the ECJ ruling in the Altmark Trans case.

5.) Article 2(3) of the Decision:

Under this provision, undertakings may be entrusted with the provision of SGEIs for more than ten years if significant investments are required which must be amortised over a longer period. For reasons of legal clarity, the useful life of the building should be taken as a basis.

6.) Article 4 of the Decision:

In principle, the entrusting of the provision of SGEIs for the creation of social and affordable housing should be limited to (non-profit and limited-profit) undertakings. With regard to the parameters for defining these undertakings, we refer to the comments in recital 22.

7.) Article 5(4) of the Decision:

If an SGEI takes the form of temporary price-controlled rental of affordable housing, the following procedure should be followed to ensure that the revenue is recorded in an economically correct manner – using a 20-year rent control period as an example: in addition to the rental income generated, any valuation gains on the developed property must also be recorded. From the perspective of profit-oriented real estate companies, the total return on a project is calculated from the rental yield plus the annual increase in value of the property.

In accordance with Anglo-Saxon accounting standards (IFRS – International Financial Reporting Standards), such increases in value are regularly capitalised in fixed assets. Although this practice is foreign to the principles of proper accounting (GoB – Grundsätze ordnungsmäßiger Buchführung) applied in German-speaking countries, where the lower of cost or market principle is used to determine the historical acquisition cost of a property, properties in economically prosperous areas tend to increase in value over time. In addition to rental income over 20 years, the property value minus residual debt must therefore be compared with the initial investment costs (minus the debt financing).

If, after the end of a temporary rent cap, the increases in value that have accrued in the meantime can be skimmed off by a profit-oriented property provider, this is problematic in terms of housing policy, budget policy and social policy: In terms of housing policy, because affordable housing is lost. In terms of budget policy, because firstly, the funds spent on promoting this housing are wasted. Secondly, because this is likely to result in expenditure on housing subsidies, which generally have the effect of driving up rents. Finally, in economically prosperous areas, this has the socio-political effect of displacing certain groups of people and professions from the centres of these areas. The income of a teacher, police officer or nurse is then no longer sufficient to pay the rents or apartment prices close to the centre. For this reason, AK is opposed to such a levy.

Annex

Z 2 lit a should be deleted. It counteracts inclusion and promotes the formation of ghettos by forcing tenants to move out if their financial situation changes (see the comments on recitals 14-16). This condition inevitably leads to the conclusion of fixed-term tenancy agreements, which are associated with considerable legal uncertainty for those affected and prevent tenants from investing in the accommodation provided.

Instead, eligibility should only be assessed when affordable housing becomes available.

In addition, regular checks on eligibility requirements may lead to an increase in vacancies due to people moving out, which will result in an overall shortage of supply. Finally, regular checks on eligibility requirements can also have a negative impact on the free movement of workers if a change of job leads to the loss of housing. Ultimately, such verification requirements create new bureaucracy instead of reducing it.

Furthermore, this conditionality also contradicts the objectives set out in recitals 9 and 14 and Chapter III, point 19 of the European Pillar of Social Rights.

Z 3: The European Commission has so far emphasised that it does not want to jeopardise functioning systems for limited-profit housing construction with the announced changes to the state aid rules. We believe that these systems are very much at risk due to the proposed provision in Z 3, as criteria for the amount of compensation, the maximum period for the provision of affordable housing and openness with regard to providers are provided for by reference to Z 2 lit b to g. This provision therefore needs to be revised urgently in order to comply with the principle of subsidiarity and to preserve the Austrian system of limited-profit housing.

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About us

The Austrian Federal Chamber of Labour (AK) is the legal body which represents the interests of approximately 4 million employees and consumers in Austria. It represents its members on all social, educational, economic and consumer policy-related issues at national level and at EU level in Brussels. Furthermore, the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The main objectives of the 1991 established AK EUROPA Office in Brussels are the representation of AK vis-à-vis the European Institutions and interest groups, the monitoring of EU policies and to transfer relevant information from Brussels to Austria, as well as to lobby the in Austria developed expertise and positions of the Austrian Federal Chamber of Labour in Brussels.