



European
Social
Charter

Charte
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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

2 January 2022

Case Document No. 1

**European Federation of National Organizations Working with the Homeless
(FEANTSA) v. Belgium**
Complaint No. 203/2021

COMPLAINT

Registered at the Secretariat on 17 December 2021

COLLECTIVE COMPLAINT

In accordance with the Additional Protocol of the
European Social Charter Providing for a System of
Collective Complaints

FEANTSA v. BELGIUM

Brussels, 17 december 2021

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1. Purpose of the complaint

The European Federation of National Organizations Working with the Homeless (hereinafter 'FEANTSA') asks the European Committee of Social Rights (hereinafter 'the Committee') to find that Belgian (Flemish) legislation, policy and practice regarding housing is not compatible with the relevant provisions of the Revised Social Charter (hereinafter 'the Revised Charter' or 'the Charter').

2. Admissibility

2.1 Defendant state

This complaint is directed against the Belgian state. In view of the state's federal nature, however, the competence on housing policy is a regional matter (Flemish Region, Walloon Region and Brussels Capital Region). As housing policy in the various regions in Belgium differentiates so much, the applicants choose to focus only on the largest Region, Flanders. Of course, as the Committee pointed out in earlier decisions, *"even if under domestic law local or regional authorities [...] are responsible for exercising a particular function, states party to the Charter are still responsible, under their international obligations to ensure that such responsibilities are properly exercised. [...] ultimate responsibility for implementation of official policy lies with the [...] state"*.¹

On the 2th of March 2004, Belgium's federal, regional and community governments completed the process of ratifying the revised European Social Charter. In all, Belgium has accepted 87 of the 98 Articles making up the Social Charter, including Articles 11, 16, 17, 19, 30 and E which are relied on in this complaint. Belgium has also accepted the collective complaints procedure provided for under the Additional Protocol, which was ratified on 23th of June 2003.

2.2 Articles concerned

Article 11- The right to protection of health

Article 16 – The right of the family to social, legal and economic protection

Article 17 – The right of children and young persons to social, legal and economic protection

Article 19 – The right of migrant workers and their families to protection and assistance

Article 30 – The right to protection against poverty and social exclusion

Article E – Non-discrimination

Article 11 of the Revised Charter reads as follows:

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health;

(...)

¹¹ E.g. ECSR 8 December 2004, *ERRC v. Greece*, No. 15/2003, §29 (Decision on the merits).

Article 16 of the Revised Charter reads as follows:

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

Article 17 of the Revised Charter reads as follows:

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in cooperation with public and private organisations, to take all appropriate and necessary measures designed:

1. a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose; b) to protect children and young persons against negligence, violence or exploitation; (...)

Article 19 of the Revised Charter reads as follows:

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:
(...)

4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters: a) remuneration and other employment and working conditions; b) membership of trade unions and enjoyment of the benefits of collective bargaining; c) accommodation;

Article 30 of the Revised Charter reads as follows:

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake: a) to take measures within the framework of an overall and coordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance; b) to review these measures with a view to their adaptation if necessary.

Article E of the Revised Charter reads as follows:

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

2.3 Status of FEANTSA

FEANTSA is the European Federation of National Organisations Working with the Homeless. It is the only European NGO focusing exclusively on the fight against homelessness. FEANTSA has currently 125 member organisations from 30 countries, including 27 Member States. Most of FEANTSA's members are national or regional umbrella organizations of service providers that support homeless

people with a wide range of services, including housing, health, employment and social support. They often work in close co-operation with public authorities, social housing providers and other relevant actors.

FEANTSA and its members are committed to understanding homelessness as a situation that deprives individuals of fundamental rights, including the right to housing. FEANTSA and its members engage in the protection of the right to housing primarily through transnational exchanges, direct advocacy and research. FEANTSA supports litigation on housing rights and has lodged several Collective Complaints over the past years.

FEANTSA has consultative status with the Council of Europe, and as such is one of the organizations authorized to lodge collective complaints under the Revised Charter. The complaint has been signed by Mr. Kjell Larsson, President of FEANTSA, who, according to the statutes of the organisation, is entitled to sign on its behalf.

For the purpose of the procedure Hugo Beersmans is appointed by FEANTSA as adviser as mentioned in Rule 25-2 of the Rules of Procedure of the Committee.

3. Complaint

This collective complaint is aimed at the situation in Flanders, where housing policy in recent decades clearly made too little progress in improving the housing situation of Flemish households, in particular for the most vulnerable households. The Belgian Constitution and the Flemish Codex Housing also include a fundamental right to housing, as part of the fundamental right to human dignity (art. 23, 3° Belgian Constitution). On the ground, however, realizations are hampered and the obligations for the Flemish government arising from fundamental rights are even violated.

The complaint unequivocally argues that the Flemish government violates its duties under the right of families to economic, legal and social protection, in particular with regard to the provision of adequate family housing (Article 16). Indeed, the fact that the right to housing is stipulated under Article 31 of the Charter, does not preclude a consideration of relevant housing issues arising under Article 16 which addresses housing in the context of securing the right of families to social, legal and economic protection.²

Moreover, this lack of effort mainly affects the lower end of the housing market, where people and their families who find themselves in a situation of poverty or social exclusion, or who are at risk of ending up in such a situation, are overrepresented. The results on the ground show that housing policy contributes very little to the right to protection against poverty and social exclusion, although States are obliged to take measures within the framework of an overall and coordinated approach to promote

² The Committee has stated that Articles 16 and 31, though different in personal and material scope, partly overlap in several areas relating to the right of families to housing. In this respect, the provisions for adequate housing and forced eviction are identical under Articles 16 and 31. As Belgium has not accepted Article 31, housing for families is examined in this complaint under Article 16. In *ERRC v Bulgaria* the Committee reiterated the connection between Articles 16 and 31 of the RESC. It was clearly stated that Article 16 of the RESC, dealing with the rights of families to social, legal and economic protection, encompasses a right to adequate housing (ECSR 10 October 2005, *ERRC v. Bulgaria*, No. 31/2005, § 9 (Decision on admissibility)).

the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to housing (Article 30).

In addition, the housing situation in Flanders also violates (in certain areas) the right to protection of health (housing quality, Article 11), the right of children and young persons to social, legal and economic protection (homeless children, Article 17) and the right of migrant workers and their families to protection and assistance (discrimination in access to housing, Article 19, 4°).

4. General overview of legislation and policy

4.1. Housing policy in federal Belgium

Article 23 of the Belgian Constitution states that everyone has the right to lead a life in conformity with human dignity. Amongst other aspects, this right includes the right to decent housing (Art. 23(3), 3° Constitution). The Belgian constitution also clarifies the implications of the responsibility for realising the right to housing within the federal state structure. The basic principle is that all regulatory bodies (at the federal level and at the level of the states) must implement fundamental rights within the matters entrusted to them. The right to housing is thus almost entirely a responsibility of the component states:

- Since 1980, the regions have been the competent authority for '*housing and the policing of housing units that pose a threat to public cleanliness and health*'.³ Based on this provision, the responsibilities of the regions include social housing, various premium schemes (e.g. rent or renovation subsidies) and the vacancy and housing quality policy;
- In 2002, steps were taken to regionalise the housing taxation system. Since that time, the regions have also acquired competence for registration fees and property taxes.
- Finally, in 2014, the regions acquired competence for the '*specific rules on the rental of residential property or parts thereof*'. This refers to private rental law (for housing), including the rules on eviction. At the same time, the component states also acquired additional competence with regard to housing taxes (i.e. tax deductions for owner-occupied dwellings) and pricing regulations,⁴ so that they could henceforth regulate private residential rental pricing, amongst other matters.
- Several matters that are closely related to housing policy are also assigned to the component states. These matters include urban and spatial planning, energy policy, the environment, land and property policy, and urban and town renewal, as well as various aspects of poverty policy, social welfare and health policy.
- As is the case with the right to housing, the constitutionally recognised principles of equality and non-discrimination also apply to the responsibility of each regulatory body within its own area of competence. The component states are therefore also responsible for the realisation of these principles within the housing sector.

The Regions also consider it their duty to realise the right to housing. This is evidenced by the regional equal-opportunity policy and regulations, as well as by the regional housing codes, which refer to the realisation of the fundamental right as a basic principle of the housing policy. The mission statement of the Flemish Housing Code of 2021 is as follows: '*Everyone has a right to lead a life in conformity with*

³ Art. 6, § 1, IV, 1° of the Special Act of 8 August 1980 on Institutional Reform, *Belgian Official Gazette (BS)* 18 August 1980 (hereinafter referred to as the BWHI).

⁴ Article 6, § 1, VI (5), 3° BWHI.

human dignity. To this end, the availability of suitable housing, of good quality, in a decent living environment, at an affordable price and with housing security must be promoted'.⁵

4.2 The foundations of a structural housing crisis

Housing policy in Belgium is rooted in the late 19th century. The dire housing conditions in the growing industrial cities and the political and social threats that accompanied them prompted a number of social laws, including the first Housing Act of 1889. This law provided a framework for establishing social housing corporations (focusing on rental), in addition to being aimed at the promotion of homeownership. In particular, the second policy option, and especially support for homeownership, would prove to be trend-setting. Throughout the entire history of Belgian (and, later Flemish) housing policy, there has been a sustained effort to support homeownership.

From the start, with the Housing Act of 1889, the government allocated tax advantages, premiums and inexpensive loans for the construction or purchase of homes, with the most important arguments being that these facilities would contribute to stability in family and social situations. Efforts to develop a stock of public (i.e. social) housing remained limited, however, including in comparison to other countries (Winters & De Decker, 2009).

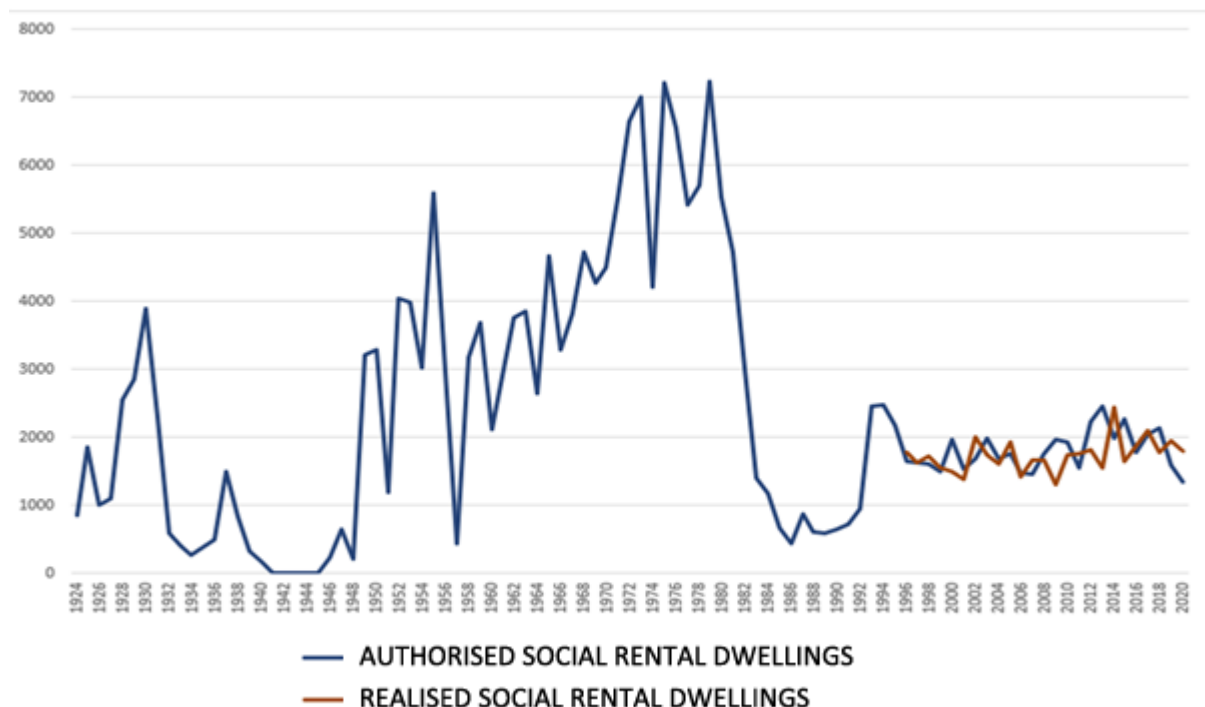
After the Second World War, housing policies throughout Europe acquired a new role in reconstruction. Following the theories of Keynes, housing construction also became an anti-cyclical instrument. More specifically, government investments in housing construction were used as a means to stimulate the economy. In contrast to the situation in many other countries, however, Belgium did not assign priority to social housing, but to the provision of even more intensive support for private housing construction (Deschamps, 1997). To this end, the De Taeye Act (1948) re-introduced a system of premiums for the construction or purchase of dwellings. This system would remain in effect until 1993.

At first, a considerable volume of social housing was also built during this period. Beginning in the 1980s, however, there has been a substantial decline. Moreover, little attention has been paid to the quality of the existing housing stock, with hardly any attention to the private rental market. During the period from 1950 to 1979, only 5% of the Belgian housing-policy budget was allocated for the renovation or improvement of the existing housing stock. The reasoning was that people constructing new homes would leave their old homes (of lesser quality) and that sufficient new construction would thus allow everyone to transition to better housing. Until the 1980s, contractual freedom prevailed within the private rental market. Only in 1991 did limited corrections follow, but even after that, private rental policy would remain limited to the regulation of contract law for decades.

Beginning in 1980, a new dynamic emerged as the housing policy was devolved (in a series of steps) to the three regions (Flanders, Brussels and Wallonia). In the early 1990s, fundamental social and economic rights were also written into the Belgian Constitution, including the right to decent housing, as part of the right to lead a life in conformity with human dignity. The consequence of this (at least on paper) was that economic objectives would no longer play a dominant role in determining housing policy.

⁵ Article 1.5 of the Flemish Housing Code of 2021 and Article 20, 6° of the Decree containing a framework for the Flemish policy on equality of opportunity and equality of treatment.

One important anchor point for Flanders was the 1997 introduction of its own housing code, the ‘Flemish Housing Code’ (currently known as the ‘Flemish Housing Code of 2021’). The Flemish Housing Code provides a legislative foundation for the Flemish housing policy and stipulates that the ultimate objective of this policy should be the realisation of the fundamental right to housing. The Flemish Housing Code also resulted in the introduction of new policy initiatives. The monitoring of housing quality, with minimum quality requirements and a system of administrative and criminal enforcement, thus became one of the priority areas. In addition, the municipalities (and other entities) acquired a greater role in directing local housing policy, and new actors were recognised, including tenants’ associations and social rental offices (‘accredited rental services’). During this period, the Flemish Government also began to invest somewhat more in the social rental sector (Winters & Van Damme, 2004). This is also evident in the graph below, which shows the number of social housing units that have been awarded and completed since these data became available.



* Source: Original calculations based on statistics from VMSW, Statistiek Vlaanderen and Deschamps (1997)

The housing taxation system, which is the main instrument for supporting homeownership, nevertheless remained a federal matter for a long time. Only in 2002 were limited elements of housing taxation transferred to the regions: competence for registration fees and property taxes. In the same year, Flanders started working with these new competences and provided exemptions and a reduction in the tax rate, again to support the acquisition of owner-occupied housing. The partial portability of registration fees when purchasing a new home was introduced at the same time. A premium encouraging owner-occupants to renovate their homes was also introduced. In the budget of the Flemish Government, this had the effect of a drastically changing pattern of resource distribution across the various sectors. From that time on, most of the resources for housing have gone to the homeownership sector at the Flemish level as well. This applied to 60% of all resources in 2011. The remaining budget was almost completely intended for social housing, such that support for private

renters remained quite limited. Only 5% of the Flemish housing budget was used to support the private rental market (Winters, 2013).

In order to increase the supply of social housing, the 2009 Land and Property Policy Decree imposed objectives to increase the number of social rental homes in Flanders by 43,500 units by 2020. This deadline was later postponed to 2023, and again to 2025, with the total number of housing units to be realised being increased to 50,000 (Van Damme, 2017). The Flemish authorities formulated these objectives as a legal obligation for each Flemish municipality to realise a certain number of additional social housing units. However, municipalities with more than a 9% share of social housing were not assigned any further objective. To obtain funding for the realisation of any further social housing projects, they must conclude a covenant with the Flemish authorities each time.

At the same time, the federal level continued to focus only on homeownership. For mortgage loans dating from before 2005, there was a tax reduction for building savings—through principal repayments—along with an additional interest deduction (Van Reybrouck & Valenduc, 2012). In 2005, these measures were replaced by the ‘housing bonus’, a system that essentially amounts to a fixed tax deduction that is set off against the marginal tax rate, so that the benefit increases with income. The system was intended to encourage households to acquire their own homes. The federal government also proved willing to incur substantial costs to this end. In 2011, federal government spending on tax advantages for owner-occupied housing amounted already to €1.5 billion (with regard to Flanders), with the bill expected to increase to almost €2 billion by 2020 (Goeyvaerts & Vastmans, 2014) and to €2.4 billion in 2024 (Vlaamse Woonraad [Flemish Housing Council], 2012). By way of comparison, the Flemish authorities had a total housing budget of only €865 million at that time (Huyghebaert, 2012). In other words, families were almost exclusively encouraged to acquire their own homes.

In 2014, a final phase of the state reform followed (at least for the time being), in which the tax deduction for owner-occupied homes and private rental housing law were regionalised as well. Because of the high cost and inefficiency of the housing bonus, the Flemish authorities decided to limit the system at first, and then to phase it out as of 2020. Nevertheless, the encouragement of homeownership also remains a clear policy priority for this Flemish Government. To compensate for the discontinuation of the housing bonus, the sales tax has now been reduced to a levy of 3%.

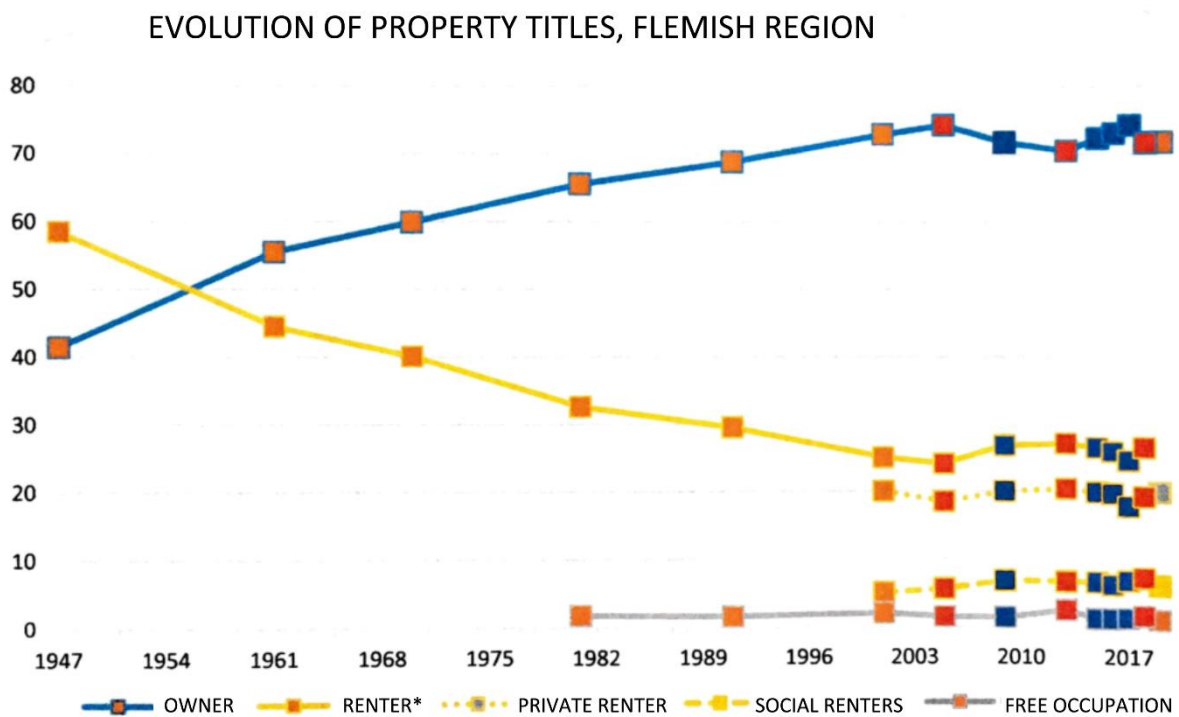
Since 2014, the regions also acquired competence for the ‘*specific rules on the rental of residential property or parts thereof*’. The Flemish Housing Rental Decree, which entered into force in January 2019, optimised and adjusted the housing rental law, and it was intended to ensure the inclusion of the housing rental rights in the objectives of the Flemish housing policy. Amendments to the federal rental law nevertheless remained very limited. This is remarkable, given that at the federal level there was neither a Ministry nor a Minister for Housing at all. For the Federal Government, private housing rental law was controlled and monitored by the Minister for Justice, as an element of contract or obligation law (Vermeir & Hubeau, 2018a).

Compared to other Flemish rental systems (leasehold and commercial rental), it is also striking that the Flemish Housing Rental Decree does not provide for any regulations linking the quality of the housing to the rental price. The latest state reform has nevertheless rendered this perfectly possible. Mechanisms are now in place to objectify commercial rental and lease prices in order to protect the economic interests of commercial tenants and leaseholders, even though no comparable protection exists for residential tenants. Since 1994, however, the right of residential tenants to decent—and thus affordable—housing has been enshrined in the Belgian Constitution as a fundamental social right (Dambre, 2009).

4.3 Housing inequality

The Flemish housing sector consists roughly of three clear positions: owner-occupant, social tenant and private tenant. Over time, profound changes have been observed in this area. In general, it is interesting to note that, whereas approximately 60% of the housing stock consisted of rental homes after the Second World War, this proportion has decreased sharply in recent decades, in favour of the proportion of owner-occupied homes (Winters, 2021).

Homeownership has even been the majority position in Flanders since the 1950s. This is due to the fact that the reconstruction following the Second World War did not take place through social housing, as was the case in other countries, but by supporting private ownership (Deschamps, 1997). Since then, the Belgian and, later, the Flemish housing policies have continued to focus on homeownership, such that the share of owner-occupants has continued to increase steadily. For this reason, Flanders has a very high share of homeownership relative to the neighbouring countries, with a peak recorded in 2005 (74.4%). This was followed by a slight decline to about 72% (Heylen & Vanderstraeten, 2019).



* Free occupation is displayed together with renting until 1981

* Orange: based on 'Volks- en Woningtellingen'; blue: based on 'EU SILC'; Red: based on 'Woonsurveys'

* Source: Winters, 2021

In Flanders, homeownership can be observed in all income quintiles, including the lowest. The development of homeownership over time nevertheless differentiates across various income groups. Since 1976, the share of owner-occupants has increased only within the two highest income quintiles. For other quintiles, homeownership has stagnated or even declined (Winters, 2021). In the period 2005 through 2018, the share of owners within the lowest income quintile actually strongly decreased (from 63% to 50%), while it increased further (from 85% to 90%) within the highest quintile (Heylen & Vanderstraeten, 2019).

Other studies have also indicated that homeownership in Belgium is unequally distributed across various social-economic profiles. For example, for the group of working people between the ages of 25 and 64 years from the lower middle class, the share of owners dropped by six percentage points during the period between 2005 and 2016. The decrease has been even sharper for the group of ‘poor’ people: from 45.8% to 32.2%, in the same period (see table below). In contrast, the proportion of lower-middle-class and poor tenants increased sharply during the same period. In the core middle class, the proportion of tenants is much lower (24%) and, in the higher-income groups, the proportion of tenants fell sharply between 1985 and 2016 (Robben et al., 2018).

	1985			2005			2016		
	Owner	Renter	Other	Owner	Renter	Other	Owner	Renter	Other
Poor	50,7%	47,0%	2,3%	45,8%	51,4%	2,8%	32,2%	65,3%	2,5%
Low Middle Class	59,7%	38,6%	1,7%	64,2%	33,8%	2,0%	58,3%	40,7%	1,0%
Core Middle Class	69,4%	28,5%	2,0%	76,0%	22,0%	2,0%	74,5%	24,1%	1,4%
High Middle Class	72,0%	26,6%	1,4%	82,8%	16,4%	0,8%	85,3%	13,9%	0,8%
Rich	67,1%	28,8%	4,1%	85,4%	13,5%	1,2%	88,6%	10,5%	0,9%
Prevalence	67,0%	31,2%	1,9%	73,8%	24,6%	1,6%	70,9%	27,8%	1,3%

* *Middle Class and Housing (calculations based on SEP and EU-SILC) for people of working age (25 to 64).*

* *Source: Robben et al., 2018.*

The second position in the Flemish housing sector is that of the social tenant. The share of social tenants has remained relatively stable, fluctuating around 6%–7%, with minor differences, depending on the source (Winters, 2021). Since the 1960s, access to housing has been organised through a regulated allocation system, which includes conditions regarding income and property ownership. Initially, the conditions for access were quite broad. Beginning in the 1990s, however, the income limits have been tightened, albeit with fluctuations in broad terms (De Decker, 2000; Winters, 2019).

The third position is that of the private tenant, which accounts for a share of approximately 20%. As the table above points out, lower-income groups are over-represented in this position, which is a clear trend.⁶ On the private rental market, homes more often than not fail to meet minimum requirements for health, safety and housing quality, with a significantly higher proportion of homes in poor to very poor condition, as compared to owner-occupied homes. For private renters in the two lowest income quintiles, 56% of their homes do not comply with minimum standards (Vanderstraeten & Ryckewaert, 2015). While housing quality in general is improving, the private rental market continues to include a large amount of poor to very poor housing. These homes accommodate vulnerable households, such

⁶ Although the average income is somewhat higher than it is amongst social tenants, due to the greater heterogeneity within the group of private tenants.

as those with an unemployed, sick or disabled reference person, as well as the elderly, single-parent families and those on low incomes (Heylen & Vanderstraeten, 2019).

Moreover, the general picture of the Flemish private rental market conceals wide variations in tenant profiles and the reasons for renting privately. For example, for some people, this market offers a temporary housing solution (e.g. in case of changes in life circumstances or when awaiting the purchase of a home), or the flexibility of the sector suits a specific mobility need. For a significant proportion of households (see below), however, renting a home privately is a necessity, as it is not feasible to acquire a home of their own—they have to have a roof over their heads, and access to social housing remains too limited. As indicated by various studies (Leroy et al., 2008; Heylen, 2017), three segments can be distinguished within the rental market.

The first segment consists of ‘older tenants in good housing’: people who have moved into adapted housing at a later age and who generally have few problems with affordability. Within this segment, improvements have been observed in the physical condition of the housing, and a large proportion (40%) of the rental housing is of recent date (built after 2005). This segment accounts for 35% of the market. A second segment consists of ‘young, affluent households in good housing’, for whom renting is an intermediate step towards homeownership and most of whom belong to the higher income quintiles. This segment also accounts for 35% of the market. The third segment consists of people with an increasingly vulnerable profile, in which households with replacement or low income are over-represented. Their homes are of lower quality, and about 40% are even in poor condition. This segment accounts for 29% of the market (Heylen, 2017). Moreover, for private tenants with a limited income (or another form of vulnerability), it is often virtually impossible to enter a better segment, in which the requirements of decent housing are more likely to be met. With hopeless waiting times for social housing and no starting budget to become owners, people in this segment are forced to make do with poor quality housing at prices that are too high (Steunpunt tot bestrijding van armoede, bestaansonzekerheid en sociale uitsluiting [Support centre for the fight against poverty, insecurity and social exclusion], 2017).

Finally, for some people, it is impossible to enter any of these positions. Often due to a lack of financial resources, they do not have access to ownership, are ineligible for social rental housing and cannot find private rental housing. They are defined as unsheltered or homeless. The welfare policy includes a system of accommodations that some of these people can use temporarily. In general, however, the transition to sustainable housing is particularly difficult. Data from the Centres of General Welfare (Centra Algemeen Welzijnswerk, CAW) indicate that, in 2018, the average length of stay in the shelter system with residential support was 106 days. These figures refer only to completed trajectories. In 2019, this increased to an average of 181 days, and it reached 210 days in 2020. A similar pattern can be observed in the case of emergency housing that is organised by local governments. For 60% of the families, the average stay in emergency housing is more than four months, with 30% having an average stay of six months (Op de Beeck et al., 2020). One of the main reasons for increasingly longer stays is the difficulty associated with transitioning to the housing market.

5. Issues under the Revised European Social Charter

5.1 The wrong focus

Most Flemish people desire to buy a home. The stimulation of homeownership is also assigned priority in terms of policy. In addition to the aim to realize the housing preferences, there are also the more ideologically coloured assumptions underlying this policy, for example that homeownership increases the likelihood of good home maintenance, housing security and neighbourhood involvement. Homeownership is also regarded as a form of savings (including for retirement), which can significantly reduce housing costs in later life. Although the advantages of homeownership have not always emerged in empirical evidence (Haffner et al., 2014; De Decker et al., 2015), the growing share of owners in the Flemish housing market is for a long time regarded as a success for these reasons (Van den Broeck & Winters, 2017). The existence of an old saying that Flemish people are born with a brick in their stomach obviously conceals the fact that the choice to encourage homeownership is ultimately political. This also explains the sensitivity of political bodies to (otherwise quite rightly) concerns with regard to the affordability of the homeownership market (De Decker, 2019).

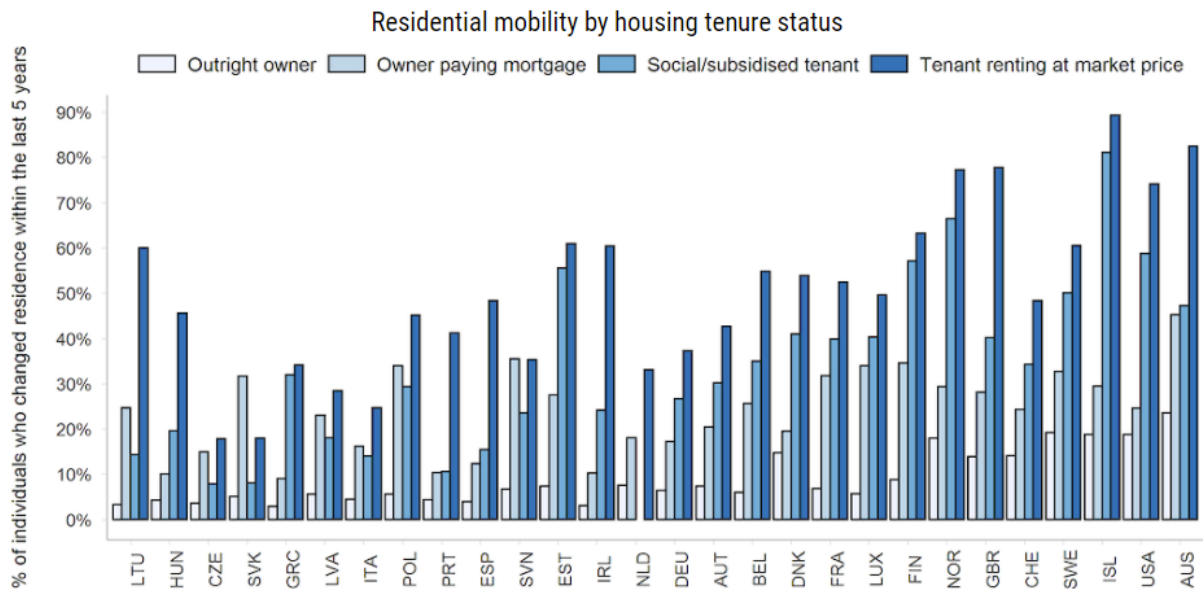
Unwanted societal consequences

The policy preference for homeownership has also been a topic of criticism. According to research by the OECD (Zwart, 2015), there is only weak evidence of the perceived benefits that are assumed to accompany housing policies based on homeownership. The study advocates a system of housing taxation that is neutral in terms of homeownership. Other studies and reports have also pointed out that the Flemish housing market is not very dynamic and thus not 'future proof'. In light of demographic changes (e.g. ageing, thinning of families, migration, new forms of cohabitation, newly composed families) and a certain demand for flexibility from the labour market, homeownership is becoming less able to meet contemporary housing needs (Ryckewaert et al., 2012; Smetcoren et al., 2014; De Decker & Volckaert, 2020; OECD, 2021).

More specifically, homeownership cannot adequately respond to these needs due to factors including 'lock-in' effects, transaction costs and financial barriers to entry. Relatively low residential mobility also raises issues of sustainability, mobility and labour mobility (Isebaert, 2013; Zwart, 2015), amongst others, as well as individual and macroeconomic risks arising from the debt burden associated with homeownership. For years, both the National Bank of Belgium and the European Systemic Risk Board (ESRB) have been warning of increasing vulnerability within the Belgian mortgage market.⁷

⁷ NATIONAL BANK OF BELGIUM, Circular NBB_2019_27 dated 23 October 2019 on the expectations of the Belgian macro-prudential authority concerning the internal management of the conditions for Belgian mortgage loans that are applied by the banks and insurance companies active on the Belgian mortgage market.

Homeowners are much less mobile than renters



* Source: OECD, 2021

In addition, a report by the International Monetary Fund (IMF; 2021) states that the gap between owner-occupants and tenants has become too wide within a context of low interest rates and homeownership-oriented housing policies. The report states unequivocally that governments should move away from a focus on homeownership and work towards realising more social housing and initiatives on the private rental market.

'The paper argues that a post-pandemic economic strategy in Europe that aims to reverse heightened disparities must include more efforts to expand affordable rental housing. Targeted higher housing allowances, more social rental housing, and regulatory and financial incentives that raise rental housing supply across locations would not only tackle housing-induced inequalities but also broaden the opportunities, especially for low-income earners and the young, during the post-COVID economic transformations. At the same time, investment in rental housing would help spur activity, create jobs, and enhance energy efficiency if properly targeted' (Elfayoumi et al., 2021).

An unfair and ineffective housing policy

The following elements are nevertheless of particular importance to the realisation of the obligations of the Flemish authorities under the European Social Charter (revised).

First, scientific studies clearly indicate that housing policies that focus on supporting homeownership inherently favour stronger socio-economic groups and do not prioritise the families and households who are most in need of housing. This is because buying a home requires a sufficient amount of entry capital and income, which is usually not feasible for people with low income or other forms of vulnerability. In other words, such housing policies are not aimed at the groups who are under the greatest pressure with regard to the affordability of housing (De Decker, 2019). The Flemish Housing Council (Vlaamse Woonraad) has also highlighted the necessity of prioritising the greatest housing needs and noted that the greatest needs in Flanders are not on the homeownership market (Vlaamse Woonraad, 2012).

Studies have also provided clear evidence of this problem (the 'Matthew effect'). According to the most recent figures, 53% of the total amount of all housing subsidies goes to the 40% highest income

group. The Matthew effect is even stronger when support is provided for the purchase of a home. In 2018, of all the tax advantages for homeownership—including reduction in property tax and sales taxes, as well as tax breaks on home loans (e.g. ‘mortgage deductions’ and ‘housing bonuses’)—almost 70% went to the 40% highest earners, as compared to only 14% for the two lowest quintiles (Heylen, 2020).

Moreover, for some time now, Belgian and foreign academics have been pointing out that support for homeownership largely translates into higher real estate prices. As a result, it does little or nothing to improve affordability. In the background, specific characteristics of the housing market (particularly in Flanders) play a role as well. The Flemish housing market is characterised by low price elasticity of supply, meaning that an increase in demand has little or no effect on increasing the supply of housing. On the contrary, because real estate prices are rising, the affordability of home ownership is improving very little, if at all (this is known as the ‘capitalisation effect’) (Andrews et al., 2011; Valenduc & Van Reybrouck, 2011; Vlaamse Woonraad, 2012; Vastmans et al., 2016; OECD, 2021).

In other words, support for homeownership convinces only very few people, and it is of little use from a societal perspective (Thiry et al., 1979; Deleeck et al., 1983; De Decker, 1994; Meulemans et al., 1996). For example, due to market forces, the housing bonus has not made it easier for starters to purchase their own homes. The winners in such systems are the financial sector and those who already own multiple homes (De Decker, 1994; Vastmans et al., 2016; Hoebeeck & Inghelbrecht, 2017). Moreover, even if the support does occasionally convince someone to buy a home, there is a danger of ‘risky’ ownership, thereby leading to affordability problems (and the risk of losing the home) or a lack of resources to improve the quality of the home to the minimum level needed to ensure housing in conformity with human dignity (De Decker, 2019) (*supra*).

A second problem is that the social rental sector offers too few solutions for families who are unable to resort to the private market (ownership or rental) for a proper solution to their housing needs, due to low income or other vulnerability. There are two reasons for this. The most prominent reason is that the supply is not large enough (in quantitative terms) to accommodate the existing needs. Waiting lists are growing, and the Flemish authorities have had little or no success in increasing the share of social housing units. As a result, Flanders has an extremely limited supply of social housing, including in comparison to other countries. In addition, over time, access to social housing has increasingly become subject to conditions that are unrelated to the need for housing. As a result, vulnerable people and families are falling through the cracks, even though they are in need of housing.

Third, decades of one-dimensional support for homeownership have negatively affected the private rental market. In addition to the observation that support for homeownership has probably also led to price increases on the private rental market (given the negative impact of increases in general housing prices on the direct rental yield) (Vlaamse Woonraad, 2012), the policy focus on ownership has also resulted in pressure on the private rental market itself. In Flanders, those who can afford it choose for homeownership, because of the subsidies and tax incentives associated with it (De Decker, 2019). The downside of this situation is a progressively weakening public for the private rental market. Over time, it has increasingly become a sector for people who have no more realistic housing alternatives, due to a lack of resources and the limited supply of social housing (De Decker & Geurts, 2000; De Decker & Pannecoucke, 2002; Winters, 2013).

At the same time, such ‘residualisation’ or ‘precarisation’ of the private rental market tends to increase rental risks, in addition to creating an investment climate within which it is difficult for lessors to charge

rents that provide a decent rental return. Especially at the bottom of the private rental market, where affordability problems are at their greatest, this creates a gap between prices that remain affordable to occupants and prices that provide sufficient return for owners. Because of this gap, many people are unable to convert their need for good quality and affordable housing into market demand. Decent homes that are affordable for this group are likely to yield returns that are too limited for lessors (Interfederaal Gelijkekansencentrum [Inter-federal Equal Opportunity Centre], 2014; Oxley et al., 2010).

Studies have indicated that this problem has intensified in recent years and that an increasing number of families and households with low (or very low) income are housed at the bottom of the Flemish private rental market. This tendency is also related to renovations, reconstruction and new construction within the better subsegments of the market. As a result, the share of good-quality private rental housing is increasing (as compared to the period before 2005) and the share of moderate-quality homes is decreasing, while the share of poor-quality homes remains the same. In most cases, however, the high-quality housing segment is too expensive for low-income groups, with declining supply in the mid-range segment increasing competition for lower-quality homes (Heylen, 2017). Moreover, housing-quality policies have too little impact on the lowest market segment. For example, a declaration of unfitness for habitation requires that the residents are able to move to other accommodation, whereas there are often no alternatives. The results, among others, therefore are too often a failure to conduct an active enforcement policy (Steunpunt tot bestrijding van armoede, bestaansonzekerheid en sociale uitsluiting [Support centre for the fight against poverty, insecurity and social exclusion], 2017; Vermeir & Hubeau, 2018).

For lower-income families, the result is that they increasingly end up in poor housing, as their lack of alternatives forces them to rent and compete with others who are in a financially stronger position and who also need a roof over their heads. In their turn, lessors are confronted with demand from potential tenant groups that are becoming increasingly impoverished. As a consequence of increasing competition on the one hand and decreasing supply (in the lower segment of the market) on the other, lessors are in an even stronger position, and they even possess a *de facto* guarantee of demand within the lower segment. There is no true market in this situation, as scarcity strengthens the negotiating position of lessors, making it easier for them to exclude 'undesirable' potential tenants and for them to charge prices that are not commensurate with the quality of the housing. As a result, the most vulnerable individuals and families have difficulty accessing housing and, when they do find accommodations, they often end up in sub-standard housing and/or paying rents that do not reflect the quality of the accommodations they are offered (Interfederaal Gelijkekansencentrum [Inter-federal Equal Opportunity Centre], 2014). These problems are often even more pronounced for specific target groups, including the elderly, large families and people with disabilities (Vlaamse Woonraad, 2017b; Schepers et al., 2020; Volckaert & De Decker, 2020).

Others are not able to find any housing solutions at all and must rely on support from welfare actors, who either propose solutions through shelters or offer very temporary housing solutions with no housing security at all. A lack of structural housing solutions also means that a significant proportion of people who find themselves in situations of homelessness are likely to remain so for a considerable period of time. Despite the lack of figures at the Flemish level (Fondation Abbé Pierre [Abbé Pierre Foundation] & FEANTSA, 2021), a census conducted in Ghent—one of the largest cities in Flanders—indicates that 38.8% of all homeless people have been homeless for more than two years (Hermans & Italiano, 2021).

Although policy actors have been aware of this problem for years,⁸ the Flemish authorities have neglected to take any meaningful steps to improve the housing situation, particularly for the most vulnerable groups. For example, Sien Winters, a research leader at the HIVA – Research Institute for Work and Society (KU Leuven) and coordinator of the Policy Research Centre Housing, noted in 2013 that the Flemish authorities had hardly any funds available for the private rental market. According to Winters: *‘With a share of only 5% of all government funding going to housing policy, we here in Flanders are far below what other countries are doing. Unlike most European countries, we do not have a rent subsidy that allows low-income families to live comfortably and affordably, even on the private market’* (Winters, 2013). Even today, neither the rent allowances nor the share of social rent is of such a nature that they could meet needs within society in terms of housing. The support that is available is granted under very restrictive conditions, and it suffers from problems of non-take-up, which limit its effective contribution to decent housing. For this reason, in its Fifth Periodic Report of 26 March 2020 under the International Covenant on Economic, Social and Cultural Rights, the UN Committee on Economic, Social and Cultural Rights (CESCR) notes a deficiency in the supply of affordable social (and other) housing.⁹

Below, we outline the consequences of the flawed Flemish housing policy in this area. We distinguish between the homeownership market, the social rental sector and the private rental market, analysing the situation according to the various components of the fundamental right to housing (e.g. affordability, quality, access and housing security). We then address the position of individuals and families in situations of homelessness, as well as that of Travellers. The figures used are derived largely from studies conducted by or on behalf of the Flemish authorities. It should be emphasised at the outset that this section is based largely on survey material. Knowledge about the actual housing situations of many groups that are more difficult to reach (e.g. undocumented migrants or homeless people) is very limited in Flanders. In addition, surveys are always susceptible to the risk of socially desirable answers (in particular when people are asked to report on their living situations or on the extent to which they, as lessors, would discriminate). It is therefore quite likely that the official statistics still underestimate the actual housing needs (De Decker et al., 2015).

5.2 Homeownership market

5.2.1 No balanced housing market

According to the results of surveys and data on the housing situations of Flemish households, the position of owner-occupants is much better than that of private or social tenants. On average, their homes are of better quality, they have limited affordability problems and a high level of housing security. Homeowners are also at substantially less risk of poverty (Hubeau et al., 2015). This is a logical consequence of the fact that those who can afford it—the higher-income groups— most often opt for homeownership in Flanders. Behind this general picture, however, lie negative effects, for society as a whole, as well as for some owner-occupants.

⁸ For example, consider the numerous recommendations on this subject by the Flemish Housing Council, the official strategic advisory council to the Flemish authorities with regard to housing policy.

⁹ The CESCR also recommended increasing the availability of affordable, high-quality housing, particularly by increasing the supply of social housing, addressing vacancy rates and regulating rents on the private market (E/C.12/BEL/CO/5, §§ 38-41 and 46-47).

The Belgian and, later, the Flemish housing policy, with its decades-long political choice to provide strong support for homeownership, is neither efficient nor targeted. As noted above, support for homeownership is an expensive policy measure, it is not financially feasible for vulnerable residents and the granting of benefits is random (everyone who purchases a home is eligible). The housing policy thus inherently provides an advantage to the stronger actors in society, while assigning no priority to those in greatest need of housing. Moreover, because the support has largely translated into higher housing prices, the support mechanisms have resulted in little or no improvement in access to housing. Studies have confirmed these Matthew and capitalisation effects time and again (Thiry, et al., 1979; Deleeck et al., 1983; De Decker et al., 1994; Meulemans et al., 1996; Vastmans et al., 2016; Hoebeeck & Inghelbrecht, 2017).

As we have also mentioned, there are negative effects from a social point of view in other areas, including the economy, mobility and sustainability. The Social and Economic Council of Flanders (Sociaal-Economische Raad van Vlaanderen, SERV), the consultative body of employers' and employees' organisations, recently raised the fundamental question of whether the Flemish housing logic—which is based on the homeownership model—is still appropriate. One reason is that Flanders, with its many private owners, will have difficulties making the necessary investments in climate objectives, such as energy efficiency (SERV, 2021). A study by Itinera confirms the need to question our homeownership-driven housing model and calculates that 40% to 51% of current homeowners are unable to finance the necessary renovations (Albrecht & Hamels, 2020).

For these reasons, academics, civil society organisations and a wide range of advisory bodies have long held the opinion that Flanders is in need of a paradigm shift, in which the principle of neutrality towards homeownership is advanced as an alternative, with government support that treats the property and rental sectors equally. These opinions are not only based on the injustice and inefficiency of a housing policy with a relatively one-sided focus on homeownership, but also on well observed risks at the bottom of the housing market (see Sections 5.2.2 and 5.4). In the past, the Flemish Housing Council has repeatedly pointed out the negative consequences of the Belgian and Flemish housing policies and the difficult situations created by the distorted policy focus, in addition to the need for a stronger private rental policy and a substantial increase in the supply of social housing (Vlaamse Woonraad, 2012; Vlaamse Woonraad, 2016; Vlaamse Woonraad, 2017b; Vlaamse Woonraad, 2017c). In a study on a more equitable housing taxation system, Van den Broeck and Winters (2017) also note that a more neutral treatment between owner-occupied and rental properties would be appropriate.

Remarkably, in its 2050 Housing Policy Plan, the Flemish authorities explicitly recognise the need for a more balanced housing market: *'In a balanced housing market, we would also like for there to be freedom of choice. Families should have autonomy in the choice between ownership, rental or another form of housing. For this reason, the housing market is in need of equivalent sub-markets, each of which functions well and offers the necessary guarantees for housing in conformity with human dignity. Only then will families be able to make a conscious choice'* (Vlaamse Regering [Flemish Government], 2018).

To this day, however, the Flemish authorities continue to make choices that run counter to this objective. Although the housing-bonus system was eventually discontinued beginning in 2020,¹⁰ after years of sharp criticism, the stimulation of homeownership has remained a clear policy priority. To

¹⁰ This means that there will no longer be a housing bonus for those taking out home mortgage loans beginning on 1 January 2020. The situation has nevertheless remained unchanged for those who took out loans before that date and who were thus entitled to the housing bonus. This means that funds will be provided to support homeownership for many years to come. For example, 25-year home loans are by no means unusual in Belgium.

compensate for the discontinuation of the housing bonus, the amount of the sales tax for the (first and only) owner-occupied home has been drastically reduced to a rate of only 3% (as compared to a rate of 12.5% prior to the regionalisation of this tax). The Flemish Government has also ignored the unanimous advice to invest the resources of the housing bonus in the objectives of the Flemish Housing Policy, in order to ensure the constitutional right to decent and affordable housing, meaning that, in particular, these resources should be redirected towards the private and social rental market (Vlaamse Woonraad, 2017d). The freed-up resources for the housing bonus are being consumed by economisation measures, however, such that the Flemish authorities are in fact reducing their budgetary efforts for housing, leaving intact the perverse effects of a decades-long policy based on homeownership.

According to the Minister for Housing, the reduction of the sales tax on the acquisition of an owner-occupied home will be compensated, in budgetary terms, by an increase in the sales tax on the purchase of a second home. Experts nevertheless fear undesirable consequences. Increasing the sales tax on the purchase of a second home could further drive up prices on the rental market. Given that, in Flanders, second homes are often offered on this market, there is a real chance that lessors will compensate for the increased tax burden by increasing rent in order to maintain their rental yield. At the same time, for the homeownership market, there is a risk that the reduction in sales taxes will further support rising real estate prices (through the capitalisation effect), as was the case with the housing bonus. Although the impact of these measures is still difficult to estimate, there is thus a risk of achieving the opposite as was intended by the Flemish Government in its Housing Policy Plan.

5.2.2 Distressed buyers and distressed owners

One specific problem of the strong focus on homeownership— as opposed to the limited and strongly delimited social rental sector and a residualised private rental market—is the strong push for families towards owner-occupied housing, while this does not always provide a sustainable housing solution for the families concerned (Doling & Ford, 2003; Schmid, 2018). This is because purchasing a home requires a long and often heavy financial commitment, potentially increasing the vulnerability to mortgage (and other) debt and eviction. For example, this may be the case due to changes in individual circumstances (e.g. divorce or illness) or to broader social changes (e.g. unemployment due to a period of crisis) (De Decker, 2015).

In Belgium, only 1% of all owner-occupants do not succeed in paying off their mortgage loans on time (Nationale Bank, 2021). This low percentage is largely due to the relatively conservative credit policy followed by the banks in Belgium.

The population of owner-occupants, however, includes a larger share who do not have adequate housing. In quantitative terms, this group is even larger than the number of private tenants living in poor and inadequate conditions. By way of illustration, we refer to a study that quantifies the phenomenon of ‘distressed buyers’ and ‘distressed owners’ on the Flemish housing market. In this study, distressed owners are defined as owner-occupants who were able to acquire a home (of sufficient quality), but who, due to changes in circumstances, find it difficult to keep maintaining their homes, thus rendering the quality of these homes inadequate. In contrast, distressed buyers are households that, due to a lack of alternatives for decent housing on the rental market, purchase sub-standard housing without having the means to bring it up to an acceptable level of quality (Vanderstraeten & Ryckewaert, 2019; Vlaamse Woonraad, 2017).

According to the study, approximately 120,000 owner-occupants in Flanders are combining quality problems with affordability problems. It is assumed that families in the three lowest income quintiles

will also not have the means necessary to improve the quality of their homes in the long run, thus placing them in fact within the group of either distressed buyers or distressed owners. These are residents living in poor housing conditions who are likely to remain in this situation without government intervention, given the financial lock-in that they are experiencing. It is estimated that this applies to 83,000 families, which corresponds to a 4% share of the Flemish homeownership market.

The same study further indicates that homes of distressed buyers and distressed owners often suffer from significantly more quality problems than is the case for other owner-occupied housing and even for the Flemish housing stock as a whole. For example, their risk of carbon monoxide poisoning is four times greater (Heylen & Vanderstraeten, 2019; Vanderstraeten & Ryckewaert, 2019). It was also found that many distressed buyers or owners have tried to improve their homes, but that their attempts have not had the desired effect, in that, even after the work, the homes concerned often still do not meet the safety, health and housing quality standards set by the Flemish authorities. The extent of the defects in these houses, combined with the financial position of the residents prevent them from implementing adequate and structural solutions on their own, without state support (Vanderstraeten & Ryckewaert, 2019).

At the same time, however, Flanders does have a renovation subsidy for the homeownership market, but it goes primarily to the middle class (third and fourth income quintiles) and not to households at the bottom of the homeownership market (Heylen, 2016). Due to the limited and flat amount of the subsidy (20% of certain costs, with no differentiation according to target groups), the technical and administrative complexity and the required pre-financing of the renovation activities, non-take-up constitutes a major problem, such that the subsidy remains highly under-utilised by households with weaker socio-economic profiles (Van den Broeck, 2019). As a result, the Flemish renovation subsidy has little actual impact at the bottom of the market, especially for those households living in the worst housing conditions. In contrast, with regard to support measures aimed at improving energy efficiency, Professor Griet Verbeeck (Hasselt University) notes that the Flemish authorities have opted primarily to subsidise a part of the investment costs. She is also very clear with regard to the targeting and effectiveness of this approach: *'The financial support measures probably do act as a stimulus (perhaps psychological) to the socially strongest group to invest effectively, even though they are generally likely to have sufficient capital to do so without the support. At the same time, it does not provide sufficiently strong assistance for the socially weakest group, as it covers an insufficient share of the investment costs'* (Verbeeck, 2016).

Prof. dr. Johan Albrecht (Ghent University) draws a similar conclusion. He points out that the (flat) renovation rate shows that subsidies and interest-free loans have little impact. Neither will such an approach change much in the future, since renovations to improve energy-efficiency will remain unaffordable for many homeowners. Barely 4 percent of the group of homeowners with limited financial resources could - due to the subsidies and interest-free loans - decide to renovate in order to obtain a lower energy footprint. The current renovation policy is mainly beneficial for higher incomes and hardly reduces the CO₂ emissions of the building stock. And in addition to this Matthew effect, current policies also promote wealth inequality: due to the renovations, higher incomes increase the market value of their real estate. Prof. dr. Albrecht clearly argues for a thorough review of the renovation policy and a more efficient use of the public resources. He states: 'If, for example, the available budgets would be used to renovate and improve the energy-efficiency of social housing, or to increase the supply of energy-efficient social and private rental housing, higher CO₂ savings can be

created and tenants – a group with an overrepresentation of the lowest incomes - can better control their energy bills.¹¹

Under pressure from climate objectives (at the European level), Flanders did launch an ‘Emergency Purchase Fund’ in 2019. The objective is to provide interest-free loans (up to a maximum of €30,000) to help owners of distressed housing to carry out energy renovations on their homes. However, due to the fact that only local Public Centres for Social Welfare (Openbaar Centrum voor Maatschappelijk Welzijn, OCMW) can submit project proposals for residents of their municipalities, distressed buyers for whom the Public Centre for Social Welfare does not file a proposal can thus not appeal to this programme. The first call in 2020 resulted in 308 planned renovations—only a fraction of the number of distressed buyers and distressed owners in Flanders. Poverty organisations explain this limited success by referring to the fact that additional loans (even if they are interest-free) are often impossible to bear for distressed buyers and distressed owners who, by definition, belong to the lowest income groups. In many cases, climate investments are simply not their first priority. The Emergency Purchase Fund thus ultimately demonstrates that the Flemish Government acknowledges the problem, but apparently also has too little insight into the living and housing circumstances of impoverished families at the bottom of the housing market.

5.2.3 Violations of the Charter

For decades, the Belgian and, later, Flemish housing policy has chosen to focus strongly on supporting homeownership, as reflected in the substantial share of the housing budget that successive governments have devoted to this segment of the housing market. This strong, largely one-sided focus on homeownership is incompatible with the obligation of the Government to progressively realise the rights contained in the Charter and to direct policy measures particularly towards the households within the society that are in greatest housing need. Scientific evidence has repeatedly indicated that the benefits of this policy accrue mainly (in terms of both proportion and tendency) to the higher income groups and that the policy has resulted in little, if any, improvement in access to housing. Nevertheless, it has been observed that the Belgian and, later, the Flemish authorities systematically continue to assign priority to homeownership. Moreover, given the high cost of these policy measures, the effective implementation of the obligations under Article 16 of the Charter is out of the question. At the very least, when determining housing policy, the government can make choices that better meet the needs of households that are in need of housing and are unable to realise their right to housing on their own. While housing policy—especially through generally applicable tax measures—has for decades allowed a substantial proportion of public funds for housing to flow to the higher income quintiles, the essential requirements for dignified housing have not been met at the lowest end of the housing market (both owner-occupied and rented) (Vlaamse Woonraad, 2012; Vandromme, 2019).

It is therefore difficult to understand how housing policy, acting in this way, could meet the objective of a comprehensive and coordinated approach to promoting access to housing in order to eradicate poverty and social exclusion. Priority is clearly not being assigned to the most vulnerable groups in society, as required by the European Social Charter, the UN Covenant on Economic, Social and Cultural Rights and other agreements.¹² Moreover, decades of support for homeownership has even pushed

¹¹ ‘Miljoenen euro’s renovatiesubsidies hebben geen impact’, De Tijd 15 december 2021.

⁹ The right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, UN Doc. E/1992/23, §11; ECSR 5 December 2007, *ATD Fourth World v. France*, no. 22/2006, §65; ECSR 5 December 2007, *FEANTSA v. France*, no. 13/2002, §56 (Decision on the merits); ECSR 4 November 2003, *Autism Europe v. France*, no. 13/2002, §53 (Decision on the merits) and ECSR 25 June 2010, *COHRE v. Italy*, no. 58/2009, §§39-40 (Decision on the merits).

some financially vulnerable residents further into problematic housing situations. This also represents a violation of Articles 16 and 30 of the Charter, each separately, but also in conjunction with Article E.

On the homeownership market, these difficult housing situations are illustrated by the phenomenon of distressed buyers and distressed owners. They are steered in the direction of purchasing a home (through tax measures and a lack of decent alternatives in the rental sector), while they are 'held captive' in housing circumstances that fail to meet essential requirements for housing in conformity with human dignity. Moreover, they have hardly any prospects for improving their housing situations through government support. The figures on distressed buyers and distressed owners, including the problems of under-utilisation of subsidies by socioeconomically weaker groups confirm the analysis that the Flemish housing policy does not have the right focus. It is absolutely unacceptable that, in Flanders, allowances and benefits from the housing policy mainly end up going to those who already have sufficient means to meet their housing needs, while vulnerable families and single people are pushed into precarious housing situations as a result (Heylen, 2020).

From the perspective of the latter group (distressed buyers, distressed owners and other homeowners in precarious housing situations), the conclusion is also that the Flemish housing policy devotes too little effort to the realisation of their right to decent family housing. The practical effect of available subsidies, which exhibits a strong under-representation of the lowest income quintiles, does indeed demonstrate that the Flemish Government is making inadequate effort to remedy the negative effects of its own focus on homeownership. This is the case, despite the fact that the households in these income quintiles are those in the homeownership market with the greatest need for housing. From this perspective, the situation in Flanders is also in violation of Article 16 of the Charter, separately and in conjunction with Article E. At the same time, a complete and coordinated approach in the fight against poverty and social exclusion is out of the question, given that the housing policy clearly pays too little attention to the position of disadvantaged, vulnerable groups. For this reason, the situation in the Flemish Region is also contrary to Article 30 of the Charter, in conjunction with Article E.

5.3 Social housing

Social rental housing is one of the most important instruments available to the Flemish authorities for the realisation of the right to family housing and for combating poverty and social exclusion. Calculations by Verbist and Vanhille show that poverty among social tenants would be 40% higher, if this group had to pay the rents on the private rental market (Verbist & Vanhille, 2013).

Social welfare theory is often cited to justify the existence of a social rental system in Flanders. This is because, as in other countries, the housing market does not function as a free market (there are various market imperfections), and access to decent housing is not equal (Barr, 1998, Winters et al., 2007). In response, the government can regulate, improve the flow of information or intervene through transfers in 'cash' or in 'kind' (e.g. the provision of inexpensive housing). Arguments for a strong social rental sector can be found primarily with regard to the inequality of access to housing, as it addresses three important causes underlying this social problem: low income, discrimination and insufficient supply.

From within the framework of fundamental rights and from the perspective of residents, it can also be stated that the provision of housing by the government (or by semi-public organisations) under social terms and conditions to households that are unable to do so on their own could intrinsically offer the most sustainable guarantees in terms of access, housing quality (physical, as well as in terms of

environment and liveability), housing security, affordability and adaptability. By contrast, private lessors (in Flanders, they are mostly private individuals who rent out one or two houses) cannot be expected to take on tasks relating to housing assistance or the quality of life in entire neighbourhoods or districts (Winters, 2019).

The Flemish authorities have largely entrusted the task of providing social housing to two types of social lessors: social housing corporations ('sociale huisvestingsmaatschappij' or 'SHM') and social rental agencies ('sociaal verhuurkantoor' or 'SVK'). In late 2020, social housing corporations owned or managed 159,217 social rental homes, with 12,412 being leased or managed by social rental agencies (VMSW, 2020). The difference between these two entities is that social rental agencies lease houses on the private market in order to sub-let them to the target audience under social terms and conditions, while social housing corporations develop and manage their own housing stock.¹³

The Flemish social housing sector is limited, and it is regarded as a 'social safety net' that, as a rule, is directed towards households who are unable to meet their housing needs on their own (Winters et al., 2007). In connection with this function, the Flemish authorities have defined access to social housing according to registration and admission conditions relating to income and property. In doing so, it aims to strictly limit housing access to those in need of support in order to realise their right to housing.

Finally, the social rental sector will undergo comprehensive reforms in the coming years (beginning in 2023). According to a recently adopted decree, social rental agencies and social housing corporations will be required to merge, thus leaving maximum one actor in each municipality (although the same actor may be active in more than one municipality). The existing system of allocation will also be replaced.¹⁴

5.3.1 Too few social housing units

Authority over social housing was devolved to the regions in 1980. In the early 1980s, the Flemish Region is thought to have had about 100,000 social rental units (Vandromme, 2019). According to figures from the Flemish social housing authority (Vlaamse Maatschappij voor Sociaal Wonen, or VMSW), 40 years later (31/12/2020), that number had increased to 159,217 rental units owned by social housing corporations and 12,412 units managed by social rental agencies, for a total of 171,629 social rental units.

Share of social rental units

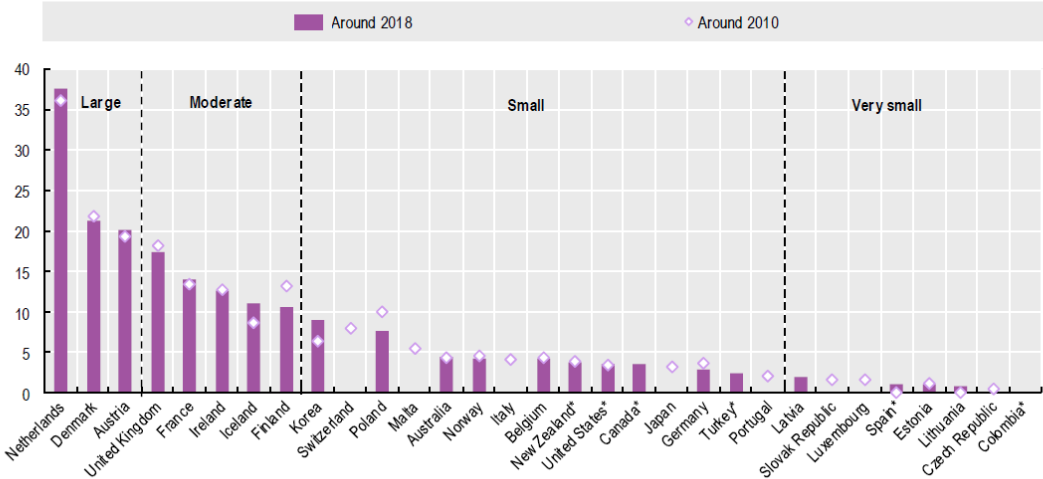
The geographic distribution is relatively uneven. Social rental housing is found primarily in the central cities (with a share above 9%) and, to a slightly lesser extent, in the smaller cities (with a share above 6%), with relatively limited numbers of social housing units in the urban periphery, the transition area and rural areas.

¹³ In addition to social housing corporations and social rental agencies, other types of lessors can provide social rental housing as well: the Flemish Housing Fund, the municipalities, the Public Centres for Social Welfare and inter-municipal cooperatives, insofar as they have called upon well-defined social housing subsidies (Vandromme, 2019). Although their numbers are limited, these entities do count towards achieving the binding social objective (Bindend Sociaal Objectief; see below).

¹⁴ Decree of 9 July 2021 containing amendments to various decrees relating to housing, Belgian Official Gazette (BS) 10 September 2021.

The average share of social rental homes in Flanders is about 6% of the total housing stock (Heylen & Vanderstraeten, 2019). From an international perspective, this is low (Scanlon et al., 2015; OECD, 2020).

Social rental dwellings, % of the total housing stock in selected years (2010, 2018)



* Source: OECD, 2020

Waiting lists and waiting periods

In addition to the limitations of the efforts of the Belgian and, later, the Flemish authorities from a comparative perspective, these efforts are clearly falling short of alleviating the housing shortage in Flanders. The substantial increase in the waiting lists for social housing applications provide a striking illustration. These lists include prospective tenants who have applied for social housing and who have met the registration and admission conditions. In other words, the lists concern a group of families and singles in need of housing support whom the Flemish authorities have deemed unable to provide decent housing on their own (Vandromme, 2019).

The table below, which is based on the official statistics of the VMSW,¹⁵ shows in the second column the number of unique prospective tenants who are on a waiting list for a social housing corporation and who are not living in social housing provided by a social housing corporation. These figures do not include those who are already living in social housing unit and have applied for another social housing unit (e.g. because the current unit is no longer appropriate to the size of the family). These renters are displayed in the third column, which shows the sum of both new prospective tenants and current tenants wishing to change to other adapted social housing units.

Prospective tenants: Social housing corporations

	Unique prospective tenants without social housing	Total number of unique prospective tenants
2012	95,862	107,090
2013	92,988	104,976

¹⁵ Available (in Dutch) at www.vmsw.be/statistieken.

2014	108,134	120,504
2015	105,370	117,681
2016	124,653	137,177
2017	122,528	135,500
2018	140,788	153,910
2019	141,324	153,510
2020	156,541	169,096

Social rental agencies also have waiting lists. According to the annual reports of the VMSW, this sector had 72,645 prospective tenants at the end of 2020 (VMSW, 2021). As reflected in the table below, the lists are growing even more strongly within these entities.

Number of tenants on a waiting list: Social rental agencies

	Unique prospective tenants
2012	26,552
2013	25,310
2014	34,684
2015	32,813
2016	45,060
2017	46,449
2018	60,136
2019	57,230
2020	72,645

When interpreting these figures, it is important to note that the same prospective tenant can be on the waiting lists of both a social housing corporation and a social rental agency. For this reason, the total of the two lists for a given year should not simply be added up. In addition, the waiting lists are updated every two years, removing people who no longer meet the conditions, those who indicate that they are no longer interested and those who do not respond to requests for information. The accurate estimation of developments in the number of candidates on the waiting list thus requires comparison with the number every two years (Vandromme, 2019). At the same time, however, this system of updates does indicate that the waiting lists provide an accurate overview of the number of prospects.

Besides the size of the waiting lists, the continuing growth also provides an important indication of the housing shortage that remains unanswered in Flanders.

In addition, slightly less than 10% of the housing stock held by social housing corporations is vacant (14,218 units as of 31/12/2020), with more than half of these vacancies being structural (accounting for 5% of all social rental housing).¹⁶ This is partly due to a lack of renovations and the resources needed for them in the past (VMSW, 2021). The number of units leased by social housing corporations (159,210), including vacancies, is therefore even lower than the total number of unique candidates on a waiting list (169,096) for a unit from a social housing corporation.

Logically, the fact that the demand for social housing greatly exceeds the supply also has an effect on the waiting periods that prospective tenants must endure. By 2020, the waiting period for allocation of units by social housing corporations had increased to an average of almost four years (1,358 days, as compared to 1,131 days in 2016) (VMSW, 2021). In some cities and municipalities, the average waiting time is even longer. For example, in Rotselaar, prospective tenants must wait an average of 4,285 days (nearly 12 years) before being allocated a unit. Differences also exist between groups of prospective tenants. For example, the waiting period for large families remains substantially longer than the average waiting period for Flanders.

Supply does not follow housing needs

The group of potential social housing beneficiaries is ultimately even much larger than the figures above suggest. For some time, poverty organisations have been pointing out that the lists of prospective tenants underestimate the actual housing shortage. It is indeed the case that not all potential beneficiaries are registered. Some people might fear the stigma of social housing, while others might not know that they are eligible, and yet others might not register due to the long waiting periods or the additional documents and information that is required (Steunpunt tot bestrijding van armoede, bestaansonzekerheid en sociale uitsluiting, 2017). In 2018, approximately 250,000 private tenants (almost half of all private tenants in Flanders) were legally eligible for social housing. This means that there are 250,000 families who meet the income and property conditions at that time (see below) for social housing, but who must still rent privately. A similar result emerged from an analysis of the actual (i.e. the 'need theoretical target group') on the private rental market (defined as '*all private tenants paying more than 30% percent of their income in rent or occupying a residence that is in poor condition and belonging to the 40% lowest income bracket*'): 254,300 households currently housed in the private rental market need social rental housing in order to live in conformity with human dignity. This number corresponds to 47% of all private tenants (Heylen, 2019).

The same study also shows that the current income requirements capture the housing need on the private rental market quite well, given the overlap between the legal and theoretical target groups. It is important to note, however, that this study considers only the housing shortage on the private rental market, despite other studies indicating the existence of a group in need of housing support at the bottom of the owner-occupier market (e.g. distressed buyers and distressed owners, as was pointed out above).¹⁷

The figures above also allow to calculate how large the Flemish social rental sector should be at least in order to correspond to the legal or theoretical target group. This is the sum of existing social tenants renting from social housing corporations (144,812), existing social tenants renting from social rental agencies (12,409) and the legal target group who do not yet live in social housing (248,900). In all,

¹⁶ Of these social housing units, 477 have even been vacant since 2012.

¹⁷ On this point, we refer to the explanation in Section 5.2.2.

406,121 social rental units are needed as of 2021. Compared to the total number of households in Flanders in 2021 (2,860,000), this translates into a need for a 14.2% share of social housing.

Given the rate of growth in the past decade, with an increase of approximately 2,000 to 2,500 housing units per year (VMSW, 2021), an immense acceleration in the pace of new construction of social housing will be needed in order to be able to offer housing to people in need within an acceptable period of time. The Belgian Court of Audit (Rekenhof) arrives at the same conclusion in a recent report (2021): *'Given the great need for additional social housing and the limited increase in funding for the construction of new homes, the waiting list will continue to grow. The problem of waiting lists for social housing will not be resolved in the near future'*.

Table of annual social rental housing transactions, by type of transaction and type of social lessor (development 2016–2020)

TYPE OF TRANSACTION	2016	2017	2018	2019	2020	*
1. NUMBER OF NEWLY CONSTRUCTED SOCIAL RENTAL UNITS (SHM'S)	1.778	2.035	2.128	1.589	1.339	
2. NUMBER OF COMPLETED RENOVATIONS* TO SOCIAL RENTAL UNITS (SHM'S)	1.323	2.153	970	1.800	2.235	
3. NUMBERS OF NEW UNITS RENTED BY SOCIAL RENTAL AGENCIES (SVK'S)	1.236	1.375	1.504	1.317	1.236	
4. NUMBER OF UNITS NO LONGER UNDER THE MANAGEMENT OF SVK'S	422	518	531	607	538	
5. NET GROWTH OF SVK-UNITS	814	857	973	710	698	
TOTAL GROWTH (1 +5)	2.592	2.892	3.101	2.299	2.037	

Renovation costs exceed €15,000 per residence

** Source: Original calculations based on statistics from VMSW¹⁸.*

The Flemish Government falls short

This limited growth is due to multiple factors. One is that, in recent years, the primary focus has been on the renovation and replacement construction of the outdated housing stock. As indicated by a housing screening (2018), the sector did not score well in terms of housing quality. The public housing

¹⁸ Available (in dutch) via <https://www.vmsw.be/statistieken>.

stock even scored as poorly as the housing stock on the private rental market, while the latter has traditionally been regarded as the most problematic market segment in the Flemish Region in terms of housing quality. A previous screening in 2013 had already shown that social housing was not much better (if at all) than the private rental market in this regard. The 2013 study reports that 46.9% of private tenants had moved into homes that did not meet minimum housing quality standards, while 44% of all social housing units were found not to meet these standards (Heylen & Vanderstraeten, 2019; Van den Broeck, 2019). Such a high proportion of social housing of inadequate quality reflects structural underfunding for maintenance, as well as for the necessity of an urgent renovation of the housing stock, which has necessitated additional effort in recent years.

When viewed over the longer term, however, the greatest inadequacy can be attributed to the Binding Social Objective (Bindend Sociaal Objectief, BSO), or the implementation thereof. As mentioned above, the Flemish Government has outsourced the task of building social housing to social housing corporations and social rental agencies. The Flemish authorities have also assigned a directive role to the local authorities and, in connection with this, have imposed a legal obligation (i.e. the BSO) on every Flemish municipality to realise a certain number of additional social rental units in the period 2009–2025. On paper, this amounts to at least 50,000 additional social rental units, distributed across Flanders (Van Damme, 2017). The required number for each municipality was determined according to a baseline study conducted on 31/12/2007, in which objectives were no longer assigned to municipalities with 9% or more social housing within their jurisdiction. Progress towards this BSO is monitored every two years.

The baseline study (late 2007) reported 143,226 social rental units. According to our count, there were 159,124 social rental units at the end of 2020. This is a total net increase of the realised social rental stock of 30,014 social rental units, taking into account the demolition, sales and renovations that lead to a decrease in the existing stock. According to a report by the Belgian Court of Audit (2015), however, the methodology used to determine the starting point for the baseline measurement is open to serious criticism. One reason for this is that the Flemish authorities have largely included the units that were already being leased by local authorities with social objectives on 31/12/2007 in the increase in the social housing supply, purely based on fact that they have fallen under the social rental system since 1/1/2008. There was nevertheless no real additional increase in the social rental supply, according to the Court of Audit, which further states the following with regard to the policy of the Flemish Government:

'The departure status of the social housing stock is determined by a baseline measurement conducted at the end of 2007. The size of the expansion is not substantiated, however, and the set of objectives is confusing, due in part to the fragmented regulation in two different decrees. Moreover, some provisions are incompatible, while others are unclear (e.g. the start of the realisation period) or will not lend themselves to compliance in practice, as no baseline measurement was carried out at the right time or because sub-objectives (targets for rent in municipalities) have a longer realisation period than the main objective (regional target for rent). Since 2013, the financial contribution from the Region for each rental unit completed has increased, while no proportionate increase has been applied to the credits. As a result, fewer realisations can be funded each year. For this reason, the realisation period for the regional objective was extended by three years. The number of new social housing units to be planned, as determined by decree of the Flemish Government, is not sufficient, given that new units must not have been merely planned at the end of the realisation period (...) but must have been effectively realised. In addition, for rental properties, there is no provision to compensate for annual attrition (e.g. due to sales or demolition).'

The realisation period for the social housing target has already been extended twice, from 2020 to 2023 and, finally, to 2025. With three years to go, it is extremely doubtful whether the Flemish authorities will even achieve the objectives set out in the BSO, particularly given that barely one quarter of the €1.77 billion budget planned for the realisation (and renovation) of social housing in 2021 had been spent as of the end of October 2021.¹⁹ Moreover, it is feared that the extensive reform of the social rental sector to be conducted in the coming years will lead to an even further decrease in the production and renovation of social rental housing.²⁰

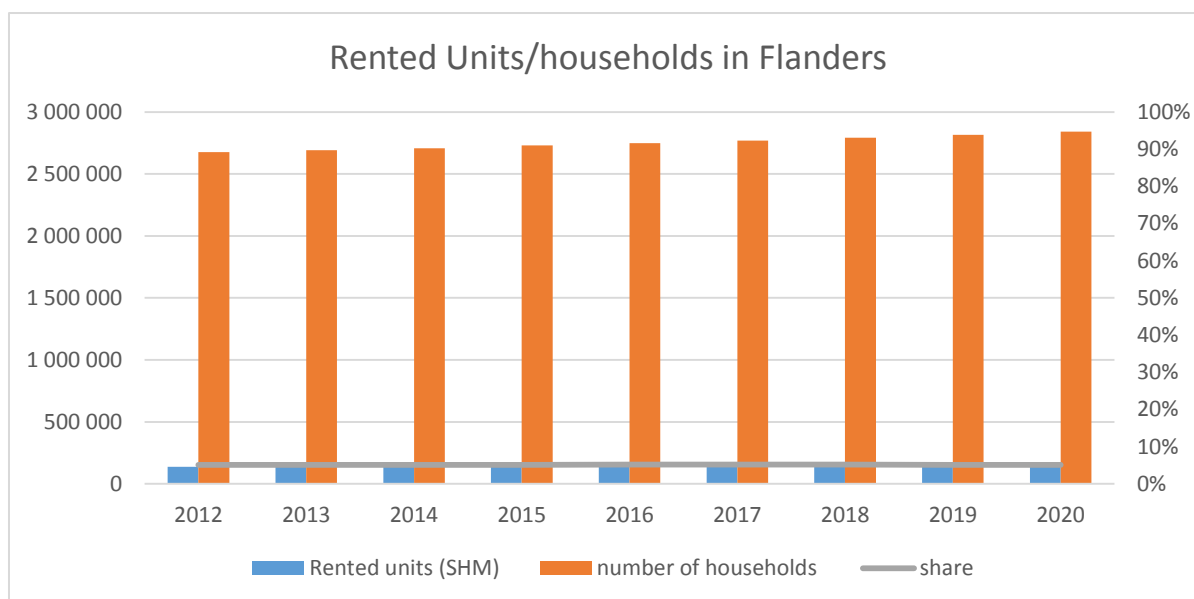
After all, the manner in which the BSO is organised and functions in practice demonstrates especially a lack of ambition to develop a sufficiently large social housing stock. While a share of 9% was intended as a lower limit, it is known that many local governments use this share as an upper limit instead. This is problematic given that, with the intended total growth of 50,000, a certain proportion of homes (14,767 housing units) is not allocated to any particular municipality. The Flemish Government is therefore counting on some municipalities voluntarily doing more than is required of them by the BSO (Van Damme, 2017). Furthermore, serious reservations can also be expressed with regard to the 9% social housing target. Not only does this mean that the intended share of social housing has thus far remained far below the share required to meet the actual need for housing (see above); the Flemish authorities also base their calculations on the number of households as of 31/12/2007. The implication of the latter observation is that, even if municipalities realise their legal obligations in full, the share of social housing will, in reality, be no more than approximately 6-7% by 2025, due to demographic developments (population growth and reductions in family size).

For example, the share of social rental units that were actually²¹ rented in 2020 (144.812) by social housing companies (or 'SHMs', by far the most important suppliers of social housing) compared to the number of households is 5,10%. This share is more or less the same as in 2012 (5,13%). The following figure gives an overview of the situation in 2012 – 2020.

¹⁹ Interpellation of Maxim Veys to Matthias Diependaele, the Flemish Minister for Finance and Budget, Housing and Immovable Heritage, with regard to the under-utilisation of the investment budget for the construction of social housing; report of the Committee for Housing and Immovable Heritage (Commissie Wonen en Onroerend Erfgoed), 30 September 2021, *Parl.St.* VI. Parl., Document 1 (2020–2021).

²⁰ Requests for explanation concerning the limited allocation of the budgets providing for the construction of social housing and the under-utilisation of the social housing budget, as submitted by Vera Jans and Maxim Veys to Minister Matthias Diependaele; report of the Committee for Housing and Immovable Heritage (Commissie Wonen en Onroerend Erfgoed), 18 November 2021, *Parl.St.* VI. Parl., Questions 583 and 584 (2020–2021).

²¹ Hence vacant units, e.g. due to renovation, are not taken into account.



* Source: Original calculations based on statistics from VMSW and Statistiek Vlaanderen

Together with the Belgian Court of Audit, amongst other authorities, we note that Flanders is taking hardly any steps to scale up the supply of social housing, thereby progressively realising the right to housing. The achievements that have been realised in this regard (during the period from 2009 to 2025) will not translate to much more than a relative stagnation compared to 2007.

In addition to the unambitious objectives and the deficient methodology used to set them, the Flemish authorities are also failing to monitor the compliance with obligations under the BSO. Although figures are requested every two years to monitor the growth of the social housing supply, the Flemish Government has repeatedly failed to call to account municipalities that are not following the required path of growth, nor has the Government linked consequences to such non-compliance. According to the Minister for Housing, the efficient enforcement of the BSOs set at the municipal level is extremely difficult and burdensome.²²

The Flemish Region is nevertheless responsible for the realisation of the right to family housing, as well as for combating poverty and social exclusion. This Flemish responsibility logically requires the regulation and supervision of the local housing policy, in order to ensure that local councils effectively achieve the objectives set.²³

The fact that the Flemish Government avoids its obligations is also illustrated by the (recent) decision that municipalities with a social housing share of at least 15% will no longer be eligible for financial support from the Flemish Region for the further development of their social housing portfolios (Flemish Government, 2019). As a result, the Flemish authorities are not making sufficient progress towards fulfilling their obligations under the European Social Charter, in addition to actively inhibiting local governments that are willing to do so.

²² Request for explanation concerning the measurement of the supply of social housing on 31 December 2020, submitted by Maxim Veys to Minister Matthias Diependaele; report of the Committee for Housing and Immovable Heritage, 30 September 2021, *Parl.St.* VI. Parl., Question 4481 (2020–2021).

²³ Cf. ECSR 7 December 2005, *ERRC v. Italy*, no. 27/2004, § 26 (Decision on the merits), ECSR 5 December 2007, *FEANTSA v. France*, no. 39/2006, §79 (Decision on the merits) and ECSR 25 June 2010, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, no. 58/2009, §§ 89-90 (Decision on the merits).

Dr Tom Vandromme (University of Antwerp) is quite clear in this regard. In his doctoral thesis entitled *De Vlaamse sociale huisvesting als instrument ter verwezenlijking van het grondrecht op wonen* (The Flemish social housing system as an instrument for realising the fundamental right to housing), he arrives at the unambiguous conclusion that the limited supply of social rental units is absolutely inadequate from the perspective of the fundamental right to housing: *'The greatest impediment is not in the rules of the social rental system, but in the insufficient supply. This is obviously problematic from the perspective of the fundamental right to housing. Even if the social rental system is in line with the fundamental right to housing, the inadequacy of the supply prevents it from providing sufficient solutions to households in need of housing support. The Flemish Region must therefore increase its efforts to increase the supply of social housing'* (Vandromme, 2019).

5.3.2 Social housing: Who qualifies and who does not?

In addition to a supply of social housing that is in line with actual needs, there is a need for a concept or mechanism that properly captures the housing need, in order to establish the rules that determine who will qualify for social housing. If the inflow and outflow of social housing are not organised properly, it is conceivable that families in need of housing support will not qualify or, conversely, that the scarce supply of social housing will be taken up by families who do not actually need the same level of government support.

In Flanders, the group of people in need of housing support has traditionally been demarcated by conditions relating to income and real estate holdings. Until 31 December 2007, the Flemish Housing Code contained the following provision: *'Prospective tenants cannot be admitted to social housing units unless they meet the conditions regarding real estate and family income set by the Flemish Government'*. These requirements were later supplemented with several additional conditions: being of age (with exceptions) and being registered in the population register. In the period between 1 January 2008 and 1 November 2017, other conditions applied with regard to the willingness to learn Dutch and to follow an integration programme.

It is important to note that these conditions apply not only to the inflow into social housing. The conditions concerning real estate holdings and (since 2017) income condition must also be met permanently throughout the entire rental period.

Income condition

The history of social housing in Belgium and, later, in Flanders demonstrates that the determination of an income threshold has been a constant balancing act, with several arguments pointing in different directions. For the sake of the financial viability of the sector and the achievement of a 'social mix', a broader definition of the target group has been advocated in the past, while others have pointed to the need to maximise the utilisation use of available resources for those most in need of housing support (Vandromme, 2019; Winters, 2019).

In the most recent reform, the income thresholds were raised slightly in order to include low-wage workers, as well as to avoid creating an unemployment trap. Given the extent of overlap between the legal and theoretical target groups for the social rental policy (see above), the conditions with regard to income provide a relatively accurate reflection of the quantitative need for housing.

In the past five years, however, the decision of the Flemish authorities to replace the principle of an open-ended social lease for new social tenants with social leases of nine years (with the possibility of three-yearly extensions) from 1 March 2017 has been particularly criticised. A social lessor must, from

that date, give notice of termination of the rental agreement if, at the end of the current rental period, the tenant has an income that exceeds 125% of the income limit for admission to social housing.

Before there was only a *possibility* for social lessors to terminate a rental agreement for a social tenant who has paid the basic rent *for the third year in a row* (comparable to the market rent on the private market) and whose income has been, in the same period, at least equal to *twice* the applicable income limit.²⁴ Under the new scheme, however, it is sufficient for the tenant to have had an income that is barely 25% higher than the income limit for admission to social housing for the past two years in order to be evicted. Further, the follow-up of this rule is constructed as a (quasi-)obligation for the lessor.

By introducing temporary tenancy agreements, the legislature opted for a social rental model that accommodates only those people who are in need of housing temporarily, and only for as long as they are in need of housing support. The justification for this change is of course that it makes housing units available for families who do meet the conditions and who are therefore more in need of housing support than are the tenants who have been terminated, and their families. Given the serious shortages in the supply of social housing, this argument may not seem unreasonable at first glance. Nevertheless, it should be subject to critical questions.

First, together with rent allowances, social housing is the most selective and therefore the most effective instrument of the Flemish housing policy. The lower income brackets are over-represented. Besides, when introducing these temporary leases, the legislator indicated that there was (and still is) a concentration of low incomes within the social housing system. More specifically, 82% of all social tenants at the time belonged to the lowest four income deciles, with only 5% belonging to the seventh or higher deciles. Conversely, studies have also indicated that—assuming an equal level of all other characteristics—it is mainly higher-income groups who leave public housing (spontaneously). Beginning at the fourth decile, the number of exits increases substantially. For example, tenants from the eighth decile are 44% more likely to leave the social rental sector than are tenants from the first decile (Heylen, 2019b). In the Flemish social rental sector, therefore, there were no significant problems that would indicate that the system was reaching the wrong target group (i.e. people who were not in need of housing support).

This observation has also been established by calculations performed by the Flemish authorities at upon the introduction of temporary leases. Data on current tenants were used to calculate the share of tenants whose income exceeded the eligibility threshold increased by 25%. At that time, this category accounted for 3.88% of all tenants.²⁵ Winters and colleagues arrive at the same finding: in 2014, 3.6% of all current tenants had incomes exceeding 125% of the income thresholds (Winters, 2019; Hubeau & Vandromme, 2017).²⁶ Meanwhile, due to a change in the concept of ‘social tenant’ and due to the distinction between the income that is taken into account when applying for social housing and the income that is relevant for the determination of rent, the group of tenant with an income that is too high would even be lower than in those earlier simulations.

As a result, the introduction of temporary leases will contribute very little to increasing the supply of social housing for people in need of housing support who have not yet been allocated any social

²⁴ Article 33, §2 (1) of the Framework Decree on Social Rental Housing, as introduced by the Decision of the Flemish authorities of 12 October 2007 to regulate the social renting system in implementation of Title VII of the Flemish Housing Code, Belgian Official Gazette (BS) 07 December 2007.

²⁵ Explanatory Memorandum, *Parl. St.* VI. Parl. 2015–16, no. 814/1, 50.

²⁶ In addition, this simulation assumes, presumably wrongly, that no notice of termination for excess income will be withdrawn, on the grounds of recent income loss, future pension or for reasons of equity and the need for housing support.

housing units. For example, even when applying the aforementioned percentage of 3.88% to the period 2026–2035 (3.88% of 22,005 additional social rental units), only a total of 854 social rental units (i.e. 95 per year) would become vacant, as the measure applies only to contracts concluded from 2017 onwards, and it has no effect on current tenants. The useful policy effect of the measure is thus quite limited (Hanselaer, 2017).

These limited social benefits are nevertheless offset by significant disadvantages to households who are forced to leave the social rental sector. One question in this regard concerns whether they will be able to realise their right to housing in a sustainable manner, after the termination of their social rental agreement, including in the near future. It is known, for example, that many women who will soon be eligible for retirement will have a much lower income, due to an incomplete career. Accordingly, whether someone is in need of housing support depends not only on income, but also on particular categorical household characteristics, with income sometimes even being a secondary factor. Examples include households with a disabled family member, large families and even elderly people looking for affordable, assisted living, given the scarce, let alone affordable, supply on the private rental market. Tenants with a migration background are also likely to face discrimination or exclusion, thus rendering the aspect of access to the rental market particularly problematic for them.²⁷ Even if it were to be considered desirable to make the higher incomes leave the social rental sector, a better answer for these groups would be to offer an incentive policy, by directing them actively towards social loans, private rental or homeownership, instead of simply terminating their agreement.

A more fundamental criticism is that such forced outflow would reduce the Flemish social rental sector, which has already served as a ‘safety net’ due to its limited size, to housing for the poor, thus also decreasing its role as a preventive barrier to poverty and as an instrument for structurally strengthening the position of those involved. In the past, the sector was better suited to such roles, as the income gap between eligibility to become a social tenant and the threshold for termination due to excessively high income was much wider. This model thus allowed more room for social tenants to improve in social-economic terms without losing their housing. Now, families earning slightly higher income are at risk of being forced to leave their homes, after which they will have to pay the prices on the private market (which are often too high). Such a state of affairs is not compatible with the view that decent housing should create a sustainable basis from which other fundamental rights can be realised and that allows for improvements in social position. Moreover, the argument of the Flemish authorities (for a ‘better’ allocation of resources) can be traced largely (or entirely) back to the serious shortages in the supply of social housing, for which it is responsible.

Condition relating to real estate holdings

In addition to the income condition, conditions relating to real estate holdings appear to play an important role in defining the target group for social housing. Current and prospective tenants are not permitted to hold rights in rem (neither in Belgium nor abroad) to a residence or plot of land intended for residential development.²⁸ More specifically, the following rights in rem are prohibited: full or partial ownership²⁹ and full or partial rights to emphyteusis, superficies or usufruct. The current, very strict regulations have been in force since 1 January 2020, following an earlier tightening beginning on

²⁷ On this point, we refer to the analysis in Section 5.4.2.

²⁸ They are also not permitted to have contributed such rights in rem to a company of which they fulfil the role of manager, director or shareholder.

²⁹ ‘Bare ownership’, in which the rights to usufruct, emphyteusis or superficies are granted to a third party, is also not permitted.

1 March 2017.³⁰ At the same time, the prohibition of partial immovable property that has been acquired free of charge (e.g. through inheritance) was somewhat relaxed by allowing a transitional period for its disposal.

Until 2017 tenants were not permitted to have any residence or residential land in full ownership or usufruct (in Belgium or abroad). This was a pertinent condition regarding categorical and selective focus on those most in need of housing support, given that the government could reasonably assume that individuals who have a home (particularly in Belgium or Flanders) in full property or usufruct should, in principle, be able to realise their own housing needs, and that those who fully own residential land should be able to build a home on it in the short term (within five years). This condition takes on a completely different meaning, however, when it prohibits partial ownership of property (with non-household members). In this case, there is no pertinent test of the need for housing support, as current or prospective tenants are not able to use the house and/or building plot for themselves and their family.

Nevertheless, tenants in such situation must dispose of (e.g. sell or donate) their share of the rights in rem at short notice, under penalty of termination of their social rental agreements, removal from the list of candidates or exclusion from the allocation of a dwelling. This also applies if there is a very small share in a residence (e.g. 1/8th or 1/16th). Even then, a (prospective) tenant will be excluded from social housing and may thus be obliged to incur costs (or risk a family conflict) to get rid of his share. Yet it is extremely difficult (and, in some cases, impossible) to dispose of a shared asset, given the non-existent demand and the limited scope of the right of use concerned. On the other hand, the impact of this obligation is quite large. In a Region where more than 70% of all households are owner-occupants, candidates or tenants of social housing often become co-owners as heirs (along with other children or family members).

In addition to the fact that the current condition relating to real estate holdings does not reflect the need for housing support, the manner in which it is elaborated is discriminatory. This is because the condition applies regardless of the location of the property (in Flanders, in Belgium or abroad), despite the existence of certain exceptions that apply only to properties located in the Flemish Region (or Belgium). As such, there are no objective and reasonable grounds that would justify that a residence that has been declared unfit or uninhabitable in Flanders can receive an exception for the registration for or allocation of social housing (provided it is sold within one year of allocation), whereas absolutely no exceptions are allowed for a defective dwelling or even a slum in a foreign country. The same applies to other situations as well, such as residences that recognised refugees own in their countries of origin. Such residences can hardly be regarded as decent housing, particularly given that the Belgian State has acknowledged that such an individual was at risk in the place in question.³¹

Especially for current and prospective social tenants of migration background, and particularly those from 'third countries' (non-EU), this method increasingly causes problems. Recently (2021), the Flemish Government provided €5 million in the budget to reimburse the costs of extra-judicial investigations (by private investigation firms) into real estate holdings abroad. For current and prospective social tenants with foreign real estate holdings, however, it is very difficult to prove that such property is in a similar exceptional situation. In many cases, instruments that are known in Flanders (e.g. declarations of unfitness for habitation or land registries) simply do not exist in some

³⁰ Until that time, the prohibition applied only to the full ownership or usufruct of an entire residence.

³¹ Since recently, the Wonen-Vlaanderen housing agency no longer regards real estate that recognised refugees own in their countries of origin as contrary to the condition regarding real estate holdings. This exception is not explicitly included in the text of the regulation, however, whereas other exceptions are.

countries. In addition, such situations are likely to require a great deal of effort (e.g. to dispose of the foreign residence or a limited part thereof acquired through inheritance or gift). This is the case even though it does not solve the housing need, and even though the public within the social rental sector consists largely of vulnerable people, who are known to be less likely to be able to navigate administrative-legal contexts easily. The fact that private agencies have been called in, without many guarantees with regard to the soundness of the investigations that they conduct (e.g. it is unclear how a judge in Flanders could verify whether the findings are correct) is also remarkable, especially considering the consequences that are potentially attached to the investigation (e.g. refusal of registration or allocation, eviction and even reimbursement of the allegedly wrongly received social discounts on the rent) (Meys & Vermeir, 2021).

5.3.3 Distributing the scarcity

The Flemish authorities have established regulations regarding the manner in which the allocation of housing must take place, thereby developing two systems: one for social housing corporations (which also include municipalities and other types of social lessors) and one for social rental agencies. Both allocation systems also have a number of ‘priority rules’, which create additional priorities within the group of prospective tenants in need of housing support. The priorities involved in these rules favour people who are in greater need of housing (e.g. applicants who are homeless) or are intended to increase the efficiency of the system (e.g. avoiding the situation in which a residence that is equipped for a person with a physical disability is allocated to a person without any disability). In addition, both systems take into account (at least to a limited extent) the waiting period that the person has already endured (the ‘chronology’). Although there is undoubtedly room for improvement,³² the principles underlying these allocation rules could be assessed as relatively positive.

Local allocation schemes

In addition to the standard allocation rules and some optional priority rules, the Flemish Government also allows local councils to draw up their own allocation rules that grant priority to specific target groups (possibly even assigning an absolute priority) or to prospective tenants of the municipality itself (see below). The existence of these local allocation rules is usually motivated by the desire to facilitate local customisation and to increase support for social housing. In practice, however, such local regulations have largely contributed to a situation in which prospective tenants who are at greater need for housing no longer receive priority in allocations. For example, with regard to the allocation of social housing to specific target groups, many Flemish municipalities apparently grant priority to the elderly, without providing sufficient justification for why this target group should receive priority over other groups, given that the elderly already account for an above average share in the social rental sector in Flanders.

Local ties

In addition, almost all Flemish municipalities grant priority because of local ties, essentially meaning that prospective tenants are selected according to their length of residence in the lessor’s working area or in the municipality in which the residence is located. The allocation policy in the Flemish Region thus

³² It is strange that the allocation systems of social housing corporations do not grant priority to the homeless, despite the fact that this target group has a very high need for housing. For this group, however, the system of accelerated allocations is applied with the possibility of refusal by social lessors once 5% of the allocations made within a given year consist of accelerated allocations.

ultimately allows municipalities to direct priority towards their own residents. Practical experience has further demonstrated that, in some cases, very extensive conditions are imposed.³³

The requirement of local ties is nevertheless associated with a variety of negative effects, one of which is that it restricts relocation mobility³⁴. This is because, when prospective tenants relocate, it reduces their chances of being allocated social rental housing. There is also consensus amongst housing and welfare actors that local-tie requirements operate primarily as an exclusionary mechanism for the most vulnerable households. This risk was recently highlighted by the European Commission's Service Departments (European Commission, 2020). For various reasons, they tend to relocate more often, often because they have no other choice. Examples include poor housing conditions or exploitation by lessors, more precarious jobs and relocation to areas that offer more employment opportunities.

The widespread use of local ties as an allocation criterion thus stands in sharp contrast to the objective of decent housing as a stepping stone to inclusion and social participation. It can also strain the freedom of choice. While 93% of all Flemish people are able to choose where to live, prospective social tenants must demonstrate long-term local ties, which eliminates their freedom of choice. In a decision dated 7 November 2013,³⁵ however, the Belgian Constitutional Court (Belgische Grondwettelijk Hof) followed a decision of the European Court of Justice³⁶, ruling that conditions regarding local ties must not restrict the freedom of establishment without reasons of housing shortage or need for housing support.

Moreover, the effects of requirements concerning local ties are clearly discriminatory. An objective, reasonable justification for a condition like *'being born in the municipality'* is very hardly conceivable. Amongst other consequences, such conditions make it impossible for newcomers to demonstrate any local ties to a municipality in Flanders. For the director of the umbrella organisation of social housing corporations, the most important explanation for why so few social rental units are allocated to recognised refugees in Flanders has to do with the requirement of 'local ties' (Mallants, 2018). Less extensive requirements of local ties (e.g. *'having resided in the municipality for six of the past ten years'*) can also have discriminatory effects. The difference in treatment always has to do with the fact that some prospective tenants, in addition to a waiting period, are required to demonstrate a period of local ties that is determined by the municipality, even though this requirement does not apply to similar prospective tenants from their 'own' municipality, even those who might be less in need of housing support. The fact that there is a high risk of discrimination, and that there is no legitimate distinction between different groups at play, is also demonstrated by the manner in which local governments are able to introduce conditions relating to local ties. For example, the Flemish authorities do not require municipalities to provide objective data to justify making such distinctions. On the contrary, they also accept disproportionately burdensome requirements (Vandromme, 2019). In addition, the pro-active supervision of the past has now been weakened to *a posteriori* supervision.

³³ For example, one municipality grants priority to candidates who have lived in the municipality for ten years before the age of 18 and, if no candidates meet this requirement, then gives priority to candidates who have lived in the municipality for ten years, after which there is priority to those who have lived in the municipality for at least three years during the last six years and, finally, to those who work in the municipality. Another example is provided by a municipality that grants priority to people who were 'born there'.

³⁴ It should also be taken into account that municipalities in Flanders are rather small in terms of territory and population (22,000 inhabitants on average, according to Statistiek Vlaanderen).

³⁵ GwH 7 November 2013, no. 142/2013.

³⁶ Court of Justice of the European Union, 8 May 2013, in the cases C-197/11 and C-203/11, Libert et al.

5.3.4 Decreasing focus on the need for housing support

As noted above, the social rental system is one of the most important instruments available to the Flemish authorities for the realisation of the right to family housing and for combating poverty and social exclusion. A common thread running through recent policy initiatives, however, is that the vision that the Flemish authorities have of social housing is departing more and more from the notion that decent housing is a basic condition for social inclusion and social participation. Nevertheless, exactly this principle also underlies the Belgian Constitution's recognition of the fundamental right to housing as part of the broader right to lead a life in conformity with human dignity. Recent initiatives on the part of the Flemish authorities have also shifted the focus of the social rental system increasingly away from on meeting the needs of those most in need of housing support. This is partly in line with another observation—that the social housing policy is more and more thwarted by objectives relating to establishment, social integration, migration and the activation of the unemployed. Earlier in this complaint, we referred to developments including the introduction of temporary rental agreements, problems with conditions relating to real estate holdings and the frequently applied condition of local ties.

Another example is the evolution from 'a language readiness' to a 'language knowledge requirement': tenants who, after one year of social renting, do not have a sufficient basic knowledge of Dutch (currently, 'Breakthrough oral') can be punished with fines of €25–€5,000.³⁷ The 'language readiness', which has applied to new social tenants since 1 January 2008, has thus been tightened³⁸ into an obligation to achieve a specific level of language knowledge. A new decree has since been approved³⁹ (but has not yet entered into force) that will scale up the language-knowledge requirement again, to the higher 'A2 oral' level, as specified in the Common European Framework of Reference for Languages. Although there is obviously nothing wrong with encouraging newcomers to learn the language, it is quite curious to link it to social benefits or facilities (e.g. social housing), including the imposition of exams and administrative fines for failure to pass. While language acquisition should be part of inclusion and full participation in society, such policies create a risk of barriers and exclusionary mechanisms. The Flemish educational community and the Social and Economic Council of Flanders (Sociaal Economische Raad van Vlaanderen, SERV) fear that such an approach to language knowledge will be detrimental and even counter-productive for the most unskilled newcomers or illiterate tenants, for whom an approach of positive encouragement would be more appropriate (VLOR, 2020; VLOR, 2021; SERV, 2021). Moreover, elementary language knowledge is already imposed within the framework of the general obligation of social integration for newcomers from third countries (excluding EU citizens), and no serious monitoring has been carried out with regard to the results on the ground under the system of language readiness.

Recent regulations (that are not yet in force) also confirm the trend towards conditions unrelated to the need for housing support. For example, social tenants with job potential must now register with the Flemish employment and vocational training service (Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding, VDAB). Those who do not will be sanctioned with fines. In this case as well, there is obviously nothing wrong with an activation policy, but it is telling that such policies are targeted

³⁷ The required language level is level A1 of the Common European Framework of Reference for Languages.

³⁸ The language-readiness condition was applied as a requirement for both registration and admission for prospective tenants, in addition to as a tenancy obligation which, throughout the course of the scheme, has weakened into a tenancy obligation that can be sanctioned only with increasing fines.

³⁹ Decree of 9 July 2020 containing amendments to various decrees relating to housing, Belgian Official Gazette (BS) 10 September 2021.

precisely (and even exclusively) at social tenants. Why should social tenants, in addition to the general activation policy, be activated differently than people who are not renting on the social housing market? Why should social tenants be the only ones required to pay an additional penalty, on top of the penalties that already exist? Once again, why should the authorities opt for a coercive system involving fines for people in poverty? The Belgian Council of State is highly critical of these policies, arguing in an advice that there is a risk that an unlawful difference in treatment will emerge between non-working social tenants with work potential and other non-working individuals. In this way, the Flemish Government threatens to stigmatise social tenants and make the system increasingly conditional, with obligations that no longer have any connection with the need for housing support.

Another planned amendment involves the introduction of a 'blacklist', which would exclude social tenants who cause nuisance and are evicted after a judgement due to misconduct or neglect. They would not be able to register as prospective social tenants for a period of three years. In the best case, this would mean that they have to wait for three years. However, prospective tenants (once registered) spend another four years on a waiting list (on average), and if they move to another municipality, they may even forget about it altogether (see below). Although it is undoubtedly true that the situations mentioned here could strain on the quality of life in the residential environment and the interests of the lessor and the other residents, the authorities are wrongly devoting insufficient consideration to the disproportionately heavy consequences for those involved.

In the field, tenant, welfare and poverty organisations have highlighted the fact that psychosocial problems are often at the root of evictions due to neglect or nuisance, thus actually indicating a need for extensive counselling. Excluding these residents from social housing means that, at best, they will end up on the private rental market, where support is even more difficult to organise. For highly vulnerable individuals (e.g. those who combine low income with psychosocial vulnerability), the chance of finding a home on the private rental market is also small. Given the lack of realistic alternatives (e.g. homeownership is usually financially unattainable), this measure even threatens to lead to homelessness. The planned initiative thus threatens to touch upon the very core of the fundamental right to housing (Vermeir & Hubeau, 2021).⁴⁰

The Flemish authorities nevertheless do not provide for any judicial supervision in this respect. Social lessors are the ones who can decide not to allow prospective tenants and their families to register for three years, except for reasons of equity, once the court has terminated a social rental agreement with reference to serious nuisance or serious neglect. It is therefore not up to the court to issue any concrete decision concerning whether this sanction (exclusion from registration) is proportionate to the seriousness of the past shortcomings. Moreover, the sanction pronounced by the judge (termination of the social rental agreement) is subsequently coupled with an additional sanction that was not pronounced by the judge. This sanction comes in addition to the already existing possibility of refusing allocation to candidates who have been tenants and whose rental contracts have been terminated or cancelled due to serious or persistent breaches of contract. From now on, the individuals concerned will be excluded *a priori* for three years, as they even cannot register as a tenant. The effects of this system are obviously extremely stigmatising. This 'precautionary measure' also reduces the likelihood of recovery, as in the case of people with psychosocial problems, as it would place them at risk of an

⁴⁰ The authors of this study, which was commissioned by the Minister for Housing, examined the possible introduction of a blacklist on the private rental market. The conclusion—which was based on a legal analysis and a survey of tenant, poverty, lessor and real estate agent organisations, as well as justices of the peace and academics—was abundantly clear that a blacklist would be undesirable and likely to encounter Constitutional objections. The Minister then decided that it would indeed be undesirable and infeasible to introduce such a list for the private rental market. Oddly enough, this is now being done for social rental housing.

especially precarious housing situation. Further, it is a very contentious and thorny issue to invoke past behavior to underpin a current decision. The Belgian Constitutional Court has in fact been reluctant to accept past history as relevant when justifying distinctions that the authorities make between different groups of people.⁴¹

Finally, but perhaps most fundamentally, is the decision of the Flemish Government to perform a comprehensive reform of the allocation system for social housing. In the near future, there will be only one allocation system, consisting of three pillars.

In the first pillar, which accounts for at least 50% of all allocations, local ties will even become the most important criterion, in combination with chronology. Anyone who has lived in a municipality consecutively for at least five of the past 10 years will be granted absolute priority over all other applicants on the waiting list. While local councils will be free to make the conditions for priority even stricter, they will not be permitted to relax or omit them. The latter is quite difficult to explain, given that this new, absolute priority rule is justified with reference to 'local support' for social housing.

Up to 20% of all allocations will be made through a second pillar ('accelerated allocation'), which is aimed at people with additional or acute vulnerability on the housing market. The Flemish authorities have defined an exhaustive number of target groups⁴² who are to be eligible for these allocations, after which a local allocation board will have to decide which of these groups have the most urgent need for housing support. The allocation can be made dependent on a counselling agreement with a welfare organisation. Given the limited capacity of these organisations to provide counselling, however, this could create a new threshold and will, once again, increase the conditionality.

These allocations will not be subject to a condition relating to local ties. The 20% share nevertheless represents a substantial deterioration from the current situation. Various actors have estimated that allocations for additional or acute vulnerability will decrease by about one third under the new system, as compared to the current situation.⁴³ Some regions could even experience decreases of up to one half. One of the expected consequences is that people from emergency housing and other shelter systems will not be able to progress through the system adequately, thus leading to congestion in such shelter facilities in the absence of fully-fledged housing solutions (Op de Beeck et al., 2020) (cf. supra). Serious questions are also raised by the fact that, in preparation for this major reform, the Flemish Government is even failing to conduct comprehensive monitoring and evaluation of the system.

⁴¹ In a case involving housing quality (in the Brussels Region), the Constitutional Court did not accept the drawing of a distinction between lessors according to whether they have or have not been convicted of rack-renting in the past (GwH 9 July 2020, no. 101/2020, B.20.2).

⁴² This concerns: 1) prospective tenants who are homeless or at risk of becoming homeless; 2) young prospective tenants who are or will be living independently with assistance; 3) prospective tenants with mental health problems who are or will be living independently; 4) prospective tenants who are living in poor housing; 5) prospective tenants in extenuating circumstances of a social nature.

⁴³ At the Flemish level, the point-based system allocation by social rental agencies is going to be overhauled. This allocation system was inspired by the ethos typology developed by FEANTSA, and it is aimed at those in acute need of housing need support and those in precarious situations. On an annual basis (2019), social rental agencies account for 2,780 allocations, with social housing corporations (without internal mutation) accounting for 8,225 allocations. Together, this amounts to 11,005 allocations. A 20% share of these allocations would be 2,201, even though social rental agencies alone account for 2,780 allocations. This does not yet take into account the current absolute priority rules that are applicable to rentals by social housing corporations, which in principle take precedence over the optional priority rules, the priority rules of local allocation regulations and the rules on local ties and chronology.

Local councils will then be able to decide for themselves whether they wish to develop a third pillar for target groups. This pillar can account for up to 30% of all allocations. The Flemish Government defines a number of possible target groups (e.g. senior citizens or people with disabilities), but local councils can also add their own. The extent to which the need for housing support will play a role is thus largely dependent on the target groups that will be chosen by local councils. In any case, the Flemish Government has already decided that the obligation of local ties will apply to this pillar as well. Instead of an optional priority rule, as is currently the case, local ties will become an obligatory and stricter priority rule for 80% of the allocations.

This is a curious policy development. In the past decade, the Flemish authorities have indeed placed increasing emphasis on the social safety-net function of social rental housing. Social housing has been allowed to serve only those who truly need it and only for as long as they need it. The new allocation policy will now disadvantage those who are at the greatest need of housing support. Newcomers, vulnerable tenants who relocate frequently and people experiencing an acute need for housing are at particular risk.

There is also no doubt that the social rental scheme will be inconsistent in this way, and that it is becoming so complex that it can hardly be understood by current and prospective social tenants, or even by professional actors. For example, according to calculations by Verstichele, the Flemish Government implemented 24 amendments to the Framework Decree on Social Rental Housing between 2007 and 2018 (Verstichele, 2018). Others have even referred to a ‘vicious circle of regulation’, in which new regulations are continuously produced in response to ambiguities in the already highly complex legislation, thus raising new questions and ambiguities (Van Dooren et al., 2015; Winters, 2019). For social tenants, the social rental system is particularly opaque. It thus requires to expend substantial effort in order to know their rights and even more to ensure their realisation.

5.3.5 Violations of the Charter

Based on the discussion above, we must conclude that the situation in Flanders is not in compliance with the obligations under Articles 16 and 30 of the Charter, for each provision separately and in conjunction with Article E.

By far the most problematic aspect is that the supply of social housing (in quantitative terms) is clearly insufficient to meet existing housing needs. In Flanders, the waiting lists and the waiting period are systematically growing, such that prospective tenants must now wait an average of nearly four years for a residence to be allocated, with this waiting period increasing even further for some applicants (e.g. large families). Studies have established that the sector should at the least double in size to meet the current need for housing, while the actual achievements of the Flemish authorities over a period of more than a decade have amounted to little more than stagnation. The Flemish authorities are not setting sufficiently ambitious targets, and they are failing to monitor the realisation of those that it does set. As a result, Flanders continues to have a very limited stock of social rental housing, including from an international perspective.

Another distressing aspect is that this is not even due to a lack of funds for housing. In 2017, De Decker & Mallants calculated that the production of social rental housing could be doubled—even with only a fraction (10%) of the resources that the Flemish authorities were spending (at that time) on the housing bonus system (which is intended to support homeownership) (De Decker & Mallants, 2017).

The deficiencies in supply are thus the result of political choices, with the consequence that those with higher incomes are most likely to enjoy the benefits of housing policy.⁴⁴

Viewing the situation in relation to previous decisions on the Charter⁴⁵ and the standpoints of the Council of Europe's Commissioner for Human Rights,⁴⁶ the conclusion is obvious that the limited supply of social housing on the one hand, and a lack of effort and ambition to change this on the other, is incompatible with Articles 16 and 30 of the Charter. Particularly for vulnerable families, the result is that not enough decent housing is available in Flanders. Due to its limited size, social rental housing also does not constitute a sufficient barrier to the problem of poverty and social exclusion.

In addition, the Flemish authorities' lack of vision and strategy for social housing has consequences including preventing the progressive realisation of the right to housing (including for families) and a coordinated approach to poverty and social exclusion. When, within a period of barely a few years, income conditions are successively raised to avoid an unemployment trap, followed by the introduction of measures to exclude people who earn even slightly too much, and then greater emphasis is placed on allocations based on chronology and especially local ties (at the expense of housing need), the conclusion must be that there is no coherent, planned policy. In the past, the Belgian Court of Audit has also sharply criticised the lack of a rationally founded policy (with regard to the BSO). The Flemish authorities have either systematically failed to support amendments with the sound monitoring and evaluation of the results in the field, or they are even blatantly going against the advice of experts and the field. These interventions nevertheless touch upon the very core of the residents' right to housing (e.g. eviction for slightly excessive income or even the use of a blacklist for the *a priori* exclusion of certain prospective tenants).

Time and again, social housing in Flanders seems to be a playground for political profiling at the expense of the most vulnerable groups. The discourse of the Flemish policy, which has repeatedly focused on social tenants as *profiteers* and even *fraudsters*, is one of the reasons why social rental suffers from a negative image and why the base of support for a greater supply has remained somewhat limited (Vansevenant, 2021).

Although the introduction of temporary tenancy agreements is an apparent exception, the social housing system tends to focus less on the most vulnerable target groups in need of housing support. This occurs in two ways. First, conditions (for qualifying for or being able to retain housing) have repeatedly been introduced, made more stringent or facilitated that, considered objectively, do not capture the existing need for housing. We must consider the proposed tightening of the condition relating to real estate holdings and of course the condition of local ties, which could apply to up to 80% of all allocations after 2023. Second, in recent years, the Flemish Government has introduced several obligations that have no connection to the need for housing support. Examples include the language-knowledge requirement and compulsory vocational training. The planned blacklist and especially the revision of the allocation system, with an absolute priority for local ties, would also render the system increasingly conditional. As signalled by poverty organisations and other actors, these developments will have the effect of making it particularly even more difficult for low-income and vulnerable groups to access and retain social housing. Within the context of the right to housing

⁴⁴ We refer to the statistical material on the Matthew effect in Section 5.1.

⁴⁵ ECSR 5 December 2007, *ATD Fourth World v. France*, no. 33/2006, §§ 123 and 131 (Decision on the merits); ECSR 5 December 2019, *Country Report France with regard to Art. 31, §3* (Conclusions) and ECSR 5 December 2019, *Country Report Portugal with regard to Art. 31, §3* (Conclusions).

⁴⁶ Commissioner for Human Rights, *Recommendation of the commissioner for human rights on the implementation of the right to housing*, CommDH(2009)5, 10.

and the right to protection from poverty, however, it is the duty of authorities to eliminate and avoid the exclusion and stigmatisation of vulnerable individuals (Martignoni, 2020).⁴⁷

In addition, certain measures of the social rental system are discriminatory. In this case as well, the first example to be considered has to do with the extensive conditions relating to local ties, as well as conditions relating to real estate holdings. With regard to the latter conditions, one of the problems is that there are no comparable exceptions for property abroad. Given that people of foreign origin are much more likely to acquire foreign real estate (e.g. through inheritance), this implies unequal treatment at least for this group.⁴⁸ The manner in which the requirement of local ties is organised is also problematic from the perspective of equality and non-discrimination principles. This condition is not based on objective reasons based on the need for housing support, but on the applicant's past history and even place of birth, with the result that certain groups are systematically excluded in a discriminatory manner. This is particularly true for those who could not have any history of residence in the Flemish Region. Both of these measures thus mainly disadvantage newcomers and people with a background of migration, despite the fact that the European Commission Service Departments have rightly pointed out that local commitment is problematic for vulnerable groups in general (European Commission, 2020).

Specifically with regard to the blacklists and the investigation of foreign assets (each of which can lead to exclusion from housing), it should also be noted that judicial oversight is inadequate in this regard. Judicial supervision is nevertheless needed in Belgian and European case law when there is a risk that measures will touch upon the core of the right to housing.⁴⁹

5.4 Private rental market

Although the homeownership market is dominant in Flanders, the private rental market is growing as well, accounting for a significant share (19%–20%) of the housing sector (Heylen & Vanderstraeten, 2019). This represents approximately 550,000 households. As previously noted, the private rental market is anything but uniform, and comprises several different segments.

The private rental market also serves a variety of functions, including that of providing temporary housing solutions in anticipation of homeownership. For a large proportion of private tenants, however, this market serves the function of a safety net, as the purchase of a home is not a viable option for them, and far too few social housing is available (at least for the time being). As mentioned above, multiple studies have indicated that approximately 250,000 private tenants—almost half of all private tenants in Flanders—need government support to be able to live in accordance with human dignity. In the Flemish Region, the housing shortage is so great that some authors have even proposed the private rental market as '*de facto* social housing', which should largely provide housing for financially vulnerable residents (De Decker & Seghers, 2014; Interfederaal Gelijkekansencentrum [Inter-federal Centre for Equal Opportunities], 2014). The diverse character of the private rental market also implies the existence of wide differences between residents with regard to their living situations. Survey data have indicated that, on average, housing quality improved between 2013 and

⁴⁷ For example, see also CESCR 11 October 2019, *López Albán*, UN Doc. E/C.12/66/D/37/2018.

⁴⁸ ECSR 5 December 2019, Country Report France with regard to Art. 31, §3 (Conclusions) and ECSR 5 December 2019, Country Report Portugal with regard to Art. 31, §3 (Conclusions).

⁴⁹ E.g. ECHR 13 May 2008, *Mc Cann v. United Kingdom*, no. 19.009/04 and ECHR 21 April 2016, *Ivanova and Cherkezov v. Bulgaria*, no. 46.577/15, § 53.

2018, even though a substantial proportion of the housing stock remains of poor or very poor quality. Private rental housing also comprises by far the highest percentage of homes without minor amenities, as compared to owner-occupied homes and social housing. In particular, successive surveys have demonstrated that problems are concentrated in the lower layers of the private rental market (Winters, 2016; Vlaamse Woonraad, 2017a; Heylen & Vanderstraeten, 2019).

At the root of this problem is a failure of the housing market to provide solutions for vulnerable households. As observed by Galbraith, there is no economically highly developed country in which the market system provides housing that the poor can afford (Galbraith, 1992). In the private rental market, market imperfections also have a particularly strong impact in this regard. Christine Whitehead and colleagues conclude that *'the market for housing overall, and for privately rented housing in particular, is subject to a wide range of market failures which make government intervention to improve efficiency almost inevitable (Haffner & Boelhouwer, 2006; Oxley 2004)'* (Whitehead et al., 2012). For example, a lack of competition leads to a guarantee of demand and a relatively dominant position for lessors, which allows them to exclude prospective tenants or determine the terms of rental contracts. Affordability problems further accentuate scarcity (or lack of choice), and discrimination is a factor that limits the choices that tenants have in practice (Whitehead et al., 2012; De Decker, 2019; Verhaeghe et al., 2020).

In Flanders, these problems are especially pronounced at the lower levels of the private rental market. As stated previously, the political choice to support primarily homeownership has resulted in decades of residualisation, with the result that a gap has opened—certainly at the lower end of the market—between the rent that residents can pay and the rent that provides a decent return for lessors. This gap creates shortages in the supply of affordable housing of decent quality. As a result, families with relatively low incomes are being increasingly driven into poor to very poor housing. In the absence of alternatives, they are forced to rent, competing with other families who also need to have a roof over their heads but who are in a stronger financial position. The greater the imbalance between supply and demand is, the greater the dominance of the market by suppliers (e.g. lessors) will be, as scarcity strengthens their bargaining position. Amongst other results, residences of poor or very poor quality are rented out anyway, and lessors charge rents that do not correspond to the quality of the homes that are rented. It also creates a framework for unbalanced selection mechanisms and discriminatory practices (Interfederaal Gelijkekansencentrum, 2014).

For a large group of households, therefore, it is anything but a given on the Flemish private rental market to find a home that is affordable, that offers housing security and that is of good quality. Moreover, vulnerable households (e.g. singles, single-parent families and low-income households) have the greatest difficulty in achieving a decent living situation in all respects (Heylen & Vanderstraeten, 2019).

These problems on the Flemish private rental market are not new. Reports denouncing the residualisation of the market have been published since the early 2000s (e.g. De Decker & Geurts, 2000). Meanwhile, various authors have openly referred to a 'housing crisis' (e.g. Verstichele, 2019; De Decker, 2019). This problem led the Flemish Housing Council, the official strategic advisory body of the Flemish Government for housing policy,⁵⁰ to take the initiative to issue a recommendation on the

⁵⁰ The Flemish Housing Council (2008–2019) consists of academics and a representative delegation from civil society organisations on both the supply and demand sites of the housing market. As a result of a decision by the current Flemish Government, however, the Flemish Housing Council—as the only strategic advisory council for housing—was dissolved in 2020. Since that time, therefore, regulatory initiatives with significant policy impact have not been structurally tested with the field. This obviously does not help in the preparation of policy.

'housing crisis in the lower layers of the private rental market'. Based on data and testimonies from practitioners, the Council warned against an unreasonable increase in rents in the lower segments, the systematic shrinking of the housing stock in the lower price categories, an unreasonable price-quality ratio at the bottom of the rental market and an increasingly deepening housing crisis. The Flemish Housing Council also pointed out the risk that some households operating from a survival strategy might slip into grey and illegal housing circuits,⁵¹ where they are especially vulnerable to abuse (Vlaamse Woonraad, 2017b).

In the following section, we discuss various elements of the right to decent housing that are violated at the expense of vulnerable households on the private rental market. It should be noted at the outset that the available data often do not take into account the specific position of people with a migration background. Surveys have also often failed to reach undocumented migrants and people experiencing homelessness (De Decker et al., 2015). As confirmed by poverty, tenant, minority and refugee organisations, however, the housing situations of these groups are particularly precarious.

5.4.1 Affordability

Scope of the affordability problem

In Flanders, two methods are used to delineate the group of residents who have or who are at risk of affordability problems: the 'housing expense to gross income ratio' and the 'remaining income'. The housing expense to gross income ratio consists of the ratio of gross housing costs to disposable income, which is then compared to a certain standard in order to identify a problem of affordability does or does not exist. Most Flemish and international studies apply a standard of 30% for gross housing costs and 40% for total housing costs.⁵² Some studies use a variable standard, which increases with income.⁵³ The residual income method refers to the budget remaining from disposable income after payment of housing costs, compared to the minimum budget for a life in accordance with human dignity (Winters 2021; Heylen, 2019).

Over time, each of these indicators clearly demonstrates that the affordability problems on the Flemish housing market have increased, particularly on the private rental market. Based on the method of housing expense to gross income ratio (using a 30% standard⁵⁴), affordability problems were already increasing in the first period for which data are available (1976–1992). At that time, however, the average housing expense to gross income ratio was rising at about the same rate for owners (with mortgage loans) as for tenants. A subsequent measurement (1997) revealed that the affordability problems had increased further, particularly for tenants. This measurement was the first to include a distinction between social and private tenants. Unsurprisingly, the results indicated that the affordability problem primarily affected the private rental market. The measurements from both 2005 and 2013 continued to indicate an increase in the share of tenants for whom the housing expense to

⁵¹ For example, in recent years, Flemish media have repeatedly reported on refugees being housed in slum dwellings and rooms by rack-renters at exorbitant prices.

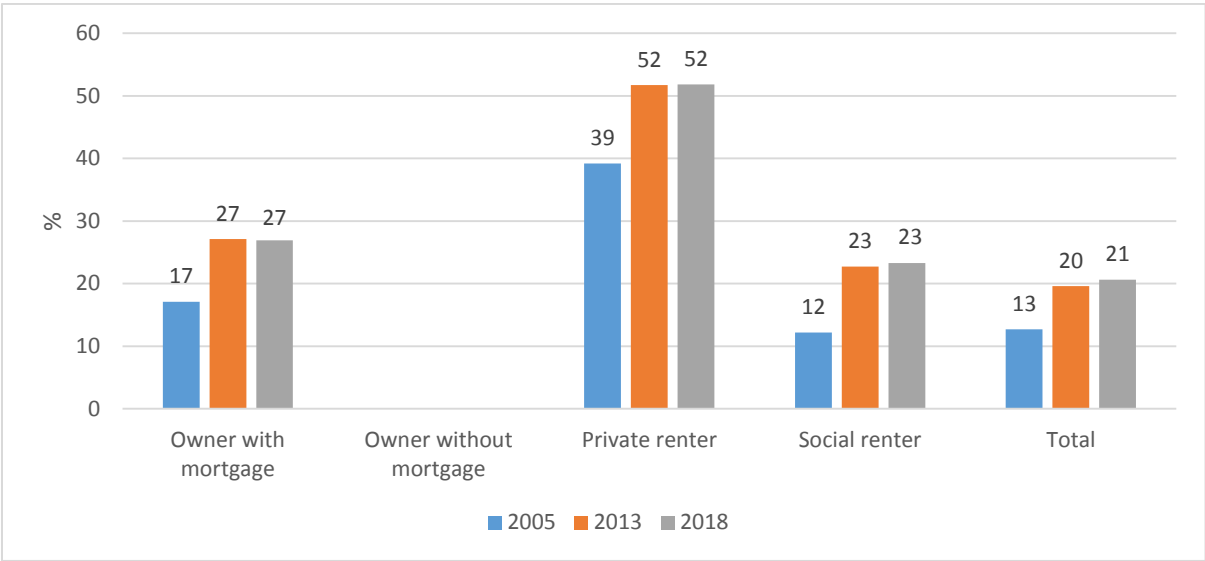
⁵² This refers to the rent and all additional housing costs (e.g. utilities, management and maintenance of shared facilities).

⁵³ This standard is 25% for the lowest income quintile, 30% for the second quintile, 40% for the third quintile and 50% for the two highest quintiles.

⁵⁴ Earlier housing studies conducted in Flanders also applied a standard of 20%. Yet others propose a standard of 33%.

gross income ratio was too high. Whereas about 20% of the private renters were experiencing affordability problems (housing expense to gross income ratio > 30%) in 1997, the share had risen to 39% in 2005 and further to 52% in 2013 (Winters, 2021). According to a measurement from 2018, the affordability problem had definitely not been resolved in the meantime, with the housing expense to gross income ratio still being too high for more than half (52%) of all private tenants.⁵⁵ The issue of affordability is thus not a cyclical phenomenon but a structural problem, regardless of whether it is considered during a period of economic recovery or crisis. This observation does not even take into account energy costs and other costs (e.g. relating to shared facilities), which can also be quite high (particularly in private rental properties, which tend to be less well-insulated, on average) (Heylen & Vanderstraeten, 2019).

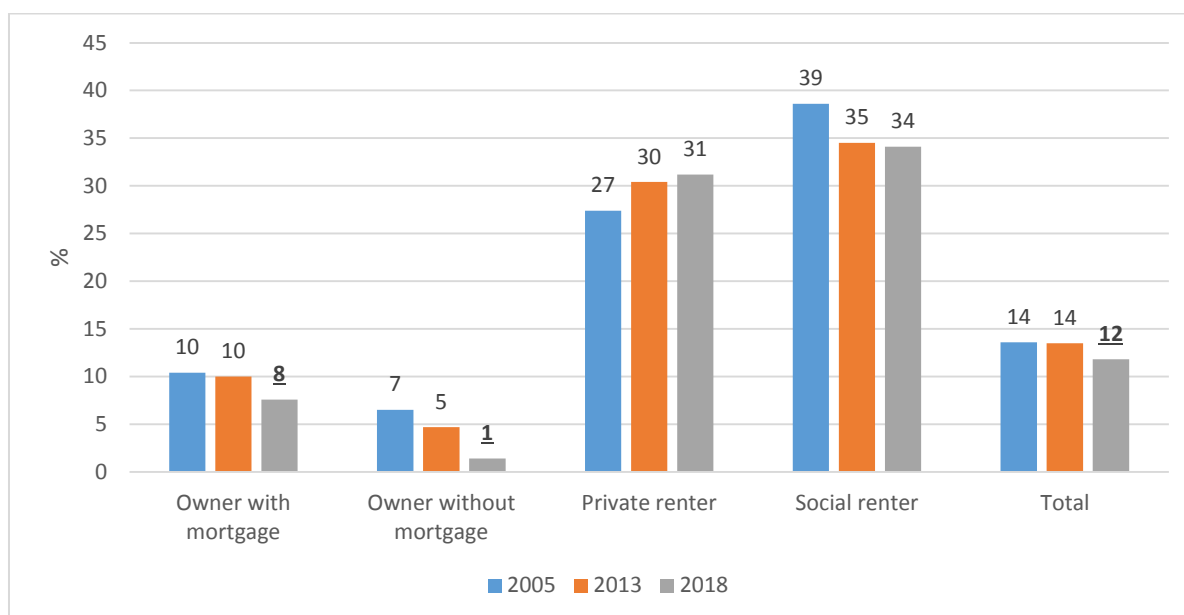
Housing expense to gross income ratio > 30%, Flemish Region



* Source: Heylen & Vanderstraeten, 2019

⁵⁵ With a housing expense to gross income ratio of 40%, this still refers to 47% of all private tenants. According to the residual income method, taking into account the additional housing costs, this amounts to a share of 34%.

Residual income too low, Flemish Region



* Source: Heylen & Vanderstraeten, 2019

Policy instruments

The scope of the affordability problem on the Flemish private rental market stands in sharp contrast to the limited initiatives that the Flemish authorities have developed to respond to it.

First, although the Flemish Housing Policy Plan for 2050 states that housing must be affordable for everyone, it does not set an affordability target (or intermediate target). It also does not specify which actions will be taken as an effective means of ensuring affordability. In other words, Flanders lacks a concrete action plan to provide an appropriate response to this problem (Vlaamse Woonraad, 2018b), even though such a plan should be a logical and necessary starting point within the progressive realisation of the right to family housing.⁵⁶

In contrast to the situation in some countries, Flanders has no mechanism with which to regulate rents at the time of contract formation. The basic principle remains that the determination of the rent is left to the market mechanism. The only exception is that the rent is blocked when consecutive short-term contracts are concluded with the same tenant.⁵⁷ On the other hand, the housing rental law provides options for increasing the rent during the course of the agreement. This can be done by including provisions in the written agreements stating that the lessor can request both an annual indexation and a revision every three years of the rent, due to construction/maintenance or new circumstances.⁵⁸ One

⁵⁶ Cf. ECSR 5 December 2007, ATD Fourth World v. France, no. 22/2006, §60 and 66 (Decision on the merits).

⁵⁷ Under the former federal regulations, the basic rent was also blocked, at least theoretically, in the case of successive short-term contracts with different tenants. As of 2019, this restriction has been eliminated by the Flemish authorities, due to the lack of possibilities for control.

⁵⁸ In theory, such 'new circumstances' could also lead to reductions in the price. Since 2019, under the Flemish Housing Rental Decree, a revision option has also been introduced any time the market value has been increased (by at least 10%) through energy-saving investments.

of the main objectives of Belgian and, later, Flemish housing rental law is therefore to guarantee a decent return for the lessors.⁵⁹

At the same time, however, the Flemish authorities have provided only limited support to residents on the private rental market. In contrast to other European countries, Flanders has no comprehensive rent allowance system that allows low-income families to live decently on the private rental market (Winters, 2013; Zwart, 2015). Although there is a 'Flemish Rent Subsidy', it is granted only for tenants relocating from a poor (or unadapted) residence to a good one, for homeless people moving into a good residence and for tenants moving into a residence provided by a social rental agency. Since 2012, there is also been a 'Flemish rent allowance' for prospective tenants who are living in good residences and who have been on the waiting list (for social housing) continuously for at least five years (currently: four years) with a social housing corporation that is active in the municipality in which the person lives (the 'domiciliary corporation').

These subsidies actually reflect the fact that the Flemish authorities actually acknowledge the problem, but the scope of the instruments remains quite limited.

First, both for the granting of the rent subsidy and the rent allowance, the applicant must meet the income threshold for social housing, as well as the stricter conditions regarding real estate holdings. The effect of additional thresholds for access to social housing thus also extend to the rent allowances. In addition, for both instruments, a large number of additional conditions must be fulfilled in order to obtain an allowance, and they are subject to a relatively strict granting procedure.

By way of illustration, there is a requirement that tenants may pay only a certain maximum amount of rent for their private rental housing or their newly occupied rental housing. According to actors in the field (e.g. tenant and poverty organisations, as well as cities and municipalities), however, the reference rents set by the Flemish authorities are unrealistically low, making it extremely difficult for tenants to meet this condition (Vlaamse Woonraad, 2018a).⁶⁰

In addition, amongst other requirements, the residence must meet minimum quality standards and, in the case of rent subsidy, the former residence must have been declared seriously unsuitable or uninhabitable, as established by a technical inspection of the residence. Although it is obviously acceptable for the Flemish authorities to be unwilling to subsidise inadequate housing, the resulting rate of attrition should not be underestimated.⁶¹ In addition, applicants for the rent subsidy must prove that the residences that they have left are non-compliant, even though inspections are not always possible. Given the administrative waiting periods for inspections to be conducted, the notice period has expired at the time of inspection in some cases. As repeatedly observed by poverty organisations and other entities, potential beneficiaries also do not apply, as they are uncertain as to whether the current or new residence will meet the quality standards and they do not want to place the relationship with the lessor (and their ability to remain in the residence) under strain. Especially for those who have little chance of finding alternative housing, it is important at least to avoid losing the current residence

⁵⁹ *Parl.St.* Kamer 1990-91, no. 1357/1 and *Parl.St.* VI. Parl. 2017-18, no. 1612/1.

⁶⁰ Although tenants are usually in a particularly weak position to negotiate contractual conditions (e.g. rent), and although the Flemish authorities have refused to draw a link between rent and quality in housing rental law, the same Flemish authorities maintain that tenants who are in need of a rent allowance must bear the consequences of excessive rent.

⁶¹ In other words, tenants—whose right to housing is already not being realised due to poor housing quality—also lose the right to a rent allowance, even though the lessor is responsible for the quality of the housing.

(Steunpunt tot bestrijding van armoede, bestaansonzekerheid en sociale uitsluiting, 2017; Vlaamse Woonraad, 2017b).

The requirement to have been continuously registered for four years as an applicant for social housing (in the case of a rent allowance) also poses a significant obstacle, especially for the most disadvantaged groups, who are known to relocate more often, amongst other characteristics. The requirement for prospective social housing tenants to respond to requests to update their data every two years also has an impact. If they do not respond, they risk removal from the waiting list and losing their right to a rent allowance. In that case, they must again endure the waiting period of four years. In addition, any rent-allowance recipients who refuse a 'suitable' offer of social housing are subject to losing the allowance. It goes without saying that vulnerable individuals and families, who are not always administratively adept and sometimes even suspicious of formal correspondence, find such thresholds very difficult.⁶²

These strict conditions ultimately result in limited effects. Although the official statistics show that the number of beneficiaries (i.e. households that meet the conditions and receive an allowance) has grown in recent years, when this coverage is compared to the scope of the affordability problem, the result is deplorable.

At the end of 2020, 13,522 individuals were eligible for the rent allowance (with an average allowance of €176.86). For the rent subsidy, 23,388 individuals were eligible (with an average allowance of €168.74), although this included 11,618 tenants of social rental agencies (who were not renting directly on the private rental market) (Wonen-Vlaanderen, 2021). Together, the two instruments thus reached approximately 25,000 private tenants. The remaining target group for support—defined as households in the lowest two income quintiles who are paying more than 30% of their income in rent or who are living in poor or very poor housing and who are not receiving support⁶³—amounts to 230,000 tenants (Winters, 2021).

As calculated in a previous study, of the theoretical target group for government support (based on the 30% housing expense to gross income ratio) in 2018, 4.8% had received a rent allowance in the previous month. In 2013, this share amounted to 2.4% (Heylen, 2019). There is thus indeed a certain positive evolution, but it remains marginal, considering the standard of living in a prosperous region like Flanders.

Moreover, as noted by the Flemish Housing Council and other entities, the complex conditions for obtaining an allowance not only limit the scope of these instruments, but also create a problem of non-take-up (Vlaamse Woonraad, 2017b). This concerns households that, in theory, are eligible but that do not make use of the allowance in practice. The most vulnerable residents are thus quite likely to become victims. The complexity of the granting procedures and the conditionality of both instruments, combined with a lack of information, mean that vulnerable occupants often simply do not apply (Vlaamse Woonraad, 2017a).

⁶² A common example from practice involves the situation in which a recipient of a rent allowance wishes to refuse an offer of social housing because the residence is not in a good state of repair. For a prospective tenant, it is difficult to provide proof of this, whereupon, in practice, the prospective tenant is faced with the choice of either 'improperly' refusing or accepting the defective property.

⁶³ Due to the manner in which this group is defined, this therefore refers to low-income groups whose right to housing has been violated and who cannot count on any support from housing policy.

The link between price and quality

One specific problem is that the rent on the Flemish private rental market often does not correspond to the level of quality that the occupant receives in return. As noted before, this problem is related to the fact that rents are determined by the system of supply and demand on the market. In Flanders, there is no regulation of base rents, even though the demand for rental housing exceeds the supply, at least in certain (low) segments. This places suppliers in a position of power, which allows them to charge unreasonably high prices. According to a price analysis, rent increases between 2011 and 2019 were only to a very limited extent the result of improvements in housing quality (Winters, 2021). Research has also identified serious indications that tenants are sometimes forced to pay rents that are far too high in relation to the quality offered (Vanderstraeten & Ryckewaert, 2015b).

Housing actors and representatives of cities and municipalities have also confirmed from the field that the price-quality ratio in the lower layers of the private rental market is neither balanced nor correct. Extreme cases are even likely to involve abuse and rack-renting (Vlaamse Woonraad, 2017b). Although this problem has been known for some time, the Flemish authorities have failed to develop a system that would allow the objectification of rents based on housing quality. Only an indicative rental price (online) estimator has been developed, which identifies the prevailing market rent based on housing characteristics that were specified voluntarily. It thus involves a market rent that obviously confirms the existing imbalance.⁶⁴

The argument against any form of regulation is that intervention would place a strain on the returns of lessors. As a result of the inaction of the Flemish authorities, however, unreasonably high yields can now be demanded for poor-quality housing, thereby exacerbating the affordability problem, especially at the bottom of the market, where applicants with low incomes compete most strongly for housing.

Another telling example is the scheme the Flemish authorities developed in the Flemish Housing Rental Decree for residences that exhibit serious deficiencies in housing quality from the start of the rental period. The Flemish authorities stipulate that such residences may not be put on the market and that no valid agreement can be made on them. If this does occur, the court must declare the rental agreement null and void. With regard to the rents that had already been paid, the Flemish legislator, who was completely free to work out its own scheme, opted in that case to make it possible to grant the lessor a compensation equal to the 'objective rental value'.⁶⁵ Although the authorities are aware that these residences strain the limits of human dignity (the presence of defects has even been established by the courts), that these residences may not be offered on the market and that their market price does not adequately reflect such defects (due to shortages in supply in the lower segment), a compensation equal to the objective rental value is thus possible, which is obviously the market value. In practice, the result is that judges sometimes grant lessors compensation equal to the agreed rent, even for residences with extensive and serious defects. In other words, market forces are pushed to their limits, even with regard to rental housing that does not allow for decent accommodations and for which unreasonably high prices are all too often charged, due to imperfections in market forces.

Nevertheless, it is also clear that rent regulation must take into account a reasonable return for the lessor. To this end, the Flemish rent estimator ('Huurschatter') can provide inspiration. At the same time, the authorities must fulfil their commitments under the European Social Charter, e.g. by making

⁶⁴ Given that instrument is intended only to increase transparency, it thus reflects the existing market situation. In no way does this instrument steer towards a correct price-quality ratio and, furthermore, it even perpetuates the excesses of the mismatch between quality and rent on the private rental market.

⁶⁵ Article 12, §2 (1) Vlaams Woninghuurdecreet.

affordable housing available to families and by rolling out rent allowances more broadly. By making a link between the allowances and a reasonable rent (determined according to housing characteristics and not on a flat-rate basis), these allowances will not have any price-increasing effect. Sensible regulation can ensure that the leasing of housing of decent quality yields acceptable returns by closing the gap with affordability through rent allowances, while curbing excessive returns on leasing poor-quality housing. In 2019, owner, broker and tenant organisations, as well as the construction industry and various experts proposed the introduction of a system for lessors that would allow them to obtain (on a voluntary basis) a number of benefits (e.g. guaranteed payment of part of the rent, renovation subsidy) in exchange for renting to low-income tenants (Vlaamse Woonraad, 2019). This draft was part of the Flemish Coalition Agreement for 2014–2019, but it was never implemented, and it has not been taken up again in the current legislature.

Old, poor and renting

Whereas the housing expense to gross income ratio is too high for more than half of all private tenants, in Flanders, this ratio is even worse for older tenants. According to figures from 2018, 7 out of every 10 older private renters face affordability problems and spend more than a third of their income on housing. When affordability is measured according to residual income (what is left after paying housing costs), the measurements are slightly more 'positive' (with half of all tenants not having enough left to live in accordance with human dignity). If these figures are compared to the position of homeowners and social tenants, there is a clear difference. Fewer than 1 out of every 10 (8.5%) older homeowners have a housing expense to gross income ratio that is too high. Social tenants fare better than private tenants, but worse than homeowners: 2 out of every 10 old social tenants experience affordability problems (Heylen & Vanderstraeten, 2019; Volckaert & De Decker, 2020).

The large differences between homeowners and private tenants can be explained, among others, by the fact that pensions in Belgium are relatively low. For homeowners, however, this is not really a problem as, at a later age, the mortgages for their homes have been paid off, thereby eliminating a significant monthly expense. One traditional argument justifying tax advantages for homeownership is that it is a form of retirement savings that offers protection from poverty in old age, as is also reflected in the figures. The problem is, however, that homeownership is not feasible for a large group, even with tax support. Individuals in these groups are forced to rent privately and, at retirement age, their income declines, while they must still pay rent. The unequal support between the homeownership and rental markets thus contributes to driving a large group of private renters into poverty later in life (Volckaert & De Decker, 2020).

In the words of Van den Broeck and Winters, 'Such unequal treatment of renting and homeownership is a deliberate policy, whose intentions include encouraging citizens to save safely, as this will help their welfare position in old age. This refers to the well-known and often-quoted argument that homeownership is a form of pension, and the tax benefit is a form of retirement savings. One problem with this, however, is that those who are unable to become homeowners (and who therefore may need it even more) are not able to enjoy this form of pension (....) In any case, this argument cannot absolve the authorities from providing an adequate pension for all citizens. If the authorities assume that households provide for their own pensions by owning their own homes and, for that reason, keep pensions lower, the groups whose income is too low to attain homeownership will suffer. They will have to continue to pay rent even after they retire. The figures on affordability problems and risk of poverty amongst older tenants thus give cause for concern' (Van den Broeck & Winters, 2017).

5.4.2 Access to housing

A basic condition for decent housing is that households must have sufficient access to housing. Two factors are important in this regard. There must be a sufficiently large supply for various groups, and there must be no mechanisms of discrimination that result in the exclusion of certain groups from access to housing.

Availability of private rental housing

The issue of the housing availability on the private rental market is linked to the question of whether there is a sufficient supply of 'decent' housing (e.g. in terms of affordability, quality and adaptability) for various tenant profiles, taking into account the different segments that exist on the market (in terms of price, geographic location and typology).

For the Flemish private rental market, the concept of 'availability' is often linked to the affordability issue and the shortage of quality housing for low incomes, which both make access to housing for these groups more difficult. Although such impeded access is certainly related to the fact that rents are sometimes unattainably high, it is also largely due to the negative selection that low-income families experience (even though they may be able to pay the rent). The combination of scarcity of supply and the presence of a large proportion of low-income groups in the private rental market creates exclusionary mechanisms. Because demand exceeds supply, situations are created in which several prospective tenants apply for the same property. Given that the residence can be leased to only one household, a selection amongst the prospective tenants is required. For lessors and real estate brokers seeking to safeguard their returns and avoid default risks, the preference goes to the financially strongest prospect—or at least the one who is perceived to be the strongest. Combined with the competition at the bottom of the market, such selection also means that the most vulnerable prospective tenants almost always and repeatedly fall by the wayside. Successive refusals through adverse selection eventually lead to a pattern of structural exclusion for this group (Verhaeghe et al., 2020; Interfederaal Gelijkekansencentrum, 2014).

Stories emerging from the field (e.g. as confirmed by tenants, brokers, lessors, poverty associations and experts) regularly involve the harrowing difficulty of finding decent housing for low-income families (De Decker et al., 2014; De Decker & Volckaert, 2020).⁶⁶ Unlike in Brussels and other regions, however, the Flemish Region does not have enough data on actual housing availability to be able to objectify the extent and development of the problem. For example, the Brussels Region has been monitoring the parts of the Brussels private rental market that are accessible to tenants in each income decile from the perspective of affordability for some time, as well as how this is developing (De Keersmaecker, 2018). The Flemish Region does not monitor this information, even though 'availability' is an essential component of the right to housing.

One exception to the lack of data is a measurement conducted in Mechelen (2020), one of the Flemish main cities, which has a population of 87,000. The measurement examines the scope of the supply (online) of affordable housing for households of various income levels, with the affordability standard being that a maximum of 30% of household income can be spent on rent. Even if housing quality requirements are not taken into account, the conclusion is that the number of available residences for

⁶⁶ This is also an item in the national media, as evidenced in the report '*Te huur/te duur*' ('For rent/too expensive') by the television programme *Pano* (2021), which followed several prospective tenants for one year in their hopeless search for affordable, decent homes. See: <https://www.vrt.be/vrtnws/nl/2021/02/15/te-huur-te-duur/>

low-income households is very limited, especially those with two or more bedrooms (Verhaeghe et al., 2020). By way of illustration, the rental offers that became available in Mechelen through one of the best-known real estate sites (Immoweb) are displayed in the table below.

Monthly rental housing stock on Immoweb for various income groups

Available family income	Max. rent according to the 30% rule	Avg. number of units/month	Avg. number of units with at least 2 rooms/month	Avg. number of units with at least 3 rooms/month
€1,000	€333	0.2	0.0	0.0
€1,200	€400	1.1	0.1	0.0
€1,400	€467	2.1	0.2	0.0
€1,600	€533	4.8	0.8	0.0
€1,800	€600	11.7	2.1	0.0
€2,000	€667	20.9	5.8	0.2
€2,200	€733	33.1	13.9	0.6
€2,400	€800	49.6	27.3	1.3
€2,600	€867	58.1	34.6	3.2
€2800	€933	67.0	42.2	5.7
€3000	€1000	72.6	47.6	8.1
€3,200	€1,067	74.0	49.0	8.9
€3,400	€1,133	76.2	51.1	10.4
€3,600	€1,200	79.3	53.4	12.0
€3,800	€1,267	80.4	54.6	12.7
€4,000	€1,333	81.3	55.4	13.1

* Source: Verhaeghe et al., 2020

The fact that large families have trouble finding housing is a problem that has also been identified elsewhere. In a survey by the Flemish Housing Council, practitioners stated that, in addition to shortages at the bottom of the rental market in general, they observed increasing shortages of large residences, thus placing large families at greater risk of arriving in situations of overcrowding (Vlaamse Woonraad, 2017b). The latter observation is also consistent with other indications. The share of single-family homes on the rental market is decreasing (from 44% in 2001 to 31% in 2018), while the share of flats is increasing (Winters, 2021). In addition, cities and municipalities have observed that the average length of stay for large families in emergency accommodation is longer, due to a lack of options for progressing to the regular market (Op de Beeck et al., 2020).

Furthermore, in the survey conducted by the Flemish Housing Council, practitioners stated that the problem of scarcity is not limited to the urban context. The city appears to be a pole of attraction for low-income and migrant households. At the same time, the problems are exacerbated by a variety of factors, including a student population that draws on a portion of the regular supply (Vlaamse Woonraad, 2017b).

Discrimination

An imbalance between supply and demand also creates an environment in which discrimination can flourish. Due to the increasing competition for affordable and quality housing, often combined with a 'surplus' of prospective tenants when a property becomes available for rent, lessors who set unreasonable or discriminatory expectations nevertheless have no problem leasing their properties (Loopmans et al., 2014; Verhaeghe et al., 2020).

In particular, according to reports by Unia⁶⁷ and scientific research, lessors are especially likely to discriminate according to the characteristics of 'wealth',⁶⁸ 'ethnicity' or 'racial characteristics', and 'disability' (Unia, 2021a). Various international organisations and human rights committees have also expressed concerns about discrimination against various target groups on the Flemish housing market.⁶⁹ As a result, certain groups of prospective tenants (e.g. those with replacement incomes or of foreign origin) have fewer opportunities to access housing.

The existence of discrimination on the private rental market in Flanders, by both lessors and among real estate brokers, has been repeatedly demonstrated by scientific studies. However, because each of these measurements was performed according to a different methodology and on a different scale, it is difficult to determine how this problem is developing over time. No true monitoring actually exists. In one survey (2013), lessors were asked about their attitudes towards people of a different origin and towards those of social-economically weaker groups. Of the respondents, 22% and 36% (respectively) indicated that they would look for another tenant (Heylen, 2014).

It is important to note, however, that surveys are always accompanied by a risk of socially desirable answers and under-reporting. For this reason, other studies, most initiated and conducted at the city level, use the method of field tests to measure the actual degree of discrimination. This has been done in locations including Ghent, Antwerp, Mechelen and Leuven, each time with results pointing to the existence of a structural problem of discrimination. The following table provides an overview of the established net discrimination rates based on ethnicity. Other findings from these studies include the observation that family composition plays a role. Single mothers with two children appear less likely to be invited to visit prospective rental units (Verhaeghe et al., 2020).⁷⁰

⁶⁷ Unia is an independent public institution that fights discrimination and promotes equal opportunities and the protection of human rights in Flanders and elsewhere.

⁶⁸ Distinctions based on income level are not considered discriminatory, as they indicate the capacity of applicants to pay the rent. At the same time, however, the exclusion of prospective tenants according to the source or nature of their income (e.g. the *a priori* rejection of applicants with replacement income) is discriminatory.

⁶⁹ In its report dated 21 May 2021, the UN Committee for the International Treaty on the Elimination of Racial Discrimination (CERD) refers to discrimination against people of foreign (African) origin, migrants, asylum-seekers, refugees and stateless individuals, including with regard to housing access (CERD/C/BEL/CO/20-22, §§ 21-27). In addition, in the Fifth Periodic Report dated 26 March 2020, the UN Committee on Economic, Social and Cultural Rights (CESCR) raises the issue of discrimination against migrants, refugees and asylum-seekers, especially those from outside the EU, including with regard to housing access (E/C.12/BEL/CO/5, §§ 38-41 and 46-47). Finally, in the Sixth Periodic Report dated 6 December 2019 on Belgium, the competent UN Committee on the International Covenant on Civil and Political Rights (CCPR) points to the persistence of discrimination against individuals belonging to ethnic, religious, linguistic or sexual minorities, including with regard to housing access. The Committee also refers to a lack of effective legal (or other) means of redress (CCPR/C/BEL/CO/6, §§ 15 and 16).

⁷⁰ The table is based on the various studies conducted by Professor Pieter-Paul Verhaeghe (Vrije Universiteit Brussel) on this topic. The results are available through the following website: <https://pieterpaulver.wordpress.com/studies/>.

NET DISCRIMINATION RATES OF CANDIDATE RENTERS WITH A MOROCCAN NAME



* Source: Verhaeghe, 2021

This problem of rental discrimination is not only related to shortages of supply and competition between applicants (Ghekiere & Verhaeghe, 2021). Studies have, among other factors, also identified a lack of governmental monitoring of compliance with the prohibition of discrimination in the field. Since the introduction of the anti-discrimination legislation, the enforcement of the prohibition against discrimination has relied almost entirely on individual complaints by actual or alleged victims. The number of actual complaints filed with Unia in 2020 about discrimination in the housing market in Flanders was limited to 110 (Unia, 2021a). This in no way leads to the conclusion that housing discrimination occurs only to a limited extent, as evidenced by the figures reported above. For a number of reasons, however, a complaint does not necessarily lead to results. In many cases, victims often do not know that they are being discriminated against and, at the individual level, the willingness to report is low and it is quite difficult to prove discrimination. Research conducted in Belgium and elsewhere has indicated that discrimination often occurs subtly rather than openly (Verstraete & Morris, 2018). Moreover, the legislation provides at most the possibility of compensation for the victim (albeit limited). This means that even those who are able to prove discrimination and litigate successfully will not find a solution to their lack of housing. In many cases, victims of discrimination will choose to continue their search for housing (Verstraete et al., 2019).

In practice, the result is that rent discrimination rarely results in an official judgement. In the period from 2014⁷¹ to 2020, there were only three procedures (known to Unia) in which the Flemish anti-discrimination legislation was applied in cases concerning rent discrimination (Unia, 2021b).⁷² Although there is a separate procedure for real estate brokers, the number of discrimination cases remains quite limited within that context as well. In a five-year period (2012–2016), there were only 12 complaints (0.4% of the total number of complaints) regarding discrimination. Due to lack of evidence or other reasons, however, only one of these complaints resulted in the imposition of a sanction. Due to the low probability of being caught, the effectiveness of the prohibition against discrimination remains

⁷¹ It was during this period that Flanders received authority to fight discrimination on the private rental market.

⁷² Two cases (one of which actually concerned student housing) involved discrimination based on origin, and the third involved automatic refusal of individuals who were drawing sickness benefits.

limited in practice. The deterrent effect on lessors and real estate brokers is extremely low (even representatives of owners' associations referred to the likelihood of sanctions as 'quasi non-existent'). In turn, victims have little or no motivation to ensure that their rights are fulfilled (Verstraete et al., 2020).

Notwithstanding this obvious enforcement deficit, the anti-discrimination policy of the Flemish authorities emphasises only the provision of information to and the sensitisation of tenants, lessors and real estate brokers, as illustrated by the '*Vlaams antidiscriminatiebeleid op de private huurmarkt*' [Flemish anti-discrimination policy on the private rental market] action plan, which was approved by the Flemish Government on 20 July 2018. It explicitly rejects enforcement, or even the creation of a legal framework to collect evidence, under the pretext that the government does not wish to organise a 'witch hunt'.^{73,74} Given that the authorities have been raising awareness for a long time, however, it is now common knowledge for lessors and real estate brokers that discrimination (e.g. on the grounds of origin) is inadmissible. Qualitative research has even indicated that some lessors and real estate brokers are developing new strategies to circumvent the prohibition of discrimination, including not discriminating until a later stage of the rental process or through the use of digital registration and detailed information sheets, thereby withdrawing the selection process from the public sphere (Verhaeghe et al., 2020). As concluded by the literature, however, enforcement is necessary in order for regulation to be effective (e.g. Balwin et al., 2012), as is the requirement issued by the European anti-discrimination directives that sanctions must be 'effective, proportionate and dissuasive'.

Studies have repeatedly identified the presence of strong, structural discrimination on the private rental market, combined with a lack of meaningful initiatives to create improvement, thus indicating that the government is not fulfilling its obligations under the Charter. This is the case, despite the existence of possibilities for developing a full-fledged enforcement mechanism, with attention to preventive and curative measures, including the use of discrimination tests as a control mechanism (Verstraete et al., 2020).

5.4.3 Housing security

Compared to owner-occupants and social lessors, the housing security of private tenants in Flanders is precarious. Two important factors in this regard are affordability and housing quality. The issue of affordability renders families vulnerable to setbacks (e.g. loss of income due to illness or divorce). In Flanders, rent arrears are even by far the most important cause of evictions (Verstraete et al., 2018). Problems with the quality of a residence can also cause the occupant to have to leave the residence (whether as a result of civil, administrative or criminal proceedings), even if the defects are the fault of the owner. Both of these issues are addressed elsewhere in this document. The following section concerns only the instruments that are applied by the Flemish housing policy specifically with regard to evictions.

⁷³ Request for explanation concerning the increasing discrimination on the housing market during the corona crisis, submitted by Maxim Veys to Minister Matthias Diependaele, minutes of the Committee for Housing and Immovable Heritage, 12 November 2020, *Parl.St.* Flemish Parliament, Document 367 (2020–2021).

⁷⁴ The results to be achieved in combating discrimination on the rental market are also formulated in a manner that reflects a clear lack of ambition. For example, the action plan states that, in the future, a decreasing proportion of lessors will still 'claim' that they discriminate.

Avoiding evictions

The avoidance of evictions is of essential importance. In addition to creating particularly distressing situations, especially if children are involved, evictions are also often the direct cause of homelessness. For families that are affected, it is often difficult to find other housing (Van Regenmortel et al., 2006). International and European law have also been paying special attention to the issue of evictions for some time, given their impact on the right to housing and human dignity.⁷⁵

In Flanders, the course of an eviction is regulated by law. Lessors are thus not able to evict tenants from their homes at their own initiative. This requires a ruling from a judge.⁷⁶ Although all evictions must go through the courts, illegal evictions occur as well (Bernard, 2011; Verstraete & De Decker, 2014a; Verstraete et al., 2018).

Hardly any information is available on the number of evictions (legal and illegal) in Flanders. Some literature distinguishes three relevant points in the procedure: the initiation of the claim, the eviction decision by the court and the execution of the court decision by a judicial officer. It has nevertheless been observed that the further one delves into this process, the less information is available (Verstraete et al., 2018). One problem is that, in Flanders, evictions are not monitored, even though this is—once again—a very important aspect of the right to housing. Only estimates are available, even with regard to the first step in the procedure: the initiation of the claim. These estimates are based on an annual survey that the Flemish Association of Cities and Municipalities (Vlaamse Vereniging voor Steden en Gemeenten, VVSG) has been organising among local welfare actors (OCMWs) since 2008. The procedure provided for by law does indeed stipulate that these actors must be notified by the court each time an eviction action is brought. Yet the data obtained from the survey are not complete: some OCMWs do not provide any information and, in some cases, they are not notified at all. Only rough estimates are available for the further steps (Winters, 2021).

These figures often overlook the fact that administrative evictions are also carried out following procedures to ensure housing quality, with no guarantee of proper, affordable and stable replacement housing for the occupant (Steunpunt tot bestrijding van armoede, bestaansonzekerheid en sociale uitsluiting, 2018). Such replacement housing has even been identified as the Achilles' heel of the Flemish housing quality policy (see below) (Hubeau, 2010; Vermeir & Hubeau, 2018b).

Moreover, it is troubling to note that the available data point towards a *status quo* with a relatively high number of evictions. The annual survey conducted by the VVSG has yielded a similar result for 10 years, with the number of eviction procedures initiated remaining stable at around 12,000 per year, which is estimated to lead to an effective eviction in 30% of all cases (Verstraete & De Decker, 2014a; Winters, 2021).

The obvious explanation for the status quo is that the instruments that the Flemish authorities use to prevent evictions and strengthen housing security do not achieve their goal, at least not adequately. Particularly important instruments for preventing evictions include housing rental law (with a

⁷⁵ Cf. CESCR, General Comment No.7: The Right to Adequate Housing (Art. 11.1): Forced evictions, 20 May 1997, *UN Doc. E/1998/22*, Annex IV.

⁷⁶ Overall, the eviction procedure also seems to be in line with the conditions set by the European Committee of Social Rights on this issue, although it could be noted that the Flemish regulations do not exclude the possibility of eviction during the winter period (or from emergency housing).

regulation on the duration and termination of the contract) and the ‘Fund to Combat Evictions’ (Fonds ter Bestrijding van uithuiszettingen).

With regard to housing rental law, it was the intention of the Belgian and, later, the Flemish legislature to strengthen the housing security of tenants and their families by stipulating a standard rental period of nine years in housing rental agreements. At least on paper, this would provide tenants with housing security for a longer period, without running the risk of being evicted each time (as is the case with short-term leases). At the same time, it was intended to provide an answer to the inequality of power existing between tenants and lessors. By strengthening housing security, these provisions are expected to improve the ability of tenants to ensure the realisation of their rights (e.g. with regard to housing quality), without running the risk of being evicted from the residence by the lessor in retaliation.⁷⁷ In addition, a guaranteed nine-year period of residence would make rents less sensitive to sudden rent increases. A nine-year period was also intended to have a moderating impact (Vandromme et al., 2018; Dambre et al., 2019).

Practical experience has nevertheless shown that these objectives are largely undermined by the frequent use of short-term contracts, which the legislation actually allows only as an ‘exception’. According to figures from the Flemish tenants’ associations, 53% of all rental contracts are initially concluded for a short duration, with a minority (44%) contracts being concluded for a duration of nine years. These figures have remained largely constant over the years. In the past, other sources have led to a comparable conclusion (Tratsaert, 2012). When drawing up the Flemish Housing Rental Decree, the Flemish authorities confirmed the importance of nine-year housing rental agreements for reasons of housing security. At the same time, however, it can be observed that short-term contracts have become even more attractive.⁷⁸ Although there may be legitimate considerations, easings in the Rental Decree (compared to the federal regime) raise a risk that the proportion of short-term housing rental agreements will increase even further.

The Fund to Combat Evictions was established in 2020 to replace the ‘Flemish Rental Guarantee Fund’ (Vlaams Huurgarantiefonds) from 2014. The latter fund allowed lessors to join voluntarily (for a fee) in order to obtain an intervention in case of increasing delinquent rent (subject to several conditions). The idea was that this would provide better protection for the returns of lessors, while also avoiding evictions. The Rental Guarantee Fund was nevertheless unsuccessful. In 2018, only 205 lessors had joined the fund, and only 29 applications for compensation were submitted.⁷⁹ By 2020, the number of applications had increased to 123 (63 of which were approved), but the impact remained staggeringly low compared to the number of new rental agreements concluded annually in the Flemish Region (approximately 100,000) (Vandromme, 2020).

As of 1 June 2020, a new instrument was created with the ‘Fund to Combat Evictions’. The initiative now no longer rests solely with the lessor, but also with the OCMW. The OCMW can appeal to the Fund to recover part of the delinquent rent it has paid to a lessor, provided that there is an instalment

⁷⁷ *Parl.St.* Kamer 1990-91, no. 1357/1 and *Parl.St.* VI. Parl. 2017-18, no. 1612/1.

⁷⁸ For example, the options that this type of contract offers for interim termination due to renovation works have been relaxed, and lessors wishing to renew short-term rental agreements with other tenants are now free to increase the basic rent, without having to take into account the rent limitation, as it applies under the Federal Housing Rental Act. Short-term rental agreements have also been made more attractive for tenants by only allowing interim termination at any time for a lower termination fee than would be charged for nine-year housing rental agreements.

⁷⁹ Request for explanation concerning the Rental Guarantee Fund, submitted by Steven Coenegrachts to Minister Matthias Diependaele, minutes of the Committee for Housing and Immovable Heritage, 11 March 2020, *Parl.St.* Flemish Parliament, Document 255 (2020–2021).

plan for the remainder of the delinquent rent, as agreed upon by the OCMW, the lessor and the tenant, including the necessary counselling.

In conceptual terms, this Fund is a significant improvement on its predecessor, but its impact remains too limited. In 2020, a total of 101 OCMW counselling agreements were drawn up, and an initial contribution was paid in 99 cases (Wonen-Vlaanderen, 2021). Awareness of the new Fund is virtually non-existent amongst practitioners, and the Minister for Housing is apparently reluctant to inform the broader public or target groups through media campaigns, even though OCMW requires a signal in order to take action. Moreover, practitioners have indicated that the conditions and procedure are too restrictive, which deters lessors from joining the system. It should therefore be clear that, as long as the Flemish authorities continue to drive with the handbrake on, additional results are unlikely in the near future.

5.4.4 Housing quality

In 1997, when the Flemish authorities introduced their own housing code in order to realise the right to housing (Art. 23, 3° Belgian Constitution), housing quality control was assigned a prominent place in the regulatory framework from the outset. At that time, the Flemish authorities had already established that a large number of poor residences were in use in Flanders, many of which were occupied by disadvantaged and vulnerable groups.⁸⁰ In concrete terms, a system of elementary safety, health and housing quality requirements was developed, which are to be interpreted as absolute minimum standards that every Flemish residence must meet. Given that these are absolute minimum requirements, the Flemish authorities regard any deficiency in these standards as a breach of the level of housing quality that is necessary to live in accordance with human dignity. Partly for this reason, administrative and criminal sanctions were simultaneously provided in order to ensure compliance (Vandromme & Vermeir, 2020).

State of the housing stock

In Flanders, substantial volumes of data are available on housing quality, including the proportion of residences that meet the minimum quality standards. In the period 2012–2013, a representative sample of 5,000 residences⁸¹ was subjected to an objective screening. Within the margins that are customary for samples, the results of that measurement are considered to provide an accurate image of the extent to which the quality standards set by the Flemish authorities have been met (Winters, 2021).

The conclusion was that, at that time, about 37% of all residences in Flanders (almost one million residences) were of inadequate quality. The results further indicated that, in relative terms, most of these residences were on the private rental market (47%) and that the share of poor-quality residences was highly correlated with the occupant's income level and the year in which the residence was constructed. For 65% of the residences of inadequate quality, it was found that the defects could be remedied with relatively simple interventions. For the remaining 35% of these residences, structural problems were also identified (e.g. moisture or stability problems, absence of basic sanitation), which implies relatively high costs for renovation. The share of residences with structural problems is

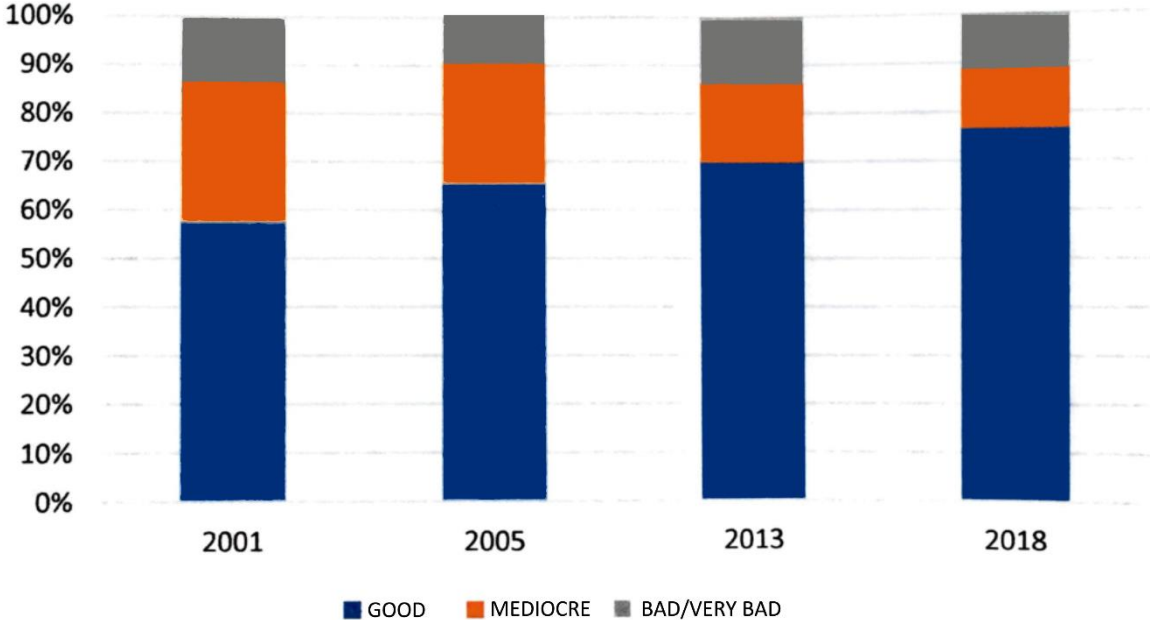
⁸⁰ *Parl.St.* VI.Parl., 1996–97, no. 654/1, 5.

⁸¹ The selection was based on a sample of households from the National Register (Rijksregister). Individuals without a domicile (e.g. those who are living—legally or illegally—in empty buildings or holiday parks) are not counted.

significantly higher on the private rental market (21%) than it is on the homeownership market (10%) (Winters et al., 2015; Vanderstraeten & Ryckewaert, 2015a).

The Flemish authorities would like to repeat a similar objective every 10 years. Because this is a fairly wide time interval, interim data were collected in 2018 according to a simpler (but less objective) method: by questioning a smaller group of residents about their own findings with regard to a variety of aspects, including housing quality. In broad terms, the results were similar to those from 2013, with greater shares of poor to very poor residences on the private rental market and a consistently high correlation between housing quality and income level. Overall, however, housing quality was found to have improved. If older data sources (from 2001 and 2005) are taken into account, the number of 'good' residences increased from 58% in 2001 to 77% in 2018, while the number of residences in 'mediocre' condition decreased from 29% to 13% (Vanderstraeten & Ryckewaert, 2017; Winters, 2021). In addition, and specific to the private rental market, the figures from 2018 indicated that some improvements had been made relative to the situation in 2013, with an increase in the number of residences of good quality (Winters, 2021).

EVOLUTION OF THE PHYSICAL CONDITION OF DWELLINGS, FLEMISH REGION, 2001-2018



* Source: Winters, 2021

Several fundamental comments can be made with regard to this overall positive development. First, the data also indicate that the proportion of households living in housing that is in poor to very poor condition is stagnating. In the period between 2001 and 2018 (almost two decades), this share has remained roughly the same. Moreover, most of these residences are found on the private rental market, which has also consistently performed worse over time than is the case for residences on the homeownership market. In addition, vulnerable households (e.g. single people, single-parent families, households with an unemployed reference person, households with an occupationally incapacitated reference person and low-income households) are the most likely to be left behind. Their scores were remarkably lower on several aspects of quality (e.g. problems with moisture or the roof). This is also the case in terms of energy efficiency. For example, the residences of vulnerable households are often more poorly insulated, thus resulting in higher energy bills (Heylen & Vanderstraeten, 2019). In other words, the data illustrate that, although the overall quality of housing is improving (probably due to

newly constructed dwellings for the higher incomes), hardly any progress is being made with regard to the housing situation of disadvantaged and vulnerable groups, as the legislator had already identified as a problem in 1997.

Lack of effort for the most vulnerable residents

The reasons why the problem of poor to very poor housing continues to persist, especially on the private rental market, have already been addressed in part above. The options are often extremely limited for families with low incomes. Competition has been intensified by a reduction in the share of residences of poor quality. Very poor quality housing is easily rented out, often to the most vulnerable individuals, as they need to have a roof over their heads and are forced to compete with others who are in at least slightly stronger financial positions. The fact that there are hardly any alternatives is related to the shortage in the supply of social housing, and the fact that homeownership is not accessible to low-income groups, as well as to problems of affordability on the private rental market. Because rental housing of better quality is financially unattainable for vulnerable people and families, they are likely to be driven towards units that are less expensive, but also worse (or much worse) and that do not meet the essential requirements for living in accordance with human dignity. One study calculates that tenants pay about €80 less per month for residences with structural quality problems, as compared to the median rent on the private market (Vanderstraeten & Ryckewaert, 2019).

The same study also addresses the housing situation of ‘captive renters’ in Flanders. Captive renters are private tenants who are housed in residences with structural quality problems and who fall within the three lowest income quintiles. They comprise a group of 93,000 households whose housing situations are abominable: 70% of these residences have problems involving seeping or rising damp, 54% are damaged by condensation, 41% pose an electrocution hazard, 40% place occupants at risk of carbon monoxide poisoning and 26% lack even basic kitchen and bathroom facilities (e.g. non-functioning bath or shower, if any at all). Although these residences clearly do not meet essential requirements for living in accordance with human dignity, they are where captive renters are driven due to a lack of alternatives. They are thus essentially ‘trapped’ in housing of poor or very poor quality, as no other housing solutions are available (Vanderstraeten & Ryckewaert, 2019). It is therefore abundantly clear that the failure of the Flemish authorities to provide a sufficient supply of affordable housing of decent quality or to provide adequate support to private tenants in their efforts to gain access to decent housing is making a direct contribution to this problem.

In addition, the apparatus that is used to enforce the Flemish minimum quality standards is insufficiently effective to address the problems existing at the bottom of the rental market. In practice, too few pro-active checks on housing quality are performed (although some municipalities do make efforts), thus rendering the existing enforcement mechanisms *de facto* dependent on reporting housing quality problems at a time when residences are already occupied. Once such a report has been made, a technical inspection is conducted (on site), after which the mayor of the municipality can decide to declare the house ‘unsuitable’ or ‘uninhabitable’. In the most serious cases (‘slum rental’), criminal procedures can be initiated. Occupants are always at risk of having to leave their homes as a result of these procedures (Vandromme & Vermeir, 2020). However aware people are of the quality standards, there is considerable reluctance to report them. Tenants do not wish to strain their relationships with their lessors, and they fear losing their homes (as a possible consequence of the procedures), after which they would have to resume the difficult search for other housing, possibly even ending up on the streets. As confirmed by practitioners and poverty organisations, vulnerable residents are often unwilling to file reports, they might decide to withdraw their reports (after being

informed of the possible consequences), or they might be reluctant to allow housing quality inspectors to access their homes if the report has been made by a social worker or other agency (Hubeau, 2010; Steunpunt tot bestrijding van armoede, bestaansonzekerheid en sociale uitsluiting, 2017; Vermeir & Hubeau, 2018b)⁸².

Studies have long denounced this problem as a weak link, with some even referring to it as the Achilles' heel of housing quality control (e.g. Hubeau, 2002). The Flemish authorities have since acknowledged this problem as well.⁸³ In response, an obligation has been imposed on local councils to secure replacement housing for the residents concerned (if necessary and to the extent that they have low income), with the possibility of recovering the costs of the replacement housing from the owner of the property. As demonstrated by numerous reports, however, uncertainty about alternative housing continues to pose a major obstacle. This is partly because the obligation for local councils to secure replacement housing is not an obligation of result, but only an obligation of effort (Vermeir & Hubeau, 2018). Practical objections and the social rental regulations also create additional barriers (in some cases, intentionally), such that finding replacement housing for those concerned does not have to be a priority. For example, residents must have lived in a dwelling that has been declared uninhabitable (i.e. proven to be unsafe, unhealthy and not allowing for housing in accordance with human dignity) for at least six months to obtain a priority for social housing.^{84,85} In the near future, these priority rules will even be completely overhauled and be replaced by the aforementioned non-guaranteed local priority rules and priority rules based on local ties, with highly uncertain outcomes for those involved.

As noted by tenant organisations, as well as by cities and municipalities, however, the timely securing of replacement housing is already nearly impossible in some cases, especially when several families need replacement housing at the same time or when large families are involved (Vermeir & Hubeau, 2018). The issue of replacement housing is so important that some local councils do not pursue any active housing quality policy, as there are too few solutions for occupants (Bernard, 2006; Hubeau, 2010; Vanderbiesen & Vandromme, 2017).

Families in poverty are thus driven into poor or very poor housing, where they are forced to make do with the level of quality that they can afford (however inadequate), as they have no certainty of a better housing situation after reporting the quality problem (Steunpunt tot bestrijding van armoede, bestaansonzekerheid en sociale uitsluiting, 2017). This can even lead to housing situations that pose health hazards. This is problematic from the perspective of the fundamental right to housing and the right to health. The continued existence of such situations is also incomprehensible in light of social or financial logic. As indicated by a study conducted by Eurofound (2016), investments in a healthy home also pay off, given the decrease in health costs.

⁸² Because the Belgian Constitution contains specific protection of family housing, an occupant must grant consent for anyone to enter the home, at least in principle. In criminal procedures, inspectors can ask a judge for permission to enter the house by force, but this does not happen very often.

⁸³ E.g. *Parl.St.* VI. Parl. 2005-06, no. 672/1, 5

⁸⁴ Flemish Housing Code Decree of 2021, Article 6.19 (2). For this reason, although it is a potential crime to lease such residences, the tenant must have been a victim of this potential crime for at least six months in order to obtain priority access to social housing.

⁸⁵ In addition, on the technical inspection report, the residence must have at least three Category II or III defects under the main headings of 'Shell' or 'Interior Structure'. This is the case, despite the fact that even one Category II defect is sufficient for a declaration of inadequacy, and a single Category III defect is sufficient for a declaration of uninhabitability with forcible eviction. See: Flemish Housing Code Decree of 2021, Article 6.19(1), 9° b.

Finally, it is interesting to note that, in Flanders, there are no incentive instruments (e.g. subsidies or tax rebates) to improve housing quality on the private rental market. The Flemish renovation subsidy applies only to owner-occupants and to houses that are leased through social rental agencies. It would nevertheless seem obvious as a means of closing the gap between what is affordable for many tenants and what provides a decent return for lessors. Without government support to bridge that gap, the housing will either be too expensive for a large proportion of tenant households, or it will be rented out in violation of the minimum requirements for living in accordance with human dignity. In addition, due to the split-incentive problem⁸⁶ and other factors, such housing is unlikely ever to meet the energy and climate targets, which provide an important key to breaking the pattern of low income, poor housing quality and high energy bills (Van den Broeck, 2019; Vanhille et al., 2017).

5.4.5 Violations of the Charter

A housing crisis is underway, especially in the lower segments of the Flemish private rental market. We must conclude that the situation is incompatible with the obligations of the Flemish authorities under Articles 16 and 30 of the Charter, both separately and in conjunction with Article E. In certain respects, there is also a violation of the Charter from the conjunction of Articles 16 and 30 with Article 11 (right to health protection).

Although the Flemish authorities have a substantial volume of data concerning the problems on the private rental market, crucial policy information is at the same time lacking. This is a first issue. For example, in the Flemish Region, evictions are not monitored, nor is rent discrimination or the factual availability of housing. Moreover, it is known that vulnerable groups are under-represented in existing data, and there is a chance that they are not reached by surveys, thus leaving a significant part of the bottom of the rental market out of the picture. Although it concerns core aspects of decent housing (housing security and accessibility), this lack of objective data impedes the development of a coherent and informed policy approach.

A second issue of a general nature has to do with the inadequate targets set by the Flemish Government. For example, with regard to 'affordability', an essential element for decent family housing, there is no affordability target at all (nor are there intermediate targets) nor an indication of which actions the authorities are planning to ensure affordability. Another example is 'accessibility', for which the Housing Policy Plan stipulates only that, by 2050, fewer lessors will *claim* to be illegally discriminating against applicants during surveys. It goes without saying that these are not serious targets against which true, measurable progress can be assessed.⁸⁷

Third, and most fundamentally, the Flemish authorities are clearly not devoting enough effort to supporting vulnerable private tenants. Due to this lack of effort (and ambition), situations are hardly improving for residents at the bottom of the market, who often live in very poor conditions. The progressive realisation of their fundamental rights, as the Charter requires, is out of the question.

On the private rental market, affordability has deteriorated over time, eventually stagnating from a 2013 measurement (and thus to the present day) at a situation in which the housing expense to gross income ratio is too high for more than half of all private tenants. In addition, according to other usual

⁸⁶ Lessors have little motivation to carry out renovations, as it is primarily tenants who reap the benefits of such investments.

⁸⁷ Cf. ECSR 5 December 2007, FEANTSA v. France, no. 13/2002, §58 (Decision on the merits); ECSR 4 November 2003, Autism Europe v. France, no. 13/2002, §53 (Decision on the merits) and Commissioner for Human Rights, *Recommendation of the commissioner for human rights on the implementation of the right to housing*, CommDH(2009)5, 6.

affordability standards (e.g. ‘residual income’) in Flanders and elsewhere, 3 out of every 10 private tenants have too little income after left after paying rent to live in accordance with human dignity.

The scope of the affordability problem (approximately 250,000 families) stands in sharp contrast to the number of needy families to which the Flemish authorities actually provide financial support (barely 25,000). These affordability problems are also the main cause of evictions, just as they are partly responsible for the fact that, on the private rental market, housing of very poor quality, which fails to meet the minimum quality requirements for living in accordance with human dignity, continue to be leased. For low-income groups and residents with other forms of vulnerability, there are often no affordable housing alternatives. As a result, a tenacious segment of poor to very poor housing has persisted, remaining roughly the same magnitude over time.

As indicated by data on ‘captive renters’, who are trapped in their current housing situations without government support and who face serious problems of moisture, mould and even electrocution hazards and the risk of carbon monoxide poisoning, for a group of renters (about 93,000 households), even the right to health protection has been violated. It is also clear that the financial support from the Flemish authorities is far too low, and the affordability of housing for a substantial group of tenant families is neither assured nor even improving. Given this limited scope of the rent allowances, combined with the problems of non-take-up, the contribution of housing policy to combating poverty and social exclusion is obviously limited as well. Based on data from the EU-SILC⁸⁸ (2011), however, it has been calculated that the poverty risk for private tenants in Flanders is about twice as high as the general poverty risk (Hubeau et al., 2015). These problems are even more pronounced for specific groups such as older private tenants, with as many as 7 out of every 10 older private tenants having experienced affordability problems in 2018. The situation on the Flemish private rental market is thus incompatible with both Article 16 and Article 30 of the Charter, each separately but also in conjunction with Article 11 and Article E of the Charter, respectively.

For other aspects of the fundamental right to housing—availability, accessibility (including the prohibition of discrimination) and prevention of evictions—the Flemish authorities conduct little or no monitoring. According to the fragmentary data that are available (primarily from local actors), little or no progress has been made in practice in this regard as well. The number of evictions has been fluctuating around the same level (12,000) for years. Evictions are often a direct cause of homelessness, especially since the families concerned have difficulty finding other housing. As repeatedly demonstrated by local studies, the private rental market also suffers from a structural problem of discrimination, which, amongst other effects, makes access to rental housing more difficult for families of foreign origin and for single mothers with children. On the private rental market, access to housing is particularly difficult for those who combine an affordability problem with another form of vulnerability. Due to the scarcity of affordable housing, they must almost always compete with other families who have at least slightly more income or who fit the image of the traditional family a little better. This situation creates structural patterns of exclusion and discrimination. The lack of effective policy instruments is incompatible with the right to protection of family housing (Article 16).

The fact that there is no improvement in practice noticeable, especially for the lower end of the rental market, stems from a lack of effort, as well as from the ineffectiveness of the current instruments. We have already referred to the limited scope of rent allowances, including non-take-up. In addition, the refusal of the Flemish authorities to draw any link between rent and the quality of housing and the very limited use of the Fund for Combating Evictions are difficult to reconcile with the picture of a

⁸⁸ European Union Statistics on Income and Living Conditions.

housing policy that could be able to tackle problems related to scarcity and the high estimated number of evictions.

For other components of decent housing, regulatory (and other) initiatives are in place, and overall positive developments have occurred. Examples include housing quality control, with attention devoted to sensitisation, as well as to control and sanctioning (both administrative and criminal). The problem in this regard remains, however, that policy instruments have proven ineffective in achieving some of the underlying objectives, especially by paying too little attention to vulnerable households in their design and operationalisation. We refer to the issue of insufficient replacement housing in the section on housing quality control. Residents wishing to realise the full extent of their rights are even at risk of losing their homes. Out of necessity, they continue to live in precarious situations. The latter applies mainly to groups that are vulnerable on the private rental market, as their housing prospects—the likelihood of finding new, decent housing when they lose theirs due to the application of housing quality instruments—are actually the least favourable. Moreover, no incentives are provided to ensure effective improvement in the quality of the stock of private rental housing.

Given that the housing problems of vulnerable individuals and families on the private rental market have not improved and have even increased, it is ultimately difficult to understand how the Flemish housing policy might respond to a progressive realisation of the right to family housing and the right to protection against poverty and social exclusion, with priority for the most vulnerable individuals and families. For decades, substantial government budgets have been made available for higher income groups (through homeownership support), while abject situations have simply persisted on the private rental market, where vulnerable groups are over-represented. The choices made by the authorities in this regard violate both Articles 16 and 30 of the Charter, both individually and in conjunction with Article E, particularly because they devote insufficient consideration to the families who are most in need of housing support.

Flanders has also refused to remedy its deficit in enforcement with regard to discrimination on the private rental market. Although the persistence of such rental discrimination has been repeatedly demonstrated, the Flemish authorities have refused to intervene and enforce the prohibition against discrimination, as it exists on paper. Because lessors and real estate brokers who discriminate run virtually no risk of being penalised, certain groups are excluded from access to a basic necessity according to irrelevant criteria. This problem has been repeatedly demonstrated for groups including individuals and families of foreign origin, households with a reference person who receives replacement income, people with disabilities and families with non-classical profiles (such as same-sex couples). For people belonging to these groups (and their families), there is thus a clear violation of the right to decent housing and the right to protection from poverty and social exclusion, as well as of the non-discrimination requirement (Articles 16, 30 and E).

In addition, there have been violations of Article 16 and Article E in conjunction with Article 19(4)(c) of the Charter. For migrant workers, the private rental market is actually a logical housing option, given the flexible duration of housing, while the prevalence of ethnic discrimination on the Flemish private rental market means that they have structurally fewer opportunities to access housing, as compared to workers from Flanders or elsewhere in Belgium. In this respect, the refusal of the Flemish authorities to act against rental discrimination is a violation of the Charter.

5.5 Homelessness

5.5.1 A lack of data

Only limited data are available on developments in homelessness in Flanders. A baseline study according to the European Typology on Homelessness and Housing Exclusion (ETHOS) definition⁸⁹ was conducted in 2014. The measurement was not intended to survey the entire group that meets the ETHOS definition, but only specific sub-groups: 1 and 2 (roofless), 3, 4 and 7 (homeless) and 9 (insecure housing due to imminent eviction). For Groups 1 and 2, data were recorded for a total of 711 adults and 53 children in the winter shelter during the period from 15 January 2014 to 31 January 2014. For Groups 3, 4 and 7, registration ran from 15 January 2014 to 15 February 2014, during which time 3,019 adults and 1,675 children were registered in homeless shelters and in transit shelters operated by local welfare actors (CAWs and OCMWs). Finally, for Group 9, the number of eviction claims reported to OCMWs in the period from 15 January to 31 January 2014 was registered at 179 OCMWs (about 60% of all OCMWs in Flanders), together counting 599 claims (Meys & Hermans, 2014). Based on this study, a certain estimate of the group of homeless people could be made, although the picture remained fragmentary. For example, the authors note that the working methods for Groups 1 and 2 (roofless) could not take into account individuals who are not reached by the winter shelter, nor consider areas in which there is no winter shelter. Because no similar measurement has been conducted since, there is no picture of how the problem has developed over time.

Other studies point to the relatively large presence of vulnerable people amongst the group of homeless people. According to the Flemish Office of the Children's Rights Commissioner (Vlaamse Kinderrechtencommissariaat), one out of every three homeless people is a minor (Kinderrechtencommissariaat, 2016). Benjamin Dalle, Flemish Minister of Youth, also writes in his policy memorandum 2019-2024: "Low-income families live more often in low-quality houses. This concerns houses with housing deprivation (without basic comfort, with structural problems and/or houses that are too dark), with a lack of space or with problems in the living environment (nuisance caused by noise, pollution, crime). Housing security and sufficient stability in the living environment are preconditions for participating in other areas of life such as education, employment and leisure activities and for the development of a sustainable social network. In Flanders, 260,000 children grow up in a situation of housing deprivation. Nearly one in three homeless people is a minor."⁹⁰

In addition, people from specific vulnerable backgrounds are also more likely to appear in the statistics. Examples include institution leavers, formerly incarcerated people, recognised refugees and people with addiction problems (Crisisplatform Wonen, 2017; De Decker et al., 2014).

In order to obtain a better picture of the problem, the King Baudouin Foundation, together with the universities of Leuven and Liège, took the initiative to prepare a manual for local councils to conduct measurements in their own municipalities. Since early 2021, data have become available for Ghent, Leuven and the province of Limburg.⁹¹ General conclusions include the fact that the number of homeless people is much higher than expected, that it is not a purely metropolitan problem and that children are often involved. For example, for the city of Ghent alone 1,472 adults and 401 children

⁸⁹ This definition distinguishes four conceptual categories of situations that indicate the absence of a home: 'rooflessness', 'homelessness', 'insecure housing' and 'inadequate housing'. The conceptual categories are further divided into 13 operational categories.

⁹⁰ *Parl.St.* VI.Parl. 2019-2020, nr. 145/1, 12.

⁹¹ According to the ETHOS Light definition, with the addition of 'threatened eviction' as a supplementary category.

were registered as homeless. Of the roofless and homeless people who were counted, 57.3% also had no legal residence status. The authors estimate that the population of roofless and homeless people is increasingly composed of younger people, women and people of colour. The authors also clearly refer to a problem of under-reporting (Hermans & Italiano, 2021).

5.5.2 An increasing shortage of structural housing solutions

With regard to the measures that the Flemish housing policy applies to combat and eliminate homelessness, the authorities attempt to formulate an answer to this problem through such efforts as providing emergency housing.⁹²

In 2020, the Minister for Housing commissioned a measurement to chart the supply of emergency housing and shortages in the supply, as well as problems and success factors for a good local emergency housing policy. The study included a survey of municipalities, to which 84% of local councils responded. For these municipalities, 1,377 emergency homes were counted, while it was also found that more than 4,000 emergency homes would be required in order to meet the needs in practice. On the positive side, the Minister announced additional investments.

At the same time, however, the results of the study indicated that the need for emergency housing is strongly linked to the dynamics of the local housing policy and the possibilities that the groups in question have for progressing to structural housing solutions. Emergency housing is just one link in a wider range and policy of quality and affordable housing, which must be accessible, particularly to the most vulnerable people (e.g. the homeless) (Op de Beeck et al.; 2020).

The scarcity of affordable, quality housing for vulnerable groups on the private rental market, as well as the shortage in the supply of social housing, logically means that there are major delays in the flow of homeless people into stable housing. In other words, the position of individuals and families in homelessness underlines the violations of the Charter that have been observed elsewhere in this document (cf. Sections 5.3 and 5.4).

Planned reforms in social housing will make this flow even more difficult. Whereas social rental agencies are currently making a particularly important contribution to structural housing solutions for the homeless, this will be much less the case beginning in 2023. In their current allocation system, the criteria of 'income' and 'need for housing support' are strongly weighted, so that families in urgent situations currently have a relatively greater chance of finding housing more quickly. It was precisely because many families were excluded from the system of traditional social housing (with a stronger focus on chronological waiting lists) that the social rental agencies were created in the 1980s (De Decker, 2002).⁹³

The Flemish Government's decision to discontinue this system in favour of allocations based primarily on local ties and chronology is problematic from the perspective of reducing and eradicating homelessness. It greatly raises the threshold for families in homelessness or threatened homelessness. From now on, those who have lived in the municipality for a long time and have been registered on the waiting list for social housing will receive priority. In many cases, however, people in precarious

⁹² Shelter initiatives and a range of counselling services are also provided through the welfare policy area. This is not a housing solution, however, but a temporary and insecure shelter situation.

⁹³ Figures from HUURpunt (the federation of social rental agencies in Flanders) confirm the purposiveness of this allocation system. For example, 87% of all allocations in 2018 were made to people with income that did not exceed the living wage. Of all applicants who were allocated housing, 77% were in a situation of homelessness or threatened homelessness.

situations do not have the opportunity to go through a waiting period (of four years, on average). They unexpectedly find themselves without a roof over their heads and, in many cases, they are not even registered on a waiting list at the time. For them, being at the back of the queue is tantamount to effective homelessness. They are added to the numbers of people who already rely on shelters, sleep on the sofa of friends or family, or sleep in the streets.

The new general rule of local ties is particularly problematic. From now on, tenants with five years of uninterrupted residence in the same municipality over a period of 10 years will receive absolute priority for 80% of the available social housing stock. Cities and municipalities can even tighten this rule. Such priority rules, however, primarily demonstrate how little familiarity the Flemish Government has with the problems at the bottom of the housing market. People living in poverty relocate more often, have few opportunities on the private rental market and consequently risk being driven into situations of homelessness. The requirement of 'local ties' does not only affect newcomers, as the Flemish Government may have intended. The homeless, victims of family violence, young job-seekers, formerly incarcerated people and former psychiatric patients will also be restricted—or *de facto* excluded—from access to structural solution to their need for housing support. These groups are in danger of falling victim to the 'collateral damage' of a policy that seeks to curb social facilities for newcomers who have not yet contributed to our social welfare state. The new system will still allow 20% of the allocations to be made in an accelerated manner, without local ties.⁹⁴ However, as noted by HURpunt and other entities, this is a substantial decline compared to the situation today, where some 30% (and in some regions 50%) of all allocations are based on acute housing needs. This organisation clearly states that homelessness will increase as a result of government policies (HURpunt, 2021).

5.5.3 Violations of the Charter

Under the Charter, Member States are obliged to take measures to prevent and reduce the risk of becoming homeless, with the goal of gradually eliminating that risk. From the wording of the Charter, it is immediately apparent that this means a progressive realisation, with the aim of eliminating homelessness step by step.

In Flanders, it is striking that knowledge about homelessness is particularly fragmentary. It is only since 2020 that an approach has been rolled out, although limited to the local level, that has the potential to gain a better understanding of this problem. To date, however, the measurements still do not cover the entire area. Because there are also no periodic measurements (or monitoring), the outcomes and effects of any policies might not be assessed sufficiently. In other words, the Flemish authorities have no idea at all of the problem of homelessness, which has a serious impact on the possibility of living in accordance with human dignity, nor on how it is developing or whether their policy is effective. The situation in Flanders is in conflict with the requirements under Article 16 of the Charter. It is thus also difficult to speak of a comprehensive and coordinated approach to promote access to housing for people living in poverty and social exclusion when there are hardly any objective data for the group of homeless people (who are the most in need of housing support). Consequently, there has been a violation of Article 16 and Article 30 of the Charter.

The lack of emergency housing and especially the lack of possibilities to gain access to decent housing within a reasonable period of time also constitute a violation of the same provisions of the Charter

⁹⁴ On this point, we refer to the explanation in Section 5.3.4.

(Article 16 and Article 30), for each provision separately but also in conjunction with Article E. The waiting periods in social housing and the lack of access to the private rental market indeed mean that the most disadvantaged, vulnerable families are, at best, often forced to stay in precarious shelters for unacceptably long periods.⁹⁵ A census conducted in Ghent—one of the largest cities in Flanders—indicates that 38.8% of all homeless people have been homeless for more than two years (Hermans & Italiano, 2021).

Instead of developing actions to improve the living conditions of those with the greatest need for housing support, the Flemish authorities are even directly going against the objectives of the European Social Charter by increasing the proportion of allocations based on chronology and local ties. By reducing access to social housing for vulnerable groups, the Flemish authorities are actually reducing protection against homelessness. The fact that the authorities apparently do not consider it necessary to precede such drastic changes with simulations of the impact in practice also demonstrates that the housing policy takes too little account of the position of the most vulnerable groups.

In addition, there is the difficult position of children and families with children (particularly larger families). First, there is the high number of children who are homeless (one out of every three homeless people, according to the Children’s Rights Commissioner, accounting for more than 400 children in the city of Ghent alone), for whom a positive living environment for their development is out of the question. For children, a situation of homelessness is obviously not in accordance with human dignity.⁹⁶ In addition, we note that access to structural housing solutions is especially difficult for homeless families with children. Studies have indicated that single mothers with children experience discrimination in accessing rental housing.⁹⁷ It has also been established that the average length of time that large families stay in shelters is longer, due to a lack of options for progressing to the regular housing market.⁹⁸ In Flanders, the number of children who are homeless is striking, and the average waiting time for finding a solution is longer in situations where children are present. That situation is a violation of Article 16 of the Charter, read in conjunction with Article 17 and Article E. Authorities can indeed be expected to pay particular attention to the position of the most vulnerable groups. Although children in homelessness are clearly in a very precarious situation, there is no coherent policy on the subject.

5.6 Travellers

In 2012, the European Committee of Social Rights found the situation of Travellers to be incompatible with Articles 16, 30 and E of the European Social Charter (revised).⁹⁹

The Flemish Government then transferred the subsidising of housing sites for Travellers from the Domestic Affairs agency to the Housing in Flanders (Wonen-Vlaanderen) agency, such that it has since been a matter of housing policy. The Flemish Government has also taken measures by increasing the

⁹⁵ We refer to the statistical material cited in Section 4.3.

⁹⁶ In its report dated 28 February 2019, the UN Committee on the Rights of the Child (CRC) also expresses a ‘serious concern’ about the poverty risk faced by children in Belgium. The Committee points out situations including the lack of decent housing, homelessness and forced evictions. (CRC/C/BEL/CO/5-6, § 36).

⁹⁷ For example, this is mentioned in a study by Professor Pieter-Paul Verhaeghe on the accessibility of the private rental market in Mechelen.

⁹⁸ We refer to the statistical material cited in Section 5.4.2.

⁹⁹ ECSR 21 March 2012, FIDH v. Belgium, no. 62/2010 (Decision on the merits) and ECSR 5 December 2019, Country Report Belgium with regard to Article 16 (Conclusion).

subsidy percentage for the acquisition, establishment or extension of a residential or development site, or the renovation of an existing residential trailer park to 100%.

Nevertheless, the Flemish authorities are not achieving any results, as financial support is not enough when local councils are able to block the construction of residential areas based on their licensing policies and if additional instruments are not developed, including a more supra-municipal approach and resources for social counselling (Vlaamse Woonraad, 2015b).

According to the Housing in Flanders agency, there were 515 pitches on residential sites and 106 pitches on transit sites on 1 March 2021.¹⁰⁰ Recent policy measures did not lead to new trailer or transit sites. At most, there are a few additional spaces on existing sites to provide a solution for double-pitchers (households sharing a single pitch with several trailers).

It is therefore clear that Flanders is continuing to flout Articles 16, 30 and E of the European Social Charter (revised), despite a previous judgement. The existing operational and legal measures are not sufficient to achieve effective results.

6. Conclusion

Although a significant part of the Flemish population does live well, many families continue to be deprived of decent, affordable, adapted homes with the necessary housing security. Given the level of prosperity in the Flemish Region and the policy choices on which it is based, the situation in Flanders is incompatible with the Charter. There is a lack of ambition, effort and realisation, as a result of which vulnerable households are particularly unlikely to see any improvement in their housing situations with regard to various sub-elements of decent housing. In the longer term, we observe an overall decline rather than a progression, such that progressive realisation of the Charter is out of the question.

Meanwhile, the absolute majority of the competences related to housing rest with the Flemish authorities. Because housing policies differ so much across the various regions in Belgium, FEANTSA choose to focus only on Flanders.

In this complaint, detailed reasons have been presented with regard to why the Flemish housing policy does not sufficiently succeed in improving the difficult housing situation of many families, with the lack of effective realisations being demonstrated in figures. The analyses also confirm that this is particularly true for the most vulnerable residents. As a result, the Belgian and, later, the Flemish authorities have systematically chosen to channel the benefits of the housing policy to the higher income groups, and not to the sectors in which the need for housing support and the risk of poverty are greatest. Access to decent housing is therefore by no means guaranteed for those in situations of poverty or social exclusion. For each sub-topic, we have provided ample justification as to why this is contrary to the obligations under the European Social Charter. In the following, we briefly summarise which provisions of the Charter are being violated.

¹⁰⁰ https://www.wonenvlaanderen.be/sites/wvl/files/wysiwyg/liijst_van_doortrekkersterreinen_0.pdf and https://www.wonenvlaanderen.be/sites/wvl/files/wysiwyg/liijst_van_residentiele_woonwagenterreinen_0.pdf.

- Homeownership market

As demonstrated in Section 5.2.3, the strong, largely one-sided focus on homeownership is incompatible with the obligation to progressively realise the rights contained in the Charter and to direct measures particularly towards the households within the society that are in greatest need of housing support. The benefits of housing policy accrue primarily to the higher income groups. Nor is there any comprehensive and coordinated approach to promoting access to housing in order to eradicate poverty and social exclusion. The priority is not on those within society who are most in need of housing support. Decades of support for homeownership have pushed financially vulnerable residents even further into problematic housing situations. This is contrary to Article 16 and Article 30 of the Charter, each separately, but also in conjunction with Article E.

- Social rental market

As indicated in Section 5.3.5, the supply of social housing is too limited. There is a lack of effort and ambition to change this situation in the short, medium and long term. Particularly for vulnerable families, the result is that not enough decent housing is available in Flanders. The Flemish authorities lack a consistent and sustained vision and strategy for social housing. This also prevents the progressive realisation of the right to decent housing for families. The actual social housing policy is also contrary to the obligation of the authorities to take measures to promote effective access to housing for individuals in poverty and social exclusion as part of a comprehensive and coordinated approach. The limited scope of the social rental sector means that access is limited and that the sector does not constitute a sufficient barrier to poverty and social exclusion. Overall, we even note that the system is increasingly less focused on the most vulnerable target group with the greatest need for housing support. In addition, various measures of the social rental system are disproportionate and/or discriminatory. This is also contrary to Article 16 and Article 30 of the Charter, each separately, but also in conjunction with Article E.

- Private rental market

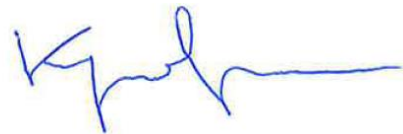
As demonstrated in Section 5.4.5, a housing crisis is raging at the lowest levels of the private rental market. Although a substantial volume of survey data is available, crucial policy information is lacking, and adequate, measurable targets have not been set in order to ensure gradual improvements in access, affordability, quality and housing security. Problems in this sub-market are concentrated at the bottom of the market, where vulnerable households often face combined problems of affordability and housing quality. Due to a lack of alternatives, they are forced into precarious housing situations. A persistent problem of discrimination has also been demonstrated in this regard. The Flemish authorities, in turn, are not devoting enough effort to supporting these vulnerable private tenants or to adjust their instruments to improve their focus on the needs of the most vulnerable groups. Current policy initiatives are too limited in scope or are too little effective in achieving the underlying policy objectives and improving the situation in practice. At least at the lower end of the private rental market, the policy that has been pursued would not have the effect of progressively realising the right to family housing. The housing policy also fails to assign sufficient priority to those most in need of housing support, which means that the risk of poverty on the private rental market remains alarmingly high. This is contrary to Article 16 and Article 30 of the Charter, both individually and in conjunction with Article E. The situation with regard to housing quality is also incompatible with Article 16 in conjunction with Article 11 of the Charter, and the specific position of elderly private tenants constitutes a violation of Article 16 in conjunction with Article E. The situation regarding migrant workers is also contrary to Article 19(4)(c) of the Charter.

- Homelessness

As demonstrated in Section 5.5.3, there is no periodic monitoring of homelessness. This makes it difficult to have any comprehensive and coordinated approach to promoting access to housing for people in poverty and social exclusion. There is a lack of opportunities to provide people in situations of homelessness with decent housing within a reasonable period of time. Access to social housing for vulnerable groups has even been reduced. This is contrary to Article 16 and Article 30 of the Charter, each separately, but also in conjunction with Article E. Flanders also has a striking number of children who are homeless. The average waiting time to arrive at a solution is even longer for situations in which children are present, and the Flemish authorities are failing to take positive measures to change this situation. This is clearly contrary to Article 16 of the Charter, in conjunction with Article 17 and Article E.

- Travellers

As demonstrated in Section 5.6, there are insufficient operational and legal measures in place to provide an effective response to the housing problems of Travellers. This is contrary to Article 16 and Article 30, each separately and in conjunction with Article E.



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