EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

15 November 2022

Case Document No. 3

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

SUBMISSIONS BY THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 13 October 2022

European Committee of Social Rights

Complaint N0 203/2021

Submission on the merits of the complaint

FOR: **The Kingdom of Belgium**

Responding State

Represented by Mr. Piet HEIRBAUT, Director General of Legal Affairs, Agent for Belgium, whose offices are located at the FPS Foreign Affairs, Rue des Petits Carmes, 15 (Egmont II) B - 1000 Brussels, Belgium

AGAINST: **European Federation of National Organisations working with the Homeless (FEANTSA)**

Complaint Organisation

Having regard to the Collective Complaint 203/2021, introduced on 17 December 2021 by the European Federation of National Organisations working with the Homeless;

Having regard the decision on admissibility adopted by the European Committee on Social Rights on 6 July 2022 ;

Preliminary remark

The decentralised structure that emerged in Belgium following several constitutional reforms means that different federal and federated entities may have competence in a given area. Such is the case with this collective complaint. However, the European Federation of National Organisations working with the Homeless has directed its collective complaint against the policy of the Flemish Region. The arguments of the Flemish Region as the competent authority in this collective complaint follow below.

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1. INTRODUCTORY BACKGROUND

1.1. Belgium's state structure (including housing as regional competence)

Belgium has a federal state structure, meaning that competences are divided between the federal state, the Communities and the Regions.

Among other things, the internal division of competences results in the following:

- Housing and housing rental law are a regional competence.
- Housing taxation (taxation relating to the owner-occupied home) is a regional competence, while taxation from the second home onwards remains a federal competence.
- Social well-being is in principle a community competence, except for the living wage, the right to social services and the minimum remit of the Public Centre for Social Welfare (Openbaar Centrum voor Maatschappelijk Welzijn, OCMW), which have remained federal competences.

Fundamental rights are 'competence-neutral' in Belgium's internal legal order. That means that they must be established by the competent government within its own competence. Several of the measures indicted in the collective complaint fall under regional competence. The complaint mainly refers to the policy field of housing as a regional competence. It should be stated here that the complaint is only filed against one of the three Regions, more specifically the Flemish Region (without mention of and/or complaint against the other Regions). This choice means that there is incomplete scope to arrive at an adequate assessment of housing policy in Belgium (across all the Regions).

At the same time, various aspects related to the issue of housing remain a federal competence, such as housing taxation for any home acquired after the first home, income policy (to provide general support to low-income households with housing problems), VAT and the calculation of cadastral income, interventions in economic market policy, and poverty reduction (including tackling homelessness). At the very least, a division of competences hinders the effectiveness of regional housing policy. This institutional factor partly determines the scope and degree of progressivity of the realisation of the right to housing. However, within the institutional context, the Flemish Region fully assumes the competence for housing (see below). Incidentally, the complaint provides a description of the situation and the evolution in housing policy, from the end of the 19th century and ending with the recent reforms. Until the state reforms of the 1980s, competence for housing was at the federal level, and thereafter, as stated, various aspects of housing policy continued to fall under federal competence (registration fees and property taxes until 2002 and rent legislation until 2014). From this viewpoint, the Flemish Region cannot be held liable for decisions made in the past that have an effect in the present (including the consequences of the drive towards property ownership), nor can the Flemish Region be liable for the competences of the federal government. The fundamental social and economic rights, including the right to housing, were only enshrined in the Belgian Constitution in 1993, and the specific articles of the European Social Charter (ESC) that Flanders (the Flemish Region) is accused of violating in the complaint were not ratified by the federal and regional governments until 2004, and even then Article 31 of the Charter directly related to housing was not ratified.

In addition, the municipalities also play an important role in the field of housing policy. In the first instance, they have the autonomy to handle all matters of municipal interest (including specific measures in the area of housing), but at the same time they are also involved by the Flemish Region in

various aspects of the implementation of regional housing policy. The Flemish Housing Code (Vlaamse Codex Wonen) of 2021 designates municipalities as directors of local housing policy[1]. Insofar as they are united in an intermunicipal partnership (intergemeentelijk samenwerkingsverband, IGS), they are also financially supported by the Flemish Region for certain responsibilities.

1.2. Best endeavours obligation

The right to housing is constitutionally enshrined in Article 23 of the Belgian Constitution. This article states that the legislator must guarantee this right, taking into account the corresponding rights and obligations whose terms are specified by the legislator. In the 'Vlaamse Wooncode', subsequently re-incorporated into the 'Vlaamse Codex Wonen' (Flemish Housing Code), this fundamental right is elaborated and the basis is laid for further implementation.

The constitutional right to housing has no direct effect, so the individual cannot derive direct rights from it. However, it is stipulated that the legislator must adequately guarantee the fundamental right. According to the prevailing legal doctrine[2], a broad degree of policy discretion may be applied in this regard. The policy discretion is limited. Among other things, there is an obligation to refrain from any measures that would hinder the degree of realisation of the right to housing. And conversely, public policy must systematically bring about the progressive realisation taking into account the level of well-being in society.

Within Belgium's legal system, it is generally accepted that the government is obliged to achieve what is feasible (while not expecting that what is unfeasible can be achieved). The complainant does not take into account, on the one hand, the principle that the government has a wide degree of policy discretion to realise the stated fundamental social rights and, on the other hand, the government is not bound to achieve what is unfeasible. The complaint implies a strong ideological choice that assumes that the right to housing is maximised and, consequently, the complaint disregards the policy discretion to achieve the stated goal gradually. Moreover, it is generally accepted in the Belgian legal system that the housing policy is based on a best endeavours obligation whereby - taking into account the limitations - choices can be made as to how the fundamental right will be fulfilled.

It will be shown below that the regional housing policy makes sufficient and adequate efforts, and is gradually releasing more funds to ensure the realisation of the right to housing.

1.3. Outline of the Flemish housing policy and international comparison

The Flemish housing policy lays down the objectives in the Flemish Housing Code, paying particular attention to the families and single persons most in need (Articles 1.5 and 1.6). Although the Flemish housing policy strives to give special attention to those most in need in terms of objectives and measures, it does not limit itself to this. The objectives set by decree do not prevent policy measures from targeting a wide range of households (beyond those just in need of housing). The complaint criticises too one-sidedly the fact that measures also have a scope other than meeting the housing needs of those most in need.

[1] Article 2.2 Flemish Housing Codex of 2021.

[2] Alen A., Clement J., Pas W. & J. Van Nieuwenhuyse, *Het federale België in de gecoördineerder Grondwet van 14 februari 1994*, RW, 1993-1994, 1347.

The Flemish housing policy is based on the principle that intervention in the market is necessary when the functioning of the market shows imperfections, and consequently the right to housing without intervention is difficult or impossible to achieve. Conversely, this means that at the micro level, the government does not intervene when the right to housing can be realised autonomously by the individual (and they rely on the market in this regard). This does not change the fact that at the macro level, measures are considered useful from a policy perspective in achieving certain objectives. For example, encouraging ownership through, inter alia, reducing registration duties is a legitimate policy objective. In this sense, asset accumulation is encouraged, inter alia, in order to compensate for the more limited pensions of part of the population (the households that cannot purchase a home can then qualify for social housing via a lower income or via the target group policy relating to older persons). Such policy choices are part of the policy discretion in achieving the objectives and may vary in intentions and emphases.

In recent decades, the Flemish government has taken various concrete steps forward with its housing policy. Besides the ambitions and objectives set out in the Housing Policy Plan (see below), this is also expressed in terms of resources and tools and in terms of the underpinnings of the policy to be pursued. On top of this, most of the measures effectively target the most vulnerable households (which is denied in the complaint, in part by the argument that a number of macro objectives do not benefit those most in need of housing):

- The number of social rental housing units rose from 146,536 in 2012 to 159,885 in 2021, and the number of social rental agencies (Sociale Verhuurkantoren, SVK) housing units rose from 6,401 in 2011 to 12,987 in 2021; this represents an increase of around 13% in the social housing stock.
- The number of beneficiaries of the rent subsidy (huursubsidie) / rent premium (huurpremie) rose from 13,246 in 2012 to 40,580 in 2021. The expenditure for both contributions has risen from just under €24 million in 2012 to over €88 million in 2021, more than tripling the resources.
- The budget for social rental housing has grown from €438,490,408 in 2012 to €1,122,312,938 in 2021, representing a substantial increase.
- The toolbox for housing quality has been extended to include a warning procedure and the housing quality policy has been broadened and developed, using a pyramid structure. The number of annual inspections of housing quality remains at its constant, high level (see below).
- There is a focus on improving the housing situation of private owners with limited means, the budget for the renovation grant remains high, at around €50 million a year, and owners with limited budgets can obtain support for making their homes energy efficient.
- Discrimination has been explicitly further addressed and corresponding mechanisms have been developed, such as easily accessible reporting centres and awareness-raising campaigns set up in cooperation with the landlords' organisations.
- An action plan to address homelessness has been rolled out and partnerships with welfare organisations are being established.
- A fund to tackle evictions has been set up (from 2018), which explicitly provides for a safety net in the event of default of payment (regional oversight and service provided by the OCMW) and new instruments on the private rental market such as rental under conditions (geconventioneerd verhuren) (to be set up in mixed private - social projects) strengthen the position of private tenants (who fall outside the target group for social rent).
- The structural underpinning of the policy has been ensured via centres of expertise (as cooperation between various universities), and the budget for research is high at €3,577,750 for the 2021-2025 Policy Research Centre Housing (Steunpunt Wonen), which facilitates recurrent and new research.

These achievements demonstrate that the stated best endeavours obligation is indeed undertaken by the competent Flemish government. Consequently, the way in which progress is achieved in fulfilling the fundamental right to housing is part of the margin of discretion of the policymakers involved (who are democratically legitimated in this regard, and accountable for how and to what extent). The complaint asserts that Flemish housing policy is achieving too little progress in improving the housing situation of Flemish households, especially the most vulnerable single persons and families. On the one hand, the complaint goes into detail about the housing situation in Flanders (the Flemish Region) and infers, based on factual data, that the right to housing has not been fulfilled for everyone, on the ground. On the other hand, the complaint includes a description and analysis of the policy pursued. From this it is concluded (erroneously) that the Revised ESC has been violated. It is argued that the fulfilment of fundamental rights is obstructed and the obligations for the Flemish government arising from the fundamental rights are violated. Claiming that the regional government is still defaulting because measures are not in place or because the policy is even detrimental to the realisation of the fundamental right and low-income households is inconsistent with the enhanced policy efforts delivered, as outlined above. Neither fundamental rights nor the provisions of the Revised ESC require that policy efforts be maximised, but rather that they be incremental in order to systematically improve the right to housing.

At the international level as well, with a policy of rising financial commitment and additional policy incentives, Flanders (the Flemish Region) is at least in the middle of the European class. In this context, there is an interesting study in progress, conducted by the Policy Research Centre Housing (Steunpunt Wonen). The aim of this study is to map recent trends in the housing market and in housing policy in the neighbouring countries (the Netherlands, Germany, France and the United Kingdom) and Wallonia and Brussels, and to compare them with the situation in Flanders. At the time of drafting of this defense, only preliminary figures are available, which are briefly explained below. The final results will be available in the beginning of 2023.[3]

Tenure status

Distribution of population by tenure status (2020, in %)

Country	**Owner**	**Tenant**
European Union - 27 countries (as of 2020)	70	30
Belgium	71	29
Flanders	*78*	*22*
Wallonia	*69*	*29*
Brussels-Capital Region	*41*	*58*
Germany	50	50
France	64	36
The Netherlands	69	31
United Kingdom	65	35

Source: EU-SILC - Eurostat, calculation of the regional numbers by the Policy Research Centre Housing

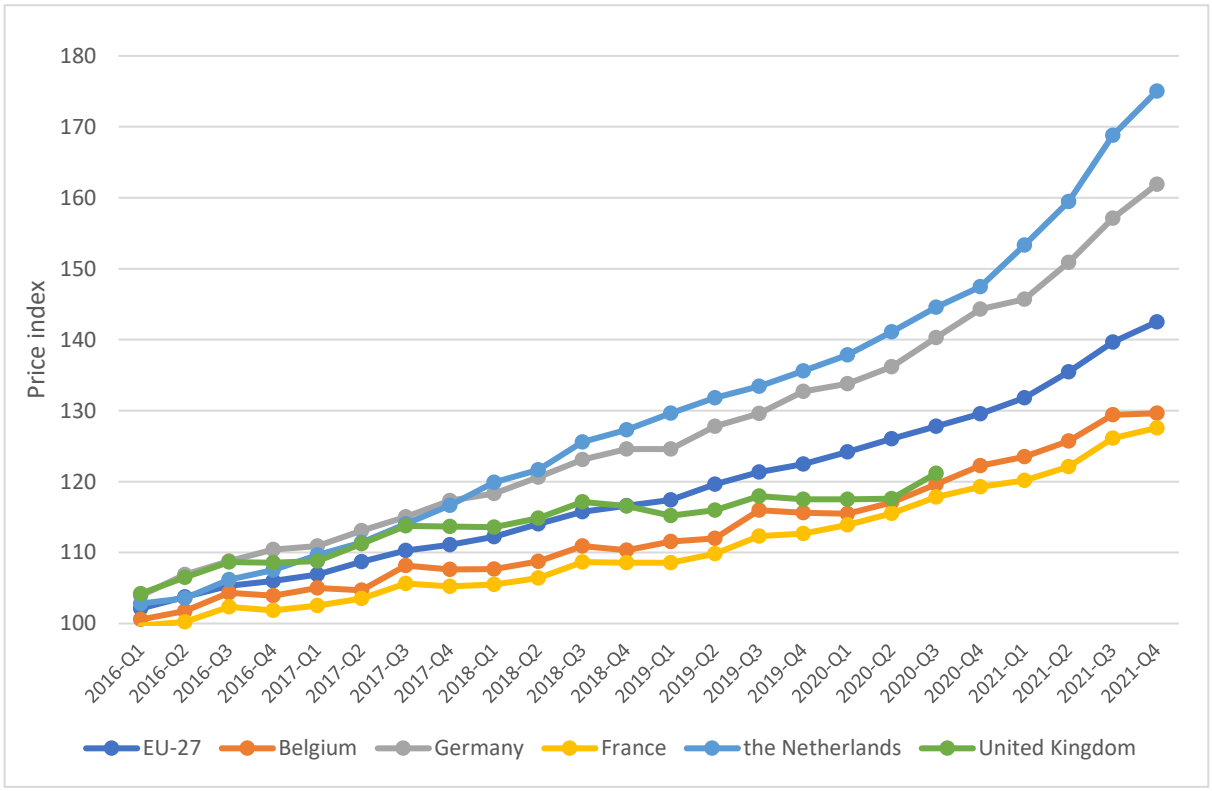
[3] Heylen, K., Woonbeleid en woningmarkt in Vlaanderen vergeleken met de buurlanden en de Belgische regio's, Steunpunt Wonen (Policy Research Centre Housing, to be published).

Unlike some of our neighbours - but similar to many other European countries - Belgium and especially Flanders (the Flemish Region) has a high proportion of home owners. This is thanks to a post-war policy that placed a strong emphasis on home ownership.

Housing prices

The following figures show the evolution of the housing prices for all of Belgium, since the housing price indices are not calculated for the regions separately.

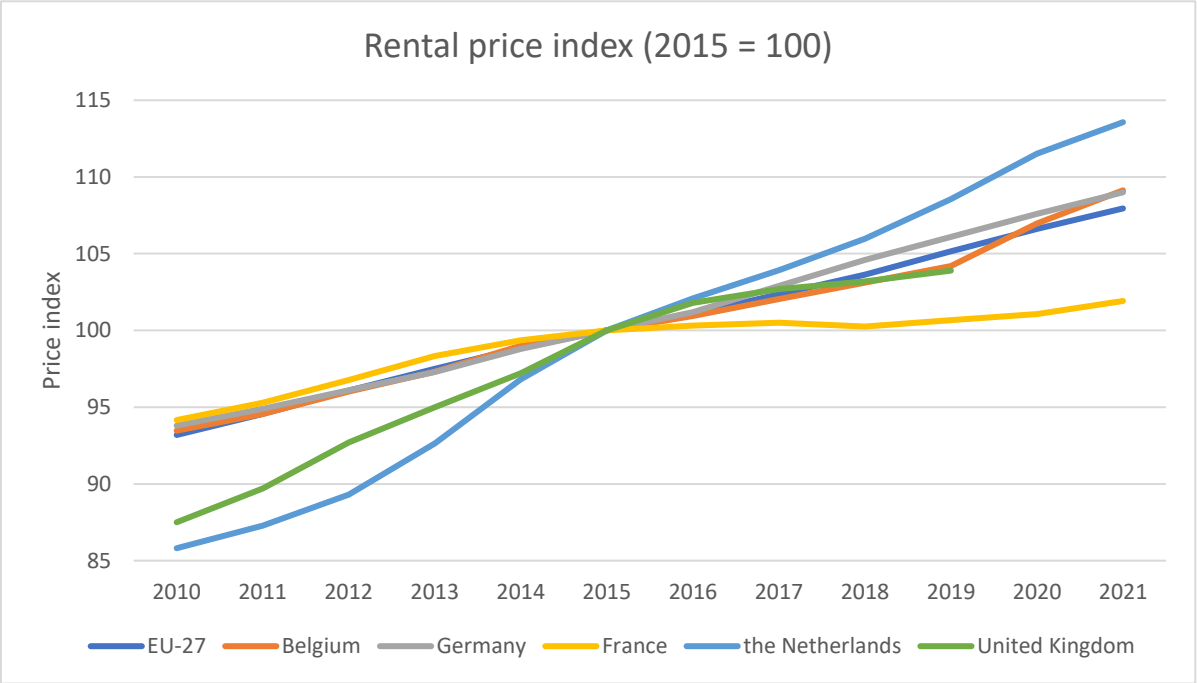
Evolution of the housing price index (2016 – 2021, 2015 = 100)



Source: Heylen, K., to be published

The above graph shows that housing prices in Belgium are certainly not rising faster than in our neighbouring countries or in the rest of the European Union. On the contrary, in Germany and the Netherlands, prices appear to be rising much more sharply than in Belgium.

Evolution of the housing price index (2010 – 2021, 2015 = 100)



Source: Heylen, K., to be published

* The rental price index is deducted from the part of the consumption price index that measures the evolution of the rental prices.

The rental price evolution in Belgium follows that of the EU average and that of Germany and the UK. From 2018 there is a slight bend upwards: the rent index in Belgium started to rise more strongly than in our neighbouring countries, with the exception of the Netherlands.

Affordability

*% of population with a housing cost overburden (housing costs incl. additional utility costs, 2020)**

Country	**% housing cost overburden**
European Union - 27 countries (as of 2020)	7.8
Belgium	7.8
Flanders	*5.5*
Wallonia	*8.9*
Brussels-Capital Region	*14.9*
Germany	9.0
France	5.9
The Netherlands	8.3

Source: EU-SILC - Eurostat, calculation of the regional numbers by the Policy Research Centre Housing

*This indicator is defined as the percentage of the population living in a household where the total housing costs (including utility costs) exceeds 40% of that household's total disposable income.

Flanders (the Flemish Region) is below the European average if we consider this indicator of affordability. The Netherlands are also below; while France and Germany are above it.

% of population in arrears on housing costs (2020)

Country	Arrears on housing costs*
European Union - 27 countries (as of 2020)	8.8
Belgium	7.8
Flanders	*3.6*
Wallonia	*8.2*
Brussels-Capital Region	*9.3*
Germany	5.2
France	8.9
The Netherlands	3.2

Source: Heylen, K., to be published

* This indicator measures the proportion of the population in a household that is in arrears with rent, mortgage loan or utility costs.

The picture is the same when the arrears on housing costs are considered: Flanders (the Flemish Region) scores better than the European average, as do Germany and the Netherlands.

Housing quality

Severe housing deprivation rate (2020)

Country	Severe housing deprivation rate*	% of population living in a dwelling with damp issues	% of population having neither a bath, nor a shower in their dwelling	% of population not having indoor flushing toilet for the sole use of their household	% of population considering their dwelling as too dark
European Union – 27 countries (as of 2020)	4.3	14.8	1.6	1.8	6.5
Belgium	2.3	15.7	0.4	0.7	6.3
Flanders	0.9	12.3	-	-	-
Wallonia	1.3	18.7	-	-	-
Brussels-Capital Region	10.2	25.0	-	-	-
Germany	1.2	12.0	0.0	0.0	4.0**
France	3.8	17.9	0.5	0.7	9.5
The Netherlands	1.5	14.8	0.1	0.0	3.5

Source: EU-SILC – Eurostat, calculation of the regional numbers by the Policy Research Centre Housing

*Severe housing deprivation rate is defined as the percentage of population living in the dwelling which is considered as overcrowded, while also exhibiting at least one of the housing deprivation measures (damp issues / no indoor toilet, no bath/shower, too dark).

** 2019 instead of 2020 (2020 was unreliable).

The severe housing deprivation rate and the percentage of population living in a dwelling with damp issues in Flanders (the Flemish Region) is (much) lower than the European average. Belgium also scores (better than) average for other quality indicators.

2. GENERAL POINTS OF THE COMPLAINT

In general terms, the complaint cites several points, from which the complainant infers that the provisions of the Charter have been violated. Among other things, it cites too limited monitoring (2.1) and invokes an inadequate housing policy which, according to the complainant, is reflected in the fact that little progress is being achieved (2.3) and the right to housing is not being fulfilled for everyone (2.2). Below, the different points will be refuted in general terms and subsequently technically substantiated and clarified in depth in terms of content (with concrete facts and/or data).

2.1. Monitoring of the situation on the ground

In general

As regards the outline of the situation and evolution on the ground, the complaint is structured and substantiated. Most of the cited research results and figures come from studies and databases commissioned and funded by the Flemish government. In recent decades, there has been a strong focus by Flanders (the Flemish Region) on the underpinnings of policy. In recent decades, Flanders (the Flemish Region) has devoted ample financial resources to research in the policy area of housing. In other policy areas (cfr. well-being) as well resources have been allocated to conduct housing-related research, for example on homelessness (KULeuven), the path to independent living which compares centres for general welfare work (centrum algemeen welzijnswerk, CAW) services and supervised independent living (begeleid zelfstandig wonen, BZW) services (KULeuven). In the housing policy area alone, around 150 studies were commissioned by policymakers over the last decade (2011-2021). These study reports are always produced by a consortium of universities (Policy Research Centre Housing, Steunpunt Wonen), which is also internationally recognised as being of high quality. Many reports and studies precede (new) housing policies and/or form the basis for modifying policies (cfr. federalisation of private rent legislation, the renewal of the framework of housing inspections, the rent estimator (huurschatter), etc.). Other reports relate to evaluations of the policy (the housing subsidies such as the rent premium (huurpremie) and rent subsidy (huursubsidie), the cost-effectiveness and efficiency of the social housing corporations and the social rental agencies, etc.) and aim at optimising the policies (emergency housing). Besides research into specific topics, the effects and evolutions in the housing market are systematically and periodically monitored in longitudinal studies. For example, the 'Vlaamse Woonmonitor' was developed as a measurement tool that systematically collects data on housing and housing policy through carefully selected indicators. Among other things, the indicators describe housing quality, affordability, housing security, and accessibility, and address the balance between supply and demand. The topics are always studied from various perspectives and the results usually provide the necessary nuance for debate. The complaint acknowledges the fact that the policy is making serious efforts to gain insight into the housing market and housing issues, but at the same time argues that the trickle-down effect of the policy is too little or not targeted enough. On the one hand, the examples cited above rebut this allegation; on the other hand, the policy has the margin of discretion and opportunity to take into account the results of studies incrementally in realising the policy. As such, the fact that the insights from studies are not immediately transposed often has to do with the necessary caution that policy decisions demand, but it cannot therefore be concluded that policy does not adequately take into account the results of studies.

In-depth technical clarification of content

One of the critical conditions for conducting a successful housing policy is policy-oriented research based on relevant and current data. In the past, this information was obtained primarily from the

'population and housing censuses'. Sampling and administrative data provided additional information. After the abolition of the population and housing census (the last one was organised in 2001), efforts were made to bring together the necessary basic information by linking administrative databases, both in the Census by the General Administration of Patrimonial Documentation (Algemene Administratie van de Patrimoniumdocumentatie, AAPD) and in Flanders' own policy data warehouse on Housing within the Flemish public administration. However, there remained omissions in the basic information needed on housing, especially on household spending and affordability and on housing characteristics and quality.

Therefore, in 2005 the Flemish government took the initiative to conduct a large-scale survey on the housing situation of Flemish households for the first time. For this, technical inspectors from the Flemish Region conducted an external technical inspection of more than 8,000 homes. For around 5,000 of these homes, residents were surveyed on their housing situation and needs. In 2012-2013, a second such survey was organised, this time involving some 10,000 households. The larger sample size made it possible to produce an even more refined picture of the housing situation. Another important difference with 2005 was that the interior of a large number of dwellings (5,000) was now also objectively brought into focus. This large-scale survey of the housing situation and housing quality was called the 'Grote Woononderzoek 2013' (Large-scale Housing Survey 2013), or GWO 2013.

Following on from the GWO 2013, structural data collection was embedded in Art. 2.40 of the Flemish Housing Code. The article stipulates that a comprehensive data collection be performed every 10 years, including a screening of housing quality. In 2018, it was decided to conduct a more targeted housing survey in the interim. In this way, up-to-date data becomes available that will make it possible to keep a finger on the pulse for key indicators and underpin the new policy cycle. Following on from this, the 'Housing Survey 2018' was organised, around four thematic modules and a sample size of approximately 4,400 units.

But data collection is not enough to provide a comprehensive understanding of the housing situation and housing needs of households, or insight into the functioning of the Flemish housing market. In order to adequately answer pertinent questions about the effectiveness and efficiency of the policies implemented or still to be implemented, the Flemish government has therefore incorporated policy-relevant research on housing into multi-year research projects since 2004. Over the period 2004-2006, the Knowledge Centre for Sustainable Housing Policy (Kenniscentrum voor Duurzaam Woonbeleid) was tasked with implementing the research project 'Ruimte voor Woonbeleid' (Space for Housing Policy). The theme of housing was subsequently included in the programme 'Steunpunten voor Beleidsrelevant onderzoek' (Policy Research Centres), successively in the context of the Policy Research Centre Space and Housing 2007-2011 (Steunpunt Ruimte en Wonen), the Policy Research Centre Housing 2012-2015 and the Policy Research Centre Housing 2016-2020. In 2021, the Policy Research Centre Housing 2021-2025 was launched. The main task of the Policy Research Centre consists of collecting basic information about housing in Flanders (the Flemish Region), monitoring Flemish housing policy and conducting specific policy-oriented research assignments. The processing of the data from the newly planned large-scale housing survey of at least 6,000 households (Housing Survey and Housing Screening 2023) are part of the remit of the current Policy Research Centre Housing (Steunpunt Wonen).

2.2. Housing inequalities

In general

As the complainant indicates, home ownership has been dominant in the Flemish housing market since the 1950s, which was brought about in part by past policies. Home ownership increased sharply until

the early 1980s, after which - from the transfer of competence for housing to the Regions - the increase slowed down. From the early 2000s, the share of homeowners stagnated at around 72%. The complainant denounces the high proportion of owners and the low proportion of social rental housing. The size of the shares of the various segments in the housing market is highlighted in the complaint as a problematic consequence of (what the complainant believes are poor) policy choices. The problem of the private rental market is also denounced, with the complainant postulating that the policy in this segment is quasi-immobile.

In general, the Flemish government argues that the targeted encouragement of home ownership, for households wishing to acquire a sole own dwelling, is a legitimate policy choice. It offers the relevant households optimal housing security, more robust than that of the private rental market. Moreover, home ownership provides financial relief for ageing households, since Belgian pensions (a federal competence over which the Flemish government has no say) are low from an international perspective. Depending on whether the purchase is the individual's own first home, the Flemish government has considerably reduced registration duties, while increasing these from the second home on. Furthermore, targeted encouragement of ownership entails a nuanced policy. For example, the 'home bonus' (woonbonus) was abolished precisely because scientific research had shown that the effect of this instrument was generally to increase prices[4]. Moreover, in an international perspective, it must be acknowledged that various countries pursue a policy of home ownership and offer valid reasons in this regard (for a description of the benefits, see Boelhouwer and Skiffer[5], among others). In this perspective, it is argued that a larger share of homeowners in the housing market provides stability and can absorb economic shocks. The housing market in Flanders (the Flemish Region) (and by extension Belgium) is therefore a relatively stable market that has come through the various crises of recent decades (world recession due to the second oil shock in the early 1980s, sharp slowdown in growth in the world economy in the 1990s, the global financial crisis in 2008 and more recently the coronavirus crisis) well compared to many of the surrounding countries. Consequently, a policy aimed at encouraging home ownership cannot simply be dismissed as counterproductive to fulfilling the right to housing.

The complaint also charges that the share of social rental housing is too low to meet needs. Social rental housing currently makes up about 7% of the housing market. Although this share has risen only slightly over the last decade, there has been a sharp increase in absolute numbers (see above). The budget for social housing in Flanders (the Flemish Region) has also grown substantially over the past 10 years (see above). In other words, Flanders (the Flemish Region) is making serious efforts to increase the supply of social rental housing. Moreover, structural measures have been put in place to strengthen the social rental housing sector. A binding social objective has been imposed on all municipalities, meaning that over a period of 15 years they have had to realise an actual increase in the local social rental housing supply (taking into account the number of inhabitants, the supply already realised, etc.). Even though the realisation of the current social objective is still ongoing, it demonstrates that Flanders (the Flemish Region) takes fulfilling the right to housing of the households most in need of housing seriously, and is also strictly monitoring this through a procedure of progress regarding the accomplishments at the local level. At the same time, the social housing sector is being thoroughly reformed with a view to the more efficient functioning of the sector and a larger supply of social rental housing (whereby the private rental market can also be harnessed more optimally with

[4] Reports 'onderzoek naar de woonfiscaliteit in Vlaanderen' (2014): Goeyvaerts G. and Vastmans F., Deel II: Budgettaire analyse van instrumenten; Vastmans F., Heylen K. and Goeyvaerts G.: Deel III: Effectenmeting; Goeyvaerts G., et al, Deel IV: Bouwstenen en scenario's; Goeyvaerts G., et al, Deel V: Samenvatting. (Leuven, Delft: KUleuven, Hiva – TUDelft).

[5] Boelhouwer, P., & Schiffer, K. (2019). *De meerwaarde van de eigen woning: geef starters een kans! Analyse en oplossingsrichtingen*. Delft: Delft University of Technology.

regard to social housing). While research[6] shows that in other countries, funding for social housing is being reduced, social housing policy in Flanders (the Flemish Region) is being improved financially as well as institutionally and in terms of available tools, in various areas. Consequently, it is unjustified and incorrect for the complainant to claim that no efforts are being made. Similarly, a housing policy that is not oriented as much as possible on housing need does not equate to violating the realisation of the right to housing, especially when it is generally assumed that the policy has the necessary margin of discretion and opportunity to interpret it according to its own (political) insights. It was highlighted above that Flanders (the Flemish Region) wishes to focus on a policy targeting multiple income groups, which, incidentally, by no means excludes a focus on households in need of housing.

Furthermore, the complaint makes the accusation that the policy is making too little effort in the private rental market. This point can also be rebutted, based on the various additional efforts and the specific supporting tools designed for this purpose. Among other things, the rent premium (huurpremie) and the rent subsidy (huursubsidie) have been adapted and significantly expanded in terms of their scope, a special fund for evictions (Fonds voor de Bestrijding van Uithuiszetting), has been set up and funded, various easily-accessible discrimination reporting centres have been set up, the checks for 15ouseng on the private rental market have been optimised at the procedure level, and the minimum quality standards for dwellings have been made more stringent (including in the area of energy and/or insulation). A system of rental under conditions (geconventioneerd verhuren) is being developed (at the time of writing this defence, the Flemish Government had approved the decision in principle in this regard). At the same time, the market context always needs to be taken into account in developing policy measures. A tight rental market with ample demand for affordable and high-quality housing requires a cautious policy in order to prevent owner-landlords from selling off their properties, and to prevent the measures from significantly distorting market forces. Such a context influences the margin of discretion of policymakers and the measures they develop for the private rental market, but this does not mean that it can be claimed that policymakers lack initiative in this segment.

In-depth technical clarification of content

The fact that the share and increase in the share of owner-occupants is not evenly distributed across the different income groups, as the complainant argues, is correct (and somewhat obvious). However, that observation requires some nuance. In the same report from which the figures are taken (Heylen & Vanderstraeten, 2019)[7], the researchers themselves indicate that this is not necessarily due to a stronger income profile among recent homeowners, but that it is equally possible that a cohort effect is at play among the total group of homeowners. In the meantime, an earlier study by the Policy Research Centre Housing (Steunpunt Wonen) highlighted the fact that the declining percentage of homeowners among the lowest income groups in the period 2005-2013 was due to a cohort effect among homeowners without a mortgage (an older group on average) and not to a changed income profile among first-time homeowners (Heylen, 2018)[8]. Between 2005 and 2013, the share of homeowners without mortgages belonging to the two highest quintiles rose, while the income profile of homeowners with mortgages did not change significantly and that of first-time buyers in the homeownership market actually became stronger between 2005 and 2013. These first-time buyers are homeowners who have purchased their homes in the last three years and are no more than 35 years old at the time of purchase.

[6] OECD (2021), "Building for a better tomorrow: Policies to make housing more affordable", Employment, Labour and Social Affairs Policy Briefs, OECD, Paris, http://oe.cd/affordable-housing-2021.
[7] Heylen K. & Vanderstraeten L. (2019). *Wonen in Vlaanderen anno 2018*. Leuven: Policy Research Centre Housing.
[8] Heylen K. (2018). *Inkomens- en vermogensverdeling gerelateerd aan wonen.* Leuven: Policy Research Centre Housing.

Furthermore, Heylen and Vanderstraeten (2019)[9] find that among homeowners with mortgages, there is a significant fall in the first income quintile (from 10 to 7%) and a significant increase in the fifth quintile (from 30 to 34%). Both trends indicate a (slightly) stronger income profile for this group. However, when they compared first-time buyers in the homeownership market between 2013 and 2018, there appears to be no significant trend. There may be a cohort effect at play within the group of homeowners with mortgages between 2013 and 2018. In any case, the explanation of the (slightly) stronger income profile of homeowners with repayments does not seem to apply among first-time buyers. In addition, it can be stressed that Flanders (the Flemish Region) does not intend to encourage the lowest income groups to become homeowners partly because the individuals involved are often only in a position to purchase lower-quality housing, and then lack the resources to renovate the dwelling in a quality manner (which is why a lower limit is imposed for social loans / owner-occupied social housing). This choice is also legitimate, given that for these lowest income groups other schemes are more suitable (social rent, rent subsidy and rent premium, with each time a higher income threshold as a condition for eligibility).

The share of social rent is rising very gradually, and is around 7%. When the income limits were made stricter in the early 1990s, the scheme became more selective. In 2013, the income limits were raised again to extend access to low-income households. This choice was prompted in part by the fact that a mix of social tenants with a more differentiated population was envisioned. At the same time, various measures are being introduced in the area of social rent, to prevent social tenants with a (relatively) high income from living in social rental housing for too long. As such, contracts with unlimited duration have been abolished and the social rent price has been linked to income, with the highest incomes being liable to pay the market price. In this way, mobility is also aimed for in the social rental market, whereby households with lower incomes can enter and those with (relatively) high incomes leave. This introduces a pertinence criterion into social housing, and the focus is on the households with the highest needs (which the complainant refers to as one-sided housing for the poor, while it is precisely this group that is in most need). Maintaining a relatively high income limit as an eligibility criterion is considered a balance for focusing on those in most need. Indeed, in this way, one of the goals of social housing is to be able to differentiate according to population of social tenants, which also enhances local capacity. In addition, significant efforts are being made to expand the social housing supply (see above: the social objective and increased resources).

The private rental sector makes up 20% of the market. Research[10] shows that in the lower segment of the private rental market, the problems of affordability, housing quality and housing security are the most prominent. The Flemish government is working harder in this segment to improve housing quality, including by expanding the available schemes. For example, a ‘warning procedure’ has been implemented, which allows tenants to continue occupying the property, while at the same time the owner is ordered to improve the property, which is being monitored. In addition, the rent subsidy and the rent premium have been expanded in terms of scope and target group. Consequently, policy steps have been taken to put the target groups in the private and social rental market on an equal footing in terms of the income and ownership conditions to qualify for support. As a supplement to the complainant's analysis, it can be stated that between 2013 and 2018, the problems in the lower segment of the private rental market did not increase, for the first time (thanks in part to intensified policy efforts). Regardless of the affordability indicator used, there was no significant change in affordability problems in the private rental market between 2013 and 2018, and the proportion of private rental housing in poor or very poor physical state fell from 18.4% to 15.9%.

[9] Heylen K. & Vanderstraeten L. (2019). *Wonen in Vlaanderen anno 2018*. Leuven: Policy Research Centre Housing.
[10] Heylen K. & Vanderstraeten L. (2019). *Wonen in Vlaanderen anno 2018*. Leuven: Policy Research Centre Housing.

2.3. Comparison of policy efforts and results on the ground

In general

We cannot overlook the specific context of the housing market within which the policy will be pursued. Since housing is rather static in nature, fundamental changes both quantitatively and qualitatively only have an effect in the longer term, and incrementally. On the one hand, planning, designing and building homes is a lengthy process that can take several years to complete; on the other hand, homes generally have a long life time, in the sense that they remain in use for several decades and most people live in the same home for a long time. Therefore, societal choices and policy choices from the past still affect current and even future generations. For example, the historically high proportion of homeowners in Flanders (the Flemish Region) is cited by the complainant as problematic. If this was problematic at all (which it is not), changing it would require an ample time frame in order to bring about other outcomes in the housing market via policy. Partly for this reason, the Flemish government has opted to develop a long-term vision and enshrine it in regulations. The Flemish Housing Code includes the Housing Policy Plan Flanders (Woonbeleidsplan Vlaanderen), which sets clear objectives by 2050. Suitable, high-quality and affordable housing must be realised for everyone by 2050, and to this end, a specific action plan will be drawn up for each new term of office. In this way, a long-term goal is incorporated into a static housing market, and the Flemish government is proactively working towards the future. Also partly on account of this, it cannot be claimed that the policy does not systematically pursue the progressive interpretation of the right to housing.

In-depth technical clarification of content

Since the transfer of the competence for housing to the regional level (1980s) and the enshrining of fundamental social rights in the Belgian Constitution (1990s), the Flemish government has worked towards developing a Flemish housing policy. The complainant rightly points out that the introduction of the 'Vlaamse Wooncode' in 1997 constituted an important anchor point, concretising the right to decent housing, and from which new policy initiatives have emerged:

"The Flemish Housing Code (Vlaamse Wooncode) provides a legislative foundation for the Flemish housing policy and stipulates that the ultimate objective of this policy should be the realization 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)."

State reform in Belgium is a lengthy process which is not yet complete. This is therefore potentially an inhibiting factor for an unambiguous policy. Since 2014 (the sixth state reform in which housing taxation was partly transferred to the Regions along with private rental legislation), Flanders (the Flemish Region) has also worked on various reforms (including in the area of housing taxation, with the abolition of the home bonus - see below).

Due to the static nature of the housing market, on the one hand, newly implemented policies, for example in terms of housing quality inspection, generate outcomes on the ground with a certain delay. After a quarter of a century of independent competence of the Flemish Region for housing policy,

progress has been made in various areas, including the quality of the housing stock, the position of social tenants (e.g. through broader support responsibilities for social landlords) and an improvement of the position of private tenants (inspections of the quality of housing based on easy-to-make requests, discrimination reporting centres, etc.). On the other hand, as stated above, not all competences were transferred to the Flemish Region, and the transfer of competences was staggered over time. This partly determined the impact and capacity of housing policies, and this context must be taken into account when assessing policies for their impact and efficiency - as well as the level of fulfilment of the right to housing. At the same time, the Flemish Region is aware of this and a policy shift is therefore proposed in the long term, including towards property acquisition, which was no longer stated as an explicit objective in the 'Vlaamse Wooncode' (nor in the current 'Vlaamse Codex Wonen'). Such a policy shift applies all the more to the above-mentioned Housing Policy Plan Flanders (2018), in which the Flemish government explicitly recognises the need for a more balanced housing market, with comparable submarkets. This Housing Policy Plan includes an information component that highlights the need for a housing policy (indeed, the housing market is not perfect). The housing policy should take measures to remedy these imperfections and ensure that every individual can live in a dignified manner. In addition, the Housing Policy Plan Flanders, building on the aspects of the Flemish Housing Code, sets out strategic long-term targets and ambitions. The targets are formulated at the strategic level and can remain applicable under changing societal conditions. They indicate where we want to be in the long term (2050) with housing in Flanders (the Flemish Region). It is a total package of targets, which are interrelated and describe the future picture as a whole. Moreover, the targets are generic and do not differentiate by submarket, housing type, target group, region, etc. Finally, the Housing Policy Plan Flanders also contains a section on monitoring, with a number of indicators for each strategic target. In each case, targets for 2050 have been set out and, starting from the current situation, a pathway to 2050 has been mapped out, with intermediate targets for 2020, 2030 and 2040. Furthermore, the targets are concretised in an action plan for each term of office.

3. OWNERSHIP MARKET

The complaint cites various arguments and reasons that are intended to demonstrate that the policy of ownership is counterproductive and that encouraging individuals to acquire property goes against the realisation of the right to housing for certain population groups. The reasons put forward relate to the support policy itself (3.1.), the policy with regard to emergency buyers (noodkopers) and the lowest income groups (3.2.). The arguments put forward shall be rebutted below section by section.

3.1. Justification of policies to support property acquisition

The complainant argues that the Flemish government continues to focus on property acquisition, while claiming that this is not efficient or targeted (the Matthew effect, where target groups benefit from a policy while they are not the intended beneficiary). A tax-neutral policy could remedy this, according to the complainant. Reducing pre-emption rights (registration duties) is seen as a measure that has a perverse effect on the private rental market. It is acknowledged that abolishing the home bonus was a good measure, but at the same time the policy is accused of not spending the freed-up funds on the private rental market. In general, it is argued that incentivising property acquisition is inconsistent with the obligation to progressively realise the Revised ESC, and the obligation to target policies towards those in most need.

In general

As cited above, the choice to support property acquisition does not mean that the policy does not adequately addresses housing needs in the social and private rental market (both in terms of policy resources and schemes). Indeed, opting for property acquisition does not preclude having a focus on those most in need of housing. The housing policy has various objectives that focus both on supporting the private and social rental market and the ownership market. Moreover, it is also unjustified to claim that encouraging households to acquire their own only home is a policy option that fails to fulfil the realisation of the right to housing. The reduced sales duty generally stimulates acquisition, at the moment of purchase (rather than an annual tax deduction). In particular, this is useful for the income group just above the target group eligible for support in the private and social rental markets. Previously, this group could only consider very modest dwellings, on which a reduced rate then applied (now the reduction applies to all homes). The increased registration duties from the second home onwards are intended to provide relief to households wishing to acquire their first owner-occupied home (and consequently provides a stimulus for buying the first home, but nothing for subsequent acquisitions). Moreover, the policy can and does prescribe certain choices and emphases in the objectives (based on the policy's margin of discretion). These relate to the legitimate prerogative of the policy, which is legitimate when it falls within the contours of the government's obligations, and consequently it is not omitted to support other groups in need of housing in fulfilling their right to housing. Furthermore, the complainant argues that the focus on property acquisition does not address the group most in need of housing. Indeed, the support does not target the group of households most in need of housing. For them, sustainable home ownership (i.e., becoming and remaining a homeowner) is not feasible, even if they are supported in this regard. For this group, the necessary support in the private and social rental markets is provided (see below). As regards the claim that the freed-up resources (from the abolition of the tax deduction) are not utilised for the benefit of a specific submarket, the Flemish government has decided to include these funds in the general policy resources in order to meet (other) policy needs (this is a policy choice and cannot be seen as a criticism of the

housing policy). Finally, a home acquisition policy has benefits at the macro-level. The robust nature of the ownership market, which allows economic and/or financial shocks to be absorbed more efficiently, was already referred to above. In addition, recent Dutch research[11] emphasises the fact that Belgium and the Netherlands are very similar in terms of economic characteristics; even the median disposable income is almost the same. Nevertheless, income inequality is (slightly) higher in the Netherlands, despite a different housing policy in the Netherlands with the main emphasis on the rental market and social renting. Encouraging home acquisition may therefore be an element to counteract income inequality (which is also backed up by other research[12]).

In-depth technical clarification of content

The Flemish Coalition Agreement (2019-2024) provided for the phasing out of the home bonus (the decision was made to phase out the mortgage deduction so as not to upset the market). Said coalition agreement also clearly highlighted the need for a change in policy, namely from a tax concession on owning a home to the acquisition of a home (via a reduction in registration duties). The complainant argues that the ownership market lacks flexibility and dynamism. In fact, shifting the benefits of home ownership to benefits in transactions can increase mobility. Moreover, initiatives are also being taken to make the housing market (including the ownership market) future-proof. For example, research is being done into how new housing initiatives can be stimulated and what added value they offer (among other things, in terms of responding to different needs, including in terms of demographics). Phasing out the home bonus was intended, as simulated by scientific research[13], to eliminate side effects on the housing market (such as increase in prices) and to achieve a more targeted ownership policy. Such initiatives and policies aimed at supporting transactions (through registration duties) debunk the complainant's claim that an ownership policy per se is problematic and prevents mobility. Moreover, it can be noted that the Matthew effect cited by the complainant is based on calculations of research that are based on data from prior to 2018. Consequently, these do not take into account the largest tax adjustment made in recent years. Furthermore, the Housing Policy Plan Flanders, as included in the Flemish Housing Code, defines the additional emphases for housing policy. Indeed, with the introduction of this Housing Policy Plan, the intention to '*provide affordable, high-quality and suitable housing for everyone by 2050*' is enshrined in a decree and will be achieved through periodic action plans. In the Housing Policy Plan, the Flemish government recognises the need for a balanced housing market, with equivalent submarkets. In other words, the neutrality cited by the complainant is integrated into the housing policy plan.

3.2. Justification of policies toward the lowest income groups

The complainant argues that the Flemish government supports property acquisition (in the past through the home bonus and currently through reduced registration duties), and thus pursues an incentivising policy also for the lower income groups. These income groups, according to the complainant, are then encouraged to acquire a home when it is not feasible or desirable for them to do so. The response of policy to this, including the creation of an emergency purchase fund (noodkoopfonds), is criticised as inadequate. Also, according to the complainant, the renovation grant

[11] Behrens C., Keijser D., & Belt T. (2020). *Europese vergelijking staatsteun en inkomensgrenzen sociale huisvesting*. Amsterdam: SEO economisch onderzoek.

[12] Kuypers S. & Marx I. (2020). *De verdeling van de vermogens en schulden in België. Een actualisering op basis van de derde golf van het HFCS.* Antwerp: Centrum voor Sociaal Beleid.

[13] Goeyvaerts G., et al (2014). *Onderzoek naar de woonfiscaliteit in Vlaanderen. Part V: Samenvatting*, Leuven, Delft: KULeuven, Hiva – TUDelft.

for owners does not sufficiently reach the lower income groups. In the complainant's view, the Flemish government does not adequately addresses this issue.

In general

The Flemish government is aware of the fact that it is financially difficult or impossible for the lowest income groups to acquire (and maintain and renovate) a home. However, it is incorrect to claim that the policy itself encourages the lowest income groups to acquire a home, via reduced registration duties. On the contrary, households with an annual income below €9,929 cannot in principle obtain a social loan (precisely so as not to encourage them to acquire). The ownership market is essentially an economic market in which, in the first instance, the parties themselves decide to transfer the property (except for a protective generic arrangement, the government does not intervene in this regard). Consequently, households are in principle allowed to make the free choice and opt for the form of housing that they deem most suitable. Although their alternatives are more limited, lower income households can also make this choice. From this perspective, the Flemish government only intends to intervene where the right to housing is difficult or impossible to realise autonomously (such intervention takes place in all submarkets). On the one hand, it is not the intention of the Flemish government to encourage the lowest income groups to acquire a home, but if this target group makes this decision based on its own freedom of choice, and consequently comes into difficulties, the Flemish government intervenes to help remedy the situation (including through the emergency purchase fund). On the other hand, the Flemish government wishes to safeguard the freedom of choice of households. For certain income groups, targeted schemes such as the social loan and the purchase of owner-occupied social housing are implemented in addition to the generic measure of reducing registration duties. In this way, the income group just above the lowest income groups can choose to acquire a property if they wish. Research has shown that this policy choice reflects the wishes of many households (Pannecoucke & De Decker, 2015[14]). In other words, the Flemish government does in fact take differentiated action when it comes to ownership among the lower income groups.

The Flemish government is aware that there are emergency buyers and that this can be problematic (in terms of loan repayment and putting off renovations). It is precisely for this reason that various schemes and measures were set up to remedy this situation, without wanting to create a policy that encourages the lowest income groups to acquire a home. On the one hand, the complainant argues that the policy encourages lower income groups too much to acquire a home, through reduced sales duties. On the other hand, the complainant denounces the fact that the schemes do not adequately reach the lower income groups. The complainant's reasoning is therefore contradictory. In addition, the complainant argues that a housing policy aimed at supporting property acquisition leads to the exclusion of households in poverty from the housing market. If such a side effect were to exist at all, the specific schemes relating to the private rental market and social housing should overcome it (see below). Possible disadvantages should therefore be remedied rather than deciding to no longer pursue the policy of ownership. The advantages of property acquisition demonstrated by the research (see above: a more solid and robust housing market and the fact that this is the preference of a broad section of society) outweigh any disadvantages.

In-depth technical clarification of content

[14] Pannecoucke I. & De Decker P. (2015), *Grote Woononderzoek 2013. Part 7. Woontevredenheid en woongeschiedenis*, Policy Research Centre Housing, Leuven.

In 2018, the Flemish government decided to set up an emergency purchase fund (noodkoopfonds). This fund aims to support lower income groups who acquire a home when they renovate it (energy-wise). To this end, the Flemish government launches periodic calls to the OCMWs who can work together and develop a collective approach as regards the housing of the emergency buyers in question. The Flemish government provides interest-free loans in this regard, and financially supports the operation. after renovation, the dwellings obtain the necessary certificates showing that they meet the energy efficiency and housing quality standards. The fact that this fund is not yet at cruising speed does not mean that it can be concluded that the Flemish government is not making adequate efforts to support emergency buyers. This fund is being monitored and is periodically evaluated to look for ways to improve it. Furthermore, the Flemish government has put an insurance scheme in place for individuals who lose their incomes. Home owners can participate in the scheme at no cost, to protect themselves against losing their home. There will then be no forced sale of the home, which is an additional support for households with limited resources. As regards the renovation grant, we refer to the income limit that applies as an eligibility condition for the grant. This income limit is an upper limit and not a lower limit, meaning that lower income groups are also eligible for the renovation grant. However, most of this support goes to middle-income earners (Heylen, 2020[15]), partly because the lowest income group do not have the financial means to acquire their own home (and no explicit policy is pursued in this regard) and higher incomes are excluded in any case. From a policy perspective, this middle-income group is precisely the target group of the scheme, but the lowest income earners are not excluded from it.

The Flemish government pursues a specific policy vis-à-vis special target groups, including in terms of property acquisition. Providing owner-occupied social housing and social lots makes it more accessible for specific target groups to acquire their own homes. Owner-occupied social housing or social lots are sold below the market price. The discount on the purchase price of the home or lot makes acquiring an owner-occupied home easier for families and single persons who do not have the financial means to do so without this support. For example, in 2020, 568 owner-occupied social housing units were sold at an average sales price of around €215,500. In 2020, 14 social lots were sold at an average sales price of around €65,470.

	Owner-occupied social housing units sold	Average sales price owner-occupied social housing unit	Social lots sold	Average sales price social lot
2015	803	€180,188.74	35	€60,610.51
2016	883	€175,980.14	57	€66,194.31
2017	997	€181,028.13	11	€48,632.07
2018	1041	€182,823.38	24	€60,283.86
2019	836	€201,706.12	20	€55,075.40
2020	568	€215,495.49	14	€65,470.44

To ensure that owner-occupied social housing, and social lots are offered to families and single persons in need of housing, prospective buyers must fall within certain minimum and maximum income limits. The prospective buyer's family situation is taken into account in calculating the maximum income. In addition, the maximum income requirement is higher in certain clusters of municipalities where housing prices are higher. Prospective buyers are not allowed to own any other immovable property. A minimum income is imposed according to the extent to which the purchaser needs protection (below this amount, it is too uncertain whether they can keep ownership of the property).

[15] Heylen K. (2020). *Woonsubsidies in Vlaanderen. Verdelingsanalyse voor 2018 en evolutie sinds 2008*. Leuven: Policy Research Centre Housing.

	Minimum income (indexed in 2022)	Maximum income (indexed in 2022)		
		Single person without dependants	*Single person with a disability*	*Family*
Municipality not included in cluster 1 or cluster 2	€9,929	€39,678	€43,639	€59,510 (increased by €3,962 per dependant)
Municipality included in cluster 1 or cluster 2	€9,929	€41,566	€45,717	€62,343 (increased by €4,151 per dependant)

It is important to highlight the complainant's claim that property acquisition has played and continues to play a central role in the policy, and that too few resources are allocated to the target group in most need. Once again, we can refute this claim since it was decided in the policy to maintain the resources for social housing from 2015 for social rental housing (and therefore for the target group in most need – see also below). Subsidies are no longer granted for the construction or acquisition of owner-occupied social housing, and social lots. Previously, social housing corporations (sociale huisvestingsmaatschappijen, SHMs), the Flemish Housing Fund (Vlaams Woningfonds), municipalities, intermunicipal partnerships, OCMWs and OCMW associations received subsidies for the construction of owner-occupied social housing, and social plots.

In addition to the specific incentive to acquire a property, the purchaser of an owner-occupied social housing unit can obtain a special social loan from the Flemish Housing Fund to finance the purchase of the home. The eligibility criteria for an owner-occupied social housing unit and a special social loan are identical (conditions relating to income and immovable property). The loan can only be granted if the sales price of the home and the estimated cost of the work still to be carried out does not exceed €200,000 (indexed amount 2021: €248,600)[16]. The amount is increased if there are dependants at the time the loan is taken out[17] or if the property is located in a municipality where house prices are higher[18]. Loans can be taken out for up to 100% of the purchase price of the home (which is necessary for low-income households).

Special social loans can be applied for by buyers of private housing and owner-occupied social housing[19]. The special social loans make it possible for households and single persons who cannot access commercial banks to still take out a mortgage loan to acquire their own home. Over a period of five years (2017 – 2021), an average of 4,130 loans were granted every year. The term is just under 25 years on average, the interest rate is lower than the commercial rate, but most importantly, the borrower can borrow up to 100% of the purchase value. Consequently, resources are targeted to support households and single persons with less capital. In this way, this group can also acquire their own home, with all the associated benefits.

[16] Art. 5.119, first paragraph and fifth paragraph Flemish Housing Codex Order of 2021.
[17] Art. 5.119, eighth paragraph Flemish Housing Codex Order of 2021.
[18] Art. 5.119, ninth paragraph Flemish Housing Codex Order of 2021.
[19] Over the period 2003 to 2008, 90% of social housing units for sale were financed with a special social loan. Heylen K. (2012). *Behoefte aan sociale koopwoningen en sociale kavels in Vlaanderen*. Leuven: Policy Research Centre Housing)

4. SOCIAL RENTAL MARKET

4.1. Supply on the social rental market

The complainant argues that the current supply of social rental housing is inadequate. The supply of 6-7% is low compared to many European countries in terms of the percentage figure, and there is a long waiting list of prospective social tenants (169,000 in 2020). Taking into account the theoretical target group, the complainant argues that a figure of 14% social rental housing is necessary (corresponding to 250,000 households that meet the eligibility requirements). One of the cited reasons for the slow growth relates to the BSO (the binding social objective, or mandatory supply of social housing to be built) which the complaint states is not ambitious enough, and the realisation of this objective is not being monitored enough.

In general

It is incorrect, judging by the facts and intentions, to claim that the Flemish Region shows too little ambition in terms of building social rental housing. Authorisation for investment by the social housing corporations (Sociale Huisvestingsmaatschappijen, SHM) has increased significantly over the past 10 years, nearly tripling to €1,133,642,000 in 2021. Moreover, in 2009 the Flemish Government decided to build an additional 43,440 housing units over a 10-year period, which at the time represented an increase of one third in the then supply (+/- 140,000 social rental units). This objective was raised to 50,000 through a decree amendment, and at the same time the time frame was extended to 2025. This stated objective is being achieved on the ground in consultation between the social housing corporations and the municipalities. Consequently, there has been a steady rise in the number of social housing units and in the resources to be spent. The fact that the time scale for realising the BSO was extended is partly due to the specific contextual factors in Flanders (the Flemish Region): a densely populated area where open space is limited, where building land is extremely scarce and expensive, and where building homes involves long lead times due to all the procedures. Taking all this into account, the time scale for realisation was extended without compromising the objective itself. By monitoring the progress (the progress test stipulated in legislation), the level of realisation is always periodically monitored. Mechanisms are also in place to encourage and motivate municipalities that are not making sufficient efforts to make additional efforts (a list of municipalities is published in this regard, and a plan of action must be submitted). It can be stated that according to the 2020 progress test, 180 municipalities are following the growth path (category 1), 107 municipalities are making sufficient efforts to achieve the objective (category 2a) and only 13 municipalities are making insufficient efforts (category 2b). From this view it can be inferred that the stated objective is likely to be achieved by 2025. Moreover, it is an established policy intention to continue efforts in the field of social rental housing. In order to make the ambition lasting, future scenarios are being considered at the regional level. In this way, the supply side will be systematically stimulated. Measuring the ambition should therefore not only be linked to the size of the percentage of social housing, but also to the efforts made on the ground to expand supply, and the financial support provided by the Flemish Region to this end. These commitments are taken very seriously. At the same time, a plan is being rolled out (Climate Action Plan 2050) to make the social housing stock ready for the climate objectives (being climate neutral by 2050). This initiative also receives considerable financial support from the Flemish government (in addition to the renovation budgets from housing, specific resources are provided for this purpose from the Flemish Climate Fund).

Besides more supply, the policy provides an allocation policy for the benefit of households in need of housing. The income limits for eligibility for social housing are rather high, and the target group is large (which allows for a mix). At the same time, it is therefore checked, after the regular contract of 9 years, whether the tenant has an income higher than 125% of the eligibility limit. If this is the case, the tenant in question must (subject to six months' notice) vacate the home, which is then allocated to a household with an income below the eligibility threshold. This process ensures a certain flow and therefore an efficient use of the supply for households in need of housing. Utilising the available supply for households in need of housing and taking policy measures to this end is an explicit and legitimate policy choice, especially when at the same time (permanent) efforts are made to increase supply. Moreover, in order to provide optimal support to the target group, the Flemish government has started a reorganisation of the social housing corporations and the social rental agencies (Sociale Verhuurkantoren, SVK) (a process that should be completed by mid 2023). This should result in a joining of forces and focusing actions on increasing supply in both the social and private rental markets (the latter is the task of the social rental agencies in Flanders (the Flemish Region), but the aim is to strengthen the functioning of the private rental market through the reorganisation). In other words, precisely because the target group is broadly defined (based on incomes), a policy is pursued that makes it necessary for people to move on when they clearly no longer belong to the target group (after the contract period has previously expired) and, at the same time, there is a permanent focus on creating additional supply.

The complainant focuses on the maximum group that is theoretically eligible, charging that the Flemish Region does not provide (or make efforts to provide) social rental housing for all these households. It was previously stated that assessing whether the policy supports the right to housing should be based on the efforts and progress made, not on the fact that the Flemish Region does not provide social housing to all households that meet the income threshold (and consequently that the supply should be 14% as the complainant argues). Firstly, not every household that has an income below the income limit has equal needs in terms of housing. Furthermore, not every household in need of housing wants to live in a social rental home (but may prefer a private rented home or modest home which they own). Moreover, there are other schemes in the policy to support the target group (cfr. rent subsidy and rent premium and innovative policies such as rental under conditions). At the same time, it must be acknowledged that the increase of supply is on track (cf. the ongoing BSO) to match the equivalent share of households living below the poverty line, which according to EU-SILC figures is 8.5%. Besides the efforts made in the area of housing, the Flemish government is making other sectoral efforts to tackle poverty (for example, the percentage of children growing up in disadvantaged families in Flanders (the Flemish Region) dropped from 13.7% in 2020 to 12.7% in 2021).

4.2. Temporary nature of social rental contracts

The complainant questions the introduction of the temporary nature of social rental contracts, arguing that this was not necessary on account of the target group being wrong. On the contrary, according to the complainant, the temporary nature is motivated by the shortage of social rental housing. Moreover, the complainant believes that the advantages do not outweigh the disadvantages. The complainant raises the question of whether individuals who leave social rental housing will be able to realise their right to housing in the regular housing market. The complainant also believes that this reduces the social housing model to a safety net for the poor (housing for the poor as a model would not prevent poverty).

In general

The temporary nature of contracts is motivated by the fact that certain tenants no longer meet the definition of social tenant in accordance with the income conditions. Other sitting tenants whose incomes do fall below the income requirement can continue to enjoy social rental housing without restriction over time. In these cases, the temporary nature of the contract has no effect (the contract is automatically extended for this group). The temporary nature only comes into play for households whose income exceeds at least the 25% margin on top of the permissible income limit, and not during the contract period, but upon expiry of the rental contract (nine years and only for contracts from 2017, when the measure was introduced).

The rationale behind the scheme is that households with incomes above the limit no longer belong to the target group,and can therefore realise their right to housing in the regular housing market. This is parallel to other tenants in the private rental market with similar incomes who cannot apply for social rental housing. It would be unfair (and potentially discriminatory) to allow households that are no longer part of the target group to continue to be eligible for social housing, while other households with similar incomes, but who are in the private rental market, are ineligible. Moreover, in this way, housing is made available for persons in need of housing who do fall under the permissible limit and who are assigned to the regular housing market. The complainant himself indicates that the normal income limit for a social rental home can be considered accurate; in this case termination is not unreasonable or unacceptable if at the end of the contract a margin of 25% is applied on top of this limit. For example, in 2021, the income limit for a social rental home for a single person with one dependant was €40,940 and the income limit for termination was then €51,175. In addition, it should be noted that, at the same time, the tenant has the possibility to submit a request to the landlord to withdraw the termination if reasonable arguments can be put forward in this regard (for example, forthcoming retirement or other reasons why they are in need of housing despite their higher income). The landlord will then decide on the request. In this way, termination due to having too high an income is not automatic; deliberation is possible on a case-by-case basis.

The claim that this leads to 'housing for the poor' is, according to the Flemish government, not an argument (it reflects an opinion whereby the complainant disagrees with the policy choice to use the social rental stock in a targeted manner for the households in most need, and is ideologically inspired, without an indication of why the policy choice is inefficient). According to the Flemish government, the fact that households that no longer belong to the target group can move on, to the benefit of households that have no choice but to turn to the private rental market and do meet the income requirements, is a legitimate policy choice based on considerations of efficiency. Nor is the measure prompted by a shortage of social rental housing, given that the policy also has a strong focus on increasing supply (see above). Furthermore, the right to housing is not affected just because the person moving on no longer belongs to the target group. The Belgian Constitutional Court also confirmed in its judgement of 19 July 2018 (No. 104/2018) that temporary tenancy agreements in social rental housing violate neither the right to housing nor contravenes the standstill principle obligation (freely translated):

"Without it being necessary to determine whether there is a significant reduction in the level of protection, it is sufficient, as far as respect for the standstill obligation in Article 23 of the Constitution is concerned, to state that, in view of the importance of the actual realisation of the right to decent housing for the most disadvantaged persons in the social housing sector and in view of the associated security for the intended target group with regard to this right, the decretal system of temporary social tenancy agreements is based on grounds of public interest that consist in reserving social rental housing

for those in most need, for as long as they need it. Therefore, the aforementioned standstill obligation has not been violated."

In-depth technical clarification of content

Temporary tenancy agreements were introduced by the Decree of 14 October 2016, which came into force on 1 March 2017[20]. Until 1 March 2017, the tenancy agreement for a social rental home in Flanders (the Flemish Region) was for an indefinite duration. The rental agreement was dissolved only if the surviving tenant died or if the tenants (reference tenant and their legal or de facto partner or legal cohabitant) no longer occupied the home as their main residence.

Since 1 March 2017, tenancy agreements with indefinite duration have no longer been concluded for new tenants. As a result, social rental housing is now a temporary support for as long as it is needed for the individuals or families who continue to meet the eligibility requirements. By analogy with the then Housing Rental Law (Woninghuurwet), the decision was made to put the duration of the tenancy agreement initially at 9 years. At the end of this period, the income of the tenant is assessed against the applicable income limit, to determine whether the tenant still belongs to the target group for social housing. The regular income limit is increased by 25% to create an additional margin, just to make sure a home can be rented (or purchased) on the private housing market, and at the same time the unemployment trap is avoided. In addition, in three cases, the social tenant whose income is too high can request the landlord to withdraw the termination. First, the tenant may request that their current income be included in the assessment (should the official amount be too high in accordance with the tax return). Second, a tenant may request that the termination be withdrawn if they have requested retirement or will reach legal retirement age no later than three years after the expiry date of the tenancy agreement. Finally, the tenant may also request that the termination be withdrawn for reasons of fairness. In such cases, the tenant must justify their request with reasons relating to his or hers housing needs This ensures that no social tenant who is in a vulnerable situation will lose their rented social home.

If the tenants meet the set conditions, the tenancy agreement is automatically renewed for consecutive three-year periods. The replacement of contracts with indefinite duration with temporary contracts in no way affects the fundamental right to housing (Article 23, paragraph 3, 3°, Belgian Constitution). The target group of social housing is demarcated based on housing need. Article 1.3, §1, first paragraph, 67°, of the Flemish Housing Code of 2021 defines “housing need" as (freely translated) "being in an actual economic and societal situation in which decent housing can only be acquired or maintained with additional or comprehensive support." Article 1.3, §2 of the Flemish Housing Code states that the Flemish Government shall determine the criteria for evaluating the actual situation for each form of support, whereby the income limits shall always be determined in relation to the family composition.

Book 6 of the Flemish Housing Code Order of 2021 lays down income limits and conditions for ownership of immovable property that demarcate the target group for this form of support. The temporary tenancy agreements provide that persons who no longer belong to the demarcated target group move out of social housing (with an additional 25% margin provided). The complainant assumes an average annual outflow of 95 households from social housing, between 2026 and 2035, from which it concludes that the policy measure has limited effectiveness. However, the calculation of the outflow is based on faulty reasoning. The complainant applies the Flemish administration's projected outflow rate of households of 3.8% to an increase of 22,005 new social rental housing units over the period 2026-2035. However, it is the number of new tenancy agreements that needs to be considered,

[20] Decr. of 14 October 2016 amending various decrees related to housing, *Belgian Official Gazette* 13 December 2016.

including the increase of new social rental housing. This is because the measure applies at the tenancy agreement level, without distinction as to whether it is a new or existing social rental home. With an increase of 22,005 homes, and on top of that an average of 10,648 homes[21] newly allocated on an annual basis, we can assume a total outflow of 4,882 households (128,499 new rentals*3.8%) or an annual average of 488. The Flemish government in any case assumes that the figures put forward by the complainant are an underestimate. Moreover, it is inconsistent to argue, on the one hand, that a measure is ineffective in terms of outcome and figures and, on the other hand, to conclude that it constitutes a general infringement of the right to housing on the part of social tenants.

4.3. The condition of property ownership

The complainant argues that the condition of property ownership has a disproportionate weighting. Partial rights in rem, according to the complainant, do not provide a housing alternative, even though these rights must be disposed of within a certain period of time. The complainant further claims that this condition is discriminatory, partly because the exceptions that apply to the prospective social tenant of native origin (who, for example, has an uninhabitable dwelling) are more difficult to demonstrate for the prospective social tenant of foreign origin who owns an uninhabitable dwelling in their country of origin.

In general

The condition of property ownership is consistent with the policy option of setting aside social rental housing for households in need of housing. Whether a household is in need of housing or not can be inferred from their financial income, on the one hand, and from the immovable property owned by the individual, on the other. If a (prospective) social tenant owns a property, the right to housing can be realised more easily (in the property itself or with the funds from the sale of the property). Up until 2017, the condition was that full ownership (100%) of the property was prohibited, while this was considered disproportionate to social tenants who could nonetheless own a large share of the property (this was not only perceived as unfair, it also gave rise to abuse). With this disproportionality in mind, it was decided (in 2017) to no longer allow home ownership to any extent. At the request of the Council of State, the regulation included all rights in rem (as otherwise an unlawful and discriminatory distinction would arise).

The rationale behind the regulation is that even a part of an immovable property corresponds to an asset, with which the right to housing can be realised. This condition of property ownership avoids a situation where prospective social tenants are at a disadvantage against each other (candidates with and candidates without property). While candidates from both groups would be equally entitled to social rental housing, the owners of a share of an immovable property would have a financial benefit from assets that could be used to realise the right to housing. To rule out this possibility, the condition of property ownership has been fully extended and property ownership, regardless of the share, is not compatible with the eligibility conditions for a social rental home. At the same time, various exceptions were reasonably provided (for example, between ex-partners) and a (generous) period for disposing of the property was permitted. These measures aim to prevent potentially adverse outcomes, and are intended to prevent a social tenant from losing their social rental property if they acquire property. For example, a social tenant may acquire a building plot from an inheritance or gift, in which case - in order to remain a social tenant - they will have to dispose of it within five years. Various exceptions

[21] The five-year average, based on the most recent figures, was 10,889 allocations of social housing on an annual basis. For 2026, this still needs to be corrected because the rental figures for January and February 2017 are still under the old system.

and time limits consequently make the scheme less harsh and provide adequate leeway for a nuanced approach in practice. In this sense, the contested measure is legitimate, lawful and defensible.

It is claimed that the scheme is discriminatory against tenants of foreign origin, while the same conditions apply to them as to Belgian natives. However, in practice it is more difficult for a social landlord to verify whether the person in question owns immovable property abroad, which is why a provision has been made to this effect which, of course, does not apply to owners of immovable property in Belgium. Although the legal scheme is the same in terms of the conditions, the modalities in terms of verifying ownership of immovable property are necessarily elaborated in a different way (which is necessary in order to be able to verify the conditions). Indeed, verifying ownership of immovable property is necessary to ensure equal treatment of social tenants (guaranteeing equal treatment according to the assessment of the eligibility conditions).

In-depth technical clarification of content

The condition regarding ownership of immovable property was amended for the first time in two areas by the Flemish Government Order of 23 December 2016 (entry into force on 1 March 2017). Up until then, only full ownership and full usufruct of a home or building plot were excluded. The above-mentioned Order stipulated that even partial full owners did not meet the condition regarding ownership of immovable property. This amendment was necessary, given that it was observed in the field that some prospective tenants were using creative schemes to "not fully own" a property in full ownership (e.g., 98% partnership), so they met the immovable property ownership condition under the regulations in place at the time (but they were not, in fact, part of the target group). On the other hand, it was stipulated that individuals who had contributed a home or a building plot to a partnership did not meet the condition either. This amendment came in response to the report of the Court of Audit to the Flemish Parliament in April 2015: 'Sociale woningen: beleid en financiering' (Social Housing: Policy and Funding). The report highlighted the fact that the immovable property ownership condition for owner-occupied social housing more restrictive than for social rental housing and that no reasonable justification could be given in this regard. At the same time, exceptions were provided for in the Order. Property belonging to a matrimonial community, if it was shown that the marriage had irreparably broken down, or property that had been acquired free of charge (e.g. by gift or inheritance), was not an obstacle to the allocation of social housing. After the social rental home had been allocated, the prospective tenant had to dispose of the property or move out of the joint ownership (within the year). If the tenant could demonstrate legitimate reasons in this regard, they could request the landlord to extend the time limit. The legislator therefore immediately provided for mitigating measures and took into account specific situations in which it would be unreasonable to impose the stricter conditions.

The Flemish Government Order of 24 May 2019 (entry into force on 1 January 2020) added other rights in rem in addition to the right of ownership, namely the right of emphyteusis and the right of superficies t. This was added at the request of the Council of State, which had indicated that, for the sake of the constitutional principle of equality and non-discrimination, these rights in rem should also be taken into account (Opinion No. 43.465/1/V of 16 and 21 August 2007, p.9 and Opinion No. 60.481/3 of 16 December 2016, p. 9). Moreover, it was unfair that renting out an owner-occupied home would be an obstacle to qualifying for social housing, while giving the dwelling in emphyteusis, with the right of superficies or usufruct would not. Another important amendment to the Order of 24 May 2019 was that spouses would only be taken into account to the extent that they actually intended to co-habit the social rental home. Up until then, the spouse was required to demonstrate that the marriage had irreparably broken down. For the allocation of social housing, the divorce proceedings

had to have been initiated, or good reasons had to be given why they had not yet been initiated. If this could not be demonstrated, the spouse had to be taken into account in verifying the ownership condition, owing to the legal status of the marriage (even if they would not subsequently occupy the social rental home). Nevertheless, these provisions resulted in various problems in practice. As such, the requirement to prove that the marriage had irreparably broken down was scrapped. The landlord therefore also no longer had to judge whether or not the marriage had indeed irreparably broken down. Possible strategies to avoid these requirements were ruled out by equating the conditions imposed on spouses or legal cohabitants who come to co-habit after the start of the tenancy agreement with the eligibility conditions for social rental housing.

By providing for exceptions to the immovable property ownership condition, the policy meets the needs in the field while the immovable property ownership condition generally ensures an equitable flow into social housing. An individual may register for a social rental home even if he still fully owns a home or building plot in full ownership with his or her spouse, legal cohabitant or de facto partner or their ex-spouse, ex-legal cohabitant or ex-de-facto partner, provided that these persons are not willing to co-habit the social rental home when the social rental home is allocated to that individual. The same applies if the individual and the persons listed have taken or given a dwelling or building plot, entirely in emphyteusis, with the right of superficies or usufruct. This addition created the possibility for an individual who is legally cohabiting, or a de facto partner, to terminate the legal or de facto cohabitation at the time they are allocated a home. Indeed, there are situations where a partner only wants to notify that they will live alone and want to unilaterally terminate legal or de facto cohabitation, at the time of the actual allocation of the home. Even if a divorce has already been finalised or the legal or de facto cohabitation has already ended, it is still possible to register. Within one year of the allocation, however, the individual must have left the joint ownership and the tenant must meet the immovable property ownership condition. However, if the tenant can demonstrate legitimate reasons in this regard, they can request the landlord to extend the time limit. Married couples, legal cohabitants and de facto partners are therefore treated equally.

It was also added that an individual can register if they have partially acquired, free of charge, a dwelling or a building plot on which a right of emphyteusis or the right of superficies has been established. They will also have to leave the joint ownership within one year of being allocated a social rental home, unless they can cite valid reasons and the landlord extends the time limit. Adding a right of usufruct was not necessary, since a right of usufruct cannot be inherited. The usufruct ends upon the death of the usufructuary (Article 617 of the Civil Code). Finally, it is also worth noting that since 1 January 2020, only prospective tenants (at the moment of registration) and tenants (at the moment of admission to the social housing and during the tenancy agreement) must meet the immovable property ownership condition. This is the single person or the couple (spouses, legal cohabitants or de facto partners). Other family members, who are only co-residents without their own right of residence, do not have to meet the conditions or tenant obligations. They can therefore have a property or right in rem, without this affecting the tenancy agreement or the rent amount.

The ownership condition applies to both immovable property in Belgium and abroad. Until recently, verifying this condition for dwellings and building plots abroad was almost impossible due to the lack of information exchange with foreign countries. In order to ensure equality between (prospective) tenants with immovable property in Belgium and (prospective) tenants with immovable property abroad, a more effective verification of ownership of immovable property abroad has been devised. Through investigation agencies that specialise in investigating immovable property ownership abroad, a social landlord can find out whether or not a tenant owns immovable property abroad. For 41

countries, the Flemish Social Housing Company (Vlaamse Maatschappij voor Sociaal Wonen, VMSW) has entered into a framework agreement with 5 investigation agencies. Social landlords can commission an investigation via the framework agreement. Social landlords have the task of verifying that prospective tenants or social tenants meet the immovable property ownership conditions in Belgium and abroad. Especially since the inclusion of Article 6.3/2 in the Flemish Housing Code of 2021 (but according to case law even without this explicit legal basis), social landlords have a basis for processing personal data pursuant to Article 6(1), paragraph 1(c) of the General Data Protection Regulation, as well as on the existing regulatory provisions.

Finally, there is no violation of the immovable property ownership condition in cases where a statutory refugee or person with subsidiary protection status, who cannot return to their country of origin, has property or rights in rem in that country which falls under the immovable property ownership condition. Indeed, immovable property owned by statutory refugees and persons with subsidiary protection status in their country of origin does not prevent them from being in need of housing in Belgium. This is a question of force majeure, which is an unforeseeable and unavoidable event beyond the control of the person concerned and which constitutes an insurmountable obstacle to the performance of their obligation. Given that the legal concept of 'force majeure' can be invoked in this case, this does not need to be made explicit in the regulations. Force majeure is not linked to the person's origin from a war zone, but to their residence status, which makes it impossible for them to return to their country of origin. A statutory refugee cannot return to their country of origin, given that they have been given statutory status due to fear of persecution in their country. In addition, statutory refugees cannot go in person to their own embassy to obtain official documents. The ties to their country of origin are severed. If the statutory refugee were nonetheless to return to their country of origin, this could indicate that they no longer fear persecution. They then run the risk of having their status as a refugee in Belgium revoked. Of course, if their recognition is revoked, the exception no longer applies and they will have to dispose of their property or right in rem (or even leave the country) at that point. And, of course, if they return, they will no longer have a need for a social rental home. The same applies to a person with subsidiary protection status who is at real risk of serious harm, i.e. the death penalty or execution, torture or degrading treatment, or punishment and harm from armed conflict.

4.4. The allocation regime for social rent

The complainant acknowledges that the principles underlying the allocation regime are sound. Local customisation and local embedding are necessary to maintain support for social housing. Nevertheless, the complainant claims that local interpretations mean that housing is not always allocated to the households in most need. Forms of local ties limit the right of establishment, impede housing mobility, and inhibit newcomers with needs from accessing social housing. The new regime (applicable at the earliest in 2023) would worsen the position of households in need, and places too much emphasis on local ties.

In general

On the one hand, the complainant makes the criticism that the policy choices lead to "housing for the poor". On the other hand, the complainant argues that specific target groups (e.g., older persons who meet the eligibility requirements) are admitted even though they may not have the most pressing

housing need. According to the Flemish government, it is impossible to realise housing for the poor and at the same time focus on other groups of households whose incomes do not fall within the lowest income deciles (meaning that the complaint is contradictory).

The allocation model for social rental housing will be comprehensively overhauled in 2023. Currently, there are two allocation systems. The first system is used by the social housing corporations and the second system by the social rental agencies. Other social landlords (local government and the Flemish Housing Fund) can choose which system to use. In addition, a municipality or intermunicipal partnership can apply a local interpretation to the allocation rules, in a local allocation regulation, within certain limits, and there is the possibility of an accelerated allocation. These systems are elaborated in Book 6 of the Flemish Housing Code Order of 2021.

The first allocation system successively takes into account the rational occupancy of the home, a series of absolute priority rules, a series of optional priority rules and the chronological order of the registrations. The second allocation system successively takes into account the rational occupancy of the home, a series of absolute priority rules, a points system and the chronological order of the registrations.

The policy has judged to bring the housing actors (social rental agencies and social housing corporations) into one organisation (the housing corporation), precisely to realise more clout in the field and to support the target group more effectively both in social housing and on the private rental market. The target group should be able to receive equal treatment in both the social and private rental markets. Therefore, in line with the formation of the housing corporations, the allocation rules of the first and second systems are integrated into one allocation system. This should result in legal certainty and equal treatment for social tenants (in the private and social rental markets).

Balance and complementarity were striven for in the development of the new allocation system. In this regard, specific housing needs, local ties and chronology, as well as special target groups, were all taken into account. The allocation regime is based on three pillars, each representing a share of the allocations (see below). Local ties remain an important anchor for the policy. It ensures, on the one hand, that the local governments have a say in the allocation (and can develop a target group policy), and on the other hand, that the local governments take responsibility for people in need of housing within their territory. Moreover, it can be noted that in the case of specific allocations, the local welfare actors co-propose candidates and co-consult on the allocations themselves. This approach ensures both accountability and local support (like the BSO, in this way each municipality develops a local policy within which social housing policy has a place). Moreover, according to the Flemish government, it is clearly too early to assess a new system that is not yet in place in terms of its effectiveness and/or impact on the ground.

Furthermore, local anchoring means that cities do not have to house a disproportionate share of the target group. The policy assumes that without local ties, the pull factor towards cities is significantly larger (too much concentration is undesirable and may further undermine support). Local ties are recognised by the Constitutional Court as a valid tool in policy when there are reasons for this, such as housing shortages or support needs. Indeed, local ties are not an exclusion criterion in Pillar 1; they only offer priority (within a certain pillar and not in all pillars). Local ties should always be applied to households that are actually part of the target group (and therefore, by definition, equally in need of housing). Moreover, the new allocation system provides for the obligation to make at least 20% of the allocations locally per year for households in most need of housing (homeless persons, persons with mental health problems, persons living in uninhabitable housing, etc.) (Pillar 2), separately from any ties criterion. This must be overseen by the Allocation Committee (toewijzingscomité), and they help

monitor the allocations in this share. This is a new body that at the local level consists of the local government, social housing organisations and welfare organisations. This meets the demand for transparency and objectivity. It should also be mentioned that the target group policy (Pillar 3) (which is given shape on the basis of local needs) does not exclude the possibility of opting for households with a high housing need (e.g. ex-inmates if the city has a prison or housing for ex-psychiatric patients). Nor is this the case in Pillar 1 where a rental property can also be allocated to a person with a high housing need (in this case the person concerned has local ties and a high housing need).

Furthermore, important principles of the new allocation regime are objectiveness, simplicity and transparency. The allocation of a social rental home should be based as much as possible on fixed criteria, and should be transparent and somewhat predictable. This eliminates the many different local interpretations of optional and mandatory rules, in favour of allocation based on pillars.

In-depth technical clarification of content

As stated, the new allocation regime consists of three pillars: (1) standard allocation; (2) accelerated allocation; and (3) the target group policy.

Standard allocations and long-term residential ties

In the standard allocation system (Pillar 1), the following are taken into account in succession:

- the suitability of the dwelling,
- the rational occupancy of the dwelling,
- the prospective tenant's long-term residential ties to the municipality,
- the provision or receiving of informal care from or to a person residing in the municipality in which the dwelling to be allocated is located,
- the chronological order of registrations.

Long-term residential ties

A new feature is the introduction of a standard priority provision for prospective tenants with long-term residential ties. These residential ties are determined based on the number of years the prospective tenant has lived in the municipality where the dwelling to be allocated is located. Priority is given to prospective tenants who have lived continuously for at least 5 of the last 10 years in the municipality where the dwelling to be allocated is located. The measure has a three-fold objective:

- To keep the affordable housing supply accessible to local residents in need of housing, and to be able to allocate them housing if they wish to remain in the municipality. In this way, people from the municipality in need of housing can be allocated a social rental home, whereby the priority increases their chances. It is a measure to prevent social exclusion and the deterioration of the social fabric (it is not a measure to exclude candidates).
- To increase local support for the social rental system.
- To send a signal to neighbouring municipalities to take responsibility in terms of providing an adequate social housing supply. An equitable distribution of an accessible social housing supply across neighbouring municipalities is one of the objectives of this measure. Moreover, the Flemish government supports the equal distribution of social rental homes by imposing a binding social objective (BSO) on each municipality with an insufficient supply of social rental homes, and providing funding to increase the supply. In this way, situations are avoided where prospective tenants are obliged to turn to municipalities that offer a wider range of options.

The measure is also proportionate since:

- it is a priority and not an exclusion criterion. The other prospective tenants will have to allow residents of the municipality to take precedence, but if no-one meets the priority condition, the other prospective tenants will be eligible. In addition, the new allocation model no longer allows municipalities to develop extensive cascades. Today, we can see in practice that quite a few municipalities include various local ties provisions in the local allocation regulations. These extensive cascade systems mean that prospective tenants without local ties will have little chance of getting a social rental home allocated to them. Indeed, they have to let all prospective tenants who meet one of the local ties provisions take precedence. The new allocation model provides that municipalities have the option of including only one stricter residential ties provision in the allocation regulations (which will offer more transparency). In practice, this change may result in prospective tenants who do not have local ties being allocated social housing more quickly.
- the priority is also accessible to the other prospective tenants, if they establish the ties with the municipality in question (for example, live there in a private rented house pending an allocation);
- measures have been taken in the meantime to expand the supply of the social rental housing stock through a mandatory BSO so that all municipalities have an adequate social housing supply (see above);
- the social rental agency pro (SVK pro) model is also being rolled out further, so that the private sector is even more involved in building social housing and the supply of private rental homes in the social rental sector increases substantially.

The priority rule 'long-term residential ties' is not applied to accelerated allocations (Pillar 2). It is expected that the prospective tenants who are most vulnerable and have the most need for housing will access social housing via this route. Therefore, if these prospective tenants move house, this will not prevent an accelerated allocation.

For allocations to specific target groups (Pillar 3), the priority rule of 'long-term residential ties' will however be applied, but again it should be emphasised that this is a priority rule and not an allocation condition. In concrete terms, this means that within the specific target group (for example, 'caravan dwellers') priority is first given to a prospective tenant who belongs to the target group 'caravan dwellers' and who also has long-term residential ties with the municipality. Next comes the prospective tenant who belongs to the target group 'caravan dwellers' and has no long-term residential ties with the municipality. Again, municipalities are not allowed to apply an elaborate cascade, which is often the case today. As such, in the future, a municipality will have to limit itself to applying the standard residential ties rule, with possibly one additional stricter provision.

Assessment of the right to free movement

A social housing measure designed to ensure that low-income persons or other vulnerable segments of the local population have an adequate housing supply may constitute an imperative reason of overriding public interest, which justifies a restriction on the free movement of persons. Only the local residents with the most limited assets on the rental market are protected. The conditions are based on objective criteria and are known in advance and therefore do not require appreciation on the part of the government.

Assessment of the principle of equality

The constitutional rules of equality and non-discrimination do not rule out that different treatment is applied between categories of persons to the extent that it is based on an objective criterion and is reasonably justified. The difference in treatment is based on an objective criterion (local ties).

Accelerated allocations (Pillar 2) and allocations to specific target groups (Pillar 3)

Accelerated allocations

A quota of 20% of the allocations at the level of the operational area of the housing corporation is provided for accelerated allocations to persons with special needs or in precarious circumstances. It is a mandatory allocation percentage to be applied. On the one hand, these are individuals who find themselves in specific circumstances of a social nature. This corresponds to the current provision, stipulated in Article 6.25, §1 of the Flemish Housing Code Order of 2021. On the other hand, it concerns the current regulation regarding the accelerated allocation to welfare target groups (current Article 6.25, §2 of the Flemish Housing Code Order of 2021), but expanded according to the unified allocation system.

A dwelling may be allocated under the accelerated system to:

- individuals who are homeless (dak- en thuisloos) or at risk of becoming homeless
- young people who live independently or are going to live under supervision by an approved service
- individuals with mental health problems
- individuals living in substandard housing
- individuals who find themselves in specific circumstances of a social nature.

In this way, prospective tenants who currently receive priority via the points system of social rental agencies owing to their high housing needs will be able to access social housing via the second pillar.

Number of allocations

	2016	**2017**	**2018**	**2019**	**2020**
Social housing corporations (SHM)	11,343	11,044	11,215	10,434	10,107
Social rental agencies (SVK)	2,351	2,524	2,808	2,782	2,486
Total	13,694	13,568	14,023	13,216	12,593
Share of social rental agencies (SVK)	0.17	0.18	0.2	0.21	0.19

It should be emphasised that the proportion of accelerated allocations is a mandatory share to be achieved every year. New allocations will therefore be possible every year. This is where the system of accelerated allocations differs from the third pillar, where an address list will generally be used and a much more limited flow into social housing will actually be possible. This is not the case for the accelerated allocations: every year, 20% of the allocations will have to be under the accelerated system to the listed target groups.

Guidance condition

Prospective tenants for the accelerated allocation of a social rental home, will in most cases be notified by a local welfare service that will then also offer the necessary guidance. This guidance condition and guidance process are no different today for the accelerated allocations (but also some standard allocations or allocations in the context of a target group plan). Indeed, in order to instruct prospective tenants in the necessary housing skills, to get them to comply with their tenant obligations and to prevent eviction, rental or housing guidance is sometimes a necessity. The housing corporations themselves will - in the context of their basic guidance tasks - provide rental guidance to (prospective) tenants and will be able to draw on the expertise that social housing corporations and social rental agencies have already built up today. However, when a tenant's specific needs exceed the landlord's basic guidance tasks, dialogue, cooperation with, and possible referral to a welfare service will be necessary. The allocation councils (toewijzingsraad) to be newly established will be able to facilitate this dialogue and partnerships and embed them more structurally. If a welfare service cannot guarantee the necessary guidance, the allocation council can look for one or more other actors who can provide this guidance. In this way, it will be easier in the future to avoid situations where an allocation cannot take place because the specific guidance needs cannot be met.

Allocations to specific target groups

For the prospective tenants in most need of housing, the legislator has clearly drawn the outlines and priorities via the system of accelerated allocations. More leeway to develop priority provisions for specific target groups is envisaged within the third pillar of the new allocation model. In this pillar, customisation takes centre stage and the local context is responded to: landlords, municipalities and welfare actors in the field identify specific housing needs and devise a customised allocation policy based on the allocation regulations.

No more than one third of the social rental housing stock in a municipality can be allocated to or reserved for specific target groups with priority. Identifying the target groups and the corresponding share of the stock for these target groups is done on the basis of local needs. The allocation council is therefore expected to identify what the main needs are at the local level, and to adapt the policy accordingly. In this regard, the objective data of the municipalities in the (sub-)area of operation can be used, as can information about prospective tenants who are registered. The choice of one or more specific target groups is substantiated in the allocation regulations. Allocation regulations with provisions for target groups that do not fall within the list established in the Order are subject to annulment, which is supervised by the minister. In such cases, the housing corporation provides the allocation regulations to the minister at the address of the agency, by secure post. An administrative file and a target group plan are attached to the allocation regulations, which include the objective data which underpins the fact that allocation regulations need to be drawn up for the chosen target groups.

Although the municipalities have certain leeway within this pillar to devise an allocation policy for specific target groups, it is obvious that this allocation policy must be devised as objectively and transparently as possible. The allocation council therefore acts as a forum where actors and municipalities in the (sub) area of operation can coordinate their approaches and policies.

4.5. Other conditions from the social rental system

The complainant cites that social rent comes with additional conditions and arrangements that are essentially unrelated to the housing needs of the target group. It is argued that conditions such as

language proficiency and registration with the employment service are conditions that result in exclusion. Sanctions are also regarded as disproportionate, such as the temporary registration suspension for social tenants who have been evicted from a social rental home following a court decision. The temporary registration suspension results in disproportionate consequences and will lead to homelessness (which goes to the very heart of the right to housing). Moreover, there is no judicial oversight of the registration suspension sanction. According to the complainant, social rent ought to be a scheme that guarantees a dignified life for the individuals in question, and contributes to inclusion and participation.

In general

Social housing should indisputably be a scheme that facilitates a dignified life, inclusion and participation. These objectives are also integrated into the policy and regulations. However, this can go hand in hand with additional requirements in terms of language proficiency and willingness to work.

The language readiness requirement aims to promote coexistence, whereby language proficiency plays an important role. Communication with fellow residents is considered essential to participate in social housing, which is usually in a broader context where agreements are made and residence rules respected (for example, in larger complexes or apartment buildings). Proficiency in the language is then essential to make living in social housing possible. If no language proficiency is required, this could even put the tenant in question in an isolated position (within society and in the social housing provided). In this sense, the social landlord also has a responsibility to guard against this and ensure that tenants at least have a good start in taking part in society. Moreover, the requirement is not an exclusion criterion, as it does not apply in order for an individual to be admitted to social housing. It is therefore not a barrier to occupying a social rental home. It is, however, an obligation of the social rental contract, and is not concerned with how the individual lives in the housing, but does aim to improve the way social tenants interact and live together, and their social position. Especially given that people from very different backgrounds often live together in social housing complexes, there is a serious risk that social tenants do not have a common language in which they can communicate with each other about everyday matters. In such a context, some tenants risk becoming socially isolated and deprived of the necessary assistance if a security issue emerges in the housing complex. Without a minimum shared means of communication, it is impossible to make a social housing complex a safe environment where people from diverse backgrounds can live together harmoniously and in a quality manner. Consequently, the obligation for tenants to be proficient in Dutch should be empowering and emancipating. Moreover, the fundamental right to decent housing can only be realised if it is guaranteed that all social tenants, to the extent possible, have a basic knowledge of Dutch. This policy measure was also confirmed in the internal legal order, in that the competent courts (Council of State and Constitutional Court) ruled that the measure is compatible with living in social housing and does not infringe on the constitutional right to housing.

As regards a willingness to work, this is not an eligibility requirement either. However, the social tenant is required to register during the contract period if they are in a position to work (and exceptions to this are provided to a reasonable extent). In this way, there is an incentive to work that promotes inclusion and participation. It also provides an impetus to move the social tenant up on the social ladder. Besides the individual benefits for the social tenant, there are also financial benefits for social housing and the social landlord. By working, the social tenant's income increases, and this is accompanied by a (fair) increase in the social rent (the social rent is linked to the income of the tenant and is low compared to surrounding countries, with an average amount of €331 in 2020). Thanks to the registration requirement with the employment services, an indirect incentive is created for the social tenant to contribute to social housing in Flanders (the Flemish Region) (the financial situation of

many social landlords in Flanders (the Flemish Region) is not rosy, and the rental income does not cover the costs - cf. Van den Broeck & Winters (2018)[22]). If the social tenant finds work, they contribute at a broader level to the more cost-effective organisation of social housing and, at an individual level, can continue to occupy the social housing until at least the end of the nine-year contract (if it turns out by then that they actually exceed 125% of the income limit due to income from employment). Keeping the social housing during the term of the contract ensures that there is no unemployment trap. If the above-mentioned limit (125%) is exceeded, and the individual concerned consequently no longer belongs to the target group, they need to make way for a household in need of housing that does meet the eligibility requirement. The fact that it is not an eligibility requirement but rather an obligation that helps create solidarity within the social housing itself (and aims to inculcate a modicum of reciprocity and involvement) is a positive policy choice. In addition, facilitating work and guiding individuals towards employment offers the social tenant the prospects of a better social position. Furthermore, the stated requirement is neutral in terms of the social tenant's right to housing. Indeed, according to the provisions in the Order, non-compliance with the obligation to register can never result in termination of the social tenancy agreement. Consequently, the Flemish Region safeguards the right to housing and in this sense the obligation to register in no way impinges upon the social tenant's right to housing. The registration requirement has been submitted to the Constitutional Court by the complainant and others, but has not been settled at the time of drafting of this defence.

The Decree of 9 July 2021, amending various decrees related to housing also incorporates an additional registration requirement for a social rental home (and will enter into force in 2023). The registration requirement stipulates that a prospective tenant cannot register if they have been evicted from a social rental home in the previous three-year period via a court decision (because of, for example, anti-social behaviour or serious neglect of the property). The basis for non-registration is always a final court order of eviction, handed down less than three years ago.
The non-registration of the person concerned is not an absolute condition but an optional possibility which can always be assessed by the social landlord themselves (the latter receives the request for registration). The legislator authorised social landlords to consider registering the person anyway, for reasons of fairness, taking into account the personal context of the prospective tenant. In such cases, the social landlord may make registration contingent on a guidance agreement between the prospective tenant and a welfare or health facility. According to the Flemish Region, the possibility of invoking fairness can offer prospects for the person concerned to get back on their feet or receive guidance (after a signal was given via an earlier court decision, which was also preceded by a preliminary process with guidance). The fact that there are situations where the prospective tenant cannot register, but depending on whether they take responsibility, can get around it, not only offers opportunities to the social tenant. It also sends a signal and a warning to the person concerned.

The complainant agrees that such tenants impair the liveability of the residential environment and the interests of the landlord and other residents. Therefore, the fundamental right to housing of the other tenants is part of the reason why it is possible to invoke this sanction, and from this perspective constitutes a protective measure. Moreover, in the case of certain tenants, a far-reaching sanction is necessary, especially after various steps have been taken in the preliminary process and failed (in particular, prior guidance by the social landlord as one of the latter's responsibilities, mediation by the social services to avoid legal proceedings, and the legal proceedings themselves). As such, eventual eviction is often the last option for the social landlord. Just as eviction itself is consistent with the right to housing and indicates its limits, the social tenant's right to housing is also not absolute, but limited, in part by such measures as eviction and the associated temporary registration suspension. The judicial and independent procedure guarantees a fair and non-partisan judicial process. Moreover, in the case

[22] Van den Broeck, K., & Winters, S. (2018), *Kosteneffectiviteit en efficiëntie van sociale huisvestingsmaatschappijen en sociale verhuurkantoren*'. Leuven: Policy Research Centre Housing.

law, partly in the context of the right to housing, the eviction of a social tenant is not treated lightly or pronounced without good reason. All elements are taken into account and the proportionality of the measures to be pronounced regarding eviction is normally ensured in this process.

As the complainant states, psychosocial problems are often an underlying cause of evictions, which shows that there is a need for comprehensive guidance. This guidance, as the complainant acknowledges, is much more present and ingrained in the social rental market (precisely because social landlords have responsibilities vis-à-vis social tenants, including ensuring basic guidance roles). If a social tenant persistently fails to meet their obligations, despite consistent guidance from the social landlord, then a judicial assessment regarding eviction is legitimate. The possibility of temporarily not registering the person should be viewed from the angle of concern for the orderly coexistence of social tenants and is intended to ensure the continued public support of social housing (as reasons of public interest). The measure has not yet been settled in domestic law: an appeal has been filed with the Constitutional Court. The new registration requirement is considered by the Flemish government in itself to be a legitimate restriction on the fundamental right to housing of persons wishing to register as a prospective tenant of social housing. However, it is not a significant restriction, and it is justified by reasons of public interest. It is not significant because the exclusion is limited in time and the social landlord can derogate from it for reasons of fairness. It is also justified because it ensures the basic right to housing of other social tenants. Moreover, a judicial review will always have taken place before the measure can become applicable, so that the seriousness of the anti-social behaviour or the neglect of the rented property will always have been considered by the court. Furthermore, there is still the possibility to file redress through an independent supervisory body if a social landlord does not accept the reasons of fairness.

In-depth technical clarification of content

Language proficiency and readiness

The language readiness requirement was introduced by the Decree of 15 December 2006[23] and served as a registration requirement, an eligibility requirement and a tenant obligation. Not having a basic knowledge of Dutch can cause problems in terms of liveability and safety in social housing complexes, due to unintelligible communication between the social tenants and the landlord and between the social tenants themselves. It was found that the regulations of the social landlord were insufficiently complied with in some housing complexes, due to the social tenants' inadequate proficiency in Dutch. Some social tenants did not sufficiently understand their rights and obligations, and were at a disadvantage because they could not communicate their requests. Moreover, it should be emphasised that, according to the Constitutional Court and the Legislation Section of the Council of State, social landlords are subject to the Public Governance Language Law (Taalwet Bestuurszaken), which in principle allows them to use only Dutch in the Dutch language area[24]. With this policy measure, the Flemish legislator aimed to ensure that social tenants would have a common means of communication *among themselves*. The language readiness requirement was reviewed by the Constitutional Court, following an action for annulment. The Court found that the language readiness requirement pursued legitimate objectives, that the policy measure was pertinent and appropriate to achieve the objective, and that the policy measure was proportionate[25].

[23] Decr. 15 December 2006 amending the decree of 15 July 1997 on the Flemish Housing Code *Belgian Official Gazette* 19 February 2007

[24] Art. 1, § 1, 1°, Laws of 18 July 1966 on the use of languages in public governance. See Council of State, Legal Dept., Opinion No. 39,536/VR/3 of January 24, 2006, *Parl. St.* Flemish Parl., 2005-2006, no. 824/1, 59; Const. Court, no. 101/2008, 10 July 2008, B.17.1 and B.36.2.

[25] Const. Court, no. 101/2008, 10 July 2008, B.34.1 and B.44.2; no. 24/2015, 5 March 2015, B.25.1-B.25.3 and B.37.2.

However, the language readiness requirement proved to be too non-obligatory and did not always lead to the desired basic proficiency in Dutch. The legislator therefore decided to change the language readiness requirement to a language proficiency requirement. The decree of 10 March 2017 amended the registration and eligibility requirements on language readiness into a language proficiency requirement as a tenant obligation (not as an eligibility condition)[26]. This policy decision has also already been reviewed by the Constitutional Court. The Court recognised that the new language proficiency requirement did not reduce the level of protection of the right to housing[27]. The Court noted that the previous best endeavours obligation has been modified to an obligation to achieve a result[28], but it stated that in order to judge whether there is a significant deterioration in the level of protection of the right to decent housing, the complete legal context of the contested provisions must be taken into account[29].

This legal context is constituted by the following elements:

- A prospective tenant's registration for and admission to a social rental home is no longer subject to a language requirement.
- Non-compliance with the language requirement cannot lead to the termination of the tenancy agreement.
- A number of grounds for exemption are provided for (not only serious illness and disability, but also limited cognitive abilities of the tenant).
- The prospective tenant is explicitly informed of the language proficiency obligation from the moment of registration for a social rental home, thereby allowing them to take the necessary steps to comply with this future obligation from that moment on.
- The tenant does not have to have the required proficiency at the time of the entry into force of the tenancy agreement, but only after a certain time limit, which may be extended.
- Guidance is envisaged for the tenant (at the time of registration, prospective tenants are given contact information for services where they can learn Dutch) and a wide range of language courses.

Finally, the Court noted that the envisaged basic proficiency in Dutch in any case contributes to communication, safety and liveability in social housing complexes and therefore to realising the right to decent housing[30]. The European Committee of Social Rights (ECSR), which monitors compliance with the Revised ESC through periodic country reports, also notes an improvement by removing the language readiness requirement and replacing it with the language proficiency requirement[31]. The ECSR also includes the existence of the supervisory body in its assessment. The ECSR concludes that the situation has therefore been brought into conformity with the Revised ESC.

It can therefore be concluded that the complainant's contention that the language proficiency requirement is more stringent relative to language readiness requirements and that the purpose of the language proficiency requirement is to exclude, cannot be entertained. Due to the fact that a prospective tenant's registration for and admission to a social rental home is no longer subject to a language requirement, the language proficiency requirement is not stricter than the language

[26] Decr. 10 March 2017 amending articles 92, 93, 95, 98 and 102bis of the decree of 15 July 1997 containing the Flemish Housing Code *Belgian Official Gazette* 11 April 2017.
[27] Const. Court, no. 136/2019, 17 October 2019, B. 29.8
[28] Const. Court, no. 136/2019, 17 October 2019, B. 26.3
[29] Const. Court, no. 136/2019, 17 October 2019, B. 27
[30] Const. Court, no. 136/2019, 17 October 2019, B. 28, 29.1 to 7
[31] European Committee of Social Rights, Conclusions 2019, Belgium, March 2020, p. 41

readiness requirement. The aim is not to exclude but rather to empower and emancipate social tenants.

Registration with the VDAB (Public Employment Service of Flanders)

To encourage social tenants to find work, a new tenant obligation is included in the Flemish Housing Code Order of 2021. Indeed, housing policy is often confronted with broader income issues which, in the strict sense, go beyond housing policy and require cooperation with other actors. The new tenant obligation is to help individuals find work. Finding and keeping a job remains an important lever to counter this income problem, and to this end, the registration requirement is an incentivising condition. The obligation to register with the VDAB applies to tenants with employment potential (but non-professionally active) and applies up to and including the age at which professional activity can normally be expected (age of 64). However, reasonable grounds can be put forward whereby the obligation does not apply, and this is based on reasons of fairness or exception conditions where an individual is unable to work or to actively seek work. For these individuals, it is ascertained that they temporarily or permanently lack employment potential, thereby exempting them from the tenant obligation. These are:

- Individuals entitled to unemployment benefit for whom an exception applies for reasons of fairness. These are persons who receive a living wage, for whom the OCMW decides that, for reasons of fairness, they cannot work.
- Individuals who cannot work on account of incapacity for work, invalidity or a recognised disability.

The landlord will check whether the tenant is professionally active, registered with the VDAB, or exempted. As stated above, non-compliance with the registration requirement cannot lead to termination of the tenancy agreement (the Flemish Region prefers to safeguard the fundamental right to housing over participation in society through employment).

Judicial eviction

The complainant argues that there is no legal review and that the registration condition is an additional sanction. The Council of State considered this possible violation of the principle of legality, but came to a different conclusion. Although from a domestic law perspective the measure clearly does not have the qualification of a punishment, the Council of State states that it must be assumed that it could be a punishment within the meaning of Article 6 ECHR. Because the legislator explicitly stipulates that only a termination of the social tenancy agreement by a judge is eligible for the measure (validation by the judge of the notice served by the social landlord or dissolution pronounced by the judge – the notice served by the social landlord which is not ratified by the judge (e.g. because the social tenant moves out of the dwelling by the end of the notice period), can never lead to the application of the measure), the application of the measure is automatically the consequence of the termination of the social tenancy agreement by a judge.

Moreover, an additional guarantee is granted to the individual concerned: if they wish to register again as a prospective tenant and the social landlord refuses this, pursuant to the new measure, the prospective tenant can file an appeal with the supervisory body that makes the assessment autonomously. In the event of a negative assessment by the supervisory body, the prospective tenant can bring an action for annulment before the Council of State.

The complainant also argues that the 'punishment' can also be imposed for acts that predate the legal application of the sanction, so it was not foreseeable. However, this is not true. Article 218 of the Decree of 9 July 2021 states that only terminations of tenancy agreements that occur after the measure has entered into effect will be eligible. Social tenants who previously saw their tenancy agreement terminated by the courts on account of serious anti-social behaviour or serious neglect of the social rental home are therefore not subject to this 'penalty'. The court may therefore take this new measure fully into account when ruling on questions of dissolution of the tenancy agreement.

Finally, the complainant cites a Constitutional Court ruling to justify that past behaviour should not be a criterion for different treatment[32]. The Constitutional Court annulled the provision of the Brussels Housing Code, stipulating that a tenancy agreement had to be declared null and void if the landlord who, for less than ten years, having been convicted for a repeat offence under Articles 433decies to 433terdecies of the Penal Code, rents out a property and that property does not meet all the requirements of safety, health and equipment stated in Article 4 of the Brussels Housing Code. This provision was declared null and void as there was a difference in treatment between tenants depending on whether they were renting from a landlord with a criminal record or not. Tenants who do not rent from such landlords and who occupied a dwelling that did not meet the minimum safety, health and equipment requirements of the Brussels Housing Code have a choice either to demand that work be done to bring the dwelling into compliance, or to claim a dissolution of the tenancy agreement. Tenants renting from a landlord with a criminal record did not have this choice; for them, the tenancy agreement was dissolved in any case. The different treatment may have been based on an objective criterion (the criminal record of the landlord with whom they entered into a tenancy agreement) but the criterion was not pertinent with respect to the objective pursued, namely, the protection of the tenants. Indeed, the fact that the landlord has been convicted on multiple occasions in the past for violations of the above-mentioned criminal provisions does not necessarily imply that the property that is the subject of the tenancy agreement declared null and void is in such a state that the annulment of the agreement is justified. Moreover, the provision creates legal uncertainty for the tenant, who cannot be informed about the criminal record of their co-contractor and thus, at the time they enter into the tenancy agreement, cannot foresee that the agreement might be annulled for a reason relating to the landlord's prior convictions. This judgement has no overlap with the policy measure being contested here.

[32] Const. Court, 9 July 2020, No. 101/2020

5. PRIVATE RENTAL MARKET

General policy framework

The Flemish government is aware that the private rental market, as a submarket, has a range of problems (including affordability, upgrading to higher quality and energy standards and the limited supply of good and affordable housing). Partly for this reason, Flanders (the Flemish Region) has committed via various policy instruments, resources and research to remedy the problems and make the necessary progress in this submarket as well. In particular, for the households that are struggling in this submarket (rising rents, limited housing quality or difficult accessibility), various measures and schemes are being devised, and new schemes are being put in place.

In this regard, the Concept Paper on Private Rent was approved by the Flemish Government in 2016 (after the transfer to the federated states of the competence for housing rental law, among other things, following the Sixth State Reform in 2014). The concept paper sets out the ambition and explains what the housing policy intends to achieve in the short term and via which approach. In this regard, the housing rental law constitutes the generic framework that applies to all housing rentals on the private market. Accordingly, the concept paper laid down the principles and objectives of housing rental law in Flanders (the Flemish Region).

The provisions of the Flemish Housing Rental Decree (Vlaams Woninghuurdecreet) are the result of extensive scientific research by the Policy Research Centre Housing (Steunpunt Wonen) and the broad involvement of stakeholders. Indeed, one of the objectives of the Flemish Housing Rental Decree is to create a stable, sustainable and balanced legal framework for the rental relationship between private tenants and landlords. As such, the provisions enjoy broad support.

A key feature of the Flemish Housing Rental Decree is the duration of the tenancy agreement, which is set in principle at nine years. This term should enhance housing security for tenants and their families. Since in principle the tenancy agreement lasts nine years, the tenant can fully exercise their rights, as they do not have to fear being evicted. While the landlord has three termination options, there are strict rules for invoking them. The Flemish Housing Rental Decree, following the federal Housing Rental Act, also provides for a regime of short-term tenancy agreements as an exception to the principle of a nine-year term. Short-term tenancy agreements cannot be terminated by the landlord, even if the latter wishes to occupy the property themselves or let their family members live there. This discourages the landlord from concluding short-term tenancy agreements. In addition, a short-term tenancy agreement can only be renewed once, whereby the maximum duration of the original tenancy agreement and the renewal cannot exceed three years. In the event of any subsequent renewal, or a renewal in which the tenancy agreement extends beyond three years, the tenancy agreement will automatically be converted to a nine-year lease. A new feature is that the tenant can terminate a short-term contract early. This gives the tenant a new power that counterbalances the short-term tenancy agreement, which is usually the preference of the landlord. In addition, the termination fee that the tenant must pay for early termination is halved compared to early termination of a long-term tenancy agreement.

A second important principle is that a decent return is ensured for the landlord. This is important to convince landlords to continue renting out their properties and to convince prospective landlords to enter the private rental market. The Flemish Housing Rental Decree therefore does not contain any provisions on the calculation of rent, and therefore leaves it up to the landlord to set the rent amount. Once the rent is fixed, it also remains in principle unchanged for the entire duration of the tenancy

agreement, even in the case of successive short-term tenancy agreements between the same tenant and landlord. However, the rent can be indexed annual and a revision is possible under strict conditions. In this regard, the Flemish Housing Rental Decree provides for a new possibility to revise the rent amount, namely when the landlord has made energy-saving investments to the rental property. This revision option helps to improve housing quality, while the higher rent for the tenant is offset by lower energy consumption.

More generally, the Flemish Housing Rental Decree aims to help ensure a minimum level of housing quality. In this regard, the Flemish Housing Rental Decree refers to the regional quality standards. At the same time, the decree applies the principle that it is the exclusive responsibility of the landlord that the property meets the housing quality requirements at the start of the tenancy agreement. A tenancy agreement entered into for a defective dwelling is null and void. However, the Flemish Housing Rental Decree aims to make it easier for the landlord to terminate the tenancy agreement, with a view to renovation works. Indeed, the termination is possible from the end of the first three-year period. Finally, the use of the certificate of conformity is encouraged. In fact, the decree provides that if the landlord has a certificate of conformity that was issued less than three months before the start of the tenancy agreement, it is legally presumed that the landlord made the property available in good condition.

With the Flemish Housing Rental Decree, the Flemish Region is also striving to facilitate access to the private rental market. Indeed, a certain group of tenants face financial barriers to entering into a tenancy agreement. Paying the first month's rent and the rent guarantee is not always straightforward, while this does not necessarily have any bearing on the tenant's ability to subsequently pay the rent on time, and maintain the property correctly. At the same time, the rent guarantee is essential in order to offer the landlord a certain level of security if the tenant does not pay the rent, or if there is rental damage. A sufficiently high rent guarantee can therefore convince landlords to rent to less conventional tenants and should be seen as a form of insurance for the landlord. To reconcile both interests, the Flemish Region introduced an interest-free rent guarantee loan. The income limits are the same as the limits for renting out a modest rental home, and are therefore relatively high. In turn, the ownership requirement is not too restrictive, given that not many tenants own other property. The application for a rent guarantee loan can be made as soon as a tenancy agreement has been concluded, but it is also possible for a prospective tenant to obtain authorisation in principle beforehand. In this way, a prospective tenant can already be certain, when searching for a rental property, whether they meet the eligibility requirements. The authorisation in principle remains valid for three months. The time scales for processing the application are deliberately kept short, so that tenants can borrow anonymously.

Another initiative was the drafting and approval of the Action Plan on Anti-Discrimination in the private rental market. The emphasis of the Action Plan is on informing and raising awareness among tenants, landlords and real estate agents, but also on a stronger commitment to existing schemes (see below). The concept paper helped create a framework for recognising and subsidising landlord organisations, with the goal of further professionalising the sector and enhancing engagement on housing policy. To this end, the sector must provide information and advice on all matters relating to housing rentals. In this regard, the sector not only needs to defend the interests of landlords and real estate agents in the private rental market, but also to help realise the right to housing (which has been enshrined in legislation).

The Housing Policy Plan Flanders and its further refinement also outline the basic principles of the policy. This framework also applies to the private rental market, and is where the necessary steps are being taken from. It is crucial in this regard to create a transparent, stable and sustainable framework,

and maintain the balance between landlords and tenants. These are the essential cornerstones for policy in the private rental market. Against this backdrop, schemes, measures and policy actions are prioritised, and this always presupposes a delicate balance. On the one hand, it must support tenants, and on the other hand, not discourage landlords from continuing to offer their properties for rent (indeed, demand is high and supply is limited). The balance aimed for necessarily results in cautious and focused policies (which the complainant confuses with a lack of ambition). Moreover, according to the Flemish government, it is a legitimate policy decision to prioritise free choice as the guiding principle in the housing market and, in principle, to allow market forces to act, according to supply and demand. Consequently, the Flemish government has opted to make corrections where necessary (when market mechanisms also lead to imperfections). The focus of the policy for the private rental market is therefore on the imperfections, and remedying these (e.g., substandard housing quality and/or excessive pressure) and on supporting the private tenants who are particularly struggling (in terms of affordability, quality, progression to social housing). In line with the free market principle, government intervention is limited so as not to disrupt the market (and respect free market competition). Nevertheless, the Flemish Government recently decided to adapt the supply of housing for specific target groups, through government intervention. Through the system of rental under conditions (geconventioneerd verhuren), an increase in the supply of affordable and quality rental housing in mixed projects (social and private) is being considered (as a specific targeted supply measure towards a target group, and with rent control to relieve pressure on the lowest segments of the rental market). In any case, it is incorrect to claim that the housing policy in Flanders (the Flemish Region) does not support the private rental market, or not enough, although it does take account of the context and the stated free market functioning.

The following sections explore various aspects of policy in the private rental market in more detail.

5.1. Affordability on the private rental market

The complainant argues that growing affordability issues are becoming a structural problem on the private rental market. Too few mechanisms are put in place to remedy this (primarily rent subsidy, rent premium), and the policy does not adequately monitor the problem. The policy is also criticised for not applying rent controls in the private rental market. The principle that landlords can earn profits is called into question in this regard. It is cited that, as a result, the rent does not effectively correspond to the quality of the dwelling (mismatch of price and quality, which is partly driven by strong demand and limited supply). Furthermore, according to the complainant, the system of rent allowances (rent subsidy and rent premium) is too limited by scope and is ineffective compared to the needs (measured against the target group of social rent). In addition, the conditions are deemed to be too restrictive (the property must be in compliance, the income conditions of the social rent are applied, the maximum rent is labelled as unrealistic). Finally, non-take-up is cited as a problem that the policy does not adequately address.

In general

First of all, we can highlight the fact that studies confirm that on the private rental market in Flanders (the Flemish Region), the affordability problem in itself is not growing (Heylen & Vanderstraeten, 2019[33]). It is found that, in accordance with the housing cost rate method, from 2013 onwards, the share of private tenants struggling with an affordability problem remained the same, and in

[33] Heylen K. & Vanderstraeten L. (2019), *Wonen in Vlaanderen anno 2018*. Leuven: Policy Research Centre Housing.

accordance with the residual income method, this share did not change significantly from 2005 onwards.

The affordability problem is being monitored through predetermined indicators. These are supplemented every year for the private rental market, based on the EU-SILC. Affordability (for different groups) in the private rental market is also described in detail through the various housing surveys. In the strategic objective in the Housing Policy Plan under 'Strategic Objective 2: In 2050, decent housing is affordable for everyone', four specific indicators are also put forward. In this regard, the complainant argues that no percentages are specified in the mid-term evaluations, while progression is clearly predetermined as a benchmark at each evaluation point.

In order to avoid undesirable fluctuations and/or pressure on supply, the policy has opted to address affordability issues primarily from the demand side, by providing financial support to tenants and mechanisms to facilitate the progression of individuals in need of housing to the social rental market. As such, prospective tenants who register for social rental housing, and complete the waiting period of four years (previously five years), are paid a rent premium. In this regard, the policy aims to support the target group of social rent who has not yet progressed to social housing - and is consequently dependent on the private rental market. Whereas prior to 2019, the target groups for support in private versus social rent were different, these are now aligned, with the aim of achieving a more coherent and effective policy. The Flemish rent subsidy supports tenants with modest incomes who move to a new rental home. The subsidy is based on three pillars: relocation to a dwelling rented out by a social rental agency (SVK's), no longer having homeless status, or leaving a substandard dwelling. The rent subsidy is in principle paid for a maximum of nine years. But an exception applies to older persons (65+) and tenants of social rental agencies (SVKs) and persons with severe disabilities. They receive the rent subsidy for an indefinite period. As stated, the rent premium is for private tenants who are registered on the waiting list for social housing (see above).

It should be emphasised that the efforts of the Flemish government vis-à-vis individual private tenants have grown considerably in recent years. The rent subsidy and the rent premium have been broadened in terms of their reach. Whereas the income conditions used to be stricter, they have now been increased and aligned with those of the target group of social rent (2019). In this regard, the policy states that the target group is essentially identical and can obtain support either in the private rental market or in the social rental market (the complainant acknowledges that the income limits for social rent are generous). In addition, putting in place a progression mechanism for social tenants who far exceed the eligibility limit (125%) in favour of private tenants who do meet the eligibility requirements is an efficient way to direct private tenants to the social rental market (see above). Moreover, changes have been made to the rent subsidy and rent premium scheme, with a view to optimising it and making it more customer-friendly (the previous cumulated subsidies ban has been scrapped) and increasing the maximum rent of private rental properties (contrary to what complainant claims). Moving out of a non-compliant dwelling is now also easier to prove (where a decision by the mayor was previously required, now a technical confirmation is sufficient). In this way, a more effective tool with a broader reach is aimed at. This is also reflected in the number of beneficiaries. This number is rising systematically, and by 2021 more than 45,000 households were eligible (20,909 for the rent premium and 24,656 for the rent subsidy). Based on the increased resources for the rent subsidy and rent premium, and the growing number of beneficiaries, it cannot be claimed that the Flemish Region is not making sufficient efforts. In any event, a general expansion of rent allowances should be approached with caution, for one reason because research shows that an overly extensive allowance system is

passed on in rents (Van den Broeck et al., 2017[34]). Therefore, the claim made by the complainant that this generates little or no adverse effect is questionable (especially when it would still have to be put in place together with rent control). On the other hand, the current policy choices do achieve the necessary progression (in terms of resources and beneficiaries), without disrupting market forces and without risk of supply failure.

Furthermore, the complainant argues that low-income older persons face difficulties in paying rent on the private rental market, in particular due to modest pensions (which are rather low in Belgium compared with pensions internationally). The policy takes this into account: older persons (65+) (in addition to social rental agency (SVK) tenants and people with a severe disability) receive the rent subsidy for an indefinite period. In this way, vulnerable older persons in the private rental market are supported to keep housing affordable. Keeping the rent subsidy for an indefinite period for the older persons target group covers the low pensions in the area of housing (as a federal matter). In addition, through the target group policy in the social rent, the municipality can opt to pay increased focus to low-income older persons (which is also often common practice). In this sense, the policy provides the necessary tools to support less well-off older persons in the rental markets.

Furthermore, the complainant highlights the fact that there is a low take-up of the subsidy by the theoretical target group (despite there being 45,000 beneficiaries). To investigate this, the policymakers assigned a specific task to the Policy Research Centre Housing (Steunpunt Wonen), which should highlight the issues and provide avenues for achieving a better reach, where appropriate (the study is ongoing and will be completed by 2023). On the other hand, as regards support for private tenants, it should be noted that for a number of very low-income households, the cost of housing will always be too high regardless of what financial support is offered from the housing policy. In this context, it is more of an income problem than a housing problem, and this cannot be addressed purely from the housing policy. The housing policy provides support according to housing need, but can never solve the overall income problem, which is why there is also a strong emphasis on providing additional social rental housing (see above).

The choice to act in the first instance on the demand side through policy is appropriate, in the opinion of the Flemish government. Controlling the supply side, as the complainant proposes, through a coercive regulation of rent control is a lot more difficult. Indeed, in several segments of the private rental market, demand exceeds the supply of affordable and quality rental housing. A mandatory system of rent control and/or limiting rents is not advisable from this perspective. Rent control as a containment measure will prompt landlords to remove their properties from the rental market, further reducing supply and increasing price pressure (which will ultimately fall back on the tenants themselves). A cautious policy is therefore deemed necessary to avoid disrupting the rental market and supply. Rent control can also lead to lower levels of housing quality in the private rental market. Indeed, landlords then have less incentive to invest in housing quality (with rent control, this is not reflected in the rent amount anyway, or less so, which is confirmed by the Country Report and the OECD: https://www.oecd.org/housing/policy-toolkit/country-snapshots/housing-policy-belgium.pdf).

In the context of limited supply and broad demand, the objective of the Flemish Housing Rental Decree is also to allow private landlords to earn a reasonable profit. Restricting or not allowing profits would result in market distortions. The objective of permitting profit-making, moreover, is not inconsistent with the fundamental right to housing of private tenants. Indeed, the private rental market is essential for the realisation of the fundamental right to housing, so the contribution of private landlords is

[34] Van den Broeck K., Haffner M., Winters S. & Heylen K. (2017). *Naar een nieuw stelsel van huursubsidies*. Leuven: Policy Research Centre Housing.

equally essential in this regard. Unlike social landlords, whose raison d'être and remit is to rent out housing to designated beneficiaries at reduced prices, private landlords have a different objective. They want (and are allowed) to earn a reasonable profit through private rental, but must of course respect the applicable rules on housing quality and contract quality (the OECD report cited above also shows that the landlord-tenant regulation in Belgium is already more robust than the OECD average).

Therefore, policymakers are more likely to opt for an indicative rent policy on the supply side whereby, on the basis of objective parameters, it is transparently communicated what can reasonably be demanded as a rent. In this regard, based on the research into the 'guideline rents', an online 'rent estimator' (huurschatter) application was developed. Based on the address and a number of characteristics of a rental property, the rent estimator provides an estimate of a typical rent for that property. The result of the calculation is informative and not binding. The objective of the rent estimator is to increase transparency in the private rental market for both tenant and landlord, without the pressure and negative effects of a rent control system. It was stated above that the proposed system of rental under conditions (geconventioneerd verhuren) is aimed at price control in a cautious and highly targeted manner (target group-specific) (this system then positions itself between the social and private rental systems).

The complainant further argues that rent prices do not correspond to the quality offered. In general, research has shown that the quality of the housing stock has improved, even in the private rental market (cfr. Heylen & Vanderstraeten, 2019[35]). For the private rental market as a whole, there is a clear correlation between the rent amount and the quality features of the housing. Research[36] carried out by the Policy Research Centre Housing (Steunpunt Wonen) in the context of the rent estimator shows that this value is actually calculated for many housing characteristics (year of construction, habitable surface, glazing, roof insulation, etc.). The rent estimator therefore provides an accurate indication of the rent amount, and it is up to the parties to negotiate it (in accordance with the choice to allow the free market to function). Taking into account the housing characteristics, rent amounts overall have not increased too much in recent years[37]. Indeed, the difference in the (limited) increase in the hedonic rent index (index for a dwelling with the same characteristics over time) and the sharper increase in rent amounts indicates that the price increases are (partly) due to changes in the composition of the housing stock, with more new construction, and the implemented quality improvements, etc. So overall, prices are not rising sharply and quality is increasing in the private rental market. Research does however show that, specifically in central cities, there is increasing price pressure (Vastmans & Dreesen, 2016[38]). In the lower segments of the private rental market, stronger demand is pushing rent prices higher. The policy opts for a cautious approach, with financial support for the target group and additional efforts to monitor the quality of the housing (if demand is high, bad-faith landlords may continue to offer inferior quality housing). The efforts in this area have been stepped up in recent years, with additional manpower for housing inspection, staffing of local government, support for the construction of emergency housing (see below).

In-depth technical clarification of content

[35] Heylen K. & Vanderstraeten L. (2019*), Wonen in Vlaanderen anno 2018*. Leuven: Policy Research Centre Housing.

[36] Vastmans, F. (2019), *De huurschatter, nieuwe resultaten versie 3, 2019*. Leuven: Policy Research Centre Housing.

[37] Vastmans F. & Laheye K. (2016), *De Huurschatter. Part 1. Een eerste algemene analyse*. Leuven: Policy Research Centre Housing.

[38] Vastmans, F., & Dreesen, S. (2021). *Woningprijzen: algemene trends en regionale verschillen. Vaststellingen in Vlaanderen en verklaringen uit de literatuur van urban economics*. Leuven: Policy Research Centre Housing.

The complainant cites various technical provisions in specific regulations or procedural steps that could be optimised, but which can hardly be used to judge Flanders' housing policy as a whole. For the sake of completeness, we will address some of the concerns.

The complainant argues that if the tenancy agreement is declared null and void by the courts, the landlord can obtain compensation for the rental property, despite the poor quality of the dwelling. In the explanatory memorandum to the relevant decree, it was cited that poor housing quality must be taken into account when this is quantified. The quantification should indicate the objective value to make the property available and should not be equated with the rental value (precisely on account of the poor quality). Incidentally, it is always up to the courts to judge this independently. The occupancy compensation after the tenancy agreement has been declared null and void due to poor housing quality is regulated in Article 12 of the Flemish Housing Rental Decree. The principle of occupancy compensation was incorporated for those cases in which the tenancy agreement is declared null and void, because the rental property did not meet the minimum housing quality requirements from the beginning. When placed in the right context, it is clear that this is a balanced measure that is consistent with realising the fundamental right to housing:

- The legislator justified the occupancy compensation as follows (freely translated): "However, applying the nullity sanction is very drastic. From a legal perspective, the tenancy agreement is deemed never to have existed and, consequently, the landlord must return the paid rents to the tenant and the tenant, in turn, is obliged to hand back the tenancy. In order to align the application of the nullity sanction in practice to the specific situation, the Court of Cassation already ruled in 2012 that the nullity of a tenancy agreement does not prevent the landlord who is obliged to refund the rent from being able to claim compensation for the occupancy of the rented property on the basis of a transfer of assets without cause, even when this nullity is the result of a violation of the housing quality standards laid down in the Flemish Housing Code (Vlaamse Wooncode) that affect public order. The court who pronounces the nullity, which will require the landlord to repay the already paid rents, can impose an occupancy compensation obligation on the tenant, which can then be offset against the rents to be repaid.
  The occupancy compensation must be based on the objective rental value of the property, taking into account its poor condition. The court determines the amount of the occupancy compensation on this basis. If the defects are minimal, and thus the objective rental value is only slightly reduced, the occupancy compensation can be equal to the rental price. In a defective property, the occupancy compensation will be less than the rental price. In a seriously defective property, there is no objective rental value and therefore no occupancy compensation can be granted. The 'objective rental value' is in contrast to the 'subjective rental value': it is not from the experience of the tenant in question that the rental value must be determined; the figure must be determined objectively or in the abstract, in particular what an average tenant would have perceived as a rental value. In this regard, the legislator specifies the basis on which the justice of the peace must determine the occupancy compensation. The choice is therefore made for an objective approach rather than an approach from the tenant in question.
  This case law of the Court of Cassation will also be incorporated into the Flemish Housing Rental Decree, so that there can no longer be any doubt or discussion on this matter.
  On the basis of general contract law, there is an exception to the principle that the tenant hands back the tenancy, by way of equivalency via the occupancy compensation, namely where granting it would be contrary to the protection of public order or morality, or where the court considers that one of the contracting parties must be more harshly dealt with. The purpose of refusing to grant occupancy compensation is therefore to avoid encouraging the landlord to rent out housing in the future in violation of regional housing quality standards. It

is up to the courts to decide in concrete terms whether granting occupancy compensation would compromise public order. The inclusion of the principle of occupancy compensation in the Flemish Housing Rental Decree does not affect this application of general contract law.
Both the fact that the court determines the size of the occupancy compensation on the basis of the objective rental value and the fact that it can nevertheless refuse the occupancy compensation if this will compromise public order give it sufficient margin of appreciation to weigh the interests of the tenant against those of the landlord on a case-by-case basis and to align the specific consequences of nullity to the specific situation.
The fact that the court may impose an occupancy compensation obligation on the tenant based on the objective rental value of the property does not change the fact that the tenant can claim damages from the landlord, for example, for relocation expenses or for damage to clothing or furniture. Given that the tenancy agreement has been declared null and void, the legal basis for claiming this compensation is not contractual, but extra-contractual (Article 1382 of the Civil Code)."[39]

- The Flemish Region is the only region that has incorporated the nullity sanction, for the case where a rental property does not meet the minimum housing quality requirements at the start of the tenancy agreement. The Brussels-Capital and Walloon Regions have stipulated that in these cases the tenant could demand the dissolution of the tenancy agreement or the execution of works. The nullity sanction is far-reaching (the landlord must repay all rents received) that is intended to discourage landlords from renting out dilapidated properties. In this way, the nullity sanction encourages the landlord to improve housing quality, which is obviously to the advantage of the private tenant.
- However, the measures to realise the fundamental right to housing must also be consistent with other fundamental rights, such as the landlord's right of ownership, as protected in Article 1 of the First Additional Protocol to the ECHR.
- The occupancy compensation ensures that the nullity sanction will always be proportionate to the landlord's right of ownership, by allowing the court, through the occupancy compensation, to adapt the severity of the nullity sanction to the extent to which the rental property failed to meet the minimum housing quality requirements.
- The fact that the Flemish Housing Rental Decree contains the principle of occupancy compensation does not mean that in all cases the tenant will be liable to pay occupancy compensation, or that the occupancy compensation is equal to the rental price paid. As indicated in the explanatory notes of the legislator, the court must determine the amount of the occupancy compensation based on the specific details of the case: *The occupancy compensation must be based on the objective rental value of the property, taking into account its poor condition. The court determines the amount of the occupancy compensation on this basis. If the defects are minimal, and thus the objective rental value is only slightly reduced, the occupancy compensation can be equal to the rental price. In a defective property, the occupancy compensation will be less than the rental price. In a seriously defective property, there is no objective rental value and therefore no occupancy compensation can be granted.*
- As indicated in the explanatory notes of the legislator, the occupancy compensation is the decretal ratification of the existing case law of the Court of Cassation.
- As indicated in the explanatory notes of the legislator, in certain cases the court will not (have to) impose occupancy compensation: *where granting it would be contrary to the protection of public order or morality, or where the court considers that one of the contracting parties must be more harshly dealt with.*

[39] *Parl.St.* Vl.Parl., 2017-18, no. 1612/1, 31-33.

As such, the occupancy compensation is not a violation of the fundamental right to housing. This is also confirmed in the literature[40]. The occupancy compensation is related to the strict nullity sanction (which is in the private tenant's interest since landlords, owing to this strict sanction, are prompted to comply with the minimum housing quality requirements) and because the court determines whether occupancy compensation must be imposed and, if so, how much it is, it is ensured that the occupancy compensation is always adapted to the specific elements of the case.

5.2. Discrimination

The complainant argues that the imbalance between supply and demand is a breeding ground for exclusionary mechanisms. Low-income households are the victims in the first instance (in part because landlords can always choose the financially better-off prospective tenants). There is too little data available on this subject to understand the extent of the problem and to adjust a policy accordingly. Furthermore, the complainant believes that discrimination in the private rental market (based on financial capacity, ethnicity or disability) is not sufficiently tackled by the government. The complainant also alleges a lack of enforcement of the ban on discrimination, which primarily relies on individual complaints by the (prospective) tenant. Discrimination policy in the private rental market, according to the complaint, is one-sided and limited to raising awareness and informing the parties concerned.

In general

The ban on discrimination is expressly provided for in federal law, which defines discrimination as a criminal offence. In addition, a general Flemish decretal framework for the equal opportunities policy and equal treatment has also been drawn up. Besides the standard police services, a specifically created body watches over possible instances of discrimination (in the various policy fields such as employment, housing, welfare, etc.). This body provides information, raises awareness on the matter and takes a mediating or corrective role in the event of problems in the field (where necessary, the body can even take legal action). Every year, a situational analysis and report is drawn up and delivered to the relevant parliaments. Currently this role is performed by UNIA, the Interfederal Centre for Equal Opportunities, as the federal human rights institution, although the Flanders Institute for Human Rights was recently set up (2022) that will also play a role in tackling discrimination in the future. Flanders (the Flemish Region) has decided to play a complementary role in the problem of housing discrimination. Partly as a result, the first step in outlining a non-discrimination policy at the regional level is to devise a general anti-discrimination action plan for the private rental market. With this, the Flemish government intends to make clear the overall framework and put forward generic measures aimed at preventing discrimination. From an ideological perspective, the complainant judges that this is insufficient, and does not involve direct action, while the Flemish government assumes that the action plan makes general choices and steps, but does not wish to intervene directly in the (pre)contractual relationship between landlord and tenant (when necessary, this falls to the regular police services). Moreover, the legislation on the housing rental market (and related discrimination in the housing market) was only transferred to the regions in 2014, which also explains the general supporting and complementary approach.

The emphasis of the Action Plan is primarily on informing and raising awareness among tenants, landlords and real estate agents, but also on making more use of existing tools, rather than putting

[40] VANDROMME T. (2019), 'De kwaliteit van de verhuurde woning in het Vlaams Woninghuurdecreet' in DAMBRE, M., HUBEAU, B., VANDROMME, T. and VERMEIR, D. (eds.), *Het nieuw Vlaamse Woninghuurdecreet. Over grote en kleine wijzigingen in het woninghuurrecht*, Bruges: die Keure, p. 50-52.

new tools in place. It would therefore be disproportionate to suddenly deploy resources such as field tests with criminal enforcement, when results can also be achieved by optimising the existing tools. In this sense, as a first option, the policy does not choose a repressive policy (which may put off landlords and give the impression they are getting the blame). The Action Plan has clear objectives which are embedded in the Housing Policy Plan Flanders, and which aim to systematically tackle and eliminate discrimination. The Action Plan is followed up through the 10-yearly sample survey (which is being incorporated into the Flemish Housing Code of 2021, and which offers guarantees in terms of evaluating progress). If the Action Plan does not produce the desired results to achieve the objectives of the Housing Policy Plan Flanders, it will be necessary to adapt it. The Action Plan primarily focuses on two main fronts: on the one hand the (umbrella organisations of) landlords and real estate agents and on the other hand the local governments.

A covenant was signed with the umbrella organisations of landlords and real estate agents, in which they undertook to fight discrimination in the private rental market. The umbrella organisations involved are expected to make the necessary efforts to inform, raise awareness among and empower their members. The implementation of the covenant is monitored on a periodic basis. This shows that the umbrella organisations are following up on the undertakings made. The umbrella organisations inform their members about the applicable regulatory framework (both on an individual and collective basis), provide template documents in accordance with the applicable regulations and also distribute the brochure of Housing Agency – Flanders (Agentschap Wonen-Vlaanderen) 'Discrimination on the rental market' (Discriminatie op de huurmarkt). In particular, providing information on a collective basis is an important role. For example, they participate in training events for private landlords (often in cooperation with local authorities). In this way, many private landlords are involved at the same time and correctly informed. Training sessions are also organised for real estate agents, in cooperation with Unia (national human rights institute) and the Vrije Universiteit Brussel. In addition, a webinar-on-demand was proposed in 2021, whereby real estate agents could benefit from upskilling on this topic at any time and regardless of their location (possibly as part of a disciplinary sanction imposed by the Executive Chambers and the Board of Appeals at the Professional Institute of Real Estate Agents (Beroepsinstituut van Vastgoedmakelaars, BIV/IPI). The Flanders Confederation of Real Estate Professions (Confederatie van Immobiliënberoepen Vlaanderen, CIB) also offers all relevant information on (anti)discrimination on its website. An important factor is that the training sessions for private landlords, and the CIB website, are not limited to their own members, but are available to all private landlords and real estate agents, so that awareness is raised beyond members. Furthermore, the BIV also organises (outside of the Covenant) training sessions on discrimination (e.g., 24 sessions in 2021, in which 550 real estate agents took part). Trainee real estate agents are required to take an e-learning course on this topic. Specific initiatives are also developed for real estate agents. This is a justifiable focus, since more and more rentals in the private rental market are organised via a real estate agent (CIB claims that one-third are) and research[41] shows that at the same time there is less discrimination when the owner-landlord uses a real estate agent. The Flemish Region has also subsidised the CIB for the development of Clee. Clee is a multilingual digital tool where a prospective tenant can manage their own rental profile. With this profile, they can apply for one or more rental properties. During the process, the individual can always follow up on the status of the prospective tenancy and will automatically receive feedback on whether they have been accepted or refused. Importantly, Clee was developed to eliminate discrimination. The individual applies through their

[41] Verhaeghe, P.P. & Ghekiere, A. (2020). Is de etnische discriminatie op de Gentse woningmarkt structureel gedaald?, (online)
https://www.researchgate.net/publication/342107347_Verhaeghe_PP_Ghekiere_A_2020_Is_de_etnische_discriminatie_op_de_Gentse_woningmarkt_structureel_gedaald/citation/download

rental profile and the landlord/real estate agent can only see the information relevant for the legitimate selection of prospective tenants. In this way, discrimination is ruled out. Moreover, Clee also saves time for prospective tenants: they only have to create their profile once and enter the relevant data, and from there they can apply for several properties. Specifically for combating discrimination through real estate agents, it should also be noted that disciplinary proceedings at the BIV against discriminatory real estate agents are rising, as are the number of disciplinary sanctions imposed. From 10 complaints relating to discrimination in 2017, the figure had grown to 18 in 2021. The number of rulings by the Executive Chamber rose from 5 to 18 over the same period. This demonstrates that using the existing tools (one of the principles of the Action Plan and the Covenant) is actually paying off.

In addition, local governments also have an important role to play. What exactly is expected from local governments is largely detailed in Book 2, Part 2, Flemish Housing Code Order of 2021. This contains a grant framework for intermunicipal partnerships (intergemeentelijke samenwerking, IGS) in the area of local housing policy for the period 2020-2025. As such, the Flemish Region provides financial support to municipalities that are part of an IGS, so that they can fulfil their mandates in the field of local housing policy, such as the task of setting up initiatives to address and/or reduce possible discrimination on the housing market. Since 1 January 2020, new projects have been subject to the obligation to inform citizens and receive reports of discrimination, via the housing desk (woonloket). 255 municipalities out of 300 are part of an IGS, meaning that a reporting centre is active in all of them since 1 January 2020. The Flemish Region actively supported the municipalities in putting the reporting centres in place. In addition, in this context municipalities can also focus on enforcing the display obligation (the obligation to state the requested rent and the amount of costs and charges in every public posting for rent, so that transparency on the rental market is encouraged and discrimination is less likely - see Article 4 of the Flemish Housing Rental Decree). This mandate is implemented in 68 municipalities in 24 IGS projects. In the autumn of 2020, eleven information sessions were organised (digitally, owing to the COVID-19 crisis) with 255 participants (background on the reporting centre, which reports should be accepted, what is the difference between banned discrimination and permitted selection (in cooperation with Unia), etc.). From the end of 2021, information sessions are being organised every 2 years to support municipalities in developing the reporting centre, in cooperation with the Human Rights Institute. Moreover, certain cities cooperate with universities (cf. cities of Antwerp, Ghent, Bruges, etc. in cooperation with the VUB) to check for discrimination in the urban market (2,950 correspondence tests were carried out in the field). In this regard, one of the findings was that awareness-raising in itself worked, and a reduction in the number of cases of discrimination was confirmed (Verhaeghe & Ghekiere, 2020[42]).

5.3. Monitoring housing quality on the private rental market

The complainant cites that although the quality of the housing stock has improved, the number of households moving into housing in very poor condition remains stable. In the area of housing quality, the private rental market scores the worst compared to other submarkets. According to the complaint, too little effort is being made to improve the housing quality of vulnerable households, and there are no incentives to improve quality in the private rental market. It is also claimed that the tools are not sufficiently effective, for example, preventive investigations are not carried out (only following complaints by the individuals involved). Moreover, it is argued that rehousing (after, for example, the

[42] Verhaeghe, P.P. & Ghekiere, A. (2020). Is de etnische discriminatie op de Gentse woningmarkt structureel gedaald?, (online) https://www.researchgate.net/publication/342107347_Verhaeghe_PP_Ghekiere_A_2020_Is_de_etnische_discriminatie_op_de_Gentse_woningmarkt_structureel_gedaald/citation/download

housing is declared uninhabitable) does not work (due to the fact that the mayor has a best endeavours obligation in this regard, and not an obligation to achieve a result). Too few rehousing alternatives are put in place from the Flemish policy.

In general

Monitoring housing quality is an important pillar of the Flemish housing policy. Housing quality standards were included in the Flemish Housing Code (Vlaamse Wooncode) towards the end of the 20th century. Since then, these have been regularly updated (in accordance with technological and/or building-technical developments), particularly with regard to fire safety, insulation levels and energy standards. The tools to monitor and inspect housing quality standards are also in place (with an administrative procedure and a criminal procedure). The procedures have also been regularly optimised, taking into account the practical conditions (cfr. housing quality monitoring pyramid - see below). On the ground, inspections are carried out by both local services and regional services. The tools are especially used to improve housing quality in the private rental market, and housing inspections are carried out primarily in this submarket. In this context, the Housing Agency - Flanders (Agentschap Wonen-Vlaanderen) carried out a total of 10,196 conformity inspections in 2021, while local governments were responsible for 20,816 conformity inspections (the tools have been developed by decree in such a way that both levels of government can act in the field).

With a view to protecting tenants, the housing quality standards are mandatory; every landlord must comply with them. The mandatory nature of the standards and the tools put in place have helped to improve overall housing quality in the private rental market (which is confirmed by research, cfr. Winters, 2021[43]). Tenants can initiate the process with a simple, easily-accessible request. It was previously stated that the rental regime is considered by the OECD to be highly regulated, with well-balanced rights and obligations for tenant and landlord. The standards, procedures and protective mechanisms in place are part of this. However, this strong framework cannot prevent tenants from nevertheless ending up in lower quality housing. As stated above, the policy opted to interpret the pre-conditions relating to renting and the rental market, and consequently to set out the framework (including in terms of housing quality), but not to intervene directly in the negotiations between the parties. Maintaining the free market remains a legitimate and principled choice, in the opinion of the Flemish government, while at the same time tenants can easily contact the government to organise a housing inspection.

The complainant believes that the government is responsible for the fact that many tenants have difficulties in the private rental market (it is stated that 93,000 households have problems with affordability and housing quality). According to the complaint, the government is not taking enough initiative to remedy the problem. It was stated above that enhanced efforts are being made in the area of the rent subsidy and rent premium, resulting in 45,000 beneficiaries and an increasing budget for rent allowances. We can also highlight the fact that, every year, around 9,000 prospective tenants progress to the social housing market. In addition, more than 31,000 housing inspections are conducted each year. It is acknowledged that not all tenants in a problematic housing situation are reached, but on the basis of the figures mentioned, it cannot be claimed that the Flemish government's efforts in terms of housing inspections, resources for rent allowances and beneficiaries are insufficient or non-existent (or that they are not growing). Moreover, research[44] shows that some households do

[43] Winters, S. (2021). *Vlaamse Woonmonitor 2021*. Antwerp: Gompel&Svacina.

[44] Juchtmans G. & Groenez S. (2018). *Een drievoudige inbedding voor kwetsbare gezinnen. Over brugfiguren, brugorganisaties en hun netwerk*. Leuven, HIVA.

Van Hootegem, H. and De Boe, F. (2017),), 'Waarom mensen in armoede hun rechten niet kunnen realiseren', Samenleving en politiek, no. 10, December 2017, p. 55-62.

not apply for support and are in principle averse to government intervention (which is also a free choice). Consequently, the Flemish government is systematically fulfilling its best endeavours obligation and is taking the necessary initiatives to this end without, however, being obliged to solve all the problems on the ground to the maximum extent (this cannot be expected, contrary to the claim in the complaint).

The complainant further alleges that the landlord receives little incentive from the government to make available and/or renovate their rental property (this would cause housing quality to lag behind). However, this needs to be nuanced and corrected. In our neighbouring countries, landlords are taxed on actual rental income (with the possibility of deductions). This is not the case for landlords in Flanders (the Flemish Region) (and the other Regions in Belgium). They are taxed on the cadastral income, which corresponds to an annual net rental value that the immovable property would yield at the reference date of 1 January 1975. The low tax rate is an advantage for landlords to bring housing to the rental market and keep it there. Furthermore, there is a financial intervention in the renovation costs of the home (up to 20 or 30% of the cost) if the landlord is willing to make the home available to a social rental agency (which in turn rents out the home to prospective tenants from the target group of social rent) for nine years. With this, the Flemish Region pursues two goals: on the one hand, to improve the housing quality of rental housing, and on the other, to increase the supply of social rental housing. In addition, the proposal of rental under conditions (geconventioneerd verhuren) also in mixed projects creates the possibility of realising and maintaining supply for specific income groups. In other words, various initiatives are ongoing to support the private rental market and landlords.

The complaint alleges that the government does not provide enough support for rehousing, in connection with the application of the tools (when, following a housing inspection, the resident has to move out of the uninhabitable dwelling). In this regard, it should be noted that the Flemish government has been subsidising emergency housing projects since 2020. Funds are released to local governments to increase the supply of emergency housing (around €11 million are released every year for this purpose). In total, more than 400 emergency housing units have already been built (in addition to the existing local supply). Residents confronted with a declaration of uninhabitable housing can be temporarily housed in this emergency housing. It is precisely because it was communicated on the ground that re-housing residents following a declaration of uninhabitable housing was difficult that these measures were created by the Flemish government. Consequently, the complainant erroneously claims that the Flemish government takes few initiatives in this area.

In-depth technical clarification of content

In the past, the administrative enforcement of housing quality policies was primarily based on a complaint from an individual tenant, but this has changed in recent years. Indeed, the Flemish government has been working for a number of years to develop a fully-fledged housing quality pyramid. Every initiative and measure in this pyramid help improve housing quality.

The housing quality pyramid starts with broad communication and awareness-raising regarding the minimum housing quality standards and encouraging compliance with these minimum standards. To this end, there are, for example, the large-scale awareness campaigns ‘Rookmelders redden levens’ (Smoke detectors save lives), ‘Hoe beschermt u zich tegen CO-gevaar’ (How to protect yourself against CO hazards) and ‘Wonen doe je niet op goed geluk’ (Housing is not a game of chance) on TV, radio, print and social media. A lot of information is also available online (www.wonenvlaanderen.be/woningkwaliteit) and there are brochures, posters and leaflets. All this information is also broadly disseminated in cooperation with a wide range of partners. There is also

the Housing Quality Guide (Woningkwaliteitswijzer). With this online tool, an owner or (prospective) tenant can go through all the focus points of their property, and find out what can or needs to be done about it. Attention is paid to stability, damp, fire safety, comfort, technical installations, etc. Finally, incentive measures also fit into this first layer of the housing quality pyramid. We can refer here to both the (former) renovation grant and the (new) rebuilding grant (verbouwpremie). Indeed, both are available to landlords who rent out their property to a social rental agency (SVK) for the duration of at least nine years.

The second layer of the housing quality pyramid relates to preventive supervision. The key focus here is a proactive approach - that means taking action without specific complaints regarding housing quality problems. The certificate of conformity takes centre stage in this regard. Local governments play an essential role in issuing these certificates. As such, the Flemish Region encourages local governments to make certificates of conformity mandatory for rental housing within their territory. Relying on local autonomy, more and more municipalities are implementing this obligation. A current list of municipalities requiring the certificate of conformity is at: www.wonenvlaanderen.be/lokale-besturen/het-conformiteitsattest-verplichten-de-geldigheid-ervan-beperken. In municipalities with a mandatory certificate of conformity, landlords can quickly find out about housing quality standards and any problems with their rental property that they need to remedy before they can rent the property out. By subsidising intermunicipal partnership projects on local housing policy, the Flemish Region supports the introduction of this obligation in numerous municipalities. In addition, there are many other proactive initiatives among local governments, such as 'krotspot' campaigns (to actively look for dwellings that are unfit or uninhabitable but are still inhabited by people) and municipal premiums. The Flemish Region facilitates knowledge sharing on these proactive initiatives. To further encourage making certificates of conformity mandatory, the Flemish government has also recently devised an accreditation system for housing inspectors. This accreditation system should make it easier for local governments to hire competent housing inspectors or outsource the work to competent private housing inspectors. In 2021, mayors issued a total of 9,788 certificates of conformity, while Housing Agency - Flanders (Agentschap Wonen-Vlaanderen) issued 1,906.

In addition, the Flemish government itself also proactively conducts conformity investigations. For example, Housing Agency - Flanders investigates homes for which a contribution to the rent (rent subsidy or rent premium) is requested. In 2021, the agency conducted 4,822 conformity investigations in this context. For the dwellings that meet the housing quality standards, the Housing Agency - Flanders itself issues a certificate of conformity. If the dwelling for which a rent contribution is requested is not in conformity, the municipality will be notified with a view to initiating a warning procedure or a procedure to declare it unfit and uninhabitable.

The third layer of the pyramid is soft enforcement. Again, the municipalities play a central role, while the Flemish Region provides advice. In this layer, the municipality can opt for the warning procedure or the procedure to declare the dwelling unfit and uninhabitable. The aim of the warning procedure is to prompt the owner to rapidly rectify the housing quality problems in the rental property. The warning procedure is therefore intended for the homes of owners who are willing to cooperate constructively and for whom the problems can be remedied quickly. If successful, the mayor will issue a certificate of conformity. If not, a procedure to declare the dwelling unfit and uninhabitable will follow. In 2021, the year the warning procedure came into effect, 391 warning procedures were conducted for a total of 423 dwellings. A certificate of conformity was issued for 247 dwellings.

If the warning procedure is unsuccessful, a procedure to declare the dwelling unfit and uninhabitable will follow. The mayor can also opt for this procedure immediately, and not go through the warning phase (for example, on account of prior history). If a dwelling is declared unfit and/or uninhabitable, it

is included in the Flemish inventory of unfit and uninhabitable dwellings. In 2021, mayors made 6,377 decisions under the administrative procedure to declare dwellings unfit and uninhabitable. 48% of the decisions involved a decision of unfitness or unfitness and uninhabitability, and in 36% of the decisions, the dwelling was not declared unfit/uninhabitable**.** If a home is on the Flemish inventory of unfit and uninhabitable dwellings and is not rectified, the owner must pay an additional charge. At the end of 2021, there were a total of 9,173 dwellings on this inventory. The aim of this approach is to encourage (rapid) rectification.

Criminal proceedings are provided for the worst forms of slumlording. This is the final piece of the housing quality pyramid. The Flemish Housing Inspectorate (Vlaamse Wooninspectie), a special inspection service of the Housing Agency – Flanders (Agentschap Wonen-Vlaanderen), is responsible for this criminal law approach. The aim here is not only to prompt landlords to rectify the situation (through the rectification order) but also to effectively punish slumlords through criminal convictions. These criminal law proceedings are not initiated by residents; the government agencies take the initiative. For the majority of initial actions in 2021, the initiative of new criminal proceedings was with the municipality (60%), with the public prosecutor's office and the police (16%) and with the Flemish Housing Inspectorate itself (15%). A total of 2,313 dwellings were investigated in the context of this criminal law enforcement effort in 2021.

5.4. Housing security on the private rental market

The complainant argues that affordability and housing quality issues mean that households have no choice but to move out of the rental property. Evictions violate the right to housing and the government should develop adequate measures to prevent this (eviction often goes hand in hand with homelessness). The measures devised by the Flemish government (including the Fund to Combat Evictions - Fonds voor de Bestrijding van de Uithuiszettingen) are too ineffective, according to the complainant. Furthermore, the lack of data is criticised (policies to tackle eviction should be based on data, according to the complaint).

In general

The Flemish Region considers the eviction procedure to be a legitimate remedy, admittedly used as a last resort when the contractual relationship between tenant and landlord fundamentally fails (as a protection of the right of ownership provided for in Article 1 of the First Additional Protocol to the ECHR). At the same time, the measure entails far-reaching consequences for the tenant and the impact is inconsistent with the right to housing. Partly for this reason, a court ruling as an independent assessment in the dispute between tenant and landlord is always necessary (weighing the non-performance on the one hand and the impact of the eviction on the other). In this context, the Flemish Region wishes to provide the necessary tools and create measures to facilitate guidance and prevent evictions.

Recently (2020), the Fund to Combat Evictions came into effect. With this Fund, guidance and mediation is put in place beforehand, and the landlord is financially compensated when they offer the tenant the necessary respite to make up the shortfalls (with the OCMW as intermediary). This tool strives to create a buffer against eviction. Due in part to its entry into force during the COVID-19 pandemic, the impact of the Fund to Combat Evictions has been limited up until now. Nevertheless, in 2021 the Housing Agency - Flanders received 214 agreements for guidance from the OCMWs and

€212,869.30 was paid out in contributions. In specific disputes, it is up to the OCMW to decide autonomously whether it wishes to rely on the Fund or whether other guidance is more appropriate. OCMWs receive financial support in this regard for additional guidance of private tenants, to avoid evictions. With such supportive measures, the Flemish government aims to put in place a policy that effectively avoids evictions.

As envisaged when the regulation was created, the Fund is assessed. This assessment conducted by the Policy Research Centre Housing[45] (Steunpunt Wonen), shows that the Fund is relevant in terms of preventing evictions. The researchers confirm that the objectives of the tool are coherent and consistent. In addition, according to the assessment, the Fund is conceptually sound, especially since integral guidance is facilitated and short-term solutions can be explored. According to the researchers, an important aspect in this regard is the Flemish government's choice for decentralised, autonomous monitoring by the OCMW. This choice provides leeway for customisation, by allowing OCMWs to use information about the client's situation; information that is only available locally. Conversely, several sticking points are expressed in terms of the technical efficiency, cost-effectiveness, the limited reach of the target group and limited awareness (partly due to the fact it was launched during the COVID-19 pandemic). The last point is linked to a lack of implementation, including insufficient communication about the system (despite informing all directly affected justices of the peace and involving tenants' associations and landlords' associations in the information campaign). These elements of the assessment will provide a basis for optimising the tool and its procedural methods.

Furthermore, it should be emphasised that the Flemish government endeavours to mitigate the consequences of eviction. Since 2020, the Flemish Region has released funds (+/- €22 million) for local governments (municipalities and OCMWs) to create a sufficient supply of emergency housing (see above). Households facing imminent homelessness, eviction or a declaration of uninhabitability can be put up in the emergency housing. A call for projects for emergency housing was launched in 2020, 2021 and 2022. The aim of this call is twofold, namely to expand the existing supply on the one hand, and improve its quality, on the other. The initiative will also be repeated in the coming years. In other words, the Flemish government provides various forms of support to prevent eviction and/or mitigate the consequences.

In-depth technical clarification of content

The complainant alleges that in the context of the housing quality monitoring, the re-housing of the residents is not guaranteed, while the Flemish government provides the necessary measures and tools to take care of this.

Partly thanks to the use of housing quality monitoring tools, it is identified when certain households are living in very unsafe, unhealthy or undignified conditions. This is the case for dwellings that are uninhabitable according to the results of a conformity investigation. These dwellings have one or more serious defects that prevent quality living or even pose an immediate risk to the safety or health of the residents. Indeed, for their own health and/or safety, residents of uninhabitable housing must then leave their homes. However, this can often still be avoided if the owner quickly rectifies the acute hazards in the dwellings. With a view to such rapid rectification of defects in dwellings, the Flemish government has developed two instruments:

- The ‘warning’ (Art. 3.10 of the Flemish Housing Code): this is a new, soft enforcement procedure in which local governments have the option of imposing on the owner of a dwelling with defects a rectification period of up to 3 months. Within this time frame, the owner must

[45] Vermeir D. (2022). *Evaluatiestudie Fonds ter bestrijding van de uithuiszettingen.* Leuven: Policy Research Centre Housing.

rectify the housing quality problems. If this is the case, the mayor will issue a certificate of conformity and the residents can continue to live there. If not, the procedure of declaring the property unfit and uninhabitable will be initiated.

- The 'rapid rectification' in the procedure to declare a dwelling unfit and uninhabitable (Art. 3.12, §2, of the Flemish Housing Code): within this administrative enforcement procedure, the mayor can impose the 'rapid rectification' of serious defects that pose an acute safety or health risk to residents. The mayor specifies the time limit for these urgent works, but it cannot exceed fifteen days. If the urgent works imposed are not carried out within the time limit, the mayor themselves may order the works to be carried out. In such cases, the municipality can recover the cost of the works carried out, from the owner.

In cases where residents need to be rehoused in any case, the mayor must take the necessary measures for the residents of the uninhabitable dwelling (Art. 3.32 of the Flemish Housing Code). This is also the case for dwellings that are overcrowded. Overcrowding is when the presence of too many people in the dwelling directly causes a safety or health risk, or when it results in undignified conditions. The rehousing obligation for residents of uninhabitable and overcrowded housing is, however, limited to residents who meet the conditions of immovable property ownership and income from the social rental system (target group of social rent). To facilitate this rehousing, the mayor can recover the costs of the rehousing from the landlord or the person who made the housing available (Article 3.33 of the Flemish Housing Code of 2021). The Flemish government also supports the municipalities in rehousing residents of uninhabitable and overcrowded houses, both structurally (e.g. through the calls for projects for emergency housing, a guide and template documents specifically designed for this purpose) and ad hoc in specific situations.

In addition, residents of dwellings declared uninhabitable may also be given priority in the allocation of a social rental home in certain cases. This is the case in particular if the uninhabitable dwelling has at least three serious defects to the building shell (e.g., stability or damp problems to the roof or exterior walls) or the interior structure (e.g., stability or damp problems to interior walls). Residents who vacate an uninhabitable or overcrowded dwelling are also eligible, when renting a dwelling in conformity in the private rental market, for a contribution to the rent. This is also the case for residents who vacate a dwelling which has been declared unfit, provided the unfit dwelling had at least two serious defects.

Furthermore, in their complaint, the complainants argue, among other things, that the Flemish Housing Rental Decree has reduced the housing security of private tenants by having made short-term tenancy agreements more attractive and allowing for interim termination for renovation works. As acknowledged by the complainant, a tenancy agreement for the tenant's main residence remains, in principle, a nine-year agreement. This offers the most housing security to the tenant. The landlord can only terminate for good reasons (they wish to live there themselves or there is comprehensive renovation work that makes further occupancy impossible) or upon payment of termination compensation. The regime of short-term tenancy agreements was kept in place, but was definitely not made more attractive for the landlord but rather for the tenant (but not at the expense of the tenant's housing security). While the short-term tenancy agreement under the Federal Housing Rental Act could not be terminated early by the tenant (unless contractually stipulated), this is now the case, which makes the short-term tenancy agreement less attractive to the landlord (the latter had certainty under the Federal Housing Rental Act that the tenant would have to pay the rent for the entire agreed term, while the tenant now has the right by decree to terminate the lease at any time with three months' notice). Moreover, the landlord's termination compensation is halved compared to nine-year tenancy agreements. As such, when the landlord 'enforces' a short-term tenancy agreement, the tenant can terminate it at any time with a limited termination compensation, which makes it less

attractive for private landlords to enter into this type of tenancy agreement. It is further claimed that a short-term tenancy agreement could be terminated by the landlord in the interim due to renovation agreements. That is incorrect: the Flemish Housing Rental Decree does not allow for early termination of the short-term tenancy agreement by the landlord.

Finally, the complainant addresses the lack of data, and holds the Flemish government responsible in this regard, while due to the division of competences, this is a shared responsibility. The Flemish government has made repeated efforts to obtain the necessary information. The following can be communicated in this regard, in more detail:

- At the time a claim for eviction is filed: the regulations include the obligation that any claim for eviction be notified to the OCMW of the municipality where the rental property is located. Whereas up until 1 January 2019, the tenant could oppose this notification, when the Flemish Housing Rental Decree was introduced, the Flemish Region determined that there is no longer a possibility of objection. In this way, the OCMW can always intervene and has a complete overview of all eviction claims in the territory of the municipality where it is based. These figures are requested from the VVSG (umbrella organisation of Flemish cities and municipalities). Furthermore, it was decided to limit the administrative workload, and partly for this reason the registrars' offices or bailiffs' offices are not obliged to report an eviction claim to the Flemish government in addition to reporting it to the OCMW.
- At the time the court rules on a claimed eviction: as stated, an eviction can only take place after it has been ordered by the court. As such, in the competent courts (justice of the peace and court of first instance), there is a full view of the number of convictions for eviction. Data exchange with the FPS Justice is being put in place, to improve access to this data into the future.
- At the time an eviction order is served: after a judge has ordered the eviction, the landlord must always solicit a judicial bailiff to serve the judicial order of eviction on the tenant. The judicial bailiffs theoretically have an overview of the number of eviction orders served.
- At the time an eviction is actually enforced: at the earliest, one month after the service of the eviction order (unless the court has specified a different time period), the eviction may actually take place. This will be carried out by a judicial bailiff. The judicial bailiffs theoretically have an overview of the number of evictions carried out.

At the request of the Flemish government, the National Chamber of Judicial Bailiffs (Nationale Kamer van Gerechtsdeurwaarders) started a periodic survey of judicial bailiffs on the number of eviction orders served and the number of evictions actually carried out. These data are not completely accurate in the initial phase, so the National Chamber of Judicial Bailiffs will continue to refine it. In addition, the Flemish Region has requested the federal Minister for Justice to include evictions and eviction orders in a central file of notices of seizure (beslagberichten). Consequently, the fact that the figures on evictions are incomplete is being addressed by the Flemish government, but the issue is complex partly due to the division of competences. Where the Flemish government does have the tools to gain insight into evictions, such as in the social housing system, these figures are actually collected (annually). In this regard, see https://www.vmsw.be/Home/Footer/Over-sociale-huisvesting/Statistieken/Huurders.

6. HOMELESSNESS

As regards homelessness, the complainant cites the lack of general and regional data (though there are various ad hoc studies that pertain to urban situations). It is also claimed that Flanders (the Flemish Region) has not developed an integrated and coordinated approach to tackle homelessness. In addition, the study into emergency housing (noodwoningen) was highlighted, which suggested that around 4,000 dwellings could alleviate the housing needs, while 1,400 emergency housing units have been built on the ground. Furthermore, the fact that households are not progressing towards the regular submarkets is also highlighted (arguing that the Flemish government falls short in this regard).

In general

Homelessness (dak- en thuisloosheid) is a complex issue with various manifestations and different causes shaping the problem. The complexity, uniqueness and dynamics of homelessness mean that different policy fields and levels of government are competent for the problem. The complexity also makes it difficult to get an accurate overview of the problem. However, it cannot be claimed that Flanders (the Flemish Region) does not take the issue seriously.

Various steps have been taken to achieve a more aligned and coordinated Flemish policy to address and tackle homelessness. An important initiative in this area was the adoption of the 2017-2019 Comprehensive Plan for Homelessness, on 9 December 2016. This plan was drawn up in consultation, cooperation and coordination between the policy areas of 'Welfare' and 'Housing'. The plan contains actions from both policy areas that contribute to an efficient and effective approach to homelessness in Flanders (the Flemish Region). The implementation of the comprehensive plan on homelessness was monitored by a joint platform on homelessness, in which the actors in the field of Housing and Welfare are represented. After this plan came to an end, a new Action Plan 2020-2024 to prevent and tackle homelessness was drawn up during the course of 2020. This plan was approved by the Flemish Government on 18 December 2020. The drafting and formulation of the plan, in collaboration between the various policy fields (Welfare and Housing), contributes to an aligned, efficient and effective approach to homelessness. The plan envisages action on four strategic objectives: (1) preventing evictions; (2) avoiding homelessness among young adults; (3) addressing chronic homelessness; (4) integrated policies related to homelessness. There is also a focus on effective monitoring of the issue. The implementation of the homelessness plan 2020-2024 is being monitored by a mixed platform consisting of actors from the policy areas of Housing, Welfare and Growing Up, but also involves representation from the Flemish Office of the Children's Rights Commissioner and local governments (VVSG), among others.

Both the drafting of the homelessness plan and the monitoring by the mixed platform contribute to a more integrated approach from the policy areas of Housing and Welfare. In addition to the policymakers and the administration, the involvement of the professional field is also organised, so that the proposed approach has more support and coherence. In general, the approach used contributes to information flow and exchange, and to the coordination of measures and initiatives. The platform provides the opportunity to look at concrete proposals or initiatives in the light of the broader issues, in order to arrive at coordinated measures that take into account both the guidance component and the housing aspect. It is therefore unjustified to claim that Flanders (the Flemish Region) does not pursue an integrated and coordinated approach (coordination of the problem is the responsibility of the Welfare policy area).

As regards the data on homelessness, there are various sources from which it can be taken. A number of information and data sources are available that give an indication of the extent of the problem. In 2014, the baseline measurement of homelessness was conducted by the Policy Research Centre

Welfare, Public Health and Family (Steunpunt Welzijn, Volksgezondheid en Gezin). This data continues to provide a starting point for policy and for the action plan (the insights remain accurate and usable). Furthermore, data is available on specific aspects such as the number of evictions within social housing through social rental agencies and social housing corporations, the number of users of shelter initiatives, and the number of dwellings declared unfit and uninhabitable. Each of these sources provides an indicative overview of the problem. Furthermore, there are the urban counts that can provide information on the quantity and numerical size of the problem. In 2020, local counts were conducted in Leuven, Ghent and the province of Limburg, and in 2021 in the South-West Flanders region (with around fifteen cities/municipalities) and the first-line zone BraVio (Vilvoorde, Machelen, Steenokkerzeel, Zemst, and Kampenhout). Also in 2022, local/regional counts will be conducted in seven regions and cities in Flanders (the Flemish Region) with the support of the Flemish government. These are the regions of Middenkust, Mid-West-Vlaanderen, Waasland, Boom-Mechelen-Lier, the district of Brugge, Welzijnszorg Kempen and the city of Antwerp. These counts are methodically/scientifically supported by the Policy Research Centre Welfare, Public Health and Family and should eventually give a good indication of the situation in the Flemish Region. The position of children in homelessness is a legitimate concern. In the local counts, families and children were also recorded separately. In this way, we have recently acquired (basic) figures on the problem. As a preventive measure, the Flemish Housing Rental Decree included a provision requiring that any claim before the Justice of the Peace regarding the tenancy agreement must be accompanied by a family composition certificate from the tenant. That way, the Justice of the Peace is aware of whether or not children are involved, and this can be taken into account in the judgement.

Despite the efforts to achieve local and regional quantitative measurements, homelessness remains a complex issue that is difficult to grasp and map. Besides the individuals who actually have to live on the streets, there are also, for example, individuals who live in unfit housing such as caravans or garage boxes or a housing unit that has been declared uninhabitable, or who temporarily stay with friends, to name just a few categories. The ETHOS (European Typology of Homelessness and Housing Exclusion) provides a good overview of the various living situations that can be understood under homelessness. This typology is based on 4 categories: rooflessness, houselessness, insecure housing, and inadequate housing, which are further broken down into 13 operational categories, each characterised by a specific living situation. A good estimate of the number of homeless people therefore requires data and information from a variety of sources. In the Flemish Government's Action Plan 2020-2024 to prevent and tackle homelessness of 18 December 2020, adequate monitoring of the issue is one of the action items in the plan. To this end, supporting the implementation of local homelessness counts (based on ETHOS light and imminent eviction) is one of the stated actions (whereby funding is also provided for the methodical support and processing of local homelessness counts). This helps achieve uniform implementation of the counts at the different locations, so that the data are mutually comparable and can also provide a good indication of the problem for Flanders (the Flemish Region) as a whole. Consequently, effective work is being carried out to ensure proper monitoring.

The complaint also cited the lack of emergency housing. It is claimed that research has adequately indicated the need but that the Flemish government is not drawing enough consequences from it. However, the efforts and calls for the realisation of emergency housing were already highlighted above (initiative started in 2020 and repeated). The fact that the government is taking the results of the study seriously, and is setting up a multi-year initiative to realise additional emergency housing, demonstrates the commitment and dedication of the Flemish government. Also with regard to the progression to the regular housing market, the complexity of the problem should be highlighted (and the intertwining of the problem with various causes and manifestations) which means that the progression on the ground is not straightforward. However, the tools and regulations do provide the

necessary anchor points to facilitate progression. For example, homelessness is a special ground for obtaining rent subsidy and, in both the current and future allocation regime in the area of social rent (explicitly stated as grounds for indigence in pillar two), constitutes a special priority for a social rental home.

7. ADDITIONAL TOPICS

7.1. Caravan sites

It is claimed that the Flemish Region is making little to no progress in terms of constructing caravan sites. In this regard, we can emphasise the fact that the Flemish housing policy strives to improve the housing situation of people who live in caravans. It is explicitly stated in the Flemish Housing Code that the right to decent housing applies to everyone, regardless of the type of housing the household chooses. Consequently, the choice of type of housing is not a decisive factor in fulfilling the right to housing. Initiatives should support this right to housing, also for caravan dwellers. In this regard, the choice was made to pursue a broad incentive policy to construct sites where caravan dwellers can then exercise their right to housing as they see fit. Due to the importance of the participation of local actors (in terms of assessing the local situation and capacity), we opted to construct sites through a strong incentive policy, on a voluntary basis on the part of the local promoters. Indeed, the Flemish government believes that an obligation would be counterproductive locally, and undermine support. The Flemish government is therefore stimulating the acquisition and development of sites through large subsidies, worth 100% for new sites and 90% for the renovation of existing sites. Sufficient subsidies are envisaged every year (between €2.2 and €4.3 million annually). This provides an incentive to build the sites locally: all requested projects have gone ahead in this way.

The following is an overview of new projects (status 18/07/2022):

Residential sites	
Beveren: creation of site with 7 pitches	Completed
Mortsel: renovation of site with 26 pitches	Ongoing
Mechelen: renovation of site with 20 pitches	Ongoing
Maasmechelen: renovation of site with 28 pitches	Waiting for a proposal
Rotselaar: renovation of site with 6 pitches	Completed

The table below provides an overview of the transit sites and residential caravan sites in Flanders (the Flemish Region), status as of April 2022.

	Province	Pitches	
Transit sites in Flanders			
	Antwerp	25	
	Limburg	1	
	East Flanders	25	
	Flemish Brabant	10	
	West Flanders	45	
Total		106	
			Families
Residential caravan sites in Flanders			
	Antwerp	177	218
	Limburg	202	199
	East Flanders	83	85
	Flemish Brabant	53	51
	West Flanders	0	0
Total		515	553

7.2. Dissolution of the Flemish Housing Council

The complaint states that the dissolution of the Flemish Housing Council (Vlaamse Woonraad) (decreed on 1 January 2021) impairs the contribution of the various actors in the professional field. However, at the same time as the dissolution by decree of the Flemish Housing Council, the proactive involvement of stakeholders in the policy area of Housing is also being proposed. The purpose of involvement is to capture societal trends and signal them to policymakers, reflect on initiatives taken in the policy field of Housing and communicate improvement proposals that will benefit the policy field of Housing. With proactive involvement, it is possible to respond flexibly to proposals or emerging trends. It allows for more focused contribution (not all stakeholders are involved in certain initiatives and the level of contribution or interest varies depending on the topic). A proactive approach will also allow for stakeholder contribution at the early stages of decision-making.

FOR THESE REASONS,

The Respondent State requests the European Committee of Social Rights to declare collective complaint no. 203/2021 unfounded.

For the Kingdom of Belgium,

Piet HEIRBAUT.