EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

15 January 2023

Case Document No. 4

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

FEANTSA'S RESPONSE TO THE GOVERNMENT' SUBMISSIONS ON THE MERITS

Registered at the Secretariat on 22 December 2022

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European Federation of National Organizations Working with the Homeless (FEANTSA) v. Belgium

Collective Complaint No. 203/2021

WRITTEN OBSERVATIONS

of the Complainant organisation to the Government´s observations on the merits

Brussels, 22 December 2022

1. General

1.1 On the division of competences in Federal Belgium

1. In its reply, the Flemish authorities cite the fact that the complaint is directed at only one of the three regions, more specifically the Flemish region, while such a choice would imply an incomplete basis for arriving at an adequate assessment of the housing policy in Belgium. The Flemish authorities mention that certain aspects that are correlated with the theme of housing belong to the federal domain of competence, which would slow down the effectiveness of the regional housing policy. At the same time, the Flemish Region states that, within the institutional context, it fully assumes its competence with regard to housing.
2. It is typical of the Belgian constitutional system that the component States (such as the Flemish Region) act at an international level in a secondary (and not 'subordinate') manner towards the federal authorities. This means that they are in principle competent at international level for all matters for which they are internally competent ("*in foro interno, in foro externo*"). When a treaty relates to different powers, ratification in the Belgian legal system requires the parliamentary consent of all the legislative assemblies concerned (Article 167, § 2 of the Constitution or Art. 167, § 3 Constitution and Art. 16, § 1 Flemish Special Institutional Reform Act). It is important that the Communities and Regions, in matters falling within their competence, not only (jointly) guarantee the conclusion and ratification of treaties, but also their implementation. Both the federal authorities and the federated entities (component States) each have the task, with regard to their own powers, of ensuring the implementation of (mixed) treaties. At the same time, only the federal State may be called to account for breaches of international or supranational obligations, even if the unlawfulness arises from conduct falling within the exclusive competence of one of the federated entities. It follows that a complaint about the housing policy must in any case be addressed to Belgium, even if the Flemish region is competent, since Belgium is formally a contracting State to the (Revised) European Social Charter.
3. There are several reasons for choosing to restrict the complaint to the situation in Flanders. First of all, Flanders is the most prosperous region. At the same time, however, it appears that the situation of vulnerable residents in Flanders is hardly improving or not at all. Secondly, by far the majority of powers in relation to housing do indeed belong to the regions. We refer to the overview included in the original complaint, which shows, among other things, that the competence as regards housing has been largely regionalised since 1980. The Flemish authorities' defence that it cannot be held responsible for past choices not only because of the issue of the decades-long regionalisation of housing policy, but also because the principles that have been retained in Flanders are largely the same as those at the federal level back then. The fact that the regional authorities in Flanders have the primary responsibility for the realisation of adequate housing is further evident from what the Flemish authorities articulate as their responsibility in the Flemish Codex Housing, as well as from the way in which the European Committee of Social Rights (ECSR) exercises its oversight with regard to Belgium. For example, the ECSR always draws up a report for 'Belgium', but assesses the situation in each region in view of the division of competences[1]. Moreover, in previous complaints, the ECSR has accepted that a complaint may be based on the situation in a particular region or area within a Contracting State[2].

[1] *E.g.* ECSR 5 December 2019, Belgium Country Report with regard to Article 16 (Conclusion).

[2] E.g. ECSR 3 February 2021, International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium, No 141/2017 (Decision on the merits), in which the Belgian authorities were censured for a violation of the

4. The Flemish authorities do not substantiate the assertion that the institutional context acts as a brake. Moreover, the Belgian State structure has been developed as a cooperative form of federalism, within which the various entities must act loyally towards each other. It is also possible for the Flemish authorities, for example, to access the federal powers on the basis of 'implicit powers' when that is necessary for the implementation of their own policy. It is a technique of which the Flemish housing policy even regularly makes use, as in the recent past, for example, in order to develop their own procedures in the case of rental disputes.
5. An established principle of international law is that States may not evade their international obligations for reasons related to the internal legal system (such as the rules defining the division of powers between the federal State and the federated entities)[3]. Irrespective of the question of which authority is competent under domestic law, the finding that too little progress is being made in the fulfilment of the obligations under the (Revised) European Social Charter in Flanders therefore remains problematic.

1.2 Concerning the tasks for local authorities

6. The Flemish authorities state that the municipalities play an important role in the area of housing policy. In Flanders, they do indeed have the possibility to regulate everything of municipal interest and are simultaneously involved as regards various aspects in the implementation of the regional housing policy by the Flemish Region.
7. However, the defence that there is a shared responsibility between the local and regional levels of administration is entirely unsubstantiated. After all, as stated above, it is the (federated) entities that have the task (each with regard to its own powers) of implementing international treaty obligations. Although they do dispose of a margin as regards policy when deciding whether to organise the policy in a central or decentral way, it is the State authorities that – both under international and domestic law – remain ultimately responsible under human rights law. The decision to organise Flemish housing policy (partially) in a decentralised manner does not, therefore, relieve the Flemish authorities of their responsibility[4]. The European Committee of Social Rights also regularly recalls this principle[5].

1.3 On the obligations of the public authorities

8. In the reply, the Flemish authorities discuss the obligations arising from the fundamental right to housing. In summary, it is argued that the right to housing has no direct effect and that there is a wide margin as regards policy, so that there is (only) a commitment on the part of the authorities to endeavour to take measures in order to fulfil the right to housing in a progressive manner. This analysis is partially correct, but must also be nuanced - both under domestic and international law.

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right to inclusive education for children with a mental disability in the French community (Wallonia-Brussels Federation).

[3] See, inter alia, Article 27 of the Vienna Convention on the Law of Treaties of 23 May 1969 and the settled case law of the European Court of Justice.

[4] Commissioner for Human Rights, Recommendation of the Commissioner for Human Rights on the implementation of the right to housing, CommDH(2009)5, 7.

[5] E.g. ECSR 7 December 2005, No. 27/2004, European Roma Rights Centre (ERRC) v. Italy, § 26, ECSR 5 December 2007, No. 39/2006, FEANTSA v. France, § 79, ECSR 19 March 2013, EUROCEF v. France, No. 82/2012, § 59 (Decision on the merits).

9. Under domestic law, it is indeed the case that the authorities have a positive obligation to fulfil the right to housing in a step-by-step manner, with a wide margin as regards policy. However, that margin is limited. In any case, the authorities must take steps to fulfil the right to housing. This means, among other things, that it should not postpone efforts indefinitely, nor should it unlawfully restrict the scope of regulations (such as by taking measures but in the process unlawfully excluding certain groups). For while the authorities would be responding to the constitutional task of fulfilling the right to housing, there would be no effective realisation (for the excluded groups). In other words, taking no action is not acceptable. In addition, it is settled case-law of the Belgian Constitutional Court that the margin in terms of policy of the public authorities is less wide when housing policy for a particular category of people can result in the loss of their home, which is considered to be one of the most far-reaching cases of interference in the right to respect for the home[6]. There is also a ban on regressive measures. The Constitutional Court and the Council of State recognise that the right to housing includes a *standstill principle*: the authorities may not voluntarily reduce the existing level of protection of the right to housing without there being grounds relating to the public interest. This would be an infringement of the Constitution under Belgian law[7]. The assertion that the right to housing has no direct effect is also inconsistent with reality. Certain (elementary or core) obligations arising from the right to housing are assumed to be directly enforceable. The authorities must therefore implement these key aspects immediately (and not progressively). Although most of the elements of the fundamental right to housing must be achieved progressively – and therefore over time – this does not, in other words, apply to the minimum core that must be achieved directly and on which the citizen can directly rely[8]. For example, citizens can – on the basis of the right to housing – take a stand against illegal evictions or against discriminatory application of housing policy, even without the authorities having taken measures to that end. The Belgian State has also been censured, for example, for failing to provide help to very vulnerable people, who were forced to live in the streets, thereby denying them the right to decent housing[9].
10. Under international law, the Flemish authorities' representation of the right to housing is also not correct. Indeed, the decision-making practice of the ECSR shows that the fulfilment of the right to housing is a commitment regarding best efforts, for which the authorities can use various resources. However, the ECSR has also specified this commitment in earlier decisions. Thus, the Committee stated in *ATD Quart Monde v. France*:

    "*This means that, for the situation to be in conformity with the treaty, States party must:*

    a. Adopt the necessary legal, financial and operational means of ensuring steady progress towards the goals laid down by the Charter;

    b. Maintain meaningful statistics on needs, resources and results;

    c. Undertake regular reviews of the impact of the strategies adopted;

    d. Establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;

    e. *Pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.*[10]'

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[6] Constitutional Court 10 July 2008, No. 101/2008, B.23.3; Constitutional Court 18 June 2015, No. 91/2015, B.16 and Constitutional Court 19 July 2018, No. 104/2018, B.9.2.

[7] E.g. Constitutional Court 19 July 2018, No. 104/2018, B.6.3.

[8] This obligation is not absolute, but if a minimum obligation is not met, it is up to the authorities to make it clear that every effort has been made in order to fulfil it with the resources available.

[9] Work. 30 April 2009, No 09/418/B.

[10] Council of Europe, *Digest of the case law of the European Committee of Social Rights*, Strasbourg, Council of Europe, 2018, 225 and ECSR 5 December 2007, No. 33/2006, ATD Quart Monde v. France, § 59 et seq.

The Council of Europe's Commissioner for Human Rights also states: *"the measures taken must meet the following criteria: they must allow the State to achieve the relevant objectives (i) within a reasonable timeframe, (ii) with a measurable progress and (iii) to an extent consistent with the maximum use of available resources.*[11]"

There is therefore no question of a 'mere' commitment (a mere obligation to take measures). In fact, the right to housing imposes an enhanced commitment in terms of effort.

In the past, the ECSR has also consistently stressed that it should be checked whether there has been actual progress in this area. Progress on paper is not enough in order to respect the right to housing (*'the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical, form*'). Furthermore, such progress must also be measurable and take into account the situation of vulnerable groups of residents, including those facing exclusion and poverty[12].

11. In that context, it is remarkable that the Flemish authorities, in defence of their policy, point to the limits of what is feasible, whereas, in their opinion, the complaint adopts a maximalist view of the right to housing and is ideologically inspired. This is a misrepresentation of the complaint. It is precisely because the budgets for housing are limited that it is unacceptable that the authorities consistently choose to devote the lion's share of public funds to expensive policy measures in favour of a large group of the population, which is not in housing need. In addition, scientific research has already shown on several occasions that the measures in question hardly improve affordability for owner-occupiers, while they drive up rents, precisely on that rental market, where to a large extent low-income groups are housed. For its complaint, FEANTSA does not start from a maximalist view of the right to housing, but uses the framework as elaborated by the ECSR.
12. The (Belgian) legal doctrine summarises this assessment framework as follows: "*The ECSR will assess the measures that a State has effectively taken (legislative or otherwise), taking into account the following elements: (i) the extent to which the measures were balanced, concrete and targeted; (ii) the extent to which the State has taken the measures in a non-discriminatory manner; (iii) the extent to which the State has deployed the resources available in accordance with international human rights requirements; (iv) if several policy options were possible: whether the State has chosen the option that best suits the obligations under the ECOSOC Convention; (v) the timing within which these steps were taken; and (vi) the extent to which the State has taken into account the precarious situation of the most vulnerable persons and households*[13]*. '*
13. Although the budgetary context obviously constitutes a limitation and the fundamental right to housing does indeed permit wide policy freedom in terms of fulfilment on the ground, there is no doubt that the focus of the Flemish authorities is misplaced and, therefore, that they also fail in their mission. FEANTSA also does not state that there is a lack of measures, but notes that these do not ensure sufficient progress in the realisation of the right to housing and do not reflect priority in terms of attention for those most in need of housing. Ultimately, the housing policy must aim at the – step-by-step – fulfilment of the right of everyone to housing. The existence of a margin as regards policy is not a licence to take just any measure, let alone to take measures that go against the fulfilment of the fundamental right to housing. However, by naming detailed policy measures, the Flemish authorities seek to conceal the fact that, in practice, they are not succeeding in

[11] Commissioner for Human Rights, *Recommendation of the Commissioner for Human Rights in the implementation of the right to housing*, CommDH(2009)5.

[12] Council of Europe, Digest of the case law of the European Committee of Social Rights, Strasbourg, Council of Europe, 2018, 225.

[13] T. Vandromme, *De verhuring van woningen via de overheid als instrument ter verwezenlijking van het grondrecht op wonen*, Antwerp, University of Antwerp, 2018, 50, based on Council of Europe, *Digest of the case law of the European Committee of Social Rights*, Strasbourg, Council of Europe, 2018, 225-226.

achieving any progressive realisation for the most vulnerable households. In any case, FEANTSA notes that the Flemish authorities are not successful in adequately substantiating the effective impact on the ground.

1.4 Regarding the housing situation in Flanders

14. The Flemish authorities point to tables which compare the situation in Flanders in the area of housing in relation to other regions and countries. These are intended to show that the Flemish Region scores relatively well. For FEANTSA, that is beside the point.
15. The fact that a considerable number of Flemish people are well accommodated was already indicated in the complaint. This finding is linked to the high level of prosperity in Flanders. However, this general picture hides sharp differences, which were also documented in the complaint. The complaint is, therefore, by no means aimed at the general housing situation in Flanders, but rather at the housing situation of more vulnerable households. For the latter, the housing situation is bad in terms of various aspects of the fundamental right to housing (affordability, quality, housing security, etc.). Due to a lack of ambition, efforts, and achievements as a result of the fact that the focus of the Flemish authorities is misplaced, there is no improvement in this either. However, the obligations under the (Revised) European Social Charter (ESC) require that priority be given to vulnerable residents. In addition, we note that the tables and figures used are sometimes very selective and incomplete (see below).
16. For these reasons, it is difficult to understand that the authorities refer to the overall housing situation in order to conceal a lack of effort for those most in need of housing, while elsewhere they (rightly) refer to the subsidiarity of authorities' intervention (i.e. measures are necessary only for those who are unable to realise their right to housing on their own). In other words, the relevant question when assessing the conformity of the Flemish housing policy with the (Revised) European Social Charter is not whether a large number of Flemish people live well. The question is what steps the Flemish authorities are taking in the progressive realisation of the right to adequate housing for everyone and what measures they are taking to combat poverty and social exclusion with respect to housing, especially from the perspective of those most in need of housing.

1.5 Monitoring the situation on the ground

17. In its decision-making practice, the ECSR clarified the importance of monitoring the results of the policies pursued on the ground. The ECSR states: "*When one of the rights in question is exceptionally complex and particularly expensive to implement, States party must take steps to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources*"[14]. The Committee added: "*The requirement to maintain statistics is particularly important in the case of the right to housing because of the range of policy responses involved, the interaction between them and the unwanted side-effects that may occur as a result of this complexity. However statistics are only useful if resources made available and results achieved, or progress made can be compared with identified needs.*"[15]
18. FEANTSA complained that the Flemish housing policy makes too little effort to collect data to substantiate and follow up on the housing policy, in order to adjust it where necessary. After all,

[14] ECSR, Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 53

[15] ECSR International Movement ATD Fourth World v. France, complaint No. 33/2006, decision on the merits of 5 December 2007, § 63.

as the Flemish authorities also point out, one of the critical success factors for pursuing a successful housing policy is having access to policy-oriented research based on relevant and up-to-date data.

19. In their response, the Flemish authorities refer to the extensive surveys on the housing situation of Flemish households and the financing of successive research consortia, which focused on policy-oriented housing research (the 'Policy Research Centre Housing'). The complaint acknowledges these efforts, but notes that there are still gaps in the data available as regards important aspects of the right to housing. This concerns the following, among other things:
    - The housing policy includes no insight into the extent and nature of discrimination as regards housing.
    - The housing policy includes no insight into the availability of the private housing supply for the profiles of diverse residents (by location, size of family, capacity to pay, etc.).
    - The housing policy does not include any insight into which homes of the private housing stock form part of the owner-occupied market or of the private rental market[16].
    - The housing policy does not include any insight into evictions.
    - The housing policy does not include any insight into the number of homeless people.

    Moreover, regarding the extensive surveys, the problem also arises that vulnerable households are often not reached or not reached enough, as indicated time and again in the reports in question. In the policy-oriented research that the Flemish authorities have commissioned, the focus is increasingly on quantitative and legal analyses, so that the shortcomings of the surveys are not offset. As a consequence, the housing situation of vulnerable households remains generally underestimated. However, appropriate (often qualitative) research methods do exist.
20. Furthermore, FEANTSA notes that the Flemish authorities do barely any work of a statistically substantive nature or monitoring of planned or implemented policy measures. There are many examples of this. For example, the Flemish authorities decided on a thorough reform of the system of regulatory precedence (priority rules) in the allocation of social housing units, but have no data regarding the share of allocations according to the existing rules regarding precedence. They claim, therefore, that the current system is not working properly, without knowing the effect of the existing rules. No simulations have been made, either, with regard to the impact of the new rules regarding precedence. However, the waiting list issue means that it is very important to determine in the fairest possible way who will have access to a social housing unit and who will have to wait (much) longer. Another example is the new regulation on language skills for social tenants. Stricter requirements are imposed on social tenants, without any policy-preparatory evaluation study being carried out, or even the effects of the existing commitment to learning the Dutch language being monitored[17].
21. There may be figures in other areas, but their quality is substandard, so that ultimately, they do not allow us to follow up on the results on the ground. This involves core elements of the right to housing. For example, the Flemish Social Housing Company (VMSW) recently published - for the first time - statistics on the forced termination (termination, dissolution, and eviction) of social rental agreements. However, the figures do not give a useful picture of the problem, inter alia

[16] Unlike in some other countries, landlords are not required to disclose their rental activities. This is except for tax reasons, but there is no information flow from the tax system to the housing policy. This lack of information complicates the roll-out of incentive and enforcement instruments. Proactive housing quality controls, for example, run into the practical problem in that authorities often do not know which housing is rental accommodation.

[17] We give two examples in this regard, but the criticism of a lack of substantiation applies to a large number of measures (for example, the reduction in sales duty, the new regulation on underutilisation, the means test, etc.).

because the categories used are unclear, overlap or do not correspond to the various procedural steps that must be gone through in the event of a forced termination[18].

22. In addition, FEANTSA notes that the Flemish Government says that it is making progress in certain areas, whereas this progress is probably purely related to the methodology used. For example, the Flemish authorities claim that the quality of housing on the private rental market has improved, while in fact the method for assessing the physical condition of the housing was changed for the latest measurement exercise as compared to the previous one. While the quality of housing was measured in 2013 on the basis of an objective assessment by trained surveyors[19], the survey in 2018 was less thorough and extensive. The study therefore makes the necessary reservations about the evolution that actually took place[20], which the Flemish authorities leave unmentioned.
23. For some of the aforementioned aspects, there is indeed partial information gathered by, among others, local administrations, universities and civil society organisations. Quite often these are initiatives aimed at filling the gaps in knowledge that the Flemish authorities leave.
24. Although FEANTSA does indeed acknowledge that efforts are being made, it also notes that for a number of core elements of the right to housing, none or too little data remains available. This mainly concerns those situations that should be a priority for housing policy (such as homelessness and evictions). Nevertheless, relevant and up-to-date data are indeed a critical prerequisite for a successful housing policy.

1.6 A planned housing policy

25. The ECSR also makes it clear that the progress under Article 31 (Revised) European Social Charter must be 'measurable' and, therefore, 'verifiable', as well as that the realisation of the right to housing must be foreseen within a certain timeframe, with interim targets for the various components thereof ('*establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage*')[21]. This requirement applies also when reviewing the obligations arising under Article 30 (Revised) European Social Charter.
26. In Flanders, the Flemish Housing Policy Plan prioritises strategic objectives, in particular 'By 2050, all homes will be of decent quality', 'By 2050, decent living will be affordable for everyone', 'By 2050, everyone will have the certainty of being able to (continue to) live in a suitable home', 'By 2050, supply and demand will be matched' and 'By 2050, everyone will have access to a home'. The authorities are doing this without referring to the right to housing. Above all, however, they omit to formulate clearly measurable and achievable objectives at intermediate stages. They also omit to indicate which strategy or instruments they wish to deploy in order to take steps towards, for example, the objective of making decent housing affordable for everyone by 2050.

[18] Huurdersblad (2021),'Evictions in private and social rentals: still too high and full of blind spots', No. 248

[19] With for the first time in a considerable period also a visit to the interior of the homes, which showed a very high proportion of poor quality housing in the rental sector.

[20] K. Heylen & L. Vanderstraeten, *Wonen in Vlaanderen anno 2018*, Leuven, Steunpunt Wonen, 2019, 6.

[21] Council of Europe, *Digest of the case law of the European Committee of Social Rights*, Strasbourg, Council of Europe, 2018, 225.

2. Thematic reactions

2.1 Owner-occupier market

27. The Flemish authorities elaborate in their reaction on the policy on support for the acquisition of property. They do so in a general sense, as well as specifically with regard to the policy towards low-income groups. Firstly, FEANTSA notes that the Flemish authorities partially acknowledge the problems in their response – sometimes implicitly, sometimes explicitly. For example, it is argued that sustainable homeownership is indeed not feasible for the group of households in greatest need of housing. Further, the need for a more balanced policy is recognised, as well as the price-increase effects and the Matthew effect of systems such as the housing bonus (tax deduction of mortgage-related costs). Also, the Flemish government confirms the analysis that certain remedial instruments (such as the Emergency Purchase Fund and the renovation premium) have no real effect (according to the Flemish authorities, they are 'not up to cruising speed' or consciously focus on middle incomes). Furthermore, the Flemish authorities point out that, in the meantime, since 2021, the biggest tax reform in years has been implemented (with the termination of the housing bonus), which would imply that steps towards a more targeted housing policy have already been taken. However, the Flemish authorities are ambivalent when they speak of the acquisition of property. On the one hand, they refer to the importance of sub-markets as equivalent alternatives (which requires a balanced housing policy), but, on the other hand, they defend its disproportionate and sustained use of resources for the acquisition of property. According to FEANTSA, these two views cannot co-exist.
28. FEANTSA has never sought to deny that a policy aimed at the acquisition of property can be a legitimate policy choice. Nor does FEANTSA believe that the high share of owners is a problem in itself. However, FEANTSA does draw attention to the following problems: 1) the fact that incentive measures can have perverse effects, such as an increase in housing prices (which has been demonstrated for Flanders by several studies); 2) the finding that the incentive measures do not pay sufficient attention to sustainable housing ownership, with the result that vulnerable groups of residents are forced to take the step of buying housing in a poor state without having the means to renovate it (which has also been demonstrated by studies)[22]; 3) the fact that the main part of public funds goes to those who can already meet their housing needs on their own, which is linked to less support for the segments where the problems with regard to housing quality, affordability, access and housing security are greatest.
29. However, the obligations under the (Revised) European Social Charter require that the housing policy pay sufficient (and even priority) attention to the realisation of adequate housing for those who do not have access to it on their own. In Flanders, this is recognised in the Flemish Housing Policy Plan but not in practice. There is clearly a big gap between word and deed. As explained in the complaint, and contrary to what the Flemish authorities claim at times, the housing policy pursued has been primarily aimed at the acquisition of property for decades (and up to this day). One of the main social problems with property support measures is that they inherently favour the stronger shoulders, given that a household must have a sufficient initial amount of capital and income to acquire its own property. The result is that such subsidies mainly end up in households with above-average incomes, which is a problem (the Matthew effect) that was pointed out in

[22] These are so-called emergency buyers, mentioned in the complaint, who, together with the 'captive renters', move into homes of inadequate quality.

Flanders years ago[23]. At the same time, the complaint showed that the supply of social housing is inadequate and that, partly as a result of the policy pursued, the private rental market has fallen into a negative spiral and scores poorly as regards various aspects of the right to housing. A general finding in this respect is that the Flemish authorities do not refute this analysis by FEANTSA, nor do they demonstrate how they intend to tackle the issue on the ground.

30. However, the Flemish authorities claim that in recent years (since 2021) they have changed their policy to become more targeted as regards property. However, this claim is unacceptable. The latest available analyses of the distribution of housing subsidies (to which parts of the market do the housing subsidies go? To which income groups do these resources go?) date indeed from 2018, just as the Flemish authorities indicate, but it is at least plausible that the findings of those analyses are still relevant. When the system of the 'housing bonus' was discontinued, the Flemish authorities immediately compensated for this intervention with a general reduction in the sales duty, while the housing bonus was not abolished but only gradually phased out from 2021 for new mortgage loans taken out for the first home. For the authorities' budget, the result was that the expenditure for the housing bonus continued to increase until 2020. Since then, the expenditure on the housing bonus has indeed been decreasing, but only very gradually, since the system is linked to the mortgage loan for acquiring a home, which in Belgium is normally 20 years[24]. Conversely, the reduction in sales duty took effect immediately and, therefore, had an immediate budgetary impact. In budgetary terms, it is therefore incorrect to claim that the authorities have changed tack. In addition, the budgets freed up as a result of the gradual reduction in the housing bonus are not reinvested in housing policy incentives aimed at the private and social rental markets, nor in improvement in housing quality, as the Flemish Housing Council, had advised[25], among other things.
31. In addition, the reduction in sales duty, like the earlier housing bonus, is not only an expensive system but also an inefficient measure that does not lead to a home becoming more affordable. This was explained in the original complaint, and, in the meantime, the National Bank of Belgium has empirically confirmed this analysis. The National Bank notes that house prices have started to rise as a result of the low elasticity of the supply on the Flemish housing market following the reduction in sales duty. In concrete terms, it is noted that the reduction in the sales duty increased the price of a house in Flanders by about 3%. That average still hides the fact that the price increases occur almost exclusively in the lower segment of the market. House prices in the higher segment remained virtually unchanged, while prices of relatively cheaper homes rose sharply by an average of 7 percent[26].
32. Furthermore, the National Bank points to the adverse effects of the measure on the private rental market. The report literally states: "*Low-value renters are likely to be the main losers of the policy. Albeit possibly not immediately, higher housing values should eventually translate into higher rental prices*."
33. In addition to this conclusion, we must add that the reduction in the sales duty (for the owner-occupied house) was accompanied, for budgetary reasons, by an increase in the sales duty for additional house(s) that an owner acquires. Such housing sometimes serves as a second residence, but often they are also housing that the owner buys and then offers on the private rental market.

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[23] E.g. H. Deleeck, J. Huybrechts & B. Cantillon, *Het Mattheüseffect. De ongelijke verdeling van de sociale overheidsuitgaven in België*, Antwerpen, Kluwer, 1983.

[24] This average term of 20 years is now also extended by tax optimisation techniques, which are partly driven by the housing bonus due to the principle that the tax deduction is possible as long as the mortgage loan runs.

[25] Flemish Housing Council, Recommendation on the regionalisation of the housing bonus, December 2012, 29.

[26] G. DOMÈNECH-ARUMI, P. E. GOBBI & G. MAGERMAN, *Housing inequality and how fiscal policy shapes it: Evidence from Belgian real estate*, NBB Working Paper, Brussels, National Bank of Belgium, 2022, 17 et seq.

Since 2020, the acquisition of a property for rental purposes has, therefore, been subject to higher taxes, which owner-landlords pass on in the rental price in order to maintain their rental return. As a result, the measures even have a double negative impact on the private rental market. Firstly, the reduction in sales duty leads to a general increase in the price level on the property market, which indirectly affects the rents; secondly, the purchase of a dwelling for the purpose of renting is taxed more heavily, which again has an impact on the rents.

34. Since the phasing out of the housing bonus and the reduction in sales duty are the most important reform in recent years, as the Flemish authorities indicate, it is impossible to see how the Flemish authorities would achieve the aim of a more neutral tax policy, let alone how there could be a break with the past trend. In budgetary terms, the focus remains on the acquisition of property. Flanders is also once again opting for an expensive measure that is open to a very large target group (all those who can afford to acquire their own homes), a large number of whom are not in housing need. In addition, the sales duty has been reduced linearly. Unlike in the Brussels-Capital Region, for example, a tax exemption up to a certain amount is not provided for, although such a measure favours more modestly priced homes. In Flanders, on the contrary, the advantage increases with the purchase of a more expensive home. It is also again noted that an inefficient measure is chosen (the advantage is lost due to price increases, as confirmed by the National Bank), which does not lead to better affordability, and which even leads to perverse effects for low-income groups. The latter result from higher rents on the private rental market, which was already under pressure and where a large proportion of low-income groups – in the absence of access to a social housing unit or to the property market – necessarily have to pay for their housing needs.
35. The main, or even only, social benefit of the reduction in sales duty is that mobility in the property market can increase, at least in theory, which could in turn contribute to, among other things, increased labour mobility. Together with the reference by the Flemish authorities (in the reply) to the absorption of economic shocks and to the financial relief of pension beneficiaries, it appears in fact that the policy pursued is largely justified on the basis of motives or grounds that do not have any link with the objectives of the housing policy or the poverty-reduction policy. Although this may not be problematic in itself, questions can be raised about the coherence and relevance of such a policy[27]. However, the main problem is that these policy choices result in the benefits of the housing policy time and again being passed on to those who have sufficient resources for their own housing, without really contributing to better affordability and, above all, without paying sufficient attention to those who are unable to enter the property market.
36. In its report, the National Bank also notes that, as a result of the reduction in sales duty, increased house prices benefit those who already owned a home, while it has become more difficult for, among others, young families with limited incomes and assets to enter the property market. In the complaint, we had cited earlier another perverse effect of such forms of incentives in favour of the acquisition of property, namely the reduction in housing costs at retirement age, as a justification for the tax advantages of owner-occupied housing. According to FEANTSA, it is unjust to make a decent life after retirement dependent on the possession of a home, especially now that the Flemish authorities themselves speak of the 'free choice of home' as a guiding policy principle[28].

[27] If increasing relocation mobility is effectively an important objective, it is odd, for example, that Flanders still does not support the private rental market as a fully-fledged sub-market (since flexibility is par excellence a strength of the private rental market) and that it creates *lock-in* effects in social housing via increased local requirements in terms of economic and social ties.

[28] P. De Decker, "Een daadkrachtig woonbeleid" (*'A vigorous housing policy'*) in P. De Decker, B. Meeus, I. Pannecoucke, E. Schillebeeckx, J. Verstraete &. E. Volckaert (eds.), *Woonnood in Vlaanderen. Feiten/Mythen/Voorstellen*, Antwerpen-Apeldoorn, Garant, 2015, 572.

In addition, it goes without saying that it is precisely the lower income groups who are less able to acquire their own homes and so enjoy the tax advantages. Even with additional Flemish aid (social loans for purchase or new construction) in addition to the tax aid, property acquisition often remains an option that is not feasible for low-income groups, so that it is not rare for them to fall into poverty if their income falls when they retire and they must, at the same time, continue to pay their rent (and thus are in more need of state assistance). Along with a lack of support for the private rental market, the result is that as many as seven out of ten older private tenants are facing affordability issues. The Flemish authorities state that support for the acquisition of property is a legitimate choice and that housing policy may also serve other policy objectives. At the same time, however, it is clear that the policy choice of continuing to focus unilaterally on a sub-market that is accessible to only those who already have considerable resources, leads to too little attention to those most in need of housing. In addition, they are strengthening the social exclusion mechanisms in the private rental market, which threatens to become a residual market. Therefore, too little use is being made of housing policy to reduce poverty and social exclusion.

37. Finally, the Flemish authorities state that their policy does not aim to push lower income groups towards non-sustainable home ownership. The fact that this (perverse) effect was perhaps not intended does not alter the fact that it does manifest itself in the field. The existence and size of a group of emergency buyers has been scientifically proven[29]. It also encouraged the Flemish authorities to take remedial action through an Emergency Purchase Fund, which implies recognition of the problem (although the impact of the Emergency Purchase Fund is not as great as the Flemish authorities had hoped). The defence that the acquisition of one's own home corresponds to the Flemish people's desire to live in their own homes is questionable. This preference is due to the extensive and sustained subsidisation of their own homes for decades, while there is (still) too little attention paid to adequate alternatives. This fact has also been documented on a number of occasions in studies[30]. The public authorities therefore clearly bear a responsibility for the phenomenon of emergency buyers.
38. In addition, despite the intention expressed in the Flemish Housing Policy Plan to evolve towards a more balanced housing market, the Flemish authorities and the Minister for Housing have to date stated that supporting the acquisition of property remains a priority policy objective (as was already evident from the reduction in sales duties). Now that the private and social rental sectors, as viewed from several aspects of the right to housing, also remain inadequate (see below) and the instruments such as the Emergency Purchase Fund are very limited and not effective, it is clear that the Flemish housing policy on the ground is not taking any steps towards a sustainable property market. Nevertheless, there are clear challenges in this area (for example, with regard to climate objectives), as mentioned in the complaint.

2.2 Social housing

39. With regard to the supply of social housing, the Flemish authorities argue that it would be incorrect, judged by facts and intentions, that they show too little ambition. In doing so, they refer to the increased loan authorisation and the Binding Social Objective (BSO) and the legal obligation of Flemish municipalities to realise a certain share of social rented housing. They also refer to the

[29] L. Vanderstraeten & M. Ryckewaert, "Het verhaal van noodkopers en 'captive renters'. Ontoereikende woningkwaliteit in Vlaanderen", in P. De Decker, B. Meeus, I. Pannecoucke, E. Schillebeeckx, J. Verstraete &. E. Volckaert (eds.), *Woonnood in Vlaanderen. Feiten/Mythen/Voorstellen*, Antwerpen-Apeldoorn, Garant, 2015.
[30] P. De Decker, "Een daadkrachtig woonbeleid" (*'A forceful housing policy'*) in P. De Decker, B. Meeus, I. Pannecoucke, E. Schillebeeckx, J. Verstraete &. E. Volckaert (eds.), Woonnood in Vlaanderen. Feiten/Mythen/Voorstellen, Antwerpen-Apeldoorn, Garant, 2015, 553 - 583.

allocation rules, the temporary social leases and the different – tightened or newly introduced – conditions that a social tenant must meet.

40. The most important bottleneck in Flemish social housing is the acute supply shortage. Contrary to what the Flemish authorities claim, there is no progress in this area and the supply shortage is becoming even more acute. As cited in the complaint, this is also the conclusion of, among others, the Belgian Court of Auditors[31].
41. In order to outline the actual achievements of the Flemish authorities, FEANTSA documented in the complaint the extent of the social housing supply and waiting lists that have grown year on year, based on the official statistics of the Flemish authorities. From these figures, it emerges that the number of individual prospective tenants for a housing unit with a social housing corporation has grown from 107,090 in 2012 to 169,096 in 2020, and even to 182,436 at the end of 2021. These prospective tenants often represent a larger family, so that the number of people in need of housing and who are waiting for support is in reality many times greater. Against this growing need for social housing, there is a supply that is stagnating. The number of people waiting today is even so high that it exceeds the total number of social housing units available. Of this housing stock, approximately 10% remains vacant due to a lack of renovations and resources in the past. Consequently, the waiting period continues to increase so that, at the end of 2020, it was an average of (nearly) four years.
42. The defence that serious efforts would be made to increase the supply is not evident from the statistics that the Flemish authorities themselves maintain. As shown in the complaint, the growth of the social rented housing stock in the last decade is systematically limited to around 2,000 to 2,500 housing units per year. In recent years, it has even been slightly less. If we compare this rate with the growth in the number of households on the waiting list, it is obvious that the need for social housing is increasingly exceeding the supply. In addition, we showed that the supply may be growing in absolute numbers, but that in fact it is stagnating if we compare the number of social housing units with the total number of households in Flanders. The statistics of the Flemish region therefore show that the share of social housing is barely growing. Over time, the size of the sector remains limited to a share of approximately 6% (compared to the number of households).
43. The defence that the amount of the loan authorisation has increased is not acceptable in this context. The Flemish authorities point to a theoretical improvement in their bookkeeping, while realisations (in the sense of a stronger rate of growth) on the ground are not being achieved. After all, it is a mere *authorisation* to support the construction or renovation of social housing through interest rate subsidies, not actual expenditure (which leads to an increase in the supply of social housing). The fact that the Flemish authorities do not use the funds available for social housing has also been strongly criticised in the parliamentary debate[32]. In 2021, for example, approximately

[31] Accounts report of the Court of Auditors for 2020, *Parl.St.* Vl.Parl. 2020-21, No. 36/1, 106.

[32] Report of plenary session 19 January 2022, *Parl. Doc.* Vl. Parl., document 4 (2021-2022); Request for explanation from Gwenny De Vroe to Matthias Diependaele about the Minister's plan to use the budget for social housing for the private rental market, *Parl. Doc.* Vl. Parl., document 1312 (2021-2022); Request for explanation from Guy D'haeseleer to Matthias Diependaele about moving 500 million euros for social housing to the private rental market, *Parl. Doc.* Vl. Parl., document 1313 (2021-2022); Request for explanation by M. Veys regarding the under-utilisation of the investment budget for social housing, Housing Committee Report of 30 September 2021, *Parl. Doc.* Vl. Parl. Document 4481 (2021-2022); Request for explanation by M. Veys regarding the under-utilisation of the budget for social housing, Housing Committee Report of 18 November 2021, *Parl. Doc.* Vl. Parl. Document 583 (2021-2022); Request for explanation by V. Jans regarding the limited allocation of budgets provided for social housing, Housing Committee Report of 18 November 2021, *Parl. Doc.* Vl. Parl. Document 584 (2021-2022); Request for explanation by M. Veys about conventional renting, Housing Committee Report of 10 November 2022, *Parl. Doc.* Vl. Parl., document 473 (2022-2023).

500 million euros under this authorisation remained unused. A similar amount is expected to remain unused for 2022. Moreover, a considerable part of the total appropriation (€250 million out of 1,150 million) was added to the budget only at a time when it was already clear that even the originally planned budget would not be used.

44. In addition, a significant proportion of the part of the loan authorisation that is used, certainly in the last few years, goes to renovation. And, as a result of structural underfunding for maintenance in the past, as much as 44% of the social housing stock did not meet the minimum quality standards[33]. The efforts in recent years in terms of renovation are, of course, positive, but inherent to the management of the stock and do not lead to the creation of additional stock.
45. An important explanation for the lack of realisations on the ground is the way in which the Binding Social Objective (BSO) has been elaborated and is being implemented. The various defects are documented in the implementation complaint. FEANTSA notes that the Flemish authorities defend the BSO, but completely ignore a number of fundamental issues that were mentioned in the complaint. For example, the Flemish authorities state that only 13 municipalities are not in line with the growth path. However, this is not evident from the data that it publishes elsewhere, whereby on the date of 31/12/2021 they classify 139 towns and municipalities in the category of municipalities that are not on schedule to achieve the planned number of social housing units[34]. This is no less than 40% of the local authorities in Flanders.
46. In addition, 14,767 units (of the 50,000 housing units anticipated by the BSO) were not allocated to any particular municipality. In order to achieve the anticipated supply creation, more is therefore required than that each municipality simply follows its individual growth path. It is therefore dishonest, as the Flemish authorities state, to claim on the basis of the municipal growth paths that the Flemish Region will achieve the target of 50,000 extra housing units.
47. Moreover, the Belgian Court of Auditors has already made it clear that even this method of calculation by the BSO is seriously wrong. For example, housing units that have already been rented out with social objectives by local authorities in the past are counted as 'new'. The BSO also does not take into account housing units that are no longer available (due to demolition or sale), while programmed homes (which have not yet been realised) are included in the calculation. In addition, the Flemish Government refuses to take sanctioning action against municipalities that do not meet the binding objective and shield the minister from this with local autonomy.[35] As a result, the binding character is eroded.
48. In addition, the authorities ignore a more fundamental problem by referring to the BSO. Indeed, even if the BSO were to be achieved in full by 2025, which in our view will not be the case, the problem remains that the level of ambition set by the BSO is far too low. The BSO's starting point is to achieve a share of social housing of 9%, but it is based on the number of households in Flanders on 31/12/2007. Due to the growth in population and the declining size of families, this means that the share of social housing will be 6 to 7% - at a fully realised BSO - if we compare the number of social housing units with the current number of families. In the complaint, we also substantiated our claim that the share of social housing should be 14 to 15% in order to meet

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

[34] Source: https://assets.vlaanderen.be/image/upload/v1664803219/2022-28-09_Meting_sociaal_woonaanbod_31-12-2021_-_tabel_website_w5gcbj.pdf and https://huurdersplatform.be/vhp/actualiteit-vhp/4-op-de-10-gemeentes-halen-doelstelling-sociale-woningen-niet/.

[35] Report of the Housing Committee on the draft decree on the expenditure budget of the Flemish Community for the financial year 2022, *Parl. Doc.* Vl. Parl. 2021-22, nos. 15-6, 23 and 29.

housing needs[36]. Although the Flemish authorities try to challenge this number in their answer, they recognise the same method of calculation of the target group of social rented housing in the Flemish Coalition Agreement, in particular by also referring to the theoretical target group as calculated by the Policy Research Centre Housing. Based on these findings, FEANTSA can only conclude that the level of ambition is too low. Even with a fully realised BSO, the Flemish authorities fall short. The ECSR has pointed out in the past that the achievement of certain authorities' objectives is not sufficient to comply with the obligations under the (Revised) European Social Charter if those objectives do not sufficiently meet the actual needs on the ground[37].

49. In addition, the Flemish authorities state that they intend to continue to focus on social housing after 2025 (after the end of the current BSO). They are apparently currently thinking about future scenarios for a new BSO. When drafting this reaction, no plans in this regard were in any case either discussed within the Flemish authorities or submitted to the Flemish Parliament. On the contrary, in response to a parliamentary question, the Minister for Housing suggested that the outlines of the new BSO will not be known before 2025 (during the next parliamentary term)[38]. In the meantime, however, the sector has no clarity about the further intentions and expectations from the Flemish Housing Policy. Given that new construction projects have an average turnaround time of seven years, the Flemish authorities - due to a lack of timely initiative - threaten to slow down the construction pace further in the coming years.
50. For the future, the Flemish authorities point to the reorganisation of the social housing landscape, with the integration of social rental agencies and social housing companies into the new housing corporations to be set up. At the same time, the Flemish authorities also decided to redesign the areas of operation of the social housing actors and to reduce their number to a maximum of one per Flemish municipality. Whether this reorganisation will be able to increase the supply in the future is in any case not evident from the concrete plans and objectives set out above. What is already clear is that this reform has rather led to a further slowdown in renovation and construction dynamics in recent years and will continue to do so in the near future. According to the umbrella organisation of social housing companies (VVH), this restructuring and merger into housing corporations would be accompanied - cautiously estimated - by a transfer of at least 20,832 housing units.[39] Operationally, of course, a reform of this size has a huge impact. Mergers need to be worked out at local (political) level, in the process of which discussions are still ongoing in some regions. Companies must agree on the transfers, which will take place until 2028. Social landlords need to reorganise their internal operations, with significant staff transfers. Renovation and construction plans will be discontinued and must be redesigned according to the new areas of operation. The reform is also accompanied by unrest in the sector, which in turn leads to staff turnover and human capital leaving the sector. It is further intended that the housing unit transfers take place in the form of transfers of shares. However, some social housing companies prefer to

[36] This housing need is calculated based on the income limits for social housing that the Flemish authorities themselves set. It is not correct that the income limits are high, and the target group is therefore large, as the Flemish authorities claim. Current income limits have been scientifically validated, based on standards used in international literature to identify affordability problems. Studies, carried out on behalf of the Flemish authorities, show that the current income limits properly reflect the actual housing needs.

[37] ECSR 5 December 2007, ATD Fourth World v. France, nr.33/2006, §§ 96-98 (Decision on the merits).

[38] Request for explanations from Vera Jans to Minister Matthias Diependaele on the planning of a new binding social objective *Parl. Doc.* Fl. Parl. 2021-22, no 3142 ().

[39] Vlaamse Vereniging van Huisvestingsmaatschappijen, 'Onzekere toekomst voor 20.000 sociale huurwoningen' (*Uncertain future for 20,000 social housing units*), November 2021, source: https://www.vvh.be/nl/nieuws/item/onzekere-toekomst-voor-20-000-sociale-woningen

sell houses, so that they disappear from the social rental system[40]. This evolution is worrying. For example, social housing company, De Volkshaard, in Ghent has sold 72 social housing units to the private sector, which are resold for three times the price after slight renovations.[41]
For these reasons, at least in the short to medium term, it is completely incorrect to claim that the Flemish authorities have contributed to additional supply with the reform. That issue has also been mentioned on several occasions in the parliamentary debate[42].

51. In addition, with the reform into housing corporations, Flanders wishes to strengthen the decision-making powers of the social housing actors in the local authorities. According to the current regulations, they are already the directors of the local housing policy. As such, they can determine – through their licensing policy in the field of spatial planning – whether additional social housing may be built in the municipality. In the future, their impact will increase even further by decreeing that the majority of the shares in a housing company must be held by local authorities. That, too, is an evolution, the impact of which remains to be seen.
52. In Flanders, in any case, an increasing number of local authorities see the norm setting on the binding social objective as a maximum objective, whereas it is actually an obligation that was conceived as a minimum requirement. This means that municipalities reject additional social housing as soon as a 9% share of social housing (calculated on the number of households as at 31/12/2007) is reached in the municipality. Although, at first glance, this would appear to be a choice by the local authorities, the Flemish Region also bears a major responsibility for that attitude. First of all, local politicians are more sensitive to NIMBY campaigns by local residents, while the Flemish authorities, as already said, have set the level of ambition of the BSO too low and do not supervise its realisation sufficiently. Secondly, the funding of the Flemish towns and municipalities is not organised in such a way that the bill for social facilities (including social housing) is distributed in a spirit of solidarity. On the contrary, municipal funding rewards local authorities with relatively richer residents. In other words, a focus on social housing – based on a financial logic – is not attractive to local authorities. It also explains why a large number of municipalities (143 municipalities out of a total of 300) opt to add requirements regarding local connections to the rules on the allocation of social rented housing (they do not wish to 'introduce poverty' by housing tenants who have no long-term connection with the municipality). Thirdly, the Flemish authorities are constantly pursuing a discourse in which social tenants are stigmatised as' profiteers' and even 'fraudsters'[43]. It goes without saying that the Flemish authorities in this way

[40] Social housing companies have a duty to reinvest the proceeds from the sale of social housing. However, this obligation has been watered down by the Minister for Housing, as the proceeds may also be reinvested in the strengthening of the financial viability and the management and maintenance of the stock, subject to certain conditions. The Flemish Parliament, on the contrary, assumed that reinvestment would go, in the first place, towards the acquisition, construction or renovation of social rental housing in order to avoid a reduction in the supply of social housing. See: Opinion of the Council of State, Legislation Division of 25 November 2021, No. 70/325, 22 - 25.

[41] Ghent housing company sells 120 social housing units: 'Not good news', Nieuwsblad, 15 October 2021, takes place: Ghent housing company sells 120 social housing units: "Not good news" (Ghent) | Het Nieuwsblad

[42] Request for explanation by M. Veys on the under-utilisation of the budget for social housing, Housing Committee Report of 18 November 2021, Parl. Doc. Vl. Parliamentary document 583 (2021-2022)

[43] At the time of writing this reply, the Minister for Housing, for example, communicated via the press and social media that one in two inspected social tenants was caught owning foreign property ("here a social housing unit but an entire block of apartments abroad: 1 out of 2 inspected tenants hits the barrier"). The Minister omitted to mention that these checks are only carried out when there are serious indications and that the facts, therefore, represent a very small fraction of the total number of social tenants (300 cases or 0.2% of the total social tenancy population). The image that is left in this way is that half of the social tenants are fraudulent. See https://sociaal.net/opinie/fraude-sociale-huurders-nuance-communicatie-ontbreekt/

undermine the support base for social housing and, consequently, the willingness to build more social housing than is required by the BSO.

53. This negative discourse on social tenants is reflected in various changes to the social rental system, which were already explained in the complaint. These include (heavily subsidised) checks by private companies on foreign (partial or otherwise) property, activation measures aimed exclusively at social tenants, an increased obligation to have knowledge of (Dutch) language only for social tenants and stricter conditions regarding property ownership. These are always measures that demonstrate a (deep) mistrust of social tenants. In the short term, the Flemish authorities are also planning to tighten the rules on under-utilisation (with stricter sanctions) and to introduce a means test, which means that upon registration and allocation – in addition to the existing income conditions and the conditions regarding property ownership – a check is carried out on the balances that a candidate has on a bank, savings or investment account. While the principle (the social housing supply being reserved for those who are unable to meet their housing needs on their own) may sound positive, once again the legal doctrine also states that the effect is inadequate[44] and leads to heavy administrative burdens for landlords[45], while social tenants are rejected as profiteers and the useful effect of the measure will be extremely limited[46]. Where the Flemish authorities apparently find that there is a major issue as regards so-called fraudulent social tenants who hide their real wealth in order to be able to live in a social housing complex, it again ignores the reality on the ground. Scientific studies show that the social rental system is already a particularly selective instrument and that a significant proportion of social tenants already voluntarily leave social housing when they earn a higher income[47].
54. Moreover, by constantly justifying these measures, together with measures such as the temporary rental agreements, from a so-called focus on social tenants who have a 'real' need, the Flemish authorities shift their own responsibility away from themselves. It is always perceived that social housing is occupied unjustly by certain groups, when in reality it is a very limited phenomenon in terms of numbers. In other words, certain problems are exacerbated, at the expense of the image of social housing, in order to come up with a solution that leaves the real problems (the shortage of social housing) virtually unanswered.
55. Contrary to what the Flemish authorities claim, the complainant has no problem with measures that would better help to ensure that the scarce social housing supply reaches those in need or that improve the inclusion and participation of social tenants. However, the measures taken by the Flemish authorities do not contribute to this. In the complaint, the grounds were extensively documented. In summary, the reasons are as follows:

    (1) due to the way they are implemented, the intended measures also affect households that are indeed in need of housing[48];

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[44] Due to the administrative burden, checks are limited to financial capacity. Anyone who really wishes to cheat can still easily avoid this means test by investing in jewellery, vehicles, property other than a home, and so on.

[45] There is no general register of assets in Flanders. Checks on financial assets must therefore be organised specifically for social housing.

[46] T. VANDROMME, "Sole interpretation of the planned introduction of a means test in social rent", *Juristenkrant*, 14 September 2022, 12 et seq.

[47] K. Heylen, *Doelgroepen sociale huur en specifieke segmenten op de woningmarkt* (*Social housing target groups and specific segments in the housing market*), Leuven, Steunpunt Wonen, 2019 and K. Heylen, "Profile of social tenants in Flanders viewed from a dynamic perspective" in T. Vandromme, D. Vermeir, S. Winters & B. Hubeau*, Sociale huisvesting in Vlaanderen (Social housing in Flanders). Looking to the future*, Oud-Turnhout, Gompel/Svacina, 2019.

[48] An example is the acquisition of a small share in a house or a building plot, for example by inheritance. Naturally, this property will not enable a household to meet its housing needs. Nevertheless, in the case of inheritance, the regulations require the transferee to dispose of the share in the home or building plot within

(2) the measures are not proportionate to the objective pursued[49];

(*3)* fulfilling a basic need (housing) is made dependent on requirements which are not related to the housing needs[50] of the households concerned;

4) while the measures lack their purpose, are disproportionate or are not based on facts, the Flemish Region repeatedly contributes to the stigmatisation of social tenants.

56. The Flemish authorities state that some of the policy measures about which there are complaints (in particular the obligation to know the language and the temporary social lease agreements) have been reviewed by the Belgian Constitutional Court. However, FEANTSA wishes to point out that, in that review, the Constitutional Court confined itself to the individual contested measure, while procedures are still pending for other measures. In addition, the Constitutional Court never gave a ruling on the various, rapidly successive changes to the system as a whole. The successive changes, however, mean that the model of social housing in Flanders is gradually shifting, in such a way that social housing is less and less able to contribute to the realisation of the right to housing[51].
57. In the complaint, we wrote that the social housing sector in Flanders is wrongly reduced to housing for the poor, where housing is more and more conditional and temporary. In their response, the Flemish authorities state that this complaint is ideologically coloured and unfounded. However, this is only the logical consequence of rules which disproportionately restrict the target group, which subject social tenants to conditions which are not related to housing needs, or which aim to impose a higher forced outflow from social housing and thus to disguise the actual shortage of social housing. The fact that these measures are sometimes highly symbolic does not detract from this growing discourse on social housing as poverty housing. Under the pressure of an acute supply shortage, the Flemish authorities effectively make choices that make the sector less able to play the role of a preventive dam against poverty and that make social housing less and less a tool for structurally strengthening the position of those in need of housing.
58. At the same time, FEANTSA notes that the Flemish region focuses less on those most in need of housing in its allocation policy. Contrary to what the Flemish region claims, this is by no means incongruent with the foregoing. The conclusion of FEANTSA is that the Flemish authorities with the measures discussed above partly miss their objective (the measures are not pertinent when it comes to distinguishing between the group of persons in need of housing and those who do not belong to that group) and are partly operating disproportionately (social tenants with a slightly higher income are forced to leave social housing, without guarantees that these tenants will be able to maintain themselves on the private market[52]). This so-called 'incongruity' mainly points to

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one year. The landlord may extend this period, but it is understandable that the disposal of a share in a property is often difficult. This requires the agreement of the co-owners or legal proceedings, as well as costs for arranging the transfer.

[49] In the complaint we cited the example of temporary rental agreements. The limited effectiveness of this measure from a social point of view does not outweigh the individual disadvantages experienced by households that have to leave their homes (in particular because, unlike in the past, the thresholds for terminating the lease are too low).

[50] For example, the Belgian Council of State was critical of the registration with the VDAB (Flemish Employment and Training Service). The Council of State doubts whether this new tenant obligation contributes to the realisation of the right to housing of social tenants (*Parl. Doc.* Fl. Parl. 2020-21, No. 828/1, 402 (Opinion Council of State)).

[51] In its various opinions on this matter, the Flemish Housing Council has also consistently and critically argued against the way in which these obligations are introduced and sanctioned, even after the Constitutional Court had rejected the individual applications for their annulment.

[52] Which in turn discourages tenants from improving their position through a higher income.

the problems that arise – due to the scarcity – in the allocation of the social housing supply among the large group of people in need of housing.

59. In addition, it is undeniable that the Flemish Region is making choices with the new allocation rules as a result of which the services will not reach the families most in need of housing. It goes without saying that the situation of those who live on the street is, for example, more precarious than the situation of those who are also in need of housing, but for the time being are able to maintain themselves in the private rental market. FEANTSA finds that the Flemish authorities explain and justify the new allocation system in detail, but that they misrepresent the consequences of this system for families with the greatest housing needs. The core of the problem is contained in the allocations under the 'second pillar' (= accelerated allocation for those with high housing needs), for which the Flemish authorities provide a quota of 20% of all allocations by housing corporations (which include the current social housing companies (SHMs) and social rental agencies (SVKs)). The Flemish authorities justify this quota on the basis of the finding that social rental agencies, which in the current system allocate to people with high housing needs, account for approximately 20% of all allocations[53]. However, the numbers provided are not based on current allocations (whereby 25% is allocated by the social rental agencies), but already on allocations according to the new system, thereby proving that at least 5% less priority allocations will be done in comparison with the current system. Moreover, the numbers provided completely ignore the fact that people with high housing needs also enter through social housing companies. To this end, the Flemish social rental system, and more specifically the system applicable to the allocations by the social housing companies (which is responsible for the lion's share of the social rental homes), currently still provides absolute priority rules for certain groups of vulnerable persons[54]. In addition, under the current rules, for another 5% of allocations, SHMs have to depart from the standard allocation rules in order to 'accelerate' the allocation of persons who are homeless, who become self-employed as minors or who find themselves, in general, in special social circumstances[55]. It is therefore abundantly clear that a quota of 20% of allocations to those people with high housing needs is a regression. Simulations by sector organisations (such as HUURpunt), which FEANTSA cited in the complaint, confirm this picture. These simulations show that the new system leads to a third less allocations to people with high housing needs. In some regions it is even down to half.
60. The quota of 20% accelerated allocations is also to be calculated after deduction of the allocations required as a result of forced relocation due to demolition, renovation, or adaptation work on the social housing unit or even sale. In view of the many necessary renovations planned, this number may increase significantly in the coming years. Moreover, the social landlord may introduce additional conditions in order to be considered as homeless, which risks undermining the allocation to this target group. In addition, the social landlord is authorised to make the allocation to certain specific target groups subject to the condition that they receive obligatory counselling from a welfare organisation, without guarantees that said welfare organisations have sufficient capacity as regards counselling.
61. Within the first and third pillars of the new allocation system (accounting for 80% of the allocations), the requirement as regards local connections (a 'long-term housing connection' of 5 years of uninterrupted residence in the municipality over a period of 10 years) applies. It is true that this requirement applies solely within the target group as a priority rule and (in theory) not as

[53] The Flemish authorities mention the number of allocations by social housing companies and agencies, stating that the agencies were responsible for about 20% of all allocations in the past year.

[54] Art. 6.19 Flemish Housing Code Decree 2021 imposes, among other things, priority rules for people with a physical disability, persons living in poor housing and emancipated minors.

[55] Art. 6.25 Flemish Housing Code Decree 2021.

an exclusion criterion. However, due to the scarce supply and the large number of candidates, the measure will work exclusively in practice. This is because people who do not have the required local connections risk being passed over time and again in favour of others, regardless of whether the latter have been on the waiting list for less time or are less in need of housing. In addition, this effect especially affects vulnerable applicants, including newcomers (given that they cannot prove a local connection), persons in grey residential circles and persons in precarious housing situations (as they move more often). It is impossible to deny that housing needs will become less important in the allocation of a social housing unit, since the allocation would be based on a criterion unrelated to housing needs. FEANTSA therefore stands by the analysis it expressed in the complaint.

62. Municipalities can also introduce an even stricter long-term residential connection requirement per municipality, even per sub-region. There was already the possibility of developing local connection requirements at municipal level, which prompted almost half of the Flemish municipalities to draw up regulations in this regard (143 out of 300 municipalities). This sometimes involves very far-reaching requirements, without the local authorities being challenged by the Minister for Housing. In answer to a recent parliamentary question, the Minister indicated that even "lifelong residential connections" could be a legitimate requirement for him. From a previous parliamentary question, it also emerges that no fewer than 43 Flemish towns or municipalities apply a priority rule based on birth in the municipality in accordance with the previous regulations in their local allocation regulations. This is highly problematic from the point of view of the prohibition of discrimination, the right to housing for all and the principle of freedom of movement and establishment for EU citizens, as newcomers and even anyone who was not born in that municipality are at risk of being excluded from the allocation of social rental housing in the municipality. FEANTSA would like to refer to a judgment of the Court of Justice of 8 May 2013, which accepts that a public authority may impose restrictions on freedom of movement and freedom of establishment, but only on condition that a legitimate public interest is invoked and that the restrictive measures are pertinent and do not go beyond what is necessary. That is not the case here.
63. After all, FEANTSA observes that the Flemish authorities in their response do not succeed in justifying the measure of local connection. For example, the argument of the level of acceptance is very peculiar, since local authorities were also able to develop local connection conditions in the past. That decision, however, belonged to their autonomous decision-making authority, while the Flemish authorities now impose a minimum obligation for the entire Flemish Region. How Flanders could make municipalities more responsible by limiting their autonomy is a mystery to FEANTSA. The signal to neighbouring municipalities is also a particularly strange argument. Not only have municipalities been able to give this signal in the past, but it is also precisely the BSO that aims to achieve an equal distribution of social housing in Flanders. The BSO wishes to achieve this by imposing a legal obligation on each municipality. Although the BSO is said by the Flemish authorities to be functioning well, it would apparently still be necessary to encourage local authorities to build more social housing by means of an indirect measure (local connections in one municipality do not impose any obligation to expand the offer in another municipality). That, of course, is not a serious argument either. On the contrary, a consequence of the possibility of providing for stricter local requirements is precisely that a domino effect is created, whereby the approval of stricter local housing requirements by one municipality triggers even stricter local connection requirements by other municipalities.
64. Finally, the culpabilisation and exclusion of the most vulnerable tenants can also be found in the measure whereby persons who have been evicted because of disturbance or neglect of the property are not allowed to re-enrol in a social housing for three years. Irrespective of the

practical[56] and legal[57] problems that FEANTSA sees in this measure, we note that the Flemish authorities agree that these are often particularly vulnerable people, for whom psychosocial problems are at the root of the problem. FEANTSA can accept that measures are needed to avoid social problems and to respect the right to housing of other residents. But the measure that the Flemish region has chosen cannot at all be endorsed by FEANTSA. Exclusion from social housing (through a ban on enrolling as a prospective tenant for three years) means that the only alternatives for the persons and families concerned are the private rental market, shelters, or homelessness. They are all scenarios in which support – in order to tackle the underlying psychosocial problems – is much more difficult to organise[58]. In addition, the parties concerned are likely to be evicted again, especially on the private rental market. The Flemish Region therefore threatens to push those involved further into difficulty, as this group is denied the prospect of a stable housing situation for three years and the possibility of counselling is made more difficult. It is important also to draw attention to the background of the issue. In fact, it was a policy choice of the Flemish authorities to generalise extramural care (the so-called 'socialisation of care') for those with psychosocial problems who were previously in institutions. This means that these people must be able to participate in society, including their right to housing. It is completely unjust first to phase out residential care and then make it more difficult for those concerned to access housing in the normal housing sector.

65. Furthermore, the assertion that the Flemish region is working towards a transparent and objective social rental system cannot be accepted at all. FEANTSA substantiated in the complaint that the system is particularly complex and incoherent. This complexity has even increased sharply in recent years due to rapid successive changes. An evaluation study commissioned by the Flemish authorities on the supervision that the Flemish region exercises over social housing actors is telling. Among other things, this report makes it clear that the system is so complex that even for social housing actors it is difficult to know and correctly apply the whole set of rules[59]. If the regulations are already difficult to manage for social housing professionals, it goes without saying that the system is even less clear to (prospective) tenants, all the more so because this group is composed partly of vulnerable persons. Complex regulations always limit the accessibility thereof, thereby making it difficult for the tenants to enforce their rights and (unconsciously) running the risk of not fulfilling tenant obligations. From this point of view, too, it is problematic that during recent years

[56] How is it clear, for example, to a social landlord which element was decisive for a court to dissolve the tenancy agreement and evict the tenant? Is it the neglect of the property or are there other elements (e.g. rent arrears)? Judgments are usually too briefly substantiated to make pronouncements on this. Consequently, a certain degree of arbitrariness in the application of the measure is inevitable. We refer to the original complaint.

[57] It concerns a sanction on which the court does not pronounce, and it can refer to facts that occurred prior to the introduction of this sanction, although the Flemish authorities state that this measure is for the purpose of dissuading social tenants from seriously neglecting the property or causing disturbance. There is a pending procedure for annulment before the Council of State.

[58] For social landlords, the organisation of counselling is part of their mission. This cannot be expected of private landlords.

[59] E. Dockx, W., Van Dooren, S. Winters, & D. Vermeir, *Naar een vernieuwd toezicht van en performancebeoordeling van de woonmaatschappij (Towards a renewed supervision and assessement of the performance of housing companies)*, Leuven, Steunpunt Wonen, 2022, 83 p. An earlier evaluation also concluded that the social rental system is particularly complex. See: S. Winters, D. Vermeir, B. Hubeau & W. Van Dooren, *Vereenvoudiging van het sociaal huurstelsel: Van het regelen van details naar regelen volgens principes* (*Simplification of the social rent system: from regulating details to regulating according to principles),* Leuven, Steunpunt Wonen, 2017, 178 p.

the Flemish region has increasingly been opting for a sanctioning approach when it comes to changes in recent years. And this at a pace that makes even professionals gasp for breath.

66. Where possible, the complainant has substantiated its analysis in terms of figures[60]. In addition to the figures included, FEANTSA can refer to testimonials from tenants (which sometimes appear in the media[61]), analyses by poverty and tenant organisations[62], the attitude of social landlords[63] and the opinion of experts. Since the introduction of the Flemish Housing Code (1997), for example, there has been a habit in Flanders of compiling a five-yearly state of affairs of developments in housing policy through an academic publication. In the latest edition (2022), Dr. Tom Vandromme (University of Antwerp) is particularly critical of the developments in the Flemish social rental system in recent years. He came to the following conclusion: "*The change in the basic principles of the social rental system had already been initiated earlier by the introduction of temporary social rental agreements and the regulator continued on the same track through the amending decrees of 2019 and 2021. The zeal in the field of the social rent system is now well known, leading to rapid, successive, far-reaching changes. However, the successive changes do not testify to a forward-looking vision of the social rental system, but to a (great) distrust of the social tenant (additional tenant obligations are added that are not directly related to housing and additional sanction mechanisms are added). The social rental system is the victim of political profiling at the expense of the most vulnerable households and the negative discourse about profiteers and even fraudsters undermines support for social housing among both the population and local authorities. The adjustments to the social rental system also fit in with this (...). While it is, of course, possible to agree on the principle that social tenants must fulfil their obligations as tenants and that the social landlord or the public authorities must take action against misconduct, the question arises as to whether the additional regulatory provisions are proportionate. Appropriate and proportionate action against social tenants who cause nuisance or do not meet the admission conditions was also possible before. With these changes, the social rental system is once again becoming a lot more complicated, which makes it not only more difficult for social housing actors to understand it, but also, and above all, for prospective tenants and tenants who, on the one hand, are less able to enforce their rights and, on the other hand, are less likely to fulfil their obligations (which in turn increases the need for sanctioning action) (...). All this is accompanied by the finding that not only certain social tenants remain in default (and that they should be addressed with respect for the fundamental right to housing), but that above all the Flemish Region remains in default when it comes to achieving an effective and meaningful expansion of the social tenancy sector. Although the number of social rental housing units owned by social housing companies and the number of social rental housing units let by social rental agencies has increased in recent years, this increase remains rather limited, does not follow the rise in waiting lists and thus does not shorten the average waiting period. The Binding Social Objective (50,000 additional social rental housing units in the period 2009-2025) is unlikely to be achieved and no new target has yet been set for the period*

[60] Neither was this always possible. For example, individual files of social tenants are not made public for privacy reasons. Sometimes it is also difficult or even impossible to quantify certain developments (such as the impact of culpabilising regulations on support for social housing).

[61] Eg. *De jacht op sociale huurders met buitenlands vastgoed: 'Ze spelen het keihard'* (The hunt for social tenants with foreign real estate: 'They play it hard'), De Morgen 21 March 2021.

[62] Resulting in pending petitions for annulment of certain provisions of decrees or the implementing decree on social rent at the Council of State and the Constitutional Court.

[63] Some social landlords refuse (in part) to implement the recent measures, precisely because the consequences are perceived as unjust in the field. E.g. *Leuven voert zelf geen onderzoek naar buitenlandse bezittingen sociale huurders* (Leuven itself does not conduct any investigation into foreign assets of social tenants), VRT NWS 22 November 2022.

thereafter. (…) The waiting list problem in social housing will therefore not be solved in the near future. However, an effective and meaningful expansion of the range of social rentals is urgently needed and must therefore be the highest priority for the Flemish region"[64]. With that, the legal doctrine once again – from an objective, academic point of view – gets to the nub of the problem.

2.3 Private rental market

67. FEANTSA notes that the Flemish authorities partially recognise the problem when they state that they are aware that the private rental market is facing several problems, including in terms of affordability, housing quality and energy standards and the too limited supply of decent and affordable homes. The Flemish Region also draws attention to the instruments and resources that it deploys or plans to deploy, as well as to the policy framework for the private rental market (Draft Memorandum on Private Rentals; outlines of the Flemish Housing Rent Decree, Action Plan on Anti-Discrimination Policy) and the Flemish Housing Policy Plan. This should then show that it would not be correct for the Flemish Housing Policy not to support the private rental market or to support it too little.
68. In the following, FEANTSA will discuss the realisation of the right to housing for the private rental market on the ground. First of all, however, FEANTSA wishes to refute the fact that the image that the Flemish Region is trying to create, namely that households would have free choice on the housing market, corresponds with reality. This refers to the desired image of a property-neutral policy and to fully-fledged sub-markets, in which Flemish people could effectively choose the sub-market that best meets their individual wishes and needs. FEANTSA has already documented in detail that the Belgian and subsequent Flemish housing policy chooses to favour a single sub-market much more strongly. Moreover, the underlying policy choices are not based on the Flemish people's free choice, but rather on ideologically coloured (and often not scientifically substantiated) assumptions about the benefits of owning a home. The fact that there is no question of a property-neutral policy in Flanders is evident, among other things, from the figures provided by FEANTSA on the distribution of Flemish housing subsidies. Other instruments confirm that the Flemish authorities do not regard the private rental market as a fully-fledged residential option, although for many Flemish people, due to the lack of social housing and a lack of resources for their own home, it is the only housing option. For example, the award of the Flemish rent subsidy ('huursubsidie') and housing benefit ('huurpremie') are linked to the condition of registering as a candidate for social housing. Anyone who receives an offer for a social housing is also deemed to accept this offer, under penalty of the loss of the right to a rent allowance[65]. For the Flemish region, the private rental market therefore does not appear to be a fully-fledged final destination, but only a step towards the property market or social housing.
69. When the Flemish Region states that it applies market forces and free choice as guiding principles and, therefore, intervenes only when necessary to remedy market imperfections, it again tries to avoid its enormous responsibility for the situation on the private rental market. First, by limiting the motivation for the public authorities to intervene in order to correct market imperfections. However, it is widely assumed that reasons of equity can also justify an intervention by the

[64] T. Vandromme, "Sociale huur volgens boek 6 van de Vlaamse Codex Wonen van 2021" (Social Housing according to book 6 of Flemish Housing Decree of 2021), in B. Hubeau & T. Vandromme (Eds.), *25 jaar Vlaamse Wooncode - 1 jaar Vlaamse Codex Wonen van 2021. Op zoek naar zilver*, Brugge, die Keure, 2022, 153-154.
[65] Art. 5.167, § 2 and Art. 5.177 Flemish Codex Housing Decree of 2021.

authorities in the market[66], just as the free market has nowhere in the world been able to create adequate housing for everyone[67]. The recognition of a fundamental right to housing in the Belgian Constitution and numerous international treaties (to which Belgium is a contracting party) should also encourage this consideration, especially now that Flanders is also failing to provide a sufficiently large social housing supply. Furthermore, in its reply, the Flemish region completely ignores the responsibility that the housing policy bears in the creation of this problematic situation in the private rental market. Based on numerous academic studies and analyses, FEANTSA substantiated in the complaint that the housing policy itself has just contributed to a decades-long residualisation and precarisation of this sub-market. In addition, the housing policy still does so to this day, as the study by the National Bank on the impact of the reduction in sales duty shows (see earlier). The consequence of such policy choices is indeed not only that phenomena, such as emergency buyers, arise, but also that problems in the private rental market, such as in terms of affordability, housing quality and accessibility, persist or even increase further.

70. Decades of policy neglect of the private rental market have also contributed to the fact that the instruments that Flanders does use appear largely dysfunctional on the ground. This is especially the case in the most precarious situations. We shall explain this finding in more detail below when discussing thematic aspects and instruments. As an example, we refer to the impact of the Flemish housing quality control. Although this is undoubtedly the strongest developed instrument of housing policy in the private rental market, data show that there remains a persistent problem of poor to very poor housing, which is often rented to disadvantaged and vulnerable residents. The underlying reasons for this are known from studies and have already been cited in the complaint. Residualisation of the private rental market means in concrete terms that, for low-income families, the supply of private rental homes has systematically decreased at the lower end of the market, which means that their choices in the search for a home are very limited. Because they need a roof over their head and have to compete with others, who are also confronted with the limited supply but who are in a (slightly) stronger financial position, out of necessity they accept the unfit and substandard housing that is available. On the supply side, the effect is that market forces do not provide incentives to invest in housing quality, as owners have a demand guarantee even for poor to very poor homes. In addition, housing quality control appears to have little effect over this market dynamic, so that quality problems continue to exist. Underlying factors include the fact that occupants or, for example, caregivers who are confronted with the poor housing situation of their client, often do not dare to report a quality problem. In the case of poor housing, the result of a procedure will be that the tenant will have to leave the housing, while neither the private market nor social housing offers a realistic housing alternative. The occupant is thus threatened with ending up on the street, or at least to be confronted with a difficult search for new housing, of which he can assume that the quality, within his available budget, will not be better.
71. FEANTSA wishes to point out once again that, contrary to what the Flemish authorities claim, it has never sought to make statements about which means or instruments the Flemish region should use to realise the obligations under the (Revised) European Social Charter. However, FEANTSA points to the fact that the limited task that the Flemish authorities set themselves – on the one hand, by providing too few social housing units and, on the other hand, by wishing only to correct market imperfections in the private rental market – means that too few steps are taken in the realisation of the right to housing, in particular for the most vulnerable households. After all, the far too limited social housing stock in Flanders means that the private rental market has to

[66] E.g. N. Barr, *The economics of the welfare state*, Oxford, Oxford University Press, 1998 and M. Oxley, *Economics, Planning and Housing*, Hampshire & New York, Palgrave McMillan, 2004.
[67] E.g. J.K. Galbraith, *De cultuur van tevredenheid*, Baarn, Bosch & Keuning, 1992.

absorb the deficits, without this sub-market being adequately supported for this purpose. This lack of support is also not a question of insufficient resources for housing policy. On the other hand, it is a result of the choice of a priority policy support for the property market, as a result of which the available resources for housing policy do not end up in households with the greatest housing needs and as a result of which the Flemish Region further aggravates the problems in the private rental market. FEANTSA can share the Flemish authorities' view when they state that an intervention by the authorities is necessary only for households that are not able on their own to realise their fundamental right to housing. However, based on this principle of subsidiarity, it is inexplicable that housing policy in support of home ownership systematically opts for expensive, non-selective instruments, which largely end up benefiting relatively wealthier Flemish people (who do not need support) and which drive up property prices. At the same time, the Flemish Region refuses to support the private rental market in a meaningful way, while this sub-market houses relatively weaker income groups and scores poorly in terms of various aspects of the right to housing.

72. With regard to the affordability on the private rental market, the Flemish region in no way refutes the analysis by FEANTSA. The fact that the problem had not increased at the last time measurements were made (2018) does not detract from the finding that a very large proportion of private tenants in Flanders are facing affordability problems. According to the 'housing expense to gross income ratio', it concerned a share of no less than 52% of private tenants in 2018, just as in 2013. The last measurement therefore confirms that there is a structural problem and that no progress is being made. Moreover, the proportion of private tenants with affordability problems has risen very sharply for a longer period of time. In 1997, for example, it still accounted for 20% of private tenants, which had already risen to 39% in 2005. In 2013 and 2018, as stated above, this share increased even further to 52%[68].
73. In their explanation of the rent subsidy and housing benefit, the Flemish authorities misrepresented the meaning of their own regulations. As stated above, it is not the case that the target group can enter *either* the private rental market *or* social housing. In order to obtain and maintain a rent allowance, the target group is obliged to register for social housing and to accept a possible later offer for a social housing unit. To state that there is freedom of choice is undoubtedly a misrepresentation of the facts. The Flemish authorities once again misrepresent the regulations when they say that they have made these instruments more customer-friendly following recent changes. In order to demonstrate the non-conformity of the (to be vacated) housing, the Flemish authorities have even done exactly the opposite to what they claim. The previous regulations allowed the identification of quality defects with a technical report, while the current regulations require that the procedure for declaring a home unfit or uninhabitable be completed in full and that a decision be taken, which can take three to six months[69]. The regulations have also just become stricter in other areas[70], which was again prompted by a (deep) distrust of tenants[71].

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[68] S. Winters, with J. Sansen, K. Heylen, K. Van den Broeck, L. Vanderstraeten & F. Vastmans, *Vlaamse Woonmonitor 2021 (Flemish Housing Monitor 2021)*, Antwerp/'s-Hertogenbosch, Gompel&Svacina, 2021, 234 p.

[69] Art. 5.164 Flemish Codex Housing of 2021. It is also noticeable that the housing quality control actually makes renting out a defective home a criminal offence. In order to obtain a rent subsidy, the occupant is therefore expected to cooperate with a crime for several months.

[70] For example, it is not sufficient that the dwelling is of substandard quality. The current regulations on the rent subsidy require, as a threshold, that there are at least two serious deficiencies.

[71] Some policymakers believe that tenants intentionally damage their homes in order to qualify for housing subsidies. Although sufficient resources already existed to combat such practices, and despite the fact that

74. In addition, the Flemish Region misrepresents the impact of the rent allowances when it says that 45,000 households receive these allowances and thereby makes it appear that they are households in the private rental market. For a substantial part of the total group of beneficiaries, this concerns households that rent socially (11,871 in 2021) through a social rental agency. The Flemish rent subsidy is in fact an instrument that is also aimed at tenants of social rental agencies. For example, 55 to 60% of all beneficiaries of a rent subsidy are tenants of social rental agencies. A further 35% are formerly homeless, while a small minority (about 5%) consist of 'regular' private tenants who moved from a defective home to an adapted, decent home. As FEANTSA already quoted in the complaint, the share of eligible families in the private rental market is therefore considerably less than 45,000 (in 2021 about 30,000). FEANTSA also indicated that small steps forward are indeed being taken, but that the scope of these measures remains too limited when compared with the number of families in need of housing on the private rental market (estimated in studies at about 230,000).
75. The limited scope of the rent subsidy among ordinary private tenants also confirms the analysis by FEANTSA that these are very complex and contingent instruments, of which vulnerable tenants (with the exception of the formerly homeless and tenants of social rental agencies) do not often (or are not able to) make use. For tenants of social rental agencies and formerly homeless people, there almost always is a form of counselling present. With this counselling by the social rental agencies, the tenants of social rental agencies are directed towards housing that complies and so are able to overcome administrative barriers. For other private tenants, there is usually no counselling available and the issue of *non-take-up* plays a full role. In addition, year after year, it appears that the number of refusals of applications by people who think they are eligible (in 2021, of the 6,974 applications, no fewer than 3,194 were refused) as well as the number of cancellations of rent allowance is appallingly high, although the Flemish Housing Council has previously made numerous policy suggestions to remedy this[72].
76. In addition to legal and administrative thresholds, the conditions for obtaining and maintaining a rent subsidy or housing benefit create even more barriers. While the Flemish authorities refuse to regulate the rent of private rented housing, they impose a condition on the target group as regards the rent subsidy or housing benefit (which must also meet income conditions), for example, in that they must find housing at a reasonable price themselves. However, the price ceiling applied by the Flemish authorities is often not realistic. In addition, tenant and poverty organisations have long reported that the link to minimum housing quality standards in particular is causing obstruction[73]. Both for the granting of housing benefit and rent subsidy, a housing quality control is carried out in order to determine whether the property is of a high quality and eligible for a subsidy. And although it is understandable that the Flemish authorities do not wish to subsidise defective housing, the consequence is that occupants in the most precarious situations do not apply. After all, it is difficult for them to assess whether their housing meets the – technical, detailed – quality standards, while a housing quality control may lead to people having to leave the home. In the latter case, the tenant must look for new housing, which, as already mentioned, certainly means a difficult search in the lower layers of the rental market. The ultimate result is that vulnerable

there is no insight into the existence or extent of this problem, the Flemish authorities decided to tighten up the system of rent subsidies in a general manner.

[72] Vlaamse Woonraad, *Huursubsidie en huurpremie. Advies Vlaamse Woonraad*, Brussel, Vlaamse Woonraad, 2018.

[73] E.g. Steunpunt tot bestrijding van armoede, bestaansonzekerheid en sociale uitsluiting, *Burgerschap en armoede. Een bijdrage aan politiek debat en politieke actie. Tweejaarlijks verslag 2016-2017*, Brussel, Steunpunt tot bestrijding van armoede, bestaansonzekerheid en sociale uitsluiting, 2017.

households miss out on government support precisely because they had to turn to poor housing because of a lack of resources.

77. FEANTSA would like to point out that this is also an example of how the housing crisis in the private rental market in Flanders has widened and deepened to such an extent that the policy instruments do not function properly. After all, it is the families with the lowest incomes who end up in the least qualitative (or rather, the most inadequate) rental housing (because this is all they are able to afford). However, it is precisely for this reason that they are subsequently not eligible for aid in the form of a rent allowance. For example, the obligation on the part of the landlord to ensure that the housing meets the minimum housing quality standards when he puts it on the market offers mainly theoretical protection[74]. At the bottom of the rental market, tenants - given the lack of alternatives and because they do indeed need a roof over their heads - are simply too weak to be able to have their rights enforced. The existing instruments also hardly help households to choose – with a rent allowance – an affordable, high-quality alternative. In order to qualify for housing benefit, the tenant must first be able to maintain him/herself independently for at least four years (after being registered with a social housing company) . The granting of rent subsidy is – as evidenced by the data on actual beneficiaries - so complex and uncertain that the instrument hardly succeeds in convincing tenants to move to an adequate housing solution[75].
78. With regard to the link between the rent and the quality of the property offered, FEANTSA finds that the Flemish authorities misrepresent the complaint[76]. Nowhere does FEANTSA claim that there is a mismatch between price and quality for the entire private rental market, nor was it claimed that landlords should not make a reasonable profit. It also appears to be wrong to suggest that FEANTSA seeks strict forms of rent regulation (as existed in some countries in the 1970s and 1980s). FEANTSA did, however, wish to point out the situation at the bottom end of the rental market, where demand far exceeds supply and where abnormal profits are indeed made through that mismatch (which, incidentally, is acknowledged by the Flemish authorities). The finding of FEANTSA is that the Flemish authorities allow these practices, which amount to abuse, to exist after they themselves have contributed to the emergence of the problem through their housing policy. However, practice in other countries (such as the German Mietspiegel) shows that there are possibilities to introduce market-based rent regulation, so that abuses can at least be curbed. With such modern forms of rent regulation, potentially adverse effects (which the Flemish authorities name) do not play, or play much less a role. The scientific literature on such systems is therefore clearly (much) more positive[77].
79. In its response, the government addresses the consequences of housing quality defects in the private-law relationship (the nullity sanction and the compensatory occupancy compensation). FEANTSA remains of the opinion that the Flemish Region thus occupies an ambiguous position. In fact, the Flemish authorities mix private and public interests and ultimately make a choice of little effect. On the one hand, they state that the rent for housing which does not meet the minimum housing quality standards is contrary to public policy and that, consequently, the contract is absolutely null and void (as a result of which the lease ceases to be lawful from the outset). This nullity sanction is justified by the Flemish region for the sake of the general interest, namely the dissuasion of landlords from renting out defective homes. On the other hand, the regulations

[74] Art. 12 Flemish Housing Rent Decree.

[75] Reference is made to the above figures with regard to the actual beneficiaries.

[76] In fact, a specious argument is used, in the process of which words are wrongly attributed to FEANTSA, in order to refute those words and ignore the substance of the matter.

[77] E.g. C. Martin, K. Hulse, M. Ghasri, L. Ralston, L. Crommelin, Z. Goodall, S. Parkinson and E. O'Brien Webb, *Regulation of residential tenancies and impacts on investment*, AHURI Final Report No. 391, Australian Housing and Urban Research Institute Limited, Melbourne, 2022, 6.

indicate that the owner should not bear the financial consequences of renting out defective housing. In the event of annulment, the owner continues to claim an occupancy compensation that corresponds to the 'objective rental value'[78]. The legal practice shows that the landlord – by using the 'objective rental value' as a reference – often still receives a payment that (closely) corresponds to the market rental price, while that price in the lower segment of the market often does not correspond to the quality of the housing. Logically, this undermines the intended dissuasive effect. If the Flemish authorities wish to maintain the minimum housing quality standards through the private-law relationship, it would be much more logical for them to deprive the landlord of the advantages that said person obtains – in violation of public order and the human dignity of the tenant. It is also relevant that there are apparently objective rents for housing that does not meet the minimum standards, but that there are no further plans for a link between rents and quality for housing that is assumed to meet these standards.

80. FEANTSA was very surprised when reading the reaction of the Belgian government with regard to the problem of discrimination. Apparently, the Flemish authorities do not know their own institutional framework very well. Indeed, in the Belgian State structure, the fight against discrimination is understood as a horizontal matter, meaning that each regulator has the task of fighting discrimination within the matters that fall to it. This means that the Flemish authorities have been competent to combat rental discrimination since 2014, in particular from the regionalisation (into the regions) of the matter of 'housing rental'[79]. Since then, the federal anti-discrimination laws no longer form the relevant legal framework in the Flemish region, but rather the Flemish Equal Opportunities Decree. Moreover, there are no criminal sanctions in Flanders for tackling (rent) discrimination. On the contrary, the Flemish legislator deliberately chose to organise the combat of discrimination through civil law mechanisms. The reference by the Flemish Region to the ordinary police services is therefore baseless since there are simply no penalties imposed. It is also remarkable that the Flemish authorities apparently see a 'complementary' role for themselves (in addition to the federal level), while this is a matter that has been fully within its competence since 2014. Furthermore, UNIA (an independent public institution that combats discrimination and promotes equal opportunities) is not a *federal* body, but an *inter-federal* institution, in which the regions and the communities are represented. It is also incomprehensible that Flanders does not wish to intervene in the (pre-)contractual relationship between tenant and landlord. With the Flemish Equal Opportunities Decree, Flanders already provides for a ban on discrimination in the access to and supply of goods and services, including housing[80]. There is not the slightest doubt in the legal doctrine that the prohibition of discrimination extends to cases of rental discrimination[81], nor that this prohibition has an effect at every stage of the rental process (thus also pre-contractually). With such reactions, which completely miss the point, the Flemish authorities perhaps confirm above all that they operate a complete non-policy in the field of rental discrimination.
81. The Flemish Region also refers to the 'Flemish anti-discrimination policy on the private rental market' (2018) action plan, in which it formulates the choice to combat discrimination through self-regulation by the sector and through awareness-raising measures. In the complaint, FEANTSA has stated that this action plan is largely inadequate. FEANTSA comes to that conclusion for various

[78] In the event of an *ex tunc* annulment, the court must 'remedy' the situation as if the agreement had never existed. In principle, the landlord must therefore return all the rent paid. The tenant, in turn, should return the use of the property, which is not practically possible. Hence the Court of Cassation ruled that it may be appropriate to grant the landlord an occupancy allowance in compensation.

[79] Since the sixth reform of the State.

[80] Art. 20, 6 of the Equal Opportunities Decree.

[81] The letting of housing through the private rental market is viewed as offering a 'service'.

reasons. Firstly, the action plan focuses on raising awareness. The Flemish authorities present this as a 'first option', as if no raising of awareness had previously taken place. The opposite is true. Unia, the local authorities, the federal and Flemish authorities, tenant, owner and broker organisations, etc., have been working to raise awareness for a long time, so that it is now well known that rent discrimination is prohibited. Almost all the measures cited by the Flemish authorities in its response (hotlines, training courses, model contracts, brochures, rental advertising, etc.) have therefore been in place for a long time[82]. The Flemish authorities have now simply brought these measures together and repackaged them into an action plan[83]. They have hardly added any[84] new policies. Secondly, and in sharp contrast to the foregoing, there is the observation that discrimination in the private rental market remains a problem, despite the existence of a prohibition of discrimination and the anti-discrimination policy pursued[85]. Although it is not clear – due to a lack of data – how exactly the problem evolves, rent discrimination has been repeatedly investigated and measured in recent decades[86]. The conclusion of these studies is repeatedly that certain groups are discriminated against when it comes to access to rental housing[87]. Therefore, this is a persistent problem, which also makes it clear that the existing instruments are not sufficient to reduce discrimination significantly. Thirdly, the choice to work through self-regulation by the sector is therefore never sufficient. While it is true that a significant proportion of private rented housing is offered through estate agents (one in three housing units), the majority of housing units are still rented out directly by the owner. In addition, it is always the landlord himself who decides to which candidate he will rent. For the group of private landlords, however, there are no organisations in Flanders that cover a substantial share of the market, nor are there any large private rental companies. The typical landlord in Flanders is a private individual who offers one or two housing units for rent. In addition to the fact that existing owner organisations are voluntary member organisations (and therefore do not have the slightest intention of doing more than disseminating information), the level of organisation of the sector is therefore simply too low to be able to be credibly committed to self-regulation.

82. FEANTSA finds it downright disturbing that the Flemish region casts the complaint aside in this area as an ideological position and, when it speaks of practical tests with criminal law enforcement, once again makes use of a specious argument. In the public debate in Flanders, there is really no one who is asking for an undifferentiated, tough approach. However, there are good arguments

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[82] The most important innovation in recent years is the training that Unia organises together with the Vrije Universiteit Brussel for estate agents. However, the Flemish authorities see no merit in this.

[83] This is evident, for example, from a 2017 study listing all the measures already in place at that time in the fight against rental discrimination. See: J. Verstraete, D. Vermeir, P. De Decker & B. Hubeau, *Een Vlaams antidiscriminatiebeleid op de private huurmarkt. De mogelijke rol van zelfregulering*, Leuven, Steunpunt Wonen, 2017.

[84] We write 'hardly' because of the regulation for inter-municipal partnerships, which have to set up a hotline for 'problematic housing situations' (including discrimination). Previously, there were hotlines for discrimination only in the town centres.

[85] As stated above, rental discrimination is covered by the Flemish Equal Opportunities Decree from 2014 onwards. Previously, federal anti-discrimination laws applied. However, in terms of content, both in area of the setting of standards and that of enforcement, these regulations are very similar.

[86] The studies were carried out using different research methods (qualitative, surveys, practical testing, screening of rental advertisements, etc.), on different geographical scales (local, Flemish) and for different grounds of discrimination (ethnicity, disability, ability, etc.). As a result, they lack the information necessary for it to be possible to map evolutions over time.

[87] E.g. J. Verstraete, D. Vermeir & P. De Decker, "'We shall not discriminate' Can/Will Flanders' Private Rental Secor keep up to its promise?" in M. Vols & C.U. Schmid, *Huoses, Homes and the Law*, The Hague, Eleven International Publishing, 2019.

for choosing a phased, constructive approach, in which sanctions can ultimately be imposed, similar to the enforcement strategy used by the Flemish authorities themselves in housing quality control. By opting for this approach, the Flemish region would not have to make any ideological choices, but would take into account administrative insights and recommendations from numerous experts. However, the Flemish authorities always ignore these recommendations. In recent years, it has done so in the drafting of the aforementioned action plan, where experts have concluded, among other things, that self-regulation is not a valid route and that a more credible enforcement office is needed in order to reduce rent discrimination[88]. It did so again with the findings of an academic committee of experts, which on behalf of the Flemish Government itself made recommendations on the monitoring of discrimination, including with regard to the private rental market[89]. Also, an evaluation of the Equal Opportunity Decree by Unia[90] and experts connected to three universities seems to be destined for the same fate[91]. This evaluation came to the conclusion - familiar to FEANTSA - that the prohibition of discrimination has too little impact due to an enforcement deficit. The underlying reasons cited were the same as those cited by FEANTSA in the complaint, including difficulties as regards proof[92], the individual responsibility of prospective tenants to initiate proceedings[93] and a lack of knowledge about the protection offered, especially for vulnerable groups. Furthermore, the experts confirmed that, in the period from 1 July 2014[94] to 7 May 2020, only three court rulings were known about rental discrimination, two of which concerned the same file and a third concerned a student rental[95]. They also came to the conclusion that there are still many steps to be taken in terms of enforcement and that – for the sake of international obligations - it is also necessary to take these steps. Reference was made to the fact that several European institutions have already warned that the enforcement as regards discrimination must be improved, and that the implementation of European anti-discrimination directives would otherwise be seriously jeopardised without judicial supervision[96]. Regardless of these warnings - which were already given by the UN Committee on the BUPO (Covenant on Civil

[88] J. Verstraete, D. Vermeir, P. De Decker & B. Hubeau, *Een Vlaams antidiscriminatiebeleid op de private huurmarkt. De mogelijke rol van zelfregulering*, Leuven, Steunpunt Wonen, 2017.

[89] After all, the Flemish authorities continue to rely on surveys to monitor discrimination, whereas according to the experts this is not the most appropriate methodology. See: S. Baert, M. Lamberts, S. Sottiaux, A. Van Hiel, P. Verhaeghe, D. Vermeir, J. Verstraete and S. Winters, *Eindrapport Centraal Expertencomité Discriminatie*, Brussel 2021.

[90] Unia, *Vlaams Gelijkekansendecreet - Evaluatie*, Brussel, Unia, 2020.

[91] E. Cloots, J. Vrielink and S. Sottiaux, *Evaluatie Gelijkekansendecreet. Deel II - Rechtspraakanalyse*, Brussel, Agentschap Binnenlands Bestuur - Afdeling Gelijke Kansen, Inburgering, Integratie, 2020.

[92] The landlord is able to take tacit action to exclude undesirable candidates and does not have to justify refusing a candidate. He may also cite fictitious reasons for the refusal, without the prospective tenant being able to ascertain whether these are the actual reasons for the refusal to rent.

[93] This responsibility is particularly at odds with traditional barriers to access to justice, especially for vulnerable groups, but also with specificities of law on discrimination. Thus, the outcome of a procedure will never result in the allocation of housing to the person discriminated against, due to the costs and time needed to be invested for a procedure – taking into account the difficulties as regards proof – and the amount of possible compensation for the victim is likely to be low.

[94] This was when Flanders became competent for the subject of housing rentals.

[95] E. CLOOTS, J. VRIELINK & S. SOTTIAUX, *Evaluatie Gelijkekansendecreet (Evaluation of the Equal Opportunities Decree). Part II – Rechtspraakanalyse (Analysis of case law*), Brussels, Agency for Domestic Governance – Equal Opportunities, Civic and Community Integration Division, 2020, 3 and 8.

[96] E. CLOOTS, J. VRIELINK & S. SOTTIAUX, *Evaluatie Gelijkekansendecreet (Evaluation of the Equal Opportunities Decree). Part II – Rechtspraakanalyse (Analysis of case law*), Brussels, Agency for Domestic Governance – Equal Opportunities, Civic and Community Integration Division, 2020, 59-60.

and Political Rights)[97], the UN Committee on Economic, Social and Cultural Rights[98] and the UN Committee on the International Convention for the Elimination of Racial Discrimination[99] – the Flemish authorities are going backwards. Where thresholds to justice could be at least partially offset by giving collective or institutional actors the possibility of instituting proceedings, the Flemish authorities now exclude this possibility. Unia still has this authority (although it is applied fairly little), but this no longer applies to the Flemish Human Rights Institute, which is to replace Unia. The new institute will be given only an awareness-raising and mediating role. Apparently, the Flemish authorities really do not have the slightest interest in pursuing a serious policy of anti-discrimination.

83. As regards this topic, FEANTSA linked the complaint to the mismatch between supply and demand, especially in the lower segments of the rental market. After all, scarcity in the private rental supply creates a framework for discrimination because landlords can almost always make a choice between different prospective tenants. A discriminatory choice (refusing an intrinsically 'good' tenant on the basis of discriminatory reasons such as physical disability or origin) has no negative consequences for the landlord in that context. This is because he has a sufficiently large rental pool. However, FEANTSA also pointed out in the complaint that scarcity leads to exclusion without necessarily involving discrimination. After all, the result is the same for candidates with a low income, who are therefore always rejected in favour of a candidate with a (slightly) higher income. In particular, these families find it difficult or impossible to access housing. According to the Equal Opportunities Decree, however, there is not an issue of discrimination in that situation, because a landlord is entitled to choose the candidate who is objectively best able to meet the tenant's obligations (read: who has the highest income). In this context, FEANTSA wishes to point out that the problem of discrimination and exclusion in the private rental market is therefore linked to the lack of support for this sub-market. The Belgian and later Flemish housing policy has triggered scarcity in the lower market segments, while an on average ever weaker and weaker group of tenants encourages landlords to select more strictly. Consequently, the anti-discrimination and equal opportunities policy in Flanders also calls for greater support for the private rental market and, in this way, the elimination of underlying mechanisms that prevent equal opportunity[100]. It is again observed that the housing crisis is so great that it will not be enough to eliminate discrimination in order to facilitate access to housing for vulnerable groups. Once again, FEANTSA has to observe that the Flemish authorities therefore do not respect their international obligations. They contribute too little to preventing discrimination as regards access to rented housing and make insufficient use of their housing policy for the purpose of eradicating poverty and social exclusion.
84. FEANTSA and the Flemish authorities agree on several aspects of housing quality control. FEANTSA acknowledged in the complaint that housing quality control was given a prominent place in the Flemish housing policy and that overall there is a positive evolution. FEANTSA also considers the phased approach, with an increasing pressure to comply with the rules, that the Flemish authorities are rolling out ('housing quality pyramid') to be a good approach (in the process of which FEANTSA regrets that the Flemish region does not pursue this approach in other areas, including the anti-discrimination policy). Nevertheless, as evidenced by the surveys cited in the

[97] Sixth Periodic Report of 6 December 2019 with regard to Belgium, CCPR/C/BEL/CP/6, §§ 15 and 16.

[98] Fifth Periodic Report of 26 March 2020 with regard to Belgium, E/C.12/BEL/CO/5, §§ 38-41 and 46-47.

[99] Report of 21 May 2021 with regard to Belgium, CERD/C/BEL/CO/20-22, §§ 21-27.

[100] E.g. M. Loopmans, H. Esam Awuih, P. De Decker, K. Heylen, B. Meeus, C. Minon, M. Moris, N. Perrin, S. Winters, F. SpijkersS, J. Teller, S. Vandenbroucke, K. Van den Broeck K & J. Verstraete, "Onderzoek van de private huisvestingsmarkt in het kader van de Diversiteitsbarometer", Interfederaal Gelijkekansencentrum, *Diversiteitsbarometer Huisvestin*g, Interfederaal Gelijkekansencentrum, Brussel, 2014.

complaint, there is also the finding that the housing quality policy has too little impact on the lower end of the market. FEANTSA pointed to the situation of, among others, the 'captive renters', who, due to a lack of other housing solutions, are stuck in homes of downright poor quality (with, among other things, 70% homes with humidity problems, 41% homes with electrocution hazards and 40% residents with a risk of CO poisoning).

85. FEANTSA also identified two underlying reasons on the basis of studies and analyses by experts. Firstly, there is the fact that the enforcement process is not sufficiently effective when it comes to addressing the problems at the bottom end of the rental market. This all has to do with a system based on individual reports and a housing market that offers hardly any alternatives for the households concerned, as explained above. The fact that the Flemish authorities, as they mention, have started to subsidise emergency homes from this point of view means that these problems are also recognised. However, the supply of emergency housing remains insufficient at present. Moreover, this is not a structural solution, since an emergency home is only offered temporarily (usually for three to six months) and the affected households have to be relocated afterwards. A second reason is therefore that market forces do not provide enough incentives for landlords to renovate their housing, since they almost always have a demand guarantee in the lower segment, even if they offer poor to very poor quality homes. The fact that Flanders does not tax landlords on their real rental income makes no difference to this. Incentive measures in order to boost the quality of housing are still lacking. It is true that in mid-2022 the Flemish authorities introduced a system whereby landlords can obtain an interest-free loan for renovation, namely if they offer the property to a social rental agency or directly to an individual tenant who belongs to a social target group. However, the system has not managed to persuade many landlords and is not currently a success[101]. No progress is being made on the ground.
86. FEANTSA has, therefore, to note that the Flemish Region fails, with regard to housing quality, to fulfil the obligations under the (Revised) European Social Charter, in particular for vulnerable households on the private rental market. In fact, it is precisely because the housing policy does not support every sub-market proportionally that there is an increasing gap in the private rental market between what tenants can pay and what yields a decent return for landlords. This is precisely why scarcity has come about in the lower market segments, which gives landlords guaranteed demand and accordingly insufficient incentives to invest in more decent housing. And it is also for this reason that the, albeit well-developed, housing quality control becomes ineffective for addressing the problems at the bottom of the market. The available data and analyses show this clearly time after time.
87. With regard to housing security, the Flemish Region cites certain measures from the sets of instruments of housing quality control, as well as provisions from the private housing rental law and the Fund for Combating Housing Evictions. It also defends itself against the criticism that too few data are kept on housing security, especially with regard to evictions.
88. Regarding housing quality control, FEANTSA would firstly like to refer to what has been mentioned above, including with regard to emergency housing (which is part of the answer to the problem of the difficult relocation of occupants). FEANTSA would also like to add that the Flemish authorities are in fact making access to social rental housing, as an alternative for residents in uninhabitable buildings, more difficult. After all, this group of residents will also have to come in via the 'second pillar' of the new allocation system, while the Flemish authorities have limited the total quota of priority allocations as stated, compared to the previous situation. The complaint also substantiated how recent regulatory changes raise additional barriers, while actors in the field indicate that a (timely) relocation was already a quasi-impossible task. For the 'quick solution' ('snelherstel'), this

[101] *Parl.St.* Vl.Parl. 2022-23, No. 7/K.

is an instrument that is known to be hardly or not at all applied on the ground for practical reasons[102]. The Flemish authorities simply ignore this criticism, which by definition is related to delicate and precarious living situations (resettlement in uninhabitable buildings), by referring to their inadequate regulations.

89. Moreover, housing security can of course be put under pressure not just by housing quality problems alone. The Flemish authorities are right when they state that the federal and later Flemish housing rental law does indeed score reasonably well in international benchmarks because it concerns a system that is well regulated on average. However, such comparative legal analyses must also take (more) into account the effects on the ground. Essential in this context is the Flemish regulation on the duration of rental contracts. In their response, the Flemish authorities are establishing arguments that would show that nine-year contracts remain the starting point and that the system of short-term contracts has not been made more attractive. This should be evident from the fact that, in the case of short-term contracts, the tenant has been given the opportunity to terminate the contract early (as a result of which, in the case of a short-term contract, the landlord runs more risks in terms of costs or loss of rent in the event of a change of tenant). However, this is a theoretical argument that the Flemish authorities do not empirically substantiate. One could just as well argue, for example, that in a market in which demand exceeds supply, the landlord does not really have to fear any loss of rent. The legal doctrine therefore states – according to FEANTSA, not without justification – that the system of short-term contracts under Flemish housing rental law is no longer an exception, but a secondary, fully-fledged system[103]. Figures from the Flemish Tenants' Associations also confirm this latest analysis: more than half of all housing leases are concluded for a short-term period (often one year)[104].
90. The importance of this issue to the actual level of tenant protection offered can hardly be underestimated. In the view of the federal and later Flemish regulator, a nine-year contract period was to be a central lever to correct the actual imbalance of power between the landlord and the tenant. It should not only protect the tenant's housing security, but also allow him or her to enforce his or her rights (for example, in terms of the quality of the house), without running the risk of being put under pressure by the landlord (by threatening to terminate the lease). The nine-year contract period was also always an important argument for not choosing to regulate rents. The regulator's reasoning was that massive increases in rent could be smoothed out by fixing the rent for nine years each time (subject to indexation and statutory possibilities for rent revision). The intention of the legislator was, therefore, to allow short-term contracts only as an exception[105]. Now that it has become apparent that, in practice, these short-term agreements are not the exception but rather the rule, the theoretical tenant protection is being eroded. At the end of each of the contractually foreseen (short) periods, the landlord has the option of stopping the rental agreement without having to give any reason, and then increasing the rent, within a new contract; without having to apply any brake. The fact that the Flemish legislature allows that loophole at least to survive is therefore difficult to accept. This puts pressure on the security of tenure. It is also an element contributing to the persistence of housing quality problems in the lower segments

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[102] D. Vermeir & B. Hubeau, *Woningkwaliteitsbewaking. Deelrapport 2: Een evaluatie van het handhavings-instrumentarium*, Leuven, Steunpunt Wonen, 2018, 122.

[103] M. Dambre, "Duur, opzegging en beëindiging van de woninghuurovereenkomst volgens de nieuwe bepalingen van het Vlaams Woninghuurdecreet", in M. Dambre, B. Hubeau, T. Vandromme & D. Vermeir (Eds.), *Het nieuw Vlaams woninghuurdecreet. Over grote en kleine wijzigingen in het woninghuurrecht*, Brugge, die Keure, 2019, 70.

[104] Incidentally, the Flemish authorities are aware of this, since they themselves referred to these figures in the Explanatory Memorandum on the design of the Flemish Housing Decree.

[105] *Parl.St.* Kamer 1990-91, nr. 1357/1 and *Parl.St*. Vl.Parl. 2017-18, nr. 1612/1.

of the market, as well as having prices that are disproportionate to the quality offered. Because of scarcity, the market power of the landlord is greatest in these segments, without the private housing rental law providing an adequate counterweight.

91. Regarding the Fund for Combating Housing Evictions, the Flemish authorities cite a recent study by the Housing Support Centre. The study indeed concludes that the Fund is conceptually well structured, but that there are a number of bottlenecks (which FEANTSA had also pointed out in the complaint, such as a lack of communication about the system). FEANTSA notes that the Flemish authorities selectively quote from this study. Indeed, in addition to poor implementation, it also appears that important restrictions also arise from the mechanism itself. The operation of the Fund amounts to a one-off, partial intervention in rent arrears in favour of the landlord, in the process of which the financial burden is shared between the local OCMW (local social services) and the Flemish Region. The intention is also that the OCMW assist the tenant in paying off the arrears[106]. The study finds that the very limited impact of the Fund has[107] to do with implementation, but also with a lack of resources for counselling and principally with problems of the private rental market itself. Indeed, in most of the housing eviction dossiers, the OCMWs consider that a one-off intervention by the Fund does not provide suitable assistance. This appears to be related in particular to the fact that tenants often face structural affordability problems, so that a one-off intervention does not offer a durable housing solution. According to aid workers, an intervention in order to avoid an immediate eviction and thus create some space to conduct the family at risk of eviction to a more affordable home also does not appear to be a realistic option. The shortages of affordable housing for low-income households appear to be so great on the ground that even with counselling it is not possible to find an adequate housing solution within several months.
92. In other words, the study confirms the analysis that the problems at the bottom of the rental market have meanwhile become so great that the housing policy instruments are becoming dysfunctional. For example, the public social service centres consider that the Fund for Combating Housing Evictions works for only a group of relatively 'stronger' private tenants with temporary affordability problems. However, this also means that the most vulnerable target group, which should be supported as a matter of priority, is not able to benefit from the Fund. Among other things, the study comes to the conclusion – familiar to FEANTSA - that Flanders should in fact work on (more) primary prevention when it comes to combating eviction, for example by making greater use of rent allowances or a wider range of social housing. This would help to reduce risks of eviction, while giving social workers more opportunities to guide clients in need of housing to adequate alternatives and to use staff capacity more proactively for those who still run into problems[108]. However, the waiting list problem in social housing and the limited system of rent allowances are still obstructing this. FEANTSA must, therefore, once again observe that the Flemish region is leaving the most vulnerable (and even those threatened with eviction) families in the cold.
93. Finally, the Flemish authorities state that the collection of data on evictions is, for jurisdictional reasons, a shared responsibility and that they themselves make sufficient efforts to obtain information. However, this is not correct. At the time of the sixth reform of the State, the special legislator expressly stipulated that the regions were to have jurisdiction over housing rentals,

[106] The whole sum or part thereof, in the judgement of the OCMW (municipal public social service centres).

[107] The 221 dossiers that the Flemish authorities mention must be compared with the approximately 12,000 annual eviction claims that are notified to the Flemish Public Social Service Centres.

[108] The public social service centres are signalling that, due to an excessive file burden, they are now forced to take remedial action in the most acute dossiers. See: D. Vermeir, *Evaluatiestudie Fonds ter bestrijding van de uithuiszettingen,* Leuven, Steunpunt Wonen, 2022, 6 & 53.

including evictions[109]. The Flemish authorities could rightly state that the organisation of the courts is a federal matter, but even then, they can invoke their implicit powers or enter into cooperation with the federal authorities in order to obtain the necessary information. The fact that Flemish regulations impose an obligation on the courts to transfer eviction orders to the public social service centres confirms that regulations regarding the collection of the necessary information is perfectly within the possibilities. The fact that there are insufficient data is therefore entirely due to a lack of initiative, not to jurisdictional problems. In addition, FEANTSA finds the argument that this would cause too much of a workload telling. Although the Flemish authorities exhaust themselves in terms of mechanisms to control and sanction (social) tenants, there seems to be no time to collect even basic information about the number of tenants threatened with eviction. This while it concerns situations that directly put pressure on the right to housing and often give rise to homelessness. It shows where the policy priority lies.

94. The only figures that exist on evictions are indeed estimates by the VVSG (Flemish Association for Towns and Municipalities), an organisation that takes this initiative to fill the gaps left by the Flemish authorities. However, the complaint already mentioned that these are rough estimates, which also do not provide any insight into the further eviction process (the figures relate solely to the number of claims). The Flemish authorities claim that they have the intention to change this, but at the moment the conclusion remains that the housing policy does not include sufficient insight into the problem. As a result, it is not possible to monitor the issue of evictions, nor can it be verified whether any policy measures are effective.

2.4 Homelessness

95. The Flemish authorities argue that homelessness is a complex issue for which various policy areas are competent. They also state that the mere existence of a Global Plan for Homelessness means that there is a coordinated policy. In addition, they claim that there is proper monitoring and always information available on the extent of the problem. Finally, the Flemish authorities state that the fact that an initiative is being set up to provide additional emergency homes testifies to their involvement and commitment to the matter and refer to other regulations that take into account this target group.

96. FEANTSA recognises that the topic touches on various policy areas. However, the Flemish authorities cannot explain the lack of progress by hiding behind this. The Flemish authorities are responsible for the most important policy areas that touch on the problem, in particular the welfare and housing policy. The Flemish authorities also recognise this when they refer to their action plan on homelessness. The fact that the complexity is used to argue that the problem is difficult to accurately portray defies all imagination, since it is an internal, Flemish matter (for which two policy areas must admittedly take up tasks). It goes without saying that this is no excuse for not having or having only a very limited view of a gross violation of human rights.

97. In practice, the action plan for preventing and combating homelessness appears to contain merely a sum of actions that affect housing and welfare policies separately. These actions exist side-by-side, do not interact with each other and, therefore, do not reinforce each other. In addition, there are measures in this action plan that have just the opposite result, such as the new social rent allocation system, which actually pays less attention to homeless people (see earlier). In addition, the monitoring of the action plan is limited to a six-monthly meeting and does not go beyond reviewing the actions included. The action plan and the implementation of the actions are not

[109] *Parl.St.* Senaat, 2012-13, nr. 5-2232/1, 83.

systematically evaluated. Many of the actions will be transferred to the local authorities without any obligation. SAM (Steunpunt Mens en Samenleving - Support Centre for People and Society) organised a survey of the existing supra-local networks for combating homelessness and found that there was a lack of targeted financial resources and a lack of Flemish coordination regarding the implementation of the plan. SAM also points out that it is not the task of local authorities simply to assume these responsibilities themselves.

98. The figures on the number of evictions in the private rental market are also extremely incomplete, as explained in the complaint. The information that is available comes from the local authorities and their umbrella organisation, VVSG. We acknowledge that more counts of homelessness are taking place, but figures for all of Flanders are still not available. No follow-up measurements have been carried out as yet. It is also striking that these counts are being carried out at the initiative of local authorities or community organisations and the King Baudouin Foundation and, therefore, not at the initiative of the Flemish authorities, which are responsible for this. The fact that the Flemish authorities seek to attribute these counts to themselves is, therefore, very strange. In addition, no embedded, structural, repeated counts have been recorded, which are nevertheless necessary in order to be able to organise the necessary follow-up and any policy adjustments. We refer to the figures in the initial complaint in order to make clear the extent of the problem and thus the need for intervention.

99. Although, as described in the complaint, 4000 emergency housing units are required, only 409 were realised in the past years, i.e. only 10%. At this rate, and with a constant need, it would take another 30 years for there to be sufficient emergency housing. The fact that the situation of homeless people can also be taken into account in a limited number of other policy instruments is correct, but as explained in the complaint, this is considered to be inadequate.

2.5 Caravan dwellers

100. No evidence of progress in the availability of new, additional sites for caravan dwellers has been demonstrated. The funds reserved for necessary renovations of existing sites are inadequate in view of the progressive realisation of the rights of caravan dwellers. The so-called 'strong voluntary incentive policy' apparently does not persuade local authorities to create significantly more sites.

101. At the very least, it can be noted that there are no recent data on the actual need for sites. Since the removal of the caravan dwellers from the integration policy, no further research has been carried out into the housing needs of this group. The estimate of the Minority Forum from 2018[110] that there is an additional need of 150 places per province is the most recent estimate.

102. We also note that the consolidated Flemish caravan policy, which brought together various actors in order to be able to monitor the situation and to make policy recommendations, was operational only until 2020 and has since been abolished.

103. The housing situation of caravan dwellers in Flanders remains thus in violation of Article 16, Article 30 and Article E of the Revised Charter, just as the ECSR earlier ruled in 2012.

[110] K. Janssens, *Een leven lang opgejaagd, de plek van woonwagenbewoners in Vlaanderen* (*Hunted for a lifetime, the place of caravan residents in Flanders)*, Tielt, Lannoo Campus, 2019.

2.6 Rational decision-making

104. The Flemish Region states that the abolition of the Flemish Housing Council coincided with a new way of stakeholder involvement, namely the 'stakeholder consultation'. This consultation would allow more flexibility and ensure early involvement of actors in the field. Nevertheless, sectoral organisations and housing experts were already able to give advice at their own initiative on social trends or policy proposals that were considered important, while now there is only consultation on those topics that the Flemish authorities put on the agenda. The main difference between the current and the former way of working, therefore, does not consist of those elements that the Flemish authorities cite. It is significant, however, that there used to be an obligation by decree to consult the professional field systematically concerning new policy initiatives. Currently, this only happens if the Flemish authorities leave room for it, which is not often the case, as is evident from the number of consultations. For example, there are now on average about three consultations per annum, while the Flemish Housing Council used to issue about fifteen opinions annually, which were often preceded by several consultations[111]. Moreover, the result of these consultations, the final recommendations, was also publicly available information. That is no longer the case. The lack of transparency is in particular a shortcoming for other stakeholders in the regulatory process. We are thinking, among others, of the Legislation Department of the Council of State, which used to be able to take note of substantive comments by experts and the sector. In its advice on proposed legislation, the Council now has less information at its disposal on which to judge whether a given measure complies with fundamental rights or not. It is also highly curious that the Flemish authorities have chosen to continue the other strategic advisory councils, but to end the Housing Council as a strategic advisory council. There is no justification for this difference.

105. FEANTSA also sees this lack of transparency and attention to the quality of the regulatory process in other areas. For example, at the beginning of the current parliamentary term (2019), the Flemish authorities decided that no more regulatory impact analyses needed to be carried out when drawing up new regulations. It is particularly unfortunate because it was at the incentive of the OECD that Flanders introduced this instrument about fifteen years ago in order to improve the quality of the regulatory process. According to the OECD, the regulatory impact analysis is still the appropriate instrument for this purpose. Another example are the so-called 'poverty tests'. These tests aim to assess the impact of new policy measures on people living in poverty, but are also often not carried out as they should be.

FEANTSA

22 December 2022

[111] E.g. Vlaamse Woonraad (Flemish Housing Council), *Jaarverslag 2019* (*Annual Report 2019*), Brussels, Vlaamse Woonraad, 2020.