EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

11 April 2023

Case Document No. 5

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

REPLY FROM THE GOVERNMENT TO THE FEANTSA'S RESPONSE

Registered at the Secretariat on 31 March 2023

European Committee of Social Rights

Complaint N0 203/2021

Submission on the merits of the complaint

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

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

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

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

Having regard to the the response of FEANTSA to the submission of the government of Belgium on the merits of the above-mentioned collective complaint

Preliminary remark

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

Reply by the Flemish Government on FEANTSA'S response

1. BACKGROUND

The Flemish government fully recognises the fact that as a region, Flanders (the Flemish Region) is responsible and competent for housing, and must comply with the associated international obligations as stipulated in the (H)ESH.

In addition, the Flemish government emphasises that the domestic legal and international obligations arising from and/or related to the right to housing are effectively respected by the policy pursued in Flanders (the Flemish Region). The Flemish government argues - and the plaintiff concurs - that the Flemish government is bound by a relevant and adequate commitment of effort to realise the right to housing in Flanders (the Flemish Region). In the following sections, the efforts and the significant increase in resources and instruments are (re)identified and supplemented where necessary, and these result in the stated commitment of effort being fulfilled.

The Flemish government highlights the fact that the policy systematically pursues the fulfilment of the right to housing, and takes additional steps in this regard. This is reflected in the substantial progress in housing policy in terms of means, measures, instruments and governance, thereby demonstrating the fact that the obligations are adequately fulfilled. In addition, the Flemish government reiterates the fact that competence for housing is exercised within an internal and external socioeconomic context. Macro socioeconomic factors and/or external events (such as a financial or energy crisis) play a role in the implementation and success rates of government policies. Such factors, together with finite public resources, explain the fact that government policies are necessarily imperfect and must continually respond to changing contexts. Shortcomings are inherent in a progressive government policy, and are tolerable within a context of a commitment of effort, insofar as the efforts are sufficient and achieve progress. In this sense, an international comparison is also relevant, given that neighbouring countries also face the same challenges, and the socioeconomic difficulties are similar. The plaintiff partly overlooks such a context and assumes a maximal result in the policy of housing, which, according to the Flemish government, de facto amounts to an effective commitment of results. Such results are neither legally required nor feasible given the context. The plaintiff overemphasises the fact that the policy does not achieve a maximal result, which, however, according to the Flemish government, detracts from the efforts actually made. Assessment of the outputs should then be based on the relevance and progress of the efforts themselves that lead incrementally to results. In this sense, the accusation on these points is both unjustified and insufficiently nuanced and well-founded.

Moreover, the plaintiff disregards the policy prerogative to independently interpret the permissible policy margin according to policy choices and measures. Among other things, this is the case when broader targeted measures are taken in addition to the targeted policies for those most in need of housing. In order to make the housing stock more sustainable, for example, various target groups fall into the scope of housing policy (inter alia from European competence, housing policy is pursued transversally with other policy areas to this end). However, a broader scope does not mean that policies in terms of resources and instruments overlooks those most in need of housing, which the plaintiff often implicitly or explicitly assumes. Moreover, broadening the scope often serves another purpose and is not in itself an argument for claiming that too little policy focus or resources are directed towards those in need of housing, especially since it is shown that resources for social housing (intended for those most in need of housing) are systematically increasing (and are even historically

high at an overall sum of €4.5 billion). Given the limited public resources, the government must also always take into account the general interest, and a balancing of the various social needs in different policy areas, as well as the realisation of fundamental rights (including the fundamental right to housing). This government context also partly determines the policy margins and the policy prerogative to concretize policy choices, but even then the choice in housing policy is to increasingly orient resources toward the target group of social rent (while other policy fields such as welfare also support the households most in need). This means that a more nuanced assessment of all government efforts is called for. The accusation that housing policy has the wrong focus is therefore unjustified, and takes too little account of the effective policy measures aimed at those most in need of housing on the one hand, and the government context in which overarching decisions and priorities can be made on the other.

In general, it is emphasised that, in accordance with the objectives laid down in decree (which prioritise the right to housing), the Flemish government works systematically to advance the realisation of the right to housing. This progress has been relevant and significant over the last decade in the various domains. With an almost threefold increase in the investment authorisation, a lot more resources are being allocated to social housing. These resources are deployed to effectively increase the supply every year, while making the transition to a sustainable social rental stock. Consequently, the number of social rental housing units made available has increased in recent years, from +/- 140,000 in 2009 to 175,000 by the end of 2021 (an increase of more than 30%). In absolute terms, the efforts effectively translate to explicit gradual progress in terms of resources and number of social rental housing units completed. Despite the absolute increase, the proportion of social housing units remains relatively stable at 6-7% of the total number of households, but this is due to the increase in the number of households themselves. Nevertheless, keeping the proportion of social housing units stable does not mean that this demonstrates a lack of serious effort, as the plaintiff claims. It only demonstrates that public investment can keep pace with demographic growth. Despite the systematic growth in the supply of social rental housing in absolute terms, there is still the policy intention to move toward increasing supply. The efforts are therefore continuing and are legally anchored with concrete deadlines (currently running until 2025). It is unjustified, and lacking nuance, when the plaintiff minimises these efforts by the Flemish government and labels them as insufficient, given the progress made. At the same time, it should be noted that additional flanking measures such as the rent premium (huurpremie) (when an individual has been on the waiting list for four years) support the social rent target group. If no social dwelling is allocated after four years, the waiting list then acts as an instrument to support individuals on the private rental market (which should put the waiting list and the shortage of social housing cited by the plaintiff into perspective, as support on the private rental market is activated, or can be). Furthermore, it should be noted that in the area of social rent, there is an allocation rule a ratio of 20% of the allocations for individuals or households in serious and/or acute need of housing (and who cannot wait four years for support, this group can be housed as a priority in social housing - see below). In this way, the needs of the target group can be met. However, the plaintiff assumes that there is a need for supply the same size as the target group itself, or an additional supply equal to the number of prospective tenants on the waiting list (the shortage is explicitly blamed on the government). Achieving such a broad supply would essentially mean achieving a maximal result, and implies a de facto commitment of result for the government. The government is not bound by any such commitment to achieve a result. Moreover, in the current financial and social context, a maximal realisation of supply is neither realistic nor feasible (as is the case for other regions and countries). The Flemish Government also points out that not everyone in the target group wants to have a dwelling on the social rental market. The Flemish government recognises the need for growth in the supply of social housing - and is continuing its efforts in this regard - but believes that the current multi-track

policy (realising the supply of social housing, support on the private rental market after the waiting period, and priority allocation to social rent) is based on an efficient and cost-effective approach. Through the rent premium, the needs of part of the target group are de facto met, and at the same time, efforts are made in both rental markets. On the contrary, the plaintiff assumes that the right to housing has been violated precisely because not every prospective tenant is allocated social housing, while the Flemish government has opted for a different approach.

The plaintiff further argues that the adapted social rental regime represents a step backwards compared to the current system, in part because those most in need would be disadvantaged. The Flemish government does not agree with this assertion and refers in this regard to its previous reply. As previously stated (and backed up with figures), prospective tenants who currently receive priority owing to their serious housing needs via the points system of social rental agencies will be able to access social housing via the second pillar. Therefore, according to the Flemish government, the choices made in the new rental regime are sufficiently accurate to make all profiles in the target group eligible for social housing, as well as the prospective tenants most in need of housing. 20% of all allocations must go to those most in need of housing. This creates the first differentiation within the (broadly defined) target group, whereby the allocation of at least one-fifth of the housing is legally guaranteed for those most in need of housing. Local housing and welfare actors must jointly assess the extent of the housing need (this is a new feature of the allocation policy and was introduced following the results of scientific research). Such a transparent process guarantees an objective and well-founded application of this 20% quota. In addition (and this is overlooked by the plaintiff), the local housing and welfare actors can jointly decide to designate a specific sub-target group that will also be allocated a quota, amounting to 1/3rd of the housing stock, in allocations. Which in itself offers sufficient degrees of freedom, where necessary, to provide this. The demarcation of this sub-target group can be focused on specific housing candidates according to local needs and requirements (such as ex-psychiatric patients). A mandatory quota for the people most in need of housing, along with a local sub-target group(s) to be assessed (in addition to the regular inflow through Pillar 1) should provide adequate guarantees to ensure that within the overall target group of prospective tenants, the most in need of housing is addressed. In addition, the updated allocation regime now takes chronology and local ties into account. All of this must make it possible to differentiate between needs and provide a solution for all prospective tenants. In this regard, explicit responsibilities are given to local housing and welfare actors on the one hand, and mandatory and protective quotas are imposed by the Flemish government on the other. In the Flemish government's view, this results in a balanced allocation system. The plaintiff also cites the facts that certain specific focal points, such as the language requirement and the obligation to register with the VDAB (Public Employment Service of Flanders) in the rent policy, are counterproductive or deter people, while the Flemish government has in fact included these requirements in the policy because of their positive and inclusive effects at the individual level and at the level of society. These requirements in no way restrict access to social housing, and therefore do not impede the fulfilment of the right to social housing. Therefore, the accusation regarding the rent regime and the updated allocation rules lacks nuance, and does not adequately acknowledge the actually demonstrated outcomes (but is made on the basis of assumed outcomes).

The fact that the Flemish government continues to intensify its efforts is evidenced by the recent decision to differentiate rental markets through the system of rental under conditions. This system provides for growth in the supply of housing, both in the private and social rental market, and also creates an intermediate regime between private and social rent. This intermediate regime provides additional protection for the group of households unable to access social housing. They can then rent on the private rental market on protective terms under conditions. Under this system, (private)

building owners and the housing corporations are asked to allocate one-third of the housing units in the project for social housing, in addition to one-third for the group of households above the target group for social rent and one-third that can be freely allocated. To support private actors in building social housing within these mixed projects, the balance of the FS3 investment authorisation (the unused FS3 funds) is used. In the future, this new way of working will result in additional supply of social housing (in addition to regular growth in supply by the housing corporations) and will also introduce a hybrid form of social support on the private rental market. This last element is new for Flanders (the Flemish Region) and is the next step in making the private rental market more socially oriented (in addition to renting private housing by the social target group, a practice that will be reinforced by organising housing corporations). The intended growth in supply on the private rental market will also have favourable effects on supply and demand, with possible favourable effects on pricing. These new initiatives also demonstrate the intention to realise the right to housing, and the stepped-up efforts of the Flemish government.

The Flemish government has pointed out in its previous defence that the private rental market is, in principle, a free market where supply and demand respond to each other and the contracting parties have full control, a policy choice which the Flemish government believes is still legitimate (to avoid disruption caused by excessive government interference). Within this conceptual choice, the Flemish government does ensure a careful balance regarding the rights and obligations of tenants and landlords (assessed by the OECD as adequate and balanced), steadily rising housing quality standards and housing quality policy, support for affordability for a specific target group (with a rent subsidy that has been broadened in its scope in recent years to the target group of social rent) and the preventive avoidance of evictions (see below on the fund to combat evictions). However, as cited in the previous defence, the precarious nature of the private rental market and possible loss of rental supply demands a cautious public policy, which the plaintiff characterises as insufficient intervention. The current set of measures in favour of the private rental market, in conjunction with the new system of rental under conditions show that the Flemish government is pursuing policy in the private rental market in a more targeted way, albeit necessarily cautiously and relying on free market forces.

The plaintiff also argues that the focus of housing policy is seriously unbalanced, given that property ownership takes priority in the housing policy. The importance of property ownership, and consequently the necessary policy focus in this regard, are legitimate choices in the Flemish government's view, although these are not priorities in the housing policy. Nevertheless, a large share of home ownership among the Flemish population underpins the general level of prosperity in Flanders (the Flemish Region). This forms part of the collective wealth and is part of the wealth accumulation of households. An owner-occupied dwelling also meets individual needs and provides broad stability. Furthermore, an owner-occupied home constitutes a financial buffer in the event of limited pension amounts, which is undeniably a reality in Belgium (and this is already mitigated in this way pending a reform of pensions, a pragmatic choice which the plaintiff criticises). The choice for a policy focused on home ownership is simply interpreted by the plaintiff as negative, while the Flemish government believes that the reasons cited to this end are legitimate (see first defence for a comprehensive overview in this regard). Moreover, the plaintiff gives too much consideration to this issue, given that the home bonus (woonbonus), the most pronounced tax instrument, has effectively been abolished for new mortgage loans (partly based on insights from scientific research, the policy was adapted) and registration duties have been reformed. The reforms effectively trickle down to the housing market (e.g., phasing out the home bonus has resulted in a dampening effect on prices). The plaintiff downplays the phasing out of the home bonus, while this phase-out has been accompanied by significantly fewer financial incentives for property acquisition. It is therefore unjustified to argue that the focus in housing policy is still on property ownership, now that the main incentive to this end has

been abolished (see below). FEANTSA further cites the argument that the freed-up resources are not being spent to benefit the housing situation of those most in need. However, this argument ignores the fact that the budgets for various policies for housing (such as rent subsidy, rent premium, loan authorisations, etc. - see also first reply) have in fact increased substantially. In addition, the government's policy margin allows resources to be redirected, taking into account existing societal needs and demands in the various domains.

2. PARTNERSHIP

The Flemish government has opted to implement the stated objectives, and the policies based on them, in consultation with partners, in particular local governments and housing corporations. Although the Flemish government is ultimately responsible for housing policy, it believes that such a cooperative model with partners, and shared responsibility, offers effective guarantees for the successful implementation and realisation of the right to housing. This model is dynamic due to its levels of freedom and, for implementation of the policy, encourages the empowerment of the local partners. At the same time, the model recognises the individuality of the local partners and allows them to have specific focal points within a legal framework (for example, to define specific profiles for allocation in social housing within the legal target group). This model builds on the principle of local autonomy and enjoys local support, which is effectively needed to care for the households most in need of housing, at the local level. Broad support is a prerequisite for local implementation of the housing policy, and the latter would be more difficult to adopt through a top-down approach by the Flemish government. Although shared responsibilities and roles may also entail risks (for example, delays in achieving the binding social objective), the Flemish government remains convinced of the suitability of such a decentralised cooperation model. Such a model inevitably goes together with the monitoring, follow-up and guidance of actors. This effectively takes place, among other things, by follow-up and guidance of the actors (cf. housing quality monitoring) and monitoring of the binding objectives, which is also laid down in procedures, in accordance with the legal regulations. The fact that dialogue and cooperation take centre stage in this regard cannot be interpreted negatively, but the plaintiff nevertheless unjustifiably regards this as insufficient follow-up overall.

In addition, the Flemish government highlights the recent reorganisation within housing policy, through the reform of different housing actors into single housing corporations, which is an additional strength in order to be able to work more decisively in the field. The traditional social housing corporations, with expertise in building social rental housing, and the social rental agencies, with expertise in assisting tenants and renting out on the private rental market, have been united into housing corporations. These are now in a one-to-one relationship with local governments, which previously involved a more unwieldy multiplicity of actors, resulting in difficult coordination. The targeted joining of forces and streamlining of sectors mean further professionalisation for the implementation of housing policy, and should produce better results . This element is also laid down in the revised performance manual for housing corporations (which prioritises clearly stated objectives and performance indicators).

The cooperation model used together with the reorganisation of the housing landscape testify to the substantial efforts made by the Flemish government to achieve better functioning and optimal fulfilment of the right to housing. The plaintiff downplays the value of these efforts, and views the governance as insufficiently focused. For example, the plaintiff states that the reorganisations are impeding the progress of the policy, especially the construction of new social rental housing, while

these are necessary steps to achieve better performance and results in the future. The comments made in this regard by the plaintiff equate to a one-sided, un-nuanced and unjustified assessment.

Furthermore, the plaintiff considers the policy cycle to be inadequate, as it does not adequately rely on monitoring outcomes, nor does it take into account the results of scientific research. In the earlier defence, it was already reaffirmed that the policy through the Policy Research Centre Housing always tries to gain the necessary insights and work with the results of research, also within the decision-making process. Therefore, the Policy Research Centre Housing is de facto an objective cornerstone of housing policy, that can effectively adjust and/or underpin policy. There are several examples of this in the recent past, including the evaluation of the fund to combat evictions, scientific research as a function of optimising the policy cycle of housing quality monitoring, research into the new Flemish regulations on the private rental regime, etc. Whenever possible, scientific insights are linked to experiences and findings of actors and workers in the field. As a result, the plaintiff disregards the merits of the Policy Research Centre Housing and its spillover effect into policy and policy measures at all stages of the policy cycle.

3. SYSTEMATIC APPROACH TO HOUSING POLICY

The plaintiff argues that the Housing Policy Plan Flanders (Woonbeleidsplan Vlaanderen) sets goals without referring to the right to housing. However, the plan repeatedly refers to the main objectives laid down in the Flemish Housing Codex, which explicitly states that 'Everyone has the right to decent housing'. Consequently, it is unjustified for the plaintiff to claim that the right to housing is not an explicit basis for the Housing Policy Plan (which is explicitly referred to, albeit not directly). Furthermore, the plaintiff asserts that there are no measurable and attainable (interim) goals. Nevertheless, the Housing Policy Plan did set (interim) goals, for the various indicators selected for monitoring the plan. Measurable targets were explicitly defined for these indicators, with periodic steps for 2020, 2030, 2040 and 2050 (except for the factors of affordability and housing security, where an improvement was proposed as it is not only housing policy that has an impact on these). Consequently, a systematic progression is envisaged, linked to objective parameters. Moreover, further efforts are being made to strengthen and further objectify the planned approach, by incorporating additional indicators and parameters in various measurement tools. For example, we can highlight the Flemish Housing Monitor, an instrument developed by the Policy Research Centre Housing. The Housing Monitor uses an even broader set of indicators to monitor the strategic targets of the Housing Policy Plan Flanders. In the short term, the annual Policy and Budget Explanatory Notes (Beleids- en Begrotingstoelichtingen - BBT) will also be envisaged, with a specific monitoring section to oversee, monitor and track the various operational targets through an additional set of indicators. It is therefore incorrect and un-nuanced to claim that housing policy is not adequately based on objective criteria, and overlooks parameters and monitoring. The plaintiff further claims that the Housing Policy Plan Flanders does not identify any strategy or instruments to achieve its strategic targets. The aim of the Housing Policy Plan is primarily to lay down and make explicit long-term targets. The way in which the gradual fulfilment of the targets can be achieved is laid down in the Flemish Housing Codex. Action plans must be drawn up for each legislature to specify the next steps, in order to systematically achieve the targets in the housing policy plan. Such a cycle is particularly relevant. On the one hand, it takes into account the possible focus points of the new legislature. On the other hand, through the action plans, which are shaped by policy papers and annual BBTs, the concrete policy measures must be indicated to further systematise the right to housing. Therefore, it cannot be argued that the approach to housing policy is not plan-based, nor that the realisation of the right to housing is not progressively envisioned.

In the general context, reference has already been made to the broad application of scientific research to the present policy challenges, as well as the actual input of results into the policy cycle. In this regard, the plaintiff accuses the Flemish government of paying too little attention to data and expertise regarding the housing situation of the most vulnerable households, and refers to the blind spots in the expertise on housing. In this regard, it should be pointed out that the most vulnerable groups are effectively more difficult to reach and that there are therefore additional methodological difficulties that hinder research into their (housing) situation (for example, they are less visible in traditional administrative databases, they are more often excluded from housing surveys as the sampling is conducted on the basis of domicile, etc.). The Flemish government is aware of these sticking points but nevertheless endeavours to the extent possible - in addition to a general understanding of housing and the housing market - to obtain a clear picture of the housing situation at the bottom of the housing market and/or the housing situation of the most vulnerable households. The Policy Research Centre Housing, among others, does conduct research into the situation of the relevant individuals, and also identifies the difficulties in this regard (most recently regarding the limited take-up of the rent subsidy and the rent premium, instruments expressly intended for this target group, the research into neighbourhoods with a concentration of vulnerable households, the evaluations of the rent guarantee loan and the Fund to combat evictions, etc.). In this way, it is possible to use the insights to devise specific and targeted housing policies. It is therefore unjustified and un-nuanced to claim that the Flemish government overlooks this aspect and/or that the blind spots are not being looked into. Moreover, particularly vulnerable groups are the subject of a specific focus in the monitoring. A number of indicators are included specifically for this purpose in the Flemish Housing Monitor, and are systematically monitored in function of more optimal insight in this area, and possible policy implementation in this regard. The monitoring of these indicators is based in part on large-scale scientific research into housing in Flanders (the Flemish Region). The fieldwork for the new edition - the Woonsurvey 2023 (Housing Survey) - is currently taking place. By way of illustration, a number of indicators are discussed in the Annex (including on discrimination in the housing market).

4. THEMATIC EXAMINATION

4.1 The ownership market

A. The recommendations by international authoritative bodiess

In the complaint, there is criticism of the fiscal measures taken by Belgium, and in particular Flanders (the Flemish Region), in recent years in the area of housing policy. Contrary to what the complaint describes as negative, we can highlight the fact that the current fiscal measures, such as the abolition of the home bonus (with ongoing contracts phased out) and the reduction of registration duties, have partly come about in response to recommendations by a number of international authoritative bodies, including the OECD and the European Commission (and further elaborated for Flanders (the Flemish Region) through scientific research).

For example, the 'home bonus' (woonbonus) was criticised on several occasions over the years by the OECD in its *Economic Surveys*.[1] The 2015 report described the home bonus as "*complex ways of mitigating the high transaction tax rates.*"[2] In 2020, the OECD stated that *"phasing out mortgage tax credits, would improve the efficiency and fairness of property taxation"*.[3] The European Commission also highlighted the negative effects of the home bonus in its working document for the country report for Belgium. The European Commission highlighted the fact that, among other things, the home bonus encourages people to take out mortgage loans purely for tax reasons, rather than due to a lack of private funds.[4]

The policy prioritised abolishing the home bonus[5] (with phase-out regime) in conjunction with a reduction of registration duties. Indeed, the Flemish government considers a policy to encourage home ownership appropriate (cf. reasons cited above) but at the same time wishes to avoid the effects of the home bonus described as negative, and to continue to encourage home ownership. Partly for this reason, it was decided to impose a (reduced) rate of 3% on taxpayers for the purchase of their first and only home. This is intended to make it easier for (young) buyers to acquire their sole own dwelling. Whereas the home bonus is a tax deduction that is taken into account in the annual assessment of the personal income tax, during the term of the loan, and consequently contributes little at the time of the actual purchase, a reduction of sales duty ensures that the amount that a buyer needs to have at their disposal at the time of the purchase is much lower. However, when it comes to purchases of a property other than the family home, a standard (increased) rate of 12% applies. This gives buyers looking to purchase their family home a significant advantage over investors buying to invest. Such policies are recommended by research and higher authorities. The OECD has recommended reducing registration duties for several years now. Indeed, the 2015 OECD report made the following recommendation regarding the housing market in Belgium:

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[1] OECD Economic Survey: Belgium 2015, p. 101 and 104, OECD Economic Surveys: Belgium 2015 | READ online (oecd-ilibrary.org); OECD Economic Survey: Belgium 2022, p. 106-107, Improving economic opportunities for all | READ online (oecd-ilibrary.org).

[2] OECD Economic Survey: Belgium 2015, p. 101, OECD Economic Surveys: Belgium 2015 | READ online (oecd-ilibrary.org).

[3] OECD Economic Survey: Belgium 2020, p. 32, OECD Economic Surveys: Belgium 2020 | READ online (oecd-ilibrary.org).

[4] European Commission, "Commission Staff working document - Country report Belgium 2015: Including an In-Depth Review on the prevention and correction of macroeconomic imbalances", COM 2015 85, p. 34-35.

[5] Coalition Agreement of the Government of Flanders 2019-2024, p. 15, Government of Flanders 2019-2024, coalition agreement (vlaanderen.be).

"Tilt housing taxes towards recurrent taxes and away from transaction taxes. Reduce transaction taxes trough lower rates instead of increasing abatements and expanding portability of previously-paid taxes".[6] (emphasis added)

The subsequent report from 2020 only welcomed this reduction. For example, the report stated that in Flanders (the Flemish Region):

"The transaction tax rate for the purchase of a sole dwelling was reduced from 10% to 7% in 2018 and 6% in 2020

(...)

These efforts should continue as there is room to further shift away from transaction taxes towards recurrent property taxes, which would lower distortions while keeping revenues constant".[7] (emphasis added)

In its recent report from 2022, the OECD reaffirms that phasing out the home bonus is a step in the right direction towards tax neutrality between renters and owners[8], while the plaintiff claims that tax neutrality is ignored or negated by the housing policy (which is unjustified and contradicted by the international sources cited). Besides abolishing and phasing out the home bonus, the decision was also made to eliminate portability of sales duty, following a short transition period.[9] As such, the system of 'portability', under which the buyer can deduct the sales duty he or she paid on a previous home from the sales duty he or she needs to pay on a subsequently purchased family home, will gradually be phased out. Along with the phasing out of the home bonus, abolishing portability of sales duty as a policy instrument means a reduction in tax benefits for owners. However, these steps that help achieve a more optimal 'fiscal balance' between tenants and owners are unfairly downplayed by the plaintiff, based on the idea of exhaustive fiscal neutrality. Moreover, tax neutrality in the absolute is not always desirable, and tax differentiation may be appropriate in policies to give advantages, for example, to owner-landlords who wish to attract a specific target group (cf. rental under conditions in France and Germany).

Abolishing tax benefits such as the home bonus and portability of sales duty is also part of the objective of reducing the complexity of the Belgian/Flemish tax system. Belgium has already been criticised on several occasions that its tax system is too complex owing to the many exemptions, reductions, deductions, etc.[10] With the abolition of these tax instruments, Belgium/Flanders (the Flemish Region) is one step closer to a simplified tax system with less tax erosion and broader tax bases.

Furthermore, the Flemish government highlights the fact that the complaint does not mention anything about the tax benefits in social rentals, such as the special regime of 7% sale duty for individuals who buy a house or apartment to rent it out through a social rental agency (see art. 2.9.4.2.13 VCF). This special sales duty regime was introduced in 2018 and aims to make investment in social housing more attractive, by reducing registration duties by almost half. There is also the reduced property tax rate for properties rented out as social housing (see Art. 2.1.4.0.1 VCF) and the gift and inheritance tax rate of 0% in the case of a gift or inheritance of property to an approved housing corporation (see Art. 2.8.4.1.1 VCF and Art. 2.7.4.2.1 VCF, respectively). There is also the reduced rate

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[6] OECD Economic Survey: Belgium 2015, p. 104, OECD Economic Surveys: Belgium 2015 | READ online (oecd-ilibrary.org).

[7] OECD Economic Survey: Belgium 2020, p. 32, OECD Economic Surveys: Belgium 2020 | READ online (oecd-ilibrary.org).

[8] OECD Economic Survey: Belgium 2022, p. 106-107, Improving economic opportunities for all | READ online (oecd-ilibrary.org).

[9] Art. 78 of the Programme Decree accompanying the 2022 budget.

[10] See, inter alia, Council Recommendation of 14 July 2015 on Belgium's national reform programme 2015 and including the Council's advice on Belgium's stability scheme 2015, 2015/C272/07, p. 3 and Council Recommendation of 13 July 2018 on Belgium's national reform programme 2018 and including the Council's advice on Belgium's stability scheme 2018, 2018/C320/01, p. 6.

of 1.5% sales duty when a social housing unit is purchased (art. 2.9.4.2.3 VCF). This demonstrates that Flanders (the Flemish Region), even in terms of its fiscal measures, does commit to social housing and uses fiscal differentiation in order to support the most vulnerable households in their right to housing.

B. Principle of legitimate expectations vs. Home bonus

In addition to its criticism of the various tax measures, the plaintiff denounced the fact that the home bonus for current mortgage contracts is being phased out, rather than being immediately abolished in full (leaving this tax measure to impact the budget for some time to come). The Flemish government reiterates the fact that the instrument has indeed been abolished and the tax benefit no longer applies to new contracts/purchases from the entry into force of the relevant regulations. Current mortgage loans in place at the time the measure was enacted are subject to the phase-out regime. This approach makes it possible to uphold the commitments made in the past, which provides legal certainty and clarity for citizens (the opposite approach would equate to unfair and uncertain government action). Moreover, we can highlight the principles of good governance that apply in our legal system as legally guiding beacons. Among other legal principles, the principle of legitimate expectations is essential in this regard, and this means that (freely translated):

> "*the citizen must be able to rely on assurances or promises made by the administration in a specific case, or on what cannot be understood by him as anything other than an established rule of conduct or policy of the administration under which that administration may not betray the legitimate expectations raised by him.*"[11]

Moreover, in light of the case law of the Constitutional Court, the principle of legitimate expectations ensured that abolishing the home bonus even for current contracts was neither desirable for the legal certainty of the relevant individuals nor a viable option in legal terms. Judgment No. 63/2013 stipulates that there may be a violation of Articles 10 and 11 of the Constitution if the principle of legitimate expectations is disproportionately compromised. When an individual takes out a mortgage loan, there is an expectation that they will be entitled to the tax benefit of the home bonus during the term of the loan. Abolishing this bonus for current loans disproportionately violates the legitimate expectation and was impossible to foresee for the citizens who were entitled to it at the time. For these reasons, the choice was made to gradually phase out the tax benefit for existing contracts, on the one hand, and to abolish the benefit for new loans from the date of entry into force, on the other.[12]

C. Taxation is not (per se) the solution to affordable housing

In the Flemish Government's opinion, the plaintiff places too much emphasis on taxation as a tool for affordable housing. In this regard, the government points to the complexity of the housing market and the fact that fiscal instruments cannot always respond quickly and/or adequately to the inelastic housing market and its potentially market-distorting effects. Taxation does constitute an instrument to bring about changes in the housing market, but this requires exhaustive research and analysis in which all the fiscal measures must fall within the scope (precisely in order to verify the interrelations

[11] Definition from I. OPDEBEEK and M. VAN DAMME, *Beginselen van behoorlijk bestuur*, Die Keure, 2006, p. 320.

[12] See judgment of the Constitutional Court no. 63/2013, 8 May 2013. This case involved a similar situation regarding the transitional arrangement of tax credits for passive dwellings and the principle of legitimate expectation.

and completeness of the outcomes). At the same time, the complexity of taxation must be taken into account, which is currently split to a significant extent between the various levels of government (and can be detrimental).

The plaintiff refers to the study by the National Bank of Belgium that would show that housing prices increased by 3% by the reduction in sales duty for the sole own dwelling, and the increase in it for the purchase of the second home, which could have a negative impact on renting out cheaper housing. Nevertheless, the Flemish government believes this must be nuanced, a fact which is also cited in the study itself. For example, the study emphasises that the policy pursued in the area of registration duties does have its merits (such as making the acquisition of the first home more accessible) and that additional research is needed owing to the limited data researchers could work with.[13]

4.2 Social housing

The foregoing outlines in general terms the heightened merits and efforts of the Flemish government in the area of social housing. Nevertheless, the plaintiff specifically argues (A) that the Flemish government has failed to demonstrate in its reply that it has taken steps forward in increasing the supply of social rental housing, (B) that the binding social objective ash an instrument is insufficient and inefficient, (C) that it remains unclear whether the reform of the social rental sector will effectively have a positive impact on the supply, and (D) that the argument regarding the recent changes to the social rental system by the Flemish government shows precisely that they do not benefit the most vulnerable groups.

(A) Supply of social rental housing units

The plaintiff believes that no progress has been made in creating social rental housing, and instead argues that the supply shortage has become more acute. Above (and in the previous reply), we cited the increase in the available resources for social housing (which can be shown in the Flemish budget). Furthermore, the plaintiff indicates in their reply that during the last 10 years there was actual annual growth of 2,000 to 2,500 housing units (concrete figures demonstrating this growth were also mentioned in the previous reply). Consequently, in terms of numbers, the stock of social rental housing is systematically growing on account of more investment. Therefore, the claim that no progress has been made is based neither on the budgetary context nor on the reality of the absolute increase in the supply of social housing in the field. At the same time, the Flemish government recognises the need for additional social rental housing, but cannot subscribe to the maximal outcome in supply put forward by the plaintiff (see previously the complementary effect of broader supply and support through the rent premium for those on the waiting list). However, the intention to continue increasing the supply of social housing is repeatedly expressed in policy terms and the efforts are confirmed by various initiatives set up by the Flemish government to adjust and/or optimise the instruments, and/or to develop new instruments (in addition to the increased budgetary efforts mentioned above). By way of illustration, reference can be made to several recent decisions:

- a faster file flow for the approval of social construction projects was put in place;
- the design guidelines and the simulation table were modified, and the loan ceiling was raised. The simulation table was adapted according to the indexation of unit prices together with an

[13] NBB, "Housing inequality and how fiscal policy shapes it: Evidence from Belgian real estate", https://www.nbb.be/doc/ts/publications/wp/wp423en.pdf, p. 20.

application of a general price increase. Furthermore, prices per square meter were adapted. Specifically for central cities, the price coefficient was increased. These initial results already indicate a larger allocation volume;

- a new modus operandi for the housing policy covenants (see below): in order to facilitate maximum utilisation of the budget, from 2022 the possibility of concluding covenants on an ongoing basis was also created;
- the development of two new group tenders: 'Design and Renovate' will allow as many renovations as possible to be tendered at once, and CBO+ will be an extension of CBO whereby promoters can also insert buildings to be renovated. In addition, the CBO procedure was launched twice for the first time in 2022; this will be organised in this same way in 2023.

Despite the increased budgets, these are not always fully utilised by partners on the ground. To remedy this, and gain a better understanding of the problem of underutilised investment budgets for social housing, the Flemish government commissioned the Policy Research Centre Housing to look into it. In addition to explanatory factors, the study primarily examined what measures and initiatives could contribute to accelerated and increased investment. It is partly in this light that innovative policies are being pursued that complement the traditional practices and standard partners to see how to expand the supply.

An example of this innovative policy in the context of expanding supply is the system of rental under conditions (which was briefly touched upon above and in the previous reply). On the private rental market, housing rented under conditions can then be offered to a specifically defined target group of families in need of housing, and single persons (and with a protective rental regime). The Flemish government has devised this instrument to achieve both an expansion of supply in the private rental market and in the social rental market. Specifically, private promoters and housing corporations will be financially motivated through a subsidy to set up housing projects with social housing and rental housing under conditions[14]. To this end, two systems have been placed on the market: an open system elaborated in regulations and the call to available land and buildings. This new instrument comes on top of the construction of social rental housing by the housing corporations and, thanks to the contribution via private partners, can provide a catalytic effect in the increase of supply of social rental housing. At the same time, the increase in the supply of high-quality, affordable private and social rental housing will also relieve the pressure on the demand side of the rental market, benefiting both social tenants and families in the private rental market who are just ineligible for social housing. The extended reinvestment obligation (whereby resources and profits must always be used to create additional supply of social rental housing) and the moratorium on the sale of social rental housing (following the reforms among social housing actors) also constitute recent decisions aimed at obtaining guarantees to enhance and/or maintain supply.

Although the efforts of the Flemish government are in themselves demonstrated by the increase in investment budgets and the annual increase in supply, the effects of the complementary initiatives (such as the faster procedures, the new group tenders, etc.) are not yet fully trickling down on the ground (among other things because construction projects take time - as the plaintiff also points out). At the same time, these elements do show that through improving processes (removing thresholds, improving procedures), targeted research and new instruments, the Flemish government continues to look for ways to effectively increase the supply of social housing. These intensified efforts are unfairly downplayed by the plaintiff, or are dismissed as 'camouflaging' the reality (which is not the case but is,

[14] On 23 December 2022, the Flemish Government approved in principle the implementing order on this matter at the first reading.

on the contrary, evidence of the meticulous monitoring of processes and an adequate response to bottlenecks/sticking points).

Another element cited by the plaintiff concerns the allocation of a considerable portion of the resources for the renovation of the social rental stock. Although the plaintiff welcomes the renovation efforts, at the same time the Flemish government is accused of not devoting enough attention and resources to this in recent years. The argument that in the past too little attention was paid to this aspect, while today financial resources are indeed made available, shows that the Flemish government does take its obligations seriously (which is implicitly recognised by the plaintiff). In addition, together with the sector, a Climate Action Plan 2050 was also devised to prepare the social housing stock for the climate objectives (to this end, in addition to the renovation budgets from housing, specific resources are made available from the Flemish Climate Fund). The fact that such a global renovation campaign has been designed incrementally and systematically also testifies to a collective planned approach (cf. global renovation planning). In each case, setting up specific renovation projects requires the necessary time in which homes become vacant (as the plaintiff also mentions in their reply) and alternatives must be offered to social tenants. The housing corporations and the Flemish government are indeed aware of the scope and impact of the overarching operation (liveability, alternative accommodation, financial, perception). The choice is therefore made to simultaneously envisage maximum use of the housing stock during the phase of vacancy (if the essential requirements in terms of standards are being fulfilled). For example, vacant dwellings pending renovation can be temporarily rented outside the system. A housing corporation can rent vacant houses pending renovation or demolition, to the public authorities, welfare or health facilities, organisations recognised to this end, or natural persons (art. 6.36 §2 of the Flemish Housing Code). There is also provided that vacant housing can be used to accommodate temporarily displaced Ukrainians (Decision of the Flemish government of 18 March 2022). Here too, the Flemish government is making sufficient efforts to make the switch to an energy-efficient and high-quality rental stock at the same time as making optimal use of temporarily vacant houses. The allegations are therefore unjustified, in the Flemish government's view.

(B) The Binding Social Objective (BSO)

It was previously cited that the Flemish government wishes to implement housing policy in an equal partnership (in the first instance with the housing corporations and local governments). In this regard, the emphasis in policy implementation is not on a top down approach but rather on guidance, dialogue and monitoring in addition, of course, to imposed objectives. With the BSO, the Flemish government has assigned to the local authorities an objective, achieving social rental supply, taking into account local support (measured by the number of inhabitants), the already implemented efforts and the already realised supply. The way in which the objective is implemented can be left to the discretion of local actors. With this initiative, the Flemish government envisaged an additional supply of around 50,000 social housing units (over a period of 15 years). As previously stated in the earlier defence, this does constitute an ambitious objective that evidences a serious commitment of effort and, moreover, one that is not straightforward to realise on the ground. The plaintiff argues that the objective is inadequate given the population growth and increased needs. It was argued above that the Flemish government prefers a multi-track policy to support the target group, all the more so since it is unrealistic, and unaffordable with the limited government resources, to meet needs purely by creating a supply of social rental housing which is equal to the target group or the waiting list.

The plaintiff states that the Flemish government does not sufficiently follow up on the imposed objectives and refuses to sanction municipalities that do not meet their objectives. However, the partnership model applied by the Flemish government is primarily based on encouraging, guiding and persuading, rather than relying on direct steering and sanctioning. This method of approach is consistent with the principle of local autonomy (much more so than the opposite model, in which there is just unilateral steering). Moreover, it is not the case that steering and sanctioning are not envisaged in the procedures, although these come after the other steps have been exhausted (and the steps in the procedure of progress have been completed). Therefore, in the Flemish government's view, the approach is not at all non-committal, but because a graduated system was developed, the steering mechanisms come only at the end. For example, a municipality that is in category 2B must enter into an agreement with one or more social housing organisations or local governments. This agreement, which is valid for three years, contains the commitment of the parties to create additional social housing supply in the municipality. If a municipality does not enter into such an agreement, Article 2.58, §3 of the Implementing order of the Flemish Housing Code provides that the Minister, after notifying the Flemish government, will enter into an agreement with a social housing organisation that is willing to realise the required social housing supply on the territory of the municipality. If it appears that the municipality still does not cooperate in the implementation of these agreements, the Flemish government may use to this end any financial mechanism legally prescribed to sanction the non-implementation of municipal obligations (article 2.23 of the Flemish Housing Code). However, the graduated mechanisms and remedies have so far proven to be sufficiently effective that sanctioning has not had to be applied to date. Indeed, the guidance discussions with the 2B municipalities in the context of the progress assessment are sufficiently efficient that additional measures are not necessary.

FEANTSA also complains that the BSO figures included by the Flemish government in the reply do not correspond with its own data. This finding is not based on reality, as the data actually come from the progress test. The picture portrayed is based on the municipalities' categories in the 2020 progress test (with an evaluation of the supply of social rental housing on 31 December 2019). This picture shows that 180 municipalities are in category 1 (they are clearly following the stated growth path), 107 municipalities are in category 2a (and are consequently making sufficient efforts to achieve the objective by 2025) and 13 municipalities are in category 2b (their efforts are insufficient at present to achieve the objective). These figures were transparently communicated in the Parliamentary Committee of Housing and Immovable Heritage (5 May 2022). The plaintiff also claims that the Flemish government presents the realisation of the binding social objective far too positively. The plaintiff's reason for this is that in addition to the locally imposed growth paths, a supply of housing must also be realised through covenants (for this supply, the Flemish government anticipated a realisation based on voluntary commitments that local governments can make). In this light, the Flemish government wishes to underline the fact that to date, 5,915 dwellings have been realised through covenants. Moreover, many covenants are still in progress (and, consequently, more supply is in the pipeline). The plaintiff criticises the fact that the covenants are hardly encouraging the local governments, even though measures were also taken to facilitate this. In this context, a new method for concluding covenants was developed. Municipalities with a high percentage of social rental housing, or that have already reached their objective could, following a periodic call by the minister, enter into a covenant for the realisation of additional supply of social rental housing. However, the actors themselves indicated that they could not adequately respond to emerging opportunities in this way. To address this, a new method for concluding covenants was devised. As of March 2022, in addition to the periodic call, a municipality can claim a budget envelope whereby a covenant can always be concluded for a specific project. This allows that a local government can react quickly, for example in cases of purchases

of quality housing, a CBO or Design-and-Build project or any other new construction or replacement construction project with an increase in social rental housing.

In the Flemish government's view, it is clear that in terms of the targets imposed on local governments, significant efforts are being made by the Flemish government (both in the monitoring of the local objective and in the voluntary commitments that local governments want to take on via covenants). Furthermore, it can be stated that the deadline for realising the BSO has been set at 2025 and, consequently, there is still room for guidance and, where appropriate, adjustment to achieve the stated objectives. At the same time, a process has also since been launched aimed at developing a new BSO.

(C) Reform of the social housing sector

The reorganisation of the housing landscape (integration of the social housing corporations and the social rental agencies into housing corporations) was cited above as a generally adequate step to establish a more effective organisation, and to achieve more professionalism (with larger areas of operation, more supply per housing corporation and a one-to-one relationship with the local governments).

The plaintiff claims that it is unconvinced that reforming the social rental sector will lead to an increase in supply. To this end, the plaintiff cites that the integration process at short notice has led to a delay in the renovation and construction of housing. Moreover, the plaintiff argues that in this reform process, some social housing corporations have opted to sell some of their stock (which has a negative impact on supply).
The fact that in the short term the (legal) reorganisation will have an impact on the construction and renovation activity is clear. However, this does not mean that the reorganisation and scaling up should not be implemented, nor can it be argued that the envisaged professionalism would be less effective and efficient for the sector and for the tasks to be carried out (in this, the complaint is substantively premature, given the current stage of implementation). And by the way, it was also opted for the shortest possible, but feasible, transition period. Once the structure of the housing corporation is implemented in the field, the new structure can play to its full potential and the focus will once again be on executing assignments. The economies of scale achieved will resonate in the further professionalism of the social housing. The merger will mean that more houses can be built, more and better quality rentals in the private rental market and the development of a broader guidance (both for tenants and prospective tenants). Efficiency gains will also result from the one-to-one relationship between the housing corporation and the local government. In general, this ensures greater transparency and clarity for tenants and prospective tenants, the streamlined flow of the target population, the improvement of service quality and faster implementation of the expansion of the supply of social housing at the local level.

As for the argument regarding the sale of social rental housing, it should be stressed that this was a unilateral and exceptional case linked purely to the context of the reform (and the exception confirms the rule here). The impact of this on the supply of social housing is overstated by the plaintiff and should be qualified by the facts and the decree context. Indeed, the reinvestment obligation laid down in the decree[15], which came into effect on 20 September 2021, guarantees that the venal value of social rental houses that are taken out of the social rental system must be reinvested in the social rental sector. This reinvestment obligation used to apply in practice only to social housing

[15] See Article 4.1/1. FCH of 2021

corporations, but was extended by the amending decree to all actors supplying social rental housing. The Flemish government also wishes to indicate that as a result of the cited exceptional sale of social rental housing by the social housing corporation[16] in question, a decree initiative was immediately put in place. As such, selling rentable social rental housing - at least until 1 January 2028 - was made impossible[17]. In this regard, the Flemish government wishes to highlight the anecdotal nature of various substantive arguments on which the plaintiff relies (such as the delay in the growth of supply or exceptional sales). In themselves, these elements do not demonstrate that reform within the sector in terms of focus and content is not justified (they only show that in ongoing reforms or process changes, unexpected events can occur).

The plaintiff also claims that local administrators are more sensitive to NIMBY campaigns by local residents. This apparently makes them reluctant to achieve the locally imposed objectives. The cooperation model between levels of government was outlined above (taking into account local realities and specifics, and whereby commitments were likewise put forward). According to the Flemish government, such a cooperation model offers guarantees to generate and retain local support, and to realise objectives locally, much more than if the local government were in a purely coercive or submissive relationship with the higher authorities. Moreover, the assertion that the phenomenon of NIMBY is prevalent at the local level is not based on facts, but is based on the assumption that local governments are not adequately armed in the face of possible resistance, which de facto implies a distrust in local governments. Also, a purely financial rationale - where more modest households are of little to no financial interest to local governments - is put forward by the plaintiff. If all such motives were to come into play, it should be recalled that local governments are democratically elected and can therefore be held accountable for the policies they implement, including the realisation of social housing. Moreover, local governments are at the service of the people and make decisions according to the common good (cf. partnership mentioned above). In this way, the plaintiff puts local governments in a bad light, which neither respects local governments in terms of their responsibilities, nor can contribute to the social significance of social housing and the increase of the supply of social housing itself.

(D) The social rental system: general and recent reforms

The general assertion was made above that it is premature to label the changes within the social rental regime as insufficiently focused, given the future entry into force. Nevertheless, the Flemish government believes that the proposed allocation regime offers the possibility of accommodating the most vulnerable prospective tenants as well as long-term waiting individuals and candidates with local ties. The system is therefore balanced for prospective tenants, and relies on the need for local support as well as on commitments to be taken on board (cf. partnership model). According to the plaintiff, the Flemish government is merely passing on its own responsibility. It is also argued that the acute supply shortage reduces the ability of the sector to avoid poverty. In this sense, it is claimed that social housing is less and less an instrument for structurally strengthening the position of individuals in need of housing. The Flemish government argues that such assumptions regarding the social rental system are not supported by the facts, especially since in social housing, on the one hand, the focus is in fact on the target group, especially those who cannot meet their housing needs independently (and

[16] It should be noted that at the time this reply was drafted, none of these dwellings had been resold after renovation.
[17] Decree of 29 April 2022, amending the decree of 9 July 2021, amending various decrees relating to housing, regarding the moratorium on the sale of rentable social rental housing and the exemption from an exploratory soil investigation when social housing actors are required to transfer land at risk

here there is still a priority arrangement for those most in need of housing - see below), and on the other hand, there is the sustained commitment to increasing the housing supply (see also above). It was underscored above that the Flemish government does not agree with the assertion that the entire target group or the candidates on the waiting list must be allocated social housing, which assumes too much of a maximal outcome and is difficult to achieve in the social and financial context. This does not mean that the function of social housing in order to provide a buffer against poverty for the target group is passed on or undermined. This function remains essential for the Flemish government, which is why tenants with too high incomes (125%) can be excluded from social housing to make room for candidates who do belong to the target group. The same applies to tenants who have monetary or real estate assets, precisely because of this they are able to independently fulfil their right to housing, and they need to step aside for entitled candidates. In this way, the Flemish government wishes to orient the supply to those who effectively need a buffer against poverty. Suggestions of passing the buck are also refuted by the actual efforts to systematically increase the supply of social housing. Nevertheless, the Flemish government pursues a pragmatic policy that takes into account the actual supply on the one hand and the most targeted use possible on the other, with particular attention to the individuals who need it most. It is therefore unfair to claim that social housing does not provide a buffer against poverty for social tenants, or that social housing does not enhance their position. Below is an outline of the various aspects related to the reforms in the social rental system (these are important for achieving social housing focused on inclusion and cohesion).

Recent changes in the social rental system

The plaintiff addresses several recent changes to the social rental system, such as checks on whether an individual owns property abroad, activation measures, stricter language requirements and stricter conditions regarding ownership of property. The plaintiff also refers to future changes related to addressing under-occupied social housing and the means test. The plaintiff indicates that the principle (the social housing supply is reserved for those who cannot meet their housing needs independently) sounds positive, but certain authors in legal theory argue that the effects of these measures are insufficient (and also create heavy administrative burdens for landlords). It has already been emphasised above that the policy is intended to strictly reserve the social rental system for the target group, based on an equal and fair application of the system, but which must inevitably be accompanied by checks on the stated conditions (check in this regard cannot be interpreted in any other way than the correct application of the conditions). Other conditions, such as the language requirement and the obligation to register with the VDAB, in no way impede access to social housing but are intended to be positive and inclusive. Indeed, these obligations serve to advance the involved individuals, both at the individual and societal level. In addition, the Flemish government wishes to express the following specific concerns regarding the application of the proposed changes:

- In terms of outcome, it is premature to judge various points at the present time. The activation measure (mandatory registration with the VDAB for non-professionally active citizens with job potential) did not take effect until 1 January 2023. The stricter language requirement applies to individuals who became tenants as of 1 January 2023, and these individuals will have two years to meet the stricter language requirements. The same applies to the future regulation on avoiding under-occupancy (which is intended to obtain an optimal and efficient use of the housing stock and in order to accommodate larger families). Therefore, the adaptations cited by the plaintiff are based on assumptions and not facts.

- As for investigating whether an individual owns property abroad, an effect can already be seen. From March 2021 - the beginning of the framework contract made available to social landlords - until 23 January 2023, a total of 714 investigations into property ownership abroad were requested by 35 different social landlords. In 329 cases, relevant and proportional property was found to be owned by social tenants abroad. These investigations are only requested if there are suspicions that a social tenant owns property abroad. For the sake of fairness and equality within social rent, excluding individuals who already own property is a logically defensible measure (see also above and previous reply), indeed, the dwellings made vacant then become available to households on the waiting list.
- The plaintiff calls into question the imposed means test and considers a check on the social tenant's means to be disproportionate (social tenants typically do not have hidden assets and the instrument ignores the reality of the social tenant, it is argued). Nevertheless, the Flemish government believes that having a certain level of monetary funds should enable prospective tenants to independently realise their right to housing on the private rental market, so that housing can be effectively allocated to candidates who do not have this possibility. In this way, financial assets are de-duplicated as an eligibility requirement to immovable and movable assets, and there is then equal treatment between (prospective) tenants with an income and (prospective) tenants with assets. The Council of State believes that the drafted regulation achieves equal treatment of prospective tenants.[18] The plaintiff's argument that the social rental system is already a highly selective instrument and that a significant proportion of social tenants already voluntarily leave social housing when they earn higher incomes is irrelevant here.
- As regards the administrative burden on landlords, large-scale efforts are being made to achieve automatic data exchange (precisely to reduce the administrative burden on landlords). The provision of the framework agreement for identifying property owned abroad can also be placed in this context.

The plaintiff also argues that the announced changes fuel a negative narrative on social tenants. According to the plaintiff, the Flemish government pursues a narrative in which social tenants are stigmatised, which apparently undermines the overall support for social housing. The changes proposed by the Flemish government are not intended in any way to stigmatise the target group, and are only intended to tackle fraud in social housing and to deter possible abuses, which will in fact enhance support for social housing. Tackling the abuses helps strengthen support for social housing, and makes society more willing to act in solidarity.

In the same vein, the plaintiff argues that the registration freeze[19] for prospective tenants who are required to leave social housing due to serious aggravated offences contributes to the "culpabilisation and exclusion" of the most vulnerable tenants. Nevertheless, with this measure, the Flemish government pursues the general interest, namely the harmonious and undisrupted cohabitation of

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[18] Council of State, Opinion No. 72.358/3 of 16 December 2022 on a preliminary draft decree of the Flemish Region "amending various decrees relating to housing," remark 14.

[19] From 1 October 2023, a prospective tenant will in principle not be able to register for social rented housing if they have had a social rental agreement that was terminated by judicial intervention during the three years preceding the date on which the prospective tenant wishes to register, for causing serious nuisance or serious neglect of the social rented housing. However, the landlord may decide not to apply this registration condition, for reasons of fairness. In such cases, the landlord may make registration contingent on a guidance agreement between the prospective tenant and a welfare or health facility. A transitional arrangements is envisaged for the application of this new registration condition. It applies only to terminations of a tenancy agreement occurring as of the date of entry into force of this new registration condition.

social tenants and local residents, and at the same time it sends a signal to the relevant tenants that their behaviour is temporarily incompatible with these objectives (this as an externalisation of responsibilities associated with the fundamental right to housing). This measure has been highly considered and thought-through at length. Indeed, only in exceptionally aggravated circumstances, and after judicial intervention, can the social tenant have a temporary registration ban imposed which effectively protects the right to decent housing of the other (prospective) social tenants and local residents. A ban is always an extreme last resort after judicial intervention, but has absolutely no exclusionary or culpabilising motive in itself.

The explanatory memorandum of the decree of 9 July 2021, amending various decrees relating to housing, justifies the scope and objective. The Council of State, Legislative Division, in its opinion on the draft of the above-mentioned decree of 9 July 2021, also recognised that the registration condition pursues a legitimate public interest objective. Moreover, a derogation option is provided by the social landlord whereby, for reasons of fairness, the registration of the candidate tenant in question can still go ahead. Consequently, at the same time as the measure to temporarily bar a candidate from registration, it is expected that the prospective tenant will remedy their social conduct, preventively. It is then up to the prospective tenant to demonstrate that they are capable of living in close proximity to other social tenants. This derogation option is intended to mitigate the temporary ban, and puts the responsibility on the prospective tenant him or herself (and ensures that the specific circumstances of each prospective tenant can be taken into account).

The Flemish government is convinced that this registration condition is a balanced and proportionate measure. The Constitutional Court has already recognised on several occasions that certain obligations may also be attached to the socio-economic rights granted by Article 23 of the Belgian Constitution. Consequently, 'corresponding responsibilities' may be imposed on social tenants in accordance with fulfilling their right to decent housing. This responsibility may also entail a prohibition on abusing the fundamental right, to the detriment of others. Individuals who invoke fundamental rights must at the least also respect the fundamental rights of others, and recognise that exercising fundamental rights involves mutual solidarity and collective responsibility. Individuals who (deliberately) cause exceptional and excessive nuisance to others in exercising their fundamental right to housing cannot invoke this fundamental right to avoid the negative consequences of their behaviour. Consequently, the fundamental right granted cannot be abused in a way that causes serious nuisance to others in the vicinity. Moreover, the new registration condition is accompanied by various mitigating modalities (see previous reply). This ensures that the measure will not have a disproportionate impact on the social tenant in question. The Council of State also confirmed that the scheme is balanced and sufficiently proportional.

The plaintiff subsequently argues that the only alternatives for the individuals in question and families will be the private rental market, shelters or homelessness if this measure is implemented. As previously stated, the measure also has a preventive effect and a social landlord may decide to re-register the candidate after all. In addition, it is important to highlight the plans being prepared by the Flemish government to introduce a new form of housing similar to the so-called Skaeve Huse (in Denmark). These dwellings are intended for individuals who cause serious nuisance to their environment. Individuals who are difficult to place in an ordinary neighbourhood with social rental housing are therefore still given the opportunity to live independently, and at the same time the nuisance in the neighbourhood is eliminated. These instruments can prevent individuals from ending up without housing alternatives, and accompany the measure in question.

The plaintiff further points out that judicial proceedings are still pending for the various new measures. In this regard, the Flemish government awaits the rulings of the Constitutional Court and the Council of State.

Recent changes in allocation policy

The plaintiff claims that the Flemish government will generally focus less on those most in need of housing in the new allocation policy. The plaintiff recognises that the situation of those living on 'the streets' is more precarious than the situation of individuals or households in need of housing who are getting by for the time being on the private rental market. The Flemish government is well aware of the varying intensity of housing need among the target group, and intends to respond to this with the new allocation rules (which include a compulsory quota and locally determined target groups). The Flemish government generally cited in its previous reply that the new allocation system aims for transparency, balance and complementarity. In the Flemish government's view, the new allocation model provides sufficient points of reference for the housing corporations and local housing and welfare actors to devise an adequate allocation policy, both for the most vulnerable target groups (such as the homeless) and for other stakeholders in the target group (however, the new allocation system will not enter into force until 1 October 2023, and any criticism in this regard is therefore premature).

According to the plaintiff, the crux of the problem is the allocation regime under the 'second pillar', whereby social housing is accelerated allocated to the individuals or households with acute or serious need of housing. In this regard, the Flemish government has imposed a quota of 20% of all allocations. The plaintiff argues that the quota is too low and is a step backwards compared to the current situation. Nevertheless, prospective tenants most in need will be assessed by the local housing and welfare actors and a fixed annual quota of 20% allocations will be provided for accelerated allocations. These accelerated allocations are reserved for individuals who are homeless or at risk of homelessness, young people living or moving into assisted independent living, individuals living in substandard housing, individuals with mental health problems and individuals in specific circumstances of a social nature. Inflows of the most vulnerable households in serious need of housing are not restricted to pillar 2. It was cited above that these households can also access housing via the target groups determined at the local level, and via pillar 1 (the regular allocation based on chronology and local ties). In addition one third of the social housing in a municipality can be allocated or reserved with priority for specific target groups (pillar 3). The local government and the housing corporation must make the necessary arrangements in this regard with the welfare and housing actors (the allocation council). This forum is a new feature of the allocation scheme, and is intended to facilitate objective and transparent operations. It also offers opportunities to jointly draw up an effective policy at the local level that takes into account the specific local needs and requirements. Consequently, not only is it premature to claim that the most vulnerable prospective tenants will be more overlooked (cf. entry into force in the future), it is also unjustified because it does not take into account the effect of the other possibilities to access social housing. As a reminder, the plaintiff states that the housing corporation might impose additional conditions for an individual to be considered homeless (which would risk undermining the allocation to this target group). This assertion can be refuted: in the new allocation model, the target groups 'individuals who are homeless or at risk of becoming homeless' are further divided into sub-target groups. The housing corporation cannot change, delete or add categories to these sub-target groups. However, after consultation in the allocation council, the housing corporation can determine the order in which applications are processed and the existing

conditions regarding the sub-target groups can be fleshed out. In view of the entry into force of the scheme and the new system, it is evident that the actors in the allocation council will make the necessary agreements regarding the specific method for accelerated allocations, and defining the target groups.

The plaintiff also argues that the social rental system is particularly complex and incoherent, while the Flemish government believes that it offers a transparent and objective system, which the plaintiff does not subscribe to. The Flemish government would like to recall that the new allocation regime abolishes the use of two separate allocation systems, meaning that there are no longer different rental regimes for social tenants. The tenant will have a single point of contact and the allocation of social housing will be based on fixed criteria in a generally predictable manner (this is currently less transparent and predictable due to the wide variety of local interpretations of optional and mandatory rules).

Local ties in the allocation model

The plaintiff cites various reasons to substantiate the assertion that the condition for an individual to have local ties in order to obtain social housing is counterproductive.

The plaintiff assumes that local governments choose to apply conditions of local ties simply to avoid attracting impoverished households from elsewhere. However, the Flemish government believes that on the one hand such a measure enhances taking up the responsibility for the target group already effectively living in the municipality , and on the other hand the local government cannot be obliged to take in other candidates from other municipalities on top of these, without restriction (with the exception of candidates with in serious need of housing - see above). Having local ties not only helps bolster the support for social housing, but it also boosts the local responsibility to provide accommodation and protection for the target group based in the local area. It allows the local government to develop a controllable and manageable social housing policy (precisely because inflows from elsewhere can be restricted). In this way, it is also a protective measure because the housing supply is (largely) allocated to the local target group. This makes it easier to meet the needs of local individuals in need of housing, and in this sense is also a measure to tackle social displacement. Moreover, a local ties condition in the area of social rent is in line with resident sentiment, who have a legitimate identification with their hometown. The measure makes local governments accountable and appeals to them to take responsibility (realising supply as well as service). Such a policy underpins the social fabric and promotes social cohesion (much more so than in the case of an uncontrolled inflow of households).

The plaintiff further argues that due to demand and (scarce) supply, the local tie measure effectively acts as an exclusion criterion. The Flemish government already justified in its previous reply that the local tie measure was not conceived as an exclusion rule, it is a priority rule. Individuals in need of housing who do not have long-term ties to a given municipality are therefore not excluded from social housing in that municipality. Moreover, each local government is obliged to generate a supply of social housing (cf. BSO), thereby spreading the supply, and each municipality must be able to accommodate the local target group. Moreover, the local ties measure in the allocation system should be regarded with nuance: after all, in addition to local ties, the mandatory quota has to be applied for candidates in serious or acute housing need (no local ties priority applies to this accelerated allocation) and the

specific target groups are all defined. Combined, this ensures a balanced allocation policy. The Flemish government also wishes to point out that similar priority rules for local residents in the context of the allocation of social housing also exist in several other EU member states (at least in nine other member states according to a recent OECD report)[20] as well as in the United Kingdom.[21] Priority schemes are also applied in other policy areas of the Flemish government for persons living close to a facility (e.g., regarding allocation of local dependent elders to the local care facility).

Furthermore, the Flemish government wishes to highlight Directive 2003/109/EC concerning the status of third-country nationals[22] who are long-term residents. In accordance with this, third-country nationals have a permanent right of residence only after five years of continuous legal residence, accompanied by a right to equal treatment regarding the 'main' benefits[23] in terms of social assistance and social protection.[24] Also under Directive 2004/38/EC, according to the Court of Justice, Member States are obliged to treat economically inactive Union Citizens equally in terms of social assistance only after those citizens have acquired a right of permanent residence in the host Member State, which is the case after a continuous period of five years of legal residence within the territory of the host Member State.[25] In this regard, the Flemish government fails to see where a fortiori an exclusion scheme is acceptable under Union law, that the mere priority scheme - which does not constitute an exclusion scheme - for persons with local ties would not be acceptable or disproportionate.

The Flemish government also wishes to stress the fact that the priority rule regarding local ties is applied within the target group of social rent. In other words, the allocation must always be made for the benefit of a household in need of housing and on the waiting list (and these households are in need of housing and meet the eligibility requirements). The context of housing need is ignored or downplayed by the plaintiff (as though these households were less entitled to social housing).

Moreover, the Court of Justice and the European Parliament have recognised that tackling the social displacement of less wealthy local residents is a legitimate policy objective. Social science literature and legal theory also recognise the protection of local residents and local communities as an objective to be pursued.

The plaintiff refers to the *Libert*-ruling to demonstrate that, on account of the local ties condition, the Flemish government does not comply with the conditions regarding imposing restrictions on free

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[20] OECD Affordable Housing Database, "Key Characteristics of Social Rental Housing", 10 March 2022, https://www.oecd.org/els/family/PH4-3-Characteristics-of-social-rental-housing.pdf, pp. 9-11. See, e.g., Art. 14 Dutch Housing Act 2014 (https://wetten.overheid.nl/BWBR0035303/2022-01-01).

[21] *Housing Act 1996 (England and Wales)*, sections 166A(5), 167(2A) and 199, http://www.legislation.gov.uk/ukpga/1996/52/contents. See also
Ministry of Housing, Communities and Local Government, "Allocation of accommodation: guidance for local housing authorities in England", London, 2012, https://assets.publishing.service.gov.uk/media/60df2d0de90e0771784b991f/Current_allocation_of_accommodation_guidance.pdf, p. 23-24.

[22] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, *OJ.* (2004) L 16/44.

[23] It is not even certain whether a social rental home falls under the category of 'main' benefits. A rent subsidy can in any case qualify as a 'main benefit', according to the Court of Justice. See CJEU, C-571/10 *Kamberaj*, 24 April 2012, EU:C:2012:233, §§ 91-92.

[24] Art. 11(4), Directive 2003/19/EC.

[25] Art. 16(1), Directive 2004/38/EC. See CJEU, C-333/13, *Dano*, 11 November 2014, EU:C:2014:2358, §§ 77-78.

movement and free establishment. In this regard, the Flemish government wishes to refer to the Court of Justice, which confirmed in the above-mentioned ruling that Member States may and can take measures to ensure that less wealthy local residents have a sufficient supply of housing:

> *"The objective of the regime set out in Book 5 of the Flemish Decree, as a regional planning measure, is thus to guarantee sufficient housing for the low-income or otherwise disadvantaged groups of the local population.*
> *In that regard, it must be noted that such requirements relating to social housing policy in a Member State can constitute overriding reasons in the public interest and therefore justify restrictions such as those established by the Flemish Decree (see Woningstichting Sint Servatius, paragraphs 29 and 30, and Case C 400/08 Commission v Spain [2011] ECR I 1915, paragraph 74)".*[26]

Moreover, the Libert-ruling is fully in line with older case law of the Court of Justice on this point. For example, the Court already ruled in the Woningstichting Sint Servatius that public housing requirements may involve overriding reasons in the public interest to justify restrictions on free movement. Such considerations, the Court said, can only acquire greater significance in the light of certain features specific to the national market situation (such as a structural housing shortage, high population density[27], tackling speculation in the land market, ensuring permanent habitation in the countryside, and maintaining economic activity independent of tourism in certain regions).[28] In more recent rulings, the Court of Justice upheld this case law.[29] In other words, the Court of Justice recognises that Member States may adopt restrictive measures regarding the freedom of establishment and movement of persons in order to continue meeting the housing needs of the local population. This is especially the case in regions with housing shortages and where the housing market is under pressure due to high population density (such as Flanders[30]). Furthermore, reference can be made to an European Parliament resolution[31] denouncing social exclusion.[32] In this, the European Parliament stresses the importance of promoting social inclusion and states that gentrification, where less wealthy residents are forced out of their neighbourhoods, must be countered.[33] In this regard, scientific research also highlights the individual and social importance of maintaining housing

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[26] CJEU, Joined cases C-197/11 and C-203/11, Libert et al, 8 May 2013, EU:C:2013:288, §§ 51-52 (emphasis added).

[27] CJEU, C-567/07, 1 October 2009, *Woningstichting Sint Servatius*, EU:C:2009:593, § 30. In this sense, see also CJEU, C-35/08, *Busley and Cibrian Fernandez*, 15 October 2009, EU:C:2009:625, §§ 31-32.

[28] CJEU, C-302/97, *Konle*, 1 June 1999, EU:C:1999:271, § 40; C-515/99, C-519/99–C-524/99 and C-526/99–C-540/99, 5 March 2002, *Reisch et al*, EU:C:2002:135, § 34; C-452/01, 23 September 2003, *Ospelt and Schlössle Weissenberg*, EU:C:2003:493, §§ 38-39; C-370/05, 25 January 2007, *Festersen*, EU:C:2006:635, §§ 27-28; C-400/08, 24 March 2011, *Commission v. Spain*, EU:C:2011:172, § 74.

[29] CJEU, C-360/15 and C-31/16, *X. and Visser*, 30 January 2018, EU:C:2018:44, §§ 134-135; CJEU, C-724/18 and C-727/18, *Cali Apartments and HX*, 22 September 2020, EU:C:2020:743, §§ 65-66.

[30] Flanders is clearly such a region. Belgium's population density rises year after year and, at 377 inhabitants/km², is the highest in the EU after Malta and the Netherlands. Moreover, there are major regional differences in Belgium: the Flemish Region has a population density of fully 492 inhabitants/km², while the figure for the Walloon Region is only 217 inhabitants/km² (figures valid 1 January 2022 - https://statbel.fgov.be/nl/themas/bevolking/bevolkingsdichtheid).

[31] European Parliament resolution of 11 June 2013 on social housing in the European Union (2012/2293(INI)), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013IP0246&rid=2

[32] *Ibid.*, § 1

[33] *Ibid.*, §§ 38 and 56.

opportunities for less wealthy native population, which is considered a legitimate policy objective to avoid forcing a part of the population to relocate, with the loss of their social network.[34]
Forced migration or displacement has a high cost, both at the individual and societal level, and is therefore a legitimate concern of the government.[35] Forced, market-led migration also erodes the social fabric and disintegrates the local community, which in turn can lead to social conflicts within the area in question.[36] In this case, for example, it may reduce public support for social housing, which is nonetheless fundamental (given the substantial public funds spent on social housing).

The priority scheme is not only motivated by reasons of public interest, it is also proportionate to its objectives, i.e., appropriate and necessary to achieve the stated purposes. More residents in need of housing will be able to remain in their own municipality (and therefore not be displaced) thanks to the priority scheme. It is also essential to give as much encouragement as possible to municipalities to assume their responsibilities vis-à-vis their own residents who are in need of housing.

4.3. Private rental market

In general, the Flemish government's previous defence highlighted the fact that even in the area of the private rental market, the policy makes various efforts and takes essential steps forward. Although the Flemish government assumes in principle the free market forces, it endeavours to address various issues through regulation, including systematically imposing stricter housing quality standards. These quality standards apply to all properties, both owned and rented. In particular, quality is monitored by the services of the Flemish government in cooperation with local governments on the private rental market (and many homes are improved every year after inspection). For example, around 30,000 conformity investigations are conducted every year by local governments, and some 10,000 investigations by the Flemish government. In addition to focusing on housing quality, the Flemish government approaches the private rental market through new instruments such as rental under conditions. Moreover, the existing instruments such as the Fund to Combat Evictions (Fonds ter Bestrijding van de Uithuiszettingen), the rent subsidy (huursubsidie) and rent premium (huurpremie) are being systematically improved and, as regards the rent subsidy and rent premium, the scope of

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[34] See e.g. R. ATKINSON, "The Evidence on the Impact of Gentrification: New Lessons for the Urban Renaissance?" (2004) 4 *International Journal of Housing Policy* 107, 111 (document 17); M. DAVIDSON, "Spoiled Mixture: Where Does State-led 'Positive' Gentrification End?" (2008) 45 *Urban Studies* 2385, 2388-2393 (document 18).

[35] See e.g. R. ATKINSON, "The Evidence on the Impact of Gentrification: New Lessons for the Urban Renaissance?" (2004) 4 *International Journal of Housing Policy* 107, 111-116; R. ATKINSON, "Does Gentrification Help or Harm Urban Neighbourhoods? An Assessment of the Evidence-Base in the Context of the New Urban Agenda" (2002) Research Paper No. 5, ESRC Centre for Neighbourhood Research, citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.368.8033&rep=rep1&type=pdf, 7-13; M. DAVIDSON, "Spoiled Mixture: Where Does State-led 'Positive' Gentrification End?" (2008) 45 *Urban Studies* 2385. See also S. REYNOLDS, "Housing policy as a restriction of free movement and Member States' discretion to design programmes of social protection: *Libert*" (2015) 52 *Common Market Law Review* 259, 278-279 (document 19).

[36] R. ATKINSON, "The Evidence on the Impact of Gentrification: New Lessons for the Urban Renaissance?" (2004) 4 International Journal of Housing Policy 107, 116-7; R. ATKINSON, "Does Gentrification Help or Harm Urban Neighbourhoods? An Assessment of the Evidence-Base in the Context of the New Urban Agenda" (2002) Research Paper No. 5, ESRC Centre for Neighbourhood Research, citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.368.8033&rep=rep1&type=pdf, 7-13; T. SLATER, "Missing Marcuse: On Gentrification and Displacement" (2009) 13 City 292; W.K. KORTHALS ALTES, "The Single European Market and the Demise of Flemish Housing Policy" (2015) 15 International Journal of Housing Policy 209, 218 (document 20); B. DOUCET, "A Process of Change and a Changing Process: Introduction to the Special Issue on Contemporary Gentrification" (2014) 105 Tijdschrift voor Economische en Sociale Geografie 125 (document 21); H.G. LARSEN and A.L. HANSEN, "Gentrification – Gentle or Traumatic? Urban Renewal Policies and Socioeconomic Transformations in Copenhagen" (2008) 45 Urban Studies 2429 (document 22).

application has been extended to the target group of social rent. Although it is acknowledged that the private rental market still has a number of shortcomings and the problems of the private rental market are partly driven by external factors that are difficult to control (macroeconomic events such as the energy crisis), the complaint lacks nuance when it is claimed that the Flemish government systematically avoids its responsibility, partly owing to its focus on property ownership. It was previously demonstrated above that the policy does not prioritise property ownership, given the abolition and phasing out of the main instrument for this purpose, and the increased resources for social housing. Therefore, the claim that responsibility with regard to the private rental market is being ignored is more of an interpretation that can be debunked by (more recent) government decisions which have resulted in progress on the ground.

(A) Introduction of additional instruments

The plaintiff claims that the Flemish government ignores its responsibility for the problems in the private rental market and argues that existing instruments do not adequately address the problems of the most vulnerable households. Aware of the imperfect situation on the private rental market, the Flemish government is steadily stepping up its efforts, albeit by intervening within the contours and setting of the free rental market (in order not to disrupt market forces, which may deter landlords, for example). The plaintiff equates these increasing and cautious policies with avoiding responsibility, which is not the case. Moreover, the plaintiff also calls for achieving a maximal outcome, whereas the government argues for systematic cautious progress.

Rental under conditions

In the previous reply, a comprehensive overview of the instruments used by the Flemish government to support households in the private rental market was provided. With the system of rental under conditions (see above), the Flemish government has taken another important step. To better match supply and demand, it encourages the realisation of a supply of affordable housing on the private rental market. These dwellings are set aside for the specific target group who fall above the income limits of social rent. At the same time, housing is offered through a protected regime with controllable rental prices. Through such an additional protective rental regime, an intermediate link is created between social rent and free private rentals. This constitutes a substantial step forward. The system whereby initiators are encouraged to realise additional private rental supply, but also to realise social rental supply, was outlined above. Together with the measures for the social rental sector, this will lead to a better inflow of vulnerable tenants into rentals under conditions or a social rental home.

Flemish rent guarantee loan

Furthermore, the Flemish government introduced the Flemish rent guarantee loan (huurwaarborglening) in 2018. This is an interest-free loan that new tenants can apply for to constitute the rent guarantee. The loan is intended to improve accessibility to the private rental market for lower-income households, in particular by allowing them to establish rent guarantees over a given period. An evaluation of the rent guarantee loan was conducted by the Policy Research Centre Housing in 2022. The instrument was evaluated positively, scoring well in terms of reaching the target audience, cost-effectiveness and suitability. The researchers therefore suggest retaining the instrument in their recommendations, in addition to a number of points for improvement that could be included (including

in terms of administrative procedure and handling). This additional instrument also supports and protects low-income tenants in the first instance.

Emergency housing

The Flemish government considers it essential for local governments to have a supply of emergency housing. To this end, an incentive framework is being developed by the Flemish government with the aim of realising supply and increasing it. The plaintiff acknowledges the Flemish government's efforts to increase the supply of emergency housing, but reiterates that the supply remains inadequate. The Flemish government is aware of the need to increase the quantity of emergency housing units. Partly for this reason, a call for projects is issued every year. As such, in 2020 and 2021, the Flemish government awarded more than €11 million in subsidies each time, enough to produce 259 and 150 emergency housing units, respectively. In 2022, €5.1 million in grants were set aside for 56 emergency housing units. There is now a total of 150 subsidised projects: 73 in 2020, 56 in 2021 and 21 in 2022. In addition, a survey of local governments will make it possible to work out how to increase participation in the call for projects. In this way, the supply will continue to grow steadily in the coming years.

Renovation loan (Mijn Verbouwlening)

Partly with a view to the overall improvement of housing quality and the overall upgrading of the energy level of the housing stock, the Flemish government introduced 'Mijn Verbouwlening' (My renovation loan) in 2022. This new instrument targets both owner-occupiers and specific landlords. Owner-occupiers who either rent to a social rental agency/housing corporation or, under certain conditions (in terms of term, rent price and housing quality) directly to a private tenant, can benefit from an advantageous loan of up to €60,000 for a comprehensive renovation that focuses on improving the housing quality and/or energy performance of the property.

Since 1 September 2022, Mijn Verbouwlening has been operational. The plaintiff argues that there are insufficient incentives for the group of private landlords to renovate their rental properties. However, the Flemish government wishes to use the instruments in a targeted manner precisely in order to give an advantage to landlords who rent out social housing or private rent under certain conditions. By deploying incentives in a targeted manner, this indirectly benefits vulnerable tenants (which would not be the case with a general incentive for all landlords). The plaintiff also claims that the system has not been successful and, consequently, no progress is being made in the field. However, given the entry into force of this measure, it is premature to make any assertions about the scope of the new instrument at this time.

(B) Improving the existing instruments

Fund to Combat Evictions

In 2020, the Flemish government reformed the Rent Guarantee Fund (Huurgarantiefonds) into the Fund to Combat Evictions (Fonds ter Bestrijding van de Uithuiszettingen). This Fund can be used to prevent vulnerable private tenants from being evicted (in collaboration with public centres for social welfare - OCMW). This Fund was evaluated and fine-tuned following an introductory period (2021 - 2022). The fact that the reform of the Fund placed more emphasis on preventing evictions, and the

Flemish government's willingness to evaluate and optimise this instrument in the short term, are proof that the Flemish government is committed to supporting low-income tenants.

The plaintiff addresses the evaluation report of the Policy Research Centre Housing, and alleges that the first defence quoted selectively from the evaluation report. The plaintiff alleges that the implementation of the Fund is deficient, and that there are obstacles arising from the functioning of the fund itself. Given that the Flemish government has already evaluated the instrument and made several adaptations to it in the short term, the allegation by the plaintiff is neither fundamental, nor does it adequately demonstrate that the Flemish government has not taken its responsibility. Moreover, it should be recalled that the evaluation report concludes that the Fund is relevant in preventing evictions. The objectives of the instrument are coherent and consistent. According to the stakeholders, the Fund is conceptually sound, especially since integral guidance is facilitated and solutions can be explored in the long run. Contrary to what the plaintiff portrays, the focus of the Fund is not just on the one-time intervention with the landlord. When this instrument was developed, guidance for tenants was the main concern (including follow-up of the instalment repayment plan or budget and housing guidance). The public centres for social welfare (OCMW) are best positioned to offer the most appropriate guidance. The Flemish Government is obviously aware of the efforts made by the OCMWs in these dossiers. Following the energy crisis, in October 2022 the Flemish government Order (VR 2022 07 10) decided not only to increase the allowance to the OCMWs, but also to double the fixed allowance for operating costs, for an initial period of six months prior to an evaluation. The operation of the Fund was optimised in response to the difficulties faced by the sector. For example, the requirement that the rent arrears must be at least two times the rental price, and a maximum of six times, to qualify for the Fund was scrapped. Administrative optimisations were also made to the template guidance agreement. For example, the OCMWs will now be allowed to decide for themselves how to settle the remaining 50% of the rent debt in consultation with the tenant and landlord, after they have settled half of the rent arrears. Furthermore, the OCMWs no longer needs to specify whether or not they make the amount paid out recoverable. The target population of the Fund was also expanded to include tenants renting a dwelling through a social rental agency. Finally, it was decided to roll out a targeted information campaign for tenants and landlords to raise general awareness of the Fund.

It is true that the Fund will not be able to provide a solution for all impending evictions. This may be the case, for example, if the payment problems are structural and the OCMW and the tenant cannot find alternative housing, as indicated by the plaintiff. However, instruments have been devised and put on the market to broadly address the issue. The fact that not all problems are solved from the outset is obvious, and is typical for new instruments.

Private rent legislation

Earlier in its defence, the Flemish government referred to the OECD to substantiate the fact that the rental regime in place on the private rental market was developed in a balanced way, taking into account the mutual interests of the parties. In this regard, the plaintiff cites that housing security is undermined by the rules on the duration of rental contracts for main residences. Although the standard duration of a rental contract is nine years, the tenant and landlord are able to enter into a contract of three years or less (the so-called a short-term contract). In this regard, the plaintiff recalls the reason why this nine-year term exists, specifically the tenant's housing security (which was already established under federal law, as a counterpart it was opted not to strictly regulate the setting of rental prices). The freedom of contract and the unrestricted functioning of the private rental market remains

an important principle for the Flemish government; it is not denied that this may result in effective short-term rental contracts (this is up to the contracting parties). However, it cannot be inferred from this that the protection of tenants would be compromised as a result. The plaintiff argues that a landlord can terminate the short-term rental contract at the end without any reason, and then sign a new rental contract with a higher rent. To avoid situations where a landlord systematically increases their rent, it was already provided under federal housing rental law that a short-term rental contract could only be renewed once and under the same conditions, without allowing the total duration of the contract to exceed three years.[37] The fact that the extension is 'under the same conditions' implies, among other things, that the rent cannot be changed. In addition, housing rental law (federal and subsequently Flemish) provides that the rent cannot be changed either if such a short-term rental contract is subsequently converted into a nine-year rental contract in the absence of timely notice.[38] This mechanism is built in precisely to prevent a landlord from abusing the regime of short-term rental contracts in order to increase their rent.[39] More generally, we can highlight the fact that both tenants and landlords believe that the option of short-term rental contracts is justified.[40]

Rent subsidy and rent premium

In the previous reply, the Flemish government explained how the systems of rent premium (huurpremie) and rent subsidy (huursubsidie) were optimised in recent years to support more private tenants. Among other things, the broadening of the scope was highlighted, whereby income limits are aligned with those of social rent. This indicates that Flemish housing policy focuses on the same target group to support the social and private rental market. This change represents a de facto significant step forward (see above).

The plaintiffs argue that the rent premium and rent subsidy do not reach enough people when considering the number of tenants in need of housing. As cited in the previous reply, the Flemish government can highlight the significant increase in the number of beneficiaries as well as in government resources. In recent years, both of these have systematically increased, thereby demonstrating that the efforts have been substantially stepped up. In addition, expanding the scope entails risks, in particular possible price-increasing effects. The Flemish government therefore calls for cautious and incremental changes to this instrument.

The Flemish government recognises that not all beneficiaries are successful when applying for the rent allowance (there are cases of non-take-up). Mindful of this problem, and with the intention to rectify it, the Flemish government decided to commission a study on the issue. The study was conducted by the Policy Research Centre Housing and was delivered in early 2023. Using quantitative and qualitative methodologies, the aim was to clarify the extent and reasons for non-take-up. The report identifies the issues and makes recommendations to increase take-up (including through better information, administrative simplification and support). A number of these recommendations are being implemented in the short term. For example, the communication addressed to citizens will be assessed on its simple and plain language. Additional data sources will be tapped, in terms of social status and guardianship status, reducing the number of certificates the applicant needs to submit. Processing

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[37] Art. 3, §6, second paragraph, Housing Rental Act and art. 21, §1, second paragraph, Flemish Housing Rental Decree.

[38] Art. 3, §6, fourth paragraph, Housing Rental Act and art. 21, §1, fourth paragraph, Flemish Housing Rental Decree.

[39] (a) De Boeck, "De uitzonderingen op de negenjarige huur" in A. Van Oevelen (ed.) *Woninghuur*, Bruges, die Keure, 2009, 154.

[40] Memorie van Toelichting, Ontwerp van decreet houdende bepalingen betreffende de huur van voor bewoning bestemde goederen of delen ervan, 1612 (2017-2018), p. 11.

agreements have already been signed with 77 OCMWs. The OCMW will then receive a list of non-applicants domiciled in their municipality so that they can then contact them and inform them of their rights. OCMWs with whom such processor agreements have not yet been entered into will be contacted to encourage them to do so. In addition, it is being exploring what further partnerships can be set up with the social actors, to provide better support and guidance to potential beneficiaries. Digital applications will also be possible by the end of 2023. Other recommendations will be further explored in the coming months. For example, the central registration register provides additional opportunities for providing information to potential beneficiaries. Finally, it is being explored which data sources can be tapped to further demarcate the group of potential beneficiaries, in order to eventually move toward more automatic allocation.

The plaintiffs further argue that the rent premium and rent subsidy instruments are not adequately customer-friendly. To back this up, the plaintiff cites the amended basis for access to the rent subsidy (whereas previously the technical report of the housing inspection was sufficient, a formal decision by the mayor is now required). However, a technical report does not offer the same official force as an effective decision by the mayor. Moreover, on the basis of a technical report, the landlord can still make improvements to the property, which in these cases does not require the tenant to move out (which is the case with a declaration of unfitness or uninhabitability by the mayor). As a result, it was decided that a technical report (or an opinion from the regional civil servant) would no longer be used as a basis for access to the rent subsidy system. Indeed, the purpose of the housing quality procedures is to resolve housing quality issues and not in itself to provide a rent subsidy. When an individual has to move after a dwelling has been declared uninhabitable, a rent subsidy is, of course, granted. But if the shortcomings are resolved during the procedure, the tenant can continue to live in the property.

Furthermore, the plaintiffs claim that the scheme for accessing the rent subsidy has also been tightened, given that the dwelling now needs to have two serious shortcomings. Nevertheless, contrary to the plaintiffs' claims, the conditions have actually been relaxed. Since 2021, two Category II or III shortcomings are enough, where previously at least three Category III shortcomings under the main headings "Building shell" or "Interior Structure" were required, or at least three Category IV shortcomings and 60 penalty points. The fact that standards evolve should not be overlooked, and energy standards in particular are being tightened. For example, failing to meet the requirements for roof insulation and double glazing can now also lead to the house being declared unfit (whereas this was not the case a few years ago), and the conditions have been tightened as regards heating installed in the living room.

Since the introduction of the new measurement methodology on 1 January 2021, the proportion of conformity investigations that meet the condition for the rent subsidy has more than doubled to 43% (in 2020, it was around 16%). This shows that the new methodology has not resulted in fewer individuals accessing the subsidy.

Renovation grant

With the introduction of Mijn VerbouwPremie (My Renovation Grant), the renovation grant and the energy grants were merged into one e-desk as of 1 October. All conditions were aligned so that applicants for a renovation or energy grant can use the one-stop shop to apply for 'My Renovation Grant'. This will encourage energy renovations of dwellings and simplify the application process for the various grants.

Landlords who rent out their property to a social rental agency or housing corporation can claim the highest grants. This grant was increased to 50% of the investment amount for applications in 2022 and 2023 and capped at a certain maximum. Grants can be applied for works to roofs, exterior walls, floors, windows and doors, and for interior renovations, electricity and plumbing works, gas condensing boilers, solar water heaters, heat pumps and heat pump boilers. The maximum grant for anyone renting out their property to a social rental agency or housing corporation amounts to over €30,000, if a grant is requested for all the different types of works. Landlords who do not rent out their property to a social rental agency or housing corporation are entitled to flat-rate grants for insulation installed or for renewable energy installations.

Between 1 October and 31 December 2022, 204 applications were submitted by landlords renting out to social rental agencies. The applications mostly concerned roof works, electricity and plumbing works, works to windows and doors, interior renovations, and gas condensing boilers.

Housing quality policy

It was previously cited that thanks to its housing quality policy, the Flemish government is actually making significant efforts to improve the quality of rented housing in the field (cf. raising standards and applying various procedures). It is therefore surprising to see that the plaintiff cites secondary and legal/technical elements to demonstrate that the Flemish government is underperforming in terms of housing quality policy on the private rental market.

The plaintiff claims that the Flemish government contradicts itself when, on the one hand, it insists on nullity as a sanction when a property is rented out that does not meet the minimum quality standards, but, on the other hand, forms the basis for compensation for the landlord. The plaintiff portrays this scheme as though the landlord in no way has to bear the financial disadvantages of having rented out a defective dwelling. This is a misinterpretation or misrepresentation of the regulations. In this regard, the Flemish government first refers to its previous reply in which it was already made clear that a *possible* compensation is linked to the objective rental value of the property. The Flemish government wishes to emphasise that any compensation is not automatic, but that a judge must always issue a decision in this regard, taking into account all the specific elements of the case, and that he or she may decide not to award compensation at all. The nullity sanction is therefore an appropriate means of deterring landlords from renting out substandard housing.[41] Moreover, the plaintiff overlooks the fact that nullity is also an appropriate sanction for the tenant. Although nullity will result in the tenant eventually having to vacate the property, they can at least do so in a legitimate manner. If, on the other hand, the legislator had made it possible for the judge to also order works to be undertaken, a tenant would remain contractually bound to the landlord, and if the landlord took no action, the tenant would be obliged to have the imposed work carried out, which is by no means straightforward in the case of an order to repair defects. This would likely result in tenants continuing to live in unfit and uninhabitable housing for longer periods of time, which therefore continue to be rented out, resulting in potential health and safety risks to the residents.[42] This last aspect would be at odds with the housing

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[41] A. VAN OEVELEN, "Gevolgen van de nietigverklaring van een woninghuurovereenkomst wegens niet-naleving van de gewestelijke kwaliteitsnormen" (note under Cass. 12 May 2012), *RW* 2012-13, 990, no. 9; T. VANDROMME, "De kwaliteit van de verhuurde woning in het Vlaams Woninghuurdecreet" in M. DAMBRE, B. HUBEAU, T. VANDROMME and D. VERMEIR (eds.), *Het nieuw Vlaams Woninghuurdecreet. Over grote en kleine wijzigingen in het woninghuurrecht*, Bruges, die Keure, 2019, 51, no. 28.

[42] T. VANDROMME, "De kwaliteit van de verhuurde woning in het Vlaams Woninghuurdecreet" in M. DAMBRE, B. HUBEAU, T. VANDROMME and D. VERMEIR (eds.), *Het nieuw Vlaams Woninghuurdecreet. Over grote en kleine wijzigingen in het woninghuurrecht*, Bruges, die Keure, 2019, 51, no. 28.

quality policy (which is aimed at improving the quality of housing on the one hand and tenant occupancy in high-quality properties on the other).

The plaintiff further argues that access to social housing for residents of uninhabitable housing is made difficult by the new allocation system. It was cited above that prospective tenants in acute or serious need of housing can be accelerated allocated to social housing, including applicants whose main residence has been declared uninhabitable (based on the New Municipal Law). There is therefore still priority for applicants in a situation of uninhabitable housing. The plaintiff further argues that the accelerated allocation is complicated by additional conditions relating to housing declared unfit. However, it was decided to have equivalence in the allocation system (and the system applied by social housing corporations has been extended to housing corporations). Moreover, the basis for accelerated allocation when the prospective tenant does not live in sufficient quality housing was reorganised based on the structural nature of the problems versus those that can be remedied quickly (for example, loose electrical wires). Only structural problems requiring intervention that cannot be solved in the short term are grounds for granting the accelerated allocation. This reorganisation, in the Flemish government's view, is based on reasonable grounds.

Anti-discrimination policy

The plaintiff reiterates its assertion that the Flemish action plan for anti-discrimination policy on the private rental market is seriously inadequate, as the action plan focuses mainly on informing and raising awareness. Nevertheless, the plaintiff overlooks several elements in this regard. Firstly, the Flemish Region has only been competent for housing rental law since 2014 and, consequently, for tackling discrimination on the private rental market. Along with the adoption of a regulatory framework for housing rentals in 2019, work has been done on anti-discrimination policies. The choice in this regard was for an incremental and targeted approach which, in addition to raising awareness and providing information, is also accompanied by flanking policy. The plaintiff only refers to the action plan, but does not mention the flanking measures. These flanking measures are aimed at eliminating the structural causes of discrimination in the private rental market. The Flemish government is aware that discrimination can occur when there is strong demand for rental housing. Therefore, as indicated above, various approaches are being taken to expand the supply in the private and social rental market (cf. above, the projects for rentals under conditions and the expansion of the supply of social housing). The action plan cannot therefore be viewed in isolation from other measures. Secondly, in drafting the action plan, a policy that could rely on broad support from all stakeholders was aimed for. Both tenants and landlords endorse the approach, with the emphasis on long-term behavioural change, through informing and raising awareness. In this regard, the fact that the federal level of competence would have already taken similar measures is independent of the initiatives of the Flemish government, which has only been competent in this domain since 2014. As the plaintiff points out, the Flemish government is not only reprising the existing instruments, but is also endeavouring to strengthen them. The Flemish government aims to achieve this strengthening through the direct involvement of local governments and local actors. Through the subsidy framework for inter-municipal cooperation (IGS), local governments have been required to set up a local reporting centre since 1 January 2021, which their residents can contact with reports of discrimination, among other things. Together, these projects account for 255 municipalities where a reporting centre exists. These offer a more accessible way for citizens to report discrimination. In turn, the municipality ensures the report is forwarded to the competent equal opportunities centre. Furthermore, the reporting centres were developed in cooperation with Unia (and with financial support from the Flemish government). The anti-discrimination policy therefore aims not only to make the existing procedures more widely known, but also to optimise them. Moreover, the plaintiff actually acknowledges that the reasons for the limited

number of convictions for discrimination are due to the fact that the rules are not sufficiently known. Therefore, while discrimination can be tackled in various ways, it seems more than appropriate to implement policies aimed at raising awareness and making the rules better known in the first place. This approach should be given every opportunity, and the policies put in place will continue to be rolled out and do not need to be an end in themselves. The covenant setting out the commitments of the sector is valid for five years and will be reviewed thereafter. The municipal reporting centres are evaluated annually under the IGS subsidisation. The action plan therefore does not rule out a phased approach in the future. Where necessary, the policy will be adjusted, and the Flemish government of course always follows up on the studies to which the plaintiff refers. The fact that an enforcement repressive component was not immediately opted for is therefore unfairly viewed by the plaintiff as ignoring the results of the studies conducted.

Furthermore, the plaintiff refers to the recently established Flemish Institute for Human Rights, which provides Flanders (the Flemish Region and Community) with its own centre for equal opportunities. In this regard, the Flemish Institute for Human Rights will combine the current missions of Unia and the gender chamber of the Flemish Ombudsman Service. The plaintiff criticises the fact that the Institute only focuses on awareness-raising and mediation and that, unlike Unia, it cannot take legal action. In this regard, the plaintiff paints an un-nuanced picture of the institution. The Flemish government has consciously chosen to take a different path in terms of compliance with the rules. The Flemish Institute for Human Rights focuses primarily on reconciliation and mediation, but also has an independent and neutral litigation chamber that adjudicates complaints of discrimination in a non-binding manner. The Flemish government takes inspiration from the Dutch example in this regard.[43] With the rulings of the independent, neutral and authoritative litigation chamber to their credit, victims will be in a much stronger position. Indeed, the judicial route remains fully open to those who wish to take it, in parallel with or after going through part or all of the procedure at the Flemish Institute for Human Rights. In this regard, a conscious decision was made not to grant the institute itself powers to act in court on behalf of a victim of discrimination. Indeed, such a mandate would be at odds with the impartiality of the litigation chamber, as a component of the Flemish Institute for Human Rights, which, moreover, does not mean a breach of the standstill principle in terms of legal assistance.[44] Indeed, with the establishment of the Flemish Institute for Human Rights, stronger guarantees are incorporated to ensure access to justice, in the form of effective legal protection against discrimination. Through mediation and the rulings of the litigation chamber, this protection can be provided free of charge, faster, and at least as effectively as through the judicial route. Therefore, there is a clear distinction in terms of approach and finality of the Flemish Institute for Human Rights compared to the regular judicial path: its neutral image and authority as a mediator are difficult to reconcile with the possibility of legal action.[45] Nevertheless, the institute itself continues to have a collective right of action.

4.4. Specific topics

(A) Homelessness

[43] See expressly Article 19, second paragraph, of the Decree of 28 October 2022, establishing the Flanders Institute for Human Rights.

[44] The Legislative Section of the Council of State also notes in its opinion on this draft decree that it is not self-evident to judge that there is a significant reduction in the proposed level of protection in this case (see Adv. Council of state. no. 71.275/3, para. 11).

[45] Memorie van Toelichting bij het ontwerp van decreet tot oprichting van een Vlaams Mensenrechteninstituut,, 2021-2022, 1357, p. 60.

The plaintiff argues that the complexity of the issue cannot be cited as a reason for the difficulty in obtaining an accurate picture of homelessness in Flanders (the Flemish Region), as it is an internal Flemish competence. As cited in the original defence, homelessness takes various forms (cf. ETHOS). Besides the most visible manifestations such as rough sleepers or people in night shelters, there are also less visible or more hidden forms of homelessness, such as people permanently living in campsites or temporarily sleeping with friends or family. In addition, the specific situation of homeless people also regularly changes. The foregoing is the reality in the field, and makes obtaining an accurate overview of the size of the homeless population a difficult challenge. This is not unique to Flanders; other European countries and regions also struggle with the same problem. As already indicated, recent local censuses, among other things, and the specific methodology used, are attempts to address the problem. Thus, efforts are indeed being made to obtain a clearer picture of the issues.

The plaintiff also argues that the Action Plan for Homelessness merely lists separate policy initiatives in the area of Housing and Well-being, and that these actions are neither related nor mutually reinforcing. On the one hand, there are actions in which both policy domains are involved to a greater or lesser extent, such as the Fund to Combat Evictions, preventive housing guidance, Housing First and the monitoring of issues. On the other hand, the Action Plan for Homelessness and the mixed platform actually provide the necessary exchange of information, discussion and coordination on the various initiatives between the policy areas involved and more broadly the professional field. This helps to make the actions developed more coherent, with more support, both at the Flemish and local levels. Similarly, the renewed allocation rules in social rent, which require that 20% be allocated to individuals in acute or serious need of housing, will result in homeless people being supported and assisted into social housing as a priority (see above). In addition, the plaintiff cites that the action plan and implementation of actions are not systematically evaluated. Besides monitoring the implementation of the action plan by the mixed platform, this forum is also tasked with advising the ministers and the Flemish Government on the progress of the action plan after practical assessments. Moreover, for various actions, an evaluation is expressly stipulated in the plan, such as for the Fund to Combat Evictions, the rent guarantee loan, the rent premium and rent subsidy (see above). In general, we can refer to what was stated above about the policy cycle: the Flemish government always tries to develop the policy concretely through evaluation and substantiation (partly through a strong input of scientific research), but of course this can be improved on certain points (which the Flemish government is open to and working on). For example, the plaintiff states that the figures on evictions in the private rental housing market are incomplete. In this regard, the Flemish government does not have the complete information on the number of claims, rulings or evictions actually carried out in the private rental housing market. This information is divided among various agencies and levels of government (in particular, the FPS Justice (claims and rulings for eviction) and the National Chamber of Court Bailiffs (actual evictions). To this end, the Flemish government has repeatedly contacted the relevant agencies and departments. Also in this context, steps are being taken to register the number of actual evictions (in cooperation with the National Chamber of Court Bailiffs) (and figures have recently been available). The annex provides a comprehensive overview of the availability of data on evictions, and the efforts to further expand this. The implementation and added value of local censuses of homelessness, methodologically supported from the Well-being policy area, was discussed in detail in the previous defence.

(B) Caravan dwellers

The plaintiff reiterates the fact that too little effort is being made for caravan dwellers, which, however, can be refuted by the Flemish government. The Flemish Housing Codex starts from the principle that the right to decent housing applies to everyone, regardless of the type of housing someone chooses.

This provides a fundamental starting point on which to add protection, and the protection offered has a broad scope. For example, the minimum quality standards apply to *every* home in the Flemish Region. Movable property, such as caravans or houseboats, also enjoy protection (when the occupant intends to leave the property in place for the long term). At the same time, the Flemish government takes into account the individual needs of specific target groups. For several years, for example, more substantial efforts have been made to set up residence sites for caravan dwellers and Roma families. In particular, Flanders (the Flemish government) opted for an incentive policy, in consultation with local initiators (cf. above, partnership model). In this regard, the subsidies available are clearly high: the purchase and development of a site is 100% subsidised for new sites and 90% for renovations of existing sites. Sufficient funds are also set aside each year in the budget for this purpose (between €2.2 and €4.3 million).

(C) Stakeholder involvement

The plaintiff also cites that the stakeholders are less involved in the policy cycle, partly because of the abolition of the Flemish Housing Council (in 2020). Partly because of the formalistic nature of the procedure within which the Flemish Housing Council had to act, the choice was made for a flexible proactive stakeholder consultation (and this was anchored in the Flemish Housing Codex). Stakeholder consultations were already used for various implemented policy initiatives, involving direct stakeholders in a targeted manner. Among other things, this was the case for the reorganisation of the social housing sector (formation of the housing corporations) and changes in social rent. The stakeholders' findings were appended to the preliminary decree file, in a comprehensive report, and are publicly available. Besides such major policy initiatives, ad hoc consultations with actors on specific sub-topics have also been put in place. This is the case, for example, with regard to the drafting of the performance manual for the housing corporations, which was produced in a long-term and intensive process in consultation with stakeholders. Periodic consultations are also held on aspects of special issues such as student housing, aspects of housing quality standards and private rent. These consultations survey and discuss the specifics of the subject matter and are therefore not set up in a broader context, but rather unilaterally with the relevant actors and experts. In this way, additional knowledge and expertise is gleaned and integrated into the policy cycle. All in all, it is clear that the proactive stakeholder consultation is being used purposefully and efficiently in the development of various policy initiatives, which is particularly useful to incorporate targeted input into its concretization. In addition, reference is made to the fact that stakeholders also have input in the evaluation of policy instruments, and their experiences are then taken into account in the further process. The plaintiff also cites that the RIA (Regulatory Impact Analysis) was abolished (a decision that affected all areas of competence of the Flemish government). The RIA was initially set up to consider various alternatives in the preparation of the policy initiative, which were then assessed for their value and feasibility. However, the RIA had a rigid, formalistic guise that often did not make any substantive contribution and also entailed a significant administrative burden. Hence the general decision to abolish it, while retaining the obligation to underpin policy initiatives and carry out specific assessments each time (including the impact on young people, people living in poverty, etc.). It was cited above that housing policy, thanks in part to scientific research, always endeavours to underpin the policy cycle in an optimal manner. In addition to stakeholder Input, this is also a valuable cornerstone for housing policy.

FOR THESE REASONS,

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

For the Kingdom of Belgium,

Piet HEIRBAUT

Annex: Overview of indicators to map the issues at the bottom of the housing market and situation of vulnerable households

- *Extent and nature of discrimination in the housing market*: the Flemish Housing Monitor includes various indicators to monitor access to the private rental market. These indicators are completed using the housing surveys. These are:
    - The proportion of landlords who say they look for another tenant if a prospective tenant of a different ethnicity wishes to rent their property
    - The proportion of landlords who say they look for another tenant if a prospective tenant who is single with children wishes to rent their property
    - The proportion of landlords who say they look for another tenant if a prospective tenant who depends on the OCMW for a rent guarantee wishes to rent their property

- *Number of dwellings occupied by owner-occupiers vs number of dwellings on the private rental market*: recent administrative data on the number of dwellings in Flanders (the Flemish Region) that are owner-occupied or rented are published on the website 'Provincie in Cijfers'. The 2011 census (where links are made between different administrative databases) is also an interesting source. The available data here includes data on occupied housing by type of ownership (owner-occupied housing, rental housing, not indicated, other housing units or collective residences). These data are available not only for Flanders (the Flemish Region), but also for Belgium and the other regions (down to the municipality level). The Census is only available (for the time being) for 2011, but the 2021 Census will soon be published. The Policy Research Centre Housing has written an interesting report describing the private rental market in Flanders (the Flemish Region) using census data.

- *Evictions*:
  The Flemish Housing Monitor of the Policy Research Centre Housing explains that evictions on the rental market can serve as an indicator to monitor the housing security of private tenants. Indeed, an (imminent) eviction jeopardises housing security in a highly concrete way. Therefore, ways to track evictions are being actively sought.

  We distinguish between data that allow us to estimate imminent evictions, data on convictions for eviction, and data on actual evictions. As soon as there is an eviction claim, housing security is jeopardised. But not every claim leads to a conviction. And not every conviction ultimately leads to forced eviction. All this information (and the links between them, e.g., in how many cases does a claim lead to a conviction) can give us more insight into the extent to which housing security is at risk in the (private) rental market.

  Threat of eviction

  1. Via figures on rental disputes submitted before the justice of the peace courts - FPS Justice: When a private or social landlord comes into conflict with its tenant, he can never decide on his own to evict the tenant. The intervention of a justice of the peace is always mandatory. Not every claim for eviction submitted before the justice of the peace results in an effective eviction. But when the claim has been submitted before the court, housing security is of course already at risk. And since rent arrears are the main reason for proceeding with eviction, rental disputes relating to the recovery of rent arrears submitted before the justice of the peace also offer interesting insights on housing security (and affordability) in the rental market.

2. Via figures from OCMWs - Flemish Association for Cities and Municipalities (VVSG): The justice of the peace pre-emptively notifies the OCMW of the municipality concerned when a claim for eviction is submitted before the court. For tenancy agreements covered by the Housing Rental Law, the tenant may oppose such notification to the OCMW. The OCMW mediates between tenant and landlord, and provides the necessary assistance to avoid eviction. The OCMW therefore also have (partial) information regarding the threat of eviction.

<u>Convictions for eviction:</u>

1. Via figures on rental disputes submitted before the justice of the peace courts - FPS Justice: After a claim for eviction is submitted, the justice of the peace (or the appellate court of first instance) must rule on it. Not every claim for eviction results in a conviction for eviction. It is therefore interesting to know the number of eviction convictions.

<u>Actual evictions:</u>

1. Via figures on the number of notices served by a court bailiff - National Chamber of Court Bailiffs (NKGB): The landlord must have the eviction notice served by a court bailiff. From then on, the tenant is given at least one month to vacate the property. The served notice makes the conviction for eviction final.
   A forced eviction does not always follow every served notice of eviction. Sometimes the tenant and landlord still reach an agreement, or the tenant leaves on their own initiative anyway. The number of evictions implemented by court bailiffs is therefore also of interest.
2. Via figures from OCMW - Flemish Association for Cities and Municipalities (VVSG): For tenancy agreements governed by the Flemish Housing Rental Decree, the court bailiff is obliged to (re)inform the OCMW when serving an eviction notice. The tenant cannot oppose this.

In recent years, we have had frequent contact with the relevant actors (FPS Justice, National Chamber of Court Bailiffs and the Flemish Association for Cities and Municipalities). The state of play:

1. FPS Justice: since 2013, the request for statistics on evictions has been regularly made to the support service of the College of Courts and Tribunals. First through the Higher Council for Statistics, later through the Interfederal Statistical Institute, and still later by the minister him or herself. Although certain steps are being taken (for example, by creating specific codes in the filing system of the justice of the peace court), it is still not currently possible to produce the necessary statistics. Figures should be available for the first time in 2023 (for 2022).
2. National Chamber of Court Bailiffs: the National Chamber has operated a Central Register of Court Bailiff Deeds (CREA in Dutch) since 1 January 2022. This allows the National Chamber to monitor and provide the administration with much more accurate figures. Housing Agency - Flanders periodically receives the figures regarding the number of evictions actually carried out (quarterly) from the first semester of 2022.
3. Association of Flemish Cities and Municipalities: the annual OCMW barometer of the VVSG surveys the threat of eviction, among other things. The OCMW respond based on the reports they receive from the justice of the peace court. We continue to urge the VVSG to provide further details to the overall figures of announced evictions. This should be possible in the next edition of the barometer.