

Providing cheap land for social housing: Violation of state aid rule of Single European Market ?

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Abstract

Member states of the European Union are not allowed to grant aid that distorts competition by favouring certain undertakings or the production of certain goods as this may effect trade between member states. Rules on state aid are laid down in the EC Treaty with the general principle that state aid is not allowed and that unjustified state aid must be repaid. Providing cheap land to housing associations, along with number of other issues arousing in urban policy implementation across Europe, may well fit within this regime, and consequently be considered illegal due to the state aid rule. This paper reflects on the practice of land provision for social housing in the Netherlands and explores the ways in which the practice may be re-framed to make a fit with the Single European Market regime. The paper aims to answer the question whether selling up land for low prices by municipalities to housing associations can be perceived as state aid according to European law, and how this practice may be restructured in a way that it is not in conflict with the Single European Market. The paper discusses to what extent the Dutch practice meets the state aid requirements and how this procedure can be relevant for other European member states concerning the cheap land provision in the social housing sector.

Key words: state aid, social housing, land price

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1. Introduction

The European Union (EU) monitors the European market to ensure that there is free and fair competition between businesses. This is done by a number of means, such as preventing collusions between suppliers and making sure that tendering processes admit competing contractors (see, for instance, Korthals Altes, 2006). In July 2005 the Dutch government received a letter from the European commissioner on competition and the non-permissibility of certain forms of state aid for housing associations. The letter listed the following forms of such state aid: loan guarantees by the Dutch social housing guarantee fund (the *Waarborgfonds Sociale Woningbouw* or *WSW*); structural sector support by the Central Social Housing Fund (the *Centraal Fonds voor de Volkshuisvesting* or *CFV*); exemption from corporation tax; and cheap loans provided through the Dutch Municipalities Bank (the *Bank Nederlandse Gemeenten* or *BNG*) and the *Nederlands Waterschapsbank* (or *NWB*).

The EU letter does not mention the fact that many Dutch municipalities make building land available to housing associations at prices much lower than those paid by private developers. Is the EU unaware of this form of support or is it of the opinion that this form of support is entirely improper, and therefore not even mentioned? In the meantime the Association of Institutional Property Investors in the Netherlands (the *Vereniging van Institutionele Beleggers in Vastgoed, Nederland* or *IVBN*) has filed a complaint with the European Commission about the way Dutch government favours housing associations. The complaint explicitly describes the provision of cheap building land as a form of state aid that is unrecognised by the European Commission (Priemus, 2008).

The present paper aims to map out the relationship between providing cheap building land for housing associations and European legislation on state aid, by using the Dutch practice as a focus of interest. The paper aims to answer the following questions: Can setting up low land prices by municipalities for housing corporations be seen as a state aid according to the European regulations? If so: in what conditions this permissible form of public aid can be satisfactory?

In this article we first clarify the European Union definition of state aid, together with its relationship to organisations offering services of general economic interest (SGEI). We then examine the matter of land transaction and financial compensation, embodied here in land purchases by housing associations. Lastly, a number of options are described for social housing land supply in relation to state aid legislation.

2. Single European market regulations and practice of land transfer for social housing: Issues with state aid and services of general interest

EU definition of state aid

The European Union (EU) keeps an eye on the European market to ensure that there is free and fair competition between businesses. This is done by a number of means, such as preventing collusions between suppliers and making sure that tendering processes admit competing contractors (see, for instance, Korthals Altes, 2006). The present study focuses on the means to prevent state aid measures from interfering with competition. Article 87, paragraph 1 of the EC treaty declares that any state aid that distorts competition is 'incompatible with the common market':

Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

Such aid, in the sense understood by Article 87 paragraph 1, only exists if its beneficiaries are ‘certain undertakings or [...] certain goods’. This is therefore an issue of selective promotion (export support falls into this category by definition).

An ‘undertaking’ has been defined by the European Court of Justice as ‘*every entity engaged in an economic activity, regardless of its legal status and the way in which it is financed*’ (Case C-41/90, Klaus Höfner and Fritz Elser v. Macrotron GmbH, 1991, p.I-1979). This therefore applies both to artificial persons in private law and to legal entities in public law. ‘Economic activity’ is understood to mean ‘*any activity consisting in offering goods and services on a given market*’ (Case 118/85, Commission v. Italy, 1987, p.2599 paragraph 7). In order to determine whether an ‘undertaking’ is involved, it is important to consider the nature of the tasks and activities and the way in which these may have been incorporated into legislation (whether the task is or is not a typical government task / general interest task) and the presence or absence of a competitive situation (that is to say, the market situation as this is, or ought to be, encountered in practice). To illustrate this last point, for example, a non-profit organisation (such as a foundation) whose economic activities are carried out in competition with other organisations is held to be an ‘undertaking’ within the meaning of the treaty.

Where a municipality supplies land to a housing association, these criteria make it clear that it would be an instance of a provision made to an undertaking; such a land supply would therefore fall within the domain of state aid.

Land supply¹ and state aid

In 1997 the European Commission published a Communication on state aids elements in the sale of land and buildings (PbEG 1997, C209/3; see also ICER, 2005). The Communication specifies conditions under which the sale of land and buildings by public bodies does not involve state aid: this is the case when the transaction is at a price that conforms to the market value, calculated on the basis of normal economic activity. The Communication had originally been intended as one of several instruments by which to allay the suspicion of state aid, but the European Commission now uses the Communication alone and also employs it by analogy to the purchase, lease and rent of land and buildings. This is shown by the decision practices of the European Commission, which represent their actual application of the Communication.

The Communication distinguishes between two basic principles: sale via an ‘unconditional bidding procedure’ (an *open, non-discriminatory and unconditional contracting procedure*, p.20) and sale without this unconditional bidding procedure. Under the first principle, the

¹ We define ‘land supply’ as the provision of serviced (building) land to a party that will take care of constructing the buildings on it. Therefore land prices are the square meter prices for which serviced land is sold to private builders.

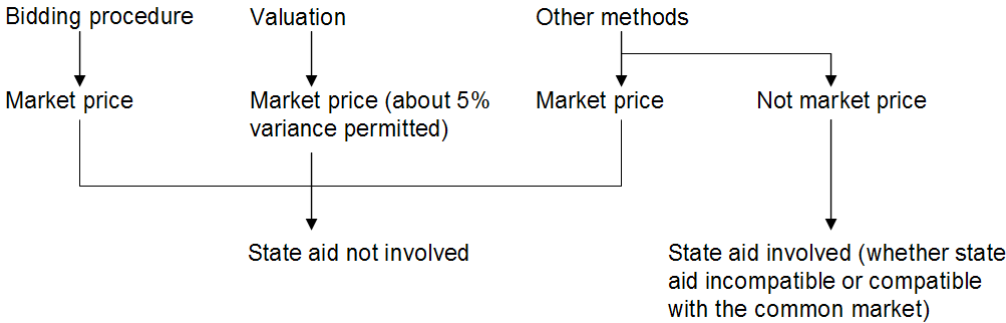
bidding procedure ensures that the sale takes place at the market price; under the second, valuation is required in order to arrive at a market price.

The Communication states that the sale of land through an open, unconditional, and sufficiently public bidding procedure is not an instance of state aid, because it has the character of an auction in which the best or only bid is, by definition, the market value. In the absence of an unconditional bidding procedure, there can still be a market value price if the land has been valued by an independent expert. The price paid in actual practice may then depart from this valued price by 5%. If the land in question cannot be sold within a reasonable period of time, then a new value may be set. According to the Commission’s so-called ‘SCI Decision’ on such valuation, qualitative demands must also be made of any valuation (PbEG 1999, C144 and 2001, L 186). The proposed use of the land must also be taken into account.

It may therefore be concluded that the European regulations on competition and state aid apply if a municipality fails to employ market prices for land it buys, sells, leases or rents out.

The Communication appears to be directed principally towards the sale of government property, and not the issue of land on which to build. For instance, the valuation of a piece of land may not be lower than its original purchase price if the transaction takes place within three years (unless the valuer has established that there has been a general price fall in the sector as a whole). However, in land supply the sale price is by definition different from the purchase price because works have been carried out in the intervening period (making the land ready to build and live on). Moreover, in the transaction of, say, a government building, the building is regarded as the final product, whereas building land is an ‘intermediary product’ whose value is co-determined by the end product (housing, offices, etc) (see Groetelaers, 2008). According to the Communication, then, there are only two methods by which a market price for a land supply can be determined: an unconditional bidding procedure, or a valuation (see also Figure 1).

Figure 1: Setting a land price for a municipal land supply



EU criteria for ‘services of general economic interest’

The EU does make some exceptions for organisations that are involved in general-interest services. The debate on general-interest services was launched in May 2003, with the publication of a European Commission consultation on this issue. The aim of this consultation was to determine how the European market rules affect these certain public services and whether there was a need to create a new legal framework which would specifically address these services. In November 2007, the Commission announced the creation of an interactive information service, handling questions on the application of Community law to general-

interest services (services covering such essential daily realities as energy, telecommunications, transport, radio and television, postal services, schools, health and social services, etc) with a communication.

General-interest services consist of three types of services:

- Non-market services
- Obligations of the State
- Services of general economic interest (commercial services of general economic utility)

Social housing is a good example of a service of general economic interest. Position Papers distributed by national and international organisations dealing with housing and welfare issues show the first concerns about the social housing within the framework of the services of general economic interest (CECODHAS 2006; GAPPW German Association of Public and Private Welfare, 2007).

An exact definition of a 'service of general economic interest' is not laid down by the EC treaty; it is left up to the member states to define this for themselves. In principle such services are held to be economic and social activities, regulated by government to a greater or lesser extent, and which either are not or cannot be left to the open market.

Treaty establishing the European Community

Article 86 paragraph 2

Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

If financial contributions are provided to undertakings that carry out 'services of general economic interest' (SGEI), then that which might otherwise be classified as state aid is held to fall into a different category (European Commission, 2005a; see also Hessel, 2006 and Bruhns, 2001). In such cases the support is seen as permissible financial compensation in recognition of the fulfilment of a public service imposed by the state.

On 24 July 2003 the European Court of Justice issued what has become known as the Altmark Judgement on the criteria by which state aid may be denoted as compensation for an SGEI (European Commission, 2005b; ICER, 2005):

1. The recipient undertaking is actually required to discharge public service obligations and those obligations have been clearly defined;
2. The parameters on the basis of which the compensation is calculated have been established beforehand in an objective and transparent manner;
3. The compensation does not exceed what is necessary to cover all or part of the costs incurred in discharging the public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations;
4. Where the undertaking which is to discharge public service obligations is not chosen in a public procurement procedure, the level of compensation needed has been determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with the means of transport so as to be able to meet the necessary public service

requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

If these four criteria are met then the price set is deemed to be a market price, which includes compensation for the undertaking providing the SGEI, and there is no question of state aid. If the four criteria are not met, or if doubt on the matter exists, then the payment has to be declared as a state aid measure and it may be confirmed as being state aid.²

In the *Community framework for State aid in the form of public service compensation* published on 29 November 2005 in the Official Journal of the European Union, the EC states that national legislation is required to specify further criteria for the recognition of an SGEI (European Commission, 2005b, p.5/6). The 'precise nature and the duration of the public service obligations' have to be specified, as do the 'parameters for calculating, controlling and reviewing the compensation' as mentioned above. If too much is paid ('over-compensation') then this payment has, in principle, to be repaid. A maximum of 10% such over-compensation per year may be carried forward to the next year. In lieu of repayment, this over-compensation may also be used to finance another SGEI operated by the same undertaking. If the undertaking's costs vary significantly each year, over-compensation of more than 10% may be justified in certain years in order to maintain operations, and in such cases this approach is permitted, provided that this is notified to the European Commission.

3. The Netherlands' practice of providing cheap land to housing associations: two options for reframing

In Dutch practice the land supply price for land earmarked for private housing development is either set by means of 'residual calculation' or a variant thereof, or it is determined in consultations between public and private parties. These processes will not always lead to market pricing as intended by the EC's Communication. A bidding procedure is used on occasion (Van der Heijden, Groetelaers & De Vries, 2006), but in Dutch practice land valuation is almost never employed in land supply.

When issuing building land, Dutch municipalities generally use different methods when setting land prices for housing associations planning to develop social housing than when doing so for private housing developers. Bidding procedures are not used. Most municipalities use a fixed land price for social housing and other social real estate development projects. The reason for this is that these houses are built to address the needs of a specific target group in the housing market. However, it is not always clear how these land prices are actually determined. 'For social housing in particular, many municipalities still use the old 'Decree on Housing Related Subsidies' (*Besluit Woninggebonden Subsidies* or *BWS*) which uses a fixed land price in calculating the subsidisable amount' (Ecorys-Vastgoed, 2006). Using a different price-setting method does not necessarily mean that this represents state aid; this is because a housing association is a special type of undertaking which delivers a service of general economic interest.

² In November 2007, within the framework of 'The Citizens' Agenda: Delivering Results for Europe', the EC published a number of documents intended to clarify and harmonise the SGEI issue (http://ec.europa.eu/citizens_agenda/index_en.htm). Special attention is given to clarifying whether given general interest services have an economic or a non-economic character, and when the application of the Altmark criteria do and do not result in the recognition of state aid provision. For an SGEI the bottom line seems to be that competition legislation is unaltered.

The question is then whether the housing associations and the state aid or compensation they receive do indeed meet the Altmark criteria. With regard to the first – a clearly described public service obligation – two lines of argument may be followed. The first of these arguments is that housing associations meet this criterion because they act in accordance with a public duty (*algemene opdracht*), for instance the Dutch Housing Act (*Woningwet*) and regulatory legislation on the Dutch social rental sector (*Besluit Beheer Sociale Huursector*, or *BBSH*). The second argument is that the public service obligation is clearly described for each land transaction involving a housing association.

It has to be acknowledged that the current description of the public duty in the *BBSH* – the preferential provision of appropriate housing for house-seekers with lower incomes (art. 13, *BBSH*) – is not a particularly concrete one. In principle it is possible to formulate a public duty, including a reporting and accountability duty, which meets the Altmark criteria, but it is impossible to make this available in the short term. This means that, for the time being at least, the second line of argument – the per-transaction description of the public service obligation – is the more relevant. No attempts to use pre-arranged parameters to calculate the compensation given to housing associations in terms of cheap building land have so far been observed in Dutch practice. In the remainder of this section we will therefore concentrate on the way the public service obligation can be described, and the maximum compensation calculated, on a per-transaction basis.

According to the Altmark Judgement the maximum compensation can be calculated as being the difference between the market price of the land being issued for private building purposes (on the basis of public procurement, or for an average undertaking) and the price of the land as issued for SGEI purposes. In order to establish the market price of this land, a bidder (in a public procurement process) or a valuer also has to take account of the housing that is to be developed on that land. If we take this housing as our starting point, then the difference between the market price of the land and its SGEI price (for comparable housing) is expressed by the difference in value between a private housing development and one having SGEI status.

Because dwellings with SGEI status are operated as rental housing over a longer period of time, ‘replacement values’ have to be used in order to calculate value and therefore maximum compensation. The question then becomes the difference in market net present value between a private dwelling and that of an identical rental dwelling with SGEI status. This difference can then be seen as the leeway that exists for lowering the land price (a land price discount) in order to compensate for the delivery of an SGEI (the provision of social housing). The question that then arises is: how are these two replacement values to be calculated?

The market replacement value of a private dwelling can be equated with its market value; after all, if the market does its work, the replacement value and the market value are one and the same.

To determine the replacement value of a dwelling with SGEI status, calculations must take into account expected operational receipts (rental income and the residual value of the dwelling after a given operational time period) together with the expenses associated with such operation (management and maintenance costs, municipal property taxes (*OZB*), homeowners’ insurance (*opstalverzekering*), etc). As a result of its below-market-rate rent levels, the replacement value of an SGEI dwelling will be lower than that of a private

dwelling. This difference represents the range within which a discount can be provided on the market rate for building land.

We can therefore conclude that if the replacement value of an SGEI dwelling plus the discount given on the market price for the associated land supply is lower than or equal to the market value of an identical private dwelling, then there is no question of state aid. If the replacement value of the SGEI dwelling plus this discount are higher than the market value of the private dwelling, then state aid is involved.

According to the Altmark Judgement any financial compensation has to be calculated objectively, transparently and explicitly *before* the land supply actually takes place. In order to meet this condition, the determination of maximum compensation can employ standardised guidelines for setting the replacement value of the proposed housing development. In doing so, two issues are crucial: the proposed rent levels and the period of operation as social rental housing. These two points ought therefore to be explicitly considered in describing the public service obligation attached to a given land supply.

With regard to the rent level, it is clear that when a municipality supplies social housing development land to a housing association for less than the market price for building land, this represents compensation for the fact that the housing will be let at lower rents than the market rate, and a consequentially lower replacement value. In order to determine maximum compensation before the land transaction takes place, it is therefore vital that future rent levels are known and are taken into account. Within this framework, a municipality making a land transaction can explicitly state the maximum rent levels to which the housing association must adhere.

The operational life of social rental housing is also vital to the determination of its replacement value. In the Netherlands it is usual to calculate the replacement value of social rental housing on the basis of an operational life of 50 years. Because a replacement value based on a below-market-rate rent is lower than the market value of private housing, it may be expected that early sale of the property on the open market would lead to a higher replacement value and therefore a lower maximum allowable compensation via the discounting of building land. It is therefore vital that before any land transaction takes place it is made absolutely clear how long the development will be operated as social rental housing. This issue can be approached in a number of ways.

One method would be to limit the envisaged exploitation period of the development as social rental housing to, for instance, 20 years, and to calculate the maximum compensation accordingly. After 20 years the housing association would then be free to sell the dwellings on the open market.

Another method would be to issue land for social housing developments under a long-term lease contract. This would enable municipalities to set constraints on the exploitation of any real estate built on it.

4. Provision of land for social housing in other EU countries

Compared to the other market players, social housing builders are in a weaker position to get land through the market, as the social housing users cannot afford to pay the market prices. Thus social housing providers usually try to get the land at its minimum value (Needham and De Kam 2004) and public sector often supports the providers in acquiring the land (Needham and De Kam 2000). The social housing providers prefer to build dwellings on serviced land, which is a site ready for housing construction in terms of connection to major road, water, sewage and energy infrastructure (De Kam, Groetelaers, and Korthals Altes 2007). Service provision for land can be done by the state, by private sector (commercial developers, community land trusts or housing cooperatives) or by social housing providers (public or private) themselves (De Kam, Groetelaers, and Korthals Altes 2007). As the experiences across Europe prove, price of serviced land for social housing is a common issue (De Kam 1998; Needham and De Kam 2000; De Kam, Groetelaers, and Korthals Altes 2007; ICSH (Irish Council for Social Housing) 2006; WLC West Lothian Council Development & Regulatory Services 2006). On top of this practice, as we displayed in the earlier section, the EU regulations may create a burden for social housing provision when it concerns the cheap land provision for social housing.

Land provision traditions for social housing across Europe

The public sector support in the provision of land for social housing happens in different forms across Europe, such as public authority (local or central government) (Needham and De Kam 2000; UN (United Nations) 2006):

- reserves land only for the development of social housing and prevents the competition;
- gives subsidies for acquiring the land, for reducing construction costs, or for the tenants so that they can pay higher rents, which increases the amount that the providers can afford to offer for land;
- provides financial assistance for the acquisition costs where the housing is for sale;
- reduces land costs by imposition of planning controls.

Characteristics of the land market for social housing

According to Needham and De Kam (2000), the most common characteristics of the land market for social housing is that land is scarce especially in the inner city areas and high land prices is a recurring issue for the social housing providers, although some exceptions were noticed such as Belgium (both in Flanders and Wallonia regions), Luxembourg, and Sweden where sufficient reserves of land for social housing were reported in the beginning of 2000s. However, the situation for these exceptional countries has also changed during the second half of the 2000s. In Luxembourg, land prices increased by more than 300% in 10 years in some areas and the reserves of land for social housing exhausted³. In fact, the main challenge of housing policy in Luxembourg includes now stopping price increases for building land, and increasing the provision of affordable housing, both for rent and for sale as CECODHAS reports. In Belgium due to the accelerating increase in the square meter prices of new building plots, costs of social housing construction increased as well, especially in Flanders⁴. This surely affected the reserves of social housing. Similarly, although municipalities are reported to have large land reserves for social housing in Sweden in end of the 1990s, difficulties in

³ http://www.cecodhas.org/index.php?option=com_content&task=view&id=86&Itemid=128

⁴ http://www.cecodhas.org/index.php?option=com_content&task=view&id=76&Itemid=118

acquiring land is reported in Stockholm also due to the tight land market. Moreover, at least until the credit crunch, a strong economic growth was expected in the coming five to seven years in Sweden, increasing the production of housing. This situation was expected to lead to higher prices for land and higher costs for construction in the social housing sector in this country as well⁵.

In most of the other EU countries (Austria, Denmark, France, Italy, Norway, Portugal, Spain, and UK) shortage of land for social housing, high land prices and difficulties of acquiring land for social housing are reported. In Spain, for example, the co-operative sector has suffered from the increase in the cost of building land and costs of construction⁶, as a result of which, amount of new construction in affordable housing decreased, but production has recently been increasing again coming to mid-2000s⁷.

Price of the land for social housing and different European approaches

In most of the EU countries the price of land is traditionally offered to the social housing providers at a lower price than the competitive market prices (see Appendix), though in some countries like Ireland and Sweden, no privileges were foreseen for lower land prices for social housing developments. However, in some countries like Austria, Belgium, Germany, Italy, and Luxembourg, the land prices are directly kept lower than market prices in favour of the social housing builders. In the Flanders region of Belgium the Ministry of Finance assesses the price of land for social housing on the basis of the land-use designation of the district plan (*gewest plan*), whereas in the Wallonia a special committee (*Comite d'Acquisition*) of the Ministry of Finance estimates the value of the land for social housing development. If the land has still to be serviced, the costs are largely subsidized by the regional government and all other servicing costs are paid by the housing association for rental housing and by the future for the housing for sale (Needham and De Kam, 2000). In Italy, land can be reserved for social housing in special areas called PEEP (*Piano di edilizia economia e popolare*-Low cost popular housing plan). For buying land for social housing the municipality can use compulsory purchase, of which must not be more than 50% of the market value (Needham and De Kam, 2000). France may also be put in this group because some municipalities acquire land to offer it to social housing providers and they sometimes accept the price below the market price (sometimes asking symbolic prices) often transferring not the freehold but a ground lease. In some cases municipalities pay some of the costs of servicing the land. However, even if the land price for a particular social housing project is higher than the valuation (checked by the public valuer) the land may still be acquired (Needham and De Kam, 2000). In Germany, the price of land for the social housing is a matter of negotiation and social housing provider does not have a right to lower land process, however, municipalities can sell land plots either at a lower price or at a fixed price agreed by the city council.

In some others some loans or subsidies are implied for reducing the prices. In Norway some loans and grants are provided from the State Housing Bank to the social housing providers but the land price has to be lower than a certain level in order to obtain these grants. In Spain some subsidies are given to keep the land prices lower than the market price. In UK, land costs alone do not have to meet certain conditions but some regulations exist to ease the land provision for social housing. Planning obligations, which are created under section 106 of the

⁵ http://www.cecodhas.org/index.php?option=com_content&task=view&id=79&Itemid=121

⁶ +28% between 2000 and 2006

⁷ http://www.cecodhas.org/index.php?option=com_content&task=view&id=80&Itemid=122

Town and Country Planning Act are well-known in the field. The 1991 law was the first statutory recognition of direct payments to the local authority (Korthals Altes 2006). In 2005 the British government has issued revised guidance on planning obligations to local authorities, seeking improvements that will restrict planning obligations (Oxley 2008). Coming to mid-2000s the Community Infrastructure Levy is suggested to reform the system that suggests affordable housing planning obligations to impose negotiated implicit land taxation (Oxley 2008). The consequences of this new regulation for land prices for social housing are still not known. In the case of the Netherlands, as we explained in detail above, most Dutch municipalities employ a fixed land price for social housing; though land available to housing associations at prices much lower than those paid by private developers. There are actually no legal instruments for acquiring land for social housing in the Netherlands, but many municipalities help housing associations to acquire the necessary land in the form of preferential acquisition (pre-emption) or compulsory purchase (Needham and De Kam 2000). In Spain land for social housing is acquired from the local governments as well as in the market. Especially in the areas where the market prices are high subsidies are given by the municipalities for buying the land and servicing costs are also sometimes paid by the local government (Needham and De Kam 2000). In Spain Autonomous Communities and Municipalities also allocate resources for the promotion of social housing on a yearly basis. Furthermore, since the establishment of regional legislation on urban planning, in each new urban development a minimum of 30% of the land must be used for protected housing. The minimum percentage is set by the new Law on State Land, which is currently being discussed in Parliament⁸.

In some countries thresholds are used to reduce land prices. For example in Denmark, the land price is obliged to be below a certain level (14 up to 20%) of the total costs. However, if the local government sells the land at a price lower or higher than similar sites, it can be complained to a higher authority. In Portugal, if the land is connected to infrastructural services the price of land is usually kept 15% of the sales value of the scheme as a fixed price.

Lower than market land prices possibly be problematic for the state aid rule

Different forms of reduced land prices for social housing exist across Europe, meaning that in the coming years some infringements can be expected. CECODHAS (The European Liaison Committee for Social Housing) report to European Commission (CECODHAS 2005) indicates certain subsidies of social housing associations across Europe including grants, loans at low interest rates, reduces VAT, guarantee for loans, exemption of local or income taxes and reduced land prices on the basis of the research they conducted with questionnaires with various corporations. The research gives us a clear figure on some countries, like Belgium, Spain and Italy, where both for social housing for rent and sale land prices are lower than the market prices, while in some others like Germany, Estonia, Finland, France, Luxembourg, the Netherlands, Austria and Poland in either of the situations land prices are lowered.

5. Discussion: Violation of state aid rule of Single European Market?

Based on a discussion between the European Commission and the Netherlands and a complaint of the Association of Institutional Property Investors in the Netherlands with the

⁸ http://www.cecodhas.org/index.php?option=com_content&task=view&id=80&Itemid=122

European Commission we focused in this paper on the relationship between providing cheap land for housing associations by municipalities and European legislation on state aid. The European Commission has not yet responded to the complaint of the Association of Institutional Property Investors.

Because we consider social housing as a service of general economic interest, state support is seen as a permissible financial compensation, when four criteria are met (Altmark criteria). We analysed the provision of cheap land for social housing in the Netherlands and came to the conclusion that Dutch practice does not meet the Altmark criteria. A first inventory of the provision of cheap land for social housing in other European countries showed us that probably more countries are in a similar position.

In order to meet the Altmark criteria, and especially the first criterion of a clearly described public service obligation, we gave two lines of argument for the Netherlands that might also be useful for other European countries. The first of these arguments is that housing associations meet this criterion when they act in accordance with a public duty. However, the current description of the public duty in the Dutch housing legislation is not a particularly concrete one. In principle it is possible to formulate a public duty, including a reporting and accountability duty, which meets the Altmark criteria, but it is impossible to make this available in the short term. This means that, for the time being at least, a second line of argument – the per-transaction description of the public service obligation – is the more relevant. No attempts to use pre-arranged parameters to calculate the compensation given to housing associations in terms of cheap building land have so far been observed in Dutch practice. In this paper we proposed a way the public service obligation can be described, and the maximum compensation calculated, on a per-transaction basis.

Another option is that the European Commission provides a framework for the way it will interpret the compatibility of a given practice of providing land for social housing. This may provide more guidance for local authorities, and specific housing authorities, and makes clear under what conditions this practice may fit in the framework of the Altmark judgment. We expect that this framework may follow the two lines we have sketched above. We expect, however, that for certain regions in which regional policies are pursued, such as, in several regions in Southern Europe or in Central and Eastern Europe, as part of the European Cohesion policies, a third option is there, that is, to provide state aid with consent of the European Commission. Next to this, presently debates are being held, whether the situation in several neighbourhoods with lower levels of income in urban areas with, on average a higher level of income, may demand to change cohesion policies in a way that policies to improve conditions in these neighbourhoods enhance the cohesion within the single market (CEC, 2008). This may involve that state aid that contributes to the cohesion of these areas, may become compatible with the Single Market.

Complicating issue is that inclusionary policies for these areas may demand a U-turn of present migration of households between those areas and the surrounding more prosperous urban areas. Presently households with less economic power move into these areas, and households with more economic power migrate-out. Just making these areas more attractive for economic more powerful households may result in a process of gentrification that may result in further concentration of economically challenged households in other neighbourhoods. The answer may therefore be supplying social housing outside these areas, i.e., giving state aid to undertakings that develop social housing in the most prosperous areas of the European Union might under certain conditions be compatible with the single market as it is an instrument to overcome the lack of cohesion within urban areas. This requires further thinking by the European Commission and other decision-making bodies within the European

Union. The Green Paper on Territorial Cohesion, (CEC 2008) which is a communication from the Commission to the Council, the European Parliament, the Committee of the Regions and the European Economic and Social Committee has opened the debate and states that “social exclusion (...)in deprived urban neighbourhoods (...) [is] associated with the pursuit of territorial cohesion.” (2008, p. 3) . The commission also indicates that “high property prices”(p. 5), the “acute problems of urban decay and social exclusion” p.5), are drawbacks of the economic gains of concentration. The commission indicates that “Here the focus should be on reducing the negative externalities of agglomeration and ensure that all groups can benefit from highly specialised and productive economies.”(page 6). The Commission questions in this green paper about territorial cohesion the following. “What additional elements would it bring to the current approach to economic and social cohesion as practiced by the European Union?” (p.11) and asks whether specific policy measures are necessary.

This opens the debate on this issue. Relevant is, however, that in more prosperous regions national governments may hold Europe off, as they expect that they do not need European financial support, making the European budget bigger, and expect that the government may arrange these policies themselves. However, the policies of the Single European Market are not only about Europe itself giving support, but also about setting the playing field for providing state aid by member states themselves.

Appendix: Price of land for social housing across Europe and the possibility of problems for the state aid rule

		Price of the land	Lower-than-market land price possibly problematic for the state aid rule
First group: Land prices are directly kept lower than market prices in favour of the social housing builders	Austria	Lower than market prices/favourably priced	Can be, because of the lowered land prices
	Belgium (Flanders Region)	- The price must not be above the market price (assessed by the Ministry of Finance)	1) Can be because sometimes it is difficult to acquire land at reasonable prices and Flemish government gives: a) <u>subsidiary subsidies</u> (to enable SHM to acquire land irrespective of fluctuations in land prices) b) loans at reduced interest rates 2) A SHM can receive a subsidy for acquiring a developed land for costs of acquiring land
	Belgium (Wallonia region)	- Has to be below the market value estimated by the <i>Comite d'Acquisition</i> of the Ministry of Finance	Can be because it has to be below the assessed price Can be because a new regulation introduces grants for acquiring land in certain locations (land is to be developed soon, near to urban centers, land previously used for industry) by the regional government and the province Can be because if the building land has a high price after servicing it can be sold to the future owner for a price below the market value and the loss is covered by <u>the sale of other land owned by the Societe Wollonne de Logement</u>
	Italy	The price of land in a PEEP area is at least 50% lower than the price of the land outside of the area	Can be because of the 50% lower land value in the compulsory purchase
	Luxembourg	Price of the land has to be low because the sites are usually provided without public services and it is becoming more difficult with the booming land prices	Can be because even though the providers buy the land at market prices, the government gives a grant of 40% of the price
	France	Checked by a public valuer (but even if the price is higher than the valuation the land may still be acquired for social housing)	Check the new law (La loi SRU) which regulates the excessive costs of land to be fully covered by the national government
	Germany	Municipality can sell plots for social housing : a) at a reduced price determined by its own costs b) at a fixed price agreed upon by the city council The resulting price is a matter of negotiation, the provider of social housing does not have a right to lower land prices	Can be because the Bund, the Lander and the municipalities are required to sell land from their stock at a reduced price Can be because the municipality gives subsidy for the land when the construction costs are too high
Second group: indirect approach to lower the land prices	The Netherlands	Building land available to housing associations at prices much lower than those paid by private developers	Can be because of the provision of cheap building land
	Norway	Has to be below a certain norm in order to obtain loans and grants from the State Housing Bank	Can be because of the lower price norm
	Spain	Subsidies to lower the prices	Can be because of the subsidies
	UK	Planning agreements to provide a proportion of the land or buildings for	Can be because of the planning obligations

		affordable housing Planning obligations and implicit land taxation	
Third group: threshold to reduce land prices	Denmark	Has to be below a certain level (20% but usually its 14%) of total costs	Can be if the land price becomes really below the market prices after the 14-20% calculation
	Portugal	Usually 15% of the sales value of the scheme (if the land is connected to infrastructural services)	Can be because of the 15% lower sales value rule Can be because of the dwelling exchange instead of land purchase
Fourth group: market prices	Ireland	Usually equal to the market value	No
	Sweden	The municipal company has to pay market prices	No

Source: Developed by the authors by updating Needham and De Kam, 2000 and CECODHAS (<http://www.cecodhas.org>)

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