

Designing a new Housing Law for Romania

ENHR Conference in Pargue, 28.6.-1.7.2009

W17 - Legal Aspects of Housing, Land and Planning

Wolfgang Amann

Director, IIBW – Institute for Real Estate, Construction and Housing Ltd.

PB 2, 1020 Vienna, Austria

www.iibw.at, T: + 43 1 968 60 08, M: amann@iibw.at

Alexis Mundt

Research Associate, IIBW – Institute for Real Estate, Construction and Housing Ltd.

PB 2, 1020 Vienna, Austria

www.iibw.at, T: +43 699 811 718 97, M: mundt@iibw.at

Abstract

This paper describes the outcome of a research program carried out by the IIBW to support the Romanian Government in redesigning the national housing law in order to cope with specific problems on the Romanian housing market and to put together and expand various existing legislations. Housing reforms in the process of transition have tended to favour home ownership with the negative side effect of reducing tenure choice and decimating the supply of affordable and tenure-secure rental housing. This paper therefore concentrates on three major topics within the restructuring of Romanian Housing Law that permit integrating European best practice in the field of housing policy. First, rental housing legislation is reconsidered and a market-based relative price control based on the German experience and on written contracts is proposed. Second, a new PPP-housing law building on the framework of PPP-social housing providers in Austria is considered. A rigid frame of checks and balances and public compensation of social service obligations are core elements. Third, special attention is paid to the compliance of proposed measures with EU-legislation on competition, which is of major importance for any legal recommendations to be applicable. We present possible solutions for the challenge to combine a consistent overall structure of a new housing law with the necessity to integrate functional parts of existing legislation and elements of European best practice. The proposed legal changes are designed to foster the development of a functional long-term private and social rental market in order to meet the housing needs of the Romanian population.

Keywords

Rental law, PPP-housing law, rental housing, Romania, countries in transition, international legal comparison

1 Introduction

The housing sector in Romania has undergone profound changes during the transition process, which started in the early 1990s. Like in many other transition countries, the housing sector initially played an important role of “political cushion” for the more radical and politically difficult reforms of other sectors. Consequently, the early reforms focused on politically popular micro-privatization of apartments in multi-family residential buildings to sitting tenants. Less attention was given, after privatization, to an efficient maintenance and management of the existing housing stock and to create affordable housing choices for those who would be (re-)entering the housing sector and could not afford homeownership or renting under profit-driven housing market conditions.

In response to these arising problems, the Romanian Government, the Parliament and Local Governments have adopted and discussed various policy measures in the area of legislation, subsidies and direct participation in order to stimulate alternative housing forms. As part of this aim, the Romanian government is presently interested in formulating and developing more explicit rental housing policies and implementing the requisite programs as part of the post-privatization realignment of housing policies.

In this context, the Romanian Government is considering to anchor its rental housing policies on a competitive, private and transparent rental market, supplemented by social rental housing programs. Consequently, greater private resources should be mobilized into the rental sector through programs aimed at developing the private market, public-private partnerships and limited-profit sectors. Reliance on the private rental sector requires developing transparent and balanced landlord-tenant regulations, including dispute resolution and eviction procedures and securing sufficient competition to prevent usurious rent seeking.

One further challenge on the Romanian housing market are the high quantity of privately owned apartments that are rented-out without written contracts to private tenants. This private rental segment is not reflected in the official statistics on tenure in Romania. Also, taxes are not collected and Romanian authorities have hardly any possibility to encourage tenant protection.

The Romanian Government is also interested in fostering a limited-profit rental housing sector to address housing affordability problems of middle and lower income households, those who cannot afford (even subsidized) homeownership. This approach should include the implementation of housing financing patterns through public-private partnerships.

Within this process of reconsidering its housing policy and legal framework, the Romanian Government introduced a tender procedure in order to engage an international research organisation with the development of a housing strategy and the drafting of a general housing law, defining the legal framework of rental housing, limited-profit housing, condominium housing, maintenance and administration of the housing stock and housing subsidies, based on a Housing Policy Strategy from 2006 and a study commissioned by the World bank by Douglas Diamond (2006).

This tender procedure was won by the IIBW, the Austria based Institute for Real Estate, Construction and Housing in spring 2007. Consequently a team of one dozen Austrian and Romanian experts from academic research, law, housing practitioners and policy advisers was put together in order to include a variety of expert knowledge from different fields into the draft of a new Romanian Housing Law. The final report was terminated in January 2008 (IIBW 2008).

The contribution at hand aims at summarizing the outcome of this final report and mention the reasoning for specific details of legal recommendations. A far-reaching description of the whole project not being possible, this paper will focus on the private and limited-profit rental market in Romania and the recommended laws designed to cope with present problems.

The structure of the paper reflects this main focus. First, the deficiency of rental housing in CESE and especially Romania will be described. Second, the research project is sketched out and the structure and reasoning behind the proposed new housing law is displayed. We will then focus on two specific laws, the new rental law and the PPP-housing law, which were designed by the IIBW within the project, and explain how European best practice influenced the legal propositions. A consecutive chapter focuses on the compatibility of the recommended laws with EU regulations, which is of major importance for any proposed legal changes since Romania's accession to the European Union in 2007. A final chapter will summarize the lessons to be learnt.

2 Background

2.1 Backlog in rental housing in CESE countries

The present economic crisis started in the housing sector and, after spreading worldwide, hits the housing sector more than other branches of industry (Scheiblecker 2008, Euroconstruct 2008). Economies in transition are more heavily affected than well developed Western countries for several reasons. Generally, low economic power makes markets (as well as individuals and national economies) vulnerable to risks, and the risks facing CESE countries are considerable and manifold. This is because for many years new construction of multi-storey dwellings in all CESE countries was largely orientated towards the upscale condominium market. There was hardly any social housing or indeed rental housing construction (Dübel 2003, Dübel et al. 2006, Ball 2007).

Addressing the owner-occupation sector, for years, the banking sector was very open to finance any project and borrower in order to establish a client profile and market share in Europe's emerging economies (Buckley & Van Order 2004, OECD 2005, Maechler & Ong 2009). Retail financing developed quickly and covered 100 per cent and even above of purchase prices. Foreign currency loans were increasingly promoted.

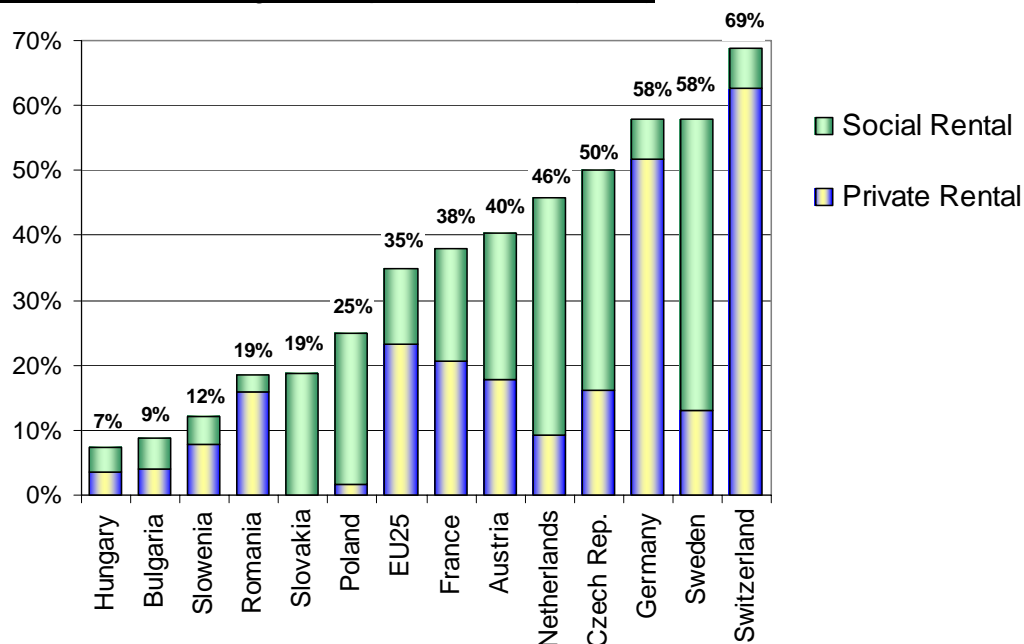
Yet, for institutional financing (financing of companies, owners associations etc. for rental housing or refurbishment) there was and still is a shortage. Development of financing instruments is closely

related to institutional development in the housing sector, i.e. the establishment of housing developers. Therefore, while the construction of owner-occupied flats has recovered since the transformation, this is not the case for rental housing. The strong preference for owning property is rooted in economic reasons (Pascariu & Stanculescu 2003). First, property is regarded as a security against trouble of any kind, above all, future income insecurity. People have experienced that property has kept its value while savings were lost and tenancy rights became more insecure. Second, there is little choice for people regarding investment. In countries with an underdeveloped banking sector, people tend to convert their savings directly into bricks and mortar. Third, property is a way to pool the economic resources of several family members, including relatives who work abroad. Thus, investment in real estate promises a double dividend by providing accommodation with low running costs and an asset that increases in value (Tsenkova 2005, Lux 2006).

Rental housing is not competitive today in most CESE countries (Scanlon & Whitehead 2004, Hegedüs 2006, Donner 2006, Amann 2005, 2006). As long as it is cheaper to finance property privately, renting an apartment is not attractive. The sharp decline in public housing in the 1990s did not recover at all. Municipalities or social housing sectors are only active in housing construction in a few countries (e.g. Poland). Generally, the public sector tries to avoid being involved once more in housing construction, as it disposed of owners' obligations by privatising big parts of the rental stock.

The profession of rental housing developers is not established in CESE countries. Currently, housing developers are often subsidiaries of construction companies. Their primary interest is to employ their own construction division and to get returns on investment as soon as possible. Long term investments are neither their core business nor in their interest. Rental housing developers in contrast must have a long term perspective. There are well functioning models for these all over Europe (see Figure 1, Donner 2000, Whitehead & Scanlon 2007).

Figure 1: Shares of rental housing in European countries (2005)



Comment: The 19% rental housing in Romania include unofficial rental units from private owners.

Source: Housing Statistics in the EU, UIPI (2003), PRC (2005), IIBW

2.2 Housing problems in Romania

After Romania's Communist regime was overthrown in late 1989, Romania experienced a decade of economic instability and decline, led in part by an obsolete industrial base as well as a lack of structural reform. Starting from 2000, however, the economy was transformed into one of relative macroeconomic stability, high growth, low unemployment and increasing foreign investment, and is currently among the most developed in South Eastern Europe. Economic growth since 2000 has averaged 4-5%, rising to 8.3% in 2004, and not less than 7.1% in 2008. This has characterised Romania as a boom economy and one of the fastest growing in Europe.

Romania is with its 21.6 million inhabitants (2006) the largest country of South Eastern Europe. Economy and population are strongly concentrated in the capital Bucharest with its two million inhabitants. The second largest city Brasov has hardly 300,000 inhabitants. Romania suffers from strong emigration. Since 1997 the population has decreased by one million. Further decrease is forecasted. Yet, there are very strong migration flows to the capital city. The population group between 16 to 25 years is with 15.5% of the total population stronger than e.g. in Hungary, Czech Republic or Austria.

Romania has a housing stock of 8.3 million units (2008). This are around 390 dwellings per 1000 inhabitants. The average household consists of 2.9 persons, which is relatively large, compared to the EU-27 average of 2.4 persons per household.

The evolution of the economy during the transformation period introduced changes also in the housing policy:

- Privatisation – which contributed to the reinforcement of the ownership rights, but determined a drastic decrease of the public housing stock and led to some major problems related to housing provision and social cohesion.
- Decentralisation – which encouraged the private sector, but at the same time determined a drastic decrease in the public funds invested in housing construction and infrastructure. A big number of municipalities are incapable of independently dealing with the housing problem of socially disadvantaged groups.
- Restitution – which is still underway, provoked many disturbances.

Between 1990 and 2004 as many as 2.2 million dwellings were privatised, which is 27% of the total housing stock (PRC 2005). As a result, the official owner occupation quote was raised to 98%. This official figure does not account for the many individually owned apartments that are rented out without written contracts (see below), which is estimated at around 1 mill. units. Hardly 2% of the stock has remained rental housing. The massive privatisation of social housing resulted in an excessively high ownership rate and, on the other hand, to a degeneration of the rental markets. The impacts are severe:

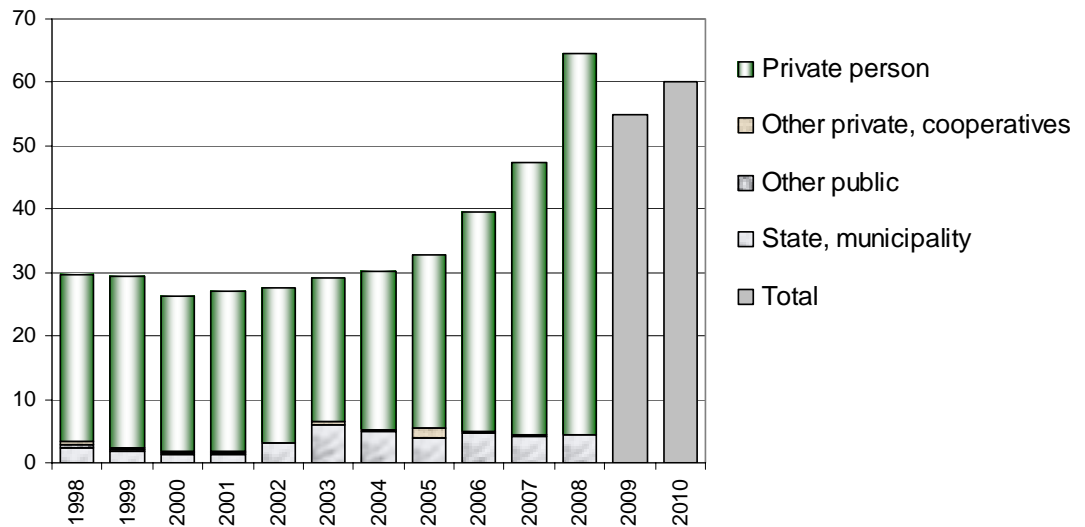
- The “manoeuvring mass” of former social dwellings is missing. This is harmful particularly for young households (which did not benefit from privatisation), for migrants to the cities and of course for low income households.
- It results in extremely unequal market sectors with much too low rents in the remaining social housing sectors and rents on international level on the private market.
- Insufficient housing supply already starts to impede economic development, particularly in metropolitan areas.

More than half of the existing housing stock was built between the 1960s and the 1980s. These buildings suffer from poor thermal quality and ongoing deterioration. The housing privatisation has made rehabilitation become more difficult, as many new owners face serious financial problems concerning the maintenance of their dwellings. Many owners still think the state should provide the much-needed support as it used to. They enjoy the benefits of private ownership but reject the responsibility adherent to such a status. Due to tenancy and the technical quality of the buildings, housing refurbishment is a paramount challenge (Pascariu & Stanculescu 2003).

Housing provision

The average useful floor space per capita is ca. 20m², which is far below the EU-25 average of 36m². This issue of “overcrowding” can only be solved by new residential construction, but the private sector is unable to compensate the diminution of public funds allocated to housing construction.

Figure 2: Housing completions (in 1000 units)



Source: National statistical offices, IIBW estimate for 2009/10

In Romania some 30,000 dwellings were completed in 2004, in 2008 the number grew to some 64,000. This is 3.0 housing completions per 1000 inhabitants. The EU-25-average was 5.2 (see Figure 2, Euroconstruct). The current financial crisis has negative effects on housing production in Romania, with housing completions forecasted to decline slightly.

By far the biggest share of completions is done by private persons. The vast majority of new construction is single family houses and condominiums. New rental construction is almost inexistent. In the past this was quite different. In 1991 only one quarter of completions was done by private persons. Its share grew up to 90% by the end of the 1990s and is today at around 80%. The second big player is the public (state and municipalities), which used to be responsible for 75% of completions. Its share decreased down to only 5% in 2001.

The main housing policy programme continues to be the construction of rental housing for young people up to 35 years. Started in 2001 and developed by the National Housing Agency (ANL), more than 17,000 dwellings have been completed by now all over the country. With support of international financing sources some grand projects with remarkable planning and construction quality were executed. After 2004 the number of completed dwellings decreased significantly.

Starting with 2006 the Government started programmes addressing the existing housing stock for refurbishment against seismic risk and thermal rehabilitation. The legislative framework was improved significantly, but a public campaign for increasing the awareness and coordinate the actions of all the stakeholders involved, is still missing.

Housing costs and affordability

Privatisation contributed to affordability of housing, at least for the sitting tenants. Quite the contrary is the case with households that enter the housing market today. Three household groups suffer particularly from shortages in affordable housing: the young, the mobile and the poor.

It is necessary to distinguish between housing costs that affect all households, and market prices that apply only to new contracts. Of course, housing costs are much lower than market prices.

On average, Romanian households spend some 22% of private consumption on housing including energy (2006), which does not seem to be a problem since it is around EU average. Yet, it depends basically on the low housing costs of many sitting tenants. Additionally, the share of housing expense has increased by 3.5 percent points since 1998. This is alarming, as it seems questionable whether incomes will catch up with the dynamics of housing market prices.

Market prices for condominiums in the capital of Bucharest and in other high-priced cities such as Braşov, Cluj-Napoca, Timişoara and Constanţa have developed very dynamically in the past few years. The largest increases were documented before 2005. The climax was reached at the beginning of 2008 when an average apartment cost around 1500 €/m² in Bucharest, the highest market segment reaching 3000 €/m². The price level came close to western European cities while incomes of the population remained much lower. At that time a modest apartment at market prices cost approximately 15 times a person's annual income. This factor is not bigger than 4 or 5 in most EU-countries. Since the peak in 2008 prices have fallen considerably and the local currency has devalued. These factors lead to a decrease in market prices of approximately one third to a price level of 900 to 1100 €/m² in Bucharest.

Considering these developments, the main challenges that can be identified for Romanian housing policy are the lack of affordable rental choices for households entering the housing market, the inefficient management and repair of common parts of high-rise condominium buildings, the inadequate housing output and the lacking affordability.

2.3 Structure of a New Housing Law for Romania

In order to set up a stringent new housing Law for Romania, there were particularly three requirements and challenges that had to be met:

First, the legal framework had to be consistent and clearly structured. The Romanian government sought a thoroughly practicable law with detailing to the level of paragraphs. Many European housing laws are the outcome of consecutive changes, ameliorations and amendments. As a result, stipulations about various domains are often scattered throughout different single laws and paragraphs, as legal changes often reflect the adaptation of regulations to newly surged practical ambiguities that have to be clarified. Therefore, to structure the new Romanian Housing Law, regulations on different domains are to be found at not more than one place, definitions ought to be collected in

one chapter of the law, so whenever this terminology is referred to in the single laws, cross-reference will suffice. Legal changes may affect the general law without rendering further changes in the single laws necessary. Therefore, a parallel development of legal domains will be prevented.

Second, a major challenge for the compilation of a new legal body was the language dimension. Any legal recommendations and wordings made by mostly Austrian experts in German language had to be adequately translated into the working language English from which, in a final phase, it had to be transmitted into clear legal Romanian. Since legal terms are very specific in each language and convey a large amount of cultural content, communication and mutual understanding was of major importance in the process.

Third, since the integration of Romania into the European Union in 2007 any laws, especially the new ones, have to be consistent with EU regulations that, though not directly affecting housing matters, may be in existence in wider policy fields, especially competition. Therefore, while consolidating the existing regulations and supplementing them with European Best Practice, the outcome had to be checked as for compliance with EU Law (see below).

In order to address these requirements in a systematic way, a comprehensive canon of housing regulations was designed within six single laws. Each of the single laws covers a highly specified field of regulation. The specification follows the context of regulation, but also the differing target groups. Laws that address consumers (Rent Law, Condominium Law) have to use a more understandable language than laws that address professional bodies (PPP Housing Law, Housing Maintenance Law, Housing Subsidy Law). The General Housing Law is a framework law that states the legal consistency of all six Laws. Furthermore, it contains regulations that are common to all, e.g. definitions.

The proposed legal canon shows the following features:

Solidity in structure – flexibility in detailing

The regulations are issued as „Simple Laws” that do not have to be amended frequently. If changes are needed, any of these Laws may be amended individually, but it will be avoided that changes in one law contradict to regulations in others. In this way an undesirable casuistic future development of housing legislation can be prevented. Details are determined by “Decisions of the Government” and – for particularly flexible aspects – as orders of the Minister in charge. These regulations may be adopted in a most flexible way in everyday legislative practice.

Innovations on basis of European Best Practice

The Romanian Housing Law introduces a number of new approaches which might increase the efficiency of the Romanian housing markets and housing provision substantially. Some of them are:

- The introduction of out-of-court arbitration should ease the access to legal rights for the citizens and quicken legal decisions.
- With the creation of condominium property in all buildings it should become possible to have one single legal regime for the whole housing stock to ease rent regulations, administration, maintenance, refurbishment, subsidies etc. This new element was designed in order to prevent the development of parallel accounting and regulation principles within mixed buildings (owner-occupied, rental) that have caused problems of administration in Romania in the past, as well as in other European countries (Pascariu & Stanculescu 2003).
- Maintenance, administration and refurbishment for all sectors of housing is regulated in one integrated law. This allows for simple procedures for all buildings. A particular target of this law is the enforcement of large-scale thermal refurbishments.
- The National Housing Agency (ANL) is a financially autonomous institution of public interest with legal personality, co-ordinating financing sources in the housing construction sector. It was established in 1999 to promote housing construction development at a national level and currently operates under the authority of the Ministry of Transport, Construction and Tourism. ANL will be developed into a key player in improving the financing tools for affordable housing. For this reason, it will acquire loans from national and international sources.
- The rent regulation scheme and the PPP Housing Law both combine adequate European regulations and will be treated in detail below.
- Additionally, with the new Housing Law EU requirements such as the obligatory energy performance certificate will be implemented.

Integration of existing regulations:

The Romanian Housing Law is designed to maintain operative existing housing regulations, particularly regarding condominium legislation (114/1996, 230/2007, 152/1998). Nevertheless, the systematic approach of the new laws does not allow for a subordination under the fairly casuistic previous regulations. Many previous regulations with proved operativeness will be integrated as “executive ordinances”. In this way it will be easy to maintain tools, procedures and standards that already became common and beneficial.

3 A new rental law

The proposed rent regulation scheme for Romania is, compared to European Best Practice, a most simple and liberal one. By contrast to existing models it works with one single price mechanism to be applied for the big stock of rented condominiums (built before 1990) and subsidised rental dwellings. The scheme of comparative rents with the newly developed tool of rent comparison lists, following the German model of “Mietenspiegel”, will be the key element. New technologies may be applied in collecting consensual market information.

3.1 Elements

The rental law states the rights and duties of tenants and landlords toward each other and toward the public. In general, it tries to interfere with the working of the housing market as little as possible and at the same time enhance transparency and tenure security.

Reaching the intended housing stock

In order to reach the intended rental housing stock with this law it is necessary to render official the many individual contracts between private apartment owners and tenants. Therefore, for all rental contracts a written form will be mandatory, including specifications on the dwelling, the partners to the contract, the monthly rent and modifying rules, the obligations of the parties regarding the use and maintenance of the dwelling and further provisions. Rental contracts that do not exist in writing by the date of coming into force of the law shall be effected in writing within a one year period. Rental contracts not containing the above-mentioned items shall be considered tenancies of unlimited time-period. Therefore, the law encompasses a strong incentive for landlords to provide written forms to hitherto unofficial, oral contracts and thereby create tenure security.

Security of tenancy

The municipalities are also encouraged to create arbitration tribunals for out-of-court settlements concerning disputes of tenancies, preferentially with the involvement of representatives of tenants' and landlords' interests. This will lead to a practicable, close-to-life interpretation of the law and may also contribute to the strengthening of the civil society. Recourse to these tribunals is binding before turning to ordinary courts. Their use is free of charge for the parties involved.

The sale of a dwelling or building does not affect tenancy rights. If a rented-out dwelling with an upright tenancy is sold by a landlord to a third party, the purchaser of the property overtakes all rights and duties of the landlord for the remaining duration of the tenancy.

Durations of tenancies concerning dwellings can be fixed at will by the parties to the contract. The law allows fixed-term contracts, the minimum term being six months, and unlimited contracts.

In general, subtenancy is not allowed: Without the consent of the landlord, the tenant is not allowed to pass on the right of use of the dwelling to a third party. Even if the landlord agrees to the transfer, the tenant remains responsible for damages caused by the third party.

Rent regulation

The regulation regarding the amount of rent concerns only dwellings built with public subsidies, i.e. dwellings built before 1990 as well as those to be built in the future according to the PPP-Housing Law. Only completely unsubsidized new dwellings will not be rent-regulated.

The rent regulation is based on an average rent according to present conditions on the housing market. Dwellings, partly or totally financed by public subsidies, irrespective of private or public own-

ership, may be rented out at rents not higher than the locally customary rent level. The locally customary rent for a dwelling will be determined in consideration of rents being paid within a municipality for dwellings of similar size, endowment, finishing, quality and location. For this reason, municipalities have to compile, proclaim and publish rent comparison lists of locally customary rents of the current and past calendar year.

A dampening effect on prices on the entire housing market is to be expected. Yet, the development of the market is taken into consideration and therefore, unlike other European countries, Romania will not experience a “rental freeze”. To the contrary, landlords will be able to rely on an adequate return on investment. Investment into housing construction by private enterprises can be expected.

Changes in the monthly rent are legitimate if the original height of the rent, the date of change and the changing factor were established beforehand. Either the rent increase will be effected every two years in accordance with changes in locally customary rents as determined by rent comparison lists, or the rent increase will be effected in accordance with yearly changes of the consumer price index.

Encouraging the modernisation of dwellings by the landlord and the tenant

The tenant must tolerate measures for the maintenance and/or the adequate modernisation of the dwelling, for energy and water saving, or for the provision of additional dwelling space. These measures have to be reasonable. On the other hand, the landlord has to agree to measures carried out by the tenant if these measures enhance the usability of the dwelling for handicapped persons or contribute to energy and water saving and if the future usefulness of the dwelling will not be substantially restricted. Useful improvements have to be reimbursed by the landlord at the date of termination of the tenancy in consideration of an adequate depreciation rate.

Changes and deteriorations of the dwelling in accordance with the contractual use of the dwelling will not have to be reimbursed by the tenant. Other deteriorations and additional wear and tear of the dwelling have to be reimbursed adequately by the tenant.

4 Elements of a PPP-Housing Law

4.1 Potentials of a Third Sector in housing

The potential of a Third Sector in housing can be seen in two different aspects. First, it enables the installation of a functioning rental market and, second, it enforces public objectives in housing policy through the operation of non-public housing providers. Under the many advantages of an increased rental housing supply, special attention must be paid to the resulting increase in labour mobility, the improvement in affordability for young and poorer households and the increase in tenure choice.

If the Romanian Government intends to emphasise rental housing, it should bear in mind some basic considerations:

- Social housing only for low income groups, with means-tested access, inevitably leads to dual rental markets (Kemeny 1995, Kemeny et al. 2005). There is a strong tendency towards “poor services for the poor”. Settlements with particularly poor tenants are in serious danger of degrading and becoming ghettos. It proves to be advantageous to strive for mixed social structures (Czasny & Stocker 2006). This assumes accessibility for middle income groups to social housing. In the face of limited budgets, it seems favourable to cover a smaller part of demand for lower and middle income groups, instead of social housing for the poorest only.
- Unitary rental markets appear advantageous compared to dual rental markets (Czasny et al. 2008). The major criteria are rental levels that do not crowd out other market segments (private rental, owner-occupation). Therefore, rents in the social housing sector should be calculated to be affordable for middle income groups. Low income groups should be supported by additional means-tested individual allowances.
- Housing is a very long-lasting product with a long period of production. Therefore, it is of major importance to warrant lasting stable conditions in terms of legal security and financing. The establishment of institutions (e.g. a PPP-housing sector) will decrease the probability that short-term housing policy programs are easily abandoned under altered political conditions.

As examples of limited-profit structures in the countries of Austria, France, the Netherlands and Sweden have shown, the implementation of a Third Sector in housing to secure general objectives of housing policy has attained convincing results (Czasny 2004, Czasny et al. 2008, Amann 2008). Particularly for low and middle income groups, the setting-up of PPP models has proven to be very effective. Unlike for-profit providers, limited-profit housing providers will not exclusively focus on rental dwellings for upper incomes, but will provide housing for middle and lower income groups, supported, if necessary, by public subsidies and the legal definition of public service obligations which specifies the social goals of the housing operators. Unlike private landlords, operators in the Third Sector will not use excess demand for housing to generate economic profits from inadequate housing supply, but will act according to public goals to which they are legally bound. To finance housing, PPP models with adequate state support would, therefore, combine the strength of the markets with public goals and, at the same time, work as incentives to market-oriented behaviour.

But is it true that starting a rental housing scheme is only possible with heavy state expenditure? There is evidence that the necessary support for a social housing sector is inversely proportional to its size. (Kemeny et al. 2005, Czischke 2005, Turner & Birgersson 2006). In some countries, though, extended social housing sectors with solid and matured non-profit housing companies work with very little state support and hardly invasive legislation (Whitehead & Scanlon 2007). Matured social housing sectors prove that by utilisation of the capital market and market forces in defined stages of the production process, it is possible to realise affordable housing with low public expenditure.

The recommendations for a PPP-housing Law for Romania are to a large extent based on the Austrian system of Limited-profit Housing Associations that has proven its efficiency to provide affordable rental housing over the last 100 years. Limited-profit Housing Associations (LPHA) in

Austria comprise altogether 192 housing co-operatives, private limited companies and public limited companies with a total housing stock (rental dwellings and owner-occupied flats) of some 750,000 units (approx. 18% of total housing stock, GBV 2008). The LPHA are responsible for 31% of new residential or 50% of multi-storey housing construction. For this task they are assigned around one third of total expenditure on housing subsidies. The housing associations are owned by public authorities, charity organisations, unions, companies, banks or private persons. To avoid moral hazard, construction firms may not be owners of LPHA.

LPHA are legally commissioned to provide tenancy secure rental apartments at cost-based rents for low and middle income households. They have to focus on housing construction, refurbishment and housing management and have to reinvest their profits in the construction of new dwellings or the purchase of building land. LPHA assets are bound to social housing goals on a long-term basis.

The strict stipulations of the Limited-profit Housing Law, the supervision through audit associations and the provincial authorities and the fact that many housing associations are owned by semi-public bodies have as a result, that housing associations are regarded as the “lengthened arm of housing policy”. They work on private market economy basis for goals strongly influenced by the public.

4.2 Elements

The basis of PPP-housing are enterprises of private law with (private or/and public) owners who have a long-term perspective and a vital interest in a functioning and flourishing housing sector.

In order to fulfil this task, regulations have to be implemented in accordance with European Union Law. The state has to guarantee the enforcement of these regulations. The system of PPP-housing will not only control the compliance with subsidy conditions and goals, but will also monitor a whole business-sector that commits to long-term re-investment. PPP-Housing companies fulfil public service obligations of general economic interest.

Field of operation

Accredited PPP-Housing companies have to focus their activities on services of general economic interest in the field of housing. They have to apply their assets to these services and agree to open their business activities to regular audit and supervision. The PPP-Housing company has to be engaged in construction and management of social dwellings.

PPP-Housing companies may build social dwellings with a limited useable floor space (e.g. of at most 90 m²) and with standard equipment, taking into account the state of the art of technology and present time habitation standards, with highest possible efficiency of construction costs, considering operational and maintenance costs.

Structure of checks and balances

There will be several elements to guarantee the transparent functioning of PPP-Housing companies: The accreditation, denial, and revoking of accreditation shall be enacted by the Ministry of Finance as accreditation authority. To be accredited as such, the PPP-Housing company has to be set-up as a limited liability company or as a joint-stock company, with a domestic head office. Cooperatives are included into the PPP-scheme as well. It is required to have a supervisory board and is not allowed to be under the predominant influence of political parties or the construction industry.

The PPP-Housing company must be affiliated to an auditing association which is in conformity with the EU-regulations 2006/43/EG, 84/253/EG and 78/660/EG and shall be accredited by the Minister of Finance. An audit must be conducted every year before the approval of the annual accounts.

Allocation

The allocation of dwellings through the PPP-Housing company has to follow objective criteria, especially regarding housing need, household size, and household income of applicants. In principle, the PPP-Housing company is not allowed to restrict the allocation of dwellings to defined persons or a defined number of persons. However, PPP-Housing companies may restrict the allocation of dwellings in some cases (reverse discrimination).

Tie-up of assets

PPP-Housing property is to stay restricted to housing policy matters on a long-term basis. Any profits have to be reinvested. Own equity and capital contributions are granted a legally defined reasonable profit. Profits are indispensable to build up equity and to carry risks. A company with too little of its own capital will necessarily be unstable and face economic difficulties, and this, of course, influences considerably the willingness of commercial banks to co-finance construction projects. Profits should, therefore, be limited to the necessary extent, and a re-investment of profits should be obligatory. EU legislation on limited-profit housing providers has recently recommended an adequate relationship between public finance providers and housing operators with public service obligations (Ghékière 2008).

If dwellings are sold, the new and any consecutive owners have no right to re-sell for at least 10 years with a gain. Price increase must only cover proved expenses on the premises of the preceding owner. This restriction is to be safeguarded with security entries in the land registry.

In case of liquidation, the PPP-Housing company has to surrender all assets including inventory to the accreditation authority. Its further use has to answer the purpose of the PPP-Housing regime.

Rent level

Rents are cost-based but there is room for rent-pooling at the level of housing companies, therefore cross-subsidisation of buildings shall be possible. Further determinants of rent calculation may be established through subsidy regulations.

PPP-Housing companies will combine the following functions: housing development, long term investment in the housing stock, housing management and maintenance. With the obligation to maintain the buildings and manage the common parts in apartment blocks, the danger of insufficient investment and dilapidation of the buildings can be prevented. They can provide an efficient structure to secure the necessary joint investments of all lodgers to maintain the common areas. As a consequence, necessary funds for these tasks will be collected continuously as a mark-up on cost-rents.

Financing

PPP-Housing companies must have privileged access to housing subsidies, especially for the provision of affordable rental dwellings. This privileged access is granted as a compensation of their public service obligations.

CEE countries spend, on average, 2% of the state budget on housing (i.e. approx. 1% of GDP). The share ranges from 1% in Slovenia and Poland up to 4% in the Czech Republic. In SEE countries, the expenditure for housing is generally below 1% of the state budget. In comparison, the average state expenditure for housing in the EU15 is 3.3% of state budgets. The difference is even more striking when the much higher GDP per capita and a housing stock in decent condition in EU15 are considered. Additional housing subsidies will therefore be a prerequisite in Romania.

The form of the subsidies remain unspecified in the law. There is no best practice in Europe, since subsidy mechanisms are very diverse in different countries, and nowadays, after the devolution of housing policy responsibility, even regions (Whitehead & Scanlon 2007). Whether lump sum grants, construction grants, annuity grants, loans, guarantees or management subsidies are preferred, will be left to the Romanian authorities to decide. But for all this, one point remains clear: The setting-up of a functional social housing sector will require supply-side subsidies and will not be able to depend on demand-side subsidies alone. Additionally, by directly influencing the supply of housing, quality and energy efficiency targets and a counter-cyclical influence on housing prices can be pursued.

As in Austria, an additional advantage of PPP models in housing will be the better financing conditions on the capital market, as long as social housing providers exist within a framework of checks and balances, with internal and external supervision (Amann & Mundt 2005, Lugger & Amann 2006). If PPP-Housing companies operate under risk-sharing conditions, either by public guarantees or by the implementation of funds, private capital participation will be encouraged due to low-risk and a reliable, stable yield. The potential to raise private capital for the operation of limited-

profit housing providers can be further encouraged by instruments such as capital-gains-tax reductions on housing bank bonds, as practised in Austria (Amann et al. 2005, Schmidinger 2008).

5 Compliance with EU regulations

At the EU level there is no legal basis for a common design of housing policies. Therefore this policy field is generally the responsibility of the individual Member States. Anyhow, for quite some time the EU legislation has influenced the housing policy of the Member States (Mundt 2006, Elsinga et al. 2008, Boccadoro 2008, Ghékière 2008, Gruis & Priemus 2008, Amann 2008).

In general, there is fundamental support from EU bodies for social housing policy measures within the Member States: “Social housing is fully in line with the basic objectives of the EC Treaty. It is a legitimate element of public policy and as it is limited to what is necessary it is in the interest of the Community that social housing is supported” (EC 2001/209). Such a support is also noticeable by the opening of the Regional Fund (ERDF) for housing (EC 2006/1080) and recent financing programmes by the European Investment Bank (EIB) (Amann et al. 2006).

Additionally, there is explicit support for social housing at the EU level because it is able to support fundamental policy goals as laid down in the European Community Treaty, such as the goal of a high level of employment and social protection, a sustainable and non-inflationary growth and a high level of protection and improvement of the environment (ECT Article 2; Ghékière 2008).

In the context of legislation on competition, however, social housing activities have to be in line with EU State Aid policy as governed by Articles 87-89 of the EC Treaty, by the later Decisions of the Commission on the matter (especially on N 497/01, N 239/02, C 515/02, N 209/01, L 312/69/2005) and by several rulings of the European Court of Justice. Only recently has a coherent EU judicature for social housing been introduced.

The provision of social housing may be considered a public service obligation in the sense of Art 86 (2). This leads to the possibility of compensating these services by the public. As for the question of the legitimate height of public service compensation, the famous judgement in the “Altmark” case (ECR I – 7747/2003) has established a general framework. Here, the Court of Justice held that, in the field of public service compensation, in order to escape the State Aid regime of Article 87, four cumulative criteria have to be met:

- The recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined.
- The parameters, on the basis of which compensation is calculated, must be established in advance in an objective and transparent manner.
- The compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit.

- The undertaking which is to discharge public service obligations, in a specific case, should be chosen pursuant to a public procurement procedure that allows for the selection of the tenderer capable of providing those services at the least cost to the community. If that is not possible, the level of compensation must be determined on the basis of an analysis of the costs which a typical undertaking, well-run and adequately provided with appropriate means, would have incurred.

For social housing as a particular field in the common market, the Commission's Decision of 28.11.2005 (EC 2005/842) brought further clarification of the Altmark ruling and established a special treatment of social housing within Competition Law: "Social housing undertakings (...) have specific characteristics that need to be taken into consideration" and "the intensity of distortion of competition in those sectors is not necessarily proportionate to the level of turnover and compensation" (EC 2005/842, p. 16). The Decision is applicable to compensations of less than EUR 30 million per year provided its beneficiaries have an annual turnover of less than EUR 100 million.

The following definitions and rules were established:

- The target groups of social housing measures are "**disadvantaged citizens** or socially less advantaged groups, which due to solvability constraints are unable to obtain housing at market conditions."
- For the compensation of social housing services, a **general exemption from notification** to the Commission was provided irrespective of the amounts involved. This will enable specific and targeted support for social housing, which is essential for e.g. urban regeneration, without the need for a separate notification to the Commission.
- Overcompensation for the fulfilment of a public service obligation may be tolerated as long as it stays within a certain threshold and is carried forward to the next period: "The revenue of undertakings entrusted with the operation of services of general economic interest in the field of social housing may vary dramatically, in particular due to the risk of insolvency of leaseholders. Consequently, where such undertakings only operate services of general economic interest, it should be possible for any **overcompensation during one period to be carried forward to the next period**, up to 20% of the annual compensation" (EC 2005/842, p.10). Any overcompensation amounting to more than 20% of the annual aid granted will count as an infringement of EU rules.
- The new package also stipulates that if an undertaking receiving State Aid to deliver services of general interest is also active in other markets, **separate accounts** must be kept.
- This Commission's Decision also lays down clear guidelines for the calculation of adequate public services compensation and stipulates which costs should be taken into consideration. The Decision allows for a **reasonable profit to be included**, which "shall take account of all or some of the productivity gains achieved by the undertakings concerned during an agreed limited period without reducing the level of quality of the services entrusted to the undertaking by the State". A clarification of the term 'reasonable profit' is also provided in order to facilitate the calculation: It means a rate of return on own capital that takes account of the risk, or absence of risk, incurred by the undertaking by virtue of the intervention by the Member State, particularly if the latter grants exclusive or special rights. This rate shall not normally exceed the average rate for the sector concerned in recent years. In determining what constitutes a reasonable profit, the Member States may

introduce incentive criteria relating, in particular, to the quality of service provided and gains in productive efficiency”.

6 Conclusions

Rental housing is not competitive today in most CESE countries such as Romania. Additionally, there is no rental alternative based on social or cost-rent principles. The main challenges that can be identified for Romanian housing policy are the lack of affordable rental choices for households entering the housing market, the inefficient management and repair of common parts of high-rise condominium buildings, the inadequate housing output and the worsening affordability.

A main prerequisite to provide rental housing alternatives is to render tenant-landlord relationships more secure and transparent. The necessary conditions therefore are written contracts and out-of-court arbitration to provide fast and low-risk settlements of tenant-landlord disputes. In the field of terms of tenancy and rent regulation we propose a liberal handling. The German example of defining a close to market upper limit of the rent level is in between a rigid rental freeze, that would in the medium run discourage the rental supply, and usury rent seeking practiced up to now in some parts of the unofficial Romanian private rental market. An important element is to make the stipulation of rent increases mandatory within written rental contracts.

How does the proposed PPP-Law meet the EU requirements? EU institutions have time and again acknowledged their support for social rental housing in the Member States and provide special financial support via their funds and development banks. This universal support was given a more definite framework by the Altmark ruling and by decisions concerning social housing. The recommended PPP-Housing law for Romania is trying to make use of European support for social housing and at the same time apply the requirements of competition law. Therefore, it clearly defines public service obligations in the field of social housing and establishes a framework how PPP-Housing companies are commissioned with these obligations by official accreditations and control by the accreditation authority. The parameters of compensation are determined transparently by the Subsidy-law. By means of the requirement of a tie-up of assets and strict control over the accounts there is long-term binding of social housing assets. A tight framework of regular audits and control will also render social housing investment attractive and less risky for capital market finance providers and at the same time facilitate the acquisition of European funds for housing policy goals. The limitation of profits to what is necessary and the enforcement of capital reinvestment make public support of the Third Sector both reasonable and legally viable.

The setting-up of a transparent and tenure secure rental market to increase tenure choice and labour mobility and at the same time increase affordability for low-income and young households will require continuous public commitment and sufficient time. By the implementation of the proposed new Romanian Housing Law, we hope that the necessary framework for such a development will be provided.

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