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EUROPEAN UNION STATE AID RULES REMAIN NECESSARY FOR TACKLING UNFAIR COMPETITION ON THE HOUSING MARKETS



"The concepts of 'level playing field' or 'freedom of competition' are not an ultra-liberal credo; they are the means by which public and private bodies can be made to compete in achieving the common good: affordable quality housing. This is why European Union's State Aid authorities must continue and enhance their crucial role, ensuring that state aid energises all market actors to compete in increasing the affordable quality housing stock" says Filiep Loosveldt, Managing Director of the European Union of Developers and House builders (UEPC).

The European Union of Developers and House Builders (UEPC) is the umbrella organisation for national federations of Developers and House Builders. The main aim of UEPC is to support and defend the interests of developers and house builders in Europe throughout lobbying an appropriate EU regulatory framework for developers and house builders. UEPC is the recognised and authoritative voice for developers and house builders at European level.

Filiep Loosveldt is the Managing Director of UEPC since 2013. He started as real estate Lawyer in Belgium in 1996 and created his own real estate consultancy company "PANAREA" in 1999. He also works closely together with the Belgian Real Estate Federation (UPSI-BVS).

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Over the last decade, there has been much conflict and debate over the European Union (EU) state aid authorities' actions aiming at ensuring a level playing field on a number of national housing markets. The concepts of 'level playing field' or 'freedom of competition' are not some ultra-liberal credo; they are the means by which public and private bodies can be made to compete in achieving the common good: quality affordable housing. This is why the EU state aid authorities must continue and enhance their crucial role by ensuring that state aid energises all market actors to compete in increasing the affordable quality housing stock. Any contribution from the State should be based on clear, transparent criteria, should not distort competition and should take into account the interests of consumers.

The decision of the European Commission (EC) to raise no objections towards the Hungarian Mortgage Support Schemes which aimed at helping homeowners affected by the current economic downturn, is very positive in that sense. The EC has concluded that although the measure mainly focuses on supporting households, it cannot be excluded that an advantage will be granted not only to the borrowers but also to the banks participating in the guarantee scheme, as indirect beneficiaries of the aid. However, the EC has also found that the aid measures contained well-defined objectives of common interest, were well designed to attain these objectives and therefore limited the distortions of competition. This scheme has hence been approved as it provided an aid of social character to individuals who were affected by a temporary income shock and at risk of losing their home. The aid was approved on the condition that the Mortgage Support Scheme was granted on a non-discriminatory basis: all Hungarian banks granting mortgages should be able to benefit from the aid.

The outcome of the famous "Dutch case" is to be welcomed as well. In fact, in the Netherlands, institutional investors lodged a complaint regarding the Dutch social housing system, arguing that it gave rise to a distortion of competition on the market of well-to-do renters. The EC concluded that the Dutch aid measures for this sector were incompatible with EU law, arguing that since the services are accessible to well-to-do persons, they no longer qualified as a public service mission of general interest. Indeed, in order to avoid distortions of competition, the compensation for social housing undertakings must not be used to finance activities outside the scope of the core service in question. Moreover, this compensation would be regarded as compatible with EU law when it is offered to all parties in an equal manner and regardless of their status (profit/non-profit). Otherwise, access to social housing should clearly be limited to a target group of disadvantaged citizens or socially less advantaged groups.

The key is to have a policy that takes account of the dynamic reality of modern housing markets and market players. Social and municipal housing companies have long since grown out of their historic function of special housing providers for the 'disadvantaged'. They have adapted to the levelling out of the old 'social categories' by taking on a more diverse and complex tenant base. At the same time, private sector house builders, investors and landlords have moved into the same direction, seeking to develop business opportunities across the population spectrum.

Narrowing down the definition of 'social housing' to merely publicly or semi-publicly owned housing companies or "not-for profit companies" does not seem to be acceptable. . With governments no longer being able to finance housing services as such, it has become inappropriate to solely allow public or semi-public bodies to offer these services. Therefore, the private sector must be enabled to offer housing services as well. State aid rules must rigorously focus on stimulating affordable housing, no

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matter what the legal status of the provider is. The aid must go indiscriminately to all those who can do the job: whether they are public, semi-public or private entities. By doing otherwise, competition on the socially mixed housing markets will be completely distorted.

In this context, we can refer to a recent Belgian case. Private developers lodged a complaint at the Belgian Constitutional Court against the Flemish Decree of 29 March 2008 on Land and Buildings Policy. This Decree obliged private developers, who applied for a building or subdivision permit for any project with more than 50 flats, 10 plots of land or 10 individual houses, to provide 20% of the land to social housing companies or to sell certain dwellings at capped prices to them or to pay €50,000 for each dwelling not provided. The private developers considered that this Decree was contrary to EU state aid rules because the compensations (purchase guarantee, infrastructure subsidies or lower taxes) had not been notified to the EC. The Belgian Constitutional Court annulled, by its decision on 7 November 2013, both the social obligations and the compensations for private residential projects. Private developers in Belgium were quite happy with this decision, because the very high social obligations made it very difficult to realize residential projects with a normal benefit.

The battle against unfair competition on the housing markets will become even more important in the near future. We can hereby refer to the recent complaint lodged by French private landlords to the EC denouncing unfair competition due to "overcompensation" received in form of state support for social housing provision. Their objective is to restore fair conditions in the French residential housing market. Indeed the allocation of state aid to the French public housing sector has distorted the housing market, while at the same time it has proven to be inefficient in reaching its main goal, namely providing affordable quality housing to the most vulnerable part of the population. They stress the importance of a fair public and private housing sector. They also emphasize that the private sector, which accounts for 6.2 billion dwellings in France, is not only subject to high taxation pressure, but also suffers from discrimination resulting from the numerous public subsidies. The EC still has to decide and hopefully it will do so in favour of a "level playing field". To be continued...

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