

FEANTSA Response to the Public Consultation on the Revised SGEI Decision

FEANTSA is the European Federation of National Organisations working with the Homeless. Social housing is a very significant instrument for preventing and addressing homelessness. We therefore follow attentively EU policies and legislation that impact it. Furthermore, many of our members are non-profit social service providers whose activities fall under the scope of the Decision.

We responded to the Commission's initial consultation and call for evidence in July. We highlighted our concern that the introduction of affordable housing as a **separate category** of SGEI to social housing under the Decision is **unnecessary** and potentially **damaging for social housing** in many European contexts.

Introducing affordable housing is **unnecessary** because Member States already have a **wide margin of discretion for defining disadvantaged citizens or socially less advantaged groups** under the current framework. This is evident from the fact that some Member States, such as France, use the existing framework to provide public support to social housing with a broad target group that includes middle income households and that serves additional purposes. Our view is that the problems relating to the application of State Aid Rules for social housing are less to do with the **definition of the target group** than with **restrictive and risk-averse application of the Altmark criteria to avoid manifest error** on the part of Member States. The "Dutch case" is often used to illustrate why the Decision should be changed. However, the Court of Justice has already ruled that the **Netherlands was not compelled by the Commission under the Decision** to introduce an income ceiling, but only to define disadvantaged citizens (Case T-202/10 RENV II).

In view of this context, we consider that the proposed introduction of affordable housing as an additional category of SGEI is **disproportionate**. Furthermore, it is **risky** and could **undermine social housing provision** in the following ways:

- 1) A more **restrictive** approach to the definition of social housing resulting from it being conceived in opposition to affordable housing.
- 2) **Dilution of public support for social housing in favour of affordable housing**, in a context where **public investment in the former has declined**; where **unmet needs are growing**; and where public support for the **most affordable forms of social housing**, which align with demonstrable **unmet housing need**, is increasingly being substituted by support for **less affordable forms of housing**
- 3) Enabling public support to flow to **for-profit** housing provision that does not match demonstrable **social needs** and may not **serve the public interest in the long term or offer value for public money**

Unfortunately, the Commission's proposal has not allayed our fears, which we are compelled to repeat and elaborate upon here.

Firstly, we continue to oppose the distinction between social and affordable housing

proposed, which fails to take adequate account of the existing status quo in many Member States. The Commission's proposal differentiates between social housing, which will **'be available to disadvantaged citizens or socially less advantaged groups, including people experiencing homelessness, who due to solvency constraints are unable to obtain housing at market conditions'** and affordable housing, which will **'be available to households that are not able, due to market outcomes and notably market failures, to access housing at affordable conditions.'** It goes without saying that FEANTSA thinks social housing should be available for homeless people. Nonetheless, we are doubtful that their inclusion in this Decision will lead to better outcomes for them in this respect. Instead, we think that the Commission's proposal risks leading to **residualisation and disinvestment in social housing by diverting aid to affordable housing**. This will ultimately mean that support shifts from lower to higher income groups, a process that is occurring in various EU countries. This is especially likely in the current context of increased demand, pressure on public budgets and a high level of political attention to housing as a societal issue. Such a shift does not reflect the reality of housing difficulties in Europe, which are concentrated amongst low-income households. The effect of such a shift is inadequate levels of social housing production, which is bad news for homelessness, even if the mention of homeless people as a target group is welcome. We are furthermore concerned that the **definition of affordable housing** remains **too vague** and is likely to lead to aid for housing initiatives that **fail to address genuine social needs** and where the link to clear **public interest is questionable**. In highly financialized housing markets, the danger of social washing of affordable housing products is very high. The references to "real need of affordable housing" and "reliable indicators" in the Commission's proposals do not convincingly address this.

Secondly, the Commission's proposal introduces a **minimum period of twenty years** from the beginning of the delivery of the service during which housing must remain either social or affordable. We find this deeply concerning. In Germany, controlled rents and allocation rules for social housing are time-limited, linked to the duration of subsidised loans. Once the loan is repaid, the units return to the regular market. In a context of dwindling new production, Germany has been **losing social housing at an alarming rate in recent decades**. Many countries have already lost significant volumes of social housing through sales to the private market. The Commission's proposal seems likely to facilitate this type of approach, despite its obvious limitations. Publicly supported housing should serve the public good **in perpetuity** to ensure **social needs are sustainably addressed** and to **provide value for public money**.

Thirdly, FEANTSA is alarmed by the Commission's proposal that aid for affordable housing should be open to **all providers able to deliver the service**, regardless of their legal status and/or public or private nature. We fear that this will weaken the position of public and not-for-profit social housing providers, whose primary mission is to meet social needs. Whilst the newly levelled playing field would not apply to social housing provision, they are likely to become less viable because of crowding out.

FEANTSA fears that the proposed change could weaken the **social credibility of the entire Affordable Housing Plan**, particularly if **EU funds and finance end up supporting more affordable housing than social housing**.

Most FEANTSA members are **non-profit social service providers**. Whilst some provide housing, many more provide accommodation and other social services. We are therefore

disappointed that the Commission's proposal for revision of the Decision pays little attention to any sector beyond housing, even though **social service providers have been encountering and signalling problems with the application** for many years – namely that the Decision is underused in the social services sector. The Commission should take **better account of the special economic reality of non-profit social service providers** in the Decision. In particular, the concept of a “non-profit entity” as defined in Art. 2 (1) (h) of the SGEI De-minimis-Regulation must also be incorporated into the SGEI Decision.

One of the drivers of the new proposal appears to be the fact that the Commission has had to handle lengthy and complicated notification procedures for affordable housing schemes in recent years (Czechia and Ireland). We understand the need to minimise **delays and administrative burden** for all parties involved. However, we feel that this should **not take precedence over ensuring public interest and value for public money**. If the proposed changes are adopted, private operators are less likely to take manifest error complaints to the Commission because the proposed changes level the playing field for them as potential beneficiaries of State Aid. This will reduce litigation but could come at a considerable social cost.

We would like to highlight that the reform of the SGEI Decision, which has been pending for years, has happened **very quickly**. Member States and stakeholders have had little time to **assess the proposals and respond adequately**. The Commission plans to publish the new SGEI Decision in December, which will be immediately applicable in all the EU Member States. Whilst we appreciate the urgency for action on housing, we consider that rushing through such important reform, using the justification of “political emergency” is insufficiently democratic, transparent and inclusive.

FEANTSA wishes to remind the Commission that **alternative courses of action** are still possible. Rather than introducing affordable housing into the Decision, the Commission could **clarify the existing rules** e.g. through a communication. It could provide Member States with **technical assistance and capacity-building** on applying them. It could also consider a **fast-track notification procedure** for affordable housing outside the Decision. Even changing the definition of **social housing** to make clearer the freedom that MS have to define its target group, **could be preferable** to introducing a competing category of SGEI.

In conclusion, FEANTSA **does not support the Commission's proposal to include affordable housing in the SGEI Decision**. We believe that the risk of damaging social housing outweighs the potential benefits and that the changes could worsen housing outcomes for the most vulnerable, as well as frustrate progress towards ending homelessness. We urge the Commission to reconsider its approach, especially as regards:

- Introduction of affordable housing as a distinct category
- Introduction of a minimum period for social or affordable function of housing
- Eligibility of all housing providers for exempt State Aid for the provision of affordable housing