

FEANTSA Reaction to the proposal for a Regulation establishing a framework for measures in Member States to safeguard housing affordability and availability (Affordable Housing Act)

FEANTSA, the European Federation of Organisations Working with the Homeless, takes note of the Commission's proposal for a Regulation establishing a framework for measures in Member States to safeguard housing affordability and availability (Affordable Housing Act). The proposal aims to provide greater legal certainty in this area. Whilst it would achieve this, we fear that the practical effect could be to make it more difficult for public authorities to take effective measures. By setting a high threshold for action and imposing extensive evidential requirements, it could significantly raise the burden on public authorities, possibly disincentivising action.

Worryingly, this is the second legal flagship to have fallen short of the Affordable Housing Plan's stated social ambition. The first was the introduction of the SGEI on Affordable Housing, which we fear could crowd out investment in social housing. Going forward, we urge the Commission to invest more energy and resources in the Plan's Fourth Pillar - protecting the most affected by the housing crisis. This requires supporting housing policy design that goes beyond rigidly defined housing stress areas and takes not only a reparatory, but also a preventive approach to housing unaffordability.

Our concerns about the proposal speak to a major challenge facing the Commission: How will it show citizens that EU-level action on housing has demonstrable social impact? Having set out a political imperative to act on housing, it lacks competence for the most important levers for change. There is a risk that the plan will fall short on its stated social ambition. One way to address this is to sharpen the focus on reaching people who are excluded from adequate housing. When it comes to the fight against homelessness, considerable impact could be achieved through effective mobilisation of the EU budget and deploying the Commission's "soft power" to support better policies. In this respect, FEANTSA was encouraged by Commissioner Jørgensen's statement in the European Parliament that "we need to do more to fight homelessness, obviously"¹. We invite the Commission to prioritise this work more in the next phase of the plan, notably in the context of the European Platform on Combatting Homelessness and the Housing Alliance.

What is in the Proposal for a Regulation?

It is a legislative proposal from the European Commission in the context of the Affordable Housing Plan. It puts forward a common operational framework for assessing housing stress and demonstrating the justification and proportionality of measures to restrict Short Term Rentals (STR) and use of residential property and land for non-primary residence. It addresses the fact that policymakers, notably at local level, report struggling to manage the impact of these uses on housing affordability, especially in major urban centres, metropolitan areas with strong labour market growth, and areas with high tourism intensity.

Initially pitched as a Directive, it is a proposal for a Regulation. If adopted, it will apply directly and uniformly. No transposition into national law is required, giving MS less room to adapt to their national contexts.

The proposal for a Regulation is accompanied by a Commission Recommendation on housing affordability and supply in areas under housing stress. FEANTSA will publish a separate response to that.

Will it help public authorities to act?

From FEANTSA's perspective, the key test for the Affordable Housing Act is whether it makes it easier or more difficult for public authorities to intervene in relation to short-term rentals (STRs) and the non-residential use of housing and land to safeguard the availability of affordable housing.

¹ See <https://audiovisual.ec.europa.eu/en/media/video/I-293922>

Answering this question goes beyond the core expertise of the homeless sector, and public authorities should draw their own conclusions. However, as key stakeholders in the outcome of housing policies, we wish to raise several concerns.

It is important to emphasise that public authorities already can, and do, regulate STRs and non-primary residential uses within the framework of EU Single Market law. Such measures must comply with the principles of proportionality and non-discrimination and be justified by an overriding reason in the public interest. Authorities that adopt such measures frequently face legal challenge. Some have run aground on proportionality and non-discrimination, but the jurisprudence is clear that housing-based restrictions are not inherently incompatible with EU law and that the protection of affordable housing can justify intervention in the public interest. In *Cali Apartments* (2020), the Court of Justice of the European Union held that a prior authorisation scheme for certain short-term rentals could be compatible with EU law where it pursued the objective of addressing long-term housing shortages and was proportionate to that objective. More broadly, the Court has consistently recognised combating housing scarcity as an overriding reason in the public interest.

FEANTSA's initial assessment is that the proposal risks making intervention more difficult in practice. The text appears to establish demanding conditions for the designation of housing-stressed areas and for demonstrating the necessity and proportionality of restrictions. In doing so, it places a significant evidential burden on authorities. We question whether it will reduce the likelihood of legal challenges, or simply further specify the grounds for such challenges. There is a possibility that cities which have adopted ambitious measures to protect housing availability could find that those measures do not satisfy the criteria established by the new framework. For example, some cities currently restrict short-term-rental activity by owner-occupier hosts, who fall outside the scope of the proposal.

Over time, CJEU jurisprudence has gradually been building legal certainty regarding the interaction between Single Market freedoms and housing-protection measures. In contrast, this proposal seeks to create a high degree of operational certainty through legislation in a relatively short period. While that approach reflects the political urgency of the housing crisis, jurisprudence arguably offers a more flexible and adaptive framework. The risk is that the Regulation substitutes a developing body of case law with a more rigid statutory framework, requiring public authorities to satisfy demanding evidential thresholds, limiting their ability to intervene before affordability pressures become critical. Whilst cities have consistently called for more legal certainty, the proposal is proof that certainty can be a double-edged sword. Moreover, bringing together regulation on both STR and non-primary housing use raises the question of whether public authorities may intervene, for instance to curb vacancy rates outside the stress areas defined according to the proposed criteria. We think the Commission should explore together with the local stakeholders to what extent this would be the case.

The initiative was initially announced as a Directive. Opting for a Regulation potentially gives MS less room to adapt to their national contexts. Beyond the question of why a Regulation, there are grounds to doubt that a common operational framework is necessary at all. Non-binding guidance explaining existing Union law and providing practical recommendations would have been a much lower-risk first step.

Housing stress

The proposal sets out cumulative criteria for an area to be under housing stress. The price-to-income ratio must be above 8, it must have increased over the preceding 10 years; and it must be unlikely to ease over the next three years. The last condition is to be proved based on a range of indicators regarding population dynamics, supply of housing or demand for housing, from which the regulatory body must choose at least one to justify the intervention. If the price-to-income ratio is above 10, the 10-year rule does not apply. The PTI above 8 combined with its increase in the past 10 years is presented as a pre-screening measure meant to identify a worrying trend before reaching critical levels.

However, the analysis presented in the Impact Assessment is questionable. The main argument for setting a PTI of 8 as a benchmark instead of, for instance, 5, as explored by the study, seems to be merely that the latter would lead to a significantly broader coverage of EU territory as falling under the housing stress definition.

Together, these criteria appear to set the bar high. House prices fluctuate, even when the long-term trend is upwards. Public authorities would have to prove that a housing crisis will continue before being permitted to act to prevent it. This could delay intervention until housing affordability has already deteriorated to crisis levels. Authorities would be required to assemble extensive evidence of both present and future market failure before adopting measures to protect the availability of affordable housing. A key question is whether and to what extent measures that are currently in place locally could be challenged, because even though Art.14 stipulates that the Regulation does not apply to measures adopted before its coming into force, it grants the possibility that “a competent authority may review such measures in accordance with this Regulation.”

Finally, price-to-income ratio is a blunt instrument to measure housing affordability. It is a macro-indicator that tells us little about the distribution of housing (un)affordability. FEANTSA has consistently argued that a proper assessment of stressed market should include some housing indicators on unmet housing need e.g. Eurofound’s 30/40 housing stress measure.

Moreover, Annex 4 of the Impact Report argues in favour of using price-to-income ratio as a proxy for rent-to-income, although it acknowledges the possibility of a disjunction between house and rent prices. We think this aspect is skimmed over too quickly, especially considering that: 1) tenants are disproportionately affected by housing unaffordability; and 2) rent increase is currently one of the factors taken into account for the assessment of stress areas in France, Spain and Germany.

Territorial scope

The proposal provides that the territorial scope of an area under housing stress must be limited to what is necessary to safeguard housing affordability and availability. While this reflects the principle of proportionality, it may prove difficult to implement in practice. Authorities would be required to demonstrate not only that housing stress exists, but also where the boundary lies. Moreover, highly localised restrictions may produce displacement effects. If restrictions apply only within narrowly defined housing-stress zones, activity may simply shift to adjacent areas, transferring rather than resolving affordability pressures. Such spillover effects are well recognised in housing.

Necessity and proportionality

Intervention is only possible where the authority can demonstrate not only that an area is under housing stress, but also that the relevant activity has had an adverse effect on housing affordability or availability during at least the preceding three years. Furthermore, it appears that public authorities must establish a causal link with housing outcomes. This will be challenging as housing outcomes are shaped by many variables. These appear to be extremely burdensome requirements. Furthermore, intervention seems only to be possible once adverse effects have already become established and measurable. This curative approach strikes us as at odds with the principles of effective housing policy, which is necessarily long-term.

Authorities must also demonstrate that no less restrictive measure would be equally sufficient to improve affordability and availability. Furthermore, measures must be territorially limited to the area under housing stress and, where appropriate, calibrated to different levels of stress within that area. As mentioned previously, such requirements are likely to prove difficult to implement in practice.

Hosts

The proposal only covers restrictions on STR activity where the owner is not a resident. Hosting therefore falls beyond the scope. However, we see no reason to believe that hosting does not impact affordability of housing. As mentioned above, some authorities restrict hosting currently.

Another Underwhelming Legislative Initiative on Housing?

The Affordable Housing Act is the second major legislative initiative under the Affordable Housing Plan, following the reform of the State aid rules for housing, which FEANTSA has argued against. In both cases, the limits of the EU’s legal competences in the housing field, and the contradictions of the Commission’s approach, become apparent.

The Commission is seeking to use the tools available to it, so far Single Market law and State aid rules, to remove barriers and create more favourable conditions to increase the supply of affordable and social housing. These initiatives have been presented to citizens as a response to the housing crisis and as part of a broader social agenda. Yet their likely impact on outcomes for people who are unable to access or maintain a decent home is questionable. As we have pointed out since the announcement of the plan in 2024, the critical question is 'Affordable for whom?'²

For people facing housing exclusion, the most important determinants of housing outcomes are unlikely to be State aid rules, Single Market rules or the regulatory burdens targeted by the forthcoming Housing Simplification Package. They are more likely to be social housing provision, benefits, tenancy protection, and homelessness services. These remain overwhelmingly within national, regional and local competence. Political will, public budgets, and the state of the knowledge will largely determine these policies, rather than adjustments to EU market regulation. Measures such as clarifying the conditions under which public authorities may restrict short-term rentals, or expanding the circumstances in which State aid can be granted to affordable housing schemes, are at best indirect mechanisms for advancing the right to housing. At worst, they create the appearance of decisive action without addressing homelessness or housing exclusion.

FEANTSA has already expressed serious concerns that the introduction of the new SGEI framework for affordable housing could weaken existing social housing systems³. We are now equally concerned that the Affordable Housing Act may make it more difficult in practice for public authorities to regulate short-term rentals and non-primary residential uses in the interests of housing affordability. Our input at the consultation phase has seemingly not shaped these measures. The forthcoming Housing Simplification Act also seems unlikely to deliver any direct benefits for those facing the most severe housing difficulties.

It is not enough for the European Union to act on housing. It must act in ways that make a positive difference, especially for those experiencing homelessness and housing exclusion. We encourage the European Parliament, Member States, cities and other stakeholders to go beyond supporting or opposing EU action on housing at the level of principle, and to examine this and other initiatives on the basis of their concrete added value. The key test of the plan is whether its actions deliver tangible benefits for those experiencing housing need, rather than disproportionately favouring the interests of the real estate sector and investors

Beyond this proposal for a Regulation, FEANTSA encourages the Commission to ensure the social credibility of the Affordable Housing Plan by focusing greater attention on the effective mobilisation of EU funding and finance for social and affordable housing and using its convening power and policy coordination tools to support stronger housing policies across Member States, notably when it comes to homelessness. The commitment to mobilise EU investment in housing solutions for people experiencing homelessness, and the proposal for a Council Recommendation on fighting housing exclusion are positive. How they are implemented and followed up will be critical tests of whether the Affordable Housing Plan can deliver meaningful social outcomes.

In conclusion, the proposal appears to have serious shortcomings. It could actually make intervention more difficult in practice. This initiative appears to confirm a pattern of the Affordable Housing Plan under-delivering on housing as a social right. The next phase of the plan must do better on addressing genuine housing needs.

² FEANTSA (2024) Affordable for Whom: Reflections on the Possibilities of an EU Affordable Housing Plan from a Homelessness Perspective, <https://www.feantsa.org/resources/affordable-for-whom-reflections-on-the-possibilities-of-an-eu-affordable-housing-plan-from-a-homelessness-perspective>

³ See [FEANTSA Response to the Public Consultation on the Revised SGEI Decision](#)



For more information contact:
Ioana Vlad, Housing Policy Officer,
[*ioana.vlad@feantsa.org*](mailto:ioana.vlad@feantsa.org)