LEGAL DEVELOPMENTS RELATING TO HOUSING
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I. EU LEGISLATION RELATING TO HOUSING

Although housing is not a competence of the European Union, European Law touches on housing in a wide range of fields. Areas where there has been no new legislative activity and texts that were already included in the first Overview are mentioned in Annex I. Other regulations in thematic areas where recent developments have taken place are presented in more detail below.
With the entry into force of the Lisbon Treaty in 2009, the **EU Charter of Fundamental Rights** became legally binding. The Charter provides the main reference point for the protection of human rights in the EU and its Art 34 3. reads as follows:

*In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.*

The proclamation of the **European Pillar of Social Rights (EPSR)** in 2017 was significant as it acknowledged the need to balance macro-economic objectives and budgetary and fiscal discipline imposed on EU Member States against the requirements of social rights. However, the EPSR principles are not enforceable in the absence of implementing measures, which impairs its effectiveness. On 14 January 2020, the new European Commission released a communication on the preparations for an Action Plan to implement the European Pillar of Social Rights which will be produced in **2021** and serve as a guide for the renewed process of convergence towards better working and living conditions in Europe.²

For now, the main mechanism following up on progress within the framework of the EPSR is the **European Semester**. It is the annual cycle of economic and social policy coordination in the EU and it focuses primarily on budgetary discipline and macro-economic stability. However, attention to social issues including homelessness and housing exclusion has gradually increased over time, enabling Principle 19 on housing and housing assistance for the homeless to emerge within the follow-up process of social progress.

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² A strong social Europe: https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_20
Article 107 of the TFEU prohibits State aid except in specific economic circumstances. The Commission is responsible for ensuring that State aid complies with Union law and in principle Member States have to notify State aid payments. Member States retain considerable discretionary powers regarding the meaning of the SGEI. Social housing, as a service of general economic interest (SGEI), is exempt from the requirement to notify the Commission of State aid payments. The Commission must verify however that there are no manifest errors. Social housing is defined as being intended for ‘underprivileged citizens or socially less advantaged groups which, due to solvability constraints are unable to obtain housing at market conditions’.

The Commission is currently reviewing its State Aid legislation, including by consulting on the 2012 SGEI Package which created a specific regime for health and social services.

Recent EU legislative and policy developments in the field of energy efficiency related to housing include:

**Directive (EU) 2018/2001 of 11 December 2018** on the promotion of the use of energy from renewable sources: directive establishing a common framework for the promotion of energy from renewable sources and setting a binding Union target for the overall share of energy from renewable sources in 2030.

**Directive (EU) 2018/2002 of 11 December 2018 amending Directive (EU) 2012/27** on energy efficiency; directive establishing a common framework of measures to promote energy efficiency within the Union in order to meet 2020 targets on energy efficiency of 20% and 2030 targets on energy efficiency of at least 32.5%.

In March 2019, the European Commission put forward the **Clean Energy for all Europeans Package**, a set of new rules defining the legislative parameters for the coming years in matters of energy, including setting 2030 goals for energy efficiency. The Clean Energy package includes an emphasis on improving energy
performance in the buildings sector as well as reaching a common definition of energy poverty with monitoring requirements from all Member States.

A milestone development in the last year is the 11 December 2019 Communication from the Von der Leyen Commission on the European Green Deal, the general roadmap to make the EU climate-neutral by 2050. This has been followed by more concrete plans on how this will be achieved, including the European Green Deal Investment Plan (EGDIP), also referred to as the Sustainable Europe Investment Plan (SEIP), which represents the investment pillar of the Green Deal. The Green Deal aims to ‘leave no one behind’ and one of its priorities is the improvement of the energy efficiency of buildings, through the renovation of housing, in particular of social housing.

Most recently, in March 2020, the new Commission put forward a European Climate Law which sets out a binding objective of climate neutrality in the European Union by 2050 in line with the Paris Agreement. Energy efficiency and energy affordability figure as key aspects considered when setting a trajectory for achieving this goal.

The European institutions have reached a partial agreement on the legislative package for cohesion policy 2021-2027. This package covers instruments such as the European Social Fund, the Fund for European Aid to the Most Deprived, and the European Regional Development Fund, which could be used by Member States to support measures relating to homelessness and housing in the period 2021-2027.
In response to the financial and economic crisis, the European Union adopted six new legislative texts in 2011 (the so-called ‘Six Pack’) to strengthen the Economic Governance\(^6\) of the euro area and the role of the Union as regards the economic policy of the Member States on the basis of Article 121.6 of the Treaty.

The social and economic governance established in the EU following the crisis did not consider until recently the impacts of fiscal and budgetary measures on social rights. This omission had significant effects particularly in EU Member States receiving budgetary support.\(^6\) The European Commission has recently presented a review of the effectiveness of the economic surveillance framework and has launched a public debate on its future.\(^7\)

Proposal for a Directive on credit servicers, credit purchasers and the recovery of collateral\(^8\)

Another consequence of the crisis has been the accumulation of non-performing loans (NPLs) in banks’ balance sheets. The EU is encouraging the development of secondary markets for NPLs, which would allow banks to manage or sell bad loans more easily. A Council’s position was approved on a proposed directive which harmonises rules for how non-credit institutions can buy credit assets from banks.\(^9\) The aim of the new rules is to reduce existing banks’ stocks of NPLs and prevent their accumulation in the future. A proposed Directive is currently being discussed in the European Parliament. This initiative may impact stressed borrowers in financial difficulty as they would be exposed to vulture funds and debt collectors located in other countries, and potentially to even worse treatment and repossession of homes.
# CHAPTER 5

**LEGAL DEVELOPMENTS RELATING TO HOUSING**

## ANNEX I.

**SUMMARY OF OTHER EUROPEAN UNION LAW TEXTS IMPACTING HOUSING**

<table>
<thead>
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<th>EU Law</th>
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| Non-discrimination           | Article 19 TFEU  
Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (article 3.1(h) on access to goods and services, including housing) |
| Free movement                | Article 45 TFEU  
Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (article 24 on equal treatment)  
Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers |
| Third country nationals      | Directive 2014/36/EU on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (article 20 related to housing conditions)  
Directive 2011/98/EU on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (article 12 related to equal treatment but provides the possibility of restrictions on equal access to housing)  
Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (article 32 on access to housing) |
| Consumer protection          | Directive 2014/17/EU on mortgage credit agreements for consumers relating to residential property  
Directive 93/13/EEC on unfair terms in consumer contracts  
Directive 2005/29/EC on unfair business-to-consumer commercial practices |
II. COURT OF JUSTICE OF THE EUROPEAN UNION

The role of the CJEU is ensuring that EU law is interpreted and applied the same in every EU country; ensuring members and EU institutions abide by EU law and lastly settling legal disputes between national governments and EU institutions. There have been recent decisions related to housing issues.
HOUSING AFFORDABILITY AND SHORT STAY ACCOMMODATION:

AIRBNB IRELAND (CASE 390/18)

In a context of high tourist flows in European cities and a growing debate on the impact of short term rental platforms on the affordability of housing, many homes previously available in the private rental market are now being rented to tourists through different platforms, such as Airbnb, Home Away and others. Tourist rental is said to be increasing the price of rentals in cities and local governments are forced to somehow regulate this activity.

A recent ruling by the ECJ in relation to Airbnb held that, under EU law, Airbnb should be considered a digital information provider rather than a traditional real estate agent. The services provided in France by Airbnb benefit from the freedom to provide services laid down by the Directive on electronic commerce and France cannot require Airbnb to hold an estate agent’s professional license as it did not notify the Commission of that requirement in accordance with Directive. Some European cities reacted strongly to the decision requesting the EU to adopt new legislation which allows them to regulate these platforms.

In the meantime, the European Commission has recently reached an agreement with collaborative economy platforms (Airbnb, Booking, Expedia Group and TripAdvisor) on data sharing. This will allow Eurostat to publish data on short-stay accommodation offered via these platforms across the EU.

STATE AID AND SERVICES OF GENERAL ECONOMIC INTEREST:

STICHTING WOONLINIE AND OTHERS V COMMISSION (JOINED CASES T-202/10 RENV II AND T-203/10 RENV II)

The European Court of Justice confirmed the Commission decision approving and making binding the commitments by the Netherlands to modify the system of financing Dutch social housing.

After years of judicial proceedings which have generated a substantive debate on social housing in the European Union, the European Court of Justice, on 15 November 2018, dismissed the appeals of the Dutch social housing bodies against the decision of the European Commission linked to social housing reform in the Netherlands. The Court of Justice recalled that the Commission has to act in the case of manifest error and reminded its meaning in the area of social housing as SGEI, as well as the respective roles of the Member States, the Commission and of the Court itself in this matter. The Court considered that the Commission ‘did not require a definition of the SGEI based on an income ceiling, [therefore] did not make a mistake, did not incur in abuse of its powers’.

CONSUMER RIGHTS, UNFAIR TRADING PRACTICES, ENERGY:

EVN BULGARIA TOPOLOFIKATSI (JOINED CASES 708/17 AND 725/17)

A recent decision by the CJUE ruled that the European Union law does not preclude a national law that provides that each owner of a property in a building in co-ownership is required to contribute to the cost of heating supplied to the common parts of that building.
III. NEW DEVELOPMENTS ON THE RIGHT TO HOUSING

During the last year there have been many new developments in relation to housing that are worth mentioning also in the UN and Council of Europe systems.
SPECIAL RAPPORTEUR ON THE RIGHT TO ADEQUATE HOUSING

Going into the final year of her mandate as Special Rapporteur on the Right to Adequate Housing, Ms Leilani Farha has continued to be a strong defender of housing as a human right, advocating for it in her country visits and thematic reports. The final report of her mandate contained sixteen guidelines for the Implementation of the Right to Adequate Housing. In 2019, Ms Farha conducted an official visit to France, among her findings she found that: ‘(...)Despite these efforts, housing affordability has become a significant problem. In most metropolitan areas there is an insufficient supply of social housing for those most in need. While the right to housing can be claimed, applicants who do so, are often allocated housing only after several years.’

DECISION BY UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS:

LÓPEZ ALBÁN V. SPAIN

In October 2019, another decision by the UN Committee on Economic, Social, and Cultural Rights (CESCR) found that Spain violated Article 11.1 on the right to an adequate standard of living. This decision holds that: ‘the eviction of the family occurs without an examination of proportionality by the authorities, which constitutes a violation of their right to housing.’ Similarly, the Committee considers that the refusal of the public housing author’s application without taking into account her situation of need, and only because she was occupying a dwelling without a legal title, constituted, in itself, a violation of her right to adequate housing.

The Committee has once again confirmed its particularly extensive position on the right to housing, comparing to other international or regional human rights bodies. Over one hundred communications by individuals and families who consider that their human right to adequate housing has been violated by the Spanish State are still pending before the CESCR. A pending case from Belgium regarding an eviction for termination of lease by the landlord is currently being studied by the Committee.

EUROPEAN CONVENTION OF HUMAN RIGHTS

Although not explicitly included in the European Convention of Human Rights, the right to housing is connected to articles which are relevant in the fight against homelessness and housing exclusion, in particular Article 3 – prohibition of torture or inhuman or degrading treatment and Article 8 – right to respect for private and family life, for example. The European Court of Human Rights has continued to produce relevant jurisprudence:

PROPORTIONALITY ANALYSIS IN PRIVATE RENTED ACCOMMODATION:

F.J.M. V. THE UNITED KINGDOM

This case concerned a possession order against a tenant when the landlords defaulted on their mortgage payments. The applicant complained that the courts in the United Kingdom had refused to carry out a balancing exercise between her rights as a tenant to not lose her home and the mortgagee’s right to be repaid.
The Court found that domestic legislation had taken account of the competing interests and that the parties in question had entered voluntarily into a contractual relationship in respect of which the legislature had prescribed how each of their Convention rights were to be respected. According to the Court, if a private tenant such as the applicant would require an independent tribunal to conduct a balancing exercise before making a possession order, the resulting impact on the private rental sector would be wholly unpredictable and potentially very damaging. The Court unanimously declared the complaint under Article 8 inadmissible.

The ECtHR recalls that the loss of one’s home is the most extreme form of interference with the right to respect for the home. Accordingly, ‘any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in light of the relevant principles under Article 8’ (§ 36). The ECtHR has developed jurisprudence in which it distinguishes between private and public landlords for the application of the proportionality check. The check only applies in cases where applicants lived in state-owned or socially owned accommodation, and no other private interests are at stake. In the private rented sector, the balance between the rights of tenants and private landlords can be struck by legislation.

**TENSION BETWEEN THE RIGHT TO PROPERTY AND THE RIGHT TO HOUSING:**

**CASA DI CURA VALLE FIORITA V. ITALY**

The case concerned a company being unable to recover possession of a building in Rome that had been occupied since 2012, without any legal title, by a group of housing activists (movimento lotta per la casa). A final and enforceable judicial decision was given on 9 August 2013 ordering the eviction of the occupants. It remained unenforced owing to social considerations (a failure to find alternative accommodation for the occupants because of a lack of resources) and fears of public-order disturbances.

The Court acknowledged that social considerations and fears of public-order disturbances could justify difficulties with enforcement and a delay in evacuating the premises. Nevertheless, it saw no justification for the Italian authorities’ complete and prolonged failure to take action, reiterating that a lack of resources could not in itself constitute an acceptable reason for failing to enforce a judicial decision. It therefore found that the national authorities, in failing to take any steps to comply with the decision of 9 August 2013, had deprived the provisions of Article 6 § 1 of the Convention of all useful effect and had breached the principle of a law-based State, founded on the rule of law and the principle of legal certainty.

**INHUMAN AND DEGRADING TREATMENT:**

**KHAN V. FRANCE**

Several unaccompanied minors, including Mr Khan, spent several months in the slum of the Lande (‘Jungle’) of Calais in northern France. The camp was dismantled several times in 2016, which led to a deterioration of Mr Khan’s living conditions there. In March 2016, before leaving France, Mr Khan filed a complaint before the ECtHR. The complaint refers to Articles 3 and 8 ECHR (prohibition of inhuman and degrading treatment, the right to respect for private and family life) and Article 1 of Protocol No. 1 (the right to peaceful enjoyment of property). Within a week, despite the request of NGOs, the ECtHR issued its decision not to require interim measures from the French public authorities, considering that measures were already being
implemented following the judgement of the Children’s Judge. However, in a February 2019 judgement, the ECtHR stated that the non-intervention of public authorities to identify and guarantee the assistance to unaccompanied minors present on the camp represents a breach of the obligations made to Member States by the ECHR in its Article 3. It considers that the public authorities did not do everything in their power to fulfil their obligations related to taking care of unaccompanied minors.

It is important to highlight that this decision followed numerous appeals from associations on the living conditions of people in this slum. The court’s decision is in line with its jurisprudence on Article 3 and it has been very well received since it includes many arguments put forward by third party interventions (from the CNCDH and the DDD).

**INTERIM MEASURES APPLIED IN P.H. AND OTHERS V. ITALY**

The ECtHR decided to apply an urgent measure in this case concerning three Bosnian citizens of Roma ethnicity who were evicted with their minor children from a settlement in Ponte Riccio in April 2019. On 5 April 2019 the Mayor of Giugliano issued Decree no. 29, ordering that all the settlement’s inhabitants be evicted for reasons of public health and safety. That order was carried out on 10 May. On 16 May 2019 the applicants made a request to the Court under Rule 39 of its Rules of Court for an interim measure to require the State to provide them and their families with adequate accommodation and to suspend any further eviction. The Court adjourned its examination of the request until 17 May 2019 after asking the parties to submit information. As it was not clear from the Government’s response to the Court’s questions whether the applicants had been rehoused, the Court decided to apply an interim measure indicating to the Italian Government that it should provide temporary accommodation for the minors involved and their parents, without separating them.

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS**

A number of collective complaints related to the right to housing have been lodged using the Additional Protocol of the Revised European Social Charter.

**COLLECTIVE COMPLAINT AGAINST GREECE FOR NON-COMPLIANCE WITH THE RIGHT TO HOUSING**

In November 2018, the International Commission of Jurists and the European Council for Refugees and Exiles lodged a collective complaint against Greece before the European Committee on Social rights for violations of migrant and asylum-seeking children’s rights, both with families and unaccompanied, under the revised European Social Charter. ICJ and ECRE alleged that Greece fails to ensure the protection of unaccompanied migrant children in Greece and accompanied migrant children on the North Eastern Aegean islands due to inter alia the oversaturation of reception facilities. The alleged grievances include the non-compliance with the right to housing; the right of children and young persons to social, legal and economic protection; the right of the family to social, legal and economic protection; the right to protection of health; the right to social and medical assistance; and the right to education. In May 2019, the European Committee of Social Rights declared unanimously the complaint admissible and decided to establish immediate measures, in particular to ensure the appointment of a guardian; to ensure access to food, water, education, and appropriate shelter; to ensure access to health care and medical assistance.
COLLECTIVE COMPLAINT AGAINST ITALY ON THE HOUSING SITUATION OF THE ROMA POPULATION

In March 2019, Amnesty International filed a complaint in response to the situation of Roma people in Italy. The complaint presents comprehensive evidence alleging how the housing situation of Romani communities in Italy amounts to a series of breaches of the European Social Charter. These include widespread forced evictions; the continued use of segregated camps featuring substandard housing and lack of equal access to social housing. In July 2019, the European Committee of Social Rights unanimously declared the complaint admissible and decided to indicate immediate measures. The measures include, in particular, to ensure that persons evicted are not rendered homeless and to ensure that evictions do not result in the persons concerned experiencing unacceptable living conditions.

FOCUS ON IRELAND

We would like to take a special look at Ireland, to give an example of how European legislation and jurisprudence can be used to advance the right to housing in domestic legislation.

INNOVATIVE LAW PASSED BY IRISH PARLIAMENT PROTECTS DISTRESSED MORTGAGE OWNERS BY INTRODUCING A PROPORTIONALITY ASSESSMENT

A piece of legislation has been passed by the Oireachtas which protects distressed mortgage owners. This Act enables courts to consider whether making a possession order would be ‘proportionate’ and fully respect the rights of the borrower and those living in the home. It must examine whether the lender has made a statement to the borrower, setting out the terms in which the borrower could remain in the home. It must also examine any proposal made by the borrower which would allow the household to remain in the home and can consider any additional matters it considers appropriate.

By applying these EU laws, in addition to the Irish legislative and legal developments, Irish courts and lawyers can really assist their clients and vulnerable defendants. This decision, along with other significant legal developments, provide courts and lawyers with the opportunity to really act to protect the interests of ordinary people at risk of losing their homes.

This had never been explicitly set out in legislation in Ireland before and had not been a consideration of courts in these proceedings.

IRISH COURT CONFIRMS THAT EU LAW PROVIDES IMPORTANT DEFENCES FOR PEOPLE AT RISK OF LOSING THEIR HOMES

In Grant v County Laois Registrar in April 2019, the Irish High Court has confirmed that EU Law protects people at risk of losing their home in Ireland. Irish judges and registrars must assess mortgage documents for unfair mortgage terms on their own initiative – or, in other words, to carry out an own motion assessment on the terms of the mortgage in line with EU law. Circuit Court Registrars, along with judges, are obliged to assess mortgage documents for unfair mortgage terms on their own initiative, without being asked to do so by the borrowers. They will then have to delete any terms they find unfair before entering a possession order, in accordance with the EU Unfair Terms Contract Directive (UTCD).